



## Indigenous perspectives on land and land use

If a group's traditional country is not in a mining area they escape the injury to country that mining represents but have little opportunity to really develop industry and commerce that could support their communities.<sup>1</sup>

During 2005 and 2006 the Australian Government argued the need for reform to policies and legislations governing Indigenous land tenures. Arguing that Indigenous land has done little to improve the material wealth and well-being of its residents, the Government's proposed a regime to subdivide communal land into individual lease lots and to encourage home ownership and business enterprise. The Government argued that increases in enterprise would have a positive flow-on effect and improve employment opportunities for Indigenous residents.

Markedly absent from this debate has been the perspectives of traditional land owners.

This Chapter puts the views of traditional owners regarding the uses and purposes of their land and seas. This Chapter also contains information about traditional owners' views on economic development and their capacity to engage in economic projects and agreements. Information and data for this Chapter is substantially sourced from a national survey conducted by the Human Rights and Equal Opportunity Commission (HREOC) during 2006.

While the majority of responses to this survey were from traditional owners and their representatives, HREOC also received responses from Indigenous people who live on land that is not theirs traditionally. Their views are also represented in this Chapter.

## Australian traditional land owners and 'historical' people on the Indigenous estate

Indigenous traditional land owners are groups of people who have traditional connections to geographical regions of Australia's land and sea. Traditional owners demonstrate traditional connection to land and sea through their association with, and knowledge of, the landscape and sites of cultural significance. Traditional owners may acknowledge, observe and practice traditional laws and customs of their region. Knowledge of the Indigenous languages of the geographic region

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<sup>1</sup> North Queensland Land Council Native Title Representative Body Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.



is also an identifier of traditional connection to a region. Traditional owners are identified by their connection or affiliation to ancestors who existed in geographic regions at the time of contact with the European settlers.

Many dispossessed Indigenous Australians live on country that is not theirs traditionally. The successive waves of white settlement and of hostile and then protectionist policies mean that large numbers of Indigenous people have not lived on their traditional lands for generations. Some people were moved into missions that have now become Indigenous townships, and others moved to areas where services such as housing, employment, health and education were more readily available.

In non urban environments, the dispossessed groups of people who live on another tribe's land are referred to as 'historical' people. Historical people have varying rights to the land under land rights statutes according to the jurisdiction in which they live. In the Northern Territory under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) for example, historical people must be consulted about development on land, but cannot veto proposals. In New South Wales, Aboriginal people do not have to prove historical connection to the land in order to claim vacant Crown land under the *Aboriginal Land Rights Act 1983*. Ability to claim land is based on membership of a local Aboriginal land council and residency or association with the area.<sup>2</sup>

## The survey

In May 2006 HREOC sent a survey to traditional land owners and their representative bodies designed to elicit information about their experiences and views regarding economic development on their land. The survey covered the following:

- priorities for / aspirations of / communities, and barriers to their effective participation, in economic development;
- the involvement of different organisations and stakeholders;
- access to funding and resources; and
- negotiations regarding Indigenous Land Use Agreements (ILUAs), Future Acts, Shared Responsibility Agreements (SRAs) and Regional Partnership Agreements (RPAs).

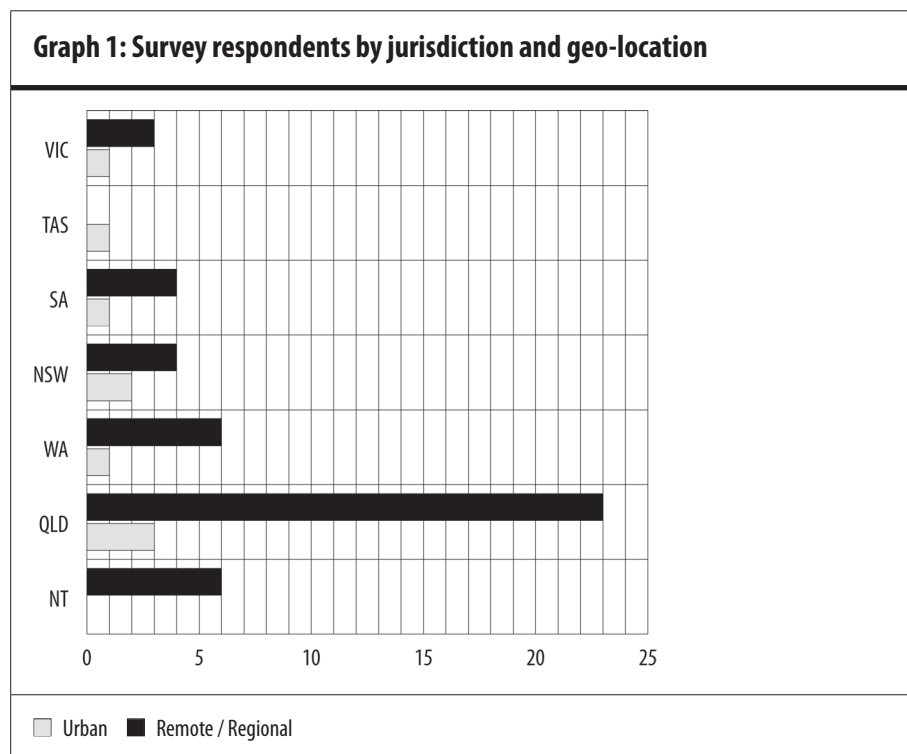
The recipients of the survey included all entities with responsibility to hold, manage and progress land under Indigenous title. These entities included Native Title Representative Bodies and Native Title Services organisations, Land Councils, Community/Shire Councils, Prescribed Bodies Corporate and Indigenous Corporations. Each entity was asked to seek the views of traditional owners represented by their organisation by (a) encouraging individual traditional owners to fill out surveys, and (b) by seeking the endorsement of traditional owners before submitting a response on their behalf in the name of the representative entity. In some instances, we received responses from entities that were representatives of Indigenous people on land, but not necessarily traditional owners. This is represented in the survey data.

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<sup>2</sup> *Aboriginal Land Rights Act 1983* (NSW), ss53-54, available online [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/alra1983201/s54.html](http://www.austlii.edu.au/au/legis/nsw/consol_act/alra1983201/s54.html), accessed 13 December 2006.



HREOC received 54 survey responses in total. There were a disproportionately high number of responses from Queensland and this may be explained by the greater number of NTRB organisations in Queensland compared with other states.<sup>3</sup> In addition, NTRBs have statutory reporting responsibilities under the *Native Title Act 1993* (Cth), whereas land councils are predominantly established as land corporations under state legislations without federal reporting responsibilities.<sup>4</sup> The survey respondent rates also demonstrate higher returns from regional and remote regions, reflecting the location of the Australian Indigenous estate as represented in Graph 1.

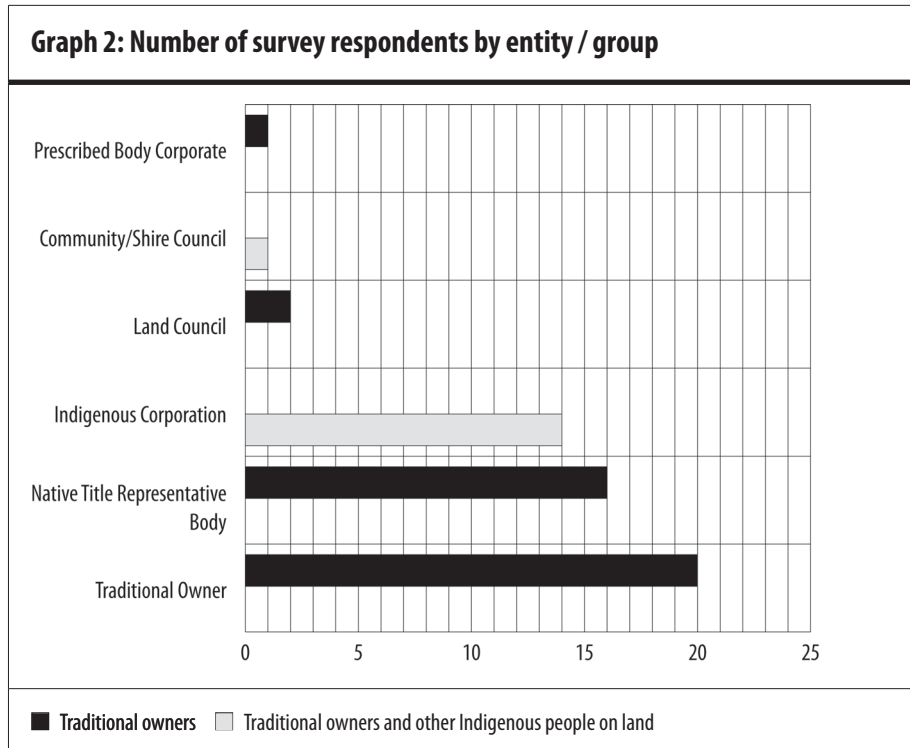


**Source:** HREOC National Survey on Land, Sea and Economic Development 2006 Urban and Regional/Remote definitions based on ARIA<sup>5</sup> definitions.

- 3 There are seven NTRBs in Queensland including the Torres Strait Regional Authority; the highest number in the country. South Australia has one, Western Australia has five, Victoria has one, New South Wales has one, the Northern Territory has two. Neither the Tasmania nor the Australian Capital Territory have NTRBs.
- 4 Two of the four Northern Territory land councils responded to our survey. Both operate as NTRBs, and both identified as NTRBs for the purposes of our survey data. Of the three Prescribed Bodies Corporate who responded to our survey, two identified as NTRBs, one from the Northern Territory and one from Queensland, and both have been recorded as NTRBs in our survey data.
- 5 Geo-locations are identified using the Accessibility/Remoteness Index of Australia (ARIA). Urban areas include the Mainland State Capital City regions (ABS Statistical Divisions) and major urban Statistical Districts (those with populations of  $\geq 100,000$ ). This includes Sydney, Melbourne, Brisbane, Adelaide, Perth, ACT-Queanbeyan, Cairns, Gold Coast-Tweed, Geelong, Hobart, Newcastle, Sunshine Coast, Townsville and Wollongong. Regional zones include provincial city Statistical Districts plus Darwin Statistical Division and other provincial areas (ABS Collection District ARIA Plus score  $\leq 5.92$ ), with populations  $< 100,000$ . Remote zones consist of those areas with a CD ARIA Plus score of  $> 5.92$  and  $\leq 10.53$ .



Graph 2 illustrates the groupings of the survey respondents. A large majority of respondents were traditional owners. Graph 2 separates Indigenous Corporations and Community Shire Councils from the traditional owner responses because while they represent traditional owners, their role is not exclusive to that purpose and therefore they are not counted as traditional owners in our data.



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

In June of 2006 there were a total of 18 Native Title Representative Bodies and Native Title Services<sup>6</sup> (hereon NTRBs) in Australia. We received responses from all but two of the NTRBs. In May 2006 there were 46 registered Prescribed Bodies Corporate (PBCs) in Australia. We received only one response from a PBC despite consistent efforts to engage them. The poor response rate from PBCs is likely due to the fact that so few have staff and the capacity to respond.

<sup>6</sup> Native Title Representative Bodies and Native Title Service responses have been grouped together under NTRB responses.



NTRBs, PBCs and Land Councils were required to obtain authorisation of their survey responses from the traditional owners they represent.<sup>7</sup> Along with the traditional owners who provided direct responses to this survey, they collectively constitute the traditional owner responses. We did not receive a representative number of survey responses from land councils.

While the overall number of survey returns is not great, the proportion of responses based on the number of functional land organisations suggests that some early conclusions can be drawn from the data.

## Parameters of economic development

The focus of our survey was to assess Indigenous economic activity on Indigenous land tenures. Economic activity can be wide-ranging, including government funded enterprise agreements, multi million dollar private enterprises, small businesses incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth), and Indigenous joint venture projects with non Indigenous partners. While a large proportion of all Indigenous enterprise activity in Australia occurs in urban environments, this report focuses on agreements and development on Indigenous land under communal title, and therefore the context is predominantly remote.

According to the Productivity Commission, in 2005, 'Indigenous owned or controlled land comprised 21.4 percent of the land area of very remote Australia in 2005, but 0.1 percent of the area of inner regional areas and 0.2 percent of the area of major cities.'<sup>8</sup> In 2005 Indigenous Australians owned or controlled 15.9 percent of the Australian land mass. In 2006, the total area has increased to 19.8 percent.

Data in this Chapter provides a picture of the extent of understanding that traditional owners and others have of economic development and their views about its potential on their land.

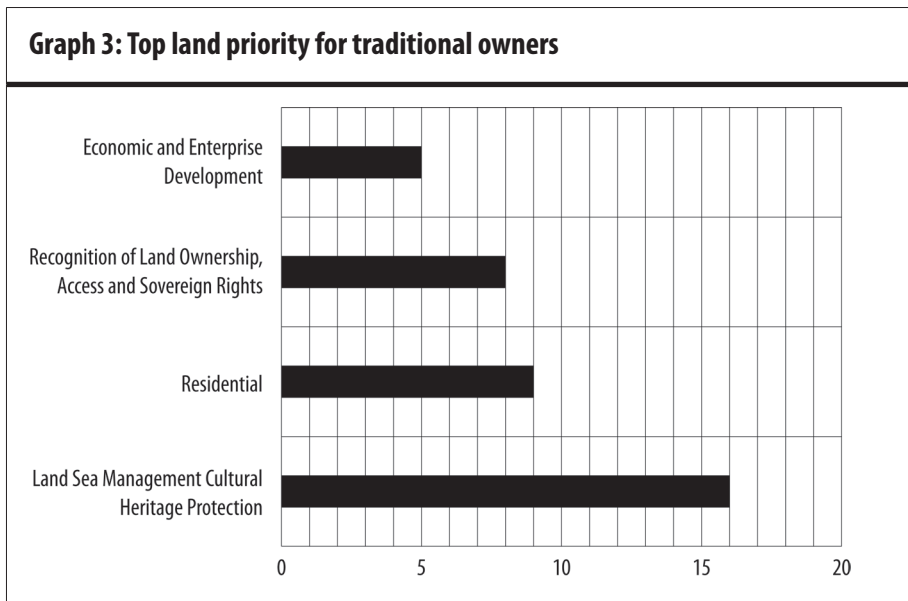
## The uses and purposes for Indigenous land

Traditional land owners were asked to identify their most important priority for their land. Graph 3 illustrates these priorities.

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7 Note: Representative bodies including NTRBs, NTSs, Land Councils and PBCs were asked to confirm that the viewpoints presented in survey responses were endorsed by traditional owners in their representative capacities.

8 Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage, Key Indicators 2005 Report*, Productivity Commission, Canberra, para 11.26.



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

According to our survey findings, above all other roles, traditional owners are most likely to identify as the custodians and the managers of their land and seas. This means that for the majority, the importance of caring for land, living on land, and the recognition of ownership of land and seas has priority above all other purposes and activity.

The traditional owner priorities for land are a significant finding. They demonstrate a majority of traditional owners are not likely to share the Australian Government's agenda for economic development as a first priority for their land.<sup>9</sup> In fact, out of 39 traditional owner survey responses, only 5 respondents, less than 13 percent, identified economic development as a first priority for land.

Economic development is an important tool in which to gain self determination and independence, but it should not come at the expense of the collective identity and responsibilities to your traditions, nor the decline in health of your country.<sup>10</sup>

This primary affiliation to land is consistent with the original intentions of the land rights and native title regimes as set out in my *Native Title Report 2005*.<sup>11</sup>

The priorities of traditional owners suggest a potential disjunction between the aims of traditional owners and those of the Australian Government. While this survey can only provide some preliminary findings, it raises questions about how well appraised government and traditional owners are of each others' position. Significant differences in land priorities could compromise objectives and out-

9 Chapter 2 of this Report outlines the Australian Government reforms to Indigenous policy and legislation to facilitate economic and enterprise development.

10 Traditional owner from the Yorta Yorta Nation Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

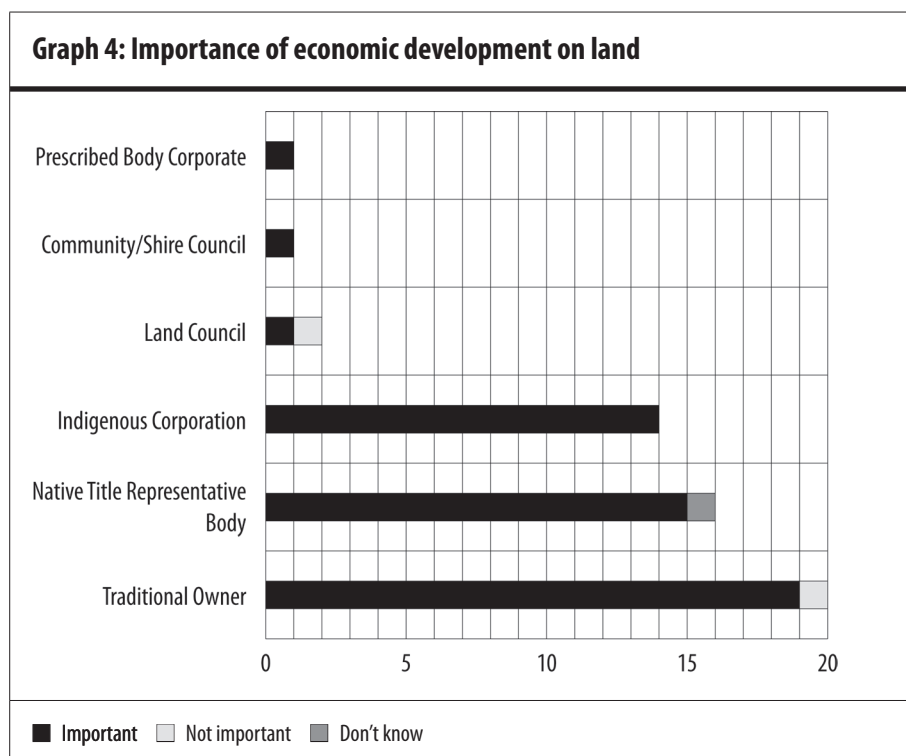
11 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2005*, Human Rights and Equal Opportunity Commission, Sydney 2005, pp14-30.



comes for both groups and highlights the need for appropriate communication and discussion about government policies at the outset.

## Economic development on Indigenous land

Even though the majority of traditional owners did not identify economic development as their first priority for land, they overwhelmingly acknowledged its importance. Graph 4 provides this data by survey respondent group.<sup>12</sup>



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

The importance of economic development on Indigenous land is a significant finding. However, while survey respondents were positive about enterprise development, the majority described a lack of capacity to develop ideas into action.

[We have no enterprise] as yet but have plans and need support to develop the ideas. We would like to develop fishing, aquaculture and tourism ventures. We need a management plan to include these ideas.<sup>13</sup>

12 Native Title Representative Body, Prescribed Body Corporate and Land Council Groups all represent traditional owners. Other survey respondent groups such as Community Councils and Incorporated Bodies represent Indigenous constituents who may or may not be traditional owners. They are therefore separated from traditional owners in the survey findings.

13 Traditional owner of the Umpila territories, Cape York, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.



The capacity to participate in agreements and to mobilise resources is an essential requirement to realise land aspirations and objectives.

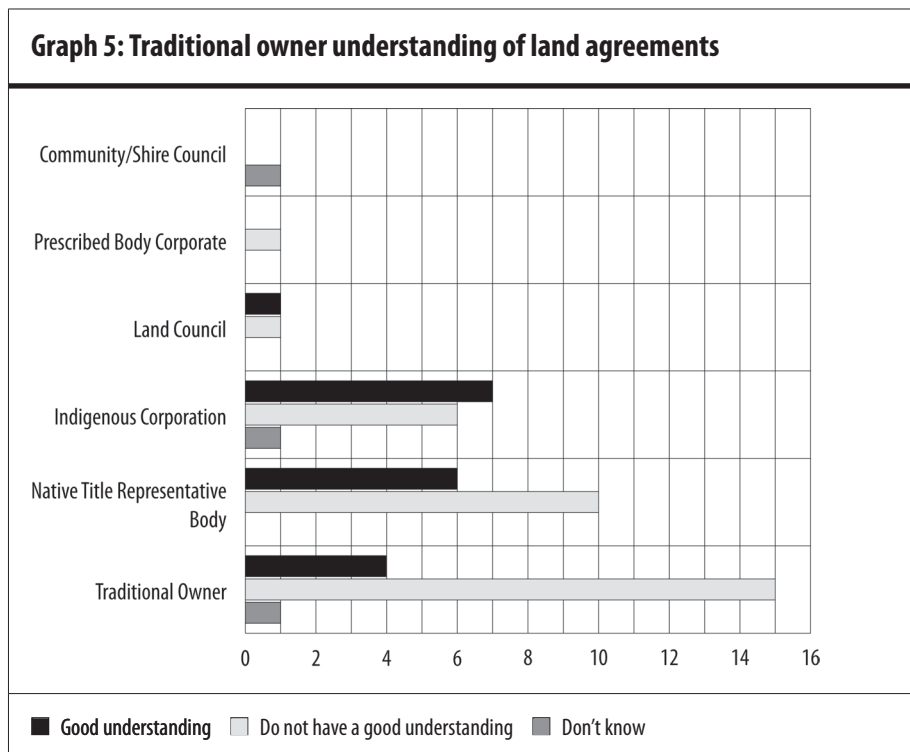
## Capacity to engage in agreement making and economic development

Our survey questions were designed to identify the degree of traditional owner understanding of the policy and legislative contexts of land agreements, as well as ascertaining the extent of their knowledge about programs and funding to support land agreements.

Under the native title regime for example, traditional owners can be parties to Indigenous Land Use Agreements. The extent of their knowledge of the working of these agreements can have bearing on the extent of leverage they obtain in meeting the needs of their family groups and broader communities. In order to be able to obtain every benefit from agreements, it is essential to have an understanding of their potential and their limits.

Major development is occurring on our traditional lands in one of the fastest growing regions in the world.<sup>14</sup>

Our survey results demonstrate that the majority of traditional owners do not have a good understanding of land agreements as illustrated in Graph 5.



Source: HREOC National Survey on Land, Sea and Economic Development 2006.

14 Traditional owner of the Gubbi Gubbi and Butchulla territories, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.





Given the findings represented by Graph 5, it is highly likely that a majority of traditional owners cannot confidently participate in negotiations. This inevitably places limitations on their ability to leverage opportunities. Graph 5 also demonstrates that representative bodies are more likely to assume that traditional owners have a good understanding of land agreements than the traditional owners are likely to claim for themselves.

Only 25 percent of traditional owner respondents claimed an understanding of agreements, while 60 percent of their NTRB representatives claimed that traditional owners were able to understand agreements. This raises questions about the extent to which traditional owners are able to give informed consent to land decisions and whether their representatives are aware of their level of comprehension. These factors impact on the longer term commitment to agreements.

Stop giving us tonnes of paperwork that we don't understand, put it clearly in simplified plain English, otherwise people sign on the dotted line without understanding what they're signing to.<sup>15</sup>

Another survey respondent noted that poor experiences can lead to disillusionment and withdrawal.

[The] uncertainty about government processes and requirements is overwhelming for people, and over the top of people's heads, including the lawyers. People want the outcomes and are not really worried about the drawn out processes involved. Bad experiences have led to people not wanting to be involved.<sup>16</sup>

Traditional owners and their representative entities were asked to identify the three most significant factors preventing their understanding of land agreements. Graph 6 illustrates these findings.

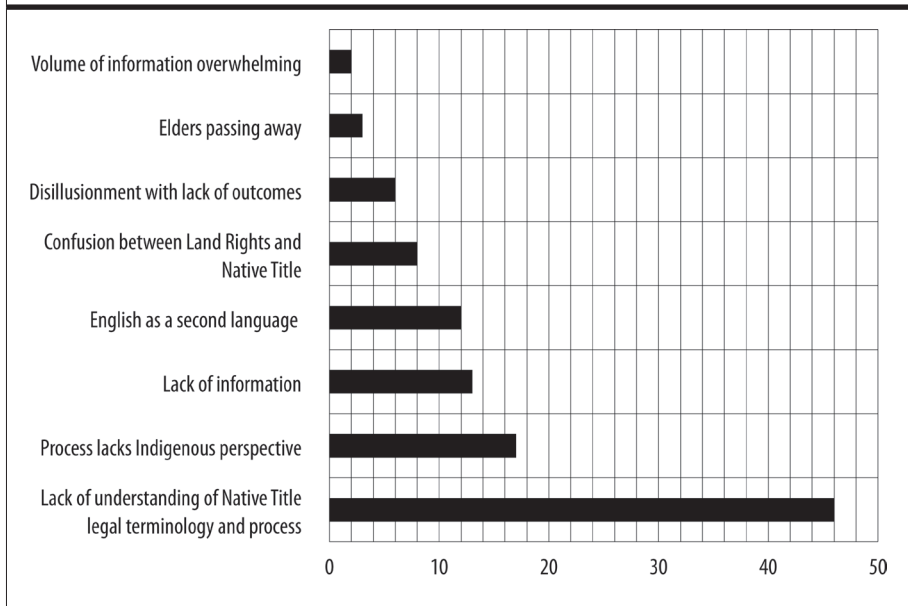
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15 Traditional owner from North Queensland (not specified), Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

16 Traditional owner of the Bega Local Aboriginal Land Council area, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.



**Graph 6: Top three reasons preventing traditional owners from understanding land agreements**



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

Graph 6 demonstrates that the complex and technical terminology of native title and land rights impedes understanding and prevents informed participation. Almost all respondents cited some form of difficulty in understanding agreements.

We need them to explain the legal process.<sup>17</sup>

[We do] not understand state verses Commonwealth processes. [We do] not understand the different processes and acts. What is native title? The Aboriginal Land Act was set up by lawyers and anthropologists for lawyers and anthropologists, only the professionals can understand it - the lawyers and anthropologists become the gatekeepers and owners of our knowledge, they run everything on our behalf.<sup>18</sup>

We need clear explanations of matters of law, anthropology and political development...The procedures are unfair and biased against Indigenous people. Our people are misled and individuals are paid off to act outside our social and decision-making structures.<sup>19</sup>

The following survey comment from the Eidsvold Wakka Wakka Aboriginal Corporation represents a common view from Indigenous organisations:

17 Traditional owner of the Juru/Gia People from Bowen to St Helens; traditional owner of the Ngaro People from Whitsunday Islands; traditional owner of the Kaanju people of Cape York: Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.

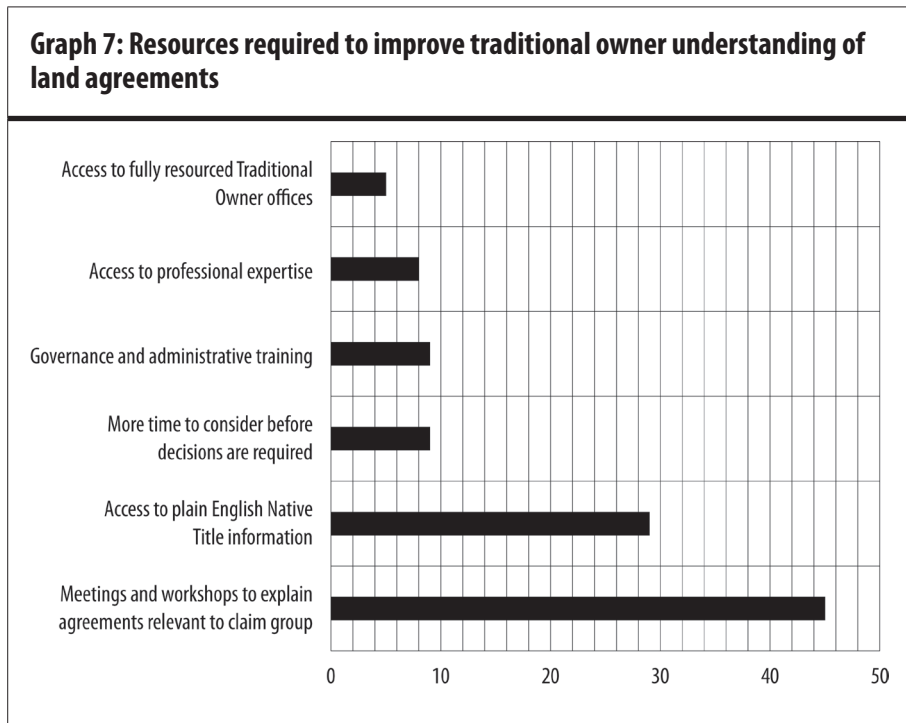
18 Traditional owner of the Umpila territories, Cape York, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.

19 Traditional owner of the Gubbi Gubbi and Butchulla territories, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.



## Improving participation in economic development

Traditional owners and their representatives were asked to identify resources that would assist in overcoming impediments to their participation in land agreements. The responses to these questions provide a mirror image to the impediments. Information and explanation is the key to overcoming the shortcomings as illustrated in Graph 7.



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

According to a number of survey comments, time constraints and the large number of matters that need to be resolved in any meeting mean that representative bodies are not able to adequately explain agreements to traditional owners.

It is very difficult to comply with all of the myriad requirements of funders, courts, the State, other parties as well as spending time on explaining processes to traditional owners. The terminology and concepts are also often very difficult to convey in culturally appropriate ways, with most meetings and discussions having long agendas and little time to spend on detailed discussions.<sup>21</sup>

20 Eidsvold Wakka Wakka Aboriginal Corporation, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.

21 Cape York Land Council Aboriginal Corporation, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.

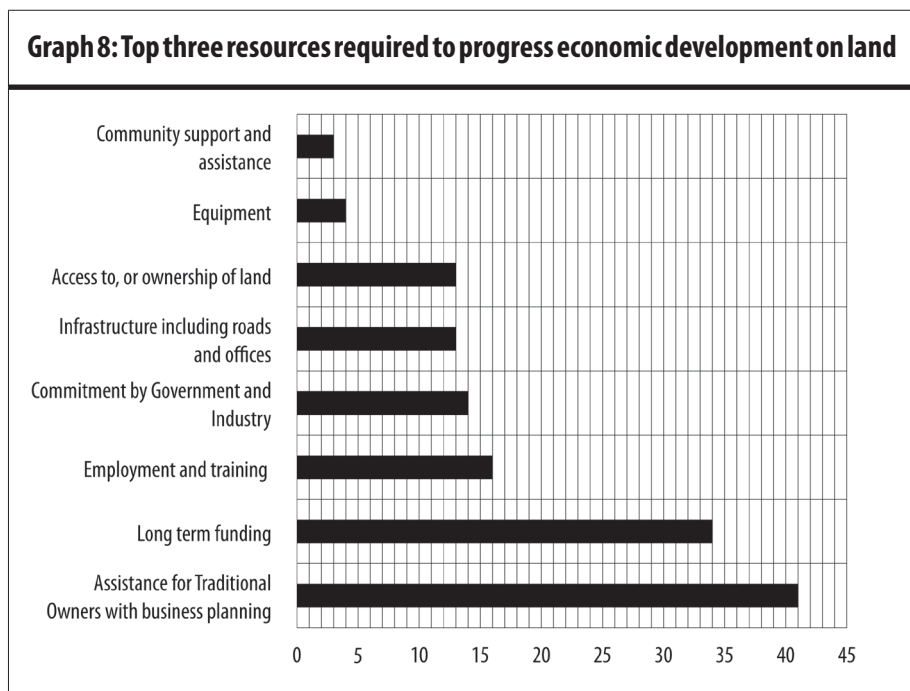


It is evident from these survey findings that an information campaign is required to improve traditional owner understanding of land regimes and their associated agreement requirements. According to a number of survey comments from traditional owners, there is a sense of being in the dark about what is happening on land.

We believe that parties are using our land but we receive no feedback or are not consulted. We need more consultation from representatives.<sup>22</sup>

Our native title claim is in progress. An anthropologist came to our land. We are not being told what is happening – people do things and we don't know what is happening. There's economic development (mining) happening on our land, and we don't know whether there are leasing monies coming to us.<sup>23</sup>

Survey respondents were asked to nominate the three most important resources required to progress development on land. Graph 8 provides their responses.



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

The need for assistance with business planning is a strong survey finding. Respondents argued that they need skilled personnel, as well as training and funding to progress their economic aspirations. A common comment from survey respondents describes a problem with turnover of qualified staff.

22 Traditional owner of the Wakka Wakka territory, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.

23 Traditional owner of the Ngawn territory, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.



[There is] too much turnover of lawyers and genealogists, and every time they go there's a new person and they are starting from scratch. This slows things down because the new guy has to learn about things, and he has been taught in a different way so he can't follow the work of the last guy.<sup>24</sup>

An economic base is required for any enterprise. Thirty nine percent of survey responses identified funding, or an income source, as one of the top priorities to progress and support development on land.

Survey respondents also identified infrastructure as a major requirement for economic development, including roads, offices, equipment and capital. The lack of infrastructure in remote locations of Australia must not be underestimated in any discussion about economic development.

Infrastructure is needed badly. Our capacity is limited to volunteer work and no professional assistance.<sup>25</sup>

Some survey respondents identified land ownership as a precondition for economic development. For those native title holders with limited rights to land, economic development may not be an option afforded by tenure rights. According to the NSW Native Title Services, the three most important requirements for economic development are as follows:

Increased funding and willingness for State Government to purchase or compulsorily acquire land which can form part of a settlement with native title claimants, specifically freehold grants to traditional owners. Legislative changes to provide a mechanism to grant land directly to traditional owner corporations would support and simplify this process.

Increased funding and willingness of state governments to develop settlements with traditional owners which are creative in the range of settlement options provided including matters such as the grant of commercial fishing licenses and water shares.

And, increased funding for personnel and infrastructure to build the capacity of traditional owners to pursue and progress their economic interests on land and water.<sup>26</sup>

## Accessing the funds and resources to progress economic development

As part of our survey, respondents were asked to identify the sources from which they obtained funding from a list of Australian Government department funding bodies including the Indigenous Land Corporation and Indigenous Business Australia.<sup>27</sup> The list of funding bodies is contained at Appendix 2 of this Report. The survey responses illustrated that some NTRBs are not accessing these funds. One traditional owner commented:

24 Traditional owner of North Queensland territory (not specified), Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

25 Traditional owner of Gubbi Gubbi and Butchulla territories, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

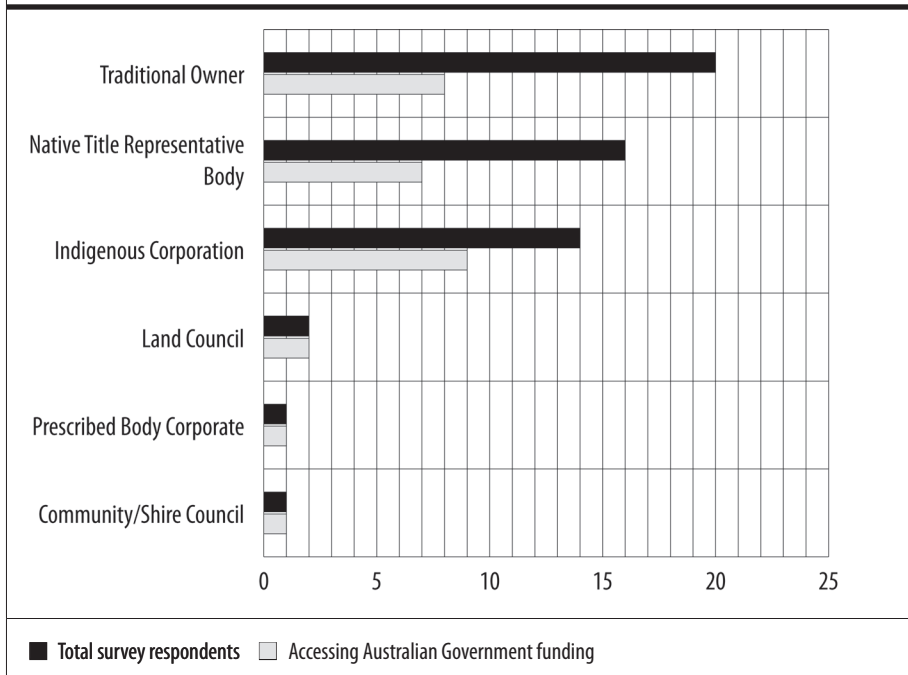
26 NSW Native Title Services Ltd, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

27 National Native Title Tribunal, *Guide to Australian Government Funding Sources, 2005*.



We did not know there were so many potential funders and we live in Victoria, what about those people in remote communities? It is difficult to understand, time consuming to submit to all the different agencies, if we had one regional agreement or treaty over our traditional lands and waters which goes over two states then we would be able to access these departments and have a proper plan that brings in all our aspirations for our people including economic development. We are flat out just protecting our culture and land from getting destroyed.<sup>28</sup>

**Graph 9: Survey respondents accessing Australian Government funding to support initiatives on land compared with total respondent numbers**



**Source:** HREOC National Survey on Land, Sea and Economic Development 2006.

Of the entities and groups with a potential role to progress economic development on land, our survey demonstrated that less than 50 percent of NTRBs and traditional owners were accessing Australian Government funds. While traditional owners as individuals may be less resourced to seek funding, it is concerning that only 44 percent of the NTRB survey respondents are receiving land development funds or funds for projects on land. As we received survey responses from all but two of the NTRBs operating in Australia, these findings are an accurate representation of actual activity.

Survey comments indicate a further limitation on NTRB ability to fund economic development activity. The following responses from representative bodies illustrate

28 Traditional owner from the Yorta Yorta Nation Aboriginal Corporation, Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006.



difficulty in quarantining resources from their operating funds because funding guidelines prescribe statutory activity and excludes others.

The Office of Indigenous Policy Coordination (OIPC) sees the funding we receive as relating to core functions, that is, native title claims. We are restricted in the use of funds and are not allowed to help in collateral ways. Any involvement in securing land or use of land other than by the recognition of native title has to be seen to be as a matter incidental to native title and as part of the negotiation of native title rights.<sup>29</sup>

Native Title Services Victoria (NTSV) has no mandate to manage economic development, but only to resolve native title claims. ILUAs with some economic benefits arise from our responsibilities under the Native Title Act.<sup>30</sup>

The statutory obligations of NTRBs under the *Native Title Act 1993* (Cth) s203BB outline the core functions of representative bodies to:

- (a) research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications; and
- (b) assist registered native title bodies corporate, native title holders and persons who may hold native title (including by representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to the following:
  - (i) native title applications;
  - (ii) future acts;
  - (iii) Indigenous land use agreements or other agreements in relation to native title;
  - (iv) rights of access conferred under this Act or otherwise; and
  - (v) any other matters relating to native title or to the operation of this Act.<sup>31</sup>

While these functions do not preclude other activity, Government funding is linked to these native title functions.

## Indigenous Land Use Agreements

Increasingly the states and territories are promoting ILUAs as a way to achieve outcomes from native title and to provide alternative settlements to native title claims. According to the National Native Title Tribunal, from July 2005 to July 2006 there were 68 ILUA registrations,

the highest ever registered in a reporting period...with [a total of] 250 ILUAs registered on the Register of Indigenous Land Use Agreements at the end of the reporting period.<sup>32</sup>

Table 1 provides the number of lodged and registered ILUAs from July 2005–July 2006.

29 North Queensland Land Council Native Title Representative Body, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

30 Native Title Services Victoria, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

31 *The Native Title Act 1993* (Cth), s203BB.

32 The National Native Title Tribunal, *Annual Report 2005 – 2006*, Commonwealth of Australia, 2006, p72, available online at [http://www.nntt.gov.au/publications/AR\\_20052006/preliminary.asp](http://www.nntt.gov.au/publications/AR_20052006/preliminary.asp), accessed 16 November 2006.



**Table 1: ILUAs lodged or registered by state and territory 2005-06**

ILUAs	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	Total
Lodged	0	1	2	19	4	0	12	4	42
Registered	0	1	34	19	4	0	8	2	68

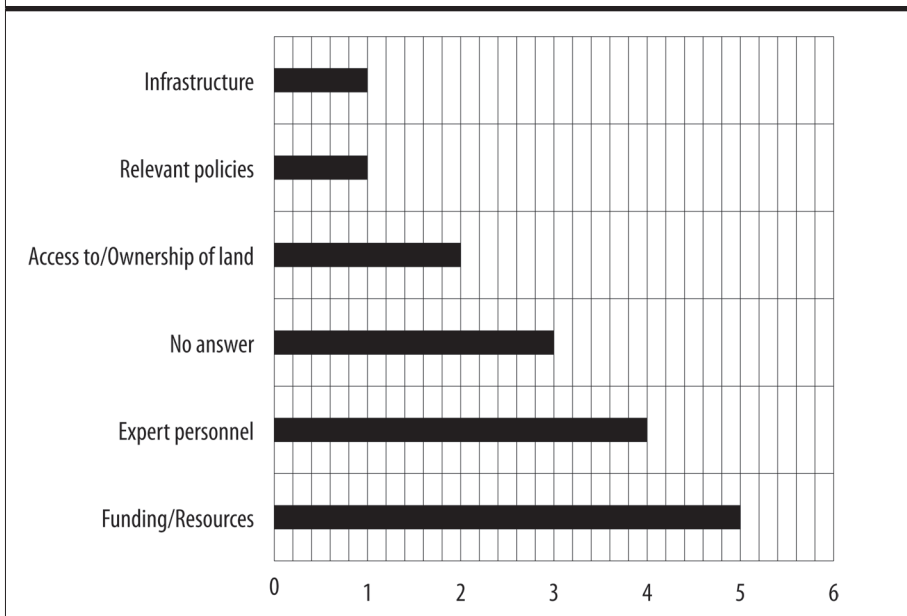
**Source:** *The National Native Title Tribunal Annual Report 2005-2006, p72.*

Our survey respondents were positive about the potential of ILUAs.

ILUAs are empowering Aboriginal people to enter into negotiations and have a say about land use in their claim area. ILUAs in South Australia include capacity building and inclusiveness of the claim group, that is, [the claim group] has ownership of the process.<sup>33</sup>

Overall, while NTRBs are increasing their participation in ILUA agreements the majority of them are not accessing other funds to enhance economic opportunities. NTRB respondents to our survey identified the most important priority for increasing economic development is funding and resources as illustrated by the survey responses in Graph 10.

**Graph 10: NTRB priorities to progress economic development on land**



**Source:** *HREOC National Survey on Land, Sea and Economic Development 2006.*

<sup>33</sup> Aboriginal Legal Rights Movement Native Title Unit, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006.*





The funding NQLC receives is from OIPC and in accordance with our Program Funding Agreement there is no opportunity to assist traditional owner groups with economic development initiatives, this is very frustrating.<sup>34</sup>

The Office of Indigenous Policy Coordination (OIPC) outlines the following parameters for NTRB funding:

Funding to Native Title Representative Bodies (NTRBs) under the Native Title Program (NTP) is not formula driven.

Within the constraints of the funding available within the Native Title Program (\$55.1M in 2006/07 funding year), funding to individual NTRBs is determined on the basis of operational plans developed by NTRBs that identify and cost prioritised native title activities to be progressed in the funding year. Funding is also provided to meet the operational overheads associated with implementing/delivering the funded operational plans. It is open to NTRBs to seek additional funding to meet unforeseen native title matters during the course of the funding year and to seek variations to operational plans to meet emerging/changed priorities.<sup>35</sup>

A further limit to NTRB's capacity to leverage economic opportunities is the high burden of work associated with the future act regime. This is explained in the following survey responses.

Prior to each financial year NTRBs are required to submit an operational plan which reflects what work is to be undertaken regarding the core functions set out in the *Native Title Act 1993* (Cth). The amount of future acts that are received by the North Queensland Land Council (NQLC) is numerous which means meeting with traditional owner groups every day of the week. The NQLC represents up to 30 native title claims in its region, not only is there difficulty in justifying financial resources, but also human professional resources which equate to funding an operation overall.<sup>36</sup>

Most groups consider [economic development] fundamental... [though] funding is insufficient for core functions, let alone economic development activity.<sup>37</sup>

The functioning capacity of each NTRB can have implications for outcomes on land, economic and otherwise.

There is no NTRB for this region. The native title service does not seem to have capacity to operate as an NTRB. The lack of capable NTRB leaves the area open to exploitation without Indigenous people's interests being considered. It is very doubtful the service organisation even has sufficient capacity to deal with future acts let alone land acquisition, land management, socio-cultural development, resource management, economic development.<sup>38</sup>

PBCs have no dedicated source of funding from the Australian Government. The recent 2006 Native Title Act Amendment Bill does not appreciably change this

34 North Queensland Land Council Native Title Representative Body Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

35 Office of Indigenous Policy Coordination, *Correspondence with Aboriginal and Torres Strait Islander Social Justice Commissioner*, Email, 3 June 2006.

36 North Queensland Land Council Native Title Representative Body Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

37 Yamatji Marlpa Barna Baba Maaja Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

38 Foundation for Aboriginal and Islander Research Action, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.



status. PBCs receive assistance from Native Title Representative Bodies to establish and incorporate to the point where they are able to conduct the first annual general meeting. Beyond this, assistance from NTRBs is for functions under s203BB(1)(a) of the NTA that include:

Assisting PBCs in consultations, mediations, negotiations and proceedings relating to the following:

- (i) native title applications
- (ii) future acts
- (iii) Indigenous land use agreements or other agreements in relation to native title
- (iv) rights of access conferred under the NTA or otherwise, and
- (v) any other matters relating to native title or to the operation of the NTA.<sup>39</sup>

Section 58 of the NTA requires Agent Prescribed Bodies Corporate to carry out functions in relation to agreements on behalf of native title holders. A lack of funding currently means that some are not able to operate at the level of responding to future acts.

PBCs are not funded to function... In particular PBCs of groups in areas where there is no mining happening and hence little or no income from mining or other agreements are particularly disadvantaged. They have the legal responsibility of responding to future act notices post determination yet most can't afford a phone line, fax or postage let alone an office, secretary and computer.<sup>40</sup>

In its 2006 report to the Australian government on PBCs<sup>41</sup> the Office of Indigenous Policy Coordination outlined the following:

It should also be recognised that, while a determination of native title rights may offer economic opportunities, many PBCs are unlikely to have a capacity to be self-funding, even over the longer term. In a number of regions subject to native title determinations, there may be few if any future acts proposed that will affect the determined native title for some years. Not all future acts concern economic activities or can offer economic benefit to a PBC. In other regions, however, the extent of future acts may be intensive. While this may impose greater demands on the PBC, it may also offer further avenues of support to meet such demands.<sup>42</sup>

The lack of a reliable source of funding for PBCs is a form of double disadvantage for native title holders on marginal land with no other economic activity. In circumstances where the possibility of an ILUA with an industry group is negligible, there is effectively no source of income for the PBC. Obviously little can occur without a functioning body to represent traditional owners in enterprise development or to access funding for projects on land.

39 Office of Indigenous Policy Coordination, *Structures and Processes of Prescribed Bodies Corporate*, October 2006, p11, available online at [http://www.oipc.gov.au/NTRB\\_Reforms/docs/final-PBCs-report.pdf](http://www.oipc.gov.au/NTRB_Reforms/docs/final-PBCs-report.pdf), accessed 13 December 2006.

40 North Queensland Land Council Native Title Representative Body, *Survey Comment, HREOC National Survey on Land, Sea and Economic Development 2006*.

41 Office of Indigenous Policy Coordination *Structures and Processes of Prescribed Bodies Corporate*, October 2006, available online at [http://www.oipc.gov.au/NTRB\\_Reforms/docs/final-PBCs-report.pdf](http://www.oipc.gov.au/NTRB_Reforms/docs/final-PBCs-report.pdf), accessed 13 December 2006.

42 Office of Indigenous Policy Coordination, *Structures and Processes of Prescribed Bodies Corporate*, October 2006, p17, available online at [http://www.oipc.gov.au/NTRB\\_Reforms/docs/final-PBCs-report.pdf](http://www.oipc.gov.au/NTRB_Reforms/docs/final-PBCs-report.pdf), accessed 13 December 2006.



PBCs continue to be reliant on overburdened NTRBs to initiate ILUAs with government in the absence of other parties. The likelihood of self-initiated economic development activity seems remote given that NTRBs currently claim lack of authority and capacity to do the same.

## Red tape

Survey respondents identified a further obstruction to potential economic activity as onerous administrative obligations.

At one stage the Cape York Land Council were required to respond to three audits in twelve months. This practically put a hold on all other matters while significant human resources and time were directed to the auditing processes. NTRBs are funded to conduct native title business and it is a significant waste of resources to be constantly going through audits rather than conducting the business they are set up to do. These processes then force timelines to be extended and the traditional owners are forced to wait longer for outcomes to their land needs and aspirations.<sup>43</sup>

Ken Henry, the Secretary to the Australian Treasury, comments:

I was struck during a visit to one of the Cape York communities last year, that the principal concern of its leaders was the red tape burden of reporting and compliance arrangements arising from a multiplicity of government intervention programmes and delivery agencies. Compliance with red tape was absorbing all of the administrative capacity of the community. Reducing the red tape burden on indigenous communities must be a national reform priority.<sup>44</sup>

It is difficult to know whether the Cape York situation is an isolated experience, though there is some evidence to suggest otherwise. In 2006 the Australian Government conducted an evaluation into Indigenous administration: *Red Tape Evaluation of Selected Indigenous Communities*. The 22 subjects of the evaluation were not NTRBs but Indigenous Community Councils, local community councils and corporations with amongst other functions, a potential role to support development on Indigenous land. The evaluation found that 'red tape or unreasonable burden is created when applications for funding have to be made every year and when the funding amounts were small. Levels of accountability were not reduced based on the size of the grant.'<sup>45</sup> Administrative and reporting accountability may be one disincentive to accessing Australian Government funding for land development projects.

## Traditional owner capacity

A prominent finding from our survey was the financial and time burden placed on traditional owners to participate in meetings related to land agreements. In circumstances where there is significant mining and other industry activity, this

43 Traditional owner from the Kaanju/Birria Gubba peoples, North Queensland and Cape York regions, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

44 Henry K., (Secretary to the Treasury), 'Managing Prosperity', *Address To The 2006 Economic And Social Outlook Conference*, Melbourne, 2 November 2006.

45 Morgan Disney & Associates Pty Ltd, *Red Tape Evaluation of Selected Indigenous Communities*, May 2006, pp6-7.



can mean regular, even weekly meetings. There is strong incentive for traditional owners to remain informed about activity on their land.

If we have to meet with the Qld government and they don't pay us, we get nothing. Usually we don't get paid at all. I am a single dad of 3 kids, if I have to go away to a meeting, my dad has to mind the kids, and I pay out of my own pocket and I can't afford to do it. It limits what I can do.<sup>46</sup>

Many of our clients suffer from meeting burnout from having to attend meetings and many have difficulty attending due to costs of travel or limited ability to take time off work.<sup>47</sup>

They don't notify us – we are called into meetings, we are asked to make decisions at the meeting – some people might be representing a whole clan and they have to make a decision on the spot. The applicant has to make the decision, there is no steering committee.<sup>48</sup>

In addition to the practical burden of the time and cost of meetings, our survey found that the lack of land management skill and knowledge of traditional owners impedes their capacity to assume the titles of land that is earmarked for divestment. In Western Australia, the majority of Aboriginal land that is currently held in trust for Aboriginal people cannot be divested because trusts do not have the capacity to manage the land.<sup>49</sup>

According to the WA Aboriginal Land Trust Department and the Indigenous Land Corporation, the following are the greatest obstacles to divestment:

1. the poor condition of the land and the requirement for its rehabilitation;
2. the readiness of Aboriginal people to take over the management of the land, including their capacity for governance of the land;
3. the lack of opportunity for economic development on the land because of its very remote location, its distance from markets, its lack of infrastructure and its lack of resources from which to generate income; and
4. the lack of traditional owner trust funds to resource and sustain the ongoing land management requirements, including fire management, feral weed and feral animal control, and water management.<sup>50</sup>

46 Traditional owner from North Queensland (not specified), Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

47 North Queensland Land Council Native Title Representative Body Aboriginal Corporation, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

48 Traditional owner of the Juru/Gia People from Bowen to St Helens, of the Ngaro People from Whitsunday Islands, of the Kaanju people of Cape York, Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.

49 Aboriginal land for divestment in WA includes land purchased by the Indigenous Land Corporation and Aboriginal reserves held by the Native Welfare Department and a number of other State government agencies are vested in the Aboriginal Lands Trust (ALT) under the Aboriginal Affairs Planning Authority Act 1972 (WA).

50 Padgett, A., (Indigenous Land Corporation) and Thomas, R., (Aboriginal Land Trust, Department of Indigenous Affairs, WA) communication with the author, 10 November 2006.



Lack of finance to pay rates, to maintain existing infrastructure, to maintain the land and manage pests and weeds, insurance and other associated costs with land is a problem identified by one Queensland survey respondent:

The Geike Aboriginal Corporation has had the Geike Station purchased back by the Indigenous Land Council. We don't have the deeds to the land but are expected to pay the rates without any funding or ability to develop an income to raise money to cover the costs.<sup>51</sup>

If NTRBs are not funded to carry out activity not strictly prescribed under s203 of the NTA, and if PBCs are lacking access to any form of secure funding, there are some serious concerns about the capacity for native title holders to manage existing land assets.

Our survey demonstrates that there are distinct impediments to economic development for traditional owners and their representative bodies. Despite these impediments, there is potential for governments to harness the interest of traditional owners in economic projects. By utilising the existing land holding governance structures, whether they be native title representative bodies or land councils and land trusts, governments have an opportunity to work in partnership with Indigenous Australians to address some of their key policy objectives.

There is potential for governments to buttress land agreements with employment, education and training initiatives. This may increase Indigenous employment rates and create economically autonomous communities. The case studies in this Report provide examples of how this is being achieved in Australia today.

The Australian Government requires reliable information about traditional owner priorities for land to ensure that its policies are appropriately targeted to achieve mutual objectives. In the same way, traditional owners require information about the Government's strategy in order to make informed decisions about land and future economic opportunities. There is currently no mechanism or communication strategy for this to occur.

## Findings

- 1.1 The most important land priority for traditional owners is custodial responsibilities and capacity to either live on, or access traditional land.
- 1.2 Economic development is welcomed by traditional owners though many lack capacity to develop ideas into enterprise.
- 1.3 There is no consistent and reliable research that identifies the needs and aspirations of traditional owners by location.
- 1.4 A majority of traditional owners do not have a good understanding of the agreements on land.
- 1.5 Entities with responsibility or potential to progress economic development are not funded to do so and have numerous statutory obligations that consume existing time and resources.

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<sup>51</sup> Traditional owner of the Kaanju people, Cape York Survey Comment, *HREOC National Survey on Land, Sea and Economic Development 2006*.



- 1.6 Less than 50 percent of the Native Title Representative Body survey respondents claimed to be accessing funds specifically targeted to economic development on land.

## Recommendations

### Recommendation 1.1

That the Australian Government identify the enterprise aspirations of traditional owners and other Indigenous people and assess their capacity to engage in economic development by:

- consulting with communities on a regional basis;
- auditing existing resources within regions;
- auditing community access to government resources; and
- strategically targeting resources to communities according to their relative disadvantage.

### Recommendation 1.2

That the Australian Government develop a communication strategy to inform all Indigenous Australians with a targeted campaign to inform those who are remotely located, of economic development policy, programs, initiatives and potential sources of funding.

### Recommendation 1.3

In consultation with the states and territories, that the Australian Government develop a mechanism to coordinate the reporting obligations of Indigenous corporations and community councils.