

Indigenous Reference Group to the Ministerial Forum on Northern Development

13 May 2019

Remote Area Tax Concessions and Payments Study
Productivity Commission
GPO Box 1428
CANBERRA CITY ACT 2601

Via Productivity Commission Submission Portal:
<https://www.pc.gov.au/inquiries/current/remote-tax/make-submission#lodge>

Dear Commissioners

Submission to the Inquiry into Remote Area Tax Concessions and Payments

I refer to the abovementioned matter.

The Indigenous Reference Group to the Ministerial Forum on Northern Development (the 'IRG') is one of two formal advisory groups to the Ministerial Forum on Northern Development (the 'Ministerial Forum'). Established in August 2017, the IRG has, at the direction of the Ministerial Forum, been working closely and intensively with relevant Commonwealth, Western Australian, Northern Territory and Queensland Government agencies, the not-for-profit sector and private sector to develop a suite of policy initiatives that are designed to substantially enhance the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy, thus creating a pathway for Northern Australia to reach its full economic potential.

Aboriginal and Torres Strait Islander people have lived in remote Northern Australia for approximately 60,000 years. Today, Indigenous persons account for an average of approximately 15 percent of the population of Northern Australia, compared to 2.5 percent in Southern Australia. Outside of the major population centres of Northern Australia, Indigenous persons have much greater population representation, well in excess of 50 percent in many instances. Primarily as a result of continued practice of traditional custom and lore which is intrinsically linked to living and working on traditional lands, as well as more recent recognition of Indigenous legal rights in extensive land and sea estate, the Indigenous population across Northern Australia is a relatively permanent population. It is also a relatively young and growing population.

While the nature of costs have changed since the Australian Government introduced financial incentives designed to encourage settlement and economic activity in remote areas of Australia, the costs of living and conducting business in Northern Australia remain high comparable to Southern Australia. The fact that approximately 170,000 Indigenous people representing 25 percent of the total Australian Indigenous population chose to live in Northern Australia despite substantially higher costs is testament to their determination to remain on traditional lands. Where financial incentives may be necessary to encourage non-Indigenous Australians to reside and work in remote areas of Northern Australia, this is not the case for Indigenous Northern Australians, many of whom prefer and chose to live on their traditional lands.

In the context of this Submission, the financial incentives required by Indigenous Northern Australians is not to encourage them to live on their traditional lands, but rather to allow them to prosper while doing so. Indigenous businesses in Northern Australia face the same generic challenges that all Northern Australian businesses face namely, small and isolated local markets, infrastructure limitations, poor and expensive logistics, limitations to telecommunications and harsh climatic conditions. However, in the case of Indigenous owned and operated businesses these factors are substantially exacerbated. Two centuries of punitive policy and dispossession has resulted in widespread, intergenerational disadvantage among many Indigenous Northern Australian

communities, rendering the navigation of the generic economic challenges presented by Northern Australia substantially more difficult.

The IRG has made 36 specific policy recommendations to the Ministerial Forum, 16 of which have been endorsed for implementation, several of which are currently the subject of cross-jurisdictional implementation planning. Included in this suite of recommendations are initiatives designed specifically to create jobs and foster labour participation among the Indigenous Northern Australian population, provide better access to capital for Northern Australian Indigenous businesses and to activate the value of Northern Australian Indigenous land, water, sea and cultural rights.

Largely as a result of the Australian Government's Northern Agenda, the Northern Australian economy is rapidly evolving, creating significant economic opportunities for the resident and relatively permanent, Northern Australian Indigenous population. The IRG is in the process of exploring how the Australian taxation system might be used to overcome the unique challenges faced by Indigenous businesses operating in remote Northern Australia, and in particular to support the implementation of the IRG recommendations pertaining to job creation, access to capital for Indigenous businesses, and activation of value from Northern Australian Indigenous land, water, sea and cultural rights.

While the IRG's work with respect to exploring opportunities to use the taxation system for this purpose is in its infancy, the IRG welcomes the opportunity to draw the Productivity Commission's attention to a number of issues that are relevant to this specific Inquiry.

The IRG thanks the Productivity Commission for the opportunity to make this Submission and looks forward to working with Productivity Commission further on this important issue.

Yours faithfully,

Peter Yu
Chair
Indigenous Reference Group to the Ministerial Forum on Northern Development

INDIGENOUS REFERENCE GROUP TO THE MINISTERIAL FORUM ON NORTHERN DEVELOPMENT

SUBMISSION TO THE PRODUCTIVITY COMMISSION INQUIRY INTO REMOTE AREA TAX CONCESSIONS AND PAYMENTS

10 MAY 2019

The Indigenous Reference Group to the Ministerial Forum on Northern Development

The Indigenous Reference Group to the Ministerial Forum on Northern Development (the 'IRG') was appointed by the Ministerial Forum on Northern Development (the 'Ministerial Forum') in August 2017, as one of two formal standing advisory groups. The IRG's directed purpose is to engage directly with, and provide policy advice to the Ministerial Forum, ensuring Indigenous perspectives are included in its deliberations, contributing to the achievement of tangible and sustainable benefits. In the first instance, the IRG has been tasked with advising on aspirations and barriers relating to developing the Indigenous business sector, growing the capability of Indigenous land owners to engage in development, and supporting Indigenous innovation.

Members of the Northern Australia Indigenous Reference Group

- **Mr Peter Yu (IRG Chair)**, Chief Executive Officer, Nyamba Buru Yawuru Ltd
- **Mr Lawford Benning**, Chair, MG Corporation
- **Dr Donna Odegaard, AM**, Chairperson, Aboriginal Broadcasting Australia
- **Mr Joe Morrison**, Director, Six Seasons Pty Ltd
- **Mr Nigel Browne**, Chief Executive Officer, Larrakia Development Corporation
- **Cr. Vonda Malone**, Mayor, Torres Shire Council
- **Ms Fiona Jose**, Chief Executive Officer, Cape York Partnership
- **A.Prof. Colin Saltmere**, Managing Director, Indjalandji-Dhidhanu Aboriginal Corporation

The IRG is an expertise-based committee comprised of Indigenous leaders across Northern Australia that have broad expertise and significant experience in Indigenous business, community and government leadership in Northern Australia. Brief biographies for IRG members are contained in Attachment 1 to this Submission.

The IRG has maintained a disciplined focus with respect to its advice to the Ministerial Forum. The IRG has focused very specifically on addressing an evident market failure in the development of Northern Australia, being inadequate activation of the Northern Australian Indigenous economy (see Attachment 2). Indigenous Northern Australians comprise an average of 15 percent of the population of Northern Australia (compared to 2.5 percent in Southern Australia), with much larger Indigenous representation in the populations of northern Western Australia and Northern Territory (approximately 25 percent), and in populations outside of the main urban centres across Northern Australia (well in excess of 50 percent in many instances). As a result, Indigenous organisations are a key component of the government, industry and non-government-organisation institutional framework in Northern Australia.

Legally recognised Northern Australian Indigenous interests in the land and sea estate are much greater than they are in Southern Australia, with Indigenous interests owning or exercising some degree of control and property rights over close to 80 percent of the Northern Australian landmass, and considerable areas of sea country. Very importantly, international conventions and increasingly the Australian judiciary are recognising that Indigenous interests extend beyond cultural rights and rights of occupancy, to rights over natural resources,

intellectual property and a right to development. Trade with and investment from Asian interests are important drivers of the development of Northern Australia and Northern Australian Indigenous interests have a significant heritage with respect to particularly South East Asian trade, having conducted trade for centuries prior to European colonisation of the Region. In this environment, Indigenous businesses' products and services are becoming increasingly important components of the trade profiles of many nations.

In other words, the size of the Indigenous population, importance of Indigenous organisations and extent of Indigenous interests in land, water, sea, natural resources and other intangible assets in Northern Australia, means that Indigenous Northern Australians are paramount stakeholders in the Northern Australian economy. **Unless Indigenous interests in the Northern Australian economy are optimally activated, Northern Australia will at best never reach its social and economic potential and at worst, fail to develop socially and economically.**

Indigenous enterprises in Northern Australia face both the same generic structural challenges as all business in Northern Australia, as well as unique challenges relating to the particular circumstances and history of Indigenous people. The generic structural challenges faced by all Northern Australian business include small and sparse local markets, remoteness (including limited access during the wet season), poor infrastructure, harsh climate and a degree of political irrelevance that is derived from the electoral imbalance between Northern and Southern Australia. In addition to these structural challenges, Indigenous business in Northern Australia also faces challenges that are the result of two centuries of discriminatory dispossession, oppressive and punitive policy that has resulted in widespread background of intergenerational socio-economic disadvantage among Indigenous Northern Australians. This manifests itself in many ways, including relatively limited capacity to engage in the workforce and to own, successfully operate and grow commercial enterprise.

Indigenous enterprise can also be inadvertently disadvantaged by policies not specifically targeting Indigenous affairs. For example, while probably necessary for the preservation of environmental values and biosecurity, the Special Quarantine Zone and Torres Strait Protection Zone that applies to areas of the Torres Strait (see Figure 1 below), place import and export restrictions and higher costs on the primarily Indigenous businesses operating within those zones.



Figure 1 – Torres Strait Protected Zone and Special Quarantine Zone

Further, while well-resourced social programs are obviously critical to improving the dire health and education status of many Northern Australian Indigenous communities, reliance on government funding itself can often create perverse incentives, which in turn discourage enterprise (including through competition by government

organisations with Indigenous managed NGOs in service delivery) and perpetuate ongoing dependence on services delivered and funded by governments. Without concurrent economic development and pathways to economic self-determination, a significant number of Indigenous Northern Australians will remain welfare dependent and continue to live with the negative impacts of dependency and passivity.

This means that the market failure in the development of Northern Australia that is the result of the generic challenges targeted by the Commonwealth's Northern Australia Agenda are greatly exacerbated in the case of the Northern Australian Indigenous economy. Developing policy initiatives that target the source of this unique market failure in the Northern Australian Indigenous economy with a high degree of specificity is the primary focus of the IRG.

Since early 2018, the IRG has been working closely and intensively with senior officials in Commonwealth, Western Australian, Northern Territory and Queensland Government agencies whose statutory and policy functions intersect with the Northern Australia Agenda and/or Indigenous economic development. This work has focused on establishing a policy framework designed to substantially enhance the engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy. The work commenced with a cross-jurisdictional policy assessment and development workshop in March 2018 which delivered 36 specific policy recommendations. The April 2018 Ministerial Forum endorsed 16 of those specific recommendations for implementation planning and referred the remaining 20 recommendations for further consideration.

Northern Australia Indigenous Reference Group Policy Development Consultation

Commonwealth Agencies – Prime Minister & Cabinet; Austrade; Agriculture and Water; Indigenous Business Australia; Indigenous Land Corporation; Office of Northern Australia; CRC for Development of Northern Australia; Northern Australia Infrastructure Facility; CSIRO; and Geoscience Australia.

Western Australian Government Agencies – Premier & Cabinet; Primary Industries and Regional Development; Jobs, Tourism, Science and Innovation; Water and Environmental Regulation; Training and Workforce Development; Communities WA; Planning, Land and Heritage; and Kimberly Development Commission.

Northern Territory Government Agencies – Chief Minister's Office; Trade, Business & Innovation; Health; Northern Territory Solicitor; Tourism NT; Local Government & Communities; Environment & Natural Resources; and Land Resource Management.

Queensland Government Agencies – Premier & Cabinet; State Development; Treasury; Employment & Training; Aboriginal and Torres Strait Islander Partnerships; Transport & Main Roads; Environment & Science; and Fire & Emergency.

The 16 recommendations can be broadly categorised as initiatives designed to:

- 1. Create jobs and foster labour participation, entrepreneurship and business acumen among the Northern Australian Indigenous population;**
- 2. Develop knowledge management systems and commission research and development that is designed to improve the decision-making environment for Indigenous managers and business owners in Northern Australia;**
- 3. Develop infrastructure that supports Indigenous economic development in Northern Australia;**
- 4. Provide improved access to capital and international markets for Indigenous businesses in Northern Australia;**
- 5. Initiatives to activate the economic value of land, water, sea and cultural resource rights and interests of Northern Australian Indigenous people; and**
- 6. Give effect to institutional arrangements that work to activate, accelerate and optimise Indigenous economic development across Northern Australia**

Focusing on the implementation instructions, the IRG held workshops in each jurisdiction to test existing policy initiatives against the 16 recommendations. This exercise culminated in a joint planning workshop in September 2018 that delivered an implementation plan to the Ministerial Forum's November 2018 meeting. This consultative work has been supported by commissioned independent research and expert policy analysis associated with each of the six themes identified above.

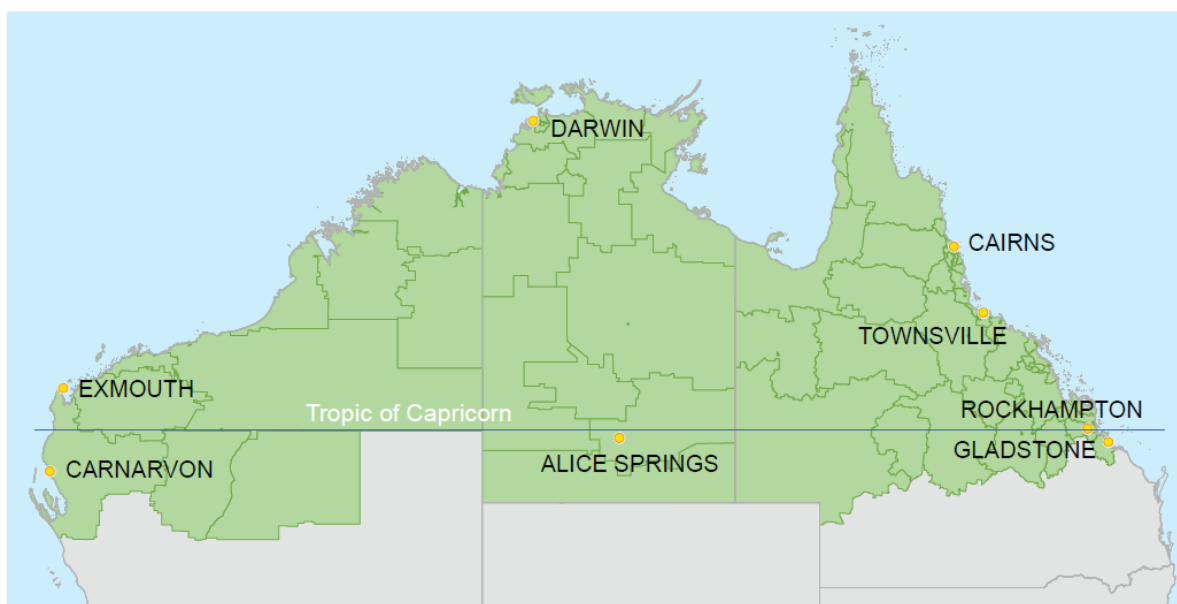
The implementation plan was endorsed by the November 2018 Ministerial Forum, with six specific implementation actions currently underway, all of which are directly relevant to the Terms of Reference for this Inquiry. In particular, agreement by the Ministerial Forum to capture the work of the IRG through a proposed

Northern Australian Indigenous Development Accord among the jurisdictions, together with the potential implementation of pan-Northern Australian institutional arrangements to support the specific needs of Northern Australian Indigenous economy, represent a much needed resetting of the institutional framework that applies to Indigenous economic development in Northern Australia.

Observations, opinions and recommendations presented in this Submission are informed by both the policy work undertaken by the IRG over the past 18 months, as well as the collective wisdom of the IRG members.

Scope of this Submission

The IRG's remit pertains to Indigenous economic development in Northern Australia. As such, the scope of this Submission is contained to the operation and impact of remote living and business taxation concessions and payments in Northern Australia, particularly with respect to their relevance to Aboriginal and Torres Strait Islander people living in Northern Australia and their northern Australian business interests. The area defined as Northern Australia for this purpose is illustrated in Figure 2¹ below.



Northern Australia as defined in the NAIF Act 2016

Figure 2 – Northern Australia

Summary of the Key Observations of this Submission

The IRG makes the following key observations:

- 1. Operations of the Zone Tax Offset and FBT Remote Area Concessions, including the levels of assistance**

The IRG asserts that from the perspective of achieving the policy objective of encouraging people to live and work in remote Northern Australia, the remote area concession and payments framework is unlikely to be efficacious. This is evidenced by the relatively small number of claimants under the Zone Tax Offset (ZTO), Remote Area Allowance (RAA) and Fringe Benefits Tax Remote Area Concession (FBTRAC), as well as the obvious fact that Australian population and industry remains concentrated in Southern Australia and particularly south eastern Australia. The likely main restricting factors with respect to the efficacy of the remote area concessions framework are:

¹ Northern Australia Infrastructure Facility

- The absence of adequate indexation which has eroded the value of the incentives to the point where they have become almost meaningless from a personal budgeting perspective in most instances; and
- The current zoning system is a blunt instrument that does not account for the true difference in cost of living in certain areas across Northern Australia or the variability in socio-economic disadvantage that is linked to remoteness across Northern Australia.

2. Economic and employment impacts of the Zone Tax Offset, FBT Remote Area Concessions and Remote Area Allowance, including the effect of applying indexation in regional Australia.

The Northern Australian economy accounts for approximately 11.7 percent of Australian GDP, but only 4.4 percent of the Nation's trading businesses and 6 percent of the Australian population². This inconsistency of the ratio of population to Gross Regional Product between Northern Australia and Southern Australia is partly the result of structural difference between the two economies, with the Northern Australian economy relatively more dependent on resources and agricultural industries. However, the fact remains that the national population is highly concentrated in Southern Australia and many Northern Australian industries are dependent on FIFO workforces, with workers sourced primarily from Southern Australia. This indicates that at a practical level, the economic and employment impacts of the remote area concessions and payments framework in its current form are minimal.

3. Operation of the Remote Area Allowance, which extends the benefits of the Zone Tax Offset to income support recipients in remote zones

It is highly unlikely that an amount of A\$18.20 per fortnight for a single person, A\$31.20 per fortnight per couple and an additional A\$7.30 per fortnight per dependent child, has a material impact on the budget of socio-economically disadvantaged persons living in remote Northern Australia.

4. Whether the Zone Tax Offset, FBT Remote Area Concessions and the Remote Area Allowance are delivering on their policy objectives and whether those objectives remain appropriate in a contemporary Australia

The IRG is of the view that using the taxation system to compensate for the relatively higher costs of living and conducting commerce in remote Australia and thereby incentivising residency and investment, is a sound approach. However, the remote concessions and payments framework should seek to be better aligned with the policy objectives of Australian Governments, particularly those of the Northern Australia Agenda. This is challenged by apparent uncertainty with respect to the legality of any taxation framework that is based on geographic differentiation.

5. Should business in remote areas be provided with similar support?

The existence of the Northern Australia Agenda and the extent of its support strongly indicates relative consensus that the economic development of Northern Australia is in the national interest. This, in turn, implies market failure that is the result of the high capital and operating cost structures that pertain to businesses operating in Northern Australia, and for which policy intervention is justified. Indigenous business in Northern Australia faces the same challenges and high cost structure as all Northern Australian businesses. However, as a result of widespread intergenerational socio-economic disadvantage, these challenges are substantially exacerbated for Indigenous business owners and operators. While the historical geopolitical interactions between the Indigenous peoples of Canada and European occupants, as well as the current political and legal frameworks that apply in Canada are very different to Australian circumstances, international precedence for preferential taxation treatment of Indigenous economic interests on a geographical basis exists.

² Office of the Chief Economist (2016), *An Economic Overview of Northern Australia*, Department of Industry, Innovation and Science, Australian Government, Canberra

6. Alternative mechanisms to better provide this support to Australians residing in specified geographical areas

The IRG believes that, provided they are appropriately indexed and deliver meaningful relief in practice, personal and business taxation concessions and additional payments under the social security system remain the most efficient mechanisms for compensating for the higher costs of remote living and conducting commerce in remote areas. However, the reality in Australia is that there is a wider range of grants and concessions that can be accessed under various Commonwealth, State and Territory programs that serve to alleviate living costs and de-risk business ventures in remote Northern Australia. This is a complex landscape of public sector initiatives which is difficult for particularly many Indigenous people living and working in remote areas to navigate and access.

Summary of Recommendations

The IRG makes the following recommendations:

1. That the Australian Bureau of Statistics:
 - Develops and maintains a set of regional and remote Consumer Price Indices that can be used to benchmark and index the remote area concession framework accurately; and
 - The boundaries that determine zoning be more precisely drawn to account for the variability of true cost of living across Northern Australia and the component of socio-economic disadvantage that is derived from remoteness.
2. That the Australian Tax Office review the personal and business budgetary value of payments and concessions under the current remote area concessions and payments framework and adjust them to a level that is adequate to encourage investment and mobilise residential workforce growth in Northern Australia, a level which is likely to be commensurate with global best practice.
3. That the Australian Tax Office reviews the current RAA payments schedule to ensure that together with other benefits, Indigenous people living in remote Northern Australia have access to resources that are adequate to ensure healthy living and pathways to education, training and employment.
4. That the Australian Tax Office work with the Office of Northern Australia to explore ways of optimising the remote area concession and payments framework's alignment with the objectives of the Northern Australia Agenda in a way that mitigates the risks associated with potential illegality of taxation mechanisms based on geographical preferential treatment.
5. That the Australian Tax Office work with the Department of Industry, Science and Innovation, Indigenous Business Australia and other key stakeholders to explore the validity of using taxation incentives to stimulate the growth of purely commercial Indigenous enterprise in Northern Australia.
6. That the Commonwealth, Western Australian, Northern Territory and Queensland Governments continue to work with the IRG to validate and implement its proposed Northern Australia Indigenous Economic Development Body, a primary purpose of which is to coordinate the myriad of concessions and support services available to Northern Australian Indigenous people and businesses seeking to engage the Northern Australian economy, ensuring that people and businesses in remote locations have access to a mix of existing solutions that is optimal for their specific circumstances.

Operations of the Zone Tax Offset and FBT Remote Area Concessions, including the levels of assistance provided, indexation and the boundaries of eligible areas and prescribed zones

For national jurisdictions that are characterised by vast areas of remote territory, policy designed to encourage population and economic growth in those areas is commonplace, particularly when remote territories are characterised by abundant natural resources and/or present sovereignty or border protection risks. For example, the Canadian *Income Tax Act* provides significant taxation deductions for taxpayers working and living in remote northern Canada.

For reasons of both national security and economic development, income tax deductions for inhabitants of remote areas of Australia have existed continuously since 1945. During the initial years of these programs, the financial incentive derived from the deductions were meaningful from a personal budgetary perspective. For example, by 1947 the Zone A deduction reached £120 (approximately A\$240) annually for individuals, compared to average annual wages at the time of £350 (approximately A\$700)³, reducing taxable income of those claiming the deduction by approximately a fifth of average annual earnings in 1950⁴, thereby reducing tax payable by approximately 3.4 percent of after-tax income for a person on an average wages⁵.

Since 1950, there have been a number of changes to the policy framework designed to either increase its concession, or reduce the impact of other policy changes on the concession derived from the framework. With the exception of the exclusion of Fly-In-Fly-Out (FIFO) and Drive-In-Drive-Out (DIDO) workforces from deductions in 2016, there have been no major changes to the framework for the past 18 years. These changes are summarised in the following Table 1.

Year	Change to Remote Area Incentives
1958	Inclusion of a loading for taxpayers with dependent children
1975	Conversion of the (pre-tax) deductions into (post-tax rebates)
1982	Creation of 'special areas' with higher rebates for especially remote areas (in essence, locations more than 250 kilometres from a town of more than 2,500 people, as measured in the 1981 Census)
1984	Introduction of the Remote Area Allowance (RAA), which was an equivalent payment for welfare recipients to extend the benefits of the ZTO to non-taxpayers residing in remote Australia
1986	Introduction of remote area concessions to lessen the impact of the then new Fringe Benefit Tax (FBT) on business operations in remote locations (hereafter, the FBT Remote Area Concessions)
2000	Expansion of the FBT remote area housing exemption to cover all employers in remote areas, rather than just primary producers
2016	Exclusion of fly-in-fly-out (FIFO) and drive-in-drive-out (DIDO) workers from the Zone Tax Offset where their normal residence is not within a prescribed remote zone

Table 1 – Changes to Australian Remote Area Incentives Since 1950

The current remote area incentive policy framework is given effect through the instruments summarised in Table 2 below.

³ Australian Bureau of Statistics (1992), *Average Weekly Earnings Australia: 1941 - 1990*, Catalogue no. 6350.0; and Cox, P., Burston, S., Kerr, A. and Slater, G. (1981), *Report of the Public Inquiry into Income Tax Zone Allowances*

⁴ Income taxation rates prior to 1950 are not readily available

⁵ ABS (Australian Bureau of Statistics) 1992, *Average Weekly Earnings Australia: 1941 - 1990*, Catalogue no. 6350.0; and

Instrument	Description
Zone Tax Offset (ZTO)	<p>The ZTO is a benefit received by income tax payers living in specialised remote zones designed to compensate employees for disadvantages associated with living in remote Australia such as uncongenial climate, isolation and high costs of living.</p> <p>ZTO deductions are claimable based on categories of remoteness (Zone A, Zone B and Special Areas) as illustrated in Figure 4 below. The annual deduction for:</p> <ul style="list-style-type: none"> Special Areas is A\$1,173 plus 50 percent of dependent child rebate at a maximum of A\$188 per child; Zone A is \$388 plus 50 percent of dependent child rebate at a maximum of A\$188 per child; and Zone B is A\$57 plus 20 percent of dependent child rebate at a maximum of \$75.20 per child.
FBT Remote Area Concessions (FBTRAC)	<p>FBTRACT is designed to lessen the impact of the Fringe Benefits Tax (FBT) on business operations in remote locations, recognising that the provision of benefits such as housing and transport are often necessary to attract employees to remote areas.</p> <p>FBTRACT is available to businesses operating in the ZTO zones (see Figure 4), with the exclusion of major towns, as well as areas outside of the ZTO zones that are sufficiently distant from large urban centres.</p> <p>Various FBT exemptions such as those that apply to employer provided housing and travel to and from the place of work are available. For other benefits such as housing subsidies, residential fuel and holiday travel, the taxable value may be discounted.</p>
Remote Area Allowance (RAA)	<p>RAA payments are designed to provide equity to those who live in remote areas but by virtue of being unemployed do not benefit from the ZTO. It is available to unemployment benefit recipients living in the ZTO Zone A and Special Areas (see Figure 4).</p> <p>The additional payments are:</p> <ul style="list-style-type: none"> For a single person, A\$473 per annum (or A\$18.20 per fortnight); For each member of a couple A\$406 per annum (or A\$15.60 per fortnight; and For each dependent child, an additional A\$190 per annum (or A\$7.30 per fortnight).

Table 2 – Current Instruments of the Australian Remote Areas Incentive Policy Framework

The absence of indexation has eroded the efficacy of the remote area incentives...

The nominal value of the ZTO was last increased in 1993. As such, the base payment for a single person residing in Zone A has remained at A\$338 per annum, Zone B A\$57 per annum and in special areas, A\$1,173 per annum for the past 25 years. Over this time, inflation has eroded the real value of this concession. Whereas the (pre-tax) Zone A tax deduction reduced tax paid by approximately 3.4 percent of after-tax income for someone on an average salary in 1950, the (post-tax) Zone A rebate is worth less than 1 percent of average after-tax income today⁶.

The absence of indexing the ZTO has clearly eroded its effectiveness as a financial incentive. However, establishing a basis on which the ZTO and other concessions can be indexed such that they maintain effective incentive is problematic. The Australian Bureau of Statistics publishes a Consumer Price Index (CPI) which as an

⁶ ABS (Australian Bureau of Statistics) 1992, Average Weekly Earnings Australia: 1941 - 1990, Catalogue no. 6350.0; and

⁶ Australian Taxation Office, (2018b), Taxation statistics 2015-16: Individuals, <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/Taxation-statistics/Taxation-statistics-2015-16/>

indicator of inflation, measures changes in the price level of a mixed basket of goods over time. The following Figure 3⁷ illustrates the trend in CPI during the period 1950 to 2019.

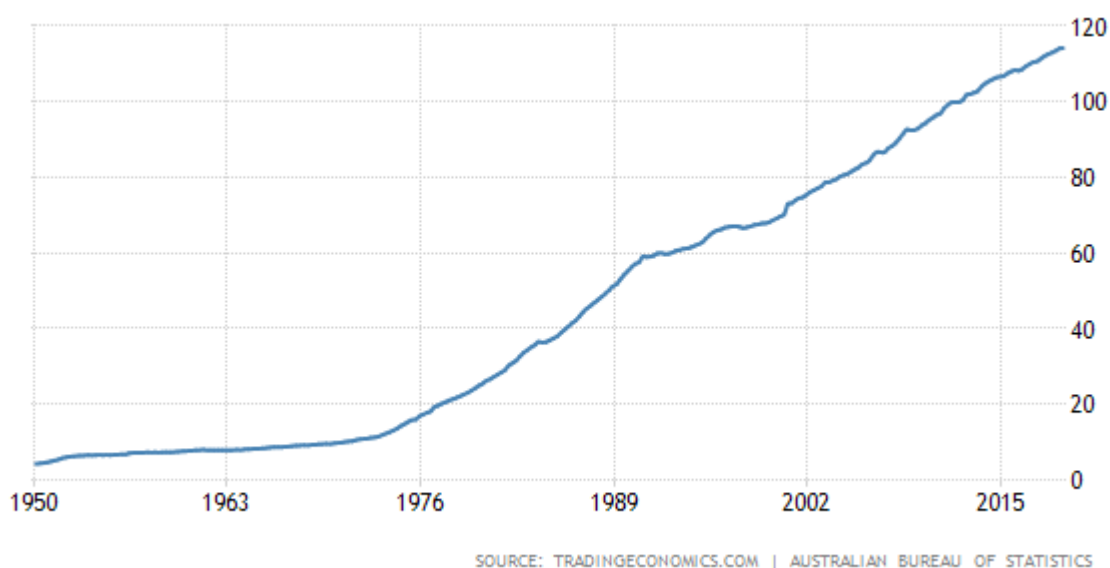


Figure 3 – Trend in Australian Consumer Price Index (1950 to 2019)

While the CPI provides a basis for indexing, it represents the weighted average index of eight Australian capital cities and is therefore not likely to reflect the cost of the same basket of goods in remote areas. Small and illiquid local markets and high infrastructure and logistics costs mean that many goods are substantially more expensive in remote locations, circumstances that are exacerbated when the national rate of GST is applied to the higher cost base. For example, while the Australian Bureau of Statistics does not publish inflation indices for remote areas, a Regional Price Index measured by the Western Australian Government identified that the same basket of goods in areas such as the Pilbara and Kimberley Regions of Western Australia were in the realm of 11 to 13 percent higher than the State’s capital, Perth⁸.

The development and maintenance of reliable cost of living statistics across northern Australia would not only assist with accurately indexing the remote area concessions and payments, but also assist with the development of effective regional development policy more generally.

Suitability of current zoning: the remote area concessions are a blunt instrument...

Generally speaking, locations more than 1,000 kilometres from Sydney, Melbourne and Brisbane, and 500 kilometres from Perth and Adelaide qualify for the remote area concession. For the purposes of determining eligibility for the ZTO and RAA, remote areas of Australia are divided into two broad zones, Zone A and Zone B. To be eligible, a recipient of the concession must reside or work in a specified remote area for more than 183 days in an income year in accordance with the criteria summarised in Table 2 above.

Northern Western Australia, the Northern Territory, Cape York and north western Queensland are categorised as Zone A. Darwin is the only major Northern Australian population centre categorised as Zone A, with Cairns and Townsville (and most of eastern northern Queensland excluding Cape York) categorised as Zone B. Areas in both Zone A and Zone B that are adequately distant from major towns are then categorised as Special Areas. These zones are illustrated in Figure 4⁹ below.

⁷ Trading Economics (2019), Australian Consumer Price Index reference base 2011/12 = 100

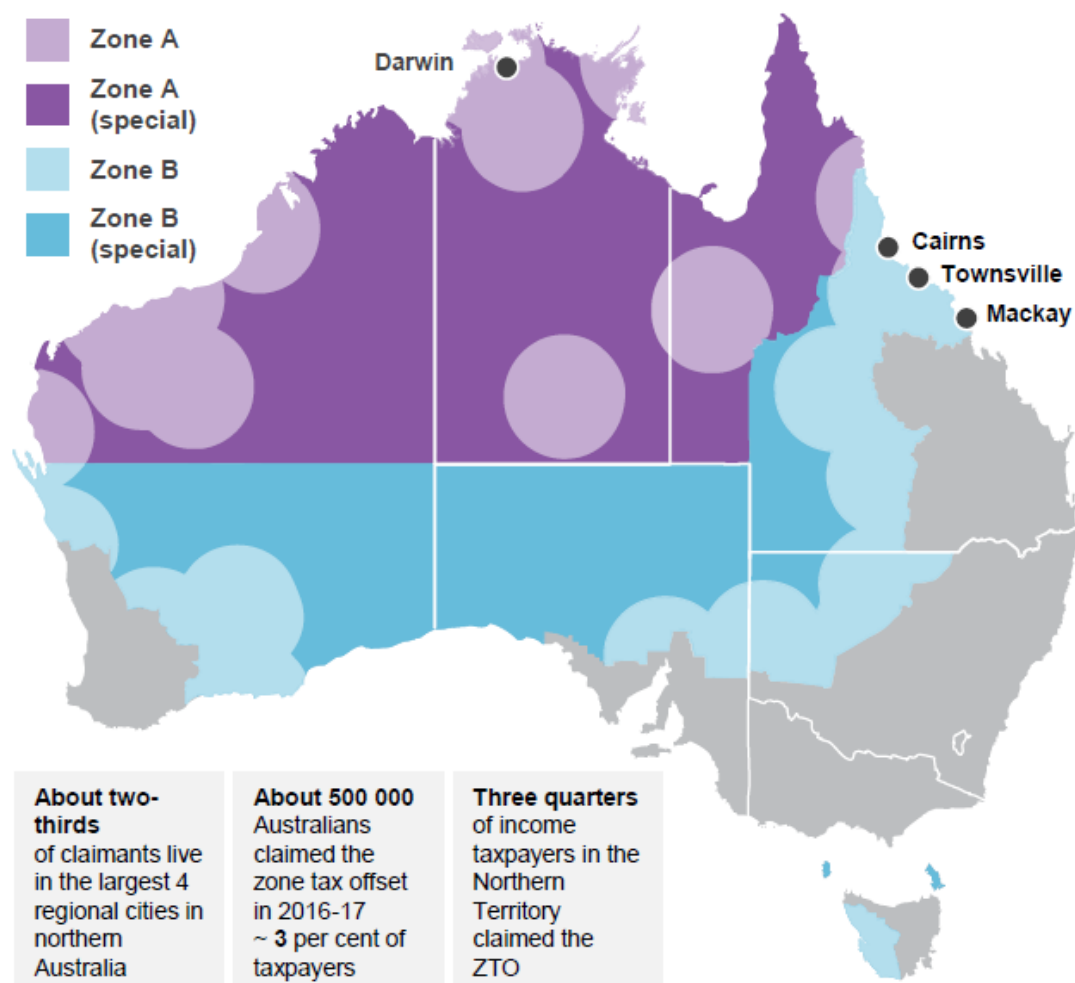
⁸ Department of Primary Industries and Regional Development (2017), Regional Price Index 2017

⁹ Productivity Commission (2019), *Remote Areas Tax Concessions and Payments: Issues Paper*, Australian Government, Canberra

The FBTRAC has a different geographic coverage to the ZTO which includes areas outside of Zone A and Zone B away from larger towns, and excluding areas around large ZTO eligible centres such as Darwin and Townsville. For the purposes of the FBTRAC an area is eligible if one of the following classifications apply:

- Classification 1 is a location that is not in Zone A or Zone B (see Figure 4) for income tax purposes, at least 40 kilometres from an urban centre that had a 1981 Census population of between 14,000 and 130,000 and is at least 100 kilometres from an urban centre that had a 1981 Census population of 130,000 or more.
- Classification 2 is a location that is in Zone A or Zone B (see Figure 4) for income tax purposes, at least 40 kilometres from an urban centre that had a 1981 Census population of 28,000 to less than 130,000 and is at least 100 kilometres from an urban centre with a 1981 Census population of 130,000 or more.
- Classification 3 applies to 'certain regional employers'¹⁰ where the employer is providing housing benefits and the location is at least 100 kilometres from an urban centre that in the 1981 Census has a population of 130,000 or more.

¹⁰ Certain regional employers include a public hospital, hospital carried on by a non-profit entity, government body where duties of employment are exclusively performed in, or in connection with, a public or not-for-profit hospital, a charitable institution, an employer who provides public ambulance services and a government body where the employees duties are performed in a police service.



Note: ^a Zone A also includes Macquarie Island, Norfolk Island, the Territory of Heard Island and McDonald Islands, the Australian Antarctic Territory, the Territory of Cocos (Keeling) Islands, The Territory of Christmas Island and Lord Howe Island. Special areas are approximate only. ^b Data in this figure are from unpublished 2016-17 ATO data and include claimants of the overseas forces offset.

Figure 4 – Tax Offset Zones

Socio-economic advantage and disadvantage can be defined as people's access to material and social resources, and their ability to participate in society. The IRG is cognisant that the remote area concessions are designed to compensate for higher costs of living in remote Australia by reducing business or personal taxation liability, or increasing welfare payments. While their specific purpose is not to address socio-economic disadvantage, in remote areas where socio-economic disadvantage is commonplace, remote area concessions and socio-economic disadvantage are intrinsically connected. While not the only driver, remoteness can be a major driver of socio-economic disadvantage and most certainly exacerbates its impact on individuals in terms of maintaining quality of life and being able to engage in the economy.

The Australian Bureau of Statistics periodically publishes indices of relative socio-economic advantage and disadvantage interpreted through Census data. The Socio-Economic Indexes for Areas (SEIFA) of Relative Socio-economic Advantage and Disadvantage (IRSAD) is a general measure of both relative socio-economic advantage and disadvantage at an area level. It uses a range of different Australian Bureau of Statistics Census variables including income, education, employment, occupation and housing characteristics. An area with a low score on this index reflects relatively high levels of socio-economic disadvantage, whilst an area with a high score on this index indicates high levels of advantage.

The 2016 SEIFA IRSAD scores for all areas have been divided into quintiles, where quintile 1 contains the lowest 20 percent of scores for the most disadvantaged areas and quintile 5 contains the highest 20 percent of scores

for the most advantaged areas. Figure 5¹¹ below illustrates the index of relative socio-economic advantage and disadvantage quintiles for Local Government Areas (LGAs).

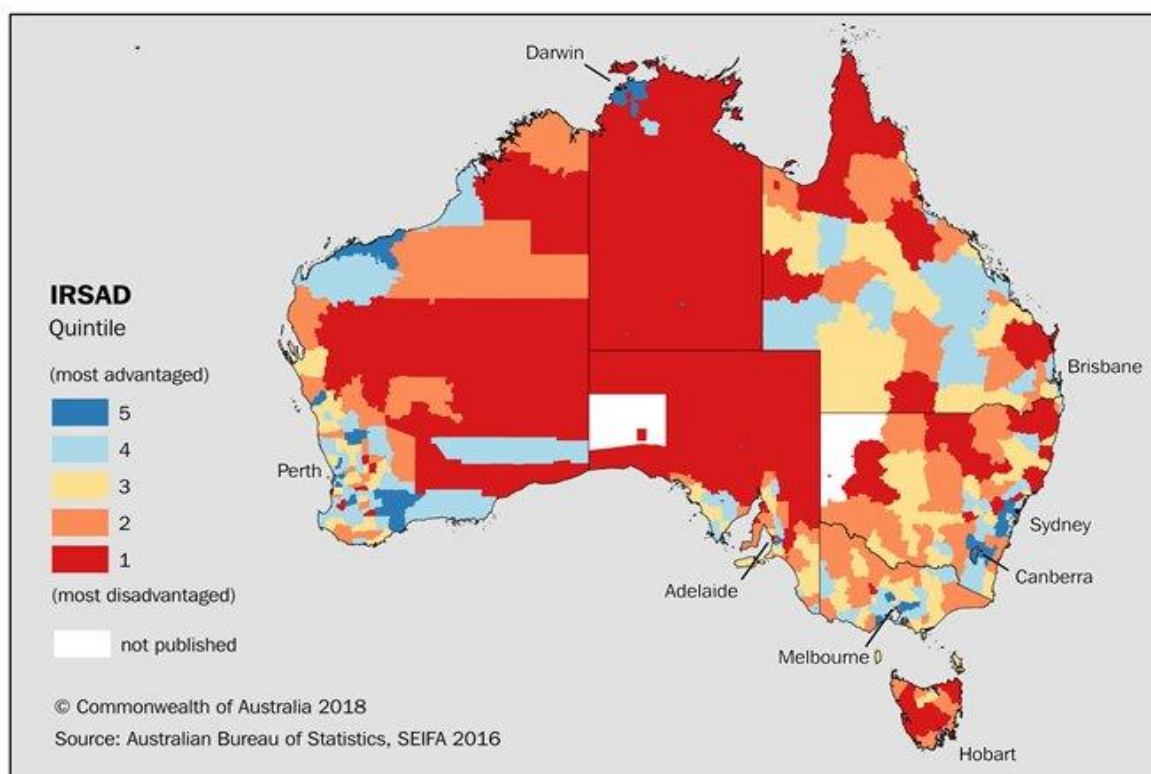


Figure 5 – Index of Relative Socio-economic Advantage and Disadvantage for Local Government Areas

A number of observations can be made from the above Figure 5. Firstly, the majority of Northern Australia (see Figure 2) is characterised by significant socio-economic disadvantage (quintiles 1 and 2), including vast areas of quintile 1 socio-economic disadvantage.

Secondly, Northern Australia is also characterised by relatively small areas of high levels of socio economic advantage (quintiles 4 and 5) which tend to revolve around the major population centres, with the highest levels of socio-economic advantage to be found in and around the Pilbara resources industry centres and Darwin.

Thirdly, and most relevant to the subject matter of this submission, in Northern Australia there is significant inconsistency between remote area concession zoning (see Figure 4) and areas characterised by significant socio-economic disadvantage. For example, of the four cities that collectively accounted for two-thirds of total ZTO claims and costs, Darwin remains in Zone A for taxation purposes, despite being identified as quintile 5 or most advantaged in the ISRA, while Townsville, Cairns and Mackay are all identified as Zone B for taxation purposes but are identified as quintile 4 (Townsville) and quintile 3 (Cairns and Mackay).

Finally, there can be significant range in the socio-economic status of areas within a particular zoning for the purposes of remote area concessions and payments. For example, the Belyuen community is approximately 110 kilometres from the Darwin locality and is classified as Zone A. Amenities include a post office, small school and community health centre. Of the 164 people living in the community, approximately 14 are employed (representing an unemployment rate of 91 percent), with around half the community's population recording a total income of less than A\$299 per week. Residents are predominately domiciled in social housing, while 45

¹¹ Australian Bureau of Statistics (2018), Socio-Economic Advantage and Disadvantage, Catalogue 2071.0

percent of households do not own a motor vehicle¹². The land is serviced by one sealed road, the Cox Peninsula Road.

On the other hand, Darwin, also classified as Zone A, is the capital of the Northern Territory; a population centre of approximately 148,884 residents who reported a median weekly income of A\$2,164, and recorded an unemployment rate of 4.7 percent¹³. Darwin has well-developed roads, air and port infrastructure and access to other critical services such as high-speed broadband internet. While compared to many Southern Australian cities Darwin is still subject to relatively higher costs, it is difficult to argue that the two Zone A communities are otherwise comparable.

People who identify as Aboriginal or Torres Strait Islander origin are significantly more likely to live in disadvantaged areas (48 percent lived in quintile 1) than non-Indigenous people (18 percent) based on the SEIFA IRSAD¹⁴. Illustrated in Table 3 below, the ten most disadvantaged Local Government Areas (LGA) throughout Australia are all located in Northern Australia, with Indigenous people accounting for the vast majority of their population.

Rank	Local Government Area	Usual Resident Population	% Aboriginal or Torres Strait Islander
1	Cherbourg (QLD)	1,269	98.7%
2	West Daly (NT)	3,166	91%
3	Belyuen (NT)	164	98%
4	Woorabinda (Qld)	962	94.7%
5	Central Desert (NT)	3,677	84%
6	Aurukun (Qld)	1,269	90.2%
7	Yarrabah (Qld)	2,559	97.4%
8	Doomadgee (Qld)	1,405	93.7%
9	Napranum (Qld)	957	94.8%
10	Palm Island (Qld)	2,446	94.1%

Table 3 – Ten Most Disadvantaged Local Government Areas – Index of Relative Socio-economic Advantage and Disadvantage

On average, people living in these most relatively disadvantaged LGAs in 2016 were young with low incomes relative to other areas. It is unlikely that the financial incentives and concessions provided under the current ZTO or RAA frameworks adequately compensate for the cost of living in these areas or make significant contribution to overcoming the component of socio-economic disadvantage that is derived from living in these remote locations.

It is unlikely that the current remote area concessions are efficacious with respect to their policy objective...

The IRG asserts that from the perspective of achieving the policy objective of encouraging people to live and work in remote northern Australia, the remote area concession and payments framework is unlikely to be efficacious. This is evidenced by the relatively small number of claimants under the ZTO, RAA and FBTRAC, as well as the obvious fact that the Australian population and industry remains concentrated in Southern Australia and particularly south eastern Australia.

The likely main restricting factors with respect to the efficacy of the remote area concessions framework are:

- The absence of adequate indexation has eroded the value of the incentives to the point where they have become almost meaningless from a personal or business budgeting perspective in most instances; and
- The current zoning system is a blunt instrument that does not account for the true difference in cost of living in certain areas across Northern Australia, or the variability in socio-economic disadvantage that is linked to remoteness across Northern Australia.

¹² ABS, 2016 Census data

¹³ ABS, 2016 Census data

¹⁴ Australian Bureau of Statistics (2018), Socio-Economic Advantage and Disadvantage, Catalogue 2071.0

Recommendations

The IRG recommends that the Australian Bureau of Statistics:

- Develops and maintains a set of regional and remote Consumer Price Indices that can be used to benchmark and index the remote area concession and payments framework accurately; and
- The boundaries that determine zoning be more precisely drawn to account for the variability of true cost of living across Northern Australia and the component of socio-economic disadvantage that is derived from remoteness.

Economic and employment impacts of the Zone Tax Offset, FBT Remote Area Concessions and Remote Area Allowance, including the effect of applying indexation in regional Australia

The discussion above clearly indicates that the efficacy of the ZTO, FBTRAC and RAA have been eroded over time as a result of inflation and are a blunt-instrument with respect to targeting socio-economic disadvantage that is associated with living in remote areas.

The Northern Australian economy accounts for approximately 11.7 percent of Australian GDP, but only 4.4 percent of the Nation's trading business and 6 percent of the Australian population¹⁵. This inconsistency of the ratio of population to Gross Regional Product between Northern Australia and Southern Australia is partly the result of structural difference between the two economies, with the Northern Australian economy relatively more dependent on resources and agricultural industries. However, the fact remains that the national population is highly concentrated in Southern Australia and many if not a majority of Northern Australian industries are dependent on FIFO workforces, with workers sourced primarily from Southern Australia. This indicates that, at a practical level, the economic and employment impacts of the remote area concessions and payments framework in its current form are minimal.

The Australian Tax Office calculates the ZTO deduction based on how many days a person was resident in a remote area. In circumstance where a tax payer was not resident in a remote area for 183 days or more, or was a recipient of the RAA, they are ineligible for the deduction. A taxpayer who resides in Zone A, Zone B or a special area continuously for an entire year and did not receive any RAA and does not have dependent children would be entitled to deductions of A\$338, A\$57 and A\$1,173 respectively.

Like Australia, the Canadian taxation system provides financial incentives for taxpayers who reside in remote areas of Canada. The Northern Residents Deduction is similar to the Australian ZTO in so far as the basic residency deduction is a function of the residential zone and the number of days lived in the remote area in the year. However, it also allows for an additional residency deduction, whereby one person per dwelling can claim if they also maintained and lived in a dwelling in the prescribed zone during the period. The amount of the deduction is far more generous than the ZTO, with the deduction for days lived in the remote zone being C\$11 per day, and the residential deduction an additional C\$11 per day. For a person claiming both the living and residency deduction and living in the remote zone all year, the deduction is \$8,303 for Zone A and \$4,015 for Zone B. Taxpayers receiving the Northern Residence Deduction are also eligible for certain travel costs deductions.

Where incentives under the Canadian system are a significant personal budgetary item, those under the Australian system clearly are not.

¹⁵ Office of the Chief Economist (2016), *An Economic Overview of Northern Australia*, Department of Industry, Innovation and Science, Australian Government, Canberra

Recommendation

The IRG recommends that the Australian Tax Office review the budgetary value of payments and concessions under the current remote area concessions framework and adjust them to a level that is adequate to encourage investment and mobilise residential workforce growth in Northern Australia, a level which is likely to be commensurate with global best practice.

Operation of the Remote Area Allowance, which extends the benefits of the zone tax offset to income support recipients in remote zones

Given the vast areas of socio-economic disadvantage in remote Northern Australia (see Figure 5) and the fact that many of those areas are characterised by primarily Indigenous populations, ensuring efficacy of the RAA is an important issue for the IRG. Ensuring that people have access to a standard of living that allows them to live healthy lives and engage in education, training and the workforce are key pathways to participation in the economy.

Like the ZTO, it is highly unlikely that an amount of A\$18.20 per fortnight for a single person, A\$31.20 per fortnight per couple and an additional A\$7.30 per fortnight per dependent child, has a material impact on the budget of socio-economically disadvantaged persons living in remote Northern Australia. Furthermore, as discussed in a previous section of this submission, socio-economic status is highly variable within zones that are used to determine remote area concession eligibility.

Recommendation

The IRG recommends that the Australian Tax Office reviews the current RAA payments schedule to ensure that together with other benefits, Indigenous people living in remote Northern Australia have access to resources that are adequate to ensure health living and pathways to education, training and employment.

Whether the Zone Tax Offset, FBT Remote Area Concessions and the Remote Area Allowance are delivering on their policy objectives and whether those objectives remain appropriate in a contemporary Australia

As discussed previously in this submission, primarily as a result of inflation and significant variability in socio-economic status, the remote areas concession and payments framework is not delivering on its policy objectives.

Northern Australia, particularly remote Northern Australia still has a relatively higher cost structure. Poor infrastructure, long distances, harsh climate and small local markets substantially inflate the cost of living and conducting commerce. While factors such as online shopping and e-commerce have improved accessibility to product and choice, high freight costs mean that Northern Australian residents and businesses still face a cost disadvantage.

The IRG is of the view that using the taxation system to compensate for the relatively higher costs of living and conducting commerce in remote Australia and thereby incentivising residency and investment, is a sound approach. In addition to adjusting payment rates for current circumstances as has been promoted throughout this Submission, the remote concessions and payments framework should seek to be better aligned with the policy objectives of Australian Governments.

The Northern Australia Agenda is an evolving framework of policies and initiatives that have been derived from the Developing Northern Australia Whitepaper¹⁶. The Northern Australia Agenda is a 20 year plan for investment and support to grow Northern Australia that is underpinned by the Developing Northern Australia Whitepaper. Table 4 below summarises the six pillars of the Northern Australia Agenda, together with key initiatives being implemented under those pillars. Indigenous entrepreneurship and businesses is one of six key pillars of the Northern Australia Agenda.

Pillar	Key Initiatives
Trade and investment gateway	<ul style="list-style-type: none"> Northern Australia Investment Forums connecting international and domestic investors with opportunities in Northern Australia Establishing an office of the Major Projects Facilitation Agency in Darwin to improve access to this agency. Creating stronger links between Northern Australia and regional Asian neighbours through better alignment with Association of South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC) agendas. Establishing a Northern Australia Biosecurity Framework Reference Group
More diversified Northern Australian economy	<ul style="list-style-type: none"> Support for Annual Developing Northern Australia Conferences Northern Australia Tourism Initiative Australian Parliament's Joint Standing Committee on Northern Australia 2016 Defence Whitepaper 20 year investment across Northern Australia Community Development Program for Remote Australia Designated Area Migration Agreement covering the Northern Territory Expanded Seasonal Worker Program Pacific Microstates Northern Australia Worker Pilot Expanded Working Holiday Maker Skilling Australians Fund
Indigenous entrepreneurship and businesses	<ul style="list-style-type: none"> Northern Australia Indigenous Reference Group Indigenous Business Sector Strategy Indigenous Land Tenure Reform Pilots Investor's Guide to Tenure in Northern Australia Township Leases Indigenous Ranger Biosecurity Activities
World-class infrastructure	<ul style="list-style-type: none"> 2015 Northern Australia Infrastructure Audit Northern Australia Infrastructure Facility Remote Airstrip Upgrade Program Northern Australia Roads Program Northern Australia Beef Roads Program Townsville City Deal Darwin City Deal Building Better Regions Fund and Regional Growth Fund
Water infrastructure investment	<ul style="list-style-type: none"> National Water Infrastructure Development Fund Northern Water Resource Assessments National Water Infrastructure Loan Facility
Research and innovation	<ul style="list-style-type: none"> Cooperative Research Centre for Developing Northern Australia Hot North Project Australian Tropical Medicine Commercialisation Grants Program Tropical Health Short Course Program Tropical Disease Collaborative Research Program

Table 4 – Pillars of the Developing Northern Australia Agenda

The Northern Australia Agenda is supported by the Commonwealth, Western Australian, Northern Territory and Queensland Governments and as a policy platform has bipartisan support. Advancement of the objectives of the widely supported Northern Australia Agenda would likely be substantially enhanced by preferentially aligning an efficacious remote area concession and payments framework with the Northern Australia Agenda. However, this does raise some legal issues that are discussed in the following sub-section of this Submission.

¹⁶ Australian Government (2016), Our North Our Future: Whitepaper on Developing Northern Australia, Australian Government, Canberra

Geographical preference is challenging: constitutionality of differential taxation in Australia...

As the basis for Commonwealth legislative power within the Australian federation, specific provisions of the Constitution must underpin and support any Commonwealth law. Broadly, taxation policy that is the subject of this Inquiry falls under, most relevantly, sections 51(ii) and 99 of the *Commonwealth of Australia Constitution Act 1900*:

- s51(ii) – ‘*The parliament shall, subject to this Constitution, have power to make laws for...taxation, but so as not to discriminate between States or parts of States.*’
- s99 – ‘*The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof.*’

Prima facie, taxation mechanisms such as the ZTO, FBTRAC and RAA under which residents located in defined geographic areas of Australia can exclusively access reduced taxation burden would seem to impugn the Constitutional bar on discriminating between States or parts of States. Not surprisingly, therefore, the constitutionality of this policy framework has from, time-to-time, been called into question. In 1945, the then Federal Treasurer, Hon. Joseph Chifley, defended the newly-introduced scheme during a parliamentary debate on the basis that a refund was permissible, whereas by implication an additional impost may not be – ‘*I have been assured that the proposal is constitutionally sound. I have generally found that any financial relief is regarded as constitutionally sound*’¹⁷.

Scholarly opinion on the matter would seem divided, but a predominance of opinion has existed since the 1950s that the ZTO at least is probably unconstitutional, albeit for reasons beyond the scope of this Submission.^{18,19,20} Previous Parliamentary inquiries have also expressed doubt as to the legality of the scheme, noting that – ‘*...[the inquiry] could have no assurance that the provision was constitutionally sound...*’²¹.

Despite the various espoused concerns, jurisprudence relating to the implementation of the remote area taxation concessions and payments has been rare and outcomes unclear. Procedural factors have likely contributed to this, whereby a taxpayer that is not eligible to receive the concessions would likely not have standing to challenge them, while those receiving the concessions are unlikely to attempt to have them overturned.

Nevertheless, the following cases shine some light on the issue:

- *Commissioner of Taxation v Clyne*²²
In this case the petitioner Clyne challenged the constitutionality of the entire *Income Tax Assessment Act* based on several points, including that the provisions pertaining to the ZTO (section 79A) impugned s51(ii) of the Constitution. This was unanimously rejected by the High Court. While Clyne’s case ultimately failed on technical grounds, only one Justice, Webb J, opined that section 79A did not discriminate between States or parts of States, instead holding that it distinguished between ‘natural or business circumstances’ that might ‘operate with different force in different localities’. By contrast the rest of the High Court concluded that it did – from the lead judgement of Dixon CJ, the rest of the

¹⁷ Hansard (1945), Hon. Joseph Chifley, Treasurer in: *Parliamentary Debates – House of Representatives*, 19 April, 924

¹⁸ Sawyer, G. (1958), ‘Commonwealth taxation laws – uniformity and preference’, *Australian Law Journal*. (32) 132

¹⁹ Rose, D. (1977), ‘Discrimination, uniformity and preference: some aspects of the express constitutional provisions’ IN: Zines, L, (ed), *Commentaries on the Australian Constitution*, Butterworths

²⁰ Gray, A. (2014), ‘Discriminatory taxation in light of Fortescue: its implications for the development of Northern Australia’, *Federal Law Review*, (42) 67-79

²¹ Commonwealth Parliament (1981), Report of the Public Inquiry into Income Tax Zone Allowances, Parliamentary Paper No. 149

²² (1958) 100 CLR 246, 259

Court agreeing, it *'[assumed] that the provisions of section 79A are not consistent with [the Constitution]'*. However, the case ultimately did not turn on the question.

- *Fortescue Metals Group Limited v The Commonwealth*²³

More recently, the meaning and implications of s51(ii) and by extension s99 of the Constitution has been considered by the High Court in what has become known as the Minerals Resource Rent Tax (MRRT) Case. A detailed consideration of the issues raised is beyond the scope of this submission. In brief, the MRRT was said to discriminate and/or preference between States as the ultimate rate of tax liability to the Commonwealth was altered by the application of individual State laws, an argument rejected by the High Court. By contrast, the concessions the focus of this Inquiry are drawn by reference to geographical areas. This is a differentiator which the plurality judgement of Hayne, Bell and Keane JJ, French CJ, Crennan and Keifel JJ broadly agreeing, thought impermissible - *'the reference to discriminating between "parts of the States" suggests...s51(ii) [is] read as directed against laws which discriminate...on the basis of geography or locality.'* Extending this further, a majority of the Court also held that s99 would not permit the extension of a concession or benefit to taxpayers solely by reason of their connection with a particular location within Australia, noting that a preference extended to one could not exist without discrimination to another.

However, in its deliberations pertaining to the MRRT Case, the majority of the Court noted a previous line of reasoning²⁴ in relation to permissible discrimination more broadly. A Commonwealth law that on its face might be unconstitutionally discriminatory or preferential may be valid if it is directed at achieving 'proper objective'. In the words of French CJ – *'the generality of the non-discrimination and no-preference limitations permits differences between States...if such provision is based upon a distinction which is appropriate and adapted to the attainment of a proper objective.'*

Unfortunately, the Court was split on the application of this broad statement to s51(ii) specifically. The plurality of Hayne, Bell and Keane JJ were of the view that s51(ii) was an absolute prohibition on geographic discrimination with no room for consideration of proportionality. French CJ was of the view that a proportionality test would be appropriate, as noted above, while Crennan and Kiefel JJ found it unnecessary to explore the issue.

Scholarly opinion is split on which formulation is to be most preferred.²⁵ While the analysis on the issue in this Submission is far from exhaustive, it is apparent that significant questions remain as to the legality of any taxation system such as the remote concessions that are based on geographic differentiation.

Any such mechanism needs to be designed in such a way as to reflect the current understanding of Constitutional prohibitions and strictures. In the absence of constitutional change through referendum, or additional clarifying High Court jurisprudence, it appears that the following three broad avenues may be pursued:

- *Rebate for fees, charges, costs and other imposts*

As explored in detail in the MRRT Case, neither s51(ii) or s99 of the Constitution prevent the Commonwealth from legislating a measure that has a differential result in some States or parts of States at the point of practical implementation if the reason for that difference is external to the law itself. Under the MRRT, resources companies faced a different rate of MRRT based on royalties set by the host State. Compensating for this difference in reaching a uniform headline rate was not discrimination. Accordingly, it is possible that a concession scheme could be implemented to benefit Indigenous businesses in Northern Australia if specific externalities that differentially affect Northern businesses (such as rates, charges or travel costs) could be identified. The unique circumstances that are the result of a widespread background of intergenerational socio-economic disadvantage combined with the generic structural challenges that are unique to Northern Australia may serve this purpose.

²³ (2013) 250 CLR 548

²⁴ *Austin v The Commonwealth* (2003) 215 CLR 185

²⁵ Simpson, A. (2014), 'Fortescue Metals Group Ltd v Commonwealth: discrimination and fiscal federalism', *Public Law Review*, 25 (93)

- *Concessions not predicated upon geographical nexus*

It appears settled that the primary differentiator for constitutional validity in this context is a geographic nexus, that is, laws that discriminate against or preference 'parts of States'. It therefore follows that discrimination or preferential treatment using some other targeting mechanism (such as Indigeneity) would not impugn s51(ii) or s99 of the Constitution. Obviously, and depending on the eventual basis used for concessionary rates, such a measure might have significant follow-on effects, raise issues of discrimination in other forms, and pose difficulties to public policy that would need to be resolved. Further, the challenge of selecting a targeting mechanism that would deliver the desired result of preferencing Indigenous enterprise within Northern Australia, without recourse to the geographic nexus of Northern Australia is not insignificant.

- *Appropriate and adapted*

Adopting the broad approach of the High Court, it might be said that laws offering concession to Indigenous businesses in Northern Australia, while clearly discriminatory, could be considered to be appropriate and adapted for proper purpose for addressing a clear instance of social and economic disadvantage. Accordingly, they would remain a valid exercise of Commonwealth legislative power. Unfortunately, jurisprudence on this point is uncertain, with no clear majority either way. In such circumstances, relying on a contentious interpretation of a *prima facie* clear bar against discrimination by geographic area is unlikely to be good legislative practice. Indeed, the plurality in the MRRT Case, while not a majority and with their reasoning on this point questioned by legal scholars, felt that the s51(ii) bar was so clearly expressed as to remove any potential for exceptions. Accordingly, this line of reasoning carries significant risks in the absence of further guidance from the High Court. This is especially so as a more new, narrowly targeted concessionary scheme, advantaging only a more visible and higher profile sector of the Australian economy in Indigenous businesses, is more likely to see a legal challenge brought against it than the present broad access remote area taxation arrangements.

Recommendation

The IRG recommends that the Australian Tax Office work with the Office of Northern Australia to explore ways of optimising the remote area concession and payments framework's alignment with the objectives of the Northern Australia Agenda in a way that mitigates the risks associated with potential illegality of taxation systems based on geographical preferential treatment.

Should business in remote areas be provided with similar support?

For so long as they face higher capital and operating costs, businesses operating in Northern Australia, particularly remote Northern Australia, will struggle to compete in the domestic and international marketplace. Lower margins and higher cost risks also means that these businesses will continue to struggle to attract necessary investment capital.

The existence of the Northern Australia Agenda and the extent of its support strongly indicates relative consensus that the economic development of Northern Australia is in the national interest. This, in turn, implies market failure that is the result of the high capital and operating cost structures that pertain to businesses operating in Northern Australia, can be justifiably the subject of policy intervention.

As such, there is a strong *prima facie* case for tax concessions, subsidies and other financial incentives to be provided to businesses operating in remote Northern Australia. Any such policy platform should be carefully designed to ensure that it is addressing true market failure and that it is efficacious with respect to its objectives. It should also be time-bound, ensuring transition to a framework of national policy norms.

Indigenous business in Northern Australia faces the same challenges and high cost structure as all Northern Australian businesses. However, as a result of widespread intergenerational socio-economic disadvantage, these challenges are substantially exacerbated for Indigenous business owners and operators.

While the historical geopolitical interactions between the Indigenous peoples of Canada and European occupants, as well as the current political and legal frameworks that apply in Canada are very different to Australian circumstances, international precedence for preferential treatment of Indigenous economic interests on a geographical basis exists.

Generally speaking, people and businesses of First Nations descent in Canada are taxed in accordance with the same taxation regime as other Canadians. However, Section 87 of the *Indian Act 1876* provides some exemptions around the personal property of a person of First Nations descent living on a reserve. The following Table 5 summarises these exemptions.

Tax Exemption	Description
Personal Property situated on a Reserve	Property owned by a First Nations person on a reserve is exempt from taxation.
Employment Income	Income earned on a reserve is exempt from income tax under paragraph 81(1)(a) of Section 87 of the Indian Act 1876
Employment-related income	Employment-related income includes insurance benefits, retiring allowances, Canadian pension plan payments, Quebec pension plan payments, registered pension plan payments or wage loss replacement plans. The portion of employment-related income that stems from employment income that was considered tax exempt will also be tax exempt.
Business income	Businesses are exempt from tax if actual income earning activities take place on a reserve, whereby the location of the customer is also a consideration.
Interest and investment income	If investment income is situated on a reserve, it is exempt from taxation. For example, dividend income from a corporation that operates only on a reserve is eligible for tax exemption. Similarly rental income from properties located on a reserve are exempt from taxation.
Royalty income	If royalties are received from the commercialisation of on-reserve resources, then the royalty income is exempt from tax.
Capital Gains	Capital gains earned on property located on a reserve is exempt from taxation. Where business assets are located partly on a reserve, the exemption is applied pro rata.
Goods and Services Tax and Harmonised Services Tax	GST and HST do not apply to goods bought on reserves by Indians, Indian Bands and Unincorporated band-empowered entities. Goods purchased off a reserve are subject to GST and HST unless delivered to a reserve.

Table 5 – Summary of Tax Exemptions for Indians under the Indian Act

While the exemptions summarised in Table 5 above have been in place since proclamation of the Indian Act, they should be considered in the context of the current program of renewal of nation-to-nation, government-to-government relationships between the Crown and Aboriginal people that is taking place in Canada. This is taking place under a philosophy that revolves around self-determination, whereby self-government is seen as the foundation for economic development of Indigenous communities.

Through negotiated agreements, law-making authority is given to Indigenous governments to decide how best to deliver programs and services to their communities. This authority can include decisions about how best to protect culture, language, education, health, use of land and how best to develop business partnerships to create jobs and benefit their citizens. However, taxation powers are also addressed and while they vary across agreements, they may result in Aboriginal governments being able to directly impose taxes on their citizens and in some cases, others living on reserves or settlement lands of Aboriginal Governments. These can include real property tax, sales tax, income tax and provincial-type commodity taxes.

While in Australia some enterprise conducted by Prescribed Body Corporates avoids taxation by virtue of the not-for-profit status of Prescribed Body Corporates, other Indigenous owned and operated businesses are taxed under the same regime as all Australian businesses. A taxation framework that provides concession to purely

commercial Indigenous owned and operated business that is located primarily on traditional lands may serve to stimulate greater Indigenous participation in the Northern Australian economy.

Recommendation

The IRG recommends that the Australian Tax Office work with the Department of Industry, Science and Innovation, Indigenous Business Australia and other stakeholders to explore the validity of using taxation incentives to stimulate the growth of purely commercial Indigenous enterprise in Northern Australia.

Alternative mechanisms to better provide this support to Australians residing in specified geographical areas

The IRG believes that the use of concessions under the taxation system and additional payments under the social security system is the most efficient means of compensating for the high costs of living in remote Northern Australia, provided they are indexed such that they are efficacious with respect to their policy objectives. In the case of incentivising investment in Indigenous business in Northern Australia this will likely need to be supplemented with a responsibly constructed program of enterprise grants.

The framework of remote area concessions and payments is one of several public policy instruments that can be accessed by residents and businesses in remote Northern Australia for the purpose of reducing the cost of living and alleviating the socio-economic disadvantage that is relatively wide-spread across, particularly Indigenous Northern Australian communities. As discussed throughout this Submission, under its current construct, the remote area concession and payment system by itself is unlikely to meaningfully address the additional cost of living or conducting business in remote Northern Australia, let alone incentivise population and industry growth in Northern Australia.

The fact is that in order to counter the economic disadvantage associated with living, working and operating a business in remote Northern Australia, people and businesses must navigate and engage with a very wide range of concession and grant programs. Identifying, let alone successfully accessing benefits is a significant challenge in remote areas, particularly for Indigenous people who often face additional challenges as a result of wide-spread background of socio-economic disadvantage. The following examples are illustrative of this issue:

- **Compliance with Fuel Tax Credits**

Quality of life and business productivity in remote Northern Australia is critically dependent on diesel fuelled vehicles. Heavy load loads, long distances, higher prevalence of off-road and other high torque requirements mean that the utility and economies of diesel-powered vehicles underpin lifestyle and business economies across much of remote Northern Australia. The need to compensate for the higher cost of fuel generally in remote Australia has been recognised through the Commonwealth Government's Fuel Tax Credit framework for some time. However, different rates of deduction that apply to different vehicle uses and different road networks render compliance with the system challenging. There are GPS-based technology solutions that make compliance substantially more simple and accurate. Greater awareness of and subsidised access to such solutions would likely result in more efficacious outcomes from this program.

- **Accessing Business and Employment Support Programs**

Indigenous people and businesses in Northern Australia have access to approximately 75 state, territory and commonwealth programs designed to support Indigenous engagement in the economy through employment or enterprise development. Needless to say, navigating this landscape to identify and access the right programs for the circumstances, let alone optimising financial assistance for the particular individual's or business' circumstances is extremely challenging. A 'one-stop-shop' based on






a network of regionally distributed, high quality advisors would likely go a long way to ensuring that the current system is optimally utilised.




A key component of the IRG's Recommendations is the recommended establishment of a Northern Australian Indigenous Economic Development Body (NAIEDB). A primary purpose of the NAIEDB is to coordinate the myriad of concessions and support services available to Northern Australian Indigenous people and businesses seeking to engage the Northern Australian economy, ensuring that people and businesses in remote locations have access to a mix of existing solutions that is optimal for their specific circumstances.

Recommendation

The IRG encourages the Commonwealth, Western Australian, Northern Territory and Queensland Governments continue to work with the IRG to validate and implement its proposed Northern Australia Indigenous Economic Development Body, a primary purpose of which is to coordinate the myriad of concessions and support services available to Northern Australian Indigenous people and businesses seeking to engage the Northern Australian economy, ensuring that people and businesses in remote locations have access to a mix of existing solutions that is optimal for their specific circumstances.

Attachment 1 – Membership of the Northern Australia Indigenous Reference Group

IRG Member	Background
Mr Peter Yu (Chair) 	<p>Mr Yu is a Yawuru Man from Broome, Western Australia, with over 35 years of experience in Indigenous development and advocacy at a regional, state, national and international level, including leading the Kimberley Land Council during the 1990s and as a key negotiator on behalf of the Yawuru Native Title Holders in the landmark 2010 Yawuru Native Title Agreement.</p> <p>He is currently the Chief Executive Officer of Nyamba Buru Yawuru Ltd (one of the largest Prescribed Body Corporates in Australia), a board member of the North Australia Indigenous Land and Sea Management Alliance (NAILSMA), member of the Australian National University Council, Deputy Chair of the AFL Aboriginal Advisory Committee, Deputy Chair of the Broome Future Alliance Ltd and Trustee of the Princes Trust Australia.</p> <p>Previous roles have included Deputy Chair of the Indigenous Land Corporation, Chair of the Western Australian Aboriginal Housing Board, board member of the Western Australian Museum and board member of the National Museum of Australia.</p>
Mr Lawford Benning 	<p>Mr Benning was born and raised in Kununurra, Western Australia. Throughout his career, Lawford has held senior positions with a number of Aboriginal organisations. He is currently the Chair of MG Corporation, which represents the Native Title interests of the Miriuwung and Gajerrong Traditional Owners. He is also Chief Executive Officer of the Gelganyem Trust for the Traditional Owners of the Argyle Participation Agreement and a board member of Binari-binyja Yarrowoo Aboriginal Corporation (Empowered Communities, East Kimberley).</p>
Dr Donna Odegaard, AM 	<p>Dr Odegaard AM is a Larrakia Elder of Darwin and businesswoman with over 40 years' experience. As owner and founder of Aboriginal Broadcasting Australia, Dr Odegaard has four television channels, four radio stations and production company reaching 2,400 Indigenous communities across Australia in over 30 Indigenous languages. Dr Odegaard is a board member of the Indigenous Land and Sea Corporation and the ANZLF Australian and New Zealand Indigenous Business Women's Network, recently endorsed by Prime Ministers Scott Morrison and Jacinta Aarden.</p> <p>Dr Odegaard's leadership in Indigenous affairs and business has been acknowledged throughout her career, including Indigenous Alumni Award (University of Newcastle), Naming Lady and Commissioning Lady for HMAS Larrakia (RAN), Order of Australia (AM) for Indigenous cultural heritage, broadcast media, education, training and reconciliation, and the prestigious Sir John Storey Lifetime Award for Significant Leadership in business and management. Dr Odegaard holds a Masters Degree in Aboriginal Land Rights and PhD on Treaty.</p>
Joe Morrison 	<p>Mr Morrison was born and raised in Katherine and has Dagoman and Torres Strait Islander heritage and has over 25 years' experience working with Indigenous people across Northern Australia and internationally on the management and development of traditional lands and waters.</p> <p>Mr Morrison is current a director of Six Seasons Pty Ltd. He served as the Chief Executive Officer of the Northern Land Council (NCL) from 2014 to 2018 and prior to that was the founding Chief Executive Officer of the North Australian Indigenous Land and Sea Management Alliance (NAILSMA). Mr Morrison has tertiary qualifications from the University of Sydney and is a renowned writer on topics such as Indigenous rights, management of country, economic development and Northern Australia development.</p>
Nigel Browne 	<p>Mr Browne is a Larrakia and Wulna Man living in Darwin. He is currently the Chief Executive Officer of the Larrakia Development Corporation (LDC) and has served on the Board of since 2005, including as Chair for the period 2010 to 2013.</p> <p>Previous positions held by Mr Browne include Crown Prosecutor with the Northern Territory Department of Public Prosecutions, Aboriginal Lands Northern Territory Solicitor and Policy Advisor to the Chief Minister of the Northern Territory. He has also held board positions with the North Australian Aboriginal Justice Agency, Law Society (NT) and Australian Day Council (NT). In 2011, Mr Browne received the accolade of National Indigenous Legal Professional of the Year in recognition of his advocacy, representation and contribution to the Larrakia People.</p>

<p>Cr. Vonda Malone</p> 	<p>Councillor Vonda Malone is currently the first Indigenous female Mayor of the Torres Shire Council in the Torres Strait. In March 2018, Vonda was awarded the prestigious McKinnon Prize for Emerging Political Leader of the Year, bestowed by two former Prime Ministers. She has also achieved unique milestones, working internationally through the Department of Foreign Affairs and Trade and the United Nations Office of the Human Rights Commission in Geneva, Switzerland.</p> <p>Vonda also holds the position of Chairperson of the Torres and Cape Indigenous Council's Alliance, consisting of 14 Councils across Torres Strait and Cape York and is a member of the Queensland Telstra Advisory Committee.</p> <p>Vonda has extensive public sector experience delivering services across the Torres Strait and Cape York. She holds a Graduate Certificate in Australian Rural Leadership, Graduate Certificate in Public Sector Management and is a recipient of the 2001 Centenary Medal.</p>
<p>Fiona Jose</p> 	<p>Ms Jose is a Kuku Yalanji and Torres Strait Islander Woman and is currently the Chief Executive Officer of the Cape York Partnership. Prior to this she held a number of executive positions in the region, including Director of Leadership for the Cape York Leaders Program, Chief Executive Officer of Cape York Institute and General Manager of the Cape York Partnership. She has also held senior leadership positions with Education Queensland and in the aviation industry.</p> <p>Ms Jose is a Leader of Empowered Communities, board member of Bama Services and Djarragun College and Chairperson of Jawun Advisory Group.</p> <p>Ms Jose has been recognised through the 2015 Telstra Business Women's Award – Queensland for Purpose and Social Enterprise and the Australian Institute of Management Queensland Not-for-profit Manager of the Year in 2012.</p>
<p>A/Prof. Colin Saltmere</p> 	<p>Associate Professor Colin Saltmere is an Indjalandji-Dhidhanu Man from North West Queensland. He is the Managing Director of the Indjalandji-Dhidhanu Aboriginal Corporation, the Myuma and Rainbow Gateway companies and is an Adjunct Professor with the University of Queensland's Aboriginal Environments Research Centre.</p> <p>In 2002, the Indjalandji-Dhidhanu Traditional Owners, led by A/Prof. Saltmere, established the Myuma Group of Companies which has successfully developed and expanded a suite of Indigenous civil construction, hospitality, catering, labour hire and training businesses. In 2015, the Myuma Group and the University of Queensland entered into a Spinifex research and commercialisation agreement to develop nanotechnology platforms for a range of products based on Spinifex grown in the region.</p>

Attachment 2: Market Failure Focus of the Policy

Recommendations of the Indigenous Reference Group to the Ministerial Forum on Northern Development

There is a market failure that is restricting the development of Northern Australia...

In addition to the more obvious notion of creating a business environment that provides equal opportunity for typically disadvantaged Indigenous northern Australians, the IRG Recommendations are directly targeted at a market failure, that if not addressed will substantially limit the extent to which Northern Australia can be developed.

Market failure is a construct of economic theory that refers to the inefficient exchange of goods and services between producers (supply-side) and consumers (demand-side). Central to the notion of market failure is the definition of an efficient market. An efficient market is an interaction between supply and demand that results in prices that reflect the full cost of the goods and services used in production and consumption. If all markets were perfectly efficient then social welfare (defined as economic benefits to all people in society) would be maximised, as the prevailing prices would lead to a socially desirable quantity of each good and service being produced and consumed.

The IRG Recommendations are underpinned by the notion that inadequate engagement of Northern Australian Indigenous interests in the development of the Northern Australian economy represents a clear market failure, that if not addressed will significantly constrain the extent to which Northern Australia can achieve its development objectives. Therefore, if we believe developing Northern Australia is in the National interest, so too is addressing this market failure. This rationale is summarised in the following Table 6.

Element of the Market Failure Argument	Discussion
<i>It is in the National interest to grow the Northern Australian economy...</i>	<ul style="list-style-type: none"> ▪ Opportunity – significant underutilised natural resources in close proximity to expanding Asian markets offers significant opportunity to grow employment, incomes and export earnings in and from Northern Australia. ▪ Relief of fiscal burden – Northern Australia presents it jurisdictional governments with limited local taxation base and significant social and infrastructure obligations, and represents a significant deficit to the national horizontal fiscal equalisation framework that underpins federation finances. Growing employment and incomes in Northern Australia will reduce the fiscal burden and broaden the taxation base of Northern Australian governments. ▪ Population expansion – employment opportunity in Northern Australia will expand the residential population, leading to larger urban centres in Northern Australia, relieving population pressure on urban centres in Southern Australia. ▪ Managing geopolitical risk – an undeveloped, unpopulated northern Australia presents the Nation with border protection and sovereignty risk that can only be addressed through development and higher levels of occupancy.
<i>Indigenous interests in Northern Australia are significant...</i>	<ul style="list-style-type: none"> ▪ Civic interests – Indigenous people represent an average of 15 percent of the population of Northern Australia (and a much higher percentage outside of major urban centres), are a relatively permanent population, and Indigenous organisations are a significant component of the Northern Australian government and non-government institutional framework. ▪ Cultural interests– Indigenous culture has been practiced continuously for over 60,000 years in Northern Australia and is a major component of the cultural identity of Northern Australia. ▪ Land and sea estate interests – in accordance with various state, territory and commonwealth legislation, Indigenous interests own or control access to vast areas of land and sea estate across Northern Australia. Indeed 78 percent of all land in Northern Australia is the subject of a determination or claim under the NT Act 1993 or the ALRNT Act 1976.

Element of the Market Failure Argument	Discussion
	<ul style="list-style-type: none"> ▪ Economic resource interests – international conventions and the Australian judiciary are increasingly recognising rights of Indigenous interests that extend beyond occupancy and cultural rights to intellectual property rights and rights to commercialise natural resources within Indigenous estates.
<i>The national interest in developing Northern Australia cannot be adequately addressed without activating Indigenous interests in Northern Australia...</i>	<ul style="list-style-type: none"> ▪ Owners of development assets – the extent of Indigenous interests in Northern Australia means that Northern Australia cannot be developed without significant participation by those Indigenous interests. ▪ Latent human resources – the Indigenous population of Northern Australia is currently significantly underemployed. Activating this latent resource will not only reduce the fiscal obligation, but provide a sizeable and stable local employment market, substantially improving the productivity of Northern Australian industry. ▪ Sharing in the opportunity – Indigenous interests will only participate in the development of Northern Australia if they are able to participate in commerce and build wealth.
<i>The limited capacity of Indigenous Northern Australians to participate in employment and enterprise ownerships is a fundamental market failure...</i>	<ul style="list-style-type: none"> ▪ The challenges that are generic to development in Northern Australia are ever-present – every business in Northern Australia faces fundamental challenges that are the result of small and sparse local markets, poor infrastructure, remoteness and harsh climate. This is the primary basis of policy initiatives resulting from the Developing Northern Australia White Paper. ▪ Socio-economic disadvantage – the impact of these generic challenges is exacerbated for Indigenous people in northern Australia by virtue of widespread socio-economic disadvantage.
<i>The IRG Policy Recommendations directly target the source of this market failure...</i>	<p>The IRG Policy Recommendations are designed to directly address the source of this market failure by undertaking specific initiatives under the following themes:</p> <ol style="list-style-type: none"> 1. Creating jobs, fostering labour participation, entrepreneurship and business acumen. 2. Knowledge management systems and research and development to support Indigenous commercial end-users. 3. Infrastructure to support Indigenous economic development. 4. Access to capital and international markets. 5. Activating the economic value of land, water, sea and cultural resource rights.

Table 6 – The Market Failure Case Underpinning the IRG Recommendations

This market failure is unique to Northern Australia...

It is reasonable to argue that Indigenous enterprise in some, particularly remote, parts of Southern Australia face similar circumstances to those outlined in Table 6 above. However, there are some very notable differences:

- **Indigenous workforce participation and enterprise ownership is a long way from population parity across Northern Australia...**
As is the case with the non-Indigenous population, the majority of Indigenous Australians (75 percent) reside in Southern Australia. However, whereas in Southern Australia, Indigenous persons comprise an average of 2.5 percent of the total population, in Northern Australia, Indigenous persons comprise approximately 15.0 percent of the total population. In the Northern Territory and northern Western Australia, Indigenous persons account for around 25 percent, and in many instances outside of major population centres, much larger portions of the population. If there were not market failure, Indigenous workforce participation and enterprise ownership would approximate population parity. In Northern Australia particularly, there is a long way to go in this regard.
- **Small local markets, remoteness, poor infrastructure and harsh climate are pervasive challenges in Northern Australia...**
There are certainly parts of Southern Australia where Indigenous (and non-Indigenous) enterprise is presented with the same challenges of small local markets, remoteness, poor infrastructure and harsh

climate that are prevalent across the vast majority of Northern Australia. However, instances of this in Southern Australia are far fewer and the impact on the overall Indigenous economy is mitigated by opportunities associated with a much larger number and density of relatively connected capital cities, major regional centres and towns.

- **Indigenous Interests in the land and sea estate and natural resources are more significant in Northern Australia, with a greater opportunity for development...**

There are also most certainly significant Indigenous interests in the estate and natural resources of Southern Australia. However, primarily by virtue of existence of large areas of existing freehold title that pre-dates the *Native Title Act 1993* (Cth) ('NTA') and the absence of the extent of tenure afforded by the *Aboriginal Land Rights (Northern Territory) Act 1976* ('ALRANT'), the area of land controlled by Indigenous interests is substantially less in Southern Australia than it is in Northern Australia. Further, because Northern Australia is relatively underdeveloped, the focus of much Indigenous land interests in Northern Australia is opportunity, whereas in Southern Australian there is a greater incidence of focus on compensation for past acts.

- **Socio-economic disadvantage is more wide spread among Indigenous Northern Australians...**

A background of socio-economic disadvantage manifests its self to varying degrees and in different ways across the entire Australian Indigenous population (as it does the non-Indigenous population). However, as a result of greater opportunity and better service delivery capacity, the extent of particularly critical socio-economic disadvantage is less wide-spread amongst Indigenous people living in Southern Australia than Indigenous people living in Northern Australia.

It is these significant inherent differences between the Northern and Southern Australian Indigenous economies that underpin the IRG's strong position that the policy framework that targets market failure in Indigenous economic participation in Northern Australia is by necessity be different to that which is targeting Indigenous economic participation in Southern Australia.

The evident market failure is adequate to justify policy intervention...

In reality there is a degree of market failure in the vast majority of markets. However, from the perspective of justifying public sector intervention designed to address identified market failure, it is typically only significant market failure that results in significant public cost or loss of significant public benefit that justifies government intervention.

Indeed careful consideration to both the nature of the market failure and an appropriate response is mandated by principles of good government. Elements of good practice policy making and review have been formally recognised by Australian governments and are reflected in a number of guidelines and requirements at commonwealth, state and territory levels. In 2006, the Australian Government adopted the following principles to aid sound policy development as identified by the Taskforce on Reducing Regulatory Burdens on Business²⁶:

- Governments should not act to address problems until a case for action has been clearly established. This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all problems will justify (additional) government action;
- A range of feasible policy options need to be identified and their benefits and costs (including compliance costs) assessed with an appropriate framework;
- Only the option that generates the greatest net benefit for the community, taking into account all of the impacts should be adopted;
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements;

²⁶ Banks, G. (2006), *Taskforce on Reducing Regulatory Burdens on Business*, Productivity Commission, Canberra

- Mechanisms are required to ensure that regulation remains relevant and effective over time; and
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

These principles are now being incorporated into regulatory impact assessments for any regulatory or quasi-regulatory proposal. Most state jurisdictions and the Commonwealth are required to undertake a regulatory impact assessment for the development of new regulations. All jurisdictions whose requirements specify that a cost-benefit-analysis framework be used to assess policy options, have a preference for costs and benefits to be quantified. In a few instances guidance documents are provided in order to assist in the development of a regulatory impact statement.²⁷

Given developing Northern Australia is in the National interest and engagement of Northern Australian Indigenous interests in the growth of the Northern Australia economy is necessary to achieve that development, there is a *prima facie* case for policy intervention to address the identified market failure.

²⁷ Victorian Government (2007) and New South Wales Government (2007)