

Dr Wendy Craik  
Commissioner  
Barriers to Effective Climate Change Adaptation  
Productivity Commission  
LB2 Collins Street East  
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Dear Dr Craik,

**Re: Productivity Commission Inquiry into  
Regulatory and Policy Barriers to Effective Climate Change Adaptation**

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) welcomes the opportunity to provide input into the Productivity Commission's inquiry into barriers to effective climate change adaptation. In this submission we highlight the intersection of native title governance issues with regulatory and policy barriers to climate change adaptation.

The Native Title Research Unit located within the Indigenous Country and Governance Research Program, AIATSIS, has since 2006 hosted a major research project examining the governance of registered native title bodies corporate (RNTBCs or PBCs as they are commonly known). RNTBCs are the corporate entities that are established to hold and manage native title once a successful determination has been made. Our research has established that RNTBCs have a key role to play in adaptation practices, based not only on their legislative responsibilities but also cultural and social responsibilities (Weir 2011, *Karajarri: a West Kimberley experience in managing native title*, AIATSIS Discussion Paper 30, <http://www.aiatsis.gov.au/research/discussion.html>). In October 2011, the AIATSIS Centre for Land and Water Research began case study research into the social and institutional barriers and enablers of climate change adaptation for RNTBCs, as part of an NCCARF research grant.

Native title lands now comprise 15 per cent of Australia, and native title holders have formal land management and community development responsibilities. Indigenous and non-Indigenous people necessarily collaborate on the building of infrastructure, town planning, economic development, land and water management and other adaptation work. This intercultural governance context is strongly influenced by the *Native Title Act 1993* (Cth). Indigenous people bring to this work their unique knowledges and relationships with 'country', which are also the basis of their native title. The combination of this knowledge, the land holdings and their responsibilities under legislation, places Indigenous people in a strong position to contribute to climate change adaptation. However, Indigenous people and their knowledges are currently marginalised in the governance, institutional and decision-making structures and practices designed to facilitate climate change adaptation.

AIATSIS recognizes that there is an important need to focus on the development of social tools that will facilitate and enable adaptive capacity from an institutional perspective. However, from our research, there are some identifiable concerns with respect to the Productivity Commission's issues paper. The issues paper implicitly excludes the experiences of native title holders in the adaptation debate. We make the following observations:

1. The definition of effective adaptation – maximum net benefit to the community as a whole – does not provide an opportunity to interrogate how this benefit is measured or defined. The majority of climate change literature is limited to biological, economic or technical matters. Limits to adaptation arise from the goals of adaptation, decision making capacity and value placed on specific forms of adaptive work. There is no explicit link made between cultural practice, knowledge and perception and how adaptive work is prioritized. Understanding these values and priorities is central to ensuring that adaptive measures are appropriate and reflected in subsequent rules and institutions. The issues paper does not have scope for a discussion about how values and perceptions of climate change will be accounted for in order to ensure that adaptive measures will be appropriate to marginalized members of the community. This is particularly important for Indigenous people whose knowledges, priorities and ethical relationships to country are often denied (whether implicitly or explicitly) in adaptation work and enabling frameworks.
2. Climate change adaptation discussions exclude the body of literature in anthropology and archeology that implicitly recognises the adaptive capacity and resilience of Indigenous communities, which is fundamental to a successful native title determination. Native title laws and customs are based in specific locales and landscapes (or country) and are embedded in Indigenous knowledges and relationships to landscape. There needs to be greater scope to question the design of social tools (such as the creation of specific tradable rights) and how this impacts on relationships between people and country that are interconnected and not divisible by specific regulatory measures.
3. Questions of costs and benefits need to be viewed more holistically. For example, there is no provision to consider the beneficial work of Indigenous native title holders who have land management responsibilities (even though there is a lack of funding and policy for this work: Weir 2011). While AIATSIS acknowledges the constraints of the Terms of Reference, the sustainability of policy and regulatory reforms is contingent on the priorities that these reforms intend to address. An inability to consider all sectors in the agenda setting process, has potential for maladaptation, especially in the most socially and economically marginalised sector, Indigenous Australia.
4. The issues paper calls for stronger property rights as a measure to enable adaptation work. However, adaptation in the Indigenous sector occurs or will occur without strong recognized rights – or the rights and interests recognized are not treated as such. Native title rights and interests are often narrowly construed once recognised and the interaction between native title rights and interests, water management legislation, and other land management regulation is rarely interrogated in any detail or considered to have limited impact. If effective adaptation is to occur across all sectors and equally amongst all Australian citizens, then native title rights and interests should be given the broadest and most beneficial definition. This has occurred in the recognition of deemed rights in the Carbon Farming initiative (<http://www.aph.gov.au/house/committee/ccea/24March2011/subs/Sub052.pdf>) and should be considered in other adaptation measures.

The results of our research into climate change adaptation and the experiences of RNTBCs are not expected until 2013, and we are conscious of the development of a report that will exclude this body of work. In the interim AIATSIS can assist in facilitating further consultations with Indigenous communities and organisations that are currently considering climate change adaptation on their native title lands, through our RNTBC network. We also direct you to the literature on RNTBCs that we have listed on our website <http://www.aiatsis.gov.au/ntru/pbcliterature.html> , and the website for RNTBCs that we support at <http://nativetitle.org.au/index.html>.

AIATSIS would like to thank you for the opportunity to provide input into this inquiry.

Yours sincerely,

Dr Lisa Strelein  
Director of Indigenous Country and Governance Research Program

20 December 2011