**Australian Government Submission to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)**

**Indigenous Land Rights in Australia**

**EXECUTIVE SUMMARY**

Australia acknowledges Aboriginal and Torres Strait Islander peoples as one of the world’s oldest continuous living civilisations, spanning over 65,000 years. Aboriginal and Torres Strait Islander people’s strong connection to family, land, language and culture forms the foundation for social, economic, and individual wellbeing.

For more than 50 years, Indigenous land rights have been recognised in legislation in Australia. Currently land rights in Australia are transforming from an era of recognition and protection, to one of realising how land rights can support the realisation of economic, social and cultural rights and benefits. This is giving rise to an ever-growing cohort of Indigenous businesses and social enterprises, Indigenous services and regional decision-making.

We welcome the opportunity to contribute to the study, and look forward to the discussion on good practices consistent with the Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples at the next EMRIP session in June 2020. In particular, the Australian Government is interested in working with other States to identify good practices that support economic empowerment and social outcomes through the realisation of land rights for indigenous peoples.

**Introduction**

Australia welcomes the opportunity to contribute to the EMRIP study on the Right to Land under the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration): A Human Rights Focus.

Land rights are interwoven with other rights and the realisation of other benefits including economic outcomes, cultural and heritage protection, community growth, and regional governance models. Australia reaffirms its support for the Declaration and its encapsulation of the economic, social, cultural and political rights of the world’s indigenous peoples.[[1]](#footnote-1) Practical effect is given to the Declaration, including Articles 25‑29, through a number of policies, programs and legislation including native title, statutory land rights, and programs that care for and manage Country. In Australia, 49.4 per cent of all land is owned, controlled, or has some form of right or interest recognised for Aboriginal and Torres Strait Islander people.[[2]](#footnote-2)

The Australian Government approaches Indigenous policy in Australia by working in partnership with Aboriginal and Torres Strait Islander peoples. Through national frameworks, partnerships are being built with Indigenous service providers and representative bodies. Place-based programs and activities are co-designed in consultation with regional governance bodies. This approach supports the Australian Government to deliver activities, programs and services, including on Country, that meet the needs and aspirations of Indigenous Australians.

**Indigenous land rights are undergoing a transition with the focus moving from recognition and protection of Indigenous rights and interests, to focus on realising the benefits and opportunities afforded by land rights and interests.**

By working in partnership to support Indigenous entrepreneurs and businesses, Australian Government policy is shifting to consider factors that build wealth and create opportunity. One driver of this shift is the amount of land and waters over which Indigenous rights and interests has been recognised. This presents the opportunity to leverage land for economic, cultural and social benefit.

**Australia’s federated system and land rights**

Australia is a federation of six states and two self-governing territories (referred to here as the state/s). Each has its own parliaments, governments and laws. Under the federated system, law -making powers for Indigenous land rights are a mix of federal, state and common law. Federal and state courts also make a substantial contribution to Australian jurisprudence on Indigenous land rights.

The Australian Constitution establishes the Commonwealth Government of Australia (referred to as the Australian Government) and defines its structure, powers and procedures. The Australian Constitution does not include a specific law-making power with respect to land (other than Australian Government land) or Indigenous land rights.[[3]](#footnote-3) Each state has statutory schemes in place for the recognition, transfer and/or reservation of land to, or for the benefit of, Aboriginal and Torres Strait Islander peoples. The types of rights, and the levels of control or access, vary amongst states. Native title and Australian Government statutory land rights sit alongside, and can even overlap with, these rights.

Due to the nature of these co-existing rights, this report will focus on Aboriginal and Torres Strait Islander rights and interests in land under the remit of the Australian Government. A summary of the land rights and heritage systems in each state can be found at Annexure A.

**Australia’s recognition of Indigenous land rights**

Australian law recognises the deep significance of traditional lands and waters to Aboriginal and Torres Strait Islander peoples, and acknowledges the part that this plays in a person’s culture and identity.

The Indigenous rights movements of the 1960s gave rise to legal challenges and questions about policy and practice in Australia. The Australian Government first granted Aboriginal rights to land in 1976 with the passage of the *Aboriginal Land Rights (Northern Territory) Act 1976.*[[4]](#footnote-4)Native title was first recognised by the common law of Australia in the 1992 High Court of Australia case *Mabo v Queensland (No 2)* (known as the Mabo decision). Since 1992, native title has evolved through ongoing legal decisions and policy changes to include the recognition of waters, and how to quantify compensation owed for the extinguishment or impairment of native title (which includes economic and cultural loss).[[5]](#footnote-5)

As legal precedent is continually established and explored, the Australian Government and states continue to consider how land tenure can improve outcomes for Aboriginal and Torres Strait Islander peoples. Through growing the Indigenous land estate, Aboriginal and Torres Strait Islander communities are building economic wealth, growing community services, and developing greater regional governance and decision-making.

**Native title**

Native title arises as a result of the legal recognition of pre-existing Aboriginal or Torres Strait Islander rights and interests, according to the traditional laws and customs currently observed. Following the Mabo decision, the Australian Government established a framework for recognising and protecting native title under the *Native Title Act 1993* (Cth) (NTA). Native title has been determined to exist over approximately 38.2 per cent of Australia’s land mass.[[6]](#footnote-6)

Native title exists as a bundle of rights and interests in relation to land and waters based on the traditional laws and customs of traditional owners. These can include the right to:

* access, use, occupy and enjoy traditional Country;
* participate in decisions about how others use traditional lands and waters;
* make decisions about the future use of lands and waters; and
* hunt and gather food, perform ceremonies, and collect bush medicines.

These bundled rights can be exclusive or non-exclusive. Native title rights and interests may include the right to possess and occupy an area to the exclusion of all others, referred to as a right of exclusive possession. A range of non-exclusive rights and interests may also be recognised. These can co-exist with other rights and interests in land (such as pastoral leases) including the right to live and camp in an area, conduct ceremonies, collect food, and to visit places of cultural significance.

The High Court of Australia has also recognised non-exclusive rights over the sea.[[7]](#footnote-7) Non-exclusive rights that may be claimed include the right to fish, hunt and gather resources for personal, domestic and communal uses.

*Native title claims*

The NTA sets out processes for the recognition of native title through the making of a native title application to the Federal Court of Australia. For native title to be recognised, claimants must establish that they have rights and interests in the claim area based on their traditional, continuous and ongoing connection to that land. The claimant must also establish that those rights and interests have not been partially or fully extinguished by inconsistent government actions (for example, the grant of freehold title). Where extinguishment is partial, non-exclusive native title rights and interests may be found.

To make an application, Aboriginal and Torres Strait Islander claimants may be assisted by legal counsel, anthropologists, researchers, and Native Title Representative Bodies and Service Providers (NTRB-SPs). [[8]](#footnote-8)

*Administration of native title*

The Australian Government currently invests approximately AUD$140 million per annum to support the native title system. This includes funding to NTRB-SPs and Prescribed Bodies Corporate (PBCs)[[9]](#footnote-9); the Federal Court of Australia (including the National Native Title Tribunal); legal assistance for native title respondents; and to support the professional development of native title anthropologists.

Once native title is determined, native title holders are required under the NTA to nominate a PBC to manage their native title. PBCs have a range of statutory functions under the NTA directed at protecting, managing and holding native title in accordance with the instructions and consent of the broader native title holding group. PBCs also ensure certainty for parties wishing to access native title lands and waters by providing a legal entity through which to conduct business.

PBCs have the potential to act as vehicles for the broader aspirations of native title holders. PBCs often seek to undertake activities relating to cultural heritage, civil rights advocacy, land management, economic enterprise and service delivery. The number of PBCs is growing as more native title claims are resolved. As at 4 December 2019, there were 210 PBCs in Australia.[[10]](#footnote-10)

Established under the NTA, NTRB-SPs are funded by the Australian Government to provide regional native title services to native title claimants and PBCs. There are 15 NTRB-SPs in Australia. Key functions include supporting native title claims, assisting traditional owners with agreement making, certifying applications and agreements, assisting with disputes and notifying traditional owners of potential impacts on their native title.

*Activities on native title land*

The NTA establishes processes for notification, consultation and negotiation with native title holders and claimants about acts affecting their native title rights and interests. The requirements vary according to the type of act proposed. The NTA also creates voluntary processes for native title groups to negotiate binding agreements for the development and management of land and water with governments and third parties, including Indigenous Land Use Agreements (ILUAs).

*Native title compensation*

The NTA also provides native title holders with an entitlement to compensation on just terms for certain acts of government that have extinguished or impaired native title. In March 2019, the High Court of Australia handed down its judgement in the first litigated determination of native title compensation.[[11]](#footnote-11)

This decision represents the first judicial consideration of the key legal principles governing native title compensation. The High Court held that the Claim Group’s native title compensation claim had two components:

* economic loss (including interest); and
* cultural loss.

Applying these principles, the High Court awarded the Ngaliwurru and Nungali Peoples AUD$2.53 million as compensation for various acts that had extinguished their native title rights and interests.

Some states have opted for alternative settlements that comprehensively deal with native title claims and also deal with compensation. Compensation settlements can include monetary and non‑monetary benefits, such as transfer of culturally significant lands, purchasing of land for Indigenous communities and other options.

Additional native title compensation claims will follow this High Court decision.

|  |
| --- |
| **Case Study: Yawuru PBC**  In two determinations in 2001 and 2006, the Federal Court of Australia determined the Yawuru people held native title rights over 5,300 km2 of land around Broome, Western Australia. Represented by Yawuru PBC, the Yawuru people negotiated a native title settlement with the Western Australian government worth almost AUD$200 million. This settlement was made through two ILUAs - the Yawuru Prescribed Body Corporate ILUA and the Yawuru Area Agreement ILUA.  The settlement provides AUD$56 million in financial compensation over five years, as well as handing over 2,000 hectares of land worth AUD $144 million. Nyamba Buru Yawuru Ltd receives and manages the assets on behalf of Yawuru PBC.  Today, the Yawuru people are the largest private landowners in Broome, Western Australia. Their land assets range from residential, industrial, commercial lands and tourism ventures. They own Roebuck Plains station just outside of Broome covering 275,000 hectares. The station is a successful pastoral property running substantial numbers of cattle and providing local employment opportunities. The settlement also created a 35,000 hectare conservation estate, which is jointly managed by the Yawuru people and the Western Australia Department of Parks and Wildlife. |

*Reforms to the native title system*

On 17 October 2019, the Native Title Legislation Amendment Bill 2019 (the Bill) was introduced into the Australian Parliament. The Bill seeks to amend the NTA to improve native title claims resolution, agreement-making, Indigenous decision-making and dispute resolution processes.

The Bill was developed through intensive public consultation including 40 meetings with key native title stakeholders and open submissions from the public on an options paper for reform and the draft Bill. An Expert Technical Advisory Group – comprised of native title holder representatives, industry and states – was also convened to provide technical advice on the Bill.

Following its introduction to Parliament the Bill was referred to the Senate Legal and Constitutional Committee. The Committee sought submissions by 28 November 2019, with the report of the Committee due by 16 April 2020.

The Bill will support economic and investment opportunities for traditional owners by giving native title holders greater flexibility around their internal decision-making processes, making improvements to the processes relating to resolution of native title claims and agreement making, and better supporting the sustainable management of native title following a determination.

**Australian Government Statutory Land Rights**

The Australian Government has direct responsibility for land rights in the Northern Territory through the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The ALRA was the first legislation in Australia which provided for Aboriginal peoples to make claims of ownership of ‘Crown land’ on the basis of traditional connection. The ALRA is Australian Government legislation as, at the time of its passage, the Northern Territory was not yet a self-governing territory and was under the administration of the Australian Government.

The ALRA provides for claims to and grants of inalienable Aboriginal freehold land by the Australian Government which is the strongest form of traditional land title in Australia. The ALRA gives traditional owners in the Northern Territory control over what happens on their land and the right to consent to development and land use proposals made by governments and investors. Approximately 48 per cent of the Northern Territory’s land mass and 80 per cent of its coastline is Aboriginal land subject to the ALRA. [[12]](#footnote-12)

Four Northern Territory Land Councils are established under the ALRA to represent the interests of traditional owners and communities. The Land Councils are representative bodies of elected Aboriginal peoples. The Northern Land Council and the Central Land Council perform dual functions as both NTRBs and Land Councils under the ALRA.

*Claim process*

For a successful claim to be granted under the ALRA, Aboriginal landowners are required to prove their traditional relationship to the land under claim.

The Aboriginal Land Commissioner, who is either a sitting or retired judge of the Federal Court or the Supreme Court of the Northern Territory, must ascertain whether the claimants are traditional owners of the claimed land as defined by the ALRA, and whether the land is available for claim. The Aboriginal Land Commissioner then makes a recommendation to the Australian Government Minister for Indigenous Australians about whether the land claim should be granted. The Minister decides whether to recommend to the Governor-General of Australia to grant all or part of the land under claim.

There have been 249 traditional Aboriginal land claims submitted since the ALRA came into operation. No new land claims have been lodged since 1997, when a related ‘sunset’ provision in the ALRA came into effect preventing the Aboriginal Land Commissioner from conducting inquiries into later claims. There are 41 land claims remaining to be finalised; 22 of these land claims are limited to intertidal zones and/or the beds and banks of rivers. The Aboriginal Land Commissioner continues to review and consider the remaining claims.

*Consent provisions under ALRA*

For an activity to proceed on Aboriginal land, the relevant Land Council must be satisfied that the traditional owners of an area of land understand the nature and purpose of a proposed action and, as a group, consent to it. A Land Council must also be satisfied that any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view.

*Aboriginals Benefit Account*

The ALRA also established the Aboriginals Benefit Account (ABA). The Australian Government provides money equivalent to the sum of royalties paid by mining companies for activity on ALRA land. The purpose of the funding is to provide funds for the administration of the four Northern Territory Land Councils, payments for the benefit of Aboriginal people living in the Northern Territory, payments for the acquisition and administration of leases, and 30 per cent of royalty equivalents are allocated to communities impacted by mining.

At 30 June 2019, the net assets of the ABA were AUD$1,062.3 million. This represents a 30.4 per cent increase from AUD$814.2 million as at 30 June 2018.

**State and territory land rights**

Various statutory land rights regimes allow states to provide a grant of title to land to traditional owner groups. Land Rights legislation involves the grant from a state government of a Crown title – generally freehold or perpetual lease title- to an Indigenous group. Aboriginal and Torres Strait Islander people presently have ownership over 15.2 per cent of the Australian continent as a result of statutory land rights legislation.[[13]](#footnote-13) A detailed overview of these schemes can be found at Annexure A.

**Caring for and managing Country**

Australia recognises that Aboriginal and Torres Strait Islander people have been caring for the land and sea for thousands of years, preserving Australia’s unique biodiversity. Through partnership between traditional owners and the Australian Government, the traditional occupations, practices and knowledge—which have been used successfully to care for Country [[14]](#footnote-14)—are now also being utilised to provide economic opportunities. Two key initiatives are the Indigenous Rangers program and Indigenous Protected Areas.

*Indigenous Ranger Program*

The Indigenous Ranger Program began in 2007 as an arrangement between the Australian Government and Aboriginal and Torres Strait Islander people to work on Country. Today it creates employment, training and career pathways for Aboriginal and Torres Strait Islander people in land and sea management. Indigenous ranger funding in 2019-20 supports over 2,900 full-time, part-time and casual positions[[15]](#footnote-15) for Indigenous Australians to work on land and sea country.

Indigenous ranger projects support Indigenous people to combine traditional knowledge with conservation training to protect and manage their land, sea and culture. Indigenous ranger groups also develop partnerships with research, education, philanthropic and commercial organisations to share skills and knowledge, engage with schools, and generate additional income and jobs in the environmental, biosecurity, heritage and other sectors.

By achieving employment and environmental outcomes, alongside wider social, cultural and economic benefits, the work of Indigenous rangers is valued by Indigenous communities across Australia.

An independent evaluation of the Indigenous Rangers and Indigenous Protected Areas programs in 2016 found that rangers had experienced increased confidence and skills through their training and work on Country. Rangers reported they felt more pride, self-worth, health and wellbeing, with closer connections to family, culture and Country. Ranger groups also reported a wide range of community benefits, including safer communities, strengthened language and culture, an ability to find meaningful employment, increased respect for women, and more role models for younger people.

Many organisations are looking to apply the specialised skillset of the increasingly professionalised Indigenous Rangers workforce to realise broader economic opportunities for local communities. Enhancing the skills and capability of Indigenous rangers and their organisations helps unlock economic opportunities arising from increased uptake of compliance and fee-for-service work. Some ranger organisations are also seeking innovative opportunities to achieve environmental and economic benefits to their communities.

The most significant funding for Indigenous rangers is through the Australian Government. The Australian Government investment in Indigenous rangers and Indigenous Protected Areas is more than AUD$830 million over 10 years up to 2023. This includes an AUD$30 million investment to develop the capabilities of rangers through the Capacity Building for Indigenous Rangers Strategy. Together, these programs provide employment for more than 2,900 Indigenous Australians in land and sea management. Indigenous rangers are also funded through other mechanisms, including state governments, universities and non-government organisations.

|  |
| --- |
| **Case Study: Capacity Building for Indigenous Rangers**  In Queensland, through the Specialised Indigenous Ranger Program and the Capacity Building for Indigenous Rangers Strategy initiatives by the Australian Government, at least 65 Indigenous Rangers have completed or are completing qualifications in compliance.  From the first cohort of 21 trainees, 17 rangers have been appointed as Authorised Compliance Officers under the Great Barrier Reef Marine Park Act 1975. In 2019, 21 rangers graduated and are currently being considered for appointment as Authorised Compliance Officers. A further 24 rangers are expected to graduate from training in March 2020.  As Authorised Compliance Officers, rangers will have the confidence and tools to be the extra ‘eyes and ears’ for the Great Barrier Reef Marine Park Authority and deal with people committing environmental offences. This will bolster efforts to protect the Great Barrier Reef and help conserve endangered marine animals such as turtles and dugongs. This offers new opportunities for how Indigenous rangers work with states to manage and care for Country. |

*Indigenous Protected Areas (IPAs)*

IPAs are areas of land and sea managed by Indigenous groups as protected areas for biodiversity conservation through voluntary agreements with the Australian Government.

IPAs are an essential component of Australia’s National Reserve System, which is the network of formally recognised parks, reserves and protected areas across Australia. There are currently 75 dedicated IPAs across approximately 67 million hectares. These account for more than 44 per cent of the National Reserve System. In addition, there are 18 new IPAs currently under development between Indigenous communities and the Australian Government. Consultations with traditional owners are in progress, to determine whether they want to dedicate all or part of their land to new IPAs.

IPAs create jobs for Indigenous men and women to work on and look after their land. Managing IPAs helps Indigenous communities protect the cultural values of their Country for future generations, and results in significant health, education, economic and social benefits. Employment of IPA rangers helps provide financial stability in the community. Rangers are also positive role models for youth within their community, showing a future for culture and tradition to which young people can aspire. Day-to-day activities of Indigenous rangers on IPAs may include interpretive activities for visitors, protection of rock art, and cultural history and language projects. Rangers also teach traditional bush tucker and medicine knowledge on Country, preserving and handing down the knowledge for future generations.

|  |
| --- |
| **Case Study: Girringun Rangers**  In 2013, James Cook University in North Queensland began a collaborative project with the Girringun Aboriginal Corporation and the Girringun Rangers to conduct dolphin, dugong, and turtle surveys in Girringun sea country. The sea country is part of the Girringun Region IPA, which consists of 1.26 million hectares of land and sea country comprising Aboriginal-held land, private land holdings, national parks, conservation parks, marine protected areas and world heritage areas.  These now annual surveys are conducted by the rangers over 200 km of coastline. All data is submitted to the Queensland Department of Environment and Heritage Protection to help with population monitoring and management.[[16]](#footnote-16) |

**Economic development of the Indigenous estate**

As Australia moves into the post-determination era, the focus for Aboriginal and Torres Strait Islander peoples is shifting from resolving claims and the determination or granting of land rights, to the question of how best to use their land for social, cultural and economic development.

There are already many examples of Aboriginal and Torres Strait Islander land rights holders, using their land in innovative ways to conduct business, generate income and employment, and invest in community development. Land rights holders engage in a wide range of enterprise including pastoralism, mining and tourism.

For many traditional owners, cultural enterprises, such as sharing cultural practices through tourism or caring for Country, is a way of achieving economic empowerment in a manner consistent with their community values and land rights. This aligns with the Declaration by supporting indigenous peoples to enjoy their own economic development pathway and maintaining cultural practices.

**Economic opportunities on native title land**

It is important to note there are some limitations on the uses of native title land. By themselves, native title rights and interests may not be sufficient to conduct certain economic activity such as where tenure or other rights are necessary to undertake commercial enterprise.

Non-exclusive rights are subject to the rights of third party interest holders. The opportunity for traditional owners to use the land for economic purposes may therefore be more restricted than it is for exclusive native title rights holders. Like non-Indigenous tenure under Australian law, native title rights do not extend to rights over minerals, gas or petroleum under Australian law. Generally, these assets are vested in the Crown, which is represented by the government.

The large number of PBCs that manage the land under the native title system can charge fees-for-service for performing their statutory functions. To avoid over burdening PBCs, land rights legislation does not impose time limits or restrictions on which costs may be passed on to third parties. These costs can vary, but should generally cover the expenses of the PBC negotiating and making decisions about access and development on their land. These could include activities like contacting affected native title holders, arranging meetings or travel, or obtaining legal advice.

The Australian Government provides basic support to PBCs through their relevant NTRB-SP. It also funds a number of programs to strategically support the PBC sector, such as programs that provide training and resources, and the running of PBC forums. These forums convene PBCs in a region with their NTRB-SP to share innovations, as well as provide opportunities to engage directly with Government officials.

Recognising the opportunities offered by stronger PBCs, and the growing number of PBCs as native title determinations are made, the Australian Government also established a capacity building funding stream in 2015. Funding is available to build capacity and provide funding directly to PBCs to capitalise on opportunities to use their native title rights and interests to pursue economic development.

*Leasing on native title land*

Native title rights and interests cannot be bought and sold, which means they cannot be easily used as security for loans or for other forms of investment. It is possible to lease native title land, which provides a mechanism for the creation of tradable tenure without loss of native title. This can be achieved through an agreement like an ILUA. This gives native title holders options regarding the use of native title land.

It is open to holders of exclusive native title to seek a ‘head lease’ from the state, for example, in the name of their PBC. The PBC would then control all land use – including further leasing, and the income that leasing might generate. To date, this option has not been widely explored in practice.

*Native title agreement making*

Native title has led to significant growth in the Indigenous asset base. In some instances, the procedural rights of native title holders under the NTA have led to significant financial and other benefits to native title groups through agreement making with parties that wish to develop native title land. Traditional owners can receive benefits from ILUAs as compensation for development activity. Native title agreements can provide Indigenous communities with a range of economic, social and cultural benefits, including direct financial contributions, employment and training opportunities, and support for heritage protection and management.

As of 9 December 2019, there were 1,304 ILUAs registered on the Register of Indigenous Land Use Agreements.[[17]](#footnote-17) In October 2015, it was reported that the estimated value of all ILUAs will grow from AUD$350 million in 2014 to AUD$520 million by 2020.[[18]](#footnote-18) It is important to note that ILUAs are for a variety of purposes, and accordingly not all will have a commercial value.

*Entrepreneurship*

Native title holders can engage in ventures on native title land. Due to economic outcomes from agreement making or compensation, there are instances where native title holders own mainstream tenure. Exclusive native title holders also control access to the land and have used this right to leverage benefits for their communities. For example, this approach has been used in some areas to ensure tourism operators pay a fee for accessing land and sites.

There is also opportunity to use native title to participate in projects such as heritage and land management. In the Northern Territory, Mimal Rangers are delivering the internationally recognised West Arnhem Land Fire Abatement project (WALFA) to generate income, using a traditional fire management regime.

The Australian Government has provided funding for the Commonwealth Scientific and Industrial Research Organisation (CSIRO), working in partnership with the National Native Title Council and local groups, to conduct case studies on investment opportunities on Indigenous land. The goal is to learn more about building Indigenous capabilities to attract investment on Country.

|  |
| --- |
| **Case Study: Jabalbina Yalanji Aboriginal Corporation (a PBC)**  In 2007, the Federal Court determined native title over approximately 144,000 hectares of Eastern Kuku Yalanji land in Far North Queensland. The Jabalbina Yalanji Aboriginal Corporation was registered as the PBC for the area and now holds and manages the native title on behalf of the native title holders, the Eastern Kuku Yalanji people.  The Australian Government is investing at the grassroots level by assisting PBCs to realise their cultural, economic and social aspirations. In 2017-18, Jabalbina received AUD$258,938 in PBC Capacity Building funding to pursue economic and employment opportunities for Eastern Kuku Yalanji people on their native title land. This funding has supported the PBC in establishing camp grounds and cultural trails, tours and other tourism ventures. In carrying out these projects, Jabalbina has engaged with key stakeholders including native title holders, neighbouring PBCs, Indigenous businesses, local councils and state government. Tourism and business contracts have created new economic opportunities in the region, which have generated almost 100 per cent Indigenous employment. |

**Economic opportunities on ALRA land**

ALRA land is inalienable Aboriginal freehold land. Traditional Aboriginal owners enjoy the right to refuse consent to any development proposal relating to land held under the ALRA. Unlike native title rights or other types of non-Indigenous tenure in Australia, this includes the right to veto mining and exploration on their land.

The ALRA sets down detailed procedures for:

* the negotiation of mining agreements on Aboriginal land;
* funding of Land Councils;
* important provisions such as roads and entry onto Aboriginal land and protection of sacred sites and traditional rights over land;
* land use agreements on Aboriginal land; and
* dealing with income from land use agreements.

The Australian Government engages with the Northern Territory Land Councils and Northern Territory Government on a range of ALRA-related matters to ensure traditional owners can harness the economic opportunities that exist on their land. Joint areas of work include improving the operation of the ALRA; updating exploration and mining provisions of the ALRA; community entity township leasing; finalising land claims and improving the distribution of royalties.

*Leasing and land use agreements on ALRA Land*

While ALRA land cannot be bought and sold, leasing and land use agreements allow traditional owners to grant a right or interest in land to private businesses, governments, community members and other land users. This enables traditional owners and third party investors to engage in economic activity on Aboriginal land. Leasing has now become commonplace.

As detailed above, it is the role of the Northern Territory Land Councils to carry out consultations and negotiations on behalf of traditional owners with parties interested in undertaking activities on Aboriginal land. Where consent is given by traditional owners, Land Councils can direct the appropriate Land Trust to enter into a lease or land use agreement with the proponent. Leases of ALRA land include terms on the length of the lease and any rent payable to traditional owners.

The ALRA also provides for mining-related payments privately negotiated between mining companies, traditional owners and the relevant Land Council. Some traditional Aboriginal owners have leveraged their land interests under the ALRA to undertake exploration and mining on their traditional estates.

Land access and use agreements under ALRA include provisions for the payment of rent or licence fees at market value, to be paid for the benefit of the relevant traditional Aboriginal owner group(s). These agreements commonly include provisions designed to promote local Indigenous training, employment and enterprise opportunities, and for the protection of sacred sites. Many groups have chosen to reinvest this income in their communities.

Agreements allow for a wide range of economic activity including third party tourism, pastoralism and fisheries operations. There are many examples of Aboriginal corporations and joint ventures undertaking business on Aboriginal land, creating potential for direct economic benefits from related business activities.

There are significant prospects for further economic opportunities in relation to the operation of commercial fisheries in tidal waters overlying Aboriginal land. To date traditional owners have not required leasing or access permits to undertake commercial fishing activities in tidal Aboriginal waters, however, this is likely change into the future.

*Township leasing*

A township lease is a lease of a community on Aboriginal freehold land in the Northern Territory. A township lease covers the entire township area, including all buildings and houses, as well as areas for future development and may include other township infrastructure. Township leases provide security of tenure for private sector investment and create land administration arrangements that give confidence to businesses and financial institutions while maintaining traditional ownership of the land.

The Australian Government can hold township leases through the Executive Director of Township Leasing or by an Aboriginal corporation comprised of traditional owners and community members. For these leases, the Executive Director manages the land on behalf of the traditional owners.

For community entity township leases, traditional owners and community members are responsible for all land-based decision-making on their traditional lands. Community entity township leases provide another option for traditional owners to leverage their land assets for economic and community benefit, and was developed at the request of traditional owners to improve localised decision-making.

|  |
| --- |
| **Case study: Gunyangara community entity township lease**  The Gunyangara township lease, executed in 2017, is the first township lease to be held by a local Aboriginal corporation from the outset. Driven by the community, the 99-year lease provides control over leasing and land use decisions to the Ngarrariyal Aboriginal Corporation, whose board of directors is comprised of Gumatj traditional owners of Gunyangara. In the first year of operation, the traditional owners saw the benefits of being able to negotiate directly with people wishing to use their land, and to move forward with projects and developments in their own timeframes and on their own terms.  The township lease provides long-term, tradeable tenure to support the ongoing development of existing businesses run by the Gumatj clan through its business arm, Gumatj Corporation Limited, as well as the creation of new business and rental returns that will be reinvested into the community. As of 12 December 2019, there are 13 subleases under the head lease.  Gumatj Corporation runs a range of businesses in Gunyangara and the Gove Peninsula area to support local employment, including a saw mill and timber works, concrete batching plan, construction joint venture, a cattle farm and butcher shop, café and nursery and the first Indigenous-owned and operated bauxite mine in the Northern Territory. |

**Conclusion**

With around three quarters of Australian land expected to be subject to native title or statutory Indigenous interests when all claims are resolved, Aboriginal and Torres Strait Islander peoples are actively identifying opportunities to leverage their land and water assets. Opportunities could include sustainable land use, pastoral leasing, commercial enterprise and cultural tourism. The Australian Government has created targeted streams of support in response this growing demand to help realise the economic aspirations of Aboriginal and Torres Strait Islander peoples.

PBCs, Indigenous Rangers and IPA groups provide an important mechanism to drive growth in economies on Indigenous land, while also managing traditional lands, biodiversity and continued connections to culture. Alongside strategies that promote caring for Country, Indigenous Australians are becoming increasingly active in industry sectors such as mining, primary production and aquaculture.

Aboriginal and Torres Strait Islander peoples are using land assets to be entrepreneurs, business leaders and proponents of economic and community development. As a result, the Australian and state governments, Land Councils, representative bodies and traditional owners are doing important work to position institutions and systems for the post-land claims era in support of Indigenous Australians.

1. Australia notes the Declaration is not binding as a matter of international law. [↑](#footnote-ref-1)
2. This includes native title rights and interests, and statutory rights and interests recognised and granted by the Australian and state governments.National Native Title Tribunal, as at 3 November 2019 [↑](#footnote-ref-2)
3. Section 51(xxxvi) of the Constitution allows for the Australian Government to make laws for people of any race, including Aboriginal and Torres Strait Islander peoples. The *Native Title Act 1993* has been enacted primarily in reliance on this power. [↑](#footnote-ref-3)
4. The *Aboriginal Land Rights (Northern Territory) Act 1976* was enacted at least partly in reliance on the territories power in section 122 of the Constitution. [↑](#footnote-ref-4)
5. Further information on the key native title decisions of the Australian Courts can be found in *25 Years of Native Title Recognition*, National Native Title Tribunal at <http://www.nntt.gov.au/Documents/Key%20native%20title%20cases.pdf> [↑](#footnote-ref-5)
6. This is land with a native title right or interest recognised and does not include statutory land rights. National Native Title Tribunal, as at 3 November 2019. [↑](#footnote-ref-6)
7. *Commonwealth v Yarmirr* (2001) 208 CLR 1 [↑](#footnote-ref-7)
8. Iinformation on NTRB-SPs can be found on the National Indigenous Australians Agency website: <https://www.niaa.gov.au/indigenous-affairs/land-and-housing/native-title-representative-bodies-and-service-providers> [↑](#footnote-ref-8)
9. Information about PBCs and their functions can be found at [www.nativetitle.org.au](http://www.nativetitle.org.au) (website created and maintained by the Australian Institute of Aboriginal and Torres Strait Islander Studies) [↑](#footnote-ref-9)
10. Public Register, Office for the Registrar of Indigenous Corporations. [↑](#footnote-ref-10)
11. Decision *Northern Territory v Mr A. Griffiths (deceased) and Lorraine Jones on behalf of the Ngaliwurru and Nungali Peoples* [2019] HCA 7 (commonly referred to as the *Timber Creek* case*).* [↑](#footnote-ref-11)
12. Northern Territory Aboriginal Land and Sea Action Plan. Released 11 April 2019. [↑](#footnote-ref-12)
13. National Native Title Tribunal, as of 3 November 2019 [↑](#footnote-ref-13)
14. ‘Caring for Country’ is a term used to describe the different sustainable land management practices that Aboriginal and Torres Strait Islander peoples undertake, and the key role these practices play in continuing culture. [↑](#footnote-ref-14)
15. This equates to around 900 ‘full time equivalent’ positions. [↑](#footnote-ref-15)
16. More examples of the important work of Indigenous Rangers and Indigenous Protected Areas can be found in *Stories from Country 2015-17 How Indigenous rangers and Indigenous Protected Areas are strengthening connections to Country, culture and community*. Published Online at <https://www.niaa.gov.au/sites/default/files/publications/stories-from-country2015-17.pdf> [↑](#footnote-ref-16)
17. National Native Title Tribunal, [Register of Indigenous Land Use Agreements](http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-Register-of-Indigenous-Land-Use-Agreements.aspx). [↑](#footnote-ref-17)
18. ‘Valuing the native title market’ by KPMG for the Financial Services Council, October 2015. [↑](#footnote-ref-18)