NATIONAL NATIVE TITLE COUNCIL

Monday 26 October 2026

Productivity Commission
GPO Box 1428
Canberra City ACT 260

Submission to *Review of the National Agreement on Closing the Gap 2026*

Introduction

Established in 2006, the National Native Title Council (**NNTC**) is the peak body for Australia's Native Title and other Traditional Owner organisations. The NNTC represents Native Title Representative Bodies and Service Providers as well as Prescribed Bodies Corporate (**PBC**s) recognised under the *Native Title Act 1993* (Cth) and other equivalent Traditional Owner representative institutions established under Traditional Owner land rights legislation such as the *Traditional Owner Settlement Act 2010* (Vic), the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) and the *Anangu Pitjantjatjara Yankunytjatjara Land Rights Act 1981* (SA).

The NNTC's work is guided by a rights-based approach rooted in best practice standards, such as the *United Nations Declaration on the Rights of Indigenous Peoples* (**UNDRIP**) and free, prior and informed consent (**FPIC**). It is a regular participant in a range of United Nations (**UN**) and regional international fora for addressing issues associated with the interaction between the resources sector and Indigenous Peoples across the globe.

In addition to representing the interests of our members the NNTC is a signatory to the *National Agreement on Closing the Gap* (***Closing the Gap***), the secretariat for the First Nations Heritage Protection Alliance and Sea Country Alliance, the PBC Steering Group, and a member of both the First Nations Economic Empowerment Alliance with the Australian National University and the Coalition of the Peaks. This national leadership role of the NNTC is recognised by the Australian Commonwealth, state governments, and by key resources sector peak bodies.

Our work aims to progress the Closing the Gap Priority Reforms and Targets. In doing so, we have an informed and nuanced perspective on the very real challenges to realisation of those targets. In our submission, we highlight both the successes and the areas for reform in progressing Closing the Gap.

Informed by the NNTCs participation in the Inland Water Target and Governance of the National Agreement on Closing the Gap, our submission will examine what effective relationships, shared decision-making in agreement governance and accountability to

communities practically means. We will look at the First Nations Heritage Protection Alliance partnership agreement with the Commonwealth government to reform the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), to examine successful partnerships. Consideration of the NNTC's contribution to the development of Indigenous Cultural and Intellectual Property legislation provides insight into the importance of influence to realise Traditional Owner priorities. Finally, a call for increased consideration of the emerging Critical Minerals sector to enabling community-led efforts to Close the Gap through economic development. through economic development.

1 Inland Water Target and the Governance of the National Agreement on Closing the Gap

As the national Aboriginal and Torres Strait Islander peak-body representative for the native title sector, the NNTC undertakes a range of programs regarding water. Specifically, our work under the Closing the Gap Inland Waters Target (**IWT**) includes co-chairing the national Inland Waters Target Working Group (**IWTWG**) with the Commonwealth Department of Climate Change, Energy, the Environment and Water (**DCCEEW**).

The development of the IWT has faced a number of challenges, including delays in establishing the original national target. With significant differences between jurisdictions in water legislation and entitlement systems, and limited and inconsistent data on Aboriginal and Torres Strait Islander ownership, access and control of water; these differences made it difficult to establish a consistent national baseline and a meaningful measure of progress. In response, the Joint Council on Closing the Gap (**Joint Council**) agreed in 2024 to move to a jurisdictional approach, with states and territories developing their own targets, baselines and enabling reforms. Under Closing the Gap, these targets must be negotiated in genuine partnership with Aboriginal and Torres Strait Islander peoples.

Through its role as co-chair of the IWTWG with DCCEEW, the NNTC supports a nationally coherent approach while allowing jurisdictions to reflect their different water systems and circumstances. The focus for the NNTC is on ensuring targets deliver a meaningful increase in Aboriginal and Torres Strait Islander ownership, access and control of water, recognising Traditional Owners as rights-holders, and ensuring partnership arrangements provide for genuine, shared decision-making rather than consultation.

1.1 Effective Relationships

The establishment of these jurisdictional targets has moved focus to the relationships of Aboriginal and Torres Strait Islander entities with their respective state and territory governments. The relationships are most effective where governments engage early, listen to Aboriginal and Torres Strait Islander organisations and are willing to change their approach in response to that advice. Strong relationships also depend on continuity, respect

and recognition of the expertise held by Aboriginal and Torres Strait Islander organisations and communities.

On a national level, the IWTWG provides an example of a governance arrangement that can support a more collaborative approach as it has First Nations representatives, government officials and is co-chaired by the NNTC and the Commonwealth. However, these relationships need to extend beyond formal meetings and consultation. They need to be supported by resources, transparent communication and clear evidence that Aboriginal and Torres Strait Islander priorities are influencing decisions and implementation.

Bodies such as the Joint Council and Partnership Woking Group (**PWG**) provide formal spaces for Aboriginal and Torre Strait Islander organisations to participate in discussions about priorities, implementation and accountability. From the NNTC perspective, these structures represent an important shift away from governments making decisions independently and towards a partnership approach. The NNTCs involvement in the IWT under CtG provides an avenue for Traditional Owner perspectives to be brought into national policy discussions.

The Joint Council, PWG and other governance bodies provide formal mechanisms through which governments and Aboriginal and Torres Strait Islander organisations can work together on Closing the Gap priorities. They create opportunities for issues to be raised, discussed and negotiated rather than governments developing policies without First Nations involvement. These structures are particularly important because they provide an ongoing relationship rather than relying on consultation on individual policies or programs. The NNTC's participation demonstrates the value of having national Aboriginal and Torres Strait Islander organisations involved in these processes, particularly on matters relating to land, waters, native title, economic development and Traditional Owner rights.

The governance arrangements under Closing the Gap have created opportunities for greater trust, respect and shared responsibility because Aboriginal and Torres Strait Islander representatives are formally involved in national governance. The recognition of the Coalition of Peaks and other Aboriginal and Torres Strait Islander organisations as partners in the Agreement is an important development. However, genuine shared decision-making responsibility and equitable representation is the only real determinate of an effective relationship between Government and Traditional Owners.

1.2 Shared Decision-Making in Agreement Governance

The National Agreement establishes shared decision-making as a central principle of the Closing the Gap approach. This is an important development because it recognises that Aboriginal and Torres Strait Islander people should have a meaningful role in decisions that affect their communities, Country and futures. The Joint Council and other governance arrangements provide formal opportunities for representatives to participate in setting priorities and considering implementation. However, genuine shared decision-making

requires more than representation at meetings, it requires equitable representation. Aboriginal and Torres Strait Islander representatives to have sufficient authority and influence to shape decisions, including decisions about priorities, policies, implementation and resources.

There remains a need to strengthen the practical application of shared decision-making across governments. Aboriginal and Torres Strait Islander representatives should have access to the same relevant information as government representatives and should be involved early enough in processes to influence the development of proposals rather than responding to decisions that have already been substantially made. The NNTC's role in the IWTWG provides an example of how co-governance can create greater opportunities for shared decision-making. However, these arrangements are most effective when shared authority extends beyond consultation and includes genuine influence over the final direction of policy, implementation and resource allocation.

Governance bodies hear community priorities through Aboriginal and Torres Strait Islander representative organisations, the Coalition of Peaks, state and territory Peaks, Traditional Owner organisations and community-controlled organisations. These structures provide important mechanisms for bringing local experiences and priorities into national discussions. However, there is a continuing challenge in ensuring that information and priorities can move effectively between communities, representative organisations and national governance bodies. Adequate funding is also necessary to enable Aboriginal and Torres Strait Islander organisations to participate effectively, obtain independent advice and engage their communities. Without these resources, participation can become dependent on government information and capacity, creating a power imbalance in the relationship.

Accountability is a central component of the Closing the Gap Agreement, and governments and the Coalition of Peaks have responsibilities for implementing the commitments made under the Agreement. The Productivity Commission provides independent monitoring and reporting, while Joint Council and other governance bodies provide mechanisms for parties to consider progress. These arrangements provide greater transparency than would exist without formal monitoring.

1.3 Accountability to Communities

Decisions are communicated through government reporting, Closing the Gap publications, Aboriginal and Torres Strait Islander representative organisations and other engagement processes. These mechanisms provide an important public record of progress and allow communities and organisations to understand developments within the Agreement. However, national reports and government publications may not always be accessible or sufficiently connected to the experiences of communities. There is therefore a need to strengthen the way decisions are communicated at regional and local levels.

Implementation of UNDRIP and its requirement for the FPIC of First Nations communities is essential. It is only though such recognition of Traditional Owner rights, through self-determined and representative Traditional Owner organisations, that accountability can occur.

2 Cultural Heritage and Shared Decision-making through Formal Partnerships (Priority Reform One)

The deeply distressing destruction of the Juukan Gorge caves by Rio Tinto in 2020 was a catalyst for a review of the legislation that failed to protect them. Led by the caves Traditional Owners', the Puutu Kunti Kurrama and Pinikura (**PKKP**) peoples and the NNNTC, the First Nations Heritage Protection Alliance (**FNHPA**) was formed. In 2021, the FNHPA entered a formal partnership with the Australian Government to co-design cultural heritage reform.

Critical to Closing the Gap is the wellbeing of Aboriginal and Torres Strait Islander Peoples. In acknowledging that 'that strong Aboriginal and Torres Strait Islander cultures are fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people', the Agreement includes outcome areas, targets and indicators 'that support the cultural wellbeing of Aboriginal and Torres Strait Islander people in areas of languages; cultural practices; land and waters; and access to culturally relevant communications.' Protection and intergenerational engagement with cultural heritage meets both the ambitions of the Agreement and the core issue addressed by the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth)(**ATSIHPA**).

2.1 Building successful partnerships

The co-design partnership has been very successful where it has been allowed to have genuine co-contribution and shared decision making. Regarding the inherently lived manifestation of cultural heritage, this approach can provide friction when Traditional Owners' whose understanding of their own culture need be registered and justified through the lens of western archaeology. The partnership provided safe and robust conversations at all levels of government to inform the reform package decision.

3 Intangible Cultural and Intellectual Property and Shared Decision-making through Formal Partnerships (Priority Reform One)

In January 2023, the Australian Government released its landmark *National Cultural Policy - Revive: a place for every story, a story for every place*. A key commitment in this 5-year plan to renew and revive Australia's arts, entertainment and cultural sector was to protect Indigenous Cultural and Intellectual Property (**ICIP**).

Through the Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts (**DITRDCSA**) Office of the Arts, the government committed $13.4 million over 4 years to support the development of new stand-alone legislation for the protection of ICIP. The process has been broken into stages, the first being to address the harm caused by fake art, merchandise, and souvenirs. More broadly, the next stage will include First Nations traditional knowledge (**TK**) and traditional cultural expressions (**TCEs**) manifest in native foods and botanicals, cultural knowledge, intangible cultural heritage and bioprospecting.

Since establishment, the NNTC has been represented on the First Nations Expert Working Group on Indigenous Cultural and Intellectual Property created to guide the development of this legislation.

3.1 Partnership decisions and influence

Nearing the end of the period for development of the legislation, the broader intergovernmental support for the reform process has been quiet. The central concern of the NNTC and many of its member organisations has been the lack of commitment to pursue stage 2 reforms. It is the ICIP in native foods and botanicals, cultural knowledge, intangible cultural heritage and bioprospecting where very real drivers of economic and cultural loss exist. Establishing and maintaining a strong ICIP regime will enable economic empowerment for the holders of that ICIP through the native foods, bioprospecting and biopharmaceutical industries. Whilst the anticipated legislation could provide this assurance, genuine engagement in the partnership and influence in its outcomes is still critically absent and it would seem that progress of the reforms has been impacted.

4 Critical Minerals and Enabling Community-led Efforts to Close the Gap (Priority Reform Two)

Australia is entering a period of significant investment in critical minerals. This transition presents not only a national economic opportunity, but a significant opportunity to advance the economic participation, development and self-determination of Aboriginal and Torres Strait islander peoples. A substantial proportion of Australia's emerging resources activity is occurring on or intersects with Country where First Nations peoples hold recognises rights and interests. The scale of this intersection is significant. Research by Burton et al found that 57.8% of critical minerals projects in Australia are located in areas where First Nations peoples have a right to negotiate. When native title claims are also considered, this rises to 79.2% of critical minerals projects. This research highlights the need for First Nations rights and interests to be considered at the outset of critical minerals policy and project development, rather than as an afterthought. The Australian Government's *Resources Sector Plan* has subsequently highlighted that these findings and recognised the importance of

early, inclusive and respectful engagement with First Nations peoples for a successful and equitable energy transition.

4.1 Place-based Partnerships

The critical minerals transition provides an opportunity to develop this work further. Employment, business participation, procurement, ownership, investment, governance and wealth creation are all distinct economic outcomes and should not be treated as interchangeable under Outcome 8 under Closing the Gap. For example, a First Nations person obtaining a job on a critical minerals project is an important outcome, but it is fundamentally different from a Traditional Owner corporation holding an equity interest in a project, an Indigenous business participating in its supply chain, a community investing in project revenues for future generations or Traditional Owners exercising meaningful governance over economic developments on Country. A Closing the Gap framework that seeks to support genuine economic self-determination should be capable of recognising and measuring these different forms of participation.

5 Transformation of Government Organisations and the NNTC (Priority Reform Three)

The NNTC is uniquely placed to work with government across initiatives and programs affecting Traditional Owner controlled lands, exercise of rights and collective decision making. As a national entity, the NNTC provides a vehicle for direct consultation, cross jurisdictional observation and informed policy positions form the Traditional Owner sector to government. As such, the NNTC works with state, territory and commonwealth government departments. At the Commonwealth level, the NNTC's expertise is called upon in partnerships and projects with:

- Attorney-General's Department
- Australian Heritage Council
- Department of Climate Change, Energy, the Environment and Water
- Department of Foreign Affairs and Trade
- Department of Industry, Science and Resources
- Department of Infrastructure, Transport, regional Development, Communications, Sport and the Arts
- Department of the Prime Minister and Cabinet
- National Indigenous Australians Agency
- Office for the Arts
- The Treasury.

Significantly, recent legislative reviews have shown a willingness by Government to consider the systemic barriers facing exercise of Traditional Owner rights. Such reviews, include those associated with the:

- *Environment Protection and Biodiversity Conservation Act 1999*
- *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
- Australian Law Reform Commission *Review of the Future Acts Regime*.

It is essential that the work, expertise and critical contribution made by the NNTC, and other Aboriginal and Torres Strait Islander entities, is enacted through tangible reform.

Conclusion

Across the NNTCs involvement in the Inland Water Targets, reform of Cultural Heritage legislation, development of ICIP legislation and work in the Critical Minerals policy space, we have observed the following.

- Genuine shared decision-making responsibility and equitable representation is the only real determinate of an effective relationship between Government and Traditional Owners.
- Aboriginal and Torres Strait Islander peoples must have sufficient authority and influence to shape decisions.
- The practical application of shared decision-making must be strengthened across governments.
- It is only though recognition of Traditional Owner rights, through self-determined and representative Traditional Owner organisations, that accountability can occur.
- Adequate funding is necessary to enable Aboriginal and Torres Strait Islander organisations to participate effectively.
- Partnerships must enable safe and robust conversations at all levels of government to inform decision making.
- Genuine engagement in partnerships and influence in outcomes is still critically important to moving Traditional Owner objectives forward.
- The critical minerals transition provides an opportunity for First Nations' employment, business participation, procurement, ownership, investment, governance and wealth creation.
- FPIC is not consultation, it is the provision of sufficient materials for Traditional owners to make decisions on whether to provide consent to activities affecting Country and Culture.

The Review of the National Agreement on Closing the Gap 2026 provides an opportunity for holistic change to the way Traditional Owner rights and inclusion in decision making are respected. If the recommendations made in this submission are implemented, the hitherto unregarded rights of Traditional Owners can be exercised to Close the Gap.

We encourage you to consider these recommendations and extend our invitation to discuss them further.

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