



12 June 2015

Mr Wayne Bergmann
Chair
Expert Indigenous Working Group
By email: EIWGSecretariat@pmc.gov.au

Dear Mr Bergmann

Investigation into Indigenous Land Administration and Use

Thank you for the opportunity to contribute to the Expert Indigenous Working Group's input to the Council of Australian Governments' (COAG) Investigation into Indigenous land administration and use to support land owners and native title holders to be able to use their land to support their social, cultural, and economic aspirations.

The Federation of Victorian Traditional Owner Corporations (the Federation) is the peak body in Victoria representing Traditional Owner Corporations. The members of the Federation represent around 65% of the State's land at present, and while not each Traditional Owner Corporation has negotiated a settlement with the State, there is a strong focus on the ability of the corporations to develop, use and control assets for the broader benefits of their members.

Context

In Victoria the *Native Title Act 1993* (Cth) (the Native Title Act) operates in parallel to the *Traditional Owner Settlement Act 2010* (Vic) (the Settlement Act).

The Settlement Act provides similar procedural rights with regard to public lands as the Native Title Act, but also provides for a range of outcomes that can be negotiated with the State, above and beyond what might be included in a native title determination, including rights to take and use specified natural resources (including animals, plants and forest produce) and to participate in the State's management of land, waters and natural resources.

In this context, the Settlement Act provides a significant benefit for Victorian Traditional Owners, particularly where historical events may make it difficult for Traditional Owners to meet the narrow and limited confines of the Native Title Act to have their native title rights and interests recognised.

The Victorian approach places significant focus upon Traditional Owner Corporations and their sustainability as the vehicle for representation, governance and management of the cultural and legal rights and interests, obligations and responsibilities. In this sense, the Settlement Act mirrors the Native Title Act and the requirement that, post-determination, a Prescribed Body

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Corporate be established, but in the Victorian Settlement Act system, the ongoing funding and sustainability of that corporation is a key priority well before agreements are executed.

Lessons from the Victorian experience

Notwithstanding the Victorian experience with the Native Title Act and the difficulty groups have experienced because of the long history of extinguishing acts having their traditional rights properly recognised, there remain useful lessons gained in Victoria about how rights in land, even if limited in nature, can be used to support economic development outcomes.

In this regard, the land tenure regime is but one ingredient for establishing and growing the potential of the Traditional Owner groups to meet economic and broader community aspirations.

In other words, even though Traditional Owner groups in Victoria may not possess “exclusive possession” native title rights and interests or have a statutory land rights scheme that enables them to grant estates or interests in their land, strong economic development gains have nonetheless been made by Victorian Traditional Owner groups.

This observation underscores that a limited focus on tenure and land administration systems and processes will not address broader issues concerning the lack of economic development by Traditional Owners and the gaps that exist in terms of development outcomes between Traditional Owners and the general population. The experience of Victorian Traditional Owners demonstrates that by building capacity and creating an environment to enable opportunities to be developed through linkages with regional and national economies, that positive economic development outcomes can be achieved and sustained.

The key factor driving the beneficial outcomes in Victoria derives from the focus upon empowering Traditional Owner communities, both pre and post-agreement (the point at which an agreement under the Settlement Act is executed) including through the establishment of representative corporations with authority to work with stakeholders, invest in assets and business ventures, and formalised acknowledgement of the range of roles and functions of that Corporation across cultural heritage, natural resource management and social and economic development.

A key feature that makes these Traditional Owner Corporations successful and able to drive economic development outcomes derives from the early focus on the development of capacity of the corporation, including:

- Planning processes - that support corporations and communities through the development of strong planning, to identify aspirations and articulate strategies, including the development of economic and investment plans
- Funding - to enable the corporations to develop the governance and management capacity to manage operational activity and the representation/governance mechanisms for successfully negotiating a settlement
- Providing opportunities - developing business capacity through supporting working on Country on a fee for service basis, as a means to develop income and to build a track record as a basis for on-going business development and growth

The focus on the Traditional Owner Corporation in Victorian Settlement Act agreements, and ensuring that the corporation is properly resourced and supported¹ allows the development of a corporate interface with the necessary skills and experience to both engage with and represent the Traditional Owner Group, and also with the Australian economy and to develop relationships and linkages, realise opportunities and to cause economic development to occur.

Enabling potential

In this framework and within the Victorian context, governments play a key role in creating an 'enabling' environment that permits Traditional Owner Corporations (and the group of Traditional Owners they represent) to obtain beneficial outcomes. These include:

- **land** – facilitating greater access to land (that may not be able to be claimed under the Native Title Act) to increase the resources upon which Traditional Owner Corporations may be able to draw.
- **people** – facilitating access to the range of skills and capacities to optimise the opportunities. While there are high aspirations for employment and recognising the skills within the Traditional Owner groups, there are significant areas of expertise required for realising economic development opportunities, from management and investment to science and resource management and linkages to commercial businesses.
- **markets** – enabling the development of markets, including through recognising the 'services' provided on Country (including through procurement), and ensuring that the skills and resources, including the intangible and public goods are valued appropriately.
- **finance** – focusing on the long term sustainable growth requires consideration of both inward and outward directed investment to balance risks and returns. Government's role may be best placed in giving focus to the ability to facilitate appropriate partners and models for business, to build on the assets and strengths in communities.
- **corporate strength** – supporting the corporations to be settlement-ready and to continue into post-settlement capacity building is vital to ensuring that capacity grows fast enough and gains critical mass to avoid the endless cycles of capacity building and rebuilding relationships, or worse the reinforcement of stereotypical view of lack of capability and business acumen. The ongoing support for Traditional Owner Corporations by governments is a key component to successful economic development outcomes..
- **scale** - an emerging issue is the need to develop the scale to pursue broader opportunities, including for State-wide or regionally based contracting, and approaches for reducing the policy development costs and enhancing outcomes through joint approaches to policy, programme and strategy development. For example, the Federation of Victorian Traditional Owner Corporations is endeavouring to coordinate and work with government on a wide range of significant policy issues and also driving business development opportunities through a joint venture, Barpa Ltd.

Summary of practical actions

The points below summarise key areas that support economic and development outcomes for Traditional Owners in Victoria. As set out above, we consider that both the Federal and State

¹ Including through ongoing support from Native Title Services Victoria Ltd, which has the corporate knowledge and capacity to provide the unique services required of Traditional Owner Groups in Victoria.

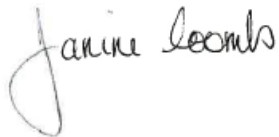
governments have responsibilities to deliver or support initiatives to give effect to these activities and the desired outcomes.

1. Tenure and land administration is but one part of the economic development equation
 - As the experience in Victoria demonstrates, successful outcomes can be obtained by ensuring support for structures that are representative of Traditional Owners, but which are also able to engage and develop linkages with the broader economy. A narrow focus on land tenure and land administration will not of itself drive beneficial outcomes, and may divert resources from being used to address other, more important factors (including those addressed in this letter).
2. Early corporation support
 - To ensure that this interface between the Traditional Owner group and the broader economy can successfully carry out its functions, the Victorian experience has demonstrated the need for the following steps to be resourced:
 1. early capacity building – ensuring that there is sufficient skills and staff, systems and structures to provide a sound platform and scale to meet core functions and responsibilities
 2. support for planning processes – the ability to articulate the aspirations and strategies into the sequence of activities required for sustainable development
 3. enabling operational activity – to develop cashflow, experience and track record, relationships and capabilities to pursue wider business activity
3. Regulatory environment
 - The creation of a regulatory environment that recognises and adequately respects the significant role of the Traditional Owner Corporation is essential, including through:
 1. the integration of corporation responsibilities into resource management policy and legislative frameworks
 2. ensuring that the concept of ‘commercial use’ of resources is incorporated into the frameworks for settlements
 3. ensuring that Traditional Owner Corporations are able to benefit, commercially, to broader resources, and not just ‘land’, including ‘new’ resources that are evolving from economic instruments or are derived from managing the environment
4. Resourcing and supporting the development of the Traditional Owner Corporation
 - In addition to the above points, the Victorian experience has demonstrated that Traditional Owner Corporations require ongoing support (including by ensuring they are properly financed to carry out functions) and assistance to ensure that economic development aspirations are achieved, by:
 1. the provision a mix of resources that includes finance and liquid assets to complement and activate the use and operational activity from land and other resources
 2. providing active support that links to the activity of government organisations, and which provides the expertise and contribution to the development of business proposals.

3. facilitating investment for long term growth, through engagement with partners and stakeholders, including for scale and scope to diversify and develop a broader range of business and operational activity.

We look forward to further consideration of the COAG investigation and in the meantime we would be happy to discuss any of the issues raised in this letter with you.

Yours sincerely

A handwritten signature in black ink that reads "Janine Coombs". The signature is written in a cursive style with a large, looped initial 'J'.

Janine Coombs
Chair