

Election Platform – 2016 Federal Election

Priorities for the Indigenous Native Title Sector

The National Native Title Council (NNTC) is the peak body for the Indigenous Native Title Sector. The NNTC provides a voice on matters of national significance; promotes the interests of Traditional Owners at the local, regional, national and international level; and advocates on their behalf on land and land related matters.

Native title goes to the core of Aboriginal identity and has the potential to be one of the key instruments of nation building. Native title has already succeeded in re-aligning race relations in Australia, but there remains much to be done if the full possibilities of native title are to be realized.

In his “Closing the Gap” speech in February 2016, Prime Minister Malcolm Turnbull stated it ‘is equally important we listen to Aboriginal and Torres Strait Islander people when they tell us what is working and what needs to change’. This is a welcome statement from the Prime Minister that all sides of politics should embrace. To this end the NNTC puts forward the following as priorities for the incoming Government.

Leveraging from Property Rights

Like any member of Australian society, Traditional Owners seek to prosper from the rights and interests they possess and have aspirations to not only participate in modern economic life, but to be significant contributors to the economy. Native title enables Indigenous participation in Australia’s economy, society and environment for the benefit of all Australians. By translating native title rights and interests into tangible economic and social benefits for their communities, Traditional Owners can achieve far higher levels of economic participation and wealth creation through employment, investment and enterprise development.

Economic development for Traditional Owners and native title groups will be enhanced through the realisation of appropriate land tenure measures. The NNTC believes that there are sufficient mechanisms already in the *Native Title Act (1993)* to allow for recognised rights in land to provide a foundation of secure land interests that can be leveraged against, and that don’t require the extinguishment of the underlying native title. The NNTC is of the view that the main impediment to achieving outcomes is in fact the barriers created by the bureaucratic and legislative mechanisms in various Government jurisdictions. Such barriers also impede Traditional Owners from realising the potential of their land and from taking their place in the economy.

With the current political emphasis on Indigenous economic development, it is also timely for a reconsideration of the impediments placed on Traditional Owners who wish to engage in commercial activity based on their native title rights. This could include engaging in carbon projects, the sustainable harvest of natural resources for commercial purposes or other related activities. The NNTC believes that removing the impediments for this type of activity will have a significant and positive impact on the ability of Traditional Owners to fully and effectively engage in economic development activities.

Negotiations for native title agreements generate benefits as well as opportunities for Indigenous people to access jobs, education and training, to enable their participation in the market and accumulate wealth. Impediments to economic development from the benefits received through native title agreements include the absence of an appropriate vehicle to hold those benefits.

The NNTC, in collaboration with the Minerals Council of Australia, has developed a vehicle designed to more adequately meet the task of holding benefits from native title agreements and support Indigenous business – an Indigenous Communities Development Corporation (ICDC) – that will support the specific needs of Traditional Owners. The creation of an ICDC and the facilitation of indigenous business should be expanded to ensure people can leverage economic development from property rights.

Governments have continued to invest in Native title Representative Bodies and Native Title Service Providers (NTRB/SPs) and this has resulted in a national network of organisations with significant capacity. They are well placed to provide support for claim related activities along with on-going support for native title holders post-settlement, to ensure that native title delivers social and economic benefits for the current and future generation of native title holders.

Key actions:

- *Support efforts of Traditional Owners to achieve recognition of rights in land including properly assisting to accelerate native title resolution.*
- *Continue to support efforts, such as the Human Rights Commission Round Table on Property Rights.*
- *In partnership with the Indigenous Native Title Sector, implement measures set out in the Investigation into Indigenous Land Administration and Use (December 2015) with particular focus on removing bureaucratic and legislative barriers.*
- *In partnership with the Indigenous Native Title Sector develop measures to enable the commercial application of native title rights.*
- *Support and introduce legislation for an ICDC in the next term of Government.*

Indigenous Advancement Strategy

As evidenced by the Report of the *Senate Finance and Public Administration References Committee Inquiry into the Commonwealth Indigenous Advancement Strategy Tendering Processes*, there are many concerns about the program design of the Indigenous Advancement Strategy (IAS)¹. The IAS

¹ Senate Finance and Public Administration References Committee, *Inquiry into the Commonwealth Indigenous Advancement Strategy Tendering Processes*, March 2016, pp. 61

was implemented with little or no consultation or engagement with Indigenous communities; created uncertainty for providers; has had significant negative impact on a large number of Aboriginal organisations; looks to have been applied haphazardly; and has resulted in gaps in service delivery.²

The NNTC is of the view that the IAS in its current form has not supported the principles of Indigenous control, has not supported empowerment of communities and Indigenous controlled organisations and does not adequately provide for the right for Aboriginal people to economically develop. To overcome this, and as recommended by the Senate Committee, the IAS program and guidelines should give priority weighting to the contribution and effectiveness of Aboriginal and Torres Strait Islander organisations to provide for their community beyond the service they are directly contracted to provide.³

For NTRB/SPs, the IAS has created funding uncertainty and has undermined confidence, which in turn has the ability to affect results. Further, while the announcement of additional funding for Prescribed Bodies Corporate (PBCs) has been welcomed, it remains a small investment whose implementation has served to fragment the sector.

NTRB/SPs and PBCs need more certainty and greater stability. These organisations are the bridge between the positive aims of Governments and their achievement at community level – certainty, stability and support are therefore key factors in advancing positive agendas for Indigenous people across Australia.

Key actions:

- *A more strategically focussed IAS program that supports Aboriginal controlled organisations.*
- *Increases in the resources available to the Indigenous Native Title Sector (NTRBs, NTSPs and PBCs) so as to enable the increased achievement of outcomes.*
- *Greater funding certainty for Aboriginal controlled organisations to ensure economic outcomes for current as well as future generations.*

Working on Country – Indigenous Protected Areas and Ranger Programs

Traditional Owners have a wealth of knowledge and experience of land and natural resource management that can benefit private land owners and government organisations as well as Indigenous communities across the country.

The Working on Country program, through its facilitation of funding for Indigenous Protected Areas (IPA) and Ranger groups, is a natural extension of native title in an area of primary interest for Traditional Owners and enables them to practice a broad suite of the rights recognised by the courts. Within these programs, Traditional Owners protect important environmental and cultural values on behalf of all Australians by caring for their country and playing an active role in natural resource management.

² Ibid, pp. 61-62

³ Ibid, pp. vii

Participating communities have achieved significant environmental outcomes in areas such as threatened species management, feral animal and invasive weed control, fire management and management of cultural sites.

The programs have proven to be an effective pathway to other types of employment and have been shown to provide significant employment, health and social benefits for Traditional Owners which far exceeds the monetary investment from Government. As such, they have made strong advances in key areas of the Closing the Gap strategy in participating communities.

In short, the Community Ranger and Indigenous Protected Area programs work and Government needs to support them. This means an ongoing commitment beyond 2018 when current contracts end and expanding the program beyond its current limitations.

Key action:

- *Continued support for Indigenous land and sea programs through the IPA and Ranger programs beyond the current 2018 contracts.*
- *Additional investment to underpin the expansion of these programs to capitalise on the economic and social benefits of Indigenous land and sea management and enable Traditional Owners to take control and determine their own future.*

Best Practice Standards for the Protection of Aboriginal Heritage

The right to protect country and culture is fundamental to Traditional Owners, with heritage management and protection being central to this. Unfortunately however, jurisdictional heritage laws as they currently stand tend to undermine the capacity of Traditional Owners to adequately protect their cultural heritage as they have been developed with the expediency of development assessments and approvals in mind.

The recently released *Our North, Our Future: White Paper on Developing Northern Australia*, calls for a review of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (ATSIHPA)* 'to reduce duplication in the heritage protection regimes across jurisdictions'. A nationally prescribed set of minimum standards for the protection of cultural heritage based on international best practice should therefore be introduced through either the ATSIHPA or the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

The most important aspect of heritage protection is to not forget whose heritage it is – and in this case it is the heritage of the Aboriginal and Torres Strait Islander people of Australia. As such, the development of standards cannot be undertaken without the full and effective participation of Indigenous people. Further to this, any standards developed need to recognise the right of Aboriginal and Torres Strait Islander people to protect their cultural heritage as a foundation principle and incorporate the principles of free, prior and informed consent.

Key action:

- *The development of nationally prescribed minimum standards for the protection of cultural heritage to operate across jurisdictions that are based on international best practice for introduction into Commonwealth legislation.*

Advocating for a better system

- *That these standards are developed with full participation of those people whose heritage it is – Aboriginal and Torres Strait Islander people.*

Amendments to the Native Title Act

The Native Title Act must deliver on its initial intent to provide meaningful rights and a basis for economic and community development for Aboriginal and Torres Strait Islander People. The Government should continue to engage with and review the operation of the Native Title Act to ensure that this intent is upheld and that native title outcomes are leveraged.

Native title provides certainty to developers and all land users, it streamlines the process by reducing the amount of red tape and regulations and gives them certainty that they are dealing with the right Traditional Owners for that area. Traditional Owners do not intend to stop development, but want to ensure that their country and culture is protected.

The *Native Title Amendment Bill 2012* provided for a range of amendments to the *Native Title Act* and was introduced in to Parliament with broad support from a range of stakeholders. The NNTC fully supports the proposed amendments, and believes the Bill sets out certain provisions that the NNTC has been advocating for over several years.

The proposed amendments align with the Commonwealth's native title strategy with a particular focus on improving agreement-making, encouraging flexibility in claim resolution, promoting sustainable outcomes and fostering economic participation and employment. The NNTC believes that the Amendment Bill will go some way towards achieving fundamental change in the system for the benefit of Traditional Owners and should be introduced into Parliament as a matter of priority.

Key action:

- *That the Native Title Amendment Bill 2012 be re-introduced in the next term of Government.*