

**Kimberley Land Council**

**COAG Investigation into Indigenous Land Administration and Use**

***Issue***

Supporting Indigenous land owners to leverage their land assets for economic development is a national challenge that requires not only the development of appropriate legal, regulatory and policy frameworks but also a demonstrate commitment to achieve this outcome from all levels of Government, and the private sector.

In Western Australia, we are currently witnessing a number of strategic changes to land tenure administration and land management that have the effect of undermining actions taken by Indigenous people to improve their wellbeing and become economically self-sufficient, but also demonstrate a gradual but deliberate undermining of native title land rights by State Government.

The below examples demonstrate that one of the key issues undermining the capacity of Indigenous people to leverage their land assets for economic development is a lack of clarity regarding the meaning of exclusive possession native title rights, combined with a deliberate erosion of native title rights through policy, legal and administrative means.

Simultaneously, the examples demonstrate how Kimberley Aboriginal people are seeking to use their native title rights to pursue cultural and environmental enterprise opportunities. Cultural conservation enterprises provide pathways to derive economic benefits from their land by recognising and developing commercially valuable aspects of cultural practices or conservation activities, based on their native title rights and interests.

In order to address these issues and further leverage these opportunities it is necessary to:

* Confirm that exclusive possession native title holders have rights to manage country equivalent to freehold land holders, enabling native title holders to derive economic benefits from their native title lands;
* Support the establishment of regional hubs – owned and governed by Indigenous people - to provide necessary support, skills and expertise to facilitate the establishment of Indigenous enterprises which will support jobs and economic advancement for Indigenous peoples; and
* Promote and develop funding opportunities which leverage private sector finance combined with public sector funds where enterprises deliver a public benefit

***Kimberley Science and Conservation Strategy***

The Western Australian Government is currently in negotiation with Aboriginal groups in the Kimberley for the creation of jointly managed conservation estates. The vast majority of the area proposed to be included in the estate system is determined exclusive possession native title lands (previously Unallocated Crown Land). In addition, a significant proportion of the area is already included in the Commonwealth National Heritage Listing and falls within Indigenous Protected Areas, currently managed for conservation purposes by Indigenous rangers funded with Commonwealth and private sector funding.

The creation of conservation estate is a worthwhile endeavour that aligns with Indigenous peoples’ strong interest in protecting and taking care of the country we live on.

Some native title holders are concerned that if they proceed to enter into an agreement to create conservation estate they will have to give away their right to exercise their native title rights forever, and no compensation granted.

These negotiations raise the important question of the value of exclusive possession native title, as well as whether and how aspirations such as caring for country can be realised in a way which supports, rather than undermines native title. As outlined above, Indigenous Protected Areas provide one example of achieving healthy country outcomes without impacting on native title tenure, which can be contrasted with the proposed approach under the Kimberley Science and Conservation Strategy, which would see huge areas of exclusive possession native title suppressed.

***Native Title Carbon Projects***

A second example is provided in the pursuit by some native title groups of environmental and cultural enterprise opportunities through carbon offset projects.

Four Aboriginal Corporations in the Kimberley have registered Australia’s only native title carbon offset projects – using their native title as the basis for establishing their right to undertake the projects under the Australian Government’s *Carbon Credits (Carbon Farming Initiative) Act 2011*. These carbon offset projects involve undertaking healthy country fire management on exclusive possession native title lands to generate carbon credits – with credits sold to private partners in the carbon market.

The Western Australian government has taken a number of steps to oppose these projects. Most recently, the Department of Premier and Cabinet has contacted the KLC and native title groups involved in the project indicating that in order for them to continue fire management activities they require a Licence from the Department of Lands under the *Land Administration Act 1997*. The Licence takes the form of a 20-page Deed granting permission to access ‘Crown Lands’ for the limited purpose set out in the Deed – in this case fire management. This is in addition to permits already obtained by native title groups from local shires under the *Bushfires Act 1954.*

The proposition that exclusive possession native title holders require a Deed of Licence to access and carry out traditional management activities on determined native title lands is of great concern, and epitomises the challenges faced by Indigenous people in exercising their property rights.

**Kimberley Land Council
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