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Northern Australia Indigenous Economic Development Body

Discussion Paper

PARTLY VALIDATED FINAL DRAFT

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April 2019

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Indigenous Reference Group to the Ministerial Forum on Northern Development

21st August 2019

Hon. Ken Wyatt AM, MP
Minister for Indigenous Australians
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

Via Email: Ken.Wyatt.MP@aph.gov.au

Dear Minister

Northern Australia Indigenous Reference Group Land Tenure, Access to Capital and the IRG Solution

I refer to our meeting at the recent Developing Northern Australia Conference in Karratha on the 10th to 12th July 2019. On behalf of the Northern Australia Indigenous Reference Group ('IRG'), I would like to thank you for continuing to support of the IRG and its policy recommendations, support that is consistent with that the IRG has received from the Ministerial Forum on Northern Development and Australian governments more generally to date.

Our dialogue in Karratha revolved around the IRG's mandate, identified key constraints to Indigenous engagement with the Commonwealth's Developing Northern Australia Agenda, the IRG's policy recommendations and the current status of implementation of those recommendations. The IRG's recommendations are founded in independent expertise that each IRG member brings to the table. This expertise is the result of practical experience derived from diverse careers at the coal-face of Indigenous economic development in Northern Australia. The policy recommendations themselves have resulted from an intensive work program over the past 18 months that has sought to bear critique from both government and independent policy experts, and the framework has and continues to be exposed to extensive consultation across the Northern Australian governments and their agencies, industry and the NGO sector.

Of the 36 specific IRG policy recommendations (detailed in Attachment 1), the Ministerial Forum on Northern Development has endorsed 16 for implementation planning and referred the remaining 20 recommendations for further consideration. The IRG continues to work with the National Indigenous Australians Agency, other Commonwealth agencies and the agencies of the Governments of Western Australia, Northern Territory and Queensland on joint implementation of specific IRG recommendations (also detailed in Attachment 1). Further, as mentioned in the most recent Council of Australian Governments (COAG) Communiqué¹, this partnership approach will be underpinned and governed into the future by the landmark Northern Australia Indigenous Development Accord between the Commonwealth and other Northern Australian jurisdictions.

¹ Council of Australian Governments (2019), *COAG Meeting 9 August 2019 - Cairns - Communiqué*

At your request, I also undertook to provide you a paper on development issues associated specifically with Indigenous land tenure in Northern Australia and other challenges that Indigenous businesses face with respect to accessing capital, as well as the IRG's proposed solution. **This paper is in Attachment 2.**

Given the significant Indigenous representation in the Northern Australian residential population, ownership and legal interests in land and inland water resources that comprise 80 percent of the Northern terrestrial landscape, as well as interests in significant areas of sea county (including 87 percent of the Northern Territory coastline), the Commonwealth's Developing Northern Australia Agenda presents Indigenous Northern Australians with an immense opportunity for economic self-determination. However, without specific policy intervention that acutely targets the business, capital access and employment support needs of Indigenous Northern Australians, the socio-economic dividends that could accrue from this opportunity will be lost - potentially forever.

The IRG's policy platform is grounded in the notion that inactivation of the Northern Indigenous economy represents a clear, unique and actionable market failure that if not adequately addressed through acutely targeted efficacious enterprise and employment support programs, will result in the Commonwealth's Northern Australia Agenda failing to achieve its objectives and the continued impoverishment of our people in the North. These circumstances will only serve to draw further national and international attention to the failings of Australian Governments with respect to addressing the policy imposed plight of Australia's Indigenous people.

It is also somewhat perverse that the opportunity for Indigenous economic self-determination that is created by the intersection between the extensive Indigenous estate in Northern Australia and the Commonwealth's Developing Northern Australia Agenda is being hindered by legislative limitations to tenure and a plethora of existing Commonwealth, State and Territory enterprise and employment support programs that are mostly ineffective in the Northern Australia development context. Indigenous people in Northern Australia want to control their assets and accrue the dividends of economic development from the development that they want. These are factors that governments can address.

It is clear that land tenure challenges will only be optimally resolved through significant reform of tenure legislation, particularly the *Native Title Act 1993* (Cth). Acknowledging that such processes take time, the IRG has focused on developing policy solutions that will achieve shorter-term outcomes and which can be implemented now.

It is my hope that you will find the attached papers informative for your considerations and I would, of course, welcome the opportunity to provide you with a more detailed personal briefing at your convenience.

Yours sincerely



Peter Yu
Chair
Northern Australia Indigenous Reference Group

ATTACHMENT 1

IRG POLICY RECOMMENDATIONS

IRG Policy Recommendations

IRG Policy Recommendations for Immediate Implementation

1. Infrastructure projects, public sector, major corporates and public investment to include consistent and agreed Aboriginal training and employment targets (underpinned by Workforce Development Plans).
2. Publicly available Workforce Development Plans (for industries and regions) with a focus on infrastructure pipelines, service sector growth areas and new and emerging growth industries:
 - Will identify key skill and education gaps
 - Underpin identification of training requirements
 - Ensure there are 'work ready' and appropriately skilled Indigenous employees and business supply chains.
3. A Northern Australia Indigenous Enterprise and Employment Hub system under the Indigenous Business Sector Strategy for single point of access
 - servicing each jurisdiction
 - designed in consultation with the IRG
 - address IRG recommendations on creating jobs, fostering labour participation, entrepreneurship and business acumen
 - providing PBCs access to training based on capability and commercial potential, business advice and useable information about economic development opportunities.
4. Government supported secondary and tertiary scholarship programs, including for STEM, will allocate specific portions of funding to target uptake by northern Australia Indigenous students.
5. Improve access to government research and development for Indigenous end-users to support commercial decision making including mechanisms for connected responses to Indigenous communities' research questions.
6. Ensure future research priorities are developed with Indigenous input and are community/locally owned and driven
 - Indigenous Research Fund includes the research and knowledge management needs of Indigenous businesses in the north and ensures findings are readily accessible to Indigenous businesses.
7. Develop a better understanding of Indigenous infrastructure investment priorities and include Indigenous interests in planning and prioritisation:
 - Including in the 2018 National Infrastructure Audit
 - Include members of the IRG in Darwin City Deal consultations to ensure alignment with the economic aspirations of Indigenous Australians for Northern Australia
8. Improve outcomes from planned infrastructure investment for Indigenous workers and enterprises
 - skills and education system, procurement processes, employment and supplier use targets

- break down silos in northern Australia infrastructure planning, both jurisdictional and those for different types of infrastructure (e.g. roads, communications, water, energy etc)
- provide IRG with information on the full extent of the known and planned infrastructure pipeline across Northern Australia.

9. Reform NAIF to include measures to support the aspirations of Indigenous businesses in the north

- reductions in the minimum size of projects and proportion of capital required
 - requirements for all projects to include Indigenous procurement and employment targets
 - strengthened Indigenous representation in decision making
 - provide funding for feasibility studies.

10. The Northern Australia Indigenous Enterprise and Employment Hub system (rec 3) is designed in line with recommendations on better access to capital and markets.

11. ILC and IBA will refresh their focus on the North and incorporate IRG's findings in their business model reforms

- ILC divestment policies actively build land-holder capacity to engage in the business economy in northern Australia
- a dedicated portion of IBA funding to be allocated specifically for capability development, investment and market analysis in Northern Australia
- an associated investment platform will be established with IBA seed funding for projects used to leverage new money for co-investment

12. Austrade will work with IRG to develop an understanding of the export support needs of Indigenous businesses and agree an approach for providing the required support.

13. Ensure appropriate services to support business development by land holders resulting from improved understanding of the economic potential of their land and water rights

- Improve access to government data, research and development for Indigenous end-users to better understand economic development opportunities from land, water and sea assets, including from northern Australian White Paper initiatives
- Provide access to business advice that incorporates high quality market research systems required to get products to market, natural resource management, issues relating to scalability of an enterprise, processes that drive scale and the wide impact of scale.

14. Provide assistance to Indigenous communities to build the capacity to develop regional land use and development plans

- similar to more formally structured land use and development planning and coordination activities undertaken by state governments
- explore how coordinated land use and resource planning, bringing in ranger activities and plans, could be achieved
- better integration of Indigenous perspectives in future water use research and planning frameworks
- provide support for the development and growth of the cultural economy, including the arts and craft, customary knowledge and applications of bush foods and medicine, biodiversity and ecosystems management etc.

15. A series of jurisdictional based "Regional Development Collaboration Deals" in areas of identified high economic potential

- underpinned by the principles of co-design and locational advantage

- which align and integrate public and private sector inputs to better focus on Indigenous economic growth
- explore options to offer services in physical, virtual and mobile forms, noting regional and remote businesses must be enabled to access this support
- with whole-of-government resourcing including from PM&C (CDP, IBSS hubs), Austrade, CSIRO, Geoscience Australia, ILC and IBA, in addition to jurisdictional and local government resources
- targeting a number of projects with Indigenous outcomes, including those which are Indigenous proponent lead
- facilitating understanding of how best to address systemic impediments to Indigenous economic development over the longer term.

16. Explore fiscal and regulatory reform options for the purposes of accelerating Indigenous economic development.

IRG Policy Recommendations for Further Consideration

1. Investigate the gaps in supporting Indigenous business enterprise, including those identified in the audit of Northern Australia Indigenous Business programs and explore:

- addressing through the Northern Australia Indigenous Enterprise and Employment Hub system
- realignment of existing capability development investments by governments to better meet the entrepreneurship and business acumen needs and opportunities in Northern Australia
- the need for a Capability Building Fund to support business development through access to concessional finance, seed funding for new business and grant funding for feasibility studies and business cases.

2. Strategic assessment of the economic opportunity available to PBCs across Northern Australia, to better target capability support to those best positioned to unlock and maximise economic opportunity.

3. Explore access to a minimum of 25 percent of any new sponsored rural and regional apprenticeships for Indigenous northern Australians.

4. Investigate mechanisms to maximise protections and benefits available through intellectual property laws and the provisions of the Nagoya Protocol, particularly related to bushfoods, by working with jurisdictions to establish minimum national legislative standards (noting Queensland's Biodiscovery Act)

5. Explore the scope and structure of an Austrade Program targeting foreign investment in northern Australia infrastructure projects that has an explicit Indigenous element and/or equity participation.

6. Explore the options for a "direct use" allocation of a minimum of \$1 billion under the NAIF for Indigenous projects that ensures a deliberate and targeted approach to growing Indigenous proponent and project ready options and is within existing legislative arrangements.

7. Clarify and further investigate options for the NAIF policy framework to activate, accelerate and optimise Indigenous economic growth.

8. Investigate options to increase competition in transport and logistics in Northern Australia.

9. Investigate potential adjustments to IPP frameworks to improve outcomes for Indigenous workers and enterprises in Northern Australia.

10. Recognising the fundamental and critical importance of communications infrastructure, scope the development of a Digital Inclusion Policy to facilitate economic development and to include actions tailored to regional and remote locations.
11. Consider a range of insurance options for mortgages over identified Aboriginal land
 - Including development of options for ILC to partner with financial institutions to facilitate the mortgaging of Indigenous-owned land while ensuring land remains Indigenous-owned.
12. Consider the options for the scope and structure of an Indigenous enterprise capital fund for Indigenous business.
13. Identify catchments for the expansion of the water resource assessments initiated in the White Paper.
14. Explore policy development to understand options for Indigenous water and sea resource usage including establishment of northern Australian Indigenous water reserves.
15. Engage through the Northern Australia Strategic Partnership and National Water Reform Committee (NWRC), to COAG, to develop a shared Indigenous water policy, protecting Indigenous water rights for economic, cultural and social use.
16. Consider measures for the inclusion of water and sea resource access in ILUAs.
17. Investigate what increased assistance could be provided to maximise opportunities for Indigenous individuals and businesses engaged in the beef, tourism, ecosystem management services and other land and water based industries.
18. Investigate the scope, authorisation and architecture for a northern Australia Indigenous economic development function.
19. Consider further measures to improve coordination and implementation of existing policy settings and service delivery capability.
20. Explore options to engage foreign labour and expertise to encourage migration and growth.

First Implementation Steps

The first implementation steps currently being undertaken in collaboration with the jurisdictions are as follows:

- Expand fee-for-service opportunities for Indigenous Rangers services across Northern Australia
- Scope feasibility study funding and other actions to leverage infrastructure investment
- Establish a working group to progress land-use planning reforms
- Scope a Northern Australian Indigenous Commercial Research Roadmap and Research Plan
- Scope a Northern Australia Indigenous Business and Employment Hub system
- Scope Regional Collaboration Areas
- Scope a Northern Australia Indigenous Economic Development Function in consultation with relevant stakeholders, including Indigenous corporations, government agencies and industry bodies

ATTACHMENT 2

NORTHERN AUSTRALIA INDIGENOUS REFERENCE GROUP

LAND TENURE, CAPITAL ACCESS AND AN IMMEDIATE SOLUTION

BRIEFING PAPER FOR THE MINISTER FOR INDIGENOUS AUSTRALIANS

THE TENURE ISSUE

The northern Australian Indigenous estate...

As is the case across Australia, Indigenous owned and operated businesses take on many forms and are evident across most sectors of the Australian economy. However, a key distinguishing factor between Northern and Southern Australia, is that the primary economic asset that most Indigenous Northern Australians have either a direct or beneficial interest in are legal rights to land and water assets that are afforded under the *Native Title Act 1993* (Cth), *Aboriginal Affairs Planning Authority Act 1972* (WA), *Aboriginal Land Rights* (Northern Territory) *Act 1976*, *Aboriginal Land Act 1991* (QLD) and/or *Torres Strait Islander Land Act 1991* (QLD).

Further, because most of this land and water resource is undeveloped, value will be created from much of this asset base by future development rather than compensation for past acts. With increasing recognition by international conventions and the Australian judiciary that Indigenous land and water rights extend beyond right to mere occupancy and cultural practice, to rights to development including rights over natural resources and intellectual property, means that the scale of this opportunity is set to increase dramatically.

The extent of the Northern Australian Indigenous estate in the context of the Nation is illustrated in the following Figure 1².

² National Native Title Tribunal (2018)

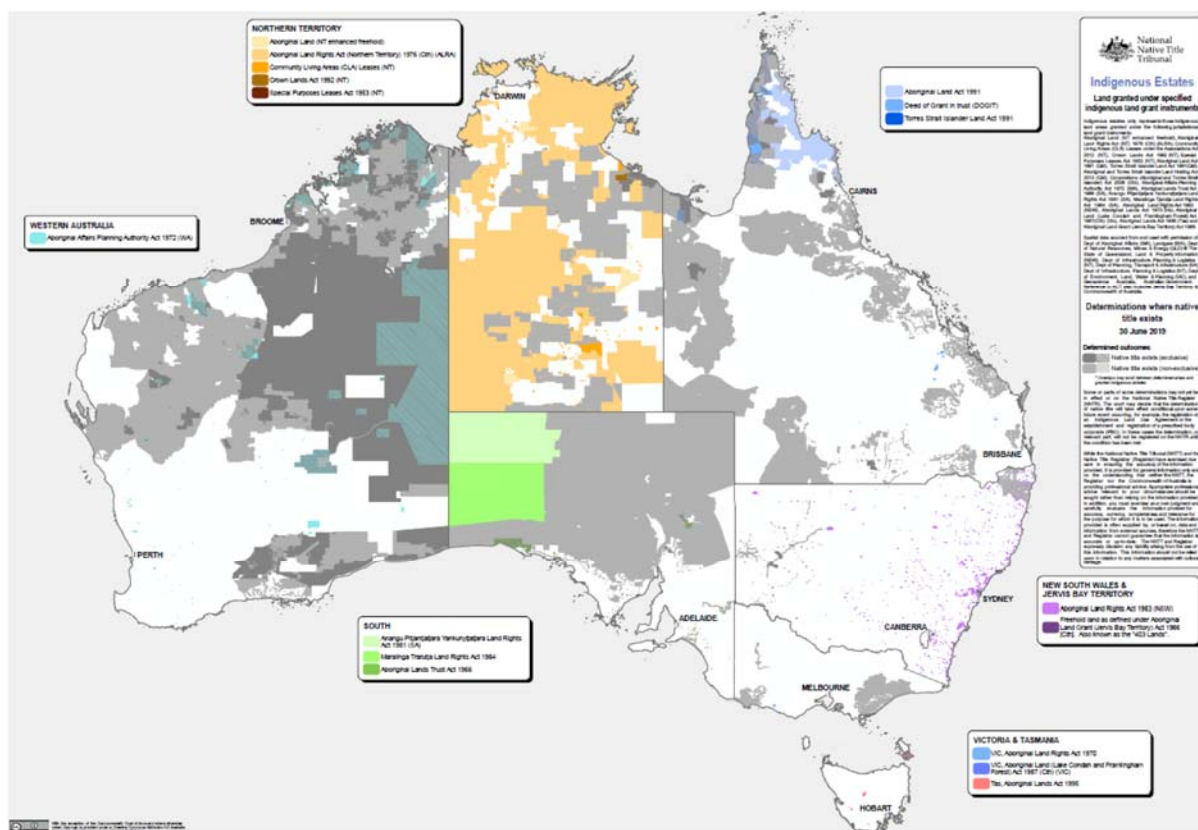


Figure 1 – Australian Indigenous Estate

Might be a large footprint, but the tenure is weak...

While geographically expansive, the vast majority of the Northern Australian Indigenous estate is the subject of a lesser-form of tenure, with that which is accrued under the *Native Title Act 1993* (Cth) (grey areas in Figure 1) particularly vulnerable and constrained.

At the very base level, native title rights are automatically extinguished by all previously existing fee-simple ('freehold') title, government action or by surrender. When native title rights are granted they are in the majority of cases, non-exclusive, not-transferrable and provide limited opportunity to control third-party access to the estate. Indeed, native title is widely recognised as a lesser class of ownership and has famously been characterised as a mere 'bundle of rights'³.

Indigenous tenure that is derived from the various State and Territory land rights and Indigenous trust legislation (coloured areas in Figure 1) is generally more secure than that derived from the *Native Title Act 1993* (Cth). However, this legislation still, to varying degrees, imposes significant restrictions as to how the lands subject to this tenure may be used by the Indigenous interests. This is particularly the case whereby a representative structure such as the Northern Territory Land Councils create administrative processes that can cause risk to Traditional Owners developing their estates – time, accessing capital and responding to investment decisions. Even in the vast estate of the Northern Territory under the *Aboriginal Land Rights (Northern Territory) Act 1976*, the land administration arrangements are reactive to third parties.

³ *Western Australia v Ward* (2000) 170 ALR 159

In other words, the Northern Indigenous estate does not enjoy the same security and/or flexibility as other tenure in Northern Australia, presenting Indigenous land right holders and owners with a significant commercial disadvantage.

The limitations of the legal tenure that underpins the Northern Australian Indigenous estate has significant implications for the viability of the Indigenous economy...

The weak tenure, restricted usage and in-fungible status of the Northern Australian Indigenous estate significantly fetters its value as an economic asset, creating significant risk that detracts from an equity investment case and rendering the asset unviable as collateral for debt financing.

This issue is most severe in the case of native title lands whereby:

- Section 56(5) of the *Native Title Act 1993* (Cth) expressly prohibits the use of native title lands as a means of financing; and
- The infamously fraught future act provisions of the *Native Title Act 1993* (Cth) promote a transactional approach to negotiations between native title holders and third-party developers whereby the objective is extinguishment of native title in exchange for monetary and other compensation.

This later issue is exacerbated by a history of native title disputes whereby third-party developers have been overwhelmingly triumphant, with only 2 percent of determined litigants able to secure positive determination over their ancestral land in the past 25 years without consent of developers, government and other investors⁴.

While Section 56(4) of the *Native Title Act 1993* (Cth) provides the Prescribed Bodies Corporate (that in accordance with the *Native Title Act 1993* (Cth) hold determined native title rights on trust or as agent for the common law Traditional Owners) with the powers to deal with Native Title interests held on trust as authorised by the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth), and therefore ability to use native title for some commercial purposes, this is limited to the usage of lands for accessing tied grants, land management activities and opportunities associated with lease conversion through a convoluted, uncertain, expensive and time consuming process.

The fact that lands accrued under the various land rights and Indigenous lands trust legislation of the States and Territories are inalienable restricts their ability to be used as collateral for debt finance. While the ability to establish leases (even long-term leases) relatively easily somewhat mitigates this and provides for some flexibility with respect to yielding commercial value from those lands, any lease arrangements typically carry significant restrictions with respect to with whom a lease agreement may be entered into and the nature of the activity that can be undertaken on that lease.

Communal ownership vehicles that form the governance framework for tenure interests exacerbate the problem...

As mentioned above and in accordance with Division 6 of the *Native Title Act 1993* (Cth) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth), when the Federal Court makes a determination of native title under the Act, the associated native title rights and interests must be

⁴ Hunter, P. (2018), 'The Native Title Act – the first 25 years – old and new challenges', *Richard Cooper Memorial Lecture*, Federal Court of Australia

held in a special purpose vehicle known as a Prescribed Body Corporate (PBC) either on trust for or agent of the common law holders of those rights and interests.

This has resulted in the establishment of almost 150 PBCs across Northern Australia (representing approximately 75 percent of all PBCs in Australia). Based on current claims, it is possible that up to an additional 45 PBCs will come into existence across Northern Australia over the coming decade.

Around 75 percent of the PBCs across Northern Australia are classified by the Office of the Registrar of Indigenous Corporations as 'small' Aboriginal and Torres Strait Islander Corporations, meaning they have less than five employees and/or annual income of less than A\$100,000 and/or non-native title assets of less than A\$100,000. Only approximately 4 percent of PBCs across Northern Australia are classified as 'large' Aboriginal and Torres Strait Islander Corporations with 25 or more employees and/or annual income greater than A\$5.0 million and/or non-native title assets in excess of A\$2.5 million.

This means that the vast majority of PBCs that manage interests in native title lands are not adequately resourced to perform their basic legislative responsibilities, let alone pursue economic development opportunities. This issue is further complicated by the communal nature of decision-making within PBCs and the fact that in some cases, some Traditional Owners do not want economic development on any of their ancestral lands.

OTHER BARRIERS TO CAPITAL ACCESS

Decisions to invest in a business or finance a business through a debt instrument are multi-faceted and extend beyond suitability of tenure. A professional investor or financier will assess whether the proposal is aligned with their investment or lending mandate in terms of at least:

- Industry or sector of operation;
- Providing a return of capital within a specified timeframe;
- Providing a return on capital at a specified minimum rate (hurdle rate) within a specified timeframe;
- A risk profile that is commensurate with respect to delivering on these return on and return of capital specifications; and
- Other factors such as governance arrangements and contractual mechanisms that facilitate the monitoring and management of risk over the duration of the investment or financing arrangement.

The entire premise of the Commonwealth's Developing Northern Australia Agenda is that it is in the National interest to grow the economy and population of Northern Australia, and therefore the limitation to enterprise development that is a function of the Region's small local markets, distance to major markets, limited infrastructure and harsh climate results is a market failure that justifies policy intervention.

Indigenous enterprise in Northern Australia faces the same generic challenges as all business in Northern Australia. However, with respect to being able to attract equity or debt finance it is further disadvantaged by the nature of Indigenous land tenure (as discussed above) and a range of other factors including:

- *On average, relatively limited entrepreneurial and management capacity* – the relative low socio-economic status of the Northern Australian Indigenous population manifests itself in many ways, including limitations to entrepreneurial and management skills and capacities.
- *Inadvertent consequences of policy* – while well-resourced social programs are obviously critical to addressing the dire health and education status of many Indigenous communities in Northern Australia, they can lead to circumstances where reliance on government undermines a necessary entrepreneurial mindset, or where government service delivery competes with Indigenous managed NGOs and other service organisations. Additionally, policies not specifically targeting Indigenous Affairs can have adverse impacts such as special quarantine zones around environmentally sensitive areas where only Indigenous businesses operate.
- *Uncertain security over intellectual property* – many Indigenous enterprises are based on unique competitive advantage that is underpinned by intellectual property such as cultural knowledge, Indigenous ecological knowledge and various artefacts. In many cases, the conventional western Intellectual Property legal framework does not provide adequate protection for Indigenous intellectual property.
- *Limited investor familiarity* – Indigenous businesses that are based on the Indigenous estate or Indigenous Intellectual Property are a relatively new investment opportunity with which relatively few investors have practical experience. This results in difficulties with respect to assessing risk and potential return.
- *Perceived investor reputational risk* – even in cases where an investor or financier can become comfortable with an opportunity, commercial lenders and professional investors can be reticent to proceed on the basis of potential damage to corporate reputation that may result from them foreclosing or imposing harsh contractual penalties on an Indigenous business in default.

Given that achieving the Developing Northern Australia Agenda is dependent on activating the Indigenous economy, policy intervention specifically targeting the unique nature of this more severe market failure is clearly justified.

THE IRG SHORT TERM SOLUTION

Because land tenure reform will be a protracted process, the IRG has, in the first instance, focused on short term solutions that will deliver immediate outcomes by targeting mainly the other barriers to attracting capital to and growing Indigenous businesses in Northern Australia.

There is an existing effort...

The main instruments through which the Commonwealth seeks to address market failure in mainstream Northern Australia are the Office of Northern Australia (which primarily performs a 'lead agency' role), the CRC for Developing Northern Australia (which commissions and coordinates research on Northern Australia relevant issues) and the Northern Australia Infrastructure Facility (NAIF) (which provides concessional debt finance for economic infrastructure projects in Northern

Australia). While each of these instruments engages with the Indigenous economy, they do not provide the targeted level of support or concession that is necessary to activate the wider Northern Australian Indigenous economy.

Market failure in activation of the Indigenous economy more broadly is of course recognised by Australian Governments. Indeed, an Indigenous person or enterprise operating in Northern Australia has access to no less than 75 enterprise support or employment programs offered by the State, Territory and Commonwealth Governments. This includes the various support and financing programs delivered by Indigenous Business Australia and the Indigenous Land and Sea Council, both of which are increasingly active in parts of Northern Australia. However, demonstrably, this landscape of existing support programs is not delivering the acutely focused support services or adequately concessionary finance that is necessary to activate the vast majority of the Northern Australian Indigenous economy.

Northern Australia Indigenous Economic Development Accord

As a companion agreement to the Northern Australia Strategic Partnership (NASP), the Northern Australia Indigenous Economic Development Accord recognises the limitations of the current cross-jurisdictional Indigenous economic development policy framework as far as it pertains to optimising the activation of the Northern Australian Indigenous economy and therefore facilitating the objectives of the Northern Australia Agenda.

Recognised by COAG and in its final stages of negotiation, the Accord aims to unlock and maximise the economic potential of Indigenous businesses, individuals and communities across Northern Australia, as well as to deeply and routinely embed the consideration of Indigenous interests in the development and delivery of government policy and programs across the North. The Accord achieves this by facilitating agreement between the Northern Australian jurisdictions that they will work collaboratively to achieve policy outcomes that directly reflect the themes of the IRG Recommendations (see Attachment 1).

This important agreement provides a platform for the IRG's proposed solution.

Supporting Proactive Development of Indigenous Lands in Northern Australia

A major contributing factor to the typical transactional approach to developing Indigenous lands that is discussed above is that primarily as a result of under-resourcing of the entities responsible for that estate (also discussed above), a significant portion of the Northern Australian Indigenous estate lies unsurveyed, unplanned, undeveloped and idle until a third-party presents a development proposal for the land.

This circumstance results in a typical scenario whereby the Indigenous interests are forced to make a decision in the absence of an evidence-based understanding of the value of their land interests, or the opportunity cost associated with accepting the proposal, ultimately resulting a transactional approach rather than a partnership approach to the development. It also results in frustration, uncertainty and potential friction where a developer proposes the development on a particularly sensitive area of the Indigenous estate instead of other more culturally viable options. These factors combine to both suppress opportunities for the holder of the Indigenous estate, as well as increasing transaction costs and uncertainty for both parties through often unnecessary protracted negotiations and disputes, and complicated and unnecessarily restrictive Indigenous Land Usage Agreements (ILUA).

To overcome these issues, the IRG has proposed a program whereby individual PBCs are resourced to develop a 'prospectus' for their native title lands. A GIS and survey based resource, this prospectus

would provide geospatial information for the specific Indigenous estate identifying its boundaries, other tenure interests, culturally sensitive areas, areas of social value, topographic features and natural resources such as water, soil types, local climatic conditions and geological features.

Each prospectus document will be developed in collaboration with existing geospatial data holders such as Geoscience Australia, Bureau of Meteorology, CSIRO and State and Territory land agencies, and may also require additional supplementary surveys to be undertaken.

The prospectus resource will be an invaluable management tool for PBCs and other Indigenous land-oriented organisations, facilitating both development by those organisations as well as a basis for informed negotiation with third-party developers. It will do this by allowing these organisations to undertake substantially improved land planning that underpins confidence in development decisions. The information will allow these organisations to identify with confidence areas they would like to develop, that could be converted to more commercial forms of tenure (such as conditional freehold that can then be leased to third parties), and areas they are prepared to forgo via extinguishment of native title for commercial compensation.

It will also reduce risk and transaction costs for third parties by providing them an evidence-based tool to inform their planning and negotiations with holders of Indigenous land rights. Ultimately, the knowledge created through the prospectuses will increase the value of the Indigenous estate and provide a platform for genuine development partnerships based on comparative advantage, as opposed to the current transactional approach to dealing with Indigenous land and water rights, where the singular objective is typically extinguishment of native title for compensation.

Combined with a system of simplified 'template' ILUAs that are linked to the prospectus, the process of developing native title lands will be considerably de-risked and simplified for all parties, an outcome that could only otherwise be achieved through significant legislative reform.

The IRG Northern Australia Indigenous Economic Development Function and Business and Employment Hubs...

In addition to other specific IRG recommendations, the Ministerial Forum for Northern Development has asked the IRG to proceed to scoping key institutional arrangements that will underpin the implementation of its recommended policy framework (see Attachment 1). This work is currently underway and the institutional framework is summarised in the following subsections.

Business and Employment Hubs

Conceptually derived from the City Deals policy framework, the Business and Employment Hubs will operate in geographical areas where there is a basis for growing a local Indigenous economy, and where participants in that local Indigenous economy want to work with a Business and Employment Hub. Participants in that local Indigenous economy may include multiple PBCs, Indigenous owned-and-operated conventional businesses, businesses based on cultural or traditional knowledge and Indigenous NGOs. The opportunity to develop a local Indigenous economy may be underpinned by an existing Indigenous economy that presents opportunity for growth, the development of new infrastructure that opens new markets for Indigenous businesses, a major new project that creates local opportunities for local Indigenous businesses or opportunities identified by the abovementioned prospectus process.

Under the model, participants in the local Indigenous economy could voluntarily enter into an in-principle agreement with the Business and Enterprise Hub whereby the Business and Enterprise Hub would support individual businesses and local economy as whole by packaging a range of 'best-in-

class' support services acutely tailored for the specific needs of each business from the existing program landscape. In other circumstances, a Business and Enterprise Hub may be established in the absence of a formal agreement.

The types of services facilitated by a Business and Employment Hub include a range of business advisory, market development, business financing, regulatory and training and education services. The Business Enterprise Hubs could also provide administrative support services for organisations, including smaller PBCs, where requested. By tailoring support services for the specific needs of individual local Indigenous economies and individual businesses and organisations within those economies, the Business and Employment Hubs will overcome the deficiencies associated with the existing support program landscape and facilitate the local Indigenous economy in capitalising on its identified opportunity.

Northern Australia Indigenous Economic Development Body

The IRG is also prosecuting the case for an institution dedicated solely to supporting and advocating for the Northern Australian Indigenous economy. Operating in accordance with the Northern Australia Indigenous Economic Development Accord, the Northern Australian Indigenous Economic Development Body will have the following core functions:

- Supporting, resourcing and coordinating the network of Business and Employment Hubs across Northern Australia;
- In accordance with a Northern Australia Indigenous Research Roadmap, aggregating existing information and commissioning new research to provide Indigenous business managers with the knowledge they need to make effective business decisions in the form that they want it;
- Critically assessing the current policy framework that applies to Northern Australia and developing evidence-based policy positions to support the growing Northern Australia Indigenous economy; and
- Advocating for Indigenous business in the Northern Australia Agenda.

Facilitating Investment in Northern Australian Indigenous Enterprise

Governments have, at their disposal, a range of tried-and-tested instruments that can be used to facilitate increased private sector investment in and lending to enterprise in circumstances of market failure. This includes grants, public resources for leveraged equity investment, taxation incentives and concessional lending. In circumstances of market failure, such policy instruments are routinely used by jurisdictions globally to both develop desirable industry sectors and address social disadvantage. For example, growth in the Australian innovation sector over the past three decades has been underpinned by a series of related Commonwealth programs that have addressed market failure at different stages of innovation commercialisation including grant programs for proof of concept and venture start-up (R&D Start, Commercial Ready, COMET and Accelerating Commercialisation), co-investment in venture capital funds under the Innovation Investment Fund (IIF) Program and a range of other repayable grant and concessional loan programs across the spectrum of commercial development.

Indeed the Northern Australia Infrastructure Facility (NAIF) is one such program designed to address market failure in investment in economic infrastructure Northern Australia, albeit its structure and remit very much confines its relevance to larger and later stage projects.

The capital needs of the Northern Australian Indigenous economy are more akin to the full-spectrum needs of the nascent Australian innovation sector 30 years ago:

- Matching at-risk grants are required to attract smaller amounts of private investment in proof-of-concept, start-up and investment attraction;
- Because of the more significant risks discussed above, mechanisms are also required to lower the private sector hurdle rate for larger private equity investment in venture expansion.

Once these higher risk phases of venture development have been successfully navigated, Indigenous Northern Australian businesses are on a pathway to support by other mainstream programs such as the NAIF and other national Indigenous-specific and mainstream business support programs. Without early stage financial support that recognises challenges that early stage Indigenous businesses in Northern Australia face, programs like NAIF will continue to be irrelevant to the majority of the Northern Australian Indigenous economy.

It is important to note that the systems of governance and prudential management that should apply to such policy programs are also tried-and-tested and well understood, substantially mitigating any reputational risk to government and other stakeholders.

Supporting the development of the Northern Australian Indigenous economy will be a separately managed source of concessional finance that can be accessed on a competitive basis by Northern Australian Indigenous enterprises. It is envisaged that this fund will facilitate concessional financing across the spectrum from matching grants to leveraged equity products similar to the former IIF Program based on criteria of merit and need.

This framework is illustrated in Figure 2 below.

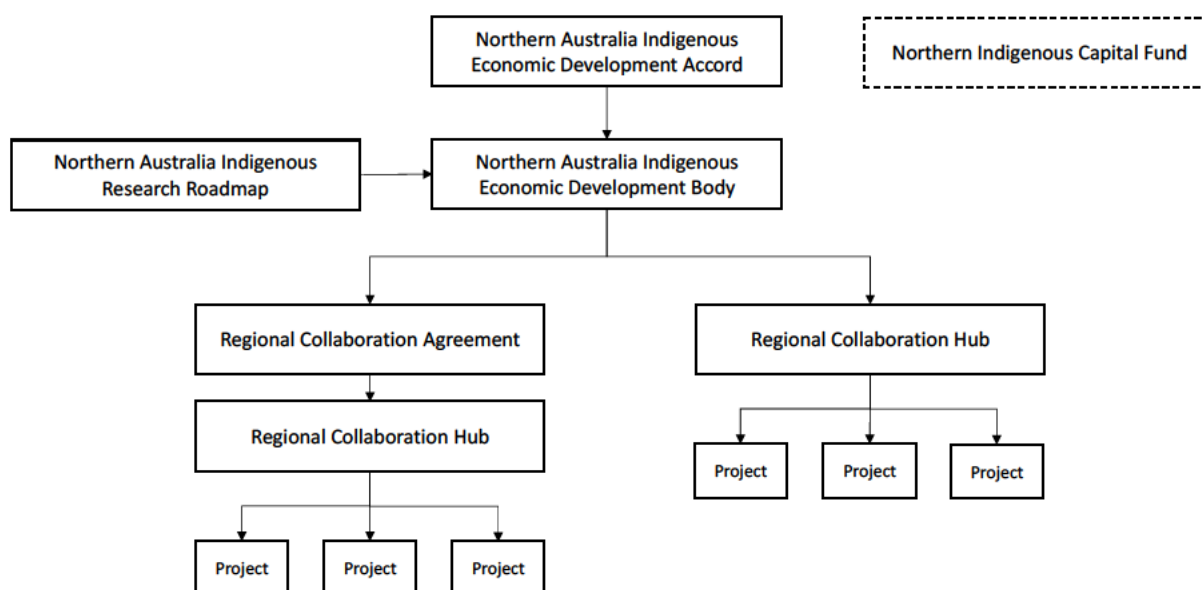


Figure 2 – IRG Policy Institutional Framework

Dampier Peninsula: An Example of Potential Application

The circumstances of the local Indigenous economy of the Dampier Peninsula in the Kimberley Region of Western Australia are characteristic of a typical Northern Australian scenario that the IRG framework is endeavouring to address. In this case, as the result of remoteness, limited infrastructure

and connectivity and fragmented and under-resourced Indigenous organisations, communities have struggled to achieve high levels of economic self-determination, despite a desire to do so and evidence of some achievement in this regard. Imminent activation of the otherwise remote region through Western Australian Government investment in road infrastructure will create a significant opportunity for the diverse Indigenous communities in the Region. However, unless supported by a package of programs acutely tailored to the specific needs of the local economy and the businesses trying to capitalise on the opportunity, benefits that could accrue will be at substantial risk and potentially lost forever.

The Dampier Peninsula extends 200 kilometres north from the town of Broome in the Kimberley Region of Western Australia. Its main settlements are the Aboriginal communities of Beagle Bay, Djarindjin, Lombadina and Ardyaloon, all situated at the north of the Peninsula. There are a number of other small communities and outstations along the peninsula.

The Dampier Peninsula is characterised by a spectacular coastline and is immediately adjacent to the Buccaneer Archipelago. Industry along the Peninsula is limited to a heavy helicopter staging base that supports crew transfer between Broome International Airport and Browse Basin offshore petroleum assets, a small number of pearling operations and tourism. Immediately offshore from the north of the Peninsula is the Kimberley Aquaculture Development Zone, albeit this is currently serviced primarily through the town of Derby.

By virtue of access to the Peninsula being via an unsealed road that is typically unnavigable for extended periods during the wet season, the tourism market is currently limited to the more adventurous traveller. However, in 2017 the Western Australia Government announced that it would seal the Cape Leveque Road from the Northwest Highway (the main arterial route across the Kimberley) to its northernmost point at Ardyaloon. When completed this will render the Dampier Peninsula accessible to a much larger and more diverse tourism market, with a significant number of 'day-trippers' from Broome in peak tourism season expected.

Indigenous land tenure on the Peninsula is both comprehensive and complex and includes Aboriginal Land Trust land and Native Title determinations for the Jabirr Jabirr/Ngumbarrl, Nyul Nyul, Nimanburr, Bininbur and Bardi Jawi people that collectively cover almost the entire Peninsula landmass. The Indigenous governance framework is comprised of a number of PBCs, Community Councils and Aboriginal Corporations, none of which have significant resources. Currently, most Indigenous businesses are small, servicing the communities and a currently small tourism market.

The significant opportunity created for the Indigenous interests in the Dampier Peninsula by sealing the Cape Leveque Road, combined with the complex tenure and Indigenous institutional landscape creates a *prima facie* case for a Regional Collaboration Deal. Under such an arrangement, the various Indigenous interests would enter into a Regional Collaboration Deal to develop the Peninsula economy (as agreed by those interests). Individually or as a collective, the PBCs would develop a prospectus that identifies specific land restrictions and opportunities, assisting planning by the local Indigenous economy (including providing the basis of a business case for converting areas to other forms of tenure if appropriate), and serving to de-risk external investment. A Business and Employment Hub would be established to work with the local Indigenous economy and individual Indigenous enterprises to deliver tailored support and concessional financing services to ensure that the Indigenous community is able to capitalise on the opportunity by the new road infrastructure. These businesses, small and medium, would, on a merit and competitive basis, have access to a range of suitable financing support packages across the spectrum through the Northern Australia Indigenous Capital Fund.

A Dampier Peninsula Indigenous economy operating under this framework is clearly a more dynamic and productive one than under the status quo, creating prosperity for its people under a model of self-determination and in the absence of major reform to tenure legislation.



Indigenous Reference Group
to the

MINISTERIAL FORUM ON NORTHERN DEVELOPMENT

STRATEGY AND IMPLEMENTATION FRAMEWORK

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Pathways to efficient Indigenous capital access in Northern Australia

Report to the IRG from the World Indigenous Business Forum
Vancouver, Canada, 2019

FOR INTERNAL USE ONLY

January 2020

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Indigenous Reference Group to the Ministerial Forum on Northern Development

3 January 2020

Department of Industry, Innovation and Science
Australian Government
Northern Australia Infrastructure Facility Review

Via Email: naifreview@industry.gov.au

CC: Nick Purtell
General Manager – Major Projects Branch
Department of Industry, Innovation and Science
Email: nick.purtell@industry.gov.au

Dear Sir/Madam

Submission to the Section 43 Review of the Northern Australia Infrastructure Facility

I refer to the abovementioned matter.

The Indigenous Reference Group to the Ministerial Forum on Northern Development (the 'IRG') is a formal advisory group to the Ministerial Forum on Northern Development (the 'Ministerial Forum')¹. Established in August 2017, the IRG has, at the request of the Ministerial Forum, been working closely and intensively with relevant Commonwealth, Western Australian, Northern Territory and Queensland Government agencies, the not-for-profit and private sectors to develop a suite of policy initiatives that are designed to substantially enhance the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy, thus creating a pathway for Northern Australia to reach its full economic potential (the 'IRG Policy Recommendations').

Building entrepreneurial and business management capability in Indigenous organisations and businesses, and providing efficient access to the right sources of capital for that enterprise are key themes around which several of the IRG Policy Recommendations revolve.

The IRG supports the Northern Australia Infrastructure Facility (NAIF) as an important component of the overall policy framework that is designed to address sources of market failure in the economic development of Australia's North. The IRG also welcomes initiatives undertaken by the NAIF to support the Northern Australian Indigenous economy, including the appointment of Ms Kate George as its first Indigenous director, the requirement for NAIF applications to demonstrate an Indigenous Engagement Strategy and financing of two projects, the proponents for which include significant Indigenous interests.

However, as a debt-based facility, the NAIF is unable to address sources of market failure for the vast majority of enterprises that comprise the Northern Australia Indigenous economy. For all but a few Indigenous enterprises across Northern Australia, smaller amounts of investment are required to fund the development of viable business cases, acquisition of equipment, installation of incremental infrastructure and working capital that supports the business during earlier phases of the business growth cycle, enabling them to acquire customers and grow to a scale that generates free cash flow and financial returns. The absence of collateral and 'bankable' future cash-flows that are common characteristics of such businesses, combined with a range of skills, capabilities and network gaps, as well as limited capacity of proponents to provide personal guarantees, means that debt finance is an option for only a few Indigenous businesses in Northern Australia.

Given their risk profile, grant, equity or equity-like finance is the only viable source of capital for these businesses. However, as a result of the unique market failure that pertains to the Northern Australian Indigenous

¹ Further background on the IRG and Ministerial Forum is provided in the enclosed submission

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economy, accessing available business grants and particularly equity finance, is especially challenging for Northern Australian Indigenous enterprise. The current Investment Mandate that applies to the NAIF presents very specific limitations to its ability to address this market failure. For example, the NAIF

- Is unable to provide grant or equity funding to support the development of feasibility studies;
- Is restricted to the use of debt instruments and is unable to provide equity or equity-like finance;
- Is restricted to investing in 'economic infrastructure' only (albeit for the purposes of the NAIF the term 'economic infrastructure' is broadly defined);
- Must only invest in projects that demonstrate a clear return of and return on capital that at a minimum must cover full repayment of the principal, the Commonwealth's cost of borrowing and administration costs of the management of the NAIF; and
- Cannot invest in projects where it, or the Commonwealth as a whole is the majority risk-taker in the project.

The vast majority of Northern Australian Indigenous enterprises are unable to meet these criteria.

The enclosed submission summarises the IRG, its remit and initiatives; describes the specific market failure and sources of that market failure (including access to capital) that those initiatives are designed to address; identifies aspects of the *Northern Australia Infrastructure Facility Act 2016* (Cth) and Investment Mandate that could be amended to provide greater flexibility for the NAIF with respect to financing Indigenous opportunities; outlines mechanisms currently being developed by the IRG that are designed to improve access to capability development for Northern Australian Indigenous enterprise; and outlines mechanisms that are the subject of preliminary assessment by the IRG that could be used to improve access to appropriate sources of finance for Indigenous enterprise in Northern Australia.

On behalf of the IRG, I would like to thank the Department of Industry, Innovation and Resources for the opportunity to make this submission and I trust that its content will prove useful for your deliberations.

Yours faithfully,



Peter Yu
Chair
Indigenous Reference Group to the Ministerial Forum on Northern Development

INDIGENOUS REFERENCE GROUP TO THE MINISTERIAL FORUM ON NORTHERN DEVELOPMENT

SUBMISSION TO THE 2019 SECTION 43 REVIEW OF THE NORTHERN AUSTRALIA INFRASTRUCTURE FACILITY (NAIF)

3 January 2020

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1. Background to this Submission

1.1. The Indigenous Reference Group to the Ministerial Forum on Northern Development and its policy framework

The Ministerial Forum on Northern Development (the 'Ministerial Forum') is a formal forum chaired by the Commonwealth Government Minister for Northern Australia and comprised of the Commonwealth Government Minister for Indigenous Australians, and Ministers from the Western Australian, Northern Territory and Queensland Governments whose portfolio responsibilities intersect with the Northern Development Agenda. Its purpose is to provide oversight and direction on the development of Australia's North in accordance with the Northern Australia Strategic Partnership (an agreement between the Northern Australian jurisdictions regarding the development of the North) and more recently, the Northern Australia Indigenous Economic Development Accord (an agreement between the Northern Australian Jurisdictions to work together and with the Indigenous Reference Group to the Ministerial Forum on Northern Development (the 'IRG') on initiatives to accelerate the development of the Northern Australian Indigenous economy).

The IRG was appointed by the Ministerial Forum in August 2017, as one of two formal standing advisory groups and is now the only formal standing advisory group to the Ministerial Forum. The IRG's directed purpose is to engage directly with, and provide policy advice to the Ministerial Forum, ensuring Indigenous perspectives are included in its deliberations, contributing to the achievement of tangible and sustainable benefits. In the first instance, the IRG has been tasked with advising on aspirations and barriers relating to developing the Indigenous business sector, growing the capability of Indigenous land owners to engage in development, and supporting Indigenous innovation.

Members of the Northern Australia Indigenous Reference Group

- **Mr Peter Yu (IRG Chair)**, Chief Executive Officer, Nyamba Buru Yawuru Ltd
- **Mr Lawford Benning**, Chair, MG Corporation
- **Dr Donna Odegaard, AM**, Chairperson, Aboriginal Broadcasting Australia
- **Mr Joe Morrison**, Managing Director, Six Seasons Pty Ltd
- **Mr Nigel Browne**, Chief Executive Officer, Larrakia Development Corporation
- **Cr. Vonda Malone**, Mayor, Torres Shire Council
- **Ms Fiona Jose**, Chief Executive Officer, Cape York Partnership
- **A.Prof. Colin Saltmere**, Managing Director, Indjalandji-Dhidhanu Aboriginal Corporation

The IRG is an expertise-based (rather than a representative based) committee comprised of Indigenous leaders across Northern Australia² that have broad expertise and significant experience in Indigenous business, community and government leadership in Northern Australia. Brief biographies for IRG members are contained in Attachment 1 to this Submission.

1.2. Market failure focus of the IRG

The IRG has maintained a disciplined focus with respect to its advice to the Ministerial Forum. The IRG has focused very specifically on addressing the sources of an evident market failure in the development of Northern Australia, being inadequate activation of the Northern Australian Indigenous economy (see Attachment 2). Indigenous Northern Australians comprise an average of 15 percent of the population of Northern Australia (compared to 2.5 percent in Southern Australia) with much larger Indigenous representation in the populations of northern Western Australia and Northern Territory (approximately 25 to 30 percent), and in populations outside of the main urban centres across Northern Australia (well in excess of 50 percent in many instances). As a result, Indigenous organisations are a key component of the government, industry and non-government-organisation institutional framework in Northern Australia.

Legally recognised Northern Australian Indigenous interests in the land and sea estate are more pronounced than they are in Southern Australia, with Indigenous interests owning or exercising some degree of control and

² For the purposes of this Submission, 'Northern Australia' refers to that area of the Australian territory defined as 'Northern Australia' by the NAIF, with the term 'Southern Australia' referring to the remainder of the Australian territory.

property rights over more than 80 percent of the Northern Australian landmass, and considerable areas of sea country, including around 85 percent of the Northern Territory coastline. Very importantly, international conventions and increasingly the Australian judiciary are recognising that Indigenous interests extend beyond cultural rights and rights of occupancy, to rights over natural resources, intellectual property and a right to development. Trade with and investment from Asian interests are important drivers of the development of Northern Australia and Northern Australian Indigenous interests have a significant heritage with respect to particularly South East Asian trade, having conducted trade for centuries prior to European colonisation of the Region. In this environment, Indigenous businesses' products and services are becoming increasingly important components of the trade profiles of many nations.

In other words, the size of the Indigenous population, importance of Indigenous organisations and extent of Indigenous interests in land, water, sea, natural resources and other intangible assets in Northern Australia, means that Indigenous Northern Australians are paramount stakeholders in the Northern Australian economy. **Unless Indigenous interests in the Northern Australian economy are optimally activated, Northern Australia will at best never reach its social and economic potential and at worst, fail to develop socially and economically.**

Furthermore, the current state/territory – Commonwealth fiscal arrangements that pertain to Northern Australia are not delivering the required progress. Rather than accelerating economic self-determination, much of the current public investment in Northern Australian Indigenous affairs is entrenching disadvantage, with the lack of visibility as to specifically how state/territory – Commonwealth financial arrangements are being invested and the specific Indigenous economic development outcomes achieved from that investment only serving to exacerbate frustration with the current system. **Unless there is fundamental shift toward a genuine self-determination model, a significant section of the Northern Australian economy and society will remain (and likely become increasingly) dependent on financial support from government that is ultimately derived from a taxation base that is located primarily in the Nation's south.**

Indigenous enterprises in Northern Australia face both the same generic structural challenges as all business in Northern Australia, as well as unique structural challenges relating to the particular circumstances and history of Indigenous people and the state. The generic structural challenges faced by all Northern Australian business include small and sparse local markets, remoteness (including limited access during the wet season), poor infrastructure, harsh climate and a degree of political irrelevance that is derived from the electoral imbalance between Northern and Southern Australia. In addition to these structural challenges, Indigenous business in Northern Australia also faces challenges that are the result of two centuries of discriminatory dispossession, oppressive and punitive policy that has resulted in widespread background of intergenerational socio-economic disadvantage among Indigenous Northern Australians. This manifests itself in many ways, including generally lower levels of education and income, limited inter-generational wealth transfer, relatively limited capacity to engage in the workforce or to own, successfully operate and grow commercial enterprise and to access the necessary networks, resources and support services required to achieve these outcomes.

Further, while well-resourced social programs are obviously critical to improving the dire health and education status of many Northern Australian Indigenous communities, reliance on government funding itself can often create perverse incentives, which in turn discourage enterprise (including through competition by government organisations with Indigenous managed NGOs in service delivery) and perpetuate ongoing dependence on services delivered and funded by governments. Without concurrent economic development and pathways to economic self-determination, a significant number of Indigenous Northern Australians will remain welfare dependent and continue to live with the negative impacts of dependency and passivity. Until Indigenous people are able to achieve economic independence, this welfare dependency will remain a significant fiscal burden for the Northern Australian government jurisdictions.

This means that the market failure in the development of Northern Australia that is the result of the generic challenges targeted by the Commonwealth's Northern Australia Agenda are greatly exacerbated in the case of the Northern Australian Indigenous economy. Developing policy initiatives that target the source of this unique market failure in the Northern Australian Indigenous economy with a high degree of specificity is the primary focus of the IRG (see Attachment 2).

The IRG Policy Recommendations and related initiatives, and the objectives and principles that underpin those recommendations and initiatives emulate world-best-practice for frameworks designed to support and accelerate regional Indigenous economic development. This is evidenced by the policy recommendations of a recent study on international best practice undertaken by the OECD³ (see Attachment 3).

1.3. Consultation and IRG Recommendations

Since early 2018, the IRG has been working closely and intensively with senior officials in Commonwealth, Western Australian, Northern Territory and Queensland Government agencies, whose statutory and policy functions intersect with the Northern Australia Agenda and/or Indigenous economic development (refer to the table below for list of those consulted). This work has focused on establishing a policy framework designed to substantially enhance and accelerate the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy. The work commenced with a cross-jurisdictional policy assessment and development workshop in March 2018 which delivered 36 specific policy recommendations. The April 2018 Ministerial Forum endorsed 16 of those specific recommendations for implementation planning and referred the remaining 20 recommendations for further consideration.

Northern Australia Indigenous Reference Group Policy Development Consultation	
<p>Commonwealth Agencies – Prime Minister & Cabinet; Austrade; Agriculture and Water; Indigenous Business Australia; Indigenous Land Corporation; Office of Northern Australia; CRC for Development of Northern Australia; Northern Australia Infrastructure Facility; CSIRO; and Geoscience Australia.</p>	
<p>Western Australian Government Agencies – Premier & Cabinet; Primary Industries and Regional Development; Jobs, Tourism, Science and Innovation; Water and Environmental Regulation; Training and Workforce Development; Communities WA; Planning, Land and Heritage; and Kimberly Development Commission.</p>	
<p>Northern Territory Government Agencies – Chief Minister's Office; Trade, Business & Innovation; Health; Northern Territory Solicitor; Tourism NT; Local Government & Communities; Environment & Natural Resources; and Land Resource Management.</p>	
<p>Queensland Government Agencies – Premier & Cabinet; State Development; Treasury; Employment & Training; Aboriginal and Torres Strait Islander Partnerships; Transport & Main Roads; Environment & Science; and Fire & Emergency.</p>	

The 16 recommendations can be broadly categorised as initiatives designed to:

- 1. Create jobs and foster labour participation, entrepreneurship and business acumen among the Northern Australian Indigenous population;**
- 2. Develop knowledge management systems, decision support tools and commission research and development that is designed to improve the decision-making environment for Indigenous managers and business owners in Northern Australia;**
- 3. Develop infrastructure that supports Indigenous economic development in Northern Australia;**
- 4. Provide improved access to capital and international markets for Indigenous businesses in Northern Australia;**
- 5. Initiatives to activate the economic value of land, water, sea and cultural resource rights and interests of Northern Australian Indigenous people; and**
- 6. Give effect to institutional arrangements that work to activate, accelerate and optimise Indigenous economic development across Northern Australia**

Focusing on the implementation instructions, the IRG held workshops in each jurisdiction to test existing policy initiatives against the 16 recommendations. This exercise culminated in a joint planning workshop in September 2018 that delivered an implementation plan to the Ministerial Forum's November 2018 meeting. This consultative work has been supported by commissioned independent research and expert policy analysis associated with each of the six IRG Policy Recommendation themes identified above.

³ OECD (2019) *Linking Indigenous Communities with Regional Development*, OECD Publishing, Paris

1.4. Endorsement by the Ministerial Forum

The implementation plan was endorsed by the November 2018 Ministerial Forum, with six specific implementation actions currently underway. These specific initiatives include the development of a Northern Australian Indigenous Development Accord between the Commonwealth, Western Australian, Northern Territory and Queensland Governments, agreement on which was announced on 12th December 2019, as well as co-design work to scope pan-Northern Australian institutional arrangements (Northern Australia Indigenous Economic Development Body and Northern Australia Enterprise and Employment Hub network) to support the specific needs of the Northern Australian Indigenous economy, and the preparation of a Northern Australia Indigenous Commercial Research Roadmap.

It is of critical importance that these initiatives are supported by improved access to capital for Indigenous business ventures.

1.5. Nature of this Submission

Observations, opinions and recommendations presented in this Submission are informed by both the policy work undertaken by the IRG over the past 18 months, as well as the collective wisdom of the IRG members.

Nothing in this Submission represents financial or investment advice in any way whatsoever. In particular, the alternative financing frameworks discussed in Section 4 of this Submission are at a very preliminary stage of analysis with significant research required to validate their likely viability with respect to deal-flow and the investment market, as well as their efficacy with respect to the policy objective.

2. Limited Access to Capital: A Source of Market Failure in the Development of the Northern Australian Indigenous Economy

2.1. Nature of the Northern Australian Indigenous economy and its capital requirements

From a capital access perspective, the requirements of the Northern Australian Indigenous economy can be discussed according to two separate, but related sources of demand for capital:

1. That which is required by Prescribed Body Corporates and (and similar legislated organisations) to fund their various statutory and self-determined remits; and
2. That which is required by a wider range of Indigenous businesses some of which may be subsidiaries of Prescribed Body Corporates, but the majority of which are independently owned and operated.

The nature of this demand is summarised in the following subsections.

2.1.1. Demand for capital from Prescribed Body Corporates and Northern Territory Aboriginal Corporations

In accordance with Division 6 of the *Native Title Act 1993* (Cth) (NT Act 1993) and the *Native Title (Prescribed Bodies Corporate) Regulations 1999* (Cth) (PBC Regulations 1999), when the Federal Court makes a determination of native title under the NT Act 1993, the associated native title rights and interests must be held in a special purpose vehicle known as a Prescribed Body Corporate (PBC), either on trust for or as agent of the common law holders of those rights and interests. Once registered with the Native Title Tribunal, the PBC becomes the first point of contact for government, industry and any other entity wishing to undertake activities on land that is the subject of a native title determination, unless the specific PBC has appointed a Native Title Representative Body Corporate to represent it in such matters.

In order to leverage value from native title interests and rights held by a PBC for the community, the PBC board and its members may, at their discretion, decide to broaden the PBC's activities beyond the management of native title interests and rights. This wider remit may, and in many cases does, include activities such as cultural projects, training and employment programs and economic development initiatives. These additional activities require capital.

There are currently around 150 PBCs across Northern Australia representing approximately 70 percent of all PBCs in Australia. Just under 50 percent of Northern Australian PBCs are located in North Queensland, around 30 percent in North Western Australia and the remainder in the Northern Territory. Circumstances in the Northern Territory are further complicated by unique arrangements under which two of the Native Title Representative Bodies, the Northern and Central Land Council's, each administer a single PBC that hold on trust or as agent the native title rights and interests of numerous common law native title holders. This is in addition to the many Aboriginal Corporations established by the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) that operate Aboriginal Land Trusts which are established by the *Aboriginal Land Rights (Northern Territory) Act 1976*. This brings complexities and oversight by a Commonwealth Statutory Authority sometimes in contention with the Aboriginal Corporations and their directors.

It is estimated that post determination of all native title claims, there will be as many as 200 PBCs across Northern Australia.

As summarised in the following Table 1, the vast majority of PBCs in Northern Australia, over 75 percent, operate with fewer than five employees, income of less than \$100,000 per annum and/or non-native title assets of less

than \$100,000. Indeed there are only five PBCs with more than 25 employees, income greater than \$5.0 million and/or non-native title assets greater than \$2.5 million⁴.

Table 1 – Northern Australian Prescribed Body Corporates

Category of PBC	Number of Employees	Income	Non-native title assets	Number
Large	>25	>\$5.0 million	>\$2.5 million	5
Medium	5 to 25	\$100,000 to \$5.0 million	\$100,000 to \$2.5 million	30
Small	<25	\$100,000 to \$2.5 million	<\$100,000	113
Total				148

A number of factors contribute to the discrepancy in PBC economic capacity including the aspiration of Traditional Owners with respect to economic development, capacity of the PBC and the intrinsic economic value of native title rights managed by the PBC. Regardless, for the many 'small' PBCs that are dependent on an annual grant averaging approximately \$68,000 and typically administered on their behalf by a Native Title Representative Body Corporate, there is arguably inadequate resourcing to fulfil basic statutory requirements, let alone engage in economic development activity that is required to fund aspirational cultural and community initiatives. Many 'medium' PBCs are similarly constrained.

Ensuring that PBCs maintain independence in managing the native title rights of the traditional owners they represent is of paramount importance. However, for many 'small' and 'medium' PBCs (and possibly even some large PBCs), economic self-determination and prosperity will likely only be achievable through economic collaborations that facilitate the pooling of economic resources that achieves scale and provides each PBC with a dividend independent from government funding.

This will then potentially allow PBCs to undertake cultural and community development activities and further economic activities that they may elect to perform from independent, self-generated and larger sources of revenue. A possible mechanism to achieve this is discussed in a later section of this submission.

2.1.2. Demand for capital from Indigenous owned and operated Businesses

In addition to businesses that might be owned by PBCs or their subsidiaries, there is estimated to be approximately 1,300 Indigenous owned and managed businesses across Northern Australia⁵. As with the Australian business landscape more generally, the majority of these businesses are owner-manager business. Consistent with the Northern Australian landscape more broadly, there is a concentration of these businesses in Darwin and the main population centres in the northern east coast of Queensland, however Indigenous economies of relative significance exist across Northern Australia. Indigenous owned and operated businesses can be found in a range of sectors including sectors that are uniquely - Indigenous such as cultural tourism, Indigenous media, Indigenous art, traditional produce and the commercialisation of other Indigenous intellectual property, as well as a wide range of mainstream sectors of the Northern Australian economy.

Some of these businesses are financially self-sustaining and meet the growth expectations of their owners. However, for others, expanding into new products and services or penetrating new markets requires the acquisition of production facilities or sourcing of working capital to grow the business that cannot be resourced organically, requiring external capital. Depending on the stage of development of the business, this capital may come from a range of sources. With the exception of micro-finance loans, businesses operating at early to mid-

⁴ Office of the Registrar of Indigenous Corporations

⁵ Australian Bureau of Statistics 2016 Census

stages of the business development cycle are only likely to attract grants and equity investment. This is illustrated conceptually in the following Figure 1⁶.

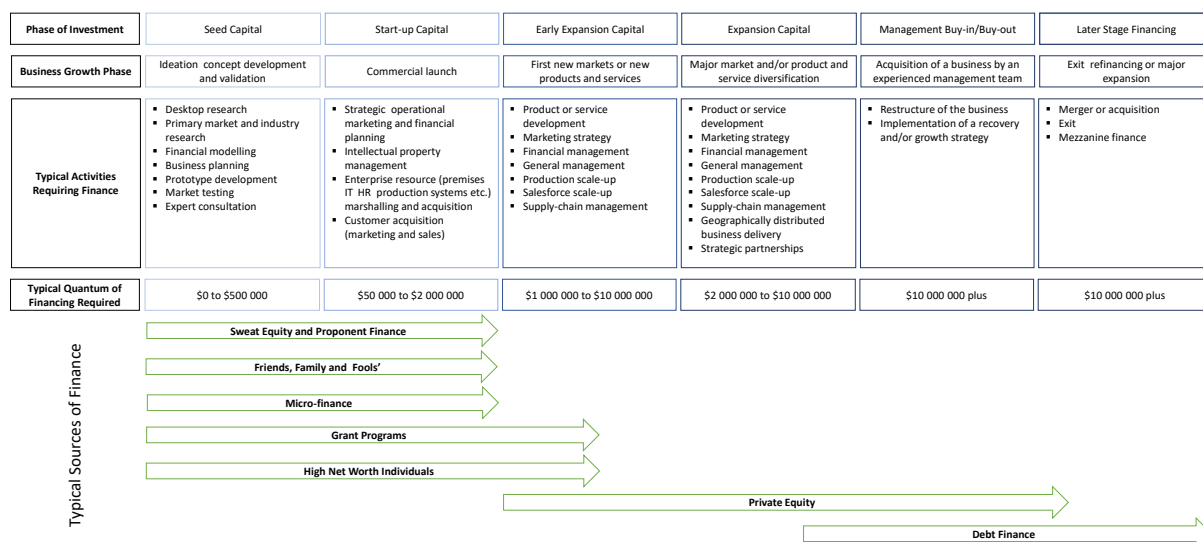


Figure 1 – Typical Business Development Cycle, Financing Requirements and Sources of Finance

2.2. Limited access to capital and suitable enterprise support services is a source of market failure

By virtue of the socio-economic multiplier of Indigenous owned and operated businesses⁷, the accelerated growth of the Northern Australia Indigenous economy is the only avenue for addressing socio-economic disadvantage in the medium-term, a fact that is globally recognised⁸. Until Indigenous organisations, communities, families and individuals are able to generate their own income, they will remain dependent on government financial support under a public policy framework that in many instances perpetuates this dependence.

Creating an enabling environment for Indigenous entrepreneurship and small business development at regional and local levels is a key recommendation of a recent global study into Indigenous regional economic development policy best practice undertaken by the OECD⁹. Key to achieving this are ensuring that:

- Business support initiatives are tailored for the specific needs of the local regional Indigenous economy and the enterprises that comprise that economy so that the right capabilities can be developed and the right resources bought to bear for local Indigenous management; and
- Businesses can efficiently source any required external capital from financiers and investors with an investment purpose, risk and return profile that is aligned with the circumstances of those enterprises.

Systems for ensuring that business support services are tailored for the needs of local regional Indigenous businesses and that these businesses are able to efficiently access finance and investment that is aligned with their needs and risk and return profile are fundamental components of the IRG Recommendations.

The Indigenous economy in Northern Australia is clearly under-represented. Across mainstream Australia there is approximately one business enterprise for every 11 people. Across Indigenous Australia there is approximately

⁶ Figure 1 is a generalised conceptual representation only. The specific business activities, financing requirements and likely sources of finance will naturally vary from business to business.

⁷ Burton & Tomkinson (2018) IN: PwC Indigenous Consulting (2018) *The Contribution of the Indigenous Business Sector to Australia's Economy*, PwC Indigenous Consulting

⁸ OECD (2019) *Linking Indigenous Communities with Regional Development*, OECD Publishing, Paris

⁹ OECD (2019), *Linking Indigenous Communities with Regional Development*, OECD

one Indigenous owned business enterprise for every 70 Indigenous persons. In the case of Indigenous Northern Australia, there is one Indigenous owned business for every 130 Indigenous people.¹⁰

As discussed in the introductory section of this Submission, the IRG has maintained an acute focus on addressing sources of the unique market failure in the development of the Northern Australian Indigenous economy. From the perspective of accessing external capital that is required to meet the economic self-determination needs of PBCs and the resourcing needs of growing Northern Australian Indigenous enterprise, the business cases that supports investment must adequately address the generic challenges faced by most Northern Australian enterprise. However, business cases for Indigenous owned and operated businesses must address other challenges including generally lower levels of personal financial investment in the business, lower levels of business management skills and entrepreneurial acumen, limited business development and financial networks and an overall lower level of competitiveness in attracting mainstream finance and investment, which are all a function of a generally lower socio-economic status among Northern Australian Indigenous people.

Across Northern Australia there are over 80 separate programs that can be accessed by Indigenous people and entities seeking employment of enterprise development support¹¹, approximately three quarters of which are targeted specifically at Indigenous interests. However, despite the existence of this *prima facie* extensive support landscape, representation of Indigenous persons in Northern Australia populations and extensive rights over economic resources in Northern Australia, Indigenous participation in the Northern Australian workforce and enterprise ownership remains grossly under-representative.

Development of business management capability, entrepreneurial acumen and business development networks can be addressed by better coordinating and tailoring support packages from this extensive landscape for the unique requirements of specific local regional Indigenous economies, a practice which is recognised as world-best-practice and which is the focus of the IRG's proposed Northern Australia Indigenous Enterprise and Employment Hub Network (discussed further in a subsequent section of this Submission).

However, support programs can only address capability development and access to capital networks. The risk and return profile of many Northern Australian Indigenous enterprises is such that it is highly likely that policy intervention designed to lower the hurdle rate will be required to attract larger amounts of private equity investment (and meet criteria of public sector programs such as NAIF) in early and mid-growth phases that is necessary to address an evident funding gap. Potential solutions to this are discussed in a later section of this submission.

Solutions designed to facilitate increased self-generated revenue from the vast PBC landscape in Northern Australia are more complicated. The IRG is developing possible solutions to this predicament which are also outlined in a later section of this submission.

2.3. Preliminary framework designed to address the equity capital access source of market failure

While significant work has been undertaken to advance the tailored business support initiatives through a proposed Northern Australia Enterprise and Employment Hub Network, Northern Australia Indigenous Commercial Research Roadmap and Northern Australia Indigenous Economic Development Body, the IRG is at a relatively early stage in developing frameworks for improved capital access. To date, this work has included a desktop review of capital access policy initiatives globally (with a specific focus on programs targeting Indigenous capital access), designing application of identified best-practice initiatives to the Northern Australian context and some preliminary expert consultation. This has generated a preliminary framework designed to address the capital access issues faced by PBCs and a preliminary framework designed to address the equity capital access requirement of growing Northern Australian Indigenous businesses more generally. IRG work in this area is ongoing.

¹⁰ Australian Bureau of Statistics 2016 Census

¹¹ Northern Australia Senior Officials Networking Group

2.4. NAIF Role in the IRG capital access framework

This submission advocates for the introduction of flexibility into the NAIF statutory framework (its Act and Investment Mandate) to enable it to support solutions to the Indigenous economy market failures to be developed consistent with Commonwealth policy (referred to in the Submission as **Qualifying Indigenous Projects** or QIPs). The responsibility for development of that policy for QIPs and in particular the criteria to be satisfied for a project to be awarded that status would reside outside of the remit of NAIF. The NAIF Board would remain the entity responsible for determining whether or not to invest its capital in any QIP.

3. Addressing Limitations of the NAIF in Meeting Northern Australia Indigenous Enterprise Capital Requirements

The Northern Australia Infrastructure Facility (NAIF) is a key initiative under the Northern Australia Agenda. It is an independent Commonwealth statutory corporation, established to serve as a provider of financial assistance. Under the current NAIF Investment Mandate, loans (which may be offered on concessional terms) is the default financing mechanism to 'economic infrastructure'. It also allows for alternative finance mechanisms (but specifically excludes equity).

NAIF is established and operates in accordance with the *Northern Australia Infrastructure Facility Act 2016* (Cth) (the 'NAIF Act') and the *Northern Australia Infrastructure Facility Investment Mandate 2018* (Cth) (the 'Investment Mandate'). Other legislation such as the *Public Governance, Performance and Accountability Act 2013* (Cth) also applies to the NAIF.

The following Table 2 and Table 3 summarise key provisions of the NAIF Act and NAIF Investment Mandate that limit NAIF's relevance as a financing mechanism for the vast majority of the Northern Australia Indigenous economy, as well as the IRG's submissions as to recommended flexibility to be introduced into the NAIF Act or Investment Mandate.

Table 2 – Key Relevant Provisions of the Northern Australia Infrastructure Facility Act 2016 (Cth)

Section	Implications	IRG Submission
Object of NAIF: s3	The object of NAIF is to provide grants of financial assistance to the State and Territories for the construction of Northern Australia economic infrastructure, which is defined as infrastructure that (a) provides a basis for economic growth in Northern Australia; and (b) stimulates population growth in Northern Australia.	IRG notes that the reference to 'grants of financial assistance' does not include grants as commonly understood given that under the NAIF Investment Mandate Schedule 1, any NAIF financial assistance must be able to be repaid or refinanced which is not a grant characteristic. Also under Section 11(5) of the Investment Mandate, financial assistance expressly excludes equity, which grant funding would comprise. The IRG submits that the NAIF mandate should be amended as required to allow NAIF to provide grant funding or equity or equity-like capital (in addition to debt finance) for QIPs rather than just debt funding. Note this submission is not advocating for NAIF to be able to offer such funding for all projects, with this proposal restricted to QIPs.
Duration of NAIF: s8	The NAIF may not provide any new grants of financial assistance after 30 June 2021. Grants of financial assistance provided prior to this date may extend beyond this date and terms and conditions of those grants modified past that date.	The date for the granting of financial assistance should be amended to at least 30 June 2026 (i.e. a five year extension) with a further review as soon as possible after that date to assess whether to extend again. This is because the development work to bring QIPs to a state ready for NAIF Board assessment is highly unlikely to be completed by the current NAIF deadline.
Ministerial Direction of NAIF: s9, s10, s11	The Minister must provide direction to the NAIF in the form of a legislative instrument known as the Investment Mandate, and NAIF must take all reasonable steps to comply with the Investment Mandate. The Investment Mandate must not direct or have the effect of directing NAIF to provide financial assistance to a particular project or a particular project proponent, but may include directions in relation to the following: (a) objectives the NAIF is to pursue in providing financial assistance; (b) strategies and policies to be followed for the effective performance of the NAIF's functions; (c) loan characteristics for circumstances in which financial assistance is used to provide or support loans; (d) providing financial assistance for purposes other than to provide or support loans; (e) eligibility criteria for financial assistance; (f) risk and return in	Where the Ministerial Forum or an appropriate Commonwealth entity has endorsed criteria for a QIP, NAIF should at a minimum be permitted to provide capital to support the QIP. IRG would prefer an even stronger direction by the Minister in the Investment Mandate that encourages NAIF to support QIPs. The statutory framework should be amended to prescribe that for QIP investments by NAIF it can take very high risk which should be acknowledged as including investment on the basis that NAIF may not recover either its capital or a return on its capital. There would need to be some parameters around this so there is a genuine endeavour for QIPs that NAIF invests in to become 'economic' over time, but acknowledging that given the market failures that may take time to

Section	Implications	IRG Submission
	<p>relation to providing financial assistance; and (g) any other matters the Minister deems appropriate.</p> <p>When NAIF intends to provide financial assistance, written notification in the form of a (Proposal Notice) must be provided to the Minister.</p> <p>On receipt of the Proposal Notice, the Minister has 21 days information on each financial assistance the NAIF proposes to provide so that the Minister can consider. The Minister is able to extend that consideration period up to 60 days by written notification to the NAIF. During this time, the Minister may instruct NAIF not to provide a financial assistance if that financial assistance would (a) be inconsistent with the objectives and policies of the Commonwealth Government; (b) have adverse implications for Australia's national or domestic security; and (c) have an adverse impact on Australia's international reputation or foreign relations.</p> <p>The consideration period does not constitute the Minister 'approving' the financial assistance. The Minister, through the consideration period, only has the ability to indicate that financial assistance should not be provided, if the Minister is satisfied that the project is inconsistent with the objectives and policies of the Commonwealth Government, has adverse implications for Australia's national or domestic security or adverse impact on Australia's international reputation or foreign relations.</p>	<p>achieve (and so a debt mechanism which requires a scheduled payment of principal and interest is unlikely to be flexible enough), and also that it may not actually be realised as an outcome.</p> <p>If the QIP asset is capable of generating a return, the NAIF capital instrument should allow NAIF to participate in the return, which may be only on a partial return basis and/or a subordinated basis to other capital providers.</p> <p>Given a QIP criteria will have been endorsed by the Ministerial Forum or an appropriate Commonwealth policy owner, the IRG suggests that the requirement for Ministerial consideration where NAIF supports a QIP may not be required.</p>
<p>Governance of NAIF: s13, s14, s15, s28, s38, s42, s43</p>	<p>The NAIF Board is to consist of the Chair and between 4 and 6 other members.</p> <p>The functions of the NAIF Board are (a) to decide, within the scope of the Investment Mandate, the strategies and policies to be followed by the NAIF; (b) to ensure the proper, efficient and effective performance of the NAIF's functions; and (c) any other functions conferred on the NAIF Board by the NAIF Act.</p> <p>Appointments to the NAIF Board are made by the responsible Minister.</p> <p>Each member of the NAIF Board must have experience or expertise in at least one of banking and finance; private equity or investment by way of lending or provision of credit; economics; infrastructure planning and financing; engineering; government funding programs or bodies; financial accounting or auditing; or law.</p> <p>The NAIF Board has the power to all things necessary or convenient to be done for or in connection with the performance of its functions.</p> <p>The NAIF Board must appoint a CEO of the NAIF who is responsible for the day-to-day administration of the NAIF. In performing its functions, the CEO must act in accordance with policies determined by the Board. The NAIF may employ staff it considers necessary for the performance of its functions.</p> <p>The NAIF may make arrangements for the services of officers or employees of the Commonwealth, a State or a Territory Government; an authority of the Commonwealth or a State or Territory or any other organisation or body.</p> <p>The NAIF must prepare and provide to the Minister an annual report pursuant to the requirements of s46 of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth). The Minister must give effect to a review of this Act as soon as possible within three years from the commencement of the Act.</p>	<p>As currently drafted, there is no requirement that any board members have expertise in banking and finance (although it is noted that persons with those skills would be eligible). Given the complex risk of NAIF financing at least two board members should be required to have expertise in banking and finance.</p> <p>There is no requirement for board members to possess skills specific to Indigenous economic development. This should also be an identified skill listed.</p>

Section	Implications	IRG Submission
Finances of the NAIF: s40, s41	<p>The NAIF may charge a fee in relation to anything done in performing its functions, and such fees must not be such as to amount to taxation.</p> <p>The Commonwealth Consolidated Revenue Fund is appropriated to the extent of A\$5.0 billion for the purposes of providing grants of financial assistance to the States and Territories for the construction of Northern Australia economic infrastructure.</p>	Subject to and informed by the development of appropriate QIP criteria and an understanding of the pipeline of QIP investments, an amount of the NAIF appropriated funds could be quarantined for QIP investments to ensure that representation of QIP investments in the NAIF portfolio is consistent with the Northern Australia Indigenous economic development policy objective.
Review of NAIF Act: s43	The responsible Minister must instigate a review of the operations of the NAIF Act as soon as possible after the period commencing 3 years from when the NAIF Act commenced. Without limiting the matters to be covered by this review, the review must consider whether the time limit of 30 June 2021 for the NAIF should be extended and the appropriate governance arrangements for the NAIF after that date.	See comments above as to extension and further review.

The primary determinant of the NAIF's strategic framework is the Investment Mandate as issued by the Minister from time-to-time in accordance with s9 of the NAIF Act 2016. The key elements of this framework are summarised in the following Table 3.

Table 3 – NAIF Investment Mandate

Element	Description	IRG Submission
Mandatory investment criteria (schedule 1)	<p>Schedule 1 of the current NAIF Investment Mandate imposes the following mandatory criteria that a project must meet to be eligible for NAIF financial assistance:</p> <ul style="list-style-type: none"> <i>The project involves construction or enhancement of Northern Australia economic infrastructure</i> – the project incorporates, in whole or part, the construction or enhancement of physical structures, assets or facilities which underpin, facilitate or are associated with (a) transport or flow of people, goods, services or information; (b) the establishment or enhancement of business activity in a region; (c) an increase in economic activity in a region, including efficiency in developing or connecting markets; or (d) an increase in population. The project must bring new capacity online and the NAIF cannot be used to refinance existing debt without creating new capacity. Examples of the types of projects that may be eligible are outlined in the Explanatory Statement to the Investment Mandate and include, but are not limited to ports, airports, rail, road, water, energy and communications infrastructure; social infrastructure such as health facilities, education facilities, research facilities, training and related accommodation facilities; processing facilities such as abattoirs and agricultural facilities; and transshipment vessels. <i>The project will be of public benefit</i> – the project must produce benefits to the broader economy and community beyond those able to be captured by the project proponent. In assessing public benefit, the Board may, without limitation, consider whether the project will have capacity to service multiple users (either immediately or during the expected life of the project). <i>The project must be located in or have significant benefit for Northern Australia</i> – projects must either be within the boundaries of Northern Australia, or if partly or wholly outside of these 	<p>The NAIF Act or Investment Mandate should be amended to specifically acknowledge that QIPs will generate broad public benefits and therefore satisfy this criteria. Refer to Section 2.2 of this Submission for examples of public benefits that are targeted through overcoming the market failure e.g. reduced dependency on welfare budgets and reduced pressure on other jurisdictional budgets through increasing Indigenous economic outcomes.</p> <p>The IRG notes that cost-benefit analysis frameworks often have a stated preference for cost and benefits to be quantified. The NAIF Public Benefit Guideline in relation to its assessment of public benefit has a preference for quantification of costs and benefits, but provides for non-quantified costs and benefits to be specified. The IRG supports that approach.</p> <p>See comments above in relation to amendments so that NAIF investments do not require a return of or on capital if they are QIPs subject to the best endeavours to generate economic outcomes.</p> <p>The Indigenous Engagement Strategy (IES) criterion or other appropriate section of the Investment Mandate should be strengthened to provide for transparent reporting of the relevant proponent's strategy for and outcomes (timeframes and progress towards achievement of the strategy to be realistic) of the implementation of the strategy around Indigenous participation, procurement, employment, including business capacity building and mentoring. The criterion should also make it clear that the setting of targets</p>

Element	Description	IRG Submission
	<p>boundaries, must produce significant benefit for Northern Australia (e.g. a project enhancing north-south connectivity).</p> <ul style="list-style-type: none"> ▪ <i>The NAIF loan must be able to be repaid or refinanced</i> – the project proponent must present comprehensive financial modelling to demonstrate the ability of the project to repay the debt in full and on time, or refinance, based on assumptions acceptable to the Board. A relevant substitute for this criterion should be used for assessing projects which request a non-loan (alternate financing mechanism) form of financial assistance. ▪ <i>Indigenous engagement strategy</i> – the project must provide a strategy which sets out objectives for Indigenous participation, procurement and employment that reflect Indigenous population in the region of the proposed project. 	<p>where possible is to be an objective which likewise should be reported against.</p>
<p>Other factors to be considered by the NAIF in making investment decisions to offer or not offer financial assistance: Investment Mandate s7, s9, s16, s13, s14</p>	<p>The Investment Mandate also provides that in making an investment decision, the Board of NAIF must:</p> <ul style="list-style-type: none"> ▪ Be satisfied that any return from financial assistance will cover at least the Commonwealth's cost of borrowing and the NAIF's administrative costs; ▪ Have regard to the extent of any concession that is offered (see below for further detail); ▪ Have regard to the potential effect of the project on other infrastructure; ▪ Have regard to the potential effect of the financing mechanism on the Australian infrastructure financing market; ▪ Have regard to the potential of the investment to encourage private sector participation in financing a project; ▪ Consider a preference for a diversified portfolio including with respect to industrial and geographic spread across the states and territories that comprise Northern Australia; ▪ Consider a preference for projects that address an infrastructure need identified through a Commonwealth, State or Territory assessment process, pipeline or priority list; ▪ Limit the concessions offered to the minimum concessions the Board considers necessary for an Investment Proposal to proceed; ▪ The Board may propose concessions; ▪ The NAIF Board may make an Investment Decision, conditional upon the project obtaining all relevant regulatory, environmental and Native Title approvals and arrangements as required by the relevant jurisdiction. However, funding must not flow to the project until all relevant approvals are in place; ▪ Consult with the State or Territory jurisdiction(s) in which a proposed project is located and if the jurisdiction provides written notification that a project should not be funded by NAIF, NAIF must not make an investment decision in relation to that project; and ▪ Where a NAIF financial assistance decision is greater than A\$100 million, consult with Infrastructure Australia. 	<p>See above comments relating to return hurdles where a QIP is involved which would need to be reflected in an amendment to this.</p> <p>It could be acknowledged that the ability to take risk for QIPs by way of no return on or of capital should be treated as a concession.</p> <p>Insert an additional consideration being to have regard to the potential effect of the financing mechanism on achievement of the IRG objectives.</p> <p>Expand to specifically acknowledge encouragement of private sector participation in financing a QIP.</p> <p>Include a preference to support QIPs (The Investment Mandate does not need to quantify the number of QIPs to be supported by NAIF). Refer above in Table 2 to a stronger position which would be that NAIF not just have a preference to support QIPs, but be required to encourage them.</p> <p>While it is noted this is only a preference, IRG submit the reference to a preference for identification through the stated Commonwealth, State or Territory process pipeline of priority list should be removed. Inclusion of this preference suggests that larger projects which tend to be captured by the lists are to be preferred. There are meritorious projects which will not be on any of those lists simply by virtue of factors such as scale. QIPs are highly unlikely to satisfy that preference under the current mandate.</p> <p>For QIP investments, the requirement relating to minimum concessions should be tied to the minimum concessions for the QIP criteria (yet to be developed) to be satisfied. .</p> <p>The list of concession types should identify equity or equity-like characteristics. For example, allowing for no returns if none are able to be generated or accumulation of return or preferential treatment or subordination of returns to other capital providers. (An expert in those types of instruments could be consulted to assist with examples or descriptions).</p>

Element	Description	IRG Submission
Mechanisms of financial assistance	<p>The current Investment Mandate states that loans are to be the default financing mechanisms for investment proposals.</p> <p>In determining any concession to be granted, the NAIF Board must have regard to (a) the extent and mix of all concessions necessary for the investment proposal to proceed; and (b) the extent of the project's public benefit.</p> <p>Concessions must be limited to the minimum the NAIF deems as necessary for an investment proposal to proceed and may include (but not limited to) (a) longer loan tenor than offered by commercial lenders, but not exceeding the longest term of Commonwealth borrowings; (b) lower interest rates than offered by commercial lenders, which cannot be lower than the rate at which the Commonwealth borrows; (c) extended periods of capitalisation of interest beyond construction completion; (d) deferral of loan repayments or other types of tailored loan repayment schedules; (e) lower or different fee structures than those offered by commercial lenders; or (f) ranking lower than commercial lenders for cash-flow purposes.</p> <p>The NAIF Board may consider using alternative funding mechanisms to a loan where it may be more appropriate for a specific project, or it is necessary to encourage private sector participation in financing a project. Such alternative funding mechanisms may only be approved by the NAIF Board if the Minister has pre-approved that alternative funding mechanism for the specific project. In providing that approval the Minister will seek the agreement of the Treasurer and Minister for Finance and consult the relevant jurisdiction.</p> <p>The NAIF is unable to offer a financing mechanism that would provide for equity to be provided to a project.</p>	<p>See above submissions relating to expansion of type of capital instrument that NAIF can provide, being grant funding or equity or equity-like instruments for QIPs.</p> <p>The requirement for interest rates not being lower than the rate at which the Commonwealth borrows would need to be amended to acknowledge that QIP investments may not require a return of or on capital.</p> <p>For QIPs, acknowledgement that there might be forgiveness of debt rather than an absolute requirement for repayment.</p> <p>Acknowledge that for QIPs there is a need to include non-loan capital and participation in the project upside if there is return actually generated (i.e. rather than a scheduled loan repayment).</p> <p>Include a specific acknowledgement that NAIF can provide alternative funding mechanisms other than a loan or which have loan like characteristics in order for it to support a QIP.</p> <p>It should also be specifically acknowledged and allowed for by way of potential concessions for NAIF in approving the terms on which its finance is offered to structure in financial incentives for project proponents and Tier 1 and Tier 2 contractors to achieve Indigenous Engagement Strategy targets. Note it would be a matter for the NAIF Board as to whether it needs to actually offer such incentives.</p> <p>In relation to the approval mechanism for alternative financing mechanisms for QIPs, given such projects are by definition to support IRG objectives which themselves are consistent with Government policy, additional approval hurdles by the Treasurer and the Minister of Finance should not be required.</p> <p>Where the alternative financing mechanism is for a QIP, remove the specific prohibition on NAIF providing equity.</p>
Investment Risk: s12	<p>The NAIF Board must satisfy itself that (a) NAIF is not the sole holder of financial risk in each project; (b) there is reasonable allocation of risk for each project between NAIF and other sources of finance for the project; (c) it can appropriately manage NAIF's risk exposure to each project; and (d) its due diligence also identifies total exposure of the Commonwealth to a project so as to prevent the Commonwealth overall having the majority financial risk in a project.</p> <p>The NAIF Board must, in consultation with the Minister and relevant Northern Australian jurisdictions develop a Risk Appetite Statement that gives preference to geographic and industry diversification and which may have a high risk tolerance in relation to factors that are unique to investing in Northern Australia economic infrastructure such as (but not limited to) distance, remoteness and climate. The Risk Appetite Statement is reviewed annually.</p>	<p>Amend these provisions to allow NAIF to participate in QIPs as the majority risk taker by itself or together with any other Commonwealth entity.</p> <p>See above comments in Table 2 on risk appetite and preferences which should be reflected in these provisions, and IRG submit there should be a specific recognition that the NAIF be permitted to invest in QIPs.</p>

4. Toward a Northern Australia Indigenous Capital Access Framework

This section discusses frameworks that the IRG is currently examining that are designed to address the specific sources of capital access market failure discussed in Section 2. These frameworks could be implemented irrespective of the changes to the NAIF discussed in Section 3.

It must be stressed that the frameworks discussed in the following Sections 4.1 and 4.2 are at a preliminary stage of development only. Significant research, analysis and expert consultation is required to validate their access to deal-flow and the appetite of the investment market to invest in such structures, as well as their efficacy with respect to addressing key Northern Australia Indigenous economic development policy objectives. They are presented in this submission for the purposes of illustrating that capital access policy mechanisms that are used to address market failure in other sectors of the economy and in other Indigenous economies could potentially be used in the Northern Australia Agenda to accelerate development of the Northern Australian Indigenous economy.

4.1. Capital access for Prescribed Body Corporates

As discussed in a Section 2.1.1 of this submission, many PBCs (and other legislated Indigenous corporations with responsibility for managing land rights and holdings) seek to generate income from their native title (or other land and water rights) assets and related enterprise in order to increase the resources available to them and to reduce their dependency on government grants to fund various cultural and community initiatives that they may wish to undertake. However, very few of the 150 PBCs (and similar organisations) across Northern Australia have the economic resources to achieve this.

The framework that the IRG is currently exploring to address capital access and capability building for Northern Australian PBCs is based on the framework established in Canada under the *First Nations Financial Management Act* and nuanced for the legal framework under which PBCs are established and operate. It is also designed to encourage voluntary economic collaboration between PBCs (and similar legislated organisations) such that they have an opportunity to participate in economic scale. This framework is illustrated conceptually in the following Figure 2 and described below.

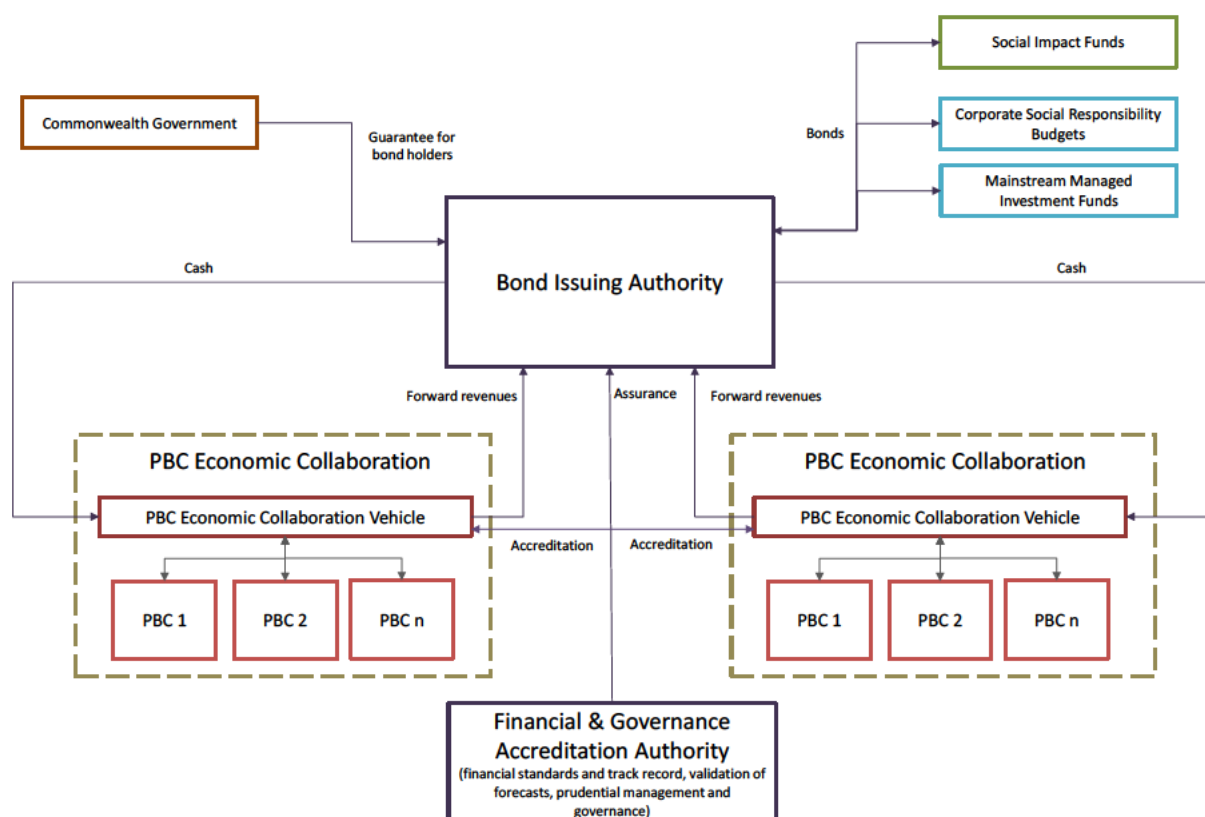


Figure 2 – IRG PBC Bond Issuing Conceptual Framework

Under this framework, the Commonwealth Government would establish two independent but related authorities – a Bond Issuing Authority and a Financial and Governance Accreditation Authority.

The Financial and Governance Accreditation Authority would work with PBCs (and other similar legislated organisations holding land and water rights) that voluntarily want to collaborate to pool and share their economic resources. Under such collaborations, individual PBCs (or similar legislated organisations) would maintain independence with respect to their cultural and community responsibilities, but place their economic assets into a collective PBC Economic Collaboration Vehicle (e.g. a trust, limited partnership etc.), with the distributions from these Vehicles to each PBC made in accordance with an economic collaboration agreement. Assets held in the Vehicles may include agricultural businesses, tourism and other businesses; mining royalties; revenues from water rights; land rentals; and other revenue generating enterprise or interests.

The Financial and Governance Accreditation Authority would work with the PBC Economic Collaboration Vehicles to develop, validate and implement business cases that generate reliable future revenues, to implement and support a governance and prudential management framework, establish a set of financial performance metrics, monitor compliance with those metrics and establish processes for managing and addressing non-compliance and default. Once satisfied that a PBC Economic Collaboration Vehicle has established 'bankable' future revenues, the Financial and Governance Accreditation Authority will provide the Bond Issuing Authority with 'assurance' as to those future revenues, allowing it to issue bond products based on those future revenues and provide the PBC Economic Collaboration Vehicle with cash to distribute for cultural or community investment purposes of the individual PBCs, or to resource further economic development in accordance with the economic collaboration agreement.

Because the resulting bond products would still demonstrate relatively high risk, it is likely that a guarantee for the bond value in full or part will be required by the Commonwealth Government for the instruments to be marketable.

This proposed framework raises a number of immediate questions that the IRG needs to resolve before it can be advanced any further, including the:

- Propensity of PBCs (and similar legislated organisations) to engage in an economic collaboration of this nature;
- Capacity of the holders of the rights within PBCs (and similar legislated organisations) to be able to participate effectively in decision-making relating to economic development;
- Ability of combined PBC assets to generate future revenues of adequate scale and reliability to underpin a bond product;
- Appetite of the professional investment market (including social impact investment sector) for such a product;
- From a policy objective perspective, the extent to which this model would address the resourcing needs of the entire Northern Australian PBC landscape; and
- Extent to which a Commonwealth guarantee is required to render the bonds marketable, and the Commonwealth's appetite to provide that guarantee.

4.2. Equity finance for Northern Australian Indigenous owned enterprise

The IRG is also in the process of developing a framework to address the equity financing and capability building gap for growing Northern Australian Indigenous businesses more broadly. Illustrated conceptually in Figure 3 and summarised below, this framework is based on aspects of models used internationally, as well as the Commonwealth Government's former Innovation Investment Fund Program, and is designed to operate in conjunction with the key elements of the IRG's proposed Indigenous economic development institutional framework for Northern Australia (Northern Australia Indigenous Economic Development Body and Northern Australia Enterprise and Employment Hub Network), as well as other established Northern Australia economic development institutional actors (such as Indigenous Business Australia, Indigenous Land and Sea Corporation and the NAIF).

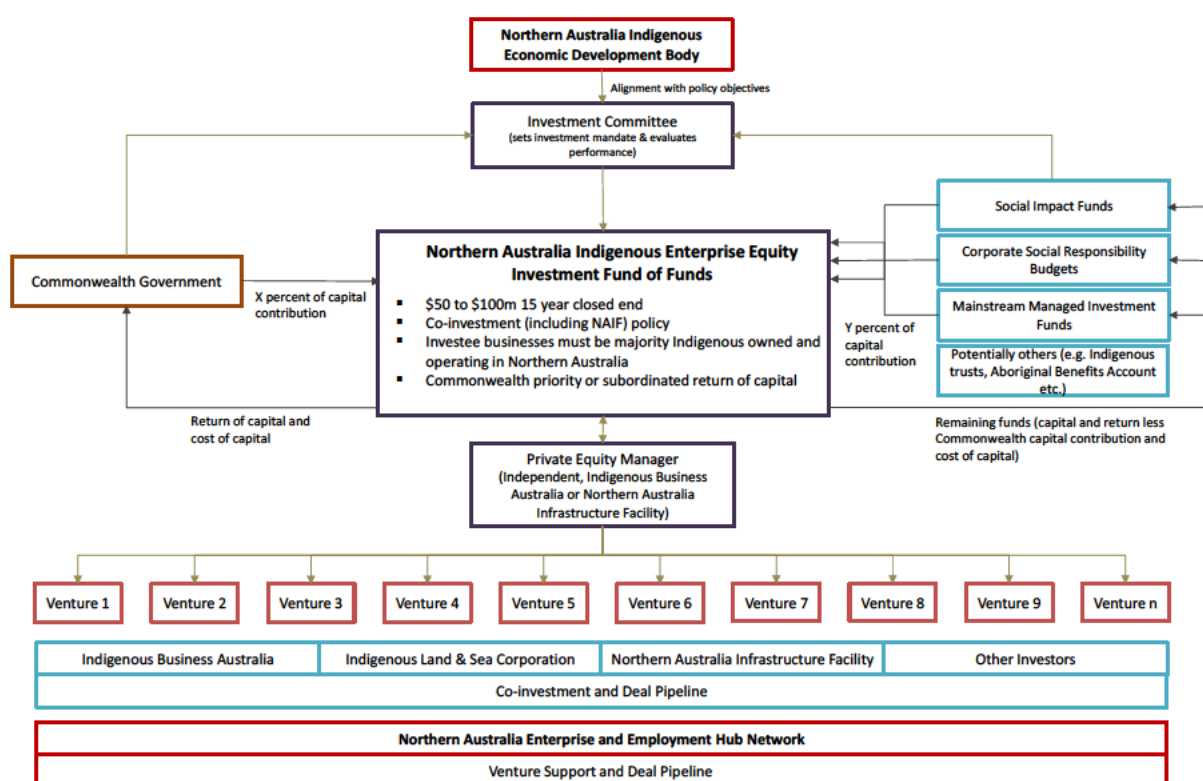


Figure 3 – IRG Northern Australia Indigenous Enterprise Equity Investment Fund (of Funds)

Under this framework a fund, or fund-of-funds, is established for a specified amount (for argument's sake a pilot fund may require a total of \$50 to \$100 million of funds under management in order to demonstrate viability and efficacy) on a closed-end basis (for arguments sake 15 years). This means the fund is compelled to raise the

amount, identify investments, make investments, grow those investments and exit those investments within the prescribed closed-end period.

Under this framework, the Commonwealth Government will contribute a portion of the capital on the basis of a risk profile that is required to attract private investment to the fund. For example, it may be a risk profile such that at the end of the fund's life the Commonwealth receives a full return of its capital and possibly its cost of capital as either a priority or subordinated payment, neither its capital or a return on its capital or other predetermined discounted return of and/or on its capital, depending on the appetite of the professional investment market. The balance of the fund is then raised from the professional investment market from sources such as the social impact investment fund sector, corporate social responsibility budgets, allocations from mainstream management investment funds to social investment and potentially other Northern Australia Indigenous economic development specific sources such as Indigenous trusts, Aboriginal Benefits Account, Indigenous Business Australia (IBA) or the Indigenous Land and Sea Corporation (ILSC). However, these more specific sources will likely face investment restrictions that could limit the scope and operations of the fund or result in sub-accounts within the fund that are required to be quarantined to meet the specific requirements of individual investors, the cost-benefit of which would need to be assessed.

A professional private equity investor with specific Indigenous enterprise investment experience is appointed through competitive tender to manage the fund. The manager could potentially be Indigenous Business Australia, NAIF (only if NAIF mandate is amended to enable it to provide equity) or an international private equity manager with Indigenous investment experience. Very importantly, a major success factor in private equity funds of this nature is the ability of the fund manager to perform an active role in supporting the management of the venture, including the provision of strategic and operational advice and providing access to important business development networks. To this end, the selected manager must have a track record in supporting the development of regional Indigenous businesses.

It is envisaged that the manager would be remunerated by way of a management fee and for the purposes of motivation, a carried interest in the fund. Because the fund, its private sector investors and the manager can incur losses as the result of poor investment decisions (the extent to which is dependent on the return of and return on capital requirements of the Commonwealth Government) the manager is motivated to make sound investment decisions and drive successful outcomes at the venture level. However, because the Commonwealth does not share in profits generated in the fund, the returns associated with successful investment outcomes are amplified, thus lowering the investment hurdle rate for private investors. It should be noted that the Commonwealth's investment in the fund is also at risk. The extent to which the Commonwealth's capital is at risk is dependent on the degree to which the Commonwealth's return of capital is discounted, prioritised or subordinated. However, in the event of a total loss, the Commonwealth's capital would be also be lost.

It is envisaged that venture investments from the fund would seek to co-invest at the venture level with established investors such as IBA and ILSC (and for later stage ventures, potentially the NAIF in its current state or where its statutory framework is amended as contemplated by this IRG Submission, in early stages), as well as other mainstream investors. The pipeline of potential venture investments would be generated and supported from the business support programs and investment activities of these established organisations, as well as the IRG's proposed Northern Australia Indigenous Enterprise and Employment Hub Network.






The Northern Australia Indigenous Enterprise and Employment Hub (EEH) Network is currently the subject of co-design and implementation planning work and is modelled on the Indigenous business hub program that is currently being deployed in major Australian cities under the Indigenous Business Sector Strategy. EEH's will be deployed in specific regional Northern Australian Indigenous economies to provide acutely tailored support for existing and aspiring Indigenous enterprises, including early concept validation and re-focusing through processes such as 'shark-tanking', mentoring, access to grants and other forms of early-stage finance and access to a full range business support services that are acutely tailored for the needs of the specific Indigenous economy and individual enterprises that comprise that economy. The EEHs will not duplicate existing Indigenous business support programs, but rather provide efficient, tailored and coordinated access to those programs and others operated by the public, not-for-profit and private sector. EEHs will also provide employment services to local Indigenous economies.




Without appropriate controls in the investment mandate, there will be a natural tendency for the manager of the fund to focus on later stage ventures where the risk-return profile is more compelling to investors. To ensure that the Commonwealth's 'subsidisation' of this structure remains focused on addressing market failure in the equity financing gap discussed above, it is proposed that an investment committee be established comprised of a representative from each of the private sector investors in the fund, the Commonwealth Government and the chief executive of the Northern Australia Indigenous Economic Development Body, an institutional setting proposed by the IRG (and which is currently the subject of co-design and implementation planning) that is designed to 'represent' the Indigenous economy in the prosecution of the Northern Australia Agenda. The Terms of Reference for this Investment Committee will be to set the investment mandate for the fund and to ensure that its investments are consistent with that mandate. The mandate will need to strike the right balance between the policy objective and ensuring that the fund is able to attract investment.

This proposed framework raises a number of immediate questions that the IRG still needs to address before it can be advanced any further, including:

- Whether there is adequate deal-flow in terms of investable Indigenous owned and operated enterprises that are seeking investment for growth in Northern Australia;
- Appetite of the professional investment market for such a fund;
- The required size and life of a pilot fund;
- Preferred business model for the private equity fund manager, including skill set, track record and remuneration model;
- Legislated ability of existing statutory Indigenous economic development agencies to participate in the fund; and
- Ensuring that the fund's investments and the manager's risk management mechanisms do not excessively dilute the Indigenous interests in the venture to the extent that the intended ultimate policy objective (economic self-determination) is undermined.

Attachment 1 – Membership of the Northern Australia Indigenous Reference Group

IRG Member	Background
Mr Peter Yu (Chair) 	<p>Mr Yu is a Yawuru Man from Broome, Western Australia, with over 35 years of experience in Indigenous development and advocacy at a regional, state, national and international level, including leading the Kimberley Land Council during the 1990s and as a key negotiator on behalf of the Yawuru Native Title Holders in the landmark 2010 Yawuru Native Title Agreement.</p> <p>He is currently the Chief Executive Officer of Nyamba Buru Yawuru Ltd (one of the largest Prescribed Body Corporates in Australia), a board member of the North Australia Indigenous Land and Sea Management Alliance (NAILSMA), member of the Australian National University Council, Deputy Chair of the AFL Aboriginal Advisory Committee and Deputy Chair of the Broome Future Alliance Ltd.</p> <p>Previous roles have included Deputy Chair of the Indigenous Land Corporation, Chair of the Western Australian Aboriginal Housing Board, board member of the Western Australian Museum and board member of the National Museum of Australia.</p>
Mr Lawford Benning 	<p>Mr Benning was born and raised in Kununurra, Western Australia. Throughout his career, Lawford has held senior positions with a number of Aboriginal organisations. He is currently the Chair of MG Corporation, which represents the Native Title interests of the Miriwung and Gajerrong Traditional Owners. He is also Chief Executive Officer of the Gelganyem Trust for the Traditional Owners of the Argyle Participation Agreement and a board member of Binarri-binyja Yarrowoo Aboriginal Corporation (Empowered Communities, East Kimberley).</p>
Dr Donna Odegaard, AM 	<p>Dr Odegaard AM is a Larrakia Elder of Darwin and businesswoman with over 40 years' experience. As owner and founder of Aboriginal Broadcasting Australia, Dr Odegaard has four television channels, four radio stations and production company reaching 2,400 Indigenous communities across Australia in over 30 Indigenous languages. Dr Odegaard is a board member of the Indigenous Land and Sea Corporation and the ANZLF Australian and New Zealand Indigenous Business Women's Network, recently endorsed by Prime Ministers Scott Morrison and Jacinta Aarden.</p> <p>Dr Odegaard's leadership in Indigenous affairs and business has been acknowledged throughout her career, including Indigenous Alumni Award (University of Newcastle), Naming Lady and Commissioning Lady for HMAS Larrakia (RAN), Order of Australia (AM) for Indigenous cultural heritage, broadcast media, education, training and reconciliation, and the prestigious Sir John Storey Lifetime Award for Significant Leadership in business and management. Dr Odegaard holds a Masters Degree in Aboriginal Land Rights and PhD on Treaty.</p>
Joe Morrison 	<p>Mr Morrison was born and raised in Katherine and has Dagoman and Torres Strait Islander heritage and has over 25 years' experience working with Indigenous people across Northern Australia and internationally on the management and development of traditional lands and waters.</p> <p>Mr Morrison is the Managing Director of Six Seasons Pty Ltd. He served as the Chief Executive Officer of the Northern Land Council (NLC) from 2014 to 2018 and prior to that was the founding Chief Executive Officer of the North Australian Indigenous Land and Sea Management Alliance Ltd (NAILSMA). Mr Morrison has tertiary qualifications from the University of Sydney and is a renowned writer on topics such as Indigenous rights, management of country, community and economic development and Northern Australia development.</p>
Nigel Browne 	<p>Mr Browne is a Larrakia and Wulna Man living in Darwin. He is currently the Chief Executive Officer of the Larrakia Development Corporation (LDC) and has served on the Board of since 2005, including as Chair for the period 2010 to 2013.</p> <p>Previous positions held by Mr Browne include Crown Prosecutor with the Northern Territory Department of Public Prosecutions, Aboriginal Lands Northern Territory Solicitor and Policy Advisor to the Chief Minister of the Northern Territory. He has also held board positions with the North Australian Aboriginal Justice Agency, Law Society (NT) and Australian Day Council (NT). In 2011, Mr Browne received the accolade of National Indigenous Legal Professional of the Year in recognition of his advocacy, representation and contribution to the Larrakia People.</p>
Cr. Vonda Malone	<p>Councillor Vonda Malone is currently the first Indigenous female Mayor of the Torres Shire Council in the Torres Strait. In March 2018, Vonda was awarded the prestigious McKinnon Prize for Emerging</p>

	<p>Political Leader of the Year, bestowed by two former Prime Ministers. She has also achieved unique milestones, working internationally through the Department of Foreign Affairs and Trade and the United Nations Office of the Human Rights Commission in Geneva, Switzerland.</p> <p>Vonda also holds the position of Chairperson of the Torres and Cape Indigenous Council's Alliance, consisting of 14 Councils across Torres Strait and Cape York and is a member of the Queensland Telstra Advisory Committee.</p> <p>Vonda has extensive public sector experience delivering services across the Torres Strait and Cape York. She holds a Graduate Certificate in Australian Rural Leadership, Graduate Certificate in Public Sector Management and is a recipient of the 2001 Centenary Medal.</p>
<p>Fiona Jose</p> 	<p>Ms Jose is a Kuku Yalanji and Torres Strait Islander Woman and is currently the Chief Executive Officer of the Cape York Partnership. Prior to this she held a number of executive positions in the region, including Director of Leadership for the Cape York Leaders Program, Chief Executive Officer of Cape York Institute and General Manager of the Cape York Partnership. She has also held senior leadership positions with Education Queensland and in the aviation industry.</p> <p>Ms Jose is a Leader of Empowered Communities, board member of Bama Services and Djarragun College and Chairperson of Jawun Advisory Group.</p> <p>Ms Jose has been recognised through the 2015 Telstra Business Women's Award – Queensland for Purpose and Social Enterprise and the Australian Institute of Management Queensland Not-for-profit Manager of the Year in 2012.</p>
<p>A/Prof. Colin Saltmere</p> 	<p>Associate Professor Colin Saltmere is an Indjalandji-Dhidhanu Man from North West Queensland. He is the Managing Director of the Indjalandji-Dhidhanu Aboriginal Corporation, the Myuma and Rainbow Gateway companies and is an Adjunct Professor with the University of Queensland's Aboriginal Environments Research Centre.</p> <p>In 2002, the Indjalandji-Dhidhanu Traditional Owners, led by A/Prof. Saltmere, established the Myuma Group of Companies which has successfully developed and expanded a suite of Indigenous civil construction, hospitality, catering, labour hire and training businesses. In 2015, the Myuma Group and the University of Queensland entered into a Spinifex research and commercialisation agreement to develop nanotechnology platforms for a range of products based on Spinifex grown in the region.</p>

Attachment 2: Market Failure Focus of the Policy Recommendations of the Indigenous Reference Group to the Ministerial Forum on Northern Development

There is a market failure that is restricting the development of Northern Australia...

In addition to the more obvious notion of creating a business environment that provides equal opportunity for typically disadvantaged Indigenous northern Australians, the IRG Recommendations are directly targeted at a market failure, that if not addressed will substantially limit the extent to which Northern Australia can be developed.

Market failure is a construct of economic theory that refers to the inefficient exchange of goods and services between producers (supply-side) and consumers (demand-side). Central to the notion of market failure is the definition of an efficient market. An efficient market is an interaction between supply and demand that results in prices that reflect the full cost of the goods and services used in production and consumption. If all markets were perfectly efficient then social welfare (defined as economic benefits to all people in society) would be maximised, as the prevailing prices would lead to a socially desirable quantity of each good and service being produced and consumed.

The IRG Recommendations are underpinned by the notion that inadequate engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy represents a clear market failure, that if not addressed will significantly constrain the extent to which Northern Australia can achieve its development objectives. Therefore, if we believe developing Northern Australia is in the National interest, so too is addressing this market failure. This rationale is summarised in the following Table 4.

Table 4 - The Market Failure Case Underpinning the IRG Recommendations

Element of the Market Failure Argument	Discussion
<i>It is in the National interest to grow the Northern Australian economy...</i>	<ul style="list-style-type: none"> ▪ Opportunity – significant underutilised natural resources in close proximity to expanding Asian markets offers significant opportunity to grow employment, incomes and export earnings in and from Northern Australia. ▪ Relief of fiscal burden – Northern Australia presents it jurisdictional governments with limited local taxation base and significant social and infrastructure obligations, and represents a significant deficit to the national horizontal fiscal equalisation framework that underpins federation finances. Growing employment and incomes in Northern Australia will reduce the fiscal burden and broaden the taxation base of Northern Australian governments. ▪ Population expansion – employment opportunity in Northern Australia will expand the residential population, leading to larger urban centres in Northern Australia, relieving population pressure on urban centres in Southern Australia. ▪ Managing geopolitical risk – an undeveloped, unpopulated northern Australia presents the Nation with border protection and sovereignty risk that can only be addressed through development and higher levels of occupancy.
<i>Indigenous interests in Northern Australia are significant...</i>	<ul style="list-style-type: none"> ▪ Civic interests – Indigenous people represent an average of 15 percent of the population of Northern Australia (and a much higher percentage outside of major urban centres), are a relatively permanent population, and Indigenous organisations are a significant component of the Northern Australian government and non-government institutional framework. ▪ Cultural interests– Indigenous culture has been practiced continuously for over 60,000 years in Northern Australia and is a major component of the cultural identity of Northern Australia. ▪ Land and sea estate interests – in accordance with various state, territory and commonwealth legislation, Indigenous interests own or control access to vast areas of land and sea estate across Northern Australia. Indeed 78 percent of all land in

Element of the Market Failure Argument	Discussion
	<p>Northern Australia is the subject of a determination or claim under the NT Act 1993 or the ALRNT Act 1976.</p> <ul style="list-style-type: none"> ▪ Economic resource interests – international conventions and the Australian judiciary are increasingly recognising rights of Indigenous interests that extend beyond occupancy and cultural rights to intellectual property rights and rights to commercialise natural resources within Indigenous estates.
<i>The national interest in developing Northern Australia cannot be adequately addressed without activating Indigenous interests in Northern Australia...</i>	<ul style="list-style-type: none"> ▪ Owners of development assets – the extent of Indigenous interests in Northern Australia means that Northern Australia cannot be developed without significant participation by those Indigenous interests. ▪ Latent human resources – the Indigenous population of Northern Australia is currently significantly underemployed. Activating this latent resource will not only reduce the fiscal obligation, but provide a sizeable and stable local employment market, substantially improving the productivity of Northern Australian industry. ▪ Sharing in the opportunity – Indigenous interests will only participate in the development of Northern Australia if they are able to participate in commerce and build wealth.
<i>The limited capacity of Indigenous Northern Australians to participate in employment and enterprise ownerships is a fundamental market failure...</i>	<ul style="list-style-type: none"> ▪ The challenges that are generic to development in Northern Australia are ever-present – every business in Northern Australia faces fundamental challenges that are the result of small and sparse local markets, poor infrastructure, remoteness and harsh climate. This is the primary basis of policy initiatives resulting from the Developing Northern Australia White Paper. ▪ Socio-economic disadvantage – the impact of these generic challenges is exacerbated for Indigenous people in northern Australia by virtue of widespread socio-economic disadvantage.
<i>The IRG Policy Recommendations directly target the source of this market failure...</i>	<p>The IRG Policy Recommendations are designed to directly address the source of this market failure by undertaking specific initiatives under the following themes:</p> <ol style="list-style-type: none"> 1. Creating jobs, fostering labour participation, entrepreneurship and business acumen. 2. Knowledge management systems and research and development to support Indigenous commercial end-users. 3. Infrastructure to support Indigenous economic development. 4. Access to capital and international markets. 5. Activating the economic value of land, water, sea and cultural resource rights.

This market failure is unique to Northern Australia...

It is reasonable to argue that Indigenous enterprise in some, particularly remote, parts of Southern Australia face similar circumstances to those outlined in Table 4 above. However, there are some very notable differences:

- **Indigenous workforce participation and enterprise ownership is a long way from population parity across Northern Australia...**
As is the case with the non-Indigenous population, the majority of Indigenous Australians (75 percent) reside in Southern Australia. However, whereas in Southern Australia, Indigenous persons comprise an average of 2.5 percent of the total population, in Northern Australia, Indigenous persons comprise approximately 15.0 percent of the total population. In the Northern Territory and northern Western Australia, Indigenous persons account for around 25 percent, and in many instances outside of major population centres, much larger portions of the population. If there were not market failure, Indigenous workforce participation and enterprise ownership would approximate population parity. In Northern Australia particularly, there is a long way to go in this regard.

- **Small local markets, remoteness, poor infrastructure and harsh climate are pervasive challenges in Northern Australia...**

There are certainly parts of Southern Australia where Indigenous (and non-Indigenous) enterprise is presented with the same challenges of small local markets, remoteness, poor infrastructure and harsh climate that are prevalent across the vast majority of Northern Australia. However, instances of this in Southern Australia are far fewer and the impact on the overall Indigenous economy is mitigated by opportunities associated with a much larger number and density of relatively connected capital cities, major regional centres and towns.

- **Indigenous Interests in the land and sea estate and natural resources are more significant in Northern Australia, with a greater opportunity for development...**

There are also most certainly significant Indigenous interests in the estate and natural resources of Southern Australia. However, primarily by virtue of existence of large areas of existing freehold title that pre-dates the *Native Title Act 1993* (Cth) ('NTA') and the absence of the extent of tenure afforded by the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRANT'), the area of land controlled by Indigenous interests is substantially less in Southern Australia than it is in Northern Australia. Further, because Northern Australia is relatively underdeveloped, the focus of much Indigenous land interests in Northern Australia is opportunity, whereas in Southern Australia there is a greater incidence of focus on compensation for past acts.

- **Socio-economic disadvantage is more wide spread among Indigenous Northern Australians...**

A background of socio-economic disadvantage manifests itself to varying degrees and in different ways across the entire Australian Indigenous population (as it does the non-Indigenous population). However, as a result of greater opportunity and better service delivery capacity, the extent of particularly critical socio-economic disadvantage is less wide-spread amongst Indigenous people living in Southern Australia than Indigenous people living in Northern Australia.

It is these significant inherent differences between the Northern and Southern Australian Indigenous economies that underpin the IRG's strong position that the policy framework that targets market failure in Indigenous economic participation in Northern Australia is by necessity be different to that which is targeting Indigenous economic participation in Southern Australia.

The evident market failure is adequate to justify policy intervention...

In reality there is a degree of market failure in the vast majority of markets. However, from the perspective of justifying public sector intervention designed to address identified market failure, it is typically only significant market failure that results in significant public cost or loss of significant public benefit that justifies government intervention.

Indeed careful consideration to both the nature of the market failure and an appropriate response is mandated by principles of good government. Elements of good practice policy making and review have been formally recognised by Australian governments and are reflected in a number of guidelines and requirements at commonwealth, state and territory levels. In 2006, the Australian Government adopted the following principles to aid sound policy development as identified by the Taskforce on Reducing Regulatory Burdens on Business¹²:

- Governments should not act to address problems until a case for action has been clearly established. This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all problems will justify (additional) government action;
- A range of feasible policy options need to be identified and their benefits and costs (including compliance costs) assessed with an appropriate framework;
- Only the option that generates the greatest net benefit for the community, taking into account all of the impacts should be adopted;

¹² Banks, G. (2006), *Taskforce on Reducing Regulatory Burdens on Business*, Productivity Commission, Canberra

- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements;
- Mechanisms are required to ensure that regulation remains relevant and effective over time; and
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

These principles are now being incorporated into regulatory impact assessments for any regulatory or quasi-regulatory proposal. Most state jurisdictions and the Commonwealth are required to undertake a regulatory impact assessment for the development of new regulations. All jurisdictions whose requirements specify that a cost-benefit-analysis framework be used to assess policy options, have a preference for costs and benefits to be quantified. In a few instances guidance documents are provided in order to assist in the development of a regulatory impact statement.¹³

Given developing Northern Australia is in the National interest and engagement of Northern Australian Indigenous interests in the growth of the Northern Australia economy is necessary to achieve that development, there is a *prima facie* case for policy intervention to address the identified market failure.

¹³ Victorian Government (2007) and New South Wales Government (2007)

Attachment 3: Linking Indigenous Communities with Regional Development – OECD Policy Recommendation

Indigenous Reference Group to the Ministerial Forum on Northern Development

The following table is sourced from an OECD Report titled, *Linking Indigenous Communities with Regional Development*¹⁴.

Overview	Policy Recommendations
Improving Indigenous statistics and data governance	
Indigenous people are more likely to live in rural and relatively remote areas, rendering the consistent acquisition of quality economic statistics relating to the Indigenous economy challenging. Additionally, conventional economic statistics are often meaningless to the value systems of Indigenous culture, rendering them of little use to communities. Indigenous people are rarely involved in the design, implementation and interpretation of data. Improved Indigenous statistics frameworks will better inform policy design and implementation and provide Indigenous managers and business owners with an ability to make more informed decisions, reducing the risk of Indigenous businesses for owners and investors.	<ol style="list-style-type: none"> 1. Developing an agreed national definition that is consistent with the principles of the International Labour Organisation Indigenous and Tribal Peoples Convention 169 (self-identification, descent and belonging to a group) 2. Applying the agreed national definition consistently across different government agencies and between levels of government 3. Including Indigenous territories in the standard geographic classification for the collection and reporting of statistics 4. Providing regular reporting of Indigenous well-being outcomes at the national and subnational levels (including urban, rural and remote regions) and by gender and age dimensions. 5. Implementing specific population-based surveys on issues that are important to Indigenous peoples and that can address gaps in the statistical framework. 6. Include Indigenous representatives in the governance of national statistical agencies to provide advice on strategic and operational issues impacting on Indigenous peoples. 7. Implement protocols and agreements to enable the pooling of data between different agencies to increase sample size and availability of data. 8. Adapt data collection methods to the needs of Indigenous peoples 9. Provide tools and capabilities for Indigenous organisations to collect their own data on issues that are important to their communities.
Creating and enabling environment for Indigenous entrepreneurship and small business development at regional and local levels	
Entrepreneurship is fundamental to economic self-determination and the ability of Indigenous communities to participate in regional economic development. Entrepreneurship presents the opportunity to use assets and resources in ways that align with Indigenous objectives for development, generating own-source revenues and ultimately economic self-determination. However, a range of market failures including entrepreneurial capacity, access to knowledge to support business decision-making, access to capital and other factors means that for Indigenous people to capitalise on entrepreneurial opportunity they require support. Because the nature of resources, opportunities, markets, culture and capability varies at the regional level, these support programs must be tailored for a targeted at the circumstances pertaining to a specific region or location.	<ol style="list-style-type: none"> 1. Improve the quality and reliability of Indigenous business data by introducing a consistent Indigenous business identifier into the system of national statistics. 2. Ensure better cultural and intellectual property protection for Indigenous products and services within countries and implement mechanisms for monitoring and enforcement. 3. Enable a place-based approach to economic development by: <ol style="list-style-type: none"> a. Providing frameworks, guidance and tools to support community-led economic development plans that are based on Indigenous values and perspectives b. Integrating policies and investments in enabling factors (infrastructure, skills and innovation) for different places, their development objectives and levels of development. 4. Increase access to finance for Indigenous businesses by:

¹⁴ OECD (2019) *Linking Indigenous Communities with Regional Development*, OECD Publishing, Paris

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Overview	Policy Recommendations
	<ul style="list-style-type: none"> a. Incorporating Indigenous values and perspectives into the design of economic development programs (e.g. objectives such as the strengthening of Indigenous language and culture, addressing social needs and support for subsistence activities) b. Providing Indigenous specific equity and loan facilities that address that address imperfections (such as less competition, lack of collateral and discrimination in credit markets) for Indigenous communities in rural areas (from micro-enterprises to established business). c. Ensuring these equity and loan instruments have flexibilities that reflect the characteristics of Indigenous economies in rural area such as lower levels of collateral, variability in cash flow and substituting wage income with subsistence and seasonal business activities. d. Increase the effectiveness of financial intermediation by supporting the formation of locally owned Indigenous institutions that can provide financial and business development support services to local communities (thereby building capacity within communities and better matching business support to local conditions). e. Ensure these institutions are at the right geographic and population scale to be viable and support the creation of mechanisms that enable them to pool risk and resources for larger loans. f. Providing mechanisms and infrastructure, and reducing regulatory barriers to encourage the formation of social impact markets (financing of activities that deliver social and/or environmental outcomes and a return on investment) for Indigenous entrepreneurs. <p>5. Build entrepreneurial skills and capacity by:</p> <ul style="list-style-type: none"> a. Providing coaching and mentoring support to develop business plans and access technical advice for emerging entrepreneurs b. Promoting success stories of individual and community-owned firms c. Providing access to resources and tools that can build financial literacy in Indigenous communities d. Providing targeted business development services that are packaged with grants that contribute to start-up and operational cost for Indigenous entrepreneurs and business owners. <p>6. Improve public procurement policies targeted for Indigenous businesses (which are already operating in Australia, Canada and the United States) by:</p> <ul style="list-style-type: none"> a. Using a combination of targets and set-asides to facilitate the inclusion of Indigenous owned businesses in public procurement markets and provide regular reporting on outcomes. b. Designing procurement packages in a way that reduces barriers to entry for micro and small business. c. Providing 'wraparound' business development support for Indigenous businesses in the public procurement market (mentoring and joint ventures, certification training, and targeted equity and loan instruments). d. Providing information about the scheduling of future public works between different levels of government at the regional level to provide greater certainty for Indigenous-owned businesses.

Overview	Policy Recommendations
Improving the Indigenous land tenure system to facilitate opportunities for economic development	
<p>Clarification of property rights over land and waters is critical for Indigenous people to be able to mobilise assets and achieve self-determination, including transparent and fair procedures to recognise rights, allocate them to groups, demarcate and title land and protect from intrusion. Indigenous people use their lands for a spectrum of activities that includes subsistence hunting and fishing, cultural practices and the commercial exploitation of natural resources.</p>	<ol style="list-style-type: none"> 1. Recognise and protect Indigenous land rights by: <ol style="list-style-type: none"> a. Ensuring Indigenous tenure is reflected in statutory instruments, in accordance with existing obligations under national law. b. Providing specific procedures to address conflicts related to existing treaties and agreements with Indigenous groups and unresolved land rights issues with Indigenous groups. 2. Support the allocation of land rights by: <ol style="list-style-type: none"> a. Adopting technical rules for demarcation processes in collaboration with Indigenous peoples and have Indigenous peoples participate in the delimitation of boundaries. b. Recording Indigenous land rights in registry systems that are transparent and easily accessible, in order to prevent competing land claims and facilitate access to data. c. Ensuring efficient and timely administrative processes for land demarcation, titling and registration. d. Providing technical support for Indigenous communities to collect data about land and water resources and map it to inform regulatory decision-making and to identify opportunities for economic development. 3. Activate and support economic development opportunities on Indigenous lands by: <ol style="list-style-type: none"> a. Providing Indigenous communities with the authority, data and support to develop land use plans, land codes and zoning maps that clearly identify areas of protection on ecological and cultural grounds, and for potential economic development. b. Ensure mechanisms are in place for Indigenous communities to have meaningful consultation on land use planning municipal and other authorities that have jurisdiction on or near their traditional territories. c. Create opportunities for Indigenous peoples to benefit from surface and sub-surface resources by: <ol style="list-style-type: none"> i. Developing and updating data that provides information on the quantity and quality of these resources ii. Ensuring that traditional knowledge and practices are incorporated into decision-making about natural resource management including planning and licensing. iii. Clarifying property rights over natural resources and providing commercially viable pathways to exploit these resources and/or lease them to third parties. d. Creating agreements that support the inclusion and leadership of Indigenous peoples in conservation and natural resource management and give opportunities for Indigenous peoples to generate economic development opportunities from them (e.g. land stewardship, ecosystem services and cultural tourism activities). e. Introducing efficient tools and processes into Indigenous land tenure regimes that facilitate investment and open up markets for land: <ol style="list-style-type: none"> i. Support for the acquisition of lands that can be used for traditional purposes and to generate own-source revenues (including freehold and public lands). ii. Long-term leasing of land parcels that are transferrable. iii. Revision of succession rules and support for land consolidation that overcome problems of fragmentation.

Overview	Policy Recommendations
	<p>4. Ensure the participation of Indigenous peoples in decisions about projects (e.g. infrastructure, energy and mining projects) that affect their traditional territories by:</p> <ul style="list-style-type: none"> a. Supporting and encouraging project proponents to engage in dialogue and meetings with Indigenous groups prior to submitting projects for approval and agreeing upfront on the terms and procedures for engagement (e.g. timing, location, language and translation and financial support). b. Increasing the scope of environmental impact assessments to include traditional knowledge and socio-cultural issues, and to assess the cumulative and wider impacts of projects on Indigenous people's cultural values and traditional activities. c. Developing a national framework for consultation with Indigenous groups about project development that seeks alignment with UN international standards of Free, Prior and Informed Consent and thus comprises: <ul style="list-style-type: none"> i. Reduced or no costs associated. ii. Broad and early consultation. iii. Clear information and informed engagement. iv. Possibility to present alternatives. d. Supporting the implementation of benefit sharing agreements that: <ul style="list-style-type: none"> i. Are guided by common tools and templates, and best practice examples. ii. Provide opportunities for third-party advice and support to Indigenous groups. iii. Combine monetary and non-monetary benefits that are linked to objectives for the community's long-term development and well-being. iv. Establish agreed timing and an action plan for implementation. v. Have mechanisms for addressing disputes and/or revising the terms of agreements. vi. Include provisions for project closure and remediation. vii. Provide regular reports on progress and outcomes to community members. e. Developing accessible databases that systematically record and publish benefit-sharing agreements (excluding commercial-in-confidence information), in order to ensure more transparency and, ultimately, more accountability.
Adapting policies and governance to implement a place-based approach to economic development that improves policy coherence and empowers Indigenous communities	
<p>Historical approaches to regional Indigenous economic development policy present four key governance challenges:</p> <ol style="list-style-type: none"> 1. Lack of coherence in the delivery of services and programs for Indigenous peoples at the local level (this can be generated due to small populations with high needs receiving multiple government programs and services across various government functions such as health, education, labour markets, industry etc.) 2. Insufficient coordination across and between levels of government and sectors to realise policy complementarities (this can be caused by differences in who is responsible for Indigenous lands between levels of government, which means services are not provided or coordinated due to these jurisdictional responsibilities). 3. Limited opportunities for Indigenous organisations and communities to shape policy planning and resource allocation decisions (can be due to the lack of political representation, 	<ol style="list-style-type: none"> 1. Facilitate policy coherence by developing or enhancing national strategic policy frameworks for Indigenous economic development that: <ul style="list-style-type: none"> a. Incorporate Indigenous values and perspectives about development into policy frameworks b. Align policy outcomes across levels of government and sectors and articulate differences in development challenges and opportunities for Indigenous peoples in urban, rural and remote regions. c. Incentivise the use of mechanisms and tools that support the implementation of a place-based approach and better link Indigenous peoples with regional development efforts (e.g. local area data, community brokers and participation in existing regional governance structures). d. Define short, medium and long term outcomes that can be measured (and disaggregated across different types of regions) to enable evaluation, learning and feedback.

Overview	Policy Recommendations
<p>inconsistent protocols for meaningful consultation and culturally inappropriate methods of engagement).</p> <p>4. Lack of Indigenous community capacity including the quality and depth of leadership, financial management and sustainability, and lack of scale (Indigenous peak and representative organisations may be relatively young, have a high dependency on scarce public funding, and face many competing demands).</p> <p>Overall governments need to shift from primarily controlling and administering resources and regulations toward playing a more supportive and enabling role. Governments can do this by strengthening Indigenous-led institutions and supporting the formation of networks and alliances that help Indigenous peoples shape decision-making and access resources.</p>	<p>2. Align implementation and enhance co-ordination between levels of government and across different sectoral policies as well as with Indigenous communities by:</p> <ul style="list-style-type: none"> a. Clarifying the roles and responsibilities of different actors involved in Indigenous economic development. b. Strengthening co-ordination mechanisms across Ministries and agencies and between levels of government for Indigenous economic development programs and projects. c. Building capabilities at the local level for public officials to broker and facilitate solutions (rather than just managing programs and administrative matters). d. Using formalised agreements between levels of governments and Indigenous communities to address issues of strategic importance and monitor their implementation. <p>3. Create opportunities for meaningful participation in government decision-making for Indigenous peoples by:</p> <ul style="list-style-type: none"> a. Establishing protocols and obligations for engagement of Indigenous peoples across the policy cycle (definition of problem, the development of policies, implementation and evaluation of outcomes). b. Addressing asymmetries of power in engagement processes and strengthening the capacity of Indigenous leaders and organisations to participate in decision-making about development. c. Developing cross-cultural competencies within public institutions at all levels. d. Supporting the recruitment and progression of Indigenous staff in public institutions. <p>4. Strengthen capacity of Indigenous-led organisations by providing resources and tools that enable the:</p> <ul style="list-style-type: none"> a. Creation of regional advisory services and innovation hubs and support for co-development institutions (e.g. governance and leadership, research and development, and advocacy organisations). b. Emergence of Indigenous community brokers who can build relationships with public and private institutions, take advantage of development opportunities and address complex challenges. c. Building of alliances between Indigenous communities to increase economies of scale and address issues of common interest (e.g. on service provision, engaging with project proponents on major projects and procurement).



Pathways to efficient Indigenous capital access in Northern Australia

Report to the IRG from the World Indigenous Business Forum
Vancouver, Canada, 2019

FOR INTERNAL USE ONLY

January 2020

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Indigenous Strategic Issues in Water Planning for Northern Australia

Paper prepared for the Indigenous Reference Group to the Ministerial Forum on Northern Development
February 2020



Australia's National
Science Agency

Research Roadmap for Northern Australia's Indigenous Business Knowledge Needs

Research pathways supporting Indigenous businesses and
the activation of Northern Australia's Indigenous Estates

Prepared for the Indigenous Reference Group to the Ministerial Forum on Northern Development



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A new framework for accelerated development of the Northern Australian Indigenous economy

Northern Australian Indigenous Economic Development Body, Enterprise and
Employment Hub Network and improved access to capital

Indigenous Reference Group to the Ministerial Forum on Northern
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