

19 June 2015

Mr Wayne Bergmann
Chair Expert Indigenous Working Group
Indigenous Affairs Department of Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600

Dear Mr Bergmann

COAG INVESTIGATION INTO INDIGENOUS LAND ADMINISTRATION AND USE

The Chamber of Minerals and Energy of Western Australia (CME) is the peak resources sector representative body in Western Australia funded by its member companies, which generate 95 per cent of the value of all mineral and energy production and employ 80 per cent of the resources sector workforce in the state.

CME is pleased to provide advice on the Council of Australian Government Investigation (COAG) into Indigenous land administration and use.

The resources sector has worked hard in developing positive and collaborative relationships with native title holders through mutually beneficial agreement making. Agreements now cover a plethora of issues such as access to land and resources, infrastructure, environmental management, tourism, cultural heritage, facilitation of business and service delivery, employment, skills and training, health and other social and economic indicators.

CME and its members support any initiatives aimed at closing the gap between Indigenous and non-Indigenous Australians. Investigation of opportunities for Indigenous Australians to leverage their interest in land is an inherently sensible and a timely measure given the opportunities available through housing, employment, business development and extractive industries.

Indigenous participation in the Western Australian resources sector remains a key priority as industry transitions from an extended period of construction to operations. CME's Resources Sector Outlook found Indigenous participation in the sector was 5.8 per cent in 2014 and importantly is forecast to increase to 8.1 per cent by 2020. These figures compare favourably to most industries. Also of significance, over 10 per cent of the resources sector's apprentices and trainees are Indigenous which is a positive sign for the future.

This significant Indigenous employment sits alongside the opportunities for Indigenous businesses in the sector from civil and mining contractors to stationery providers and coffee carts. Indigenous employment and business activity is economically empowering Indigenous people and communities, therefore helping to close the gap.

In considering how legislative, regulatory, administrative and operational systems can be improved to empower and enable the economic advancement of Indigenous Australians it is important to note the inherent complexity of land ownership and determining rights and interests to land.

Western Australia contains the largest area of land where native title has been determined to exist. As at 31 December 2014, native title has been determined to exist over 1,121,235 square kilometres, equating to 44.3 per cent of the Western Australian jurisdictional area.¹ The state of Western Australia is also subject to the highest national volume of future act processes and native title claims.

Adding a further layer of complication is the type tenure over which indigenous land interests are held. For example, tenure is often held communally and is non-traditional in terms of its ability to be transferred. As a result there may be issues with obtaining loans from lending facilities needed to leverage economic advancement from land.

The economic advancement on Indigenous land should be held to the 'ordinary' regulatory, commercial and legal terms when developing, selling or mortgaging property to leverage economic advancement. CME considers this crucial to ensuring sustained economic development and advancement for Indigenous land holders.

Whilst supportive of the aspirations of the investigation, CME and its members are mindful of a number of areas where there is the potential for unintended consequences if reforms are not carefully considered. CME is concerned third-party interests in land may be impaired or impinged upon by additional red tape, increases to timeframes for securing access or other approvals, and increased cost and uncertainty.


In the Western Australia context, the Aboriginal heritage regime can be drawn-out and costly with the bulk of additional financial benefit derived not necessarily flowing to Indigenous land holders. If not carefully considered, reforms have the potential to exacerbate this problem and ultimately lead to less mining investment in Australia due to the difficulties associated with obtaining land access. Such an outcome would be counter intuitive to the aims of the reform for economic advancement of Indigenous land holders.

CME considers many of the issues highlighted above are in part due to the current governance of Indigenous land administration and use. Governance structures and capacity is a key area where reform is needed to ensure economic advancement through land use can be achieved.

The proposal for an Indigenous Community Development Corporation (ICDC) model as proposed by the National Native Title Council and the Minerals Council of Australia could be the appropriate model to attain a level of governance required to achieve the aspirations of the investigation. The option for an ICDC model could provide a flexible means for a cooperative approach whereby holders of land-related payments can co-invest with governments and the private sector in regional development projects, leading to increased economic participation of Indigenous communities. CME would welcome further investigation into the merits of the model by the Expert Indigenous Working Group.

CME looks forward to continued engagement in COAG's investigation into Indigenous land use and administration. Should you have any queries regarding the above please contact Kane Moyle on (08) 9221 511 or by email K.moyle@cmewa.com.

Yours sincerely



Reg Howard-Smith
Chief Executive

¹ National Native Title Tribunal, Determinations of Native Title, as at 31 December 2014.