



CENTRAL LAND COUNCIL

Central Land Council Submission to the Joint Select Committee

Inquiry into the Development of Northern Australia

1. - Introduction

The Central Land Council (CLC) is a statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRA'). Among other functions, it has statutory responsibilities for Aboriginal land acquisition and land management over an area of approximately 780,000 km² across the southern portion of the Northern Territory. The CLC is also a Native Title Representative Body established under the *Native Title Act 1993* ('NTA'). Through its elected representative Council of 90 community delegates the CLC continues to represent the aspirations and interests of approximately 17,500 traditional landowners and other Aboriginal people resident in its region, on a wide range of land-based and socio-political issues at the local, regional, Northern Territory and national level.

The CLC aims to improve the lives and futures of its Aboriginal constituents by reducing the level of Aboriginal disadvantage in central Australia through sustainable development and change. The CLC's approach to sustainable development is based on an integrated and strengths-based strategy of building economic, social and cultural capital. Significant work is being done under the various functions of the CLC in each of these related areas through initiatives in:

- natural and cultural resource management;
- sustainable land use e.g. pastoral, tourism and other enterprise development;
- land management participation e.g. community-based ranger programs;
- development of other remote employment pathways and programs e.g. pastoral, mining; and
- innovative community development work.

There has been a longstanding interest by various governments in the development potential of the north extending back to the post war period in the 1940s with minimal

success and with little consideration for the aspirations of Aboriginal people in the region.¹ As recently as 2007 the Howard government established a taskforce to investigate the potential of agricultural development in the north with a view of providing food for the nearby Asian market. It is important that the committee takes into account the past attempts at developing the north and that the same mistakes are not repeated².

Past government interests and initiatives to 'develop the north' have focussed on the 'tropical north,' which sits predominantly outside the CLC region. This inquiry, however, includes land outside the tropical region and includes land north of the tropic of Capricorn, which encompasses semi-arid/low rainfall and very remote areas within the CLC administrative region. The CLC notes that the Alice Springs region is also included in this inquiry. The CLC has a statutory responsibility under both the ALRA and NTA for a vast region of the Northern Territory that is included in this inquiry under the current definition of 'northern Australia'.

The CLC welcomes the opportunity to contribute to the inquiry and would be available to attend a public hearing if required.

2. Terms of Reference

The Committee to consider policies for developing the parts of Australia which lie north of the Tropic of Capricorn, spanning Western Australia, Northern Territory and Queensland, and in doing so:

- examine the potential for development of the region's mineral, energy, agricultural, tourism, defence and other industries;
- provide recommendations to;
- enhance trade and other investment links with the Asia-Pacific;
- establish a conducive regulatory, taxation and economic environment;
- address impediments to growth; and
- set conditions for private investment and innovation;

¹ Garnett, S., Woinarski, J., Gerritson, R., and Duff, G. (2008). *Future Options for North Australia*. Charles Darwin University Press.

² The Committee should refer to the comprehensive study by the Northern Australia Land and Water Taskforce – *Northern Australia Land and Water Science Review 2009* which is still a very relevant document. Available on line at: <http://www.regional.gov.au/regional/ona/nalwt.aspx>

- identify the critical economic and social infrastructure needed to support the long term growth of the region, and ways to support planning and investment in that infrastructure.

3. The Aboriginal Land Rights Act

Under the ALRA, access to, and the use of, Aboriginal land is formalised through voluntary leasing provided for under s.19 of the Act. It provides certainty to third parties and recognition of traditional Aboriginal ownership through the need to seek the informed consent of land owners, just as is necessary with other private property. The consultation processes associated with obtaining a s.19 lease is managed by the CLC. The process is efficient, clear and accessible to third parties seeking or wishing to formalise an interest in land. Almost 500 such leases have been processed in the last five years, and in some communities, up to 90% of the available land is now held under lease. This data is set out comprehensively in a CLC paper titled 'Land Reform in the Northern Territory: evidence not ideology' (October 2103), included here as Attachment A. The CLC asserts that communal title is not the main barrier to economic development and urges the Committee to focus on the real barriers to economic development in the sparsely populated arid zone including lack of infrastructure, remoteness, and distance to market.

It is often stated that a major impediment to economic growth in the NT is the ALRA and that Aboriginal people are opposed to development. A recent example of this view was expressed by Northern Territory Department of Mines and Energy in a report by the Productivity Commission in reference to non-financial barriers to mining stating that:³

... the Aboriginal Land Rights [Northern Territory] Act 1976 [Cth] (ALRA) is considered to be the foremost non-financial barrier to exploration in the Northern Territory....

Furthermore in a submission to this inquiry⁴ the Northern Territory Government states that:

³ Productivity Commission 2013, *Mineral and Energy Resource Exploration*, Inquiry Report No. 65, Canberra.

⁴ Submission by the Northern Territory Government to the Joint Select Committee on Northern Australia, February 2014. Available at: http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jscna/subs.htm

Despite having secure tenure and receiving royalty income, after 38 years, people living on ALRA land are among Australia's most disadvantaged, and economic development on ALRA land is minimal.

The NT Government submission calls for a review of the ALRA as a precursor to the socioeconomic advancement of Aboriginal people in the NT. The CLC strongly asserts that the ALRA does not inhibit development. In contrast to the above it is stated in a report (included here as attachment B), prepared for the CLC and Northern Land Council assessing mineral exploration in the NT over the period 2001 to 2012, that the:

...NT has performed at least as well as any other state in attracting investment in mineral exploration over the past decade or so. Over the past five years, including the period of falling mineral prices in the aftermath of the GFC, it has performed better than most other states. Over this period it has also performed better at attracting exploration for new mineral deposits (greenfields exploration).

In the CLC region there are a plethora of other factors that inhibit Indigenous economic development. These include the climate and environment, poor education outcomes, lack of basic infrastructure, proximity to markets and cost of transportation. There is no evidence that the ALRA and communal land ownership are impediments to economic growth. Aboriginal land is the private property of Aboriginal peoples held in common. This form of tenure reflects Aboriginal custom and law.

Recommendation: That the Committee recognise that communal title is not an impediment to economic development and recommend that the ALRA not be amended without the consent of traditional owners.

4. Sustainable Development Opportunities

Aboriginal people own approximately 50% of the land mass in the CLC region and constitute approximately 41% of the total population⁵. It is vital that the rights and interests of Aboriginal people are recognised and protected in any development in northern Australia. Governments seeking to explore opportunities in the north should ensure that appropriate processes are in place that meaningfully includes Aboriginal people in decision making on

⁵ Data gleaned from ABS 2011 reports.

their futures. A very real risk of development that does not include Aboriginal people is that the socioeconomic gap between Aboriginal and non-Aboriginal people will widen.

The rights and interests of Aboriginal people include the equitable sharing of any benefits arising from development and the equitable access to development opportunities. This entails taking note of the development aspirations of Aboriginal people and investing in developing local capacities. To realise these development aspirations it is essential that significant investments are made in the areas of human and social capital; particularly health, education and governance.⁶ It is also important that any investment in these areas is done in collaboration with Aboriginal people or their representative organisations to maximise the relevance and positive impact of any policy changes. For example, the maintenance of Indigenous languages and culture, Aboriginal customary institutions, and the transfer of Indigenous knowledge across generations are essential building blocks that play important roles in enterprise development such as the art and cultural tourism sectors.

Having access to land and other resources and assets is essential to facilitate economic development activity. The development of people to be able to effectively interact with economic institutions is also hugely important to any economic development policy and program. It is the experience of the CLC that the development of human and social capital is an area requiring comprehensive investigation and appropriate program responses in order to realistically achieve economic development policy objectives in remote central Australia. For example the extent of development will continue to be constrained until skill levels can be improved in relation to Aboriginal business development.

Mining, government services, tourism and pastoralism are the industries that dominate the economy in northern Australia. They each hold possibilities for the significant involvement of Aboriginal people. Another important industry that is of critical importance to northern Australia, which is often overlooked, is Indigenous cultural and natural resource management. The following section draws the Committee's attention to this quickly emerging area as well as the other well known industries described above and the opportunities and challenges within these sectors.

Recommendation: That the rights and interests of Aboriginal people be acknowledged and protected in policy development relating to the development of northern Australia, and

⁶ Garnett *et al* 2008

Aboriginal people be centrally involved in the development and implementation of such policy.

Recommendation: That the importance of further urgent investment in development work to build human and social capital be recognised.

4.1 Cultural and Natural Resource Management

Northern Australia contains relatively intact landscapes especially on Aboriginal land. In the CLC region, much of this land is marginal in terms of pastoralism and agricultural production, which is precisely why it was available for claim under the ALRA. Many regions of Aboriginal land contain ecosystems of national significance that require ongoing care, protection and maintenance. These and other areas of land are also of immense cultural and spiritual significance to Aboriginal landowners. They play a vital role in Aboriginal culture and spirituality. While Aboriginal lands contain vast areas of intact landscapes they are by no means pristine and are continually under threat from feral animals, weeds, erosion and wildfires.

There is enormous potential to further develop and strengthen existing Indigenous Cultural and Natural Resource Management (ICNRM) activities in the region. This is an area that needs to be closely examined by the Committee particularly given its inextricable relevance to other industry sectors, for example, eco-tourism and the Aboriginal art sector. Aboriginal ranger groups are the key vector for the implementation of ICNRM activities in the north providing environmental services beyond the capacity of mainstream agencies in nationally significant areas such as weed and feral animal management, biosecurity, wildlife monitoring and fire management. These services provide significant benefits to the broader Australian community. It is essential that they are recognised as such and supported to continue to provide these essential environmental services to Northern Australia and the nation as a whole.

Aside from the environmental benefits of ICNRM there are significant health benefits that flow from ICNRM, as encapsulated in the intent of the bilateral *Healthy Country, Healthy People* arrangements between the NT Chief Minister and Australian Prime Minister active in recent years. There is evidence that ICNRM is a contributor to improved health of Aboriginal people resulting from more physical activity and better nutrition as well as the psychological

importance of being and working on their own country.⁷ The uptake of, and interest in, working as a ranger in northern Australia is an indication of the importance that Aboriginal people place in this type of work. Aboriginal people want policy changes that strengthen and secure these programs.

Given the large tracts of Aboriginal-owned land in the Northern Territory it is critical that government support jobs on country and in local communities so that on-going management needs (e.g. fire management, weed and feral control, biodiversity conservation) are addressed in a cost effective manner and in a way that delivers associated benefits that address *Closing the Gap* targets.

Recommendation: That there is further investment to strengthen and extend successful existing Indigenous Cultural and Natural Resource Management (ICNRM) programs.

4.2 Cultural Tourism Development

Many Aboriginal people in the CLC region see cultural tourism as a real option for economic development on country. This is especially so because it holds potential for younger people to be involved and benefit this emerging industry.

It is an opportunity that can be realised by Aboriginal people increasing their knowledge of the tourism industry and by building the capacity to be effectively involved in the development and management of sustainable cultural tourism enterprises on their land. CLC constituents will require policy frameworks/programs along with good research and support to realise their ambitions including: to develop understanding of specific markets, support to access resources to build their capacity to be involved in tourism, to implement sound business practices, to form complementary partnerships with other operators and effectively market their products.

There is a long standing link between tourism and protected areas in the CLC region with a strong market demand for Aboriginal cultural experiences. This is recognised in the Tourism Australia/ Parks Australia sponsored National Landscapes program branding of the area as Australia's iconic Red Centre National Landscape. There is great potential for Aboriginal people to develop distinctive products and be directly involved in tourism activity in the

⁷ Garnett, S., Sithole, B., Whitehead, P. J., Burgess, C. P., Johnston, F. H., and Lea, T. (2009). Healthy Country, Healthy People: Policy Implications of Links between Indigenous Human Health and Environmental Condition in Tropical North. *The Australian Journal of Public Administration*, Vol. 68, no. 1, pp. 53 – 66.

jointly managed National Parks and Indigenous Protected Areas (IPAs) in this region. Aboriginal land under such co-operative management regimes provides a solid framework for the development of sustainable tourism operations which requires both economic viability and effective natural and cultural resource management of the land being used for tourism. The associated land use agreements developed within the consultation and planning framework of the ALRA provide the necessary certainty and clarity that enhances project sustainability.

There is an urgent need for capacity development in a number of areas associated with business/economic development. In the context of tourism development, further exploration of appropriate joint venture models conducive to building indigenous business capacity are urgently required. There is the potential for government, in partnership with Aboriginal organisations, to design an incentive program that encourages established business operators to partner with Indigenous business proponents under arrangements that give prominence to providing benefits through capacity development, employment etc. while offering operator incentives that reduce their risks. Depending on the scale of the enterprise, consideration should be given to assisting the joint venture partner to directly provide the commercial expertise and other capacity-building support themselves as required or to work in collaboration with the relevant agency or an appointed third-party to facilitate such a process. CLC would welcome the opportunity to work with the committee to further examine and develop this idea.

The growth of a sustainable Aboriginal tourism industry providing new on country experiences which attract more visitors to the region, and activities that encourage them to stay longer, has the potential to make an important contribution to the economic development of the Northern Territory.

Recommendation: That Cultural tourism development be recognised and supported as a key economic opportunity for Aboriginal people in the north with a focus on sustainability and an alignment with community interests and aspirations.

Recommendation: That the Committee recommend that further consideration be given to options for a new tourism joint venture model which would provide appropriate incentives to encourage established business operators to partner with Indigenous business proponents under arrangements that give prominence to providing benefits through capacity development and employment to Aboriginal people.

4.3 Pastoralism

A significant area of land in the CLC region, including both Aboriginal Freehold and Pastoral Lease land, is under pastoral management. The CLC has been active for over 15 years in supporting and developing Aboriginal owned and operated cattle enterprises. Since 2003 the CLC has been involved in the successful multi-agency collaboration, the Indigenous Pastoral Program (IPP), sponsored by the Indigenous Land Corporation (ILC). Aboriginal pastoral enterprises provide employment opportunities for Aboriginal people and remains as an important industry for central Australia. The pastoral industry also provides an avenue for Aboriginal people to maintain connections to country.

For the ongoing sustainability of the pastoral industry in central Australia it is vital that the fragile and marginal ecosystems are managed appropriately through regular pastoral land monitoring, environmental mapping, soil conservation, invasive species control and the management of wild fires. For the benefit of both the industry and Aboriginal landholders, represented by the CLC, the feasibility of a multi-species abattoir should be investigated as an economic incentive and compensation for the management of land degradation due to the impacts of feral animals.

Many of the cattle properties in central Australia are very remote and the road networks are seriously degraded. The costs of transporting cattle to both the southern and northern (live export) markets reduce the viability of cattle operations in central Australia. Investment in upgrading and sealing a number of the major road routes would have an impact on the long term viability of cattle business in the north as well as opening up other opportunities.

Ongoing investment in human capital is also required to ensure the viability of the pastoral industry. Business management and governance support for Aboriginal owned cattle operations are areas that are in need of support.

Recommendation: That Aboriginal pastoral enterprises continue to be supported through governance and business management capacity development activities and investment in the road network be increased to reduce costs and allow for diversification.

Recommendation: The feasibility of a multi-species abattoir be investigated to provide for an incentive for land owners to manage land degradation issues associated with feral animal impacts.

4.4 Horticulture

There has been a significant amount of work done in central Australia identifying the areas that are suitable for horticulture development on Aboriginal owned land. The Committee should make itself familiar with these studies. Included here, as attachment C, is a map highlighting the opportunities that relate to horticulture development on Aboriginal owned land⁸.

As mentioned earlier, Aboriginal owned land under communal title can be voluntarily leased for the purposes of developing horticultural enterprises on Aboriginal land, including by Aboriginal people wanting to start their own business. This can provide the security of tenure required to attract private investment, and allow for mortgaging as required. A successful example of this can be seen in Alekerange (approximately 400km north of Alice Springs). This is an area of Aboriginal land that has been leased to a private investor to develop a commercial horticultural enterprise. This demonstrates that the regulatory environment of the ALRA is not the impediment to economic development opportunities for Aboriginal people and Aboriginal land as some often claim.

As discussed in this submission there are a number of other factors that limit the economic development potential such as human capital and local capacities. In the context of horticultural development access to capital for base level infrastructure development, such as bore fields, transport and power is also a significant factor inhibiting development of this sector. There is a role for government and private investors to provide a mechanism to access capital for the development of sustainable and viable large economic projects. This can be done through partnerships between Aboriginal land owners, government and private investors where there are returns on investment. Aboriginal land owners are keen to use their property for economic development opportunities.

Recommendation: That further consideration is given to providing access to capital for base level infrastructure development to stimulate horticultural activity on Aboriginal land in the CLC region.

⁸ The map included as attachment C is based on research commissioned by Centrefarm Aboriginal Horticulture Limited. Centrefarm is an Aboriginal-owned not-for-profit Australian company whose role is to identify commercially viable opportunities that provide the foundations for new regional economies and support the generation of jobs. For more information see: <http://www.centrefarm.com/>

4.5 Mining -

The ALRA provides a best practice regime for consulting with traditional Aboriginal owners and protecting their rights and interests in relation to the processing of applications for exploration and mining. The processes in place under the ALRA demonstrate best practice for consultation of traditional Aboriginal owners. Under these processes the CLC's role is four fold:

- Identifying traditional Aboriginal owners;
- Acting as adviser to the traditional Aboriginal owners, and on their behalf as an intermediary in negotiation;
- Ascertaining traditional Aboriginal owner decisions; and
- Administering the resulting contracts.

The systems developed by the CLC within the statutory framework set by the ALRA are well established, efficient and ensure informed decision making by traditional Aboriginal owners in relation to their land.

The CLC has a statutory responsibility under the ALRA and the NTA to consult traditional Aboriginal owners and native title holders over proposals for exploration and mining and, where instructed to do so, to make agreements with mining companies which satisfy all the interested parties.

For Aboriginal owned freehold land under the ALRA the traditional Aboriginal owners must consent to any exploration. Once consent is given by traditional Aboriginal owners to exploration, they cannot refuse any subsequent mining. For applications on pastoral leases, where the NTA applies, no consent provision exists. Rather, 'native title holders' have a right to negotiate terms for an agreement but cannot withhold consent to the grant of an exploration title.

However, fundamental to the CLC consultation and agreement making process under both the ALRA and NTA schemes is the informed consent of the traditional owners or native title holders.

The principle underlying the administration of Aboriginal land is that the traditional Aboriginal owners of each parcel of land have the sole right to make decisions as to land

use. Other Aboriginal people affected by the decision must also be consulted, but the final decision lies with the traditional Aboriginal owners. These provisions of the ALRA reflect Aboriginal customary law, and the strong relationship between traditional Aboriginal owners and the land.

The NTA provides traditional Aboriginal owners or native title holders with less say on the future of their land than under the ALRA. This reflects the legal status of traditional Aboriginal owners under the NTA as claimants or holders of a certain rights and interests in the land by way of native title rather than *owners* of land; native title rights and interests coexist with other rights and interests in land (including those of pastoralists). One result of this is that the NTA provides a lesser level of protection for Aboriginal cultural rights, and does not provide the same guarantees of respect for Aboriginal title and law than the ALRA. There are strong arguments that recognised Native Title Holders (as distinct from Native Title claimants and holders of other residual rights in country under pastoral lease) should have the same rights as traditional Aboriginal owners under the ALRA.

The CLC has made agreements on behalf of traditional Aboriginal owners with mining companies for more than 20 years. Under such agreements the traditional Aboriginal owners secure sacred site protection, environmental protection, some compensation and sometimes employment and training. The mining companies secure clear, reliable and enduring agreements without the confusion and uncertainty that may characterise exploration elsewhere. For example over the 2010 financial year there were 128 exploration agreements and 10 mining agreements involving 97 companies executed under the ALRA.

Recommendation: That the Committee recognise that the provisions in Part IV of the ALRA provide clarity, efficiency and certainty and recommend that the provision not be amended without the consent of traditional owners.

5. Infrastructure Development

There is a vast region of land under Aboriginal ownership in the Northern Territory, however, the condition of that land and the level of basic infrastructure are severely limited. For Indigenous people to realise the potential of their land asset base, investment in basic infrastructure is a key element that is required as a prerequisite to economic development.

As discussed under the pastoral section above, investment in improving the road network in the north is essential to reducing costs and opening up other opportunities. With a larger network of sealed and upgraded roads costs will be reduced in accessing markets and more visitors will travel through the NT opening up other economic opportunities, for example, that are associated with tourism. As an example of the CLC's commitment to this the CLC supported an NT Government application to Infrastructure Australia for significant upgrades to the Tanami road.

Investments in remote area telecommunications infrastructure will have huge impacts across industries including health, education and enterprise development. However telecommunications infrastructure alone will not guarantee uptake of digital services. There are particular constraints and characteristics of remote central Australia that need to be included in policy development associated with telecommunications. As a member of the Broadband for the Bush Alliance the CLC supports the recommendations and comments made by the alliance in a submission to this inquiry and urges the committee to seriously consider these.

Further, there are serious limitations on the ability to commence new developments and businesses in many remote communities due to the lack of essential services and vacant serviced lots. A recent internal CLC audit of leases consented to at Lajamanu indicates that more than 81% of available serviced lots in the community are now leased, with further applications currently being processed which, if approved, would see this figure increase to 94%. Similarly, 71% of all available serviced lots in Alekarenge are now leased, with further applications currently being processed which, if approved, would see this figure increase to 82%.

Recommendation: That the Committee consider the data on the availability of serviced lots in remote communities and recommend a strategic approach to essential services investment.

Recommendation: That appropriate investment in the road network and telecommunications infrastructure and policy be made to improve the sustainability of the existing economy and provide for new opportunities.

6. Water Allocation

Water is vital to economic development in the arid region of the CLC. It is also vital to the maintenance of fragile ecosystems and flora and fauna. Using water in central Australia

means tapping into groundwater reserves. The CLC is alarmed at recent policy changes in the NT to abolish the Strategic Indigenous Reserve (SIR) which held 20% of a water control district's allocation in reserve for Aboriginal landowners. Aboriginal peoples' property rights in water need to be clearly defined. This is an urgent policy area, especially in a region with extremely low precipitation. The SIR acknowledged the inherent rights of Aboriginal people in water and in accessing economic opportunity at a time that they were in a position to do so.

In combination with recent changes to the NT Pastoral Act that allows for diversification, including horticulture activities, there is a real risk that Aboriginal people will not be able to access ground water that sits under Aboriginal owned land as the water allocation will be taken up by non-Aboriginal interests. The Water Act describes allocations from a water control district on a first-come, first-served basis. Once all available water has been allocated (licensed), water trading can commence. Unless landowners have both the capital and the business plan in place to develop their land, they will not be allocated a water licence.

The CLC strongly supports the position statement of the National Water Commission on Water Management in Northern Australia⁹ that Indigenous interests and involvement in water planning and management be recognised, including the provision of specific water allocations to Indigenous peoples.

Recommendation: That the Committee recommend that the NT Government reverse its decision to abolish the Strategic Indigenous Reserve (SIR) which held 20% of a water control district's allocation in reserve for Aboriginal landowners.

Recommendation: That the Committee investigate other mechanisms for ensuring that Indigenous interests and involvement in water planning and management be recognised, including the provision of specific water allocations to Indigenous peoples.

⁹ Included as an attachment to the National Water Commission submission to this inquiry available from the inquiries website.