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Wayne Bergman
Chair
Expert Indigenous Working Group
COAG Investigation into Indigenous Land Administration and Use
Via email: EIWGSecretariat@pmc.gov.au

Dear Mr Bergman,

Thank you for your invitation, dated 13 May 2015, to provide written advice to the Expert Indigenous Working Group, regarding the COAG Investigation into Indigenous Land Administration and Use. Reconciliation Australia is committed to contributing to the collective rights of Aboriginal and Torres Strait Islander peoples. Native title and Land Rights Acts, at Federal, State and Territory levels, play an important role in the realisation of these rights. As the Social Justice Commissioner describes in the 2014 Social Justice and Native Title Report, access to and enjoyment of lands and resources are central to the social and economic development of Aboriginal and Torres Strait Islander peoples.

A review into Indigenous land administration and use has the potential to improve the life outcomes and self-determination of Aboriginal and Torres Strait Islander people. Reconciliation Australia believes any outcome of the review which eroded the rights and responsibilities of Aboriginal and Torres Strait Islander people regarding land use would be detrimental to the future of reconciliation in Australia. For the purpose of this submission, we do not make explicit reference to the benefits of, or potential changes to, the Native Title Act, as we believe these are best made by the Social Justice Commissioner. We do, however, support the recommendations made by the current and previous Social Justice Commissioners with regard to the native title systems. Given this, we focus our advice on three areas:

- 1) Land rights allow Aboriginal and Torres Strait Islander people to express their collective rights;
- 2) The *Aboriginal Land Rights (Northern Territory) Act 1976* and the Ord River Stage 2 agreement provide examples of effective land rights and use agreements; and
- 3) The views, opinions, and concerns of Aboriginal and Torres Strait Islander peoples and organisations must be carefully considered and given due weight.

Land rights allow Aboriginal and Torres Strait Islander people to express their collective rights

Part of Reconciliation Australia's role lies in explaining the importance Aboriginal and Torres Strait Islander people place on their collective rights, as referenced in the United Nations Declaration on the Rights of Indigenous Peoples. We aim to ensure that all policies and

programs affecting Aboriginal and Torres Strait Islander people follow constructive and transparent processes so these collective rights are observed.

Reconciliation Australia believes that land rights embody Aboriginal and Torres Strait Islander collective rights, and that they are a major milestone in the reconciliation process. The current land rights, including land administration and use arrangements, have been the result of hard fought struggles by Aboriginal and Torres Strait Islander people, and many compromises have been made throughout this process. Any changes which eroded the rights of Aboriginal and Torres Strait Islander people to administer or use land under communal title would be likely to diminish Aboriginal and Torres Strait Islander people's trust and confidence in government processes.

Economic development on land owned by Aboriginal and Torres Strait Islander people has the potential to greatly contribute to employment opportunities, as well as improving the health, education and wellbeing of Aboriginal and Torres Strait Islander people. It is also true that many Traditional Owners, land councils and Native Title Representative Bodies are anxious to pursue economic opportunities. Exemplifying this, the Joint Select Committee on Northern Australia heard no evidence that Aboriginal or Torres Strait Islander people were seeking to make any changes to freehold title or statutory recognition under the *Aboriginal Land Rights (Northern Territory) Act 1976*. Instead, land councils and Traditional Owners desire to employ the current provisions of the Act for development proposals.

Respect must be granted to the collective rights of Aboriginal and Torres Strait Islander people, by recognising that land held under land rights legislation is not 'available' for development, unless it is development driven by Aboriginal and Torres Strait Islander peoples and communities. Therefore, economic development cannot become a reality without the participation of Aboriginal and Torres Strait Islander people. Fundamentally, this must remain the guiding principle for any changes to land use and administration. Similarly to the Northern Land Council, Reconciliation Australia believes that the objective of Commonwealth and State or Territory land administration and use policies should be to ensure that Aboriginal and Torres Strait Islander peoples are able to use their land, and any connected development, to control their own futures, and keeping land under Aboriginal or Torres Strait Islander control is central to achieving this future. The key is to ensure that Aboriginal and Torres Strait people are part of the next wave of development, and this can only happen via genuine engagement and support. Throughout this process, collective rights must not be eroded by any changes to Aboriginal and Torres Strait Islander land administration and use legislation.

The Aboriginal Land Rights (Northern Territory) Act 1976 and the Ord River Stage 2 agreement provide examples of effective land rights and use agreements

There are many examples of land use agreements being successfully negotiated through the native title process which would provide possible cases of good practice for the Working Group to examine. Reconciliation Australia has selected to discuss here the *Aboriginal Land Rights (Northern Territory) Act 1976*, and the Ord River Stage 2 agreement, as we believe they provide strong examples of the effectiveness of current land rights legislation, and the flexibility provided to Indigenous land owners to negotiate land agreements.

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) was the first attempt by an Australian government to legally recognise the Aboriginal and Torres Strait Islander system

of land ownership and create legislation concerning the concept of inalienable freehold title. The Act allows Traditional Owners to keep their culture strong and to negotiate constructively with governments and developers over mining and infrastructure projects, providing the strongest land rights for Aboriginal or Torres Strait Islander people, while also ensuring flexibility for land use, including for economic development. In addition, by outlining the roles and responsibilities of Land Councils, the Act functions as a guidebook, showing the importance of strong Aboriginal and Torres Strait Islander governance.

Similarly, the Ord River Stage 2 agreement shows that while communal title can add another dimension to economic development and home ownership opportunities, it can also be effectively employed to remove conflict over tenure issues. After a lengthy litigation process that travelled through three levels of Australian courts (and was ultimately unresolved), a principled, resourced, non-adversarial approach to collaborative land use planning resulted in the achievement of collective and shared goals. Ultimately, this agreement resulted in a range of land use outcomes, including freeholding areas for farming, which extinguished native title but provided compensatory enhanced rights and usages for Traditional Owners over other areas. Ultimately, the Ord River Stage 2 agreement proves that current legislation provides the framework in which to negotiate, and the best approaches are ones which are transparent, honest, and based on respecting and empowering collective rights.

Additionally, Reconciliation Australia supports the approach of the Indigenous Land Corporation (ILC), to promote flexible and sustainable negotiated settlements, instead of litigation wherever possible. Approaches must be designed to maximise Aboriginal and Torres Strait Islander benefit, including achieving social, cultural, environmental and economic goals. As such we also support the ILC's proposed Stronger Land Account Bill. The Bill proposes to strengthen the current Land Account as a compensatory mechanism for land dispossession by ensuring Aboriginal and Torres Strait Islander people remain in control of the account, and at the same time, ensuring the highest standard of governance and flexibility for the Land Account to grow over time.

The views, opinions, and concerns of Aboriginal and Torres Strait Islander peoples and organisations must be carefully considered and given due weight

Reconciliation Australia values this opportunity to make a submission to the COAG Investigation, and to be involved in further conversations with the Expert Working Group. We commend COAG on their appointment of the Expert Indigenous Working Group, to ensure that Indigenous voices are included at the heart of the investigation.

From submissions to the Forrest Review consultation process, it appeared that the Forrest Review, which includes recommendations for admission of 99 year leases in the Northern Territory, was not based on strong consultation processes with Aboriginal and Torres Strait Islander communities and organisations. As a result, the Forrest Review has neglected the opinions of key land bodies, such as the Northern Land Council, who argue that 99 year leases are not necessary, as the Act already has provisions for the grant of leasehold interests in traditional lands, and that they may change the status quo from consultation into coercion.

Only through meaningful and ongoing consultation with peak bodies and organisations can such miscommunication be avoided. The Social Justice Commissioner also highlights this in his 2014 report with regard to native title, arguing that any review of the native title system

must meaningfully include Aboriginal and Torres Strait Islander people in the process. In our core work of building partnerships, trust, and respect, Reconciliation Australia knows that valuing the voice of Aboriginal and Torres Strait Islander people is essential to achieve positive outcomes.

To this end, we would strongly encourage the COAG Investigation to continue to consult with, and place heavy emphasis on the views of, organisations who work predominantly in the area of land rights. These organisations include, but are not limited to, Aboriginal and Torres Strait Islander Land Councils across Australia, Native Title Representative Bodies and the Indigenous Land Corporation. It is essential there is meaningful consultation with Land Councils, as the trustees and knowledge holders of the land. The consultative and educational process must be continued once the report has been delivered to COAG in September. Often in Indigenous Affairs, there has been a communication gap between good intentions and the information provided to interested parties and the public. This communication gap, or in some cases miscommunication, can create feelings of uncertainty, ill-will, and mistrust. In particular, it will be important for members of the Expert Group and the broader investigation team to re-engage with consultative groups, and those organisations who work predominantly within the land rights space.

Thank you again for the request to provide input to the Expert Indigenous Working Group. Reconciliation Australia appreciates the opportunity, and we would be happy to discuss the investigation with you further.

Yours sincerely



Ms Melinda Cilento

Co-Chair



Dr Tom Calma AO

Co-Chair