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Branch Manager  
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Dear Sir

### **Optimising Benefits from Native Title Agreements**

The Taxation Institute of Australia ('Taxation Institute') is pleased to provide comments on the *Optimising Benefits from Native Title Agreements* Discussion Paper ('Discussion Paper') released for public comment on 8 December 2008.

Whilst we appreciate that the broad scope of the Discussion Paper is to generate ideas, stimulate discussion and seek input on how the benefits negotiated through native title related agreements can deliver social and economic wealth for generations of Indigenous people, our comments below are focused on the following taxation issues raised in section 3d, *Tax options*, of the Discussion Paper:

- what would be a preferred model through which native title payments could be made for the benefit of the traditional owners and the Indigenous community; and
- are there non-tax related incentives that might achieve a similar outcome?

By way of background the Taxation Institute is a national body of over 15,000 members, with a focus solely on taxation. Our members include tax agents, accountants, lawyers and members of the judiciary with an interest in taxation, in all its various forms, as well as officers of the Australian Taxation Office ('ATO'), Treasury and State Revenue Offices.

In the past the Taxation Institute has worked closely in consultation with the Parliament of Australia (through Ministers and Parliamentary Committees), the Treasury and the ATO (as well their international counterparts), regulatory review agencies (including the Board of Taxation, Inspector General of Taxation, the Australian National Audit Office and the Tax Agents' Boards) and State and Territory Revenue authorities. We also have strong and constructive relationships with other tax professional, industry representative, and academic and research bodies, both in Australia and overseas.

The Taxation Institute agrees that there are a number of potential difficulties in the charitable trust model being used to accumulate payments to be used to stimulate growth and financial

opportunities for existing Indigenous businesses and assisting with the development of new businesses. The two key challenges are:

- to devise solutions that permit accumulation but avoid the potential for challenge to a fund's charitable status by the Commissioner of Taxation; and
- to achieve this without creating distortions and complexity in the taxation law through the creation of complicated special regimes.

Therefore, the Taxation Institute supports a minimal change model that would involve the Government treating as exempt any native title receipts and the gains they generate, where those funds are to be applied to stimulate growth and financial opportunities for Indigenous businesses. The exemption would be for that purpose and for no other purpose.

This would allow Indigenous communities' access to a range of existing financial structures such as trusts or entities based upon the mutuality principle (such as co-operatives and mutual funds). Mutual funds would provide for "tax free" accumulation and potentially meets the individual membership requirements of traditional ownership groups. Tax law changes required to achieve the exemption would be minor deeming provisions and the associated compliance costs would be contained.

Should you have any queries with respect to any of the matters raised above please do not hesitate to contact Joan Roberts on 03 9611 0178 or the Taxation Institute's Senior Tax Counsel, Dr Michael Dirkis on 02 8223 0011.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Joan Roberts', with a stylized flourish at the end.

Joan Roberts  
President