



12 June 2015

Secretariat  
COAG Land Investigation  
Department of the Prime Minister and Cabinet

By email only: [EIWGsecretariat@pmc.gov.au](mailto:EIWGsecretariat@pmc.gov.au)

Dear Secretariat,

**RE: COAG Investigation into Indigenous land administration and use**

Thank you for the opportunity to provide a submission in relation to the Council of Australian Governments (**COAG**) investigation into Indigenous land administration and use (**COAG Investigation**).

The Financial Services Council (**FSC**) represents Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks, licensed trustee companies and public trustees.

In some cases operating for over 120 years, professional trustees are held to the highest professional and fiduciary obligations under the common law and legislation. Through prudent and responsible management, FSC trustee members have grown funds placed in their trust, including acting as trustee or co-trustee for over 1,500 charitable trusts or foundations with assets of around \$4.37bn.

As part of their business, FSC members act as professional trustees of native title trusts (most commonly charitable trusts), helping to manage the funds in those trusts in the best interests of Indigenous communities. Working closely with those communities, trustees establish an appropriate trust to meet long-term community needs, manage the ongoing operations of the trust, and distribute funds to beneficiaries. Trustees are accountable and report to communities including through advisory councils comprised of respected elders, and partner with them to develop tailored plans which help meet community goals.

This submission discusses: 1) the work the FSC has done with its community partner organisation, the First Nations Foundation (**FNF**), to develop an industry standard in relation to native title trustee services; and 2) impediments to Indigenous economic development from the perspective of its professional trustee members which work with Indigenous communities.

***FSC Standard: Cultural Capability in Native Title Services***

The FSC is proud that we and the FNF successfully brought together a widely-respected group of Indigenous leaders and organisations to develop an FSC Standard that will be mandatory for FSC members which provide native title services to Indigenous communities: Indigenous Business Australia; the National Congress of Australia's First Peoples; the Australian Indigenous Governance Institute, and Nyamba Buru Yawuru Ltd. That Standard is entitled, *Cultural Capability in Native Title Services*, and is enclosed for your reference.

In conjunction with FSC trustee members and FNF, this group has put together a Standard aimed at cementing partnerships between trustees and the Indigenous communities which they serve. This Standard is about building strong relationships founded on equality, mutual respect, and recognition of the knowledge and skills gaps which can hold back trustees and communities. It will encourage tailored, culturally appropriate financial services to assist communities to achieve their aspirations.

This Standard requires FSC trustee members to develop clear disclosure of the services they provide, recognising that for many communities their first language is not English. FSC trustees must also provide ongoing support to Indigenous governance structures and communities, for example through facilitating appropriate financial literacy and governance training.

While Indigenous communities may have capacity gaps, so do trustees. With that in mind, the Standard requires trustees to: ensure that staff that work with communities undertake cultural awareness training prior to engaging with them; partner with communities to gain an understanding of their cultural values, histories and aspirations; and work towards establishing a formal strategy to develop cultural capability, such as through a Reconciliation Action Plan.

Lastly, the Standard requires trustees to adopt inclusive decision-making and values when managing native title trusts, including incorporating non-financial considerations, where possible. This obligation recognises that communities have unique relationships with their land and seas, stretching back millenia.

It is worth noting that these principles will not be mere words on paper, but instead obligations binding on FSC trustee members, requiring annual sign-off at Board level.

The FSC Standard was publicly launched at Parliament House, Canberra on 28 May 2015, during National Reconciliation Week, with the strong bi-partisan support of: the Assistant Treasurer, Josh Frydenberg; Minister for Indigenous Affairs, Nigel Scullion; and the Shadow Assistant Treasurer, Andrew Leigh, as well as stakeholders including the Business Council of Australia, Reconciliation Australia, and Indigenous Business Australia.

The FSC believes that this Standard sets an appropriately high benchmark for how trustees work with Indigenous communities, and promotes sustainable business practices. Further, we hope that the development of this Standard represents a positive contribution towards, and supports, Aboriginal and Torres Strait Islanders capitalising on the economic, social, and cultural opportunities offered by native title.

### ***Impediments to Indigenous economic development***

In the FSC's view, one of the most significant impediments to economic development of Indigenous communities is the inability to conduct land development on Aboriginal & Torres Strait Islander reserves. Much of Indigenous land is vested in the Aboriginal Lands Trust which leases land to a local Aboriginal corporation, usually for a period of 99 years. A local Aboriginal corporation (LAC) then administers the community and receives government funding to deliver housing needs. Given the ALT and LAC hold tenure of all land in the community, there is no incentive for private investment on the land, not even for individuals owning their own homes.

A similar consequence exists with native title - the land is recognised as belonging to the community and a prescribed body corporate is nominated to hold the title on behalf of the community. That land is not freehold and therefore also acts as a restraint on private investment by the community themselves. One of the implications of this is that Indigenous communities cannot produce private equity, given the land within their community is unavailable for purchase or commercial development.

Whilst legislative changes may offer a solution, further work should be done to facilitate land development and help partner traditional land-holders with those wishing to invest capital in communities.

### ***Next steps***

Given the COAG Investigation remains ongoing, our comments are preliminary in nature, and we would be happy to provide further comments as proposals are discussed and developed. The FSC is committed to promoting the social and economic inclusion of Aboriginal and Torres Strait Islanders, and would welcome an ongoing role in the policy debate.

Please feel free to contact me on (02) 8235 2520, if you have any questions, or would like to clarify, any points made in our submission.

Yours sincerely



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