

1 June 2015

Mr Wayne Bergmann
Chair, COAG Expert Indigenous Working Group
c/o Department of the Prime Minister and Cabinet
PO Box 6500
CANBERRA ACT 2600
EIWGSecretariat@pmc.gov.au

Dear Mr Bergmann,

Indigenous land owners and native title holders

The Australian Bankers' Association (**ABA**) appreciates the opportunity to provide advice on how Indigenous land administration systems and processes could be improved to support better economic development outcomes for Indigenous peoples and communities and to assist the Expert Indigenous Working Group in providing advice in relation to the Council of Australian Governments (**COAG**) investigation into Indigenous land administration and use.

With the active participation of 23 member banks in Australia, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services.

The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

Introductory remarks and context

On 10 October 2014, the COAG announced it would conduct an investigation into Indigenous land administration and use, to enable traditional owners to readily attract private sector investment and finance to develop their own land with new industries and businesses to provide jobs and economic advancement for Indigenous people.¹

The ABA recognises that many Indigenous Australians face social, economic and financial disadvantage. We have been working in partnership and collaboration with Indigenous communities and their representatives for many years to tackle these challenges and support Indigenous peoples and communities economic and financial opportunity and development. There have been some significant achievements and learnings, but we acknowledge that further work is required to improve accessibility for Indigenous Australians.

The ABA supports economic and financial policies and strategies aimed at addressing financing home ownership, businesses and economic development on Aboriginal land or land where native title rights and interests exist. However, we consider that this is related to factors more broadly to do with social, economic and financial inclusion for Indigenous Australians, including:

- Relatively low household incomes for many Indigenous Australians, high cost of housing relative to income levels (especially in remote locations), and inability to save a deposit for a home loan;
- Relatively low levels of financial literacy for many Indigenous Australians;

¹ <http://www.dpmc.gov.au/indigenous-affairs/about/jobs-land-and-economy-programme/coag-land-investigation>

- Limited access to mainstream financial institutions and low levels of understanding about property and housing markets and borrowing requirements (security for a mortgage, credit risk assessment models, interest rate repayments, etc.);
- Low levels of confidence in approaching banks and other mainstream financial institutions by many Indigenous Australians; and
- Limited availability (of appropriate) housing stock (especially in remote locations).

The ABA believes that efforts to promote economic advancement will take a comprehensive, collaborative and coordinated commitment. Specifically, the challenge for governments, business and community sectors will be to create long-term and sustainable strategies which will enable opportunities for choice for Indigenous Australians, promote pathways to home ownership or suitable alternatives, raise levels of education and financial literacy, generate employment and investment opportunities along with infrastructure and service delivery, and economic and social participation for Indigenous peoples and communities.

Furthermore, a necessary part of any comprehensive program to encourage home ownership and business, enterprise and economic development on Aboriginal land or land where native title rights and interests exist needs to ensure that Indigenous individuals, families and communities are aware of the opportunities, risks, responsibilities and rewards of borrowing and investing.

Most importantly, the ABA believes that policies and strategies for addressing this complicated area of policy and practice cannot be a 'one-size-fits-all', and this view should be recognised and shared by all.

Following, the ABA provides responses to some specific questions we have been asked as part of the COAG investigation.

How could administration systems on Indigenous owned lands be improved to support better economic development outcomes for Indigenous people?

The ABA believes that an enabling environment needs to be created and various solutions need to be provided to improve and support better economic and financial opportunity and development for Indigenous peoples and communities.

Banks require robust land administration systems, including secure and clearly defined titles to land – that is, the existence of consistent and clearly defined zoning and planning schemes (so that developers of land know with certainty that their proposed use of land will be subject to enduring and efficient approval processes), the ability to register interests (rights) on that title, the ability for that title to be readily traded, clear development consent processes and clearly defined land use parameters.

Governance arrangements and administrative systems on Indigenous owned lands present barriers and require significant improvement. Governance arrangements and administrative systems relating to the operation of Land Councils and other organisations, the management of housing and other assets and land tenure vary across the state jurisdictional boundaries, which potentially impact on whether a property can be mortgaged. In some cases, where legislative land tenure has been addressed, governance, administrative and development challenges prohibit making inroads into supporting better economic and financial opportunity and development for Indigenous peoples and communities.

Most importantly, valuations are very difficult in remote locations. Valuation models need to be supported via mechanisms and practices to encourage the development of property and housing markets, enhance maintenance and value of town areas, properties and infrastructure, and promote robust legal and ownership structures, including unrestricted security, clear line of sight to the property and cash flow, and unambiguous default and recourse provisions. However, even if banks and other lenders obtain appropriate security and recourse, the viability of financing property and construction is uncertain – that is, remoteness, low demand, equity position, and risk profile pose a higher lending risk, and therefore, the valuation may not reflect the actual cost/replacement value but rather other factors. These lending considerations are likely to impact on loan to value ratios (**LVRs**) and interest rates.

Other barriers that need to be addressed on Indigenous owned lands include the lack of effective administrative arrangements, such as planning schemes and zones, surveys that clearly delineate lot boundaries, availability of building surveyors, a clearly articulated development consent process and limited access to municipal and essential infrastructure and services and the high costs of servicing land.

Furthermore, Indigenous organisations need to assess their governance arrangements and land use restrictions. Cultural considerations should be taken into account, for example, cultural requirements to vacate a property for sorry business and the implications for expecting the continuation of rental payments or loan repayments during extended periods of time when the property is vacant. Other expectations that need to be addressed include restrictions or preferences for transfer of title held by some Land Councils and organisations.

The ABA believes that it is imperative that Government fund investment in administration systems to firstly, overcome the barriers and impediments that exist, and secondly, to facilitate the development of land to attract investment and to support better economic and financial opportunity and development outcomes for Indigenous peoples and communities.

What practical ideas based on experience with the legislative, regulatory, operational and policy frameworks does the ABA have that can assist underpin investment on Indigenous land?

Based on experience, the ABA believes the following considerations will assist underpin investment on Indigenous land:

- Successful economic outcomes on Indigenous land must begin with strong leadership and governance.
- It will be important to understand that Indigenous governance is complex.
- Community governance is required, drawing on and respecting strong cultures and traditions.
- Organisational governance must be present, with sound corporate governance structures and processes, including decision making rules, reporting and record keeping processes, and dispute resolution mechanisms.
- Special funding to ensure Aboriginal land owners have ready access to financial and business advice in order to make sound investment decisions.
- Creation of incentives to assist new businesses and enterprises on Aboriginal land deal with the barriers to entry caused by high up-front establishment costs (e.g. tax incentives, investment in land administration structures to reduce costs of approvals, creation of a special government fund to assist businesses and enterprises better cope with these high up-front costs – e.g. to fund feasibility studies, etc.)

A number of banks have supported Indigenous business and enterprise development in remote locations. Some case studies could be provided upon request.

What can be done to ensure Indigenous land-owners and native title holders can access finance from mainstream banks, engage with wealth creation activities and leverage their land assets as collateral for investment?

The ABA considers that the Federal Government should work with Indigenous communities and their leaders and other stakeholders (including the banking industry) to implement a multi-faceted policy approach to ensure Indigenous land-owners and native title holders can access finance from banks and mainstream financial institutions.

An enabling environment must be created, one that considers the following factors and impediments.

First, at an individual level, successful ownership is related to secure employment, education and financial literacy and stable income and cash flow situation (financial position).

Unfortunately, many Indigenous Australians do not possess a sound and stable economic base to save the initial capital required to purchase equity, meet ongoing debt repayments as well as meet their general cost of living. There is entrenched disadvantage, characterised by low levels of employment and income, as well as education. This is a widely acknowledged issue. It is critical that the gap between market offerings and the position of potential

home buyers is carefully considered in terms of insufficient deposit savings or poor credit history, where banks and other financial institutions would not normally lend due to the risk profile of the borrower.

Second, the risk profile of the borrower is an important factor preventing access to finance. Banks are required to comply with responsible lending obligations under the *National Consumer Credit Protection Act 2009* (Cth). To protect the interests of consumers, the key responsible lending obligation is that banks and other financial institutions must not suggest, assist with or provide a credit product that is unsuitable for a consumer. A credit contract will be unsuitable if it does not meet the consumer's objectives and requirements, and/or the consumer would be unable to meet the repayments, either at all or only with substantial hardship.²

As a result, banks have credit assessment methods to inform their lending decisions. Due to the entrenched disadvantage outlined above, many Indigenous Australians (especially living in remote locations) fail to meet core credit assessment methods:

1. 'Character' being a borrower's proven track record in being able to manage their finances;
2. 'Capacity' being a borrower's proven track record in being able to manage their finances;
3. 'Collateral' referring to the borrower's security for the proposed loan;
4. 'Capital' being the amount of equity a borrower can provide upfront towards a transaction; and
5. 'Conditions' being the terms on which the lending is undertaken.

In the case of Indigenous Australians, this last point is even more relevant as there may be language barriers that need to be overcome in ensuring a full understanding of the commitment being made when borrowing for home ownership, business, enterprise and economic development. To ensure compliance with responsible lending obligations, banks and other financial institutions will require support from government to enable Indigenous Australians access to finance, such as financial support arrangements (see below). The Government will, therefore, need to play a critical role in creating an enabling environment to attract private investment.

Third, even though home ownership can offer many Australians housing and financial security and wealth creation opportunities, home ownership carries risk and ongoing costs, and other housing options (i.e. renting) may provide better housing solutions that do not involve ongoing financial commitment or personal sacrifice. Nonetheless, in an environment where debt is taken, it is of utmost importance that the borrower fully understands the risks and implications of borrowing, as well as the longevity commonly associated with such financial burdens.

Accordingly, effective education and financial literacy form the foundation of prudent money management skills and ongoing economic participation. Many Indigenous Australians have low levels of education and financial literacy and possess only a very limited understanding of the responsibilities associated with debt and equity and the operation of markets.

Currently, banks provide varying education support and financial literacy programs for Indigenous Australians with regard to home ownership, and more broadly financial and economic participation. There are extensive financial literacy programs and materials available specifically targeted for Indigenous Australians.

What is the role of banking and financial institutions in financing home ownership, businesses and economic development on Indigenous owned land?

While the ABA and our member banks support a comprehensive, collaborative and coordinated commitment to promoting economic and financial opportunity and development, we strongly believe that it is not the role of banks or other financial institutions to create the enabling environment for home ownership and business, enterprise and economic development on Aboriginal land or land where native title rights and interests exist. The creation of this enabling environment is the role of government. That said, banks and financial institutions can play an important role in working with stakeholders to develop appropriate policy and practice approaches to improve outcomes, including supporting programs for raising levels of education, financial literacy and business literacy.

² *National Consumer Credit Protection Act 2009* (Cth).

ABA's key recommendations:**1. Assess product and service offerings**

The ABA believes that the Federal Government should work with banks to assess their product and service offerings with a view of providing products and services which meet Indigenous peoples' needs, banks' commercial interests (including cost recovery, credit assessment and operational risk management, corporate responsibility, etc), banks' legal responsibilities (including responsible lending obligations), and support the Government's Indigenous policies and support programs.

2. Government financial support arrangements

The ABA believes that various forms of financial support should be provided by the Federal Government through Indigenous-targeted and non-targeted strategies, including subsidies (i.e. mortgage protection, insurance, deposit), security guarantees, no and low interest loan schemes, interest repayment support schemes, rebates for real estate transaction costs, tax incentives for home savings accounts, first home buyer's grant, rent to buy and shared equity schemes, cost neutral refinancing options to transfer loans from the IBA home loans program to mainstream banks and other financial institutions, and additional investment in IBA Split Loans program.

3. Supporting mechanisms

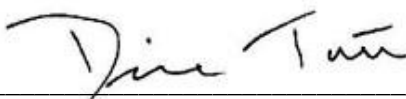
To ensure a multi-faceted approach is provided and the enabling environment is complete, the ABA believes that support mechanisms could be provided by the Federal Government in partnership with banks and other financial institutions, businesses and community organisations, including education and financial literacy programs, business enterprise support activities, home purchaser counselling services, financial counselling services, money management and business mentoring programs, mortgage broker management services, community capacity building support activities, and cultural awareness programs.

Concluding remarks

The ABA believes that financial and economic opportunity and development for Indigenous peoples and communities will take a comprehensive, collaborative and coordinated commitment. A new national Indigenous financial and economic strategy should be developed by COAG identifying partnership pilot programs to explore possibilities, facilitate progress and take account of the different needs and circumstances of Indigenous peoples and communities across Australia. We would be pleased to work with the COAG on identifying appropriate partnership pilot programs to be included in a new national strategy.

The ABA appreciates the opportunity to contribute to this consultation process. We would be pleased to discuss our submission with you further. If you have any questions or would like to arrange a meeting, please contact Ms Lena Rizk on (02) 8298 0419: lrizk@bankers.asn.au.

Yours sincerely,



Diane Tate