



NATIONAL INDIGENOUS COUNCIL

Friday, 3rd June 2005

Indigenous Land Tenure Principles

Statement by Magistrate Sue Gordon, Chairperson

Members of the National Indigenous Council (NIC) will meet with Land Councils/Native Title Representative Bodies (3 June 2005) to advance their discussions on the issues surrounding Indigenous land tenure.

At its February 2005 meeting the NIC commenced consideration of how the now considerable Indigenous land base might be best used to facilitate the economic development of Indigenous people, including individual home ownership and entrepreneurship. The NIC agreed that further consultation was necessary to inform its own advice to the government.

Land Councils and Native Title Representative Bodies are a primary source for advice and the Native Title conference provided the opportunity to consult with all parties at one time. The NIC is grateful to the organizers for allowing this to happen. The meeting today will be used as one means of informing the NIC's views in this area, including on the issue of land tenure.

The Council recognised the cultural significance of land to Aboriginal people. It should also be noted that tenure arrangements are only one piece of a much larger jigsaw of social and economic factors.

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“These bigger challenges remain the primary obstacles to economic independence and to wealth generation on Indigenous land,” Chairperson of the NIC, Magistrate Sue Gordon AM, said.

“The NIC has agreed that some change is necessary for Indigenous Australians to be able to gain improved outcomes from their land base into the future. It is a precondition, not a panacea,” Mrs Gordon said.

“The meeting will focus on a set of draft Indigenous land tenure principles that have been formulated by NIC members as a starting point for obtaining the views of interested stakeholders. The NIC will further consider these principles with the feedback we receive today at our next meeting, before formalising our advice to government,” Mrs Gordon said.

“While we have differing views within our community on how to improve the variety of special Indigenous land tenures across Australia, we recognise that collective ownership is inherent in Aboriginal custom and we believe in the fundamental importance of securing that underlying land title for future generations.”

“We welcomed the Prime Minister’s acknowledgement earlier this week that communal interest in and spiritual attachment to land is fundamental to Indigenous culture – and that, rather than winding back or undermining native title or land rights, what everyone is interested in is how to make the land work better for families and communities wishing to build economic independence and wealth. It is clear that retaining the land base should not disadvantage individuals by frustrating their aspirations for individual home ownership and wealth creation,” Mrs Gordon said.

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[Note: The NIC Possible Indigenous Land Tenure Principles are attached.]

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DRAFT WORKING DOCUMENT
NATIONAL INDIGENOUS COUNCIL

POSSIBLE INDIGENOUS LAND TENURE PRINCIPLES

1. The principle of underlying communal interests in land is fundamental to Indigenous culture.
2. Traditional lands should also be preserved in ultimately inalienable form for the use and enjoyment of future generations.
3. These two principles should be enshrined in legislation, however, in such a form as to maximize the opportunity for individuals and families to acquire and exercise a personal interest in those lands, whether for the purposes of home ownership or business development.
 - An effective way of reconciling traditional and contemporary Indigenous interests in land – as well as the interests of both the group and the individual – is a mixed system of freehold and leasehold interests.
 - The underlying freehold interest in traditional land should be held in perpetuity according to traditional custom, and the individual should be entitled to a transferable leasehold interest consistent with individual home ownership and entrepreneurship.
4. Effective implementation of these principles requires that:
 - the consent of the traditional owners should not be unreasonably withheld for requests for individual leasehold interests for contemporary purposes;
 - involuntary measures should not be used except as a last resort and, in the event of any compulsory acquisition, strictly on the existing basis of just terms compensation and, preferably, of subsequent return of the affected land to the original owners on a leaseback system basis, as with many national parks.
5. Governments should review and, as necessary, redesign their existing Aboriginal land rights policies and legislation to give effect to these principles.

