

Native Title, Indigenous Economic Development and Tax Response to Consultation Paper

1. Background

Catherine Brown & Associates Pty Ltd was established in 1999 to provide advice and support to not for profit organisations, with a special focus on governance and on developing effective foundations (including community foundations across Australia). Catherine Brown, Director, has worked with many of Australia's leading foundations. She is a management consultant, lawyer and Board director. In recent years, Catherine has worked with a number of Indigenous organisations in relation to governance, charitable tax status and strategic planning including, amongst others, Lumbu Community Foundation (no longer operating), Karrkad-Kandji Trust, Warddeken Land Management Ltd and North Australian Land and Sea Management Alliance.

This response only covers questions within the consultation paper about which Catherine has some experience. Due to time pressures, this response is brief. Catherine would be happy to provide more information or talk over any of these comments with Treasury officers.

2. Indigenous Community Fund (3.2)

(i) If development of a new tax exempt vehicle is progressed further:

- (i) What payments should such a fund be able to receive? Should the fund only be allowed to receive payments made under a native title agreement or should it be allowed to receive other payments?*

If the Indigenous Community Fund is established as a charitable fund (i.e. for public not private benefit and for purposes beneficial to the community or a significant portion of the community) then it should be able to receive native title funds and any other payments that are consistent with its charitable purposes. This could include donations, philanthropic grants or fees for services.

(ii) *Do you agree with the proposed permitted uses of the fund? What other uses could be considered?*

I agree with the permitted uses of the fund and would encourage Treasury to consider extending this to include economic development activities that have a public benefit eg micro-enterprise start up grant programs, and other permitted DGR activities.

In a submission that was made to the former Prime Minister's Community Business Partnership in respect of a similar model for rural and regional community foundations, we suggested that activities that fall within an existing DGR category (Register of Environmental Organisations, Register of Cultural Organisations, PBIs, Health Promotion Charity, Education Scholarship Funds, Public Library Fund, etc) or a listed DGR (for example the objects of the Foundation for Rural and Regional Renewal) should be permitted uses of a community fund.

(iii) *What legal form should the fund be required to take?*

Having worked extensively with community foundations across Australia and with Indigenous not for profit organisations, I would recommend that the fund should be a public company limited by guarantee with charitable purposes. The company would be able to act as trustee of one or more trusts if required or could manage one or more internal public funds, subject to guidelines such as for the Register of Environmental Organisations. A company is an entity that is well understood by donors and a public company must meet public reporting requirements under the Corporations Act 2001. Alternatively, the company could incorporate under the Corporations (ATSI) Act 2006 as this now incorporates the duties of directors under the Corporations Act.

(iv) *What kinds of governance requirements should the fund be subject to?*

The directors' duties under the Corporations Act 2001 should apply. Where the company is managing trusts, the relevant Trustee Act should also apply. Again, these duties are well understood. Training would need to be provided to directors with no or little experience so that matters such as eligibility, conflict of interest and directors duties were well understood. I have provided this type of training to several groups and it is also available from other organisations such as the AICD.

(v) *How would the establishment of a new tax exempt vehicle impact on existing agreements?*

The purpose of the funds would need to be carefully identified. Funds that are essentially for private benefit could not be paid into a community fund for public benefit.

(vi) *What kinds of transitional arrangements would be required?*

There may need to be a private benefit fund and a community fund (public benefit) to enable previous payments to be treated correctly from a tax perspective.

(j) *Within the context of your experience, what difference would a new tax exempt vehicle make to native title groups and Indigenous communities?*

I think that a new tax exempt vehicle would be a useful model for benefiting Indigenous communities provided it had a straightforward legal form and adequate governance training was provided. An Indigenous Community Fund could enable longer term planning for the wellbeing of a whole community.

3. Deductible Gift Recipient (5.1)

(n) *How would a new DGR general category for Indigenous organisations that carry out activities across multiple DGR categories impact on the ability of such organisations to obtain DGR status?*

Apart from the charitable services DGR category or a special listing under the Income Tax Assessment Act, the ATO is strict about organisations nominating their dominant purpose and applying for DGR endorsement under a particular category. This is limiting for many non-Indigenous DGR organisations as well as the proposed Indigenous Community Fund. A similar point was made in a submission to the former Prime Minister's Community Business Partnership in 2004, where it was argued that Community Foundations should have their own DGR category via a register of Community Foundations. This would enable them to carry out multiple DGR categories for the benefit of their community. I would support a Register of Indigenous and Regional Community Funds (or Foundations).

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30 November 2010