



Principles for Economic and Social Development

The consultations with Native Title Representative Bodies (NTRBs) and a limited number of other stakeholder groups, discussed in detail in chapter 2, focused on the Discussion Paper issued in June 2004 entitled *Promoting Economic and Social Development Through Native Title* (at Annexure 1). The Discussion Paper proposed the following principles for promoting economic and social development through native title agreements:

Agreements should;

- Respond to the group's goals for economic and social development;
- Provide for the development of the group's capacity to set, implement and achieve their development goals;
- Utilise to the fullest extent possible the existing assets and capacities of the group;
- Build relationships between the various stakeholders; and
- Integrate activities at various levels to achieve the development goals of the group.

This chapter seeks to discuss within the framework of these principles the key issues that arose out of the consultations.

One issue that became apparent early in the consultations was that while the Discussion Paper directs the above principles to native title agreement making, a broader application of the principles was required in order to change the focus of the native title system towards the goal of promoting the economic and social development of the traditional owner group. The consultations demonstrated that while agreements provide an important opportunity to achieve this goal, economic and social development opportunities need to also be available outside the agreement making process. For instance, the issues of capacity development and governance for traditional owner groups may be addressed through avenues other than agreement making, such as programme funding. The following discussion of the principles is conducted on the basis that the principles are applicable to the native title system as a whole rather than limited to native title agreements.



1 Respond to the group's goals for economic and social development

Human rights principles require that Indigenous people take control of their own development process. This is consistent with the practical consideration that unless Indigenous development policies are designed and implemented with the effective participation of the Indigenous people for whom they are intended to benefit, they are unlikely to succeed. It is also consistent with the practical consideration that building the capacity of a group to take control of their own economic and social development will ultimately help produce a community which is self-supporting and self-governing.

Native title agreement making provides an opportunity for the traditional owner group to bring its agenda for economic and social development to the negotiation table. Through this process, governments come to understand and respond to the social and cultural context for the development objectives of the group. Native title agreements can then be tailored to the development needs of the claimant group.

The consultations identified the following issues in relation to the first principle as it applies to the native title system.

Government and companies must provide adequate time for traditional owners to establish decision making processes and identify their goals

The context for government and third party engagement with traditional owner groups is often in pursuit of policy or commercial goals. Principle 1 does not seek to undermine this engagement but requires that in addition to these goals, the economic and social goals of the native title party be taken into account.

This requires that adequate time is given to establish stable decision making processes so that the goals of traditional owners can be properly identified. While initially this may extend the expected time frames for government and third party projects, over time these delays will be reduced as groups clarify their short, long and medium term goals. In addition, by taking account of Indigenous aspirations, governments and developers may begin to involve traditional owners at an earlier stage in the project development.

The issue of time frames is critical in resource rich land where governments and third parties often require access to land and resources as soon as possible. The benefit of obtaining quick decisions in order to maximise the economic opportunities currently available must be weighed against the long term sustainability of an agreement that does not allow time for traditional owners to consider their own economic and social development goals and how the terms of the agreement can advance these goals.



Indigenous rights in land and resources must be developed to provide greater opportunity for Indigenous economic and social development

At present the law of native title gives limited recognition to rights and interests that provide a sustainable basis for economic development, such as commercial fishing and harvesting rights or rights to control access to natural resources. Respondents in the consultations noted that the *Yorta Yorta*¹ decision tends towards a frozen rights approach to native title, and that the test for extinguishment of native title in the *Ward* decision² results in the recognition of highly specific and limited rights to carry out activities over the land rather than to control access to the land or make decisions in relation to the land. In addition, traditional owners' rights are often limited by governments' commercial licensing systems, which regulate the commercial exploitation of natural resources. While this regulation is necessary to ensure resources are not over exploited, traditional owners may be excluded from economic development opportunities if they are not able to acquire commercial licences under existing systems.

The property rights of traditional owners, as for other Australian citizens, should assist their economic development where this is desired. The 'sui generis' nature of native title is no bar to equality of participation in the conventional economy as the Australian legal system already accommodates a wide range of property forms without prohibiting their commercial use. Indigenous rights and interests in land could be transformed into a stronger economic base by the acceptance of commercial rights that flow from Indigenous ownership of land and resources. As still the most socio-economically disadvantaged group in our society, Indigenous people's participation in the mainstream economy should not be conditioned upon an ability to buy into it. Traditional owners should not be forced to purchase licences to exercise their native title rights commercially. Other opportunities should be made available, such as directing a proportion of catch profits or mining royalties to traditional owners as 'resource rental'; subsidising the purchase of, or granting without fee, commercial licences; providing an equity stake for traditional owners in development on Aboriginal land; granting seed funding for enterprises; or offering contracting concessions to Indigenous businesses in development projects. However, it is unlikely that the creation of capital alone will contribute to the economic and social development of Indigenous communities. A comprehensive approach is needed that includes the development of Indigenous capacity to achieve economic and social goals in a sustainable way. Features of such an approach include:

- **Mechanisms that enable economic and social development for traditional owners and their communities where their land is not the subject of external developer interest.** Many traditional owner groups' land will not attract large-scale development projects such as mines, infrastructure projects or new residential subdivisions. While these

1 *Members of the Yorta Yorta Aboriginal Community v Victoria & o'rs* [2002] HCA 58 (12 December 2002) ('Yorta Yorta').

2 *Western Australia v Ward* [2002] HCA 28 (8 August 2002) (Ward).



communities have the advantage of avoiding exposure to the limited timeframes and money and time pressures of big projects, they can easily be overlooked for development opportunities. However, resource development is not the only means through which traditional owners can work towards social and economic development goals. Some NTRBs have been able to assist traditional owners through alternatives such as small enterprises in land management, cultural and eco-tourism or commercial customary harvesting. Although, many NTRBs do not have the funding or staff resources to support traditional owners in creating this type of small enterprise development, particularly as NTRBs are already insufficiently funded to meet their statutory requirements (see the *Native Title Report 2003*).

- **A wide range of options for economic and social development should be available to traditional owners through agreement making.** Traditional owner groups throughout Australia are diverse – some groups live in remote areas with limited access to the conventional economy, while other groups live in urban areas or in areas with substantial economic development opportunities, such as mining regions or tourist destinations. Similarly, traditional owners in some groups have a good understanding of the non-Indigenous economic, political and legal systems while others have strong traditional authority and knowledge of culture but less understanding of the non-Indigenous systems. This diversity amongst traditional owner groups requires that options for economic development should be similarly diverse. One model for economic and social development for one traditional owner group is unlikely to be able to deliver the same results in a different group or community. Consequently economic and social development strategies need to be structured to suit the diversity of goals and aspirations that traditional owner group may have.

In addition, innovative strategies for social and economic development are needed that can produce a variety of outcomes. Some outcomes may be structured to directly benefit individuals and families rather than the whole community. Other outcomes may have more of a community development focus and be directed towards delivering benefits to the whole community. For example, outcomes may include scholarships, training and employment or commercial business opportunities for Indigenous community enterprises.

Whatever the type of outcomes sought or model for economic development chosen, these should be set by the traditional owners and reflect their goals for economic and social development, consistent with their traditional culture and values.

- Governments and third parties have an important role in assisting traditional owners realise their economic and social development goals. The provision of services, such as health services, schools and housing, roads etc, is essential to economic and social development. These services are citizenship rights to which every Australian is entitled.



Government must retain and satisfy its responsibilities for service delivery and the provision of citizenship rights. Traditional owners must not have to relinquish their native title rights in a native title agreement to attain 'benefits' that all other Australians take for granted.

- **Companies should also contribute to traditional owners' economic and social development in areas where they operate.** The growing international commitment to sustainable development and corporate responsibility requires that companies also promote, protect and respect human rights and development in the communities in which they operate and in relation to their own employees.

With government, companies and traditional owners contributing to the realisation of the economic and social development goals of traditional owners, a coordinated approach between these participants is necessary. This requires a partnership approach that not only encourages coordination and cooperation but also seeks to overcome the disparity between the partners by recognising the rights of Indigenous Australians and empowering them to achieve their goals for economic and social development.

Identifying the 'group'

The consultations that my staff conducted confirm that the process for identifying the traditional owner group is important in maximizing the opportunities for economic and social development that can be generated for traditional owner groups from the native title system. Two issues arose in this regard.

- **The process of identifying the traditional owner group is important for all stakeholders from traditional owners themselves to government and industry.** The tests for identifying the traditional owner group within the native title system, whether applied administratively by the government or through the court, should reflect the traditional ways of defining who has rights to country, and also, give confidence to third parties that their dealings with the traditional owner group will not be undermined in the future by claims from other groups and individuals.
- **Connection reports provide a useful mechanism to identify the members of the traditional owner group for a particular area while at the same time allowing negotiations between the claim group and the government to commence prior to the determination of a claim.** The criteria that claimants must satisfy in the connection report for establishing who has traditional connection to an area of land should be determined with the effective participation of Indigenous people.

The criteria for establishing 'connection' will need to take account of situations where there are substantial disputes, overlapping claims or justifiable uncertainty in relation to the identification of the traditional owner group. In these cases the government should assist the Indigenous parties resolve the disputes between them.



2 Provide for the development of the group's capacity to set, implement and achieve their development goals

Capacity development requires not that sustainable development be 'delivered' to traditional owners but that those who seek to achieve development goals within their communities are actively involved in setting the agenda and determining the outcomes. Relocating control of the development process to the traditional owner group requires capacity within the group to set, implement and achieve development goals. This requires stable and accountable decision making structures through which the development goals of the group can be formulated and achieved. Where this is not the case decision making processes and structures will need to be developed. In designing strategies to build the capacity of the group to make decisions in relation to their economic and social development it should be acknowledged that capacity development:

- is a long term process requiring the investment of consistent and adequate resources,
- is an ongoing process during which communities can learn from their experiences and build on their changing abilities, and
- is a staged process, determined by the growing capacity and skill base of the group.

Implementing capacity development through the processes available within the native title system requires a significant change of approach, not just by government but also by traditional owners individually and within their group and their representatives. It requires that native title agreements, for instance, not only define outcomes for the group, but also that they define processes to enable the group to take control of its development agenda. These processes must enable learning and adaptation to occur over a long period. This might lead to a series of agreements over time that are staged to allow the group to monitor and evaluate the success of its strategies at significant stages of the development process and to make decisions based on this evaluation. Consequently, native title agreements should ensure timeframes are appropriate for this purpose and staged in accordance with the critical phases of the development process.

This approach to agreement making is typified by the model of incremental treaty making advocated by the British Columbia Treaty Commission in Canada.³ Incremental treaty making is a process for building treaties by negotiating over time a series of agreements that are linked to, and can be implemented prior to, the final treaty. The approach emphasises long term investment in the negotiation of agreements, ongoing learning and adaptation, the creation of partnerships and development of long term relationships. It seeks to deliver frequently on outcomes rather than trying to achieve one set of outcomes through a single agreement. This in turn allows for gradual capacity development within the traditional owner group.

3 The incremental treaty-making model is discussed in the *Native Title Report 2003*, p178.



The consultation process identified important areas that need to be addressed in order to improve the capacity of traditional owner groups to set, implement and achieve their economic and social development goals. There must be a greater focus on capacity development for traditional owners through the negotiation and agreement making process. Good governance is a crucial part of the second principle. Time and planning are needed to establish good structures and decision making processes.

Identifying the group's goals

- **More support and research is needed to assist traditional owners develop techniques to identify their goals.** Traditional owners require the support of NTRBs, government and companies to establish their goals and develop strategies to achieve them. Consideration must be given to how traditional owners' goals can be identified in a systematic, transparent and effective way. Participatory planning and social impact assessments have been used to help traditional owner groups and their communities identify their goals for economic and social development. Other methodologies designed by social scientists working in the overseas aid development sector such as 'rapid appraisals', which allow community development planning to be completed in short timeframes (around one month), may also be useful here. However, during the consultations, few respondents discussed these or other strategies for identifying goals because there is a perception these processes take a long time, or are not able to be funded as part of NTRB functions.
- **It is important that traditional owners can identify their goals prior to or in the early stages of negotiations.** Ideally, the traditional owner group's goals for economic and social development should be identified prior to determination or the signing of agreements so that these goals can be incorporated into the terms of agreements. However, where government and developers want access to land and resources, there may not be enough time for traditional owners to identify their goals. Without time to identify goals, traditional owners may not be able to negotiate agreements that match their community's skills, aspirations and needs. As a result the agreement may not support their economic and social development goals.

Capacity development

- **The process of negotiations and agreements should provide for the capacity development and empowerment of traditional owners.** Capacity development is a process that aims to empower groups. In a native title context, it requires that traditional owners have an active role in negotiations and agreements, and that the goals and objectives of traditional owners are a genuine part of the negotiation process. Individuals within groups are a crucial part of the process and must also be empowered.



- Capacity development takes time. Groups must first identify their assets and then use and develop these assets to achieve their goals. **The short timeframes of the native title future act procedures undermine the process of capacity development.**
- **NTRBs have an important role in assisting traditional owners to develop their capacity and achieve their economic and social development goals.** However, at present, many NTRBs are not able to undertake this facilitative role due to the timeframes of the native title process, the focus on legal rights and limited funding. Those NTRBs that are able to adopt capacity development strategies generally do so in relation to their other statutory responsibilities or through alternate funding streams, rather than as part of the native title process.

Governance

- **Strong governance structures are essential to achieve economic and social development.** Good governance enables traditional owners to make stable decisions and manage internal relationships. Good governance structures have a number of important features, including good leadership, clear decision making processes, support from the people they represent, effective dispute resolution mechanisms, accountability both to the internal group and external parties, and separation between decision makers and those who benefit from decisions. Each of these features is important to ensure good decisions are made and that traditional owners' governance structures are sustainable.

In addition, traditional owner groups have established decision making processes based on laws, customs, values and experiences. At times these decision making structures may not incorporate or be consistent with the mechanisms for governance described above. Striking the balance between traditional owners existing decision making processes and other governance mechanisms is challenging and difficult to prescribe. However there are two important factors that must be taken into account in developing governance structures suitable for sustainable development among traditional owner groups.

First, governance structures and processes need to be relevant to the traditional owner group and incorporate in some way the decision making processes that have credibility and legitimacy with traditional owners. Second, governance structures should enable decision making that delivers sustainable economic and social outcomes for traditional owners. Those that are unable to do so will quickly lose the respect and trust of the group.

- **Good governance takes time to establish.** It is important that decision making and dispute resolution processes are established before the group is required to make complex and difficult decisions affecting the direction of their economic and social development. Establishing decision making processes and managing internal relationships can be difficult and challenging, particularly at the beginning of the native title process



as traditional owners may not have been required to make complex legal decisions on behalf of the group before. As much as possible, traditional owners should be able to establish these processes without too much external pressure.

Traditional owners and NTRBs use a number of decision making and governance structures to manage their rights and interests. Prior to the establishment of corporate governance structures, like PBCs or other incorporated bodies, many traditional owners establish more informal decision making bodies. These bodies are often referred to as working groups, reference groups or advisory committees. They are established to represent traditional owners, engage with NTRBs, government and industry, and develop the direction and goals of the traditional owner group. These structures are an important part of the establishment of traditional owner governance, and it is important that they are supported by traditional owners and have clear roles and responsibilities. As much as possible, these informal bodies should be inclusive, with transparent processes.

- Corporate governance structures that represent traditional owners are established under a range of enactments including, the NTA, *Aboriginal Councils and Associations Act 1976 (Cwlth)* and corporations law, generally. However these legislative structures can have significant limitations. **It is important that NTRBs and traditional owners are able to consider a range of governance options and carefully design corporate structures that suit traditional owner's decision making processes, include effective governance mechanisms, and are compatible with the economic and social development goals of traditional owners.**

There are a number of different options for corporate structures that traditional owners can consider. The first option – a Prescribed Body Corporate or PBC – is required to represent native title holders after a native title determination under the NTA. PBCs provide a corporate structure that seeks to incorporate features of the native title system including the recognition of native title holders and their rights and interests and traditional decision making processes. However PBCs also have significant limitations: they are subject to a bewildering array of enactments that can set up inconsistent rules and create onerous administrative responsibilities for traditional owners; they are difficult and complex to run in compliance with their legislative framework; and they may create inconsistencies with traditional law and custom through strict rules of incorporation. As a result of these limitations traditional owners may want to consider other options, such as:

- a more active and formal role for NTRBs in supporting corporate governance requirements by centralising administrative functions in a service provider,
- regionally-based PBCs that manage native title for multiple native title groups,



- incorporating informal structures established by traditional owners to manage the native title claim process prior to a determination,
- coordinating the operations of PBCs and land trusts established under State, Territory and Commonwealth land rights legislation,
- using other corporations such as those set up under corporations law, community councils or state-based land rights systems as the corporate governance structure,
- broadening the membership of the corporation to provide wider community representation and increase the pool of skills available to the governing body.

Importantly, a separate corporate structure from that used to manage native title should be used by traditional owners to carry out commercial activities. Whatever model is appropriate to the governance structures and goals of traditional owners, it must be adequately funded and the capacity of the traditional owners to manage it must be assured or developed.

Implementation, monitoring and evaluation

- **The implementation and monitoring of agreements is a crucial part of the agreement making process.** Monitoring is necessary to ensure the terms of agreements are implemented. Importantly, traditional owners must have a key role in monitoring their own agreements. To do so effectively, traditional owners should actively participate in the negotiation of agreements and develop their capacity to understand, implement and monitor their own agreement.

At present there is limited research and analysis directed towards implementation and monitoring. Existing research demonstrates that agreements, especially resource development agreements, do not provide adequate mechanisms for either implementation or monitoring of agreements.⁴ This research has identified important issues that must be addressed by agreements, to improve implementation and monitoring, including:⁵

- the human and financial resources necessary for implementation and monitoring,
- a long term focus that includes regular reviews of the implementation of the agreement,
- clear goals, commitments and responsibilities, which are also flexible to respond to changes in the objectives and goals of parties, and

4 C. O'Faircheallaigh, 'Native Title and Agreement Making: Focusing on Outcomes for Indigenous Peoples', paper presented at The Native Title Conference 2003, Native Title on the Ground, Alice Springs 3-5 June 2003; O'Faircheallaigh, C., 'Implementation – The forgotten dimension of agreement making in Canada and Australia', in *Indigenous Law Bulletin*, October 2002, Vol 5 Issue 20.

5 *ibid.*, 2002.



- strong mechanisms to address implementation issues and credible measures to deal with failure to implement.

Benchmarking and monitoring agreements is also a key aspect of the Alice Springs principles developed by my predecessor as Social Justice Commissioner in relation to resource development agreements.⁶ These principles require that the resource developer must:

- negotiate outcome focused benchmarks with full participation of traditional owners and custodians,
 - agree to independent monitoring of performance, based on the agreed benchmarks,
 - ensure timely reviews of agreements and other relevant development activities,
 - negotiate, with the full participation of traditional owners and custodians, a code of conduct to apply to all employees and contractors, covering areas such as cross cultural relations, responsible use of alcohol, and fraternising with local people, and supplemented by staff training, including localised delivery of cross cultural training, and
 - provide resources and funding to ensure effective implementation of all stages of agreements with traditional owners and custodians.
- **Traditional owners need to develop, evaluate, and monitor their own skills, knowledge and capacities.** This process of internal monitoring and evaluation of the group's capacity in relation to economic and social development should occur regularly. Through this process the group can identify areas for ongoing learning and development that enable it to achieve its goals for economic and social development.

For example, traditional owners may want to develop a land management project on their country. One of the first stages of this process will be to establish the existing skills and knowledge of the group and identify other areas for training and development. As the group builds skills and knowledge and the project expands, it is likely that further training and skills development will be necessary. Identifying and linking these skills to overall goals can lead to ongoing learning and adaptation.

6 These principles were developed with the support of HREOC and Griffith University, by a forum of Indigenous people from Australia's resource-rich areas. The forum was held in Alice Springs in May 2002. The principles are contained in the HREOC publication, *Development and Indigenous Land: A Human Rights Approach*, May 2002. Available on HREOC website at www.humanrights.gov.au/social_justice/corporateresponsibility/index.html.



3 Utilise to the fullest extent possible the existing assets and capacities of the group

Development driven by the group emphasises building the skills of people within the group rather than using external skills to identify and drive the achievement of objectives. It also seeks to tailor development to the group's skills and values. There are two ways agreements can use the existing assets and capacities of traditional owner groups. These are:

Utilising and building on the existing capacities of the group

Capacities and skills that could be utilised in native title agreements differ between traditional owner groups, but may include: the ability to use and manage their natural environment sustainably, cohesive cultural and social relationships, a traditional decision making structure, a unique relationship to the land of their ancestors, and values that are shared by the members of the group.

There is also an opportunity for developing the skills and knowledge of traditional owners. Assisting traditional owners to develop 'non-traditional' skills in administration, land management or business enterprise, for example, should be part of the process of relying on and developing endogenous capacity.

Utilising and building on the assets of the group

Native title rights and interests in land can be an important foundation for Indigenous economic and social development. Economic returns can flow from Indigenous people developing the land and the resources contained on the land, from companies seeking access to the land and resources for development purposes, and from the cultural assets of the group and its unique relationship to the land. All of these sources can provide a foundation for the group's ongoing development. Native title agreements directed to achieving the development goals of the group should seek to enhance the rights and interests of traditional owners, rather than focus on the limited expression of these rights in native title law or the extinguishment of native title rights.

4 Agreements should build relationships between stakeholders

If native title negotiations are to contribute to the development goals of the traditional owner group, key stakeholders within the native title system must build relationships with this objective in mind.

The most important relationship for Indigenous people pursuing development goals is with government. A partnership with government is essential. However, it is critical that the group retains control of the development process, with the government adopting a facilitative role to help the group achieve its development goals. This role should be carried out through processes and institutions that reflect the group's cultural values and are respected by the community.



Relationships between parties are often shaped by the broader context in which they exist. Frequently the native title context is defined by ongoing litigation; differing State government policies for dealing with native title processes; the Commonwealth Indigenous policy framework and at a local level, the relationships between Indigenous groups. All of these issues can significantly impact on relationships between stakeholders. In fact issues such as ongoing litigation and disputes between Indigenous groups can define relationships if no other defining goals are in place. On the other hand, if stakeholders establish shared objectives, these goals can help to define the relationship and at the same time manage broader issues such as litigation, disputes and government policy in the context of stakeholders shared objectives. The following issues were raised in the consultations as necessary to establishing relationships that can contribute to the economic and social development of the traditional owner group:

- **To establish strong relationships, stakeholders need to agree on shared goals.** This does not mean that companies must have as their main objective, the economic and social development of traditional owners. Rather it requires that within the company's goals for a profitable new venture, processes are established to promote traditional owners' goals as well. Such an approach would aim to balance economic, social and environmental concerns – incorporating the objectives of government, industry and traditional owners. The balance of these factors is the hallmark of a sustainable development approach.

At a more specific level, relationships can be better established if stakeholders consider the following issues.

- **Parties should give attention to building and strengthening their relationships separate from the particular transaction.** Parties' relationships are a significant determinant in whether their engagement will lead to beneficial outcomes – relationships can make or break negotiations and also affect how agreements operate in practice. It is unlikely that non-Indigenous parties will foster traditional owners' economic development without relationship strengthening initiatives that improve their understanding of each others' positions. This is especially important where negotiating parties have had little previous or positive contact.
- **Parties should ensure their relationship exists at an organisational and not just an interpersonal level.** Where parties' relationships are dependent on specific individuals, they may deteriorate or disappear if there is a change in personnel.
- **Relationships take time to build.** A number of successful and complex agreements have occurred only as a result of many years' engagement between parties. Initial arrangements, such as access to or heritage protection protocols for a particular area, can strengthen a relationship, and then more complex negotiations can be successfully tackled.



- **All parties should promote Indigenous rights and economic development as appropriate areas of government attention.** Even where commendable arrangements are negotiated between a traditional owner group and government or individual company, these can be criticised or worked against by other parties. There needs to be more effort by all parties to improving the general public's (and also respondents') understanding and acceptance of the economic development issues of traditional owner groups.

The above issues are directed to building relationships between traditional owner groups and other stakeholders so as to advance the traditional owners in achieving their economic and social development goals. A relationship that also needs to be considered in redirecting the native title system to the economic and social development of traditional owner groups is the effect this might have on the relationship between traditional owners and other members of their communities. An approach that only concentrated on the well being of the traditional owners is unlikely to be practical, equitable or sustainable if the living conditions of other members of the Indigenous community in which traditional owners live are not being addressed. Some parties commented that, in fact, the principles being developed in this report may exacerbate the divisions that have already arisen in Indigenous communities since native title was first recognised.

Resolving the types of tensions in communities referred to above will require a willingness and commitment by traditional owners, communities and governments. Consistent with current Commonwealth policy goals, good decision making and dispute resolution mechanisms can support greater cooperation within Indigenous communities. Government can contribute to this process by providing adequate funding, infrastructure and staff resources. Government can also facilitate the establishment of community and regional governance structures, within which all community groups can be represented. This is discussed in more detail in the following chapter.

Government can also address inequity and division within communities by implementing the ideas and opportunities included in the Social Justice Package that was designed to be put into effect in conjunction with the operation of the NTA. The provision of basic services in relation to health, housing, water and education to all members of the community will alleviate tensions within communities

Traditional owners and other groups within communities must also be willing to put aside new and old animosities; focus on building or rebuilding trust and networks within communities and begin to establish shared goals and values for the community. These activities contribute to the strengthening and renewal of social capital⁷ within Indigenous communities.

7 Improved social capital is said to contribute to improved health, better education, improved child welfare, lower crime rates, improved governmental responses and increased economic productivity. See Productivity Commission, *Social Capital: Reviewing the Concept and its Policy Implications*, Commission Research Paper, Commonwealth of Australia, Melbourne, 2003.



5 Agreements should integrate activities at various levels to achieve the development goals of the group

Traditional owners' development initiatives occur within a system of interrelated levels and understandings, including the local, regional, state, national and international levels. The key actors within the native title sector include State, Local and Commonwealth Government agencies, NTRBs, the National Native Title Tribunal, the Federal Court and industry bodies.

If progress is to be made towards the economic development goals of traditional owner groups, the various parties in the native title system cannot work at cross-purposes. Key issues arising from the consultations include:

- **Sufficient resources are needed to enable capacity building within traditional owner groups and also in those parts of the native title system on which these groups depend.** While this point has already been referred to in the discussion under principles 1 and 2 (above), it is of such importance that it bears repeating. Most of the initiatives and actions which could assist economic development for traditional owner groups require resources to be properly implemented.
- **The Commonwealth's funding of the native title system should encourage negotiation over litigation.** A financial assistance scheme focused on individual native title litigation claims will not adequately support initiatives aimed at assisting the economic and social development goals of traditional owner groups. The Commonwealth should investigate other ways to assist parties engage in a way that may contribute to the building of relationships between stakeholders which can create a stable environment for the economic and social development of traditional owner groups. In this regard the Commonwealth should reassess third party respondent funding to support greater relationship building between traditional owners and other interests in land and waters.
- **PBC funding must be urgently addressed.** Even where native title determinations do provide the possibility of outcomes that will further the economic and social development goals of traditional owner groups, the lack of PBC funding has impeded the realisation of potential benefits. There is a pressing need for this fundamental issue of implementation to be addressed by Commonwealth and State Governments.
- **Parties should be seeking to build into native title agreements, opportunities under State and other laws that are outside of, or in addition to, the Commonwealth's Native Title Act.** There are many State Government initiatives that can assist the economic and social development goals of traditional owner groups. Economic and social outcomes for traditional owners may be generated from a number of sources and different government agencies. However, government contribution to the economic and social development goals of traditional owners should be integrated into the governments' existing responsibilities



to all citizens and be consistent with their policy approaches for Indigenous Australians. Third parties can consider their contribution to traditional owner development within their sphere of influence.

- **Governments and third parties have an important role to play in facilitating and supporting traditional owners' economic and social development. To do so effectively, government and third parties also require capacity building.** Capacity building could address better and more cooperative relationships with traditional owners, greater understanding of development strategies, improved internal coordination (e.g., whole of government approaches), and awareness of the potential of their own contributions to traditional owner development. Governments and third parties can contribute important skills, knowledge, resources and opportunities to traditional owners' development goals.

The above principles provide a sound basis on which to redirect the native title system towards the economic and social development of traditional owner groups. The following chapter considers the policy framework that is required to realise these principles.