

RECOMMENDATIONS OF THE WORKING GROUP ON TAXATION OF NATIVE TITLE AND TRADITIONAL OWNER BENEFITS AND GOVERNANCE AND GOVERNMENT RESPONSE

CONTEXT

On 18 March 2013, the Government established the Working Group on Taxation of Native Title and Traditional Owner Benefits and Governance to explore options to strengthen governance and promote sustainability in the management of native title and other land-related payments. The establishment of the working group forms part of the closing the gap agenda to ensure that Indigenous people have the tools and opportunities to achieve greater economic independence and security for themselves, their families and communities.

The Government appreciates the investment of time provided by the working group members and the range of expertise they brought to the group. The Government shares the working group's concern that reforms are urgently required if the current opportunities for Indigenous people are to be secured. It also recognises that there is no single pathway to ensure this outcome, and appreciates that the recommendations provided by the working group complement each other, and the recent amendments to the *Income Tax Assessment Act 1997*, by addressing different elements of the holding and managing of native title and land-related benefits.

GOVERNMENT RESPONSE

The Government welcomes the report of the Working Group on Taxation of Native Title and Traditional Owner Benefits and Governance and supports in principle all of the working group's recommendations.

In response to the working group's strong support for the proposed reforms and sense of urgency to address them, the Government will immediately take steps to further develop each of the recommendations, with a view to taking early action including introducing implementing legislation where appropriate in 2014.

The Government will immediately refer a number of issues to the Review of the Role and Functions of Native Title Organisations which is presently underway so they can be incorporated in the review report which is due by the end of 2013.

WORKING GROUP RECOMMENDATIONS

Recommendation

Recommendation 1: The Government introduce legislation into Parliament to make an Indigenous Community Development Corporation (ICDC) type of entity — a registered not-for-profit entity as described in this report that is exempt from income tax and has DGR status — available to Indigenous communities as soon as possible. The Working Group suggests the Department of Families, Housing, Community Services and Indigenous Affairs, as the department of the minister responsible for Indigenous affairs, co-ordinate implementation of the proposal, with ongoing support from the Attorney-General's Department in relation to native title issues and Treasury in relation to taxation issues

Recommendation 2: The Government take urgent steps to regulate private agents (that is, persons or firms other than Native Title Representative Bodies or Native Title Service Providers and/or their legal representatives) involved in negotiating native title future act agreements.

Recommendation 3A: The Working Group recommends the Government refer the following matters for consideration to the current Review of the Roles and Functions of Native Title Organisations:

Review the establishment under statute of a trust that would be the holder of native title agreement funds where there was no Prescribed Body Corporate, ICDC entity or other appropriate funds management entity to receive them.

- The Government supports the recommendation in principle.
- The Government plans to develop an ICDC type of entity in consultation with stakeholders, with a view to introducing any implementing legislation in 2014.
- The Government supports the recommendation in principle.
- The Government will refer the recommendation to the Review of the Roles and Functions of Native Title Organisations which is due to report in December 2013.
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Recommendation

Recommendation 3B: The Working Group recommends the Government refer the following matters for consideration to the current Review of the Roles and Functions of Native Title Organisations:

Review a process for the registration of section 31 native title future act agreements. (If this matter is outside the scope of the Review's terms of reference and it is not practicable for it to be referred to the Review, the Working Group recommends the Government take other steps to achieve this outcome.)

Recommendation 4: The Government take urgent steps to amend the Native Title Act or relevant regulations to clarify that the native title holding community is the beneficial owner of funds generated by native title agreements, irrespective of the identity of the legal owner or possessor of those proceeds, and that the named applicant is in a fiduciary relationship to their native title holding group.

- The Government supports in principle the creation of a register of native title agreements.
- The Government notes that this recommendation is outside the terms of reference of the Review of the Roles and Functions of Native Title Organisations.
- The Government will develop an agreements registration process in consultation with stakeholders, with a view to introducing any implementing legislation in 2014.
- The Government supports the recommendation in principle.
- The Government will develop a statutory duty model in consultation with stakeholders, with a view to introducing any implementing legislation in 2014.
- The Government notes that any reform proposal must address the issues underpinning the recommendation and be consistent with the effective operation of the Act.

