



Yawuru Native Title Holders Aboriginal Corporation RNTBC ICN 7033

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Yawuru Native Title Holders Submission to the Review of the Indigenous Land Corporation and Indigenous Business Australia

Introduction

The Yawuru people are native title holders for approximately 530,000 hectares of land in and around Broome in the West Kimberley region of Western Australia. More than half the Yawuru native title determination area includes Roebuck Plains pastoral lease which Yawuru hold exclusive possession native title rights over. Roebuck Plains was purchased on behalf of the Yawuru by the Indigenous Land Corporation (ILC) in July 2000 but has remained in ILC's control of the property since that time. Likewise, ILC hold a property referred to as the Old OTC block, which includes an area of very, high cultural significance for the Yawuru community. Yawuru successfully negotiated the return of this land, which was held by ATSIC until it was disbanded, whereupon the property was transferred to the ILC. Yawuru are currently negotiating with the ILC for the transfer of Roebuck Plains Station to Yawuru ownership along with the nearby OTC Block.

Yawuru welcome the Australian Government's Review of both the ILC and Indigenous Business Australia (IBA). We see this Review as an opportunity for the Australian Government to modernise critical parts of government machinery to advance Indigenous social and economic development. Yawuru asserts that the Review should address critical deficiencies in Australia Indigenous public policy.

Yawuru believe that substantial structural and policy reform of the ILC and IBA would be critical to forging a national coherent framework in Australia's Indigenous public policy that could improve land use, commercial opportunities and respect for Indigenous cultural imperatives. This alignment cannot happen whilst government institutions, established to support Indigenous economic and social development, encourage a fragmented and piecemeal approach to support Indigenous endeavours.

In summary Yawuru contend that the Review should consider recommending the following;

1. The ILC and IBA should be amalgamated to create a new national Indigenous development body with a national board with responsibility for holding income and assets in trust for Indigenous people
2. The new body should have a regional focus through the establishment of regionalised entities made up of Native Title Representative Bodies, Native Title Body Corporates and other relevant Indigenous development entities which will act as a door way to assess and make decisions on Aboriginal proposals for development that emanate from native title groups and other Aboriginal groups
3. The regional entities should make assessments and determinations with respect to financing Indigenous economic and social development based on;
 - Business and strategic plans of native title and indigenous land owning groups that demonstrate economic viability and sustainability and cultural, social and economic benefits to the relevant Indigenous community;
 - Consistency with well thought out strategic objectives of Indigenous communities to re-build their communities and social structures
 - Overcoming dependency on the dominant society
 - Alignment and partnership with Commonwealth, State and local government regional development policies and strategies
 - Participation of private industry

Yawuru Native Title Experience

This submission is informed by Yawuru's philosophical approach to Indigenous development and by its experience in implementing the Yawuru Native Title Global Agreement which we negotiated with the Western Australian Government, and were signed in 2010.

Yawuru argues that traditional lands and resources are the foundation upon which Indigenous people intend to rebuild the economies of their nations and so improve the socioeconomic circumstance of their people—individuals, families, communities, and nations.

After more than a century of domination by western powers and exclusion from the benefits of an imposed economy and a political regime over our society and physical environment, Yawuru negotiated a global agreement that aims to secure the cultural foundations of Yawuru society as a fundamental basis for Yawuru's participation in the local and global economy.

The tenets of Yawuru's development agenda is based on;

- (i) Greater control of activities on our traditional lands,
- (ii) Self-determination and an end to dependency through economic self-sufficiency,
- (iii) Preservation and strengthening of traditional values and their application in economic development and business activities, and
- (iv) Improved socioeconomic circumstance for individuals, families, and our community through a range of economic activities including employment opportunities, enterprise development, and social entrepreneurship and improved housing.

Yawuru's objectives to rebuild our nation and establish a firm economic foundation, so that our people will no longer be dominated by an external society, is impeded by two related factors that are part and parcel of Australia's colonial legacy.

The first is that critical aspects of the Yawuru native title global agreement place onerous constraints on Yawuru's capacity to achieve its economic and social objectives. The Yawuru Agreement is grounded in a compensation package that combines limited funding over a finite period for capacity development with a land estate for cultural protection, environmental conservation and wealth creation. This negotiated compensation in return for Yawuru agreeing to surrender our rights over land subject to residential and commercial purposes 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.

The second impediment relates to Yawuru's objective to strengthen a once marginalised people into society at large through our capacity to forge partnerships with public and private capital. The failure of public institutions and policies to support Yawuru's partnership endeavours is the focus of this submission.

The Yawuru Agreement was never intended to be the basis of our community's economic and social reconstruction in isolation from the economic and social circumstances in which we co-exist. The opposite is in fact the case. Our Agreement provides Yawuru with the potential capacity to create partnerships and alliances with government, industry and local government so that new opportunities are generated to significantly improve the socio economic position of Yawuru and other marginalised Indigenous people who live in Yawuru country.

This approach to partnership building on the strength of Yawuru native title recognition and agreement making is supported by senior Commonwealth and State Ministers and the Shire of Broome at a broad philosophical level. The problem has been to translate this objective into strategic and sustainable action. Since the formal registration of our Agreement in the form of two Indigenous Land Use Agreements in August 2010, Yawuru have found it exceedingly difficult to negotiate mutual beneficial partnerships with all levels of government and industry. This particularly applies to the areas of housing, employment, enterprise creation and individual and community capability development.

A critical factor explaining the failure to cultivate partnerships is the absence of public institutional capacity to facilitate opportunities where Yawuru assets can connect with public and private resources to produce tangible outcomes consistent with both Yawuru aspirations and government policy objectives. The success of Yawuru's endeavours to engage creatively with government and industry on initiatives concerning housing development, employment programs, land management initiatives, training and leadership development and family and community based commercial enterprise has been limited by the lack of this capacity.

This unfortunate reality is juxtaposed against obvious opportunities for Yawuru and other indigenous people in the Broome region to dramatically improve their social and economic position through innovative housing development on Yawuru land; employment in the rapidly growing energy industry; enterprise engagement in cultural and ecological tourism; a range of land and marine management initiatives; and participation in delivering social services.

That so many economic and social development opportunities are being missed because of a failure to leverage Yawuru assets with public and private capital highlights a failure of governments to build a

coherent public policy and institutional framework that matches the determination of Yawuru and other indigenous people to rebuild their societies and empower their members from the strength of recognising traditional lands and culture. The current policy incoherence, where bodies such as the ILC and IBA and a range of other publicly funded entities established to support Indigenous policies operate in a policy context that is fundamentally detached from native title, must be confronted with consequential public policy and institutional reform.

Yawuru's engagement with the ILC and IBA reinforces the necessity to reform these bodies. Their mode of operation with Yawuru has been piecemeal and non-strategic. Yawuru's relationship with the ILC has been particularly galling. The ILC purchased Roebuck Plains Station in 2000 for Yawuru traditional owners consistent with its legislative charter. Despite the 2006 Federal Court ruling that Yawuru holds exclusive native title rights over the pastoral property, the ILC has retained exclusive possession of Roebuck Plains for its own commercial purposes in opposition to Yawuru's rights and aspirations and has only recently entered into negotiations to transfer the property to Yawuru ownership. In the case of Roebuck Plains Station, the ILC has shown itself to be in competition with Yawuru rather than carry out its legislative responsibility to assist Yawuru native title to enjoy our rights and achieve our economic and social objectives. In addition, the ILC did not take an active role in assisting to resolve an internal community dispute over the ownership of a building in Broome which it had purchased for the use of Yawuru women.

The ILC and IBA, as national publicly funded bodies established to support Indigenous development, have the potential to facilitate partnerships between Yawuru and other parties to build economic and social partnerships. However, as they are currently structured and policy directed, 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.

Amalgamating the ILC and IBA into a National Indigenous Development Body with a Regional Focus

The IBA and ILC are the two leading publicly funded national bodies established by federal legislation with responsibilities for Indigenous economic and social development. Both have significant valued assets. The IBA, established under the 1990 Aboriginal and Torres Strait Islander Commission (ATSIC) legislation has responsibility to assist Indigenous people into home ownership and to support Indigenous business development. The ILC was established by statute as an amendment to the ATSIC Act in 1995 to administer the Indigenous Land Fund, as a response by the national parliament, along with the Native Title Act, to the 1992 Mabo High Court judgement.

Both bodies have not been substantially reformed since they were established. It should be acknowledged, that whilst these bodies may claim credit for various Indigenous economic and land development initiatives, these achievements have been largely piecemeal and have had little impact on the overall economic position of Indigenous people in Australia. Yawuru argue that it is timely that both these bodies should be reformed and amalgamated as one national indigenous development body to support a renewed national effort to rebuild indigenous communities in line with developments that have occurred since the recognition of Indigenous common law rights.

The Review should consider how best a national body - dedicated to supporting Indigenous people rebuild their communities and engage with the global economy on their terms - should be structured to achieve positive and sustained Indigenous economic and social improvement. Yawuru argues that a regional focus is the most effective means of achieving this outcome. Whilst it is acknowledged that the original statutory and policy direction of the ILC emphasised a regional approach, it should be appreciated that Indigenous organisational and governance capacity was not well established at the time the ILC was established in the mid-1990s.

Since that time there have been a large number of native title claims settled throughout Australia and the subsequent creation of many native title body corporates, which however, are mostly not well resourced. There have also been a number of complex agreements negotiated between native title groups, governments, local government authorities and industry that are having significant impacts on localised societies and economies. Reform of the Australian government's Indigenous development machinery in alignment with the realities of native title agreements making capacity would significantly advance the potential economic and social outcomes from these agreements.

Yawuru argue that merging the ILC and IBA's assets and financial capacity within a coherent developmental framework based on evidence of what approaches are most effective 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 Kimberley region presents an instructive case for a regional focus for Indigenous development. Much of the region has been determined as native title with high level Indigenous cultural, social and economic integration. The Kimberley has been identified by both Commonwealth and State Governments as a discrete region and efforts are made to integrate public investment within a regional context. The region is currently facing considerable development opportunities and challenges, particularly from the energy industry, which affects a range of native title groups.

Yawuru contend that the amalgamation of the ILC and IBA into a national Indigenous development body supported by regional decision making entities made up of Native Title Representative Bodies, Native Title Body Corporates and other relevant Indigenous development interests can maximise the integration of public investment for Indigenous development within a wider regional development context.

Conclusion

Yawuru argue that for too long public policies and structures created for Indigenous social and economic development have operated within a separate, often regionally detached, development policy frame. Yawuru believe this approach contributes to current Indigenous economic under development. It fails to recognise rights held by Aboriginal people at regional and local levels and their responsibilities to manage their assets and determine their futures.

The separate development approach ignores the emerging Indigenous development force of native title recognition and agreements. This Review is an important opportunity for the Australian Government to modernise its statutory machinery and embrace native title and its potential to advance indigenous economic and social development. Reforming the ILC and IBA, as broadly proposed in this submission, would require new federal legislation. Yawuru believe that legislation proposing a new and inclusive approach to Indigenous development has the potential to gain widespread support from the Indigenous and mainstream Australian community as well as State/Territory governments and industry.

