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Yawuru Submission

Joint Parliamentary Inquiry into Northern Australia

Recommendations

Yawuru make the following recommendations to the Joint Parliamentary Inquiry into Northern Australia which are supported by this submission.

1. The Joint Parliamentary Committee should see this Inquiry as an opportunity to recommend to the Australian Parliament and to the Australian Government to reset the relationship between Indigenous people, governments and industry about a Northern Australian development vision that is inclusive, sustainable and equitable.
2. Native title recognition and negotiated regional and local agreements under other Aboriginal specific land tenure regimes can be the basis for resetting the relationship between Indigenous people, governments and industry in Northern Australia.
3. Local and regional agreements, over land and resource utilisation with Aboriginal people, should be placed within a strategic policy framework as they have immense potential to improve the economic and social position of indigenous people which would benefit Northern Australia as a whole.
4. The Joint Parliamentary Committee should consider an investment in Indigenous capacity development in Northern Australia as a critical component for resetting the relationship

- between Indigenous people, government, industry and the broader community and its capacity to deliver other social and economic outcomes
5. Yawuru believe that the processes of engagement between native title holders, other Aboriginal land owners and development proponents must be treated as a fundamental dimension of Northern Australia's future development.
 6. For the Native Title Act to be relied on to negotiate comprehensive and far reaching agreements for extra-large developments that affect several native title groups over a broad region some considerations need to be made of other issues.
 7. The Joint Parliamentary Committee should consider, as part of resetting the relationship between Indigenous people, governments and industry in Northern Australia, how development can be assessed and underpinned by the informed consent of native title holders.
 8. Yawuru believe that the Committee should consider a Northern Australian Aboriginal planning framework comprising native title holders and traditional owners who are able to participate in mainstream planning and development assessment processes.
 9. The Committee should consider recommending the establishment of an investment entity to enable comprehensive cultural and social mapping of northern Australia as a fundamentally important tool to assist Indigenous interests to participate with government, industry and the general community.
 10. Yawuru see the Parliamentary Inquiry and the proposed White Paper as an opportunity to revisit arrangements which are deemed by Aboriginal land holders as an impediment to achieve Indigenous participation in the broader regional development in Northern Australia in a manner that respects Indigenous property rights and cultural responsibility whilst also allowing for appropriate development.
 11. The Framework should include specific provisions for Indigenous water access, water management, and involvement in planning, consistent with the position of the Indigenous Water Policy Group (IWPG) initiated in 2006 and supported by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA).
 12. A regional economic focus in Northern Australia should be developed to enable Indigenous people to coordinate their participation in Northern Australian planning, the development of organisational capacity, the setting of priorities and decision making processes.
 13. The Joint Parliamentary Committee should address the dysfunctional and inequitable public funding arrangements that apply to Northern Australia.
 14. Land tax and local government rates should not apply to freehold land transferred to native title holders in order to extinguish the native title rights so that the property right might then be developed. The enjoyment of native title and its conversion to tenure should include what are deemed as necessary development costs.
 15. The Parliamentary Committee should explore the potential for social finance to support Indigenous development in Northern Australia and the role government could play with respect to taxation incentives and direct assistance.
 16. Recognise the importance of the conservation and cultural economy to the long-term development of Australia's North.

Introduction

Yawuru people hold native title to approximately 53,000 square kilometres of land in and around Broome in the Kimberley region of Western Australia. Following the native title determination in 2006, Yawuru negotiated a native title global agreement with the Western Australian Government and the Shire of Broome in 2010.

The steps Yawuru are taking to rebuild our society on the basis of the global agreement are described in the attached documents; About Yawuru and the 2012/2013 Yawuru Annual Report.

Yawuru welcome the current policy focus on the development of Northern Australia by the Federal Parliament and the Australian Government. We believe that the development of a White Paper on Northern Australia is timely given the extraordinary opportunities and challenges facing this region which has immense significance for the Australian nation. A White Paper has the potential to provide a national strategy for northern Australia's long term development that has broad endorsement and commitment from the major political parties, industry and Indigenous people.

The position of Indigenous people is critical to northern Australia's future development; Indigenous interests own or lease vast land estates throughout Northern Australia and exclusive and nonexclusive native title rights apply to most of the region's land mass.

The Indigenous component of Northern Australia's total population is significant. Outside a handful of major population centres, Indigenous people constitute the majority of Northern Australia's permanent population. Yawuru argue that most of Northern Australia's Indigenous communities, families and individuals live in a state of structural underdevelopment which is a critical factor for the whole region's underdevelopment. Accordingly, Yawuru argue in this submission that the Parliamentary Inquiry and the proposed White Paper must address the structural issues that impede Indigenous development as a fundamental aspect of the nation's strategic approach to Northern Australia's development.

This submission draws from the challenges and issues that Yawuru are confronting in implementing our strategic plan for Yawuru economic and social development. We believe that

our experience, particularly concerning Yawuru's engagement with the resource development sector and with government and public institutions, is highly pertinent to this Inquiry's consideration about Northern Australia's future development.

This submission is not a comprehensive Yawuru position. It aims to place priority matters before the Joint Parliamentary Committee for investigation and consideration which we hope will influence the proposed direction of the White Paper and promote serious engagement between governments, industry and Indigenous interests about the future development of Northern Australia.

Northern Australian Structural Underdevelopment

In 2011 Yawuru undertook a comprehensive Indigenous household survey in Broome in collaboration with the Australian National University (CAEPR WORKING PAPER NO. 82/2012). The survey showed that more than 60% of the approximate 4,000 Broome permanent Indigenous residents live in public housing or on land owned by the State Government. Only 20% of Indigenous households in Broome are owner-occupied compared to 71% of households nationally which are either owned outright or being paid off. This data highlights the structural inequity facing Indigenous people in Broome regarding housing and the ownership of wealth. This situation is no doubt similar in other townships throughout Northern Australia. Under current public policy and economic development projections, there is no evidence that this level of disadvantage will change in the foreseeable future.

Yawuru identify five broad reasons for Indigenous structural underdevelopment in Broome, which also applies to Northern Australia generally.

1) Limited inherited indigenous wealth

Whilst many people in mainstream society benefit from generational wealth inheritance, this benefit has applied to few Indigenous people in the Broome region. From the commencement of western colonisation in the 1880s until the late 1960s most Indigenous people were either excluded from, or exploited in the western imposed economy. Many Indigenous people worked as un-paid or lowly paid pastoral station workers until pastoral industry equal wages were arbitrated by government and applied to the Kimberley region in the early 1970s. Mass evictions from Kimberley pastoral properties resulted from the equal wage decision leading to many Aboriginal people relocating to towns such as Broome. Aboriginal people working in the pearling industry

and government services were also poorly paid. Likewise people working on church missions received little or no wages. The closure of some missions and pastoral industry restructure led to a significant population drift to towns like Broome; a demographic process which is continuing today. A high proportion of Broome's Indigenous population is dependent on public welfare entitlements and family supports. (ibid)

2) Limited capacity for Indigenous people to engage in the modern economy

A number of combined factors such as the history of exclusion and social stress has meant that a high proportion of Indigenous people have limited employment experience and poor education and training. Indigenous employment participation in Broome's regional mainstream economy is very low despite job opportunities in the tourism industry (Broome's largest private economic sector) and the public and non-government organisational service sector.

3) Inherited trauma and social dislocation

There is growing acceptance about the role of historically transmitted trauma in Indigenous people's contemporary lives. This is highlighted by research particularly in Canada, following the Canadian Royal Commission on Aboriginal Peoples (1996), and the work of the Australian Aboriginal and Torres Strait Islander Healing Foundation. Contemporary Indigenous grief and trauma manifests in pervasive mental illness, high rates of alcohol and drug abuse, family and community violence and crime and subsequent disproportionate imprisonment of Indigenous people.

Yawuru have prioritised individual and community healing as an important aspect of our development agenda. The trauma experienced by many Yawuru people with respect to forced family separations; institutionalisation and past government assimilation practices have been extensively documented in the Yawuru native title Federal Court trial (*Rubibi Community v Western Australia* [2006] FCA 82). The Western Australian Government provided comprehensive evidence of this history to the Federal Court in its failed effort to prove that contemporary Yawuru people were disconnected from their traditional culture and that therefore Yawuru's common law rights had been extinguished.

4) Dysfunctional relationships with government

Yawuru and other Indigenous people in the Broome region deal with a range of Commonwealth and State Government agencies and increasing number of non-government organisations which deliver innumerable services and programs that are purportedly designed for Indigenous benefit and development. There is extensive literature which shows this approach is uncoordinated, wasteful, and non-evidenced based and accompanied by poor performance accountability

systems (See for instance, Royal Commission into Aboriginal Deaths in Custody 1990; Indigenous Expenditure and Overcoming Disadvantage Reports by the Australian Productivity Commission, Office of Audit and Evaluation; Indigenous Programs 2006/07). Yawuru argue that government's dealing with Indigenous people and their organisations demonstrates an unconscionable lack of policy coherence, which has a significant opportunity cost for government and is detrimental to the strategic development objectives of Yawuru and other Aboriginal people (See *Yawuru submission to ILC/IBA Review, 2014*, attached). In his essay, *Our Right to Take Responsibility*, Noel Pearson described the dysfunctional relationship as leading to a pervasive feeling of 'ennui' among Indigenous people. (Pearson, Noel, "Our Right to Take Responsibility", Noel Pearson and Associates, Cairns 2000) Yawuru's experience strongly bears out Pearson's description in this regard.

5) Native title as dead capital

Yawuru and other Aboriginal groups in the Broome region hold exclusive native title over extensive areas of their country. This is important recognition of Indigenous traditional land ownership and also provides limited statutory protection regarding the use of these lands by third parties and government utilities. However Australian statutory law does not enable native title holders to use their traditional title for their economic benefit except in cases where native title holders can leverage economic advantage from developers who want to use Aboriginal lands. The only way native title holders can convert their native title lands into a wealth creating asset is through formally surrendering their land title to the State Government in return for a statutory freehold title. This is a highly difficult situation for native title holders because such a conversion of land title means the permanent extinguishment of communal native title rights. Yawuru and other native title holding groups in Northern Australia should be in a position to use their native title as a basis for long term sustainable development but this potential is impeded because under Australian law, communal native title is fundamentally "dead capital" (This issue is dealt with further in the submission).

Re-setting the Relationship

It is noted that the terms of reference for the Parliamentary Inquiry contains no reference to Indigenous issues. Yawuru do not see this omission in an unfavourable light as Indigenous issues should pervade all aspects of the Inquiry. Yawuru argue that the Joint Parliamentary Committee and the proposed White Paper should consider new ideas about linking Indigenous development with Northern Australia's long-term development and not be unduly influenced by current policy thinking and discourse. Faddism is a characteristic of Australian public policy that in recent decades has pertained to government's relationship with Indigenous peoples and it is hoped that the Inquiry will be rigorous and considered in its use of evidence about the significance of Indigenous people to Northern Australian development. In this regard it is important that the

Inquiry does not focus on incrementally reforming a failed development paradigm which has produced the structural dimensions of Indigenous underdevelopment that are outlined above.

Yawuru argue that the Parliamentary Inquiry and proposed White Paper are an opportunity to reset the relationship between Indigenous people, governments and industry about a Northern Australian development vision that is inclusive, sustainable and equitable. Yawuru believe that the recognition of Indigenous common law rights and Indigenous land ownership can be the basis for re-setting the relationship between the Australian State and Indigenous people. Since the 1992 Mabo High Court decision, Australia's embrace of native title has been, in many respects, mean spirited or half measured and begrudging at best. Yawuru's native title determination and negotiated global agreement was arrived at after more than a decade of litigation and negotiation; an experience repeated in many other places throughout Australia.

The contested history of native title has seemingly entrenched a philosophical policy culture, where Australian governments seek to manage and contain native title outside mainstream policies and strategies that purport to promote economic and regional development. The subtext of State and Commonwealth government policy is that communal native title rights are viewed as a threat to western economic development. Yawuru argue that this underlying and pervasive unstated political philosophy is a fundamental impediment to the future development of Northern Australia given the depth of Indigenous cultural attachment throughout the region.

A fundamental ingredient to unlocking the potential for Northern Australia's economic development is building partnerships between Indigenous people, governments and industry based on an agreed broad vision. Building and sustaining these partnerships must be grounded in a commitment by governments and industry to engage meaningfully with Indigenous imperatives; securing traditional culture, protecting places of cultural significance, preserving and revitalising language, and infusing Indigenous values and protocols in local and regional mainstream planning regimes.

Such a commitment means the acceptance by governments of the fundamental premise that vibrant Indigenous societies supported by traditional cultural values are able to coexist and engage confidently with the dynamics of the global economy. Yawuru argue that native title recognition and negotiated regional and local agreements under other Aboriginal specific land tenure regimes can be the basis for resetting the relationship between Indigenous people, governments and industry in Northern Australia.

Yawuru believe that its 2010 native title global agreement highlights the potential for comprehensive negotiated agreements to build partnerships and strategically galvanise public, private and community resources and effort to achieve agreed development objectives. The Yawuru Agreement, alongside the Mirriwung Gajerrong Agreement in the Ord River and the Burrup Agreement in the Pilbara, has been negotiated largely because of the development imperatives of the Western Australian Government. In this respect they are stand-alone agreements that sit outside a broad public policy framework which limits their scope and potential.

If placed in a strategic policy framework, local and regional comprehensive agreements have immense potential to improve the economic and social position of Indigenous people which would in turn have immense benefit for Northern Australia as a whole.

As part of a regional agreement approach Yawuru urge the Joint Parliamentary Committee to consider innovative measures to build the capacity of Indigenous people to help rebuild their societies and to engage with the global economy on their terms. Yawuru propose that the Joint Parliamentary Committee should consider an investment in Indigenous capacity development in Northern Australia as a critical component for resetting the relationship between Indigenous people, government, industry and the broader community and its capacity to deliver other social and economic outcomes

Yawuru propose that the investment should be focused in three broad areas:

- Mainstream education, incorporating early child hood development, primary and secondary schooling and vocational training and further education
- Governance development and decision making
- Addressing generational trauma and grief and community mediation

Yawuru recommends that the Parliamentary Inquiry should seriously consider the potential for comprehensive agreements over land and resource utilisation with Aboriginal people to be a key feature of public policy in the future development of Northern Australia.

Engaging the Global Economy

Yawuru accept that expanded mineral production, particular relating to LNG and unconventional gas, and agricultural development are the key areas of economic development in Northern Australia in the foreseeable future. Native Title and Traditional Land owning groups have legal rights under Commonwealth and State/Territory native title, Aboriginal land and heritage and environmental legislation to safeguard their rights and interests with respect to development proposals on their lands. Apart from legal instruments, Northern Australian Indigenous interests have shown to be capable of engaging in public political campaigns against development proposals if those development proposals are seen to threaten their interests.

Yawuru believe that the processes of engagement between native title holders and other Aboriginal land owning groups and development proponents must be treated as a fundamental dimension of Northern Australia's future development. The Broome region can be seen as a microcosm for the whole of Northern Australia in terms of development opportunities and pressures. Off shore and on shore gas extraction has dominated economic development plans in this region in recent years and there are broad plans for horticultural development based on using sub surface water reserves.

The Yawuru experience in dealing with development proposals in recent years highlights key issues that the Joint Parliamentary Committee may want to consider. The now abandoned proposal to build a LNG processing facility at James Price Point was not located on Yawuru country and therefore Yawuru were not directly involved in the negotiations. However, Yawuru society and our natural environment would have been affected by the development and therefore Yawuru made submissions to the formal strategic assessment process.

After eight years of negotiating a highly convoluted regional agreement, the legacy of the failed James Price Point proposal is an Aboriginal community deeply divided and uncertain about its relationship with government and industry. There are lessons to be learned from the James Price Point experience about how industry and governments should engage traditional owners to seek their consent for industrial development proposals that will affect their lives and natural environments.

A key lesson is that if the *Native Title Act, 1993* (Cth) is to be relied on to negotiate comprehensive and far reaching agreements for extra-large developments that affect several native title groups over a broad region, some consideration needs to be made about a range of issues that affect Indigenous people in the region. Single and vulnerable native title groups should not be placed in a position to legally sanction developments that could potentially transform large regions. During

the Strategic Assessment process concerning the proposed James Price Point project, government and companies appeared blinded to these vulnerabilities by their short term interests and detrimentally damaged the community rather than being prepared to cultivate a dynamic and fruitful coexistence. The social ruptures in the Broome region caused by the Browse negotiations will take a long time to heal.

This experience provides lessons for the future; massive reserves of unconventional gas exist throughout the Canning Basin, covering a huge region of the south Kimberley and western desert, which some analysts claim dwarfs the Browse Basin's gas deposits. Exploration and progress towards production is growing rapidly in this region supported by significant Chinese and Japanese investment.

It seems inevitable that Broome will be the centre of a large scale off-shore LNG and terrestrial unconventional gas province. Without a different approach to Indigenous negotiation and consent arrangements over resource development it also seems inevitable that the next Kimberley Aboriginal and environmental battleground will be over the extractive practice of fracking. Like others throughout the world, Kimberley Aboriginal people's fears about fracking are real. They worry about surface and underground water pollution, methane gas leakage and the impact of wells, roads and pipes over the landscape and a host of other concerns that this new industry may bring.

In addition to the impact of the gas industry there are proposals to use the region's abundant water for agricultural development as well as developing other natural resources. The participation of Yawuru and other native title groups in this development agenda must be accompanied by a commitment to sharing all the available information concerning large scale developments – environmental, financial, infrastructure and social impacts, both positive and negative. Only then will native title holders be in a position to provide their informed consent about developments on their traditional lands.

For the most part, Aboriginal people will welcome development if it can be shown that the benefits outweigh the cultural, environmental and social costs. The aim should be that economic development should enhance Aboriginal people's social and cultural position. It is not just jobs and much needed services that can be achieved from economic development projects. Agreements with developers can secure long term income so that native title and other Aboriginal land owning groups can implement their own development agendas.

There are global standards by which this engagement between Indigenous people, governments and industry can occur. The United Nations Universal Declaration of the Rights of Indigenous People commits nation states to negotiate with Indigenous people based on the principle of ‘free, prior and informed consent.’ The Joint Parliamentary Committee should consider as part of resetting the relationship between Indigenous people, governments and industry in Northern Australia; how development can be underpinned by the informed consent of native title holders and other Aboriginal traditional land owners.

The Joint Parliamentary Committee should consider how best to invest in Indigenous capacity to negotiate consent agreements with developers that are based on respect for Aboriginal imperatives. Yawuru believe that the Committee should consider a Northern Australian planning framework comprising native title holders and other Aboriginal land owners who are able to participate in mainstream planning and development approval processes. This commitment should be accompanied by a firm underwriting to ensure transparency in community and stakeholder engagement (particularly in building local governance capacity), and a creative negotiation and transaction model that delivers serious commercial and financial equity to the traditional land owners.

As part of this planning framework Yawuru propose that the Committee should consider recommending the establishment of an investment entity to enable comprehensive cultural and social mapping of Northern Australia as a fundamentally important tool to assist Indigenous interests to participate with government and industry. This comprehensive mapping should use the best geo spatial technology available to capture Indigenous cultural and social data, including land use and occupation, and incorporate relevant infrastructure and natural resources so that information can be displayed graphically and transparently. Yawuru Native title holders are currently developing geo spatial capacity as part of our determination for Yawuru to engage the global economy on our terms.

Suggested Areas for Structural and Policy Reform

Yawuru recommend that the Joint Parliamentary Committee consider the following areas of policy reform to seriously address the structural factors causing underdevelopment in Northern Australia.

a) Reform of native title land tenure

Yawuru like other native title groups are unable to generate wealth from their native title lands or maximise the use of those lands for social benefit, such as housing.

The Committee should be aware that currently there is a gap in public policy to support Indigenous housing investment on native title lands where Native Title holders seek to preserve their communal ownership rights. In essence, native title lands cannot be used for privately owned Indigenous housing because communal owned land is seen as incompatible with land as a fungible asset.

Aboriginal lands are subject to native title rights and interests which are regarded by the High Court of Australia and the *Native Title Act 1993* (Cth) as inalienable. That is, that native title rights and interests cannot be bought or sold in the normal property market. Under the *Native Title Act 1993* (Cth) (s.56(5)), native title rights and interests are also statutorily protected from debt recovery processes and are therefore also unusable as security against a loan. In order to facilitate home ownership and economic development on lands subject to native title rights and interests, the native title rights and interests must first be surrendered and extinguished or otherwise compulsory acquired by the State before an exclusive possession freehold or leasehold title can be granted. In short, native title holders are not able to use their property rights to participate in the modern economy in the same way as other property holders.

Yawuru urge the Committee to explore innovative land tenure reforms which combine statutory and customary land systems regarding security of tenure and housing development for the purposes of reducing housing stress and consequent social problems throughout northern Australia (see for instance *Human Rights Council, Twenty-second session Agenda item 3, Report of the Special Rapporteur on Adequate Housing, 24 December, 2012*).

Yawuru have a particular concern over lands held land in trust for Aboriginal people by the Western Australian statutory body, the Aboriginal Lands Trust (ALT). A number of properties are held by the ALT in and around Broome as well as throughout the northern regions of the State.

Within the ALT estate under existing rules of transfer, the ALT may sell, lease or otherwise dispose of land it holds to any Aboriginal person provided the land will continue to be for the use and benefit of Aboriginal people/inhabitants, but Aboriginal communities living on the land generally do not have the power to lease or dispose of the land without the Minister's prior approval. According to the Aboriginal and Torres Strait Islander Social Justice Commissioner (AHRC, 2005), this reflects 'protection' style legislation from the 19th Century.

Yawuru see the Parliamentary Inquiry and the proposed White Paper as an opportunity to revisit arrangements which are deemed by Aboriginal land holders as an impediment to the achievement of Indigenous and broader regional development throughout Northern Australia. The thrust of Yawuru's concerns regarding land tenure reform is broadly supported by the commissioned research paper, *Land Tenure in Northern Australia: Opportunities and Challenges for Investment* (CSIRO June 2013). It is the submission of Yawuru that understanding how native title operates throughout Northern Australia, its potential and its drawbacks, is *fundamentally critical* to meeting the terms of reference of the Committee and necessary to properly inform each of the recommendations that they are tasked to provide.

b) Water Reform

Water rights and access are central to maintaining Indigenous peoples' practice of culture and unique connections to country.

Yawuru believe it is necessary to include specific provisions for Indigenous water access, water management, and involvement in planning within the new framework, consistent with the Indigenous Water Policy Group (IWPG) initiated in 2006 and supported by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA). Yawuru support a Strategic Indigenous Reserves (SIR) approach, which involves establishing water entitlements from the consumptive pool for Indigenous groups to facilitate economic development. The SIR provides the opportunity for Indigenous communities to manage and govern water resources. Yawuru also strongly defend the need to recognise the cultural significance of water through a separate cultural flows allocation from the non-consumptive pool. Cultural flows allocations serve to maintain the spiritual, cultural and physical health and value of water sites for Indigenous people.

These Indigenous policy principles are consistent with the National Water Initiative (NWI), particularly to the objective to include Indigenous people—as legitimate stakeholders—in water plans and management decisions, and are also in keeping with the National Water Commission's (NWC) position statement on Indigenous access to water resources.

c) Regional Indigenous Organisational Capacity for Economic Development

Yawuru have recently made a submission to the Review of the Indigenous Land Corporation and Indigenous Business Australia, arguing that the institutional reform is required to ensure that

government Indigenous development objectives should be aligned to the realities of native title. The submission said in part:

Yawuru argue that merging the ILC and IBA's assets and financial capacity within a coherent developmental framework could vastly improve the social and economic outcomes that are currently achieved from public investment in Indigenous development if such a body operated through a regional focus. The importance of a regional focus is that investment decisions can be made strategically that:

- More effectively takes into account local and regional economic circumstances
- Maximises the positive impact of various native title groups in a regional economic context
- More effectively integrates other community, government and public resources which is often fragmented and isolated
- Enhances Commonwealth and State government regional development policy alignment
- More effectively builds Indigenous organisational capacity development
- Supports Indigenous community cohesion at a regional level

The submission is attached for the consideration of the Joint Parliamentary Committee and Yawuru trust that the Inquiry will see merit in developing a regional economic focus in northern Australia based on enabling Indigenous people to participate in Northern Australia planning, the development of organisational capacity, and the setting of priorities and decision making.

d) Fiscal and Finance Reform

Yawuru argue that the Joint Parliamentary Committee should address the dysfunctional and inequitable public funding arrangements that apply to Northern Australia. The allocation of public funding to meet the needs of Northern Australia, and particularly the disadvantaged position of Indigenous people, are clearly inadequate.

In the Parliamentary Inquiry's consideration about financial arrangements and impediments to development, Yawuru draws attention to two areas which we believe requires reform. The first is compensation for extinguishment and impairment of native title rights and the other is the potential for private sector investment in Indigenous social and community development, infrastructure and cultural pursuits.

Yawuru believes that issues surrounding native title holder compensation represent a critically important factor for Indigenous and Northern Australian development. Whilst native title rights are protected by the Commonwealth Native Title Act, all levels of government have the power to compulsory acquire native title, like other forms of land title, and pay just terms for compensation as required by the Australian Constitution or State constitutions or relevant land acquisition statutes. In many instances native title holders have no choice but to surrender their rights and

negotiate agreed compensation, because of certainty imperatives that are imbedded in the western economic system. The Native Title Act provides for an Indigenous Land Use Agreement (ILUA) where there is a legal process for native title holders to agree to surrender their common law rights in return for compensation.

In Yawuru's case the Western Australian Government negotiated with Yawuru native title holders for more than four years after native title was found to have survived in and around Broome. The negotiations centred on the details of Yawuru native title that was to be surrendered to the State and the nature of the compensation to be paid. The final compensation agreement combines limited funding over a finite period for capacity development with a land estate for cultural protection, environmental conservation and wealth creation. The compensation package is heavily burdened by a range of imposts such as land tax, local government rates and development costs that significantly erodes Yawuru's development capacity, especially where these take effect before the land can be put to productive use.

Yawuru argue that compensation in the form of fee simple land title for native title extinguishment should be free from taxation imposts until the lands in question can be used productively. This would mean that the native title agreements would have enhanced integrity as a basis for resetting the relationship between Indigenous people and governments and also be far more viable and effective instruments of regional development. We ask that the Parliamentary Joint Committee gives serious consideration to recommending that land tax and local government rates should not apply to freehold land transferred to native title holders in order to extinguish the native title rights so that the property right might then be developed. The enjoyment of native title and the conversion to tenure should include what are deemed as necessary development costs.

Yawuru also asks the committee to consider the potential for new forms of social finance such as social impact investment that could apply to Indigenous development in Northern Australia. Yawuru believe that there is considerable potential for the private sector to invest in Indigenous social initiatives in partnership with Indigenous groups and government. Social finance could incorporate market based initiatives where government pays dividends to investors based on public savings in areas such as justice or health or joint venture investment arrangements. New sources of investment from the private sector could assist indigenous people in housing development, employment and a range of social services. Yawuru would like the Parliamentary Committee to explore the potential for social finance to support Indigenous development in Northern Australia and the role government could play with respect to taxation incentives and direct assistance.

Conclusion

Yawuru native title holders engage with native title and traditional land owning groups throughout Northern Australia mainly through the forums and community consultations that have been organised by the North Australian Indigenous Land and Sea Management Alliance (NAILSMA). From this engagement we know that all Northern Australian traditional land owning groups have practical and innovative visions. They want to revitalise their societies through land management activities, cultural/eco-tourism, carbon farming, creative arts, education and youth development and a host of other initiatives.

Yawuru believe that it is important to dispel the myth that western style economic development is mutually exclusive from Aboriginal traditional life and values. The old economy based on extractive resource development, horticulture and cattle grazing can coexist and support the emerging Aboriginal cultural economy. Yawuru therefore strongly endorses the work that NAILSMA is doing to promote the northern Australian culture economy of which Yawuru is an active participant. The conservation and cultural economy are a significant part of Northern Australia's character and it is critical that the Parliamentary Paper and the proposed White Paper recognise the importance of this to the long-term development of Australia's North.