
Native Title Report 2004

SUMMARY:

Achieving economic and social development through native title



The *Native Title Report 2004* looks at how the native title system can contribute to the economic and social development goals of Indigenous peoples. The report seeks to answer the following questions:

- What do Indigenous people need to achieve their own economic and social development and how can native title processes contribute to this?
- How can we build on the structures and assets of native title to enable traditional owners to achieve sustainable development outcomes?

Economic and social development principles

The report outlines a number of principles that can assist in directing the native title system towards the economic and social development goals of traditional owner groups, as follows:

- 1) Respond to the traditional owner group's goals for economic and social development
- 2) Provide for the group's capacity to set, implement and achieve the group's development goals
- 3) Utilise the existing assets and capacity of the group
- 4) Build relationships between stakeholders and
- 5) Integrate the activities of native title institutions to achieve the development goals of the group.

The principles recognise the distinctiveness of traditional owner identity, but also show how native title can be used to contribute to the economic and social development of traditional owner groups. They are based on strategies for sustainable development and capacity development drawn from Australia and overseas.

Native title within the legal system

The report notes that the native title process needs to build on the existing legal process of rights-recognition, to produce broader outcomes for Indigenous peoples. At times, the price of a native title determination is too high. Many cases run for years and involve complex issues of law and fact. This means lawyers, anthropologists and other experts must be retained throughout lengthy court cases. There is also the emotional cost with Indigenous people having to prove who they are and whether they have

lived their lives in a 'traditional' way. Then there is the real possibility that after all this the legal tests will be too difficult to satisfy and some or all of the native title rights claimed will have been extinguished by the creation of non-Indigenous interests.

Beyond the legal system: Native title agreements

Native title should not just be limited to the legal framework but needs to move beyond it in order to contribute to outcomes that are useful in achieving the economic and social development goals of traditional owner groups.

Native title agreement making can provide an opportunity for this to occur. This is because these agreements are not necessarily tied to the restricted legal nature of native title rights, but can be directed to outcomes that parties want to achieve. The negotiation process also provides an opportunity for governments to understand the social and cultural context for the development objectives of the group.

However, in many cases, these opportunities for developing economic and social outcomes from the native title process are not being pursued by governments. Instead, native title agreements are seen simply as settlements of a legal dispute - and once a native title case is resolved, whether through litigation or agreements, governments walk away from a process which, for Indigenous people, has only just begun.

The principles seek to orient native title agreement making to the broader needs and goals of the traditional owner community, and encourage ongoing engagement between the parties beyond the agreement.

Developing a policy framework

The goal of economic and social development proposed in the report for the native title system is not dissimilar to the goal that the government has proposed for Indigenous policy more generally. It is consistent with the 'practical reconciliation' agenda; with the goals pursued by the Council of Australian Governments (COAG); and with the goals of the new arrangements for the administration of Indigenous affairs announced by the Commonwealth Government during 2004. Yet native title is kept separate from these policy developments. The report questions this apparent contradiction between the government's approach to native title and its approach to other Indigenous issues.

The report argues that some of the concepts that underpin the new arrangements could and should be employed in the native title context. These include: addressing regional and local need; promoting community governance; an outcomes focus; a whole of government approach; government and community accountability; flexibility in policy development, program delivery, and fiscal arrangements. Developing a native title policy consistent with these principles will enhance the capacity of the native title system to deliver real outcomes for traditional owner groups and the communities they live in.

In turn, native title can contribute to realising the objectives of the government's broader Indigenous affairs policy - the economic and social development of all Indigenous peoples.

One of the key mechanisms for effecting the new arrangements will be agreements struck between the Government and Indigenous peoples at regional and community

levels. Regional Participation Agreements (RPAs) will set out the regional priorities of Indigenous peoples, while Shared Responsibility Agreements (SRAs) will focus on needs and aspirations at the community, family or clan level. These agreements will be based on the principle of shared responsibility and involve mutual obligation or reciprocity for service delivery.

Both SRAs and RPAs could benefit from the assets of the native title process. Native title establishes a basis on which to build stronger decision making structures linked to traditional authority. It also contributes social and cultural capital, property rights, established relationships with government and companies through the claims and agreement processes, and a national network of representative bodies specialised in assisting traditional owners to achieve their goals. Conversely, SRAs and RPAs will need to take account of native title and the special role of traditional owners within Indigenous communities in order to be effective and sustainable.

An opportunity presently exists to reappraise native title policy, its direction and its processes. The public sector is making significant and radical changes in the way it develops and implements government policy through a 'whole of government' approach, and these new processes and concepts are being tested in the Indigenous policy arena. This offers exciting opportunities to improve the wellbeing of traditional owners and their communities, and improve the workability and sustainability of Indigenous policies overall.