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Mr Wayne Bergmann
Chairman
Expert Indigenous Working Group
COAG Investigation into Indigenous land administration and use
Parliament House
CANBERRA ACT 2600

By Email: EIWGsecretariat@pmc.gov.au

Dear Mr Bergmann

COAG Investigation into land administration and use

Thank you for the invitation to make a submission to the Expert Indigenous Working Group. Central Desert Native Title Services (Central Desert) board see the COAG investigation into land administration and use as a timely opportunity to bring some attention to a significant area of growth and potential in our post determination operations and one in need of some fresh thinking and innovation.

I note that the Senior Officers Working Group will focus its investigation and advice on improving the Indigenous land legislative, regulatory, administrative and operational systems and processes to:

- enable Indigenous land owners to derive economic benefits from their land
- enable jobs and economic advancement for Indigenous peoples
- enable Indigenous home ownership and commercial enterprise
- attract private sector investment and finance
- develop industries and businesses support service delivery and infrastructure investment.

In the remote central desert region of Western Australia it is well established that Indigenous employment, job creation and economic development is one of the most pressing needs. This need is articulated by individuals, communities, businesses and governments alike. The factors that inhibit employment progress, economic development and job creation in remote desert regions are common across the many communities that are currently serviced by Central Desert and include such well established factors as high levels of unemployment (65%, Forrest report p. 7), welfare dependency and a lack of personal and work readiness skills.

Our experience has shown that competitive, local enterprises can be tailored to fit remote Australia's market opportunities and can be developed to leverage the skills, resources and drivers of Indigenous Australians in remote regions.

In the Central Desert region there is more than 21 million ha of land under Indigenous ownership that is managed through partnerships between Indigenous, private and public organisations with overlapping interests. Local Indigenous job creation and enterprises are currently being explored and developed at the points where these interests intersect, such as:

- Indigenous mining and environmental compliance contracting,
- recovery of landscapes for ecological and pastoral productivity purposes,
- increasing domestic and international tourism in the desert and the management of visitor impacts,
- protecting Australia's biodiversity, and
- the protection of places of national environmental and cultural significance.

Government investment has a critical role to play

Indigenous land managers in the central desert region are engaged on a number of fronts with stakeholders/clients who desire to procure local, quality and cost effective land management services. For many remote Indigenous people, this is or can be their first engagement with the employment and enterprise economy. For most investors with interests in the region this lack of work readiness is an obstacle and a significant risk.

Australian government investment through programmes such as the Indigenous Protected Area (IPA), Working on Country (WOC) and Caring for our Country (CfoC) play an important role in supporting Indigenous people's engagement in the economy by providing training and meaningful job opportunities on their land. At the individual level, these programmes often enable people who are either long term unemployed or never before employed to build life and job skills that give them the confidence and capacity to go on to become employed as community-based rangers, or indeed go on to other 'mainstream' employment opportunities.

At the community and/or organisational level, investment through these programmes builds the capacity for the communities/organisations to become 'contract ready' and to take advantage of commercial opportunities as they arise on their lands. For instance, a ranger team that started out in Wiluna working on a series of small natural resource management projects (supported by IPA and CfoC programmes), has gone on to secure fee-for-service contracts with a local mining company to deliver environmental compliance services and with a State Government agency (Parks and Wildlife) to deliver biodiversity conservation services. These Australian government programmes have played a critical role in enabling these opportunities and continue to play an important co-investment role to build the long-term financial viability of the ranger team.

From Central Desert's perspective the State of Western Australia (the State) is in a prime position to provide strong leadership in offering opportunities that could further build capacity in the indigenous workforce and bring people to an industry standard work and contract readiness. The combination of the State's substantial land management and environmental compliance responsibilities and the strong desire for creating natural resource management (or ranger) employment opportunities in regional Indigenous communities provides a recipe for some innovative reinvestment of State resources into the procurement of services from local ranger teams to deliver on these responsibilities.

The mining industry has already seen the wisdom in investing in local Indigenous workforces, with the expectation that a local workforce will be cost-effective relative to fly-in fly-out options. An example of this is the Northern Star Recourses Limited (ex Newmont Gold) Jundee project which has been running successfully and consistently since 2011. This project has attracted UN recognition for human rights best practice in the resource industry and was runner up in the Department of Minerals and Petroleum Golden Gecko Awards for Environmental Excellence in 2013.

Success at Jundee has only been possible due to an employment model that partners with State and Federal agencies and others to provide a pathway to industry standard work readiness and provides support for workers to meet their cultural obligations concurrently and without conflict with their contractual obligations. From this success, the framework is being applied at another Northern Star mine, in partnership with Central Desert and the Department of Prime Minister and Cabinet.

There is a grass roots demand for investment in ranger groups and associated programmes. Building the skills and capacities needed to deliver these services to agreed standards is an investment in:

- 'closing the gap' in regional Indigenous communities;
- long term efficiencies in the delivery of more effective land management and environmental compliance services to the people of Western Australia; and
- developing a workforce and stabilising an economy in areas where both of those elements have been too long neglected.

Supply Nation and the Indigenous Procurement Initiative are positive actions supporting economic development for Indigenous people at a national level. At a State level, the inclusion of Indigenous land management procurement targets for delivery on the State's land responsibilities and obligations would go a long way towards supporting sustainable remote area economies, addressing closing the gap targets and invigorating the spirit of those often ostracized and currently targeted remote communities.

Central Desert developed a paper for the WA Alliance of Rep Bodies which was presented to Premier Colin Barnett in 2013. The paper offers a model through which the State could procure services from ranger groups to address a range of its statutory obligations. The paper can be provided to your working group if required.

Commercial use of natural resources

With regards to enabling Indigenous land owners to derive economic benefits from their land there are several areas that could be considered. The State's fierce opposition to various matters in the native title determination process seem to run counter to its rhetoric on wanting to support economic development for Indigenous land owners.

Seeking to insist, for example, that traditional resources cannot be used for commercial purposes where determinations reached under prior governments were silent on the matter, is a clear obstacle in the path of Indigenous economic development. Further, our organisation's view is that the current approach of the State Government to insist upon native title rights in relation to resources being something akin to subsistence appears to be based upon policy, not upon the evidence provided by native title claimants or upon clear native title jurisprudence.

On an administrative level there is an obstacle for Indigenous land owners around sandalwood harvesting that needs consideration and is being contemplated by the State.

"The Inquiry into the Sandalwood Industry in Western Australia" (Report 35 of the WA Parliament's Standing Committee on the Environment and Public Affairs) says that the harvesting of sandalwood is subject to volume restrictions imposed by Order in Council. The last Order was published in November 1996 and fixed the total harvest at 3,000 tonnes per financial year. This was split equally between green and dead timber. There is also an inter-agency agreement between the Forest Products Commission (FPC) and the Department of Parks and Wildlife (DPaW) which sets the amount that can be harvested from Crown Land at 2,700 tonnes and from 'private' land at 300 tonnes.

Central Desert suggests that this allocation of harvesting between Crown and private land has been set, in the past, with the underlying assumption that land subject to native title claims or that are determined native title land, falls into the 'Crown Land' category.

Central Desert and the WA Department of Lands are working jointly to have the Birriliburu native title determined area become "private land" for the purposes of sandalwood harvesting using a specific purpose lease and an underlying Indigenous Land Use Agreement (ILUA). Central Desert contends that this should not actually be necessary and that native title determination areas should be seen as 'private land'. However, and without prejudice, Central Desert is working within current WA government policies.

The issue is that an area the size of the Republic of Ireland will move from Crown Land to private property. Central Desert believes that it is appropriate for the inter-agency agreement between FPC and DPaW to be reviewed as a result.

We argue that if Indigenous communities are able to exploit resources within their determined land there will be a range of benefits, all of which meet the stated aims of the Commonwealth and State Governments – jobs, economic engagement, conservation, cultural enhancement and health.

It would appear to be an unintended consequence that large areas of land become private land for the purposes of harvesting sandalwood and that Indigenous people are then even less able to access sandalwood as a resource because of the tight restriction on private land harvesting and no access to Crown land sandalwood.

In other words, if a significant area of 'Crown land' with sandalwood resources growing on it moves into the 'private' estate, a corresponding amount of interagency allocation should follow. This allows more indigenous people to engage in the activity at commercially viable return rates. This would also help to reduce sandalwood poaching as local people begin to manage their own estate.

Having entrepreneurial Indigenous land owners establish sandalwood or similar enterprises opens further opportunities for them to then contract their local ranger teams to provide services in relation to their environmental and other obligations, thus broadening and strengthening the local economy.

The financial, emotional and opportunity cost of native title related litigation

For the people whose native title was extinguished by the vesting of the Gibson Desert Nature Reserve (GDNR) the State ceased negotiations in 2008 that were close to seeing ownership of the land returned to the group and the group jointly managing the GDNR with the State; a valuable social, cultural and economic opportunity significantly delayed if not lost. The State's rationale was not unreasonable at a policy level in that they wanted to use the GDNR as a sound test case to clarify some law around compensation.

The State, however, went on to seek, and were successful in submitting very late in the proceedings, evidence contending that the native title right of exclusive possession, use and occupation had been extinguished prior to the vesting of the nature reserve. If the Court finds in the State's favour the value of the claim as a test case is hugely diminished and the compensation application would proceed upon a substantially different basis than what was originally anticipated. The vast resources invested (and potentially wasted) in the case so far by the State and the Commonwealth (through the Court, as a respondent and through the native title programme) could have gone towards mediating or negotiating a settlement focused in part on economic development for the affected traditional owners, but has instead gone mostly towards an adversarial contest.

The biggest loser is again the Aboriginal community stuck in the middle of the process, who time and time again almost get on their feet only to be knocked down again by the process designed to help them.

In conclusion

Central Desert submits this paper as a range of issues for consideration. Given the short turn around for this submission it is not a conclusive list but covers the major topics that are at the fore of our attention. I reiterate the Central Desert Board's appreciation for the opportunity to make a submission. If you have any further questions or need any clarification please contact our Chief Executive, Mr Ian Rawlings, on 08 9425 2000 or at ianrawlings@centraldesert.org.au

Yours sincerely



TERRY GROSE
CHAIRMAN