



The economic logic of the NIC Principles and economic development on Indigenous lands

As my predecessor pointed out in the *Native Title Report 2003*, native title is a political process as well as a legal process. Indigenous people enter a relationship with the State on the basis of their identity as the traditional owner group of an area of land. In some cases native title has provided the first opportunity since colonisation for a relationship of this type to be formed. Where the State is sincere about transforming the economic and social conditions in which Indigenous peoples live in Australia, native title can provide an opportunity to lay the foundations for development within the framework of traditional laws and customs and consistent with international human rights principles.¹

In promoting economic development using land as the basis, policy makers should recognise that development is a journey as well as a destination. In formulating proposals for economic development on Indigenous lands, it is important that appropriate consideration is given to the desired end results. Not only this, we must ensure that the means support the ends and that realistic and sustainable measures are implemented to support economic development. While changes to land tenure may be appropriate in particular circumstances to promote economic development where this is desired by traditional owners, it should not be seen as the panacea for Indigenous communities. This Chapter explores some of the themes and assumptions underlying the National Indigenous Council's Principles for Land Tenure (NIC Principles) as outlined in Chapter 1 and suggests a number of factors and features of land that policy makers and traditional owners/claimants ought to consider in any proposal to promote and foster economic development on Indigenous lands. Finally, this Chapter explores some diverse and innovative ideas for economic development beyond the NIC Principles.

1 *Native Title Report 2003*, p1.



Theoretical views about economic development

A key aspect of current debate is that *promoting individual ownership and control of communally owned Indigenous lands is paramount to economic development and realising home ownership* for Indigenous people. The NIC views shared interests as opposed to, and counter to, individual interests in achieving economic development. Arguably, in many respects the NIC Principles represents the modernisation theory of economic development, *which was formerly the prominent mode of thinking* within the international community, particularly in Western society. While there is not capacity within this report to conduct a detailed analysis of the different theories of economic development, it is worth noting the basic features of a number of models relevant to the context of economic development and indigenous lands.

Modernisation

Modernisation theory, gained prominence as a theoretical framework in the 1950s and 1960s, and emphasises the need to progress to economic development through historical stages. It implies that to develop, societies must modernise and economies must move from being low productivity, traditional technology – mostly primary sector and subsistence basis to being a high productivity, modern, mostly industrial sector. It also sees monetary income and economic growth as key elements in measuring development progress and quality of life. Humans are seen as operating on the basis of individual self-interest and ‘rational’ economic behaviour. As a consequence, traditional culture and social structures are seen as barriers to development. For example, Adelman and Taft Morris state that one of the factors needed to initiate development is:

significant social development that helps break down traditional societies, customary behaviour patterns and the sway of traditional cultures and leads to the enlargement of the domain in which market-oriented behaviour guides economic activity.²

While modernisation theory has enjoyed a healthy following particularly within national aid agencies, there has been recognition at the United Nations (UN) level that an increased emphasis on protecting human rights in the development process is required. A rights-based approach to development has been adopted by UN agencies to ensure that trade-offs between development and rights are no longer central to economic development. It also acknowledged that in many cases, viewing development in purely economic terms is often counterproductive to development and meeting social and environmental goals. According to the United Nations Economic and Social Council report of the Working Group on the Right to Development:

the implementation of the right to development would require the judicious use of public policies and well-directed expenditures to address income and asset inequalities and to establish an effective social safety net, since economic growth alone, however robust, could never suffice to overcome poverty.³

2 I. Adelman and C. Taft Morris, *Development History and its Implications for Development Theory: An Editorial*, 1999. Available online at: <<http://are.berkeley.edu/~adelman/WORLDEV.html>>.

3 United Nations Economic and Social Council Right to Development Report of the Working Group on the Right to Development on its fifth session (Geneva, 11-20 February 2004) E/CN/2004/23.



This idea is explored later on in this Chapter in relation to the experience of the World Bank, particularly in relation to land reform.

Hybrid Economy

The Hybrid Economy model for Indigenous economic development on traditional land is based on combining ‘traditional ecological knowledge’ or Indigenous knowledge with Western biological and social sciences to produce sustainable land management and related industries.⁴

Based on a 24 year longitudinal study of an Aboriginal ‘outstation’⁵ community in Arnhem Land,⁶ Jon Altman suggests that remote Indigenous communities are sustained by ‘hybrid’ economies comprised of three elements:

1. Customary (for example hunting and gathering)
2. Market (for example arts and crafts for sale in the Australian ‘mainstream’ economy)
3. State (for example income support transfers).

He found the *customary* component to be the largest sector in the outstation economy, both in 1979 and 2003, with the imputed value of wildlife representing up to 50 per cent of total income for some individuals and groups.⁷

The Hybrid model suggests that economic development for Indigenous communities on country needs to take account of and build on all three elements of the hybrid – in particular, recognising the role of the customary sector for Indigenous livelihood as well as its important commercial potential.⁸ The requirements for realising this model include:

- state remuneration for the contribution of the customary economy to the wider society, through sustainable land use and conservation effected by the practice of ‘traditional ecological knowledge’
- private sector innovation to establish joint ventures.

4 J.C. Altman ‘Sustainable development options on Aboriginal land: the hybrid economy in the twenty-first century’ *CAEPR Discussion Paper No.226*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2001; J.C. Altman ‘People on country, health landscapes and sustainable Indigenous economic future: The Arnhem Land case’, *The Drawing Board: An Australian Review of Public Affairs*, Vol 4, No. 2, 2003, pp65-82.

5 Small settlements formed on their traditional lands after migrations from missions and government townships in the 1970s, following the shift in Indigenous policy from assimilation to self-determination.

6 Arguably, a limitation on this theory is its specificity to Arnhem Land, whose characteristics may help or hinder its application to other areas of Indigenous land. Robert Levitus (also of CAEPR) on Jon Altman’s ‘hybrid economy’ model: ‘outstation residents account for around 5-10% of the Indigenous population, and not all of these enjoy the environmental richness of north-central Arnhem Land. Some familiar with arid zone circumstances have questioned the potential of the hybrid model’, pers comm, 17 May 2005.

7 J.C. Altman and P.J. Whitehead, ‘Caring for country and sustainable Indigenous development: Opportunities, constraints and innovation’, *CAEPR Working Paper*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2003.

8 J.C. Altman, *ibid.*



This approach offers Indigenous people on land rights and native title land 'the real possibility of choice' about the way of life they wish to lead,⁹ through presenting strategies relating to each of the hybrid components and not just to the market.

Development, culture and freedom

Related to the Hybrid model, there is an emerging interest in the need to incorporate increased ethical and culture specific principles in economic development. In particular, economist Amartya Sen sees the expansion of individual freedom as both the principal means and ends of development. On this view, the spectrum of freedoms ranges from freedom from premature mortality and malnutrition to freedom to participate in economic exchange to enjoy political liberty; to basic civil rights, and to lead the kinds of lives we have reason to value.¹⁰ Sen considers that this 'development as freedom' approach requires that people engaged in the development process be able to decide freely themselves what traditions and aspects of their culture they wish to preserve and follow. Conversely, people are free to decide those aspects of culture that may be transformed or abandoned in the process.¹¹

A final theory of note in the current context is that of Hernando De Soto. His views have been utilised by Noel Pearson in the recent debates surrounding economic development on Indigenous lands. De Soto argues that legal title to property is fundamental to its exploitation as an asset.¹² He suggests that poor people in 'developing countries' can accumulate capital – in the form of land in shanty-towns for example – but they are unable to realise its potential wealth because without legal title to such property, it cannot be used as collateral. This view holds that without good title, lenders will not be willing to make loans against the land or shanty as security.¹³ Of note is that De Soto's analysis is based on shanty towns in Peru where populations are high and various levels of commercial activity are common place, despite formal title to land.

Human Right to Development

Given its obvious relevance to the current discussions regarding economic development, it is worth devoting some attention to the human right my predecessor highlighted in the Native Title Report 2003 – the right to development. The right to development was recognised in 1986 by the UN General Assembly with the adoption of the *Declaration on the Right to Development* (DRD). Article 1 provides:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political

9 T. Rowse, *Indigenous Futures: Choice and Development for Aboriginal and Islander Australia*, UNSW Press, Sydney, 2002, p7.

10 A. Sen, *Development as Freedom*, Oxford University Press, Oxford, 1999.

11 A. Sen, *ibid.*, p32.

12 H. De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*, Basic Books, 2000.

13 W.B. Conerly, *The Mystery of Capital: Why Capitalism Triumphs in the West an Fails Everywhere Else*, *Ideas on Liberty*, Jan 2002: Vol .52, No.1, 2002, p54; R. Edwards, 'Native Title: dead Capital?' *Singapore Journal of Legal Studies*, 2003, pp80-115.



development, in which all human rights and fundamental freedoms can be fully realised.

The two elements which characterise the right to development are 1) development is a human right which belongs to people, not to States, and 2) the goal of development is the realisation of all human rights and fundamental freedoms. Development defined by human rights is aimed at the full realisation of all human rights and fundamental freedoms. In relation to Indigenous Australians these rights include:

- the right to self-determination
- the right to protection of culture
- economic, social and cultural rights
- right to free, prior and informed consent
- and equality

This approach to development would aim for a broad range of outcomes, including:

- Indigenous control of development goals and agenda setting
- Development consistent with culture and cultural issues
- Better health, access to food, housing and a stable meaningful job would be just as important as increased incomes
- Indigenous people would be active participants in the process of building economic and social outcomes in their communities
- Indigenous communities would be able to say 'No', where there was discontent with government programs and development proposals
- Indigenous rights in land would be recognised as being of equal importance and as a result have equal protection
- Life chance indicators of Indigenous people would be equal to that of other Australians, reflecting a fair distribution of the benefits of national development.

Development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of resulting benefits.¹⁴ It must be carried out in a way which respects and seeks to realise people's human rights. Thus *development is not only a human right in itself, but is also defined by reference to its capacity as a process to realise all other human rights.*

Better outcomes cannot be achieved in communities without strong recognition and support for the rights of these communities. In relation to economic development for Indigenous communities on Indigenous lands, I envisage development that builds on and preserves rights to land regardless of whether these rights come from land rights claims, native title legislation or traditional laws and practices. Building on rights does not involve the removal of these rights through the alienation of Indigenous land or by winding back the 'right to negotiate' to encourage resource development. Further analysis of the right to development and its relevance to the leasing debate is provided in Chapter 4.

14 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, p9.



Previous policy approaches

The idea of using land to generate economic outcomes for Indigenous Australians is not new, although it is only recently that a development focus has been brought to bear on the process. Elspeth Young identifies that the policies of assimilation and integration¹⁵ adopted a welfare approach rather than development, assuming that Aboriginal and Torres Strait Islander peoples would not be capable of taking prime initiatives for either social or economic change affecting them. Programs focused on 'encouraging and/or coercing all Aborigines to accept European workethics and join the labour force, primarily in positions at the bottom end of the occupational hierarchy.'¹⁶ For example, under the 'Protectorate' system set up in New South Wales in 1838, the functions of Protectors included working to persuade Aboriginal people in their area to settle down to a life of farming.¹⁷ Assimilation and integration did not mean equality, however. Aboriginal pastoral workers were paid below the Award wage until 1968. Frequently, wages were paid in kind rather than cash.

The policies of self-determination and self-management,¹⁸ in theory, shifted control over Indigenous development from governments to Indigenous communities, although as Young notes, assimilationist thinking was entrenched in bureaucracies and continued to exert influence even after the policy had officially been abandoned.¹⁹ The granting of land rights and the recognition of native title rights support this shift, through growing Indigenous control over land and resources.

Young argues that previous government attempts to generate Indigenous economic development from land share the following characteristics:

- An assimilationist, welfare-oriented foundation which has been challenged by the shift to the policies of Indigenous self-determination and self-management
- Conflicting definitions of development, particularly ambivalent attitudes towards the relative importance of social and economic development aims
- An emphasis on primary resource development as the economic base, which is subject to the severe and unpredictable world market fluctuations
- An inherent vulnerability which affects the availability of all government funding and puts programs at risk
- Division of responsibility between and within government departments.²⁰

To this can be added the following observations:

- Strategies have been fragmented between different levels of government.

15 For further information on the policies of assimilation and integration, see Chapter 1, p28.

16 E. Young, *Third World in the First: Development and Indigenous Peoples*, Routledge, London, 1995, p103.

17 C.D. Rowley, *The Destruction of Aboriginal Society*, Pelican, Sydney, 1970, p56.

18 For further information on the policies of self-determination and self-management, see Chapter 1, pp28-31.

19 Young, *op.cit.*, pp102-104.

20 Young, *op.cit.*, pp117-118.



The 1967 national referendum saw responsibility for the administration of Indigenous affairs shifted to the Commonwealth Government, while responsibility for land and resources remain with the state and territory governments. Local governments are responsible for zoning land and raising rates for the provision of infrastructure. And as discussed in Chapter 2,²¹ a variety of Indigenous entities including Aboriginal councils, Aboriginal Land Trusts and Prescribed Bodies Corporate (PBCs) have responsibility for Indigenous legal interests in land. These divisions make it imperative that all levels of government coordinate their activities in partnership with Indigenous entities where economic development is to be pursued through Indigenous land.

- Citizenship services gaps, such as infrastructure and social development needs, such as education and health have not been taken account of in economic development policies.

Further discussion of this issue is in Chapter 4.

Articulating the outcomes – development for whom?

History tells us that economic growth in the broader economy does not necessarily translate into greater social and economic outcomes for Indigenous people. Reflecting on the *Yorta Yorta*²² judgment demonstrates this well. As Justice Olney summarised in his decision at first instance, by the 1850s Aboriginal resistance to settlement had ceased. The Yorta Yorta population had been drastically reduced while the white population had grown dramatically – attracted by pastoral lands and gold. Government Inquiries were held into the condition of Aborigines and addressing their ‘absolute wants’. Missions and reserves were established to address these needs. Later, ‘half castes’ were dispersed from missions and stations. Families were split up or forced to move away from areas that had been their homes for years. In the twentieth century most of the reserve land had been leased to non-Indigenous farmers. While employment for Aboriginal people became harder to find as the non-Indigenous population grew and soldiers returned home. Funding for reserves was reduced and Aboriginal people living on reserves were not eligible for unemployment benefits nor were able bodied people eligible for rations.²³

As Chapter 1 observed, there is no doubt that Indigenous people throughout Australia have experienced similar events on their lands. These stories demonstrate how industry, agriculture and mining contributed to the growth of the Australian economy while at the same time, deprived Indigenous Australians of their economic resources and disrupted social, cultural and political structures. Development in Australia has not been enjoyed by the entire population. Indigenous Australians have been, and continue to be, marginalised from development outcomes on their lands.

21 Chapter 2, p82-86.

22 *Members of the Yorta Yorta Aboriginal Community v Victoria & Ors* [2002] HCA 58 (12 December 2002) (‘Yorta Yorta’).

23 *Yorta Yorta*, paras 152, 153.



Therefore, it is important to establish clear vision and direction for economic development that makes Indigenous people and their development goals central to the process. An overall policy objective needs to be formulated in relation to economic development for Indigenous lands – both land rights lands and native title lands. Unfortunately, the NIC Land Tenure Principles and government policy are wanting in this regard. Unless a more comprehensive and inclusive economic development strategy is developed, the inadequacy of historical government actions to include Indigenous Australians in the share of the bounty from national development, and of existing government programs and services to deliver better outcomes, Indigenous Australians will continue to be eclipsed by the current debate about land tenure.

Few would argue against the pursuit of economic development. However, understanding the means by which this can be achieved consistent with indigenous rights should be the focus of attention for policy makers. As this Chapter will highlight, it is evident that there are a number of options available and the views of Indigenous peoples are diverse. So far in the current debate it is unclear what outcomes policy makers seek to achieve by proposing changes to the nature of title in Indigenous lands. The following have all been referred to in the debate as issues that need to be addressed:

- Home ownership
- Address housing shortages
- Wealth creation and capital accumulation
- Capacity building and community development
- Economic growth
- Increased industry participation and investment in Indigenous land
- Perceived governance problems in community entities such as land councils
- Encouraging entrepreneurial behaviour within Indigenous communities
- Improved efficiency in existing lease granting processes and procedures
- Improved socioeconomic indicators such as education and employment.

The problem is that it is not clear which of these are the objectives of the NIC Principles and related leasing proposals. A simple demonstration of the inadequacies of the current debate is the failure of the NIC Principles to specify whether their encouragement of individual leasing would be confined to Indigenous Australian lessees or whether it would extend to non-Indigenous Australians. Existing impediments have not been clearly identified nor evidenced, outcomes are not clear and the views of traditional owners have not been sought. Until the desired outcomes are articulated and any impediments are properly identified and addressed, the prospect of using Indigenous lands to promote economic development will be as remote as the land at the centre of the debate. Unravelling these issues must be made a priority, must be conducted with effective Indigenous participation and must make Indigenous aspirations and development goals central, to be meaningful and sustainable. The extent of winners, losers and conflict must also be a consideration with any proposal on Indigenous lands so as to avoid the potential negative effects of redistribution.



Realising economic development: the assumptions, factors and challenges

While striving for economic development for Indigenous communities is a necessary and worthwhile pursuit, the current NIC Principles and in fact any economic development model, needs to consider the wider socioeconomic issues relating to Indigenous communities on Indigenous communal lands. As I noted in the 2004 Native Title Report, 'Simply creating capital may not address underlying social and economic development issues, particularly in remote areas. These communities and individuals require support and assistance to build and develop their capacity to sustain development in the long term.'²⁴ In that respect, the NIC Principles draw a number of conclusions about life on communal lands that need to be rationally examined prior to taking any decisions.

Land ownership is but one factor that influences economic development. In the remote and rural communities to which much of this proposal is aimed, there are a great many other factors that will influence economic development, such as access to markets and credit, income and existing resources and infrastructure²⁵. The challenges of economic development on Indigenous lands should not be seen as insurmountable. However, these challenges need to be fully understood in order to meet the goals of economic development and Indigenous communities.

The question of communal ownership

As this Report highlights, there has been considerable criticism of the ability of communal ownership to promote economic development for Indigenous communities. The current debate regarding whether or not Aboriginal lands and communal ownership inhibits individuals from owning their own home does not adequately focus on whether the land in question is land that has been granted by the Crown or land that is the subject of native title or both. As Chapter 2 explored, in relation to lands that are subject to native title, the rights over those lands are diverse and range from exclusive possession to rights of access to land. This factor alone has ramifications for whether or not the change from communal to individual property interests will promote economic development or provide opportunity for home ownership in parts of Australia subject to native title. Clarifying understandings and perceptions about how communal interests are and have been used is a useful way of contextualising debate in this area.

Individual ownership

The origins of the proposal to open communal title to individual leasehold interest have largely been generated by comments by the Prime Minister and Minister for Indigenous Affairs, and the NIC Principles. During a visit to the town

24 Aboriginal and Social Justice Commissioner, Native Title Report 2004, Human Rights and Equal Opportunity Commission, Sydney, p65.

25 For data refer to the Australian Bureau of Statistics: Housing and Infrastructure in Aboriginal and Torres Strait Islander Communities 2001 Report. Selected findings include water quality was either not tested, or had failed testing in the 12 months prior to the survey, in 46% of the 213 Indigenous communities which had a population of 50 or more and were not connected to a town water supply. Further, overflows or leakages from sewerage systems in the 12 months prior to the survey occurred in 48% of Indigenous communities with a population of 50.



of Wadeye in the Northern Territory in April 2005, the Prime Minister commented that:

All Australians should be able to aspire to owning their own home and having their own business. Having title to something is the key to your sense of individuality, it's the key to your capacity to achieve and to care for your family and I don't believe that indigenous Australians should be treated differently in this respect.²⁶

The third NIC Land Tenure Principle recommends that Aboriginal land legislation be amended to maximise opportunities for individuals to acquire and exercise a personal interest on communal lands.

Individual ownership is assumed to be a prerequisite to promoting home ownership and economic development. This view reflects the 'Tragedy of the Commons' notion that was prevalent at the time of the Enclosure Acts in eighteenth century Britain, which:

- divided up the 'common land' which had traditionally been shared by the community
- redistributed plots of land in an effort to combine them into larger areas
- revoked peasant's traditional right to scavenge food left behind on his landlord's fields (gleaning rights)
- required all farmers to build a gate around their lands.²⁷

This idea holds that communal property will tend to be neglected or degraded since no single owner has a vested interest in protecting or improving the property; while individual property will be improved because the owner has an economic interest in seeing its value improved. The 'Tragedy of the Commons' gained currency again more recently with the thesis of biologist Hardin²⁸ who suggests that personal gain or self-interest will inevitably lead to the depletion of a commonly held object, particularly where there is little incentive or coercion to manage the utility of the asset. The example used by Hardin is a communally owned plot of land used for farming. While the land can only sustain a finite amount of cattle, each of the owners, if left to his own devices, will seek to maximise the benefits to himself and this will inevitably involve increasing their own number of cattle, despite the possibility that this may deplete the land. Therefore, under this view, the land would be best utilised where each farmer has ownership and responsibility for a portion of the land and the propensity to over-farm the land is removed. Another common example that has been used is the difference between the care shown by an individual to a privately owned house as compared to a rented home or public housing. However, as Chapter 4 explores, an alternative thesis about entrepreneurialism emphasises the importance of 'social capital' or reciprocity, trust and social contracts within groups for encouraging prosperity. This view sees communal entities, rather than individual operation, as necessary for economic development.

26 Prime Minister John Howard, 6 April 2005, Door stop interview Wadeye, Northern Territory. Full transcript available at: <www.pm.gov.au/news/interviews/Interview1305.html>.

27 See BBC online at: <www.bbc.co.uk/education/beyond/factsheets/makhist/makhist4_prog7d.shtml>, accessed 25 November 2005.

28 G. Hardin, 'The Tragedy of the Commons', *Science* (162:1243-1248) 1968.



Another view is that financial institutions will not lend to multiple owners, however, as described later in the Chapter, innovative ideas abound for lending on communal lands. The Central Land Council (CLC) in the Northern Territory indicates that it is not communal land tenure that explains the failure of financial institutions to expand their lending practices to lands subject to ALRA land:

The popular misconception is that this finance is unavailable because of problems with the use of Aboriginal land as collateral. The experience of the Central Land Council is that even where tenure arrangements are secure, and 99 year leases are offered, there is a difficulty in generating financial support for projects initiated in a remote Aboriginal context. The fact that tenure is not a barrier to financial lending for major commercial development on Aboriginal land is also demonstrated by the Alice Springs to Darwin railway project.²⁹

The CLC suggest that the Australian and Northern Territory Government and the Australian Bankers Association work with the CLC to develop a guide to help financial institutions understand the different processes involved in lending on Aboriginal land, as has been done successfully in Canada.

Support for the Government and NIC push for a move to individual titling of communal land tenure has been given mainly by conservative commentators³⁰ while the majority of Indigenous leaders oppose it. The views of traditional owners are conspicuously absent. As a fundamental starting point, proper evidence and analysis of any proposal, including the NIC Principles, is essential and has so far been lacking. A thorough research and consultation process, including full information about what a proposal entails (including losses or detriment as well as benefits) in a form that is understood by traditional owner groups, and the right to say no, is necessary to comply with the principle of free, prior and informed consent as well as to understand whether changes will support intended outcomes.³¹ How changing title from communal to individual ownership through leasing will address other identified impediments to economic development such as inadequate infrastructure in remote areas, under-investment in education and healthcare, high levels of welfare dependency, high levels of un-employment and limited job opportunities and limited commercial opportunities is unclear. Proponents of NIC Principles consider that changing communal title to individual leasehold will kick start economic development; but international experience demonstrates that this is not a sound assumption as the World Bank experience below highlights.

Communal Ownership: the World Bank experience

The push to change tenure arrangements from communal title to individual title is not a new idea in approaches to economic development. The former approach of the World Bank in addressing economic development is a case in point.

The World Bank is the name commonly used for the International Bank for Reconstruction and Development and the International Development Association. Its aim is to address poverty and improve the living standards of people in the developing world. The World Bank is a specialized agency of the United

29 Central Land Council Policy Paper: *Communal Title and Economic Development*, March 2005, pp9-11.

30 For example see H. Hughes, and J. Warin, 'A New Deal for Aborigines and Torres Strait Islanders in Remote Communities', *Issue Analysis No. 54*, Centre for Independent Studies, Sydney, 2005.

31 Central Land Council Policy Paper, *Communal Title and Economic Development*, 2005, p2.



Nations and is made up of 184 member countries. These countries are jointly responsible for how the institution is financed and how its money is spent. The World Bank provides loans, policy advice, technical assistance and knowledge sharing services to low and middle income countries to reduce poverty.³²

The strategy of individual titling was prominent with the World Bank in the 1970's. To illustrate, in the 1975 Land Reform Policy paper of the Land Policy Division of the World Bank it recommended the following measures for economic development:

- formal land titling as a precondition of 'modern development'
- the abandonment of communal tenure system in favour of freehold title and subdivision of the commons
- widespread promotion of land markets to bring about efficiency enhancing land transfers
- support for land redistribution on both efficiency and equity grounds.³³

The World Bank experienced difficulties in achieving outcomes under the individual titling approach to economic development. According to empirical economic research, the results exposed high costs, few benefits and in Africa, where farming prospered, it appeared to do so within a framework of customary rights, kinship and social contracts.³⁴

The World Bank has since shifted its approach to economic development and formal land titling. The World Bank's current view is that the need for individual formal titling is dependant on the nature and availability of land itself. It sees *the need for more formal property rights to exist only as populations increase and land becomes scarce*. There is little incentive to hold individual title where the rights to the land are available to all members.

Societies adopt property rights when high population density requires land-related investment or if other factors increase the value of land.³⁵

In its 2003 Report, the World Bank sought to address the twin goals of economic development and poverty reduction and found that 'dealing with efficiency will not automatically also resolve all equity issues'.³⁶ After extensive research and practical application, the World Bank has taken the view that tenure security is vital to promoting economic development; however *the nature of that security is not necessarily tied to formal individual title*:

Even though formal title will increase tenure security in many situations, experience indicates that it is not always necessary, and often is not a sufficient condition for optimum use of the land resource.³⁷

32 See www.worldbank.org for more detail.

33 J. Quan, 'Land Tenure, Economic Growth and Poverty in Sub-Saharan Africa' in C. Toulmin and J. Quan (eds), *Enduring Land Rights, Policy and Tenure in Africa* (2000) International Institute for Environment and Development, pp31-49.

34 S. Gilmour, 'Improved Wealth Creation and Economic Sustainability for Individuals, Families and Communities – an Australian approach to land tenure reform', 27 June 2005, in possession of the author, Sydney, p12.

35 World Bank Land Policies for Growth and Poverty Reduction, Chapter 2, World Bank Research Report, Oxford University Press, 2003, p9.

36 World Bank, *ibid.*, p15.

37 World Bank, *ibid.*, pxxvii.



The World Bank acknowledges customary title as a means of facilitating economic development and recently noted that 'subject to minimum conditions, [customary title] is generally more effective than premature attempts at establishing formalised structures.'³⁸ It should be noted that agricultural use of land is a key element of the value of land in the World Bank analysis, whereas this is not necessarily the case for remote land held under Indigenous communal ownership. However, it nonetheless provides important lessons for applicability here in Australia. The importance of secure land rights and access to justice to improve investment opportunities and reduce poverty was also highlighted in the Human Development Report 2005 by the United Nations Development Programme.³⁹

Reflecting on the experience of the World Bank and the lessons it provides for the Australian context, Susan Gilmour argues that the following issues are associated with market based land reform:⁴⁰

- *Unintended distributive effects*: individualised title creates winners and losers in an environment that favours those with existing access to economic and administrative power.⁴¹
- *Cost*: the cost of creating, enforcing and administering the title could be inhibitive.
- *Enforcement*: title may be ignored, particularly where the regime has been imposed or where the system in place has been satisfactory.
- *Disputes*: formal individual titles could create disputes over land as a result of competition between individuals over the ownership to communal lands.⁴²
- *Status quo*: arguably, formal individual titles over Aboriginal lands will have no impact on economic development in the absence of such things as markets and credit.⁴³
- *Reduced flexibility*: there is the possibility that titling could lead to land grabbing and reducing the flexibility with which land may be accessed for opportunities of wide benefit.⁴⁴

These difficulties must be borne in mind in governments' consideration of the NIC Principles.

Communal interests: government experience so far

There are relevant contexts where all levels of governments and third parties currently successfully engage with Indigenous peoples as a collective – that is,

38 World Bank, *ibid.*, pxxvii.

39 Human Development Report 2005, United Nations Development Programme, p53.

40 S.Gilmour, *op.cit.*

41 J.P. Platteau, 'Institutions, Social Norms and Economic Development', Overseas Publishers Association 2000, p150 cited in Gilmour *op.cit.*, p13.

42 S. Gilmour, *ibid.*, p13.

43 *ibid.*

44 E. Fortin, 'Reforming Land Rights: The World Bank and the Globalisation of Agriculture'. Available online at http://www.oxfam.org.au/what_we_do_issues/livelihoods/landrights/africa_south.htm, accessed 26 June 2005; and J. Quan, 'Land tenure, Economic Growth and Poverty in Sub-Saharan Africa' in C. Toulmin and J. Quan (eds), *Enduring Land Rights, Policy and Tenure in Africa* (2000) International Institute for Environment and Development, pp31-49.



through the negotiation of Indigenous Land Use Agreements (ILUAs) and other types of native title agreements. As outlined in the *Native Title Report 2003*⁴⁵ the native title policies of both federal and state levels of government encourage negotiations with Indigenous groups rather than litigation over areas of land subject to native title.

Native title agreements under the *Native Title Act 1993* (Cth) (NTA) include:

- agreements to the content of a native title determination which is ratified by the Federal Court once all parties consent ('consent determinations')
- agreements produced out of negotiations under the 'right to negotiate' ('section 31 agreements')
- ILUAs.

There are also many other agreements, such as contracts and Memoranda of Understanding, related to native title but made outside the formal framework of the NTA. Proponents of development on land and governments have successfully negotiated thousands of agreements with Indigenous groups, demonstrating that communal ownership has not hindered engagement with third parties in practice.⁴⁶ The concept of multiple owners of a single entity should be a familiar one – it forms the very basis of the legal form of the corporation.

Native title, although often conceptualised as an 'Indigenous right', is also a property right with parallels to many other property rights. In fact, in many ways, native title is no different to already recognised, and uncontroversial, property rights such as easements. Its communal nature is also analogous to other property holdings such as property held by corporations.⁴⁷

The NTA requires native title groups to form a corporate entity, a 'Prescribed Bodies Corporate' (PBC), when they achieve a successful native title determination. The PBC provides a single point of contact for the group for third parties, and the relevant Regulations⁴⁸ enable the PBC to make its decisions about the native title rights it manages by traditional law and custom or an otherwise agreed decision making process. Likewise, under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) decisions about the land involving non-Aboriginal use are conveyed to third parties by the relevant Land Council following the traditional owner group making a decision in accordance with either an agreed or a traditional decision making process.⁴⁹ A variety of other Indigenous entities exist under other land rights statutes. These bodies enable communal decision making to take place according to traditional means or contemporary agreed processes, and be communicated to outsiders through a conduit, in the same way that the shareholders of corporations can take decisions as a group at general meetings and convey this through resolutions and company decisions.

45 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2003*, Chapter 2.

46 See the Agreements, Treaties and Negotiated Settlements Project database at: <www.atns.net.au/index.php>, accessed 2 November 2005.

47 L. Behrendt, *Achieving Social Justice: Indigenous Rights and Australia's Future*, The Federation Press, Sydney, 2003.

48 *Native Title (Prescribed Bodies Corporate) Regulations 1999*

49 *Aboriginal Land Rights (Northern Territory) Act 1976 (Commonwealth)*, s.77A.



Individual financial capacity and access to finance

Among other things, the current debate around economic development has centred on Indigenous land as a basis for increasing levels of Indigenous home ownership and consequently, individual's economic status. There are a number of factors besides land tenure that act as inhibitors to home ownership and business development; that is the focus of this section.

Income

Examining income levels of Indigenous people and communities is a critical component of any successful proposal regarding improvements in home ownership. According to a research discussion paper produced by the Reserve Bank of Australia (RBA) in May 2005,⁵⁰ two of the major factors influencing home ownership in Australia are income levels and wealth – the ability to make financial commitments towards the property. Income and wealth are distinguished where wealth reflects an accumulation of other sources of income besides that which is derived from property and employment (particularly liquid assets i.e. assets that are money or can be quickly converted to money such as shares). Among other things, the RBA paper examines who owns property in Australia and uses a cross section of 7,245 households from the 2002 Household, Income and Labour Dynamics in Australia (HILDA) Survey.

More often than not, households incur debt in order to finance the purchase of a property. While the level of income is important to enable buyers to make mortgage repayments and influences the size of the debt and the purchase, the wealth required to make the down payment appears to be more important than income levels, particularly in the transition from renting to home ownership.⁵¹ The RBA findings are consistent with other studies⁵² which have shown that the constraints associated with wealth are a real barrier to young renter households wishing to own their own home. According to the RBA, lower income households often do not own their own property.⁵³

According to the Productivity Commission Report *Overcoming Indigenous Disadvantage Key Indicators 2005*, the income levels for Indigenous Australians remains markedly lower than for the rest of the population. The report measures household income in gross weekly equivalised household income (GWEH). The report notes that nationally, in 2002, the mean GWEH income for Indigenous households was \$394 compared with \$665 for the non-Indigenous population. This numerical difference alone demonstrates the disparity in household incomes between the different groups. However, the report also highlights that the data may not be an adequate reflection of relative income given the difference in composition and circumstances of many Indigenous households compared to non-Indigenous households.⁵⁴ The report sets out a number of differences between Indigenous and non-Indigenous households, some closely related to other socioeconomic indicators, which influences the quality of the GWEH data:

50 M. Kohler and A. Rossiter, *Property Owners in Australia: A Snapshot*, Research Discussion Paper 2005-03, Economic Research Department, Reserve Bank of Australia, 2005.

51 *ibid.*, p6.

52 *ibid.*, p6.

53 *ibid.*, p6.

54 Productivity Commission, *Overcoming Indigenous Disadvantage Key Indicators 2005*, p3.42.



- Indigenous people are more likely to live in larger households with large numbers of dependents and smaller incomes.
- Indigenous households are more likely to extend over generations, than non-Indigenous households.
- High Indigenous adult mortality can impact upon household living arrangements.
- Indigenous people, especially those living outside the cities, may live in households with resource commitments to their extended families living elsewhere.
- Indigenous households tend to have a large number of visitors, which are not necessarily accounted for in a data collection that takes a snapshot on a particular day, such as a census.⁵⁵

This suggests that the lower GWEH for Indigenous households is used to support an increased (and sometimes uncertain) number of people within an Indigenous household. Arguably, this increased financial burden on Indigenous peoples will have negative effects on the ability to engage in the savings patterns and lending practices required for the purchase of large purchases such as a home. Additionally, people living on communal lands are most likely to experience the burden of higher costs of living such as food, general consumables, white goods and transport.

Debt

It is not surprising then that the RBA also found that higher income households were more likely not only to own their own property but also to hold debt against their properties, since they are better placed to service that debt. The RBA evidence suggests that the decision to hold debt is strongly influenced by the age, income and wealth of the household. The relationship with gearing (that is, borrowing to invest) is different to that with home ownership for age and wealth.

Like home ownership, households with higher income are more likely to hold debt, possibly since they are in a better position to service the debt (and therefore to obtain the mortgage in the first instance). In contrast, the likelihood of holding debt falls with wealth, a reflection of past accumulation of savings (and thus of possibility to pay off debt). Similarly, gearing ratios among households with debt tends to rise with income and fall with higher wealth.⁵⁶

These findings are particularly interesting in the current debate in relation to home ownership. When we consider home ownership and economic development, we are not merely considering the capacity of an individual servicing a loan, but the possibility of individuals saving a deposit to purchase their own home and the on-going responsibility for funding repairs and maintenance of the home that are generally provided at no cost in a rented home. We are also conceiving of a situation where individuals own all or part of their property and are using this ownership as collateral in order to borrow capital to fund a business venture and or build another home for example. Besides the threat of foreclosure (the repossession and sale of the property by the lender for failure to meet

55 Productivity Commission, *ibid.*

56 M. Kohler and A. Rossiter, *op.cit.*, p15.



mortgage repayments), there are a great many risks involved for individuals and communities in these circumstances that policy makers ought to consider to ensure that the end goals are realistic and sustainable.

While the government currently has competitive home loans available to Indigenous people through Indigenous Business Australia (IBA), these currently do not apply on communal lands. Through the IBA's Home Ownership Programme, Aboriginal and Torres Strait Islanders who meet certain criteria can be put on a waiting list for a home loan before being invited to apply formally. To be eligible, applicants must have combined gross weekly incomes of up to 150% of the IBA Income Amount (IIA).⁵⁷

For applicants earning up to 125% of the IIA:	Applicants can borrow up to 95% of the purchase price of a property less 5% deposit or \$3,000 deposit (or \$1,500 deposit for household incomes less than \$30,000 p.a.), which ever is the lesser.
For applicants earning over 125% and up to 150% of IIA:	Applicants can borrow up to 60% of the purchase price of a property.

As mentioned the Home Ownership Programme (HOP) does not currently apply on communal lands. The issue that the IBA has with communally owned lands is that they have difficulties in identifying the various parties to the loan agreement. While there is no available policy or research on the extent of the obstacles, the IBA are concerned to ensure certainty around what property rights are secured following the granting of a loan and security around the extent of ownership of the property – for both the buyer and the seller. Given the extent of individual property ownership opportunities that already exist on communally held land (outlined in Chapter 2), there may be scope to develop policy and practice and extend the home ownership programme to communal lands. The IBA has indicated that they are reviewing options for home ownership on communal lands (see also the recommendations contained at the end of this Chapter).

The former Queensland Aboriginal Co-ordinating Council, ATSIC (previously responsible for HOP) and the Queensland Department of Housing commissioned a report to examine a number of financial models for achieving home ownership on community title land that policy makers might want to consider in light of intentions to improve home ownership.⁵⁸ These will be outlined later on in this Chapter and include proposals such as 'Depreciated Lease-to-Purchase Model, Subsidised Mortgage Options, Interest Free Mortgage Schemes, Subsidised Repayment Schemes, Non-Profit and Concessional Mortgage Schemes, Government or Community Guarantor Schemes and various combinations.

Accessing finance and financial institutions

The need to satisfy lending institutions that clients have the available resources to service a loan repayment for the purchase of property is one consideration.

57 The IBA Income Amount is based on the National Average Male Weekly Earnings figures and is updated quarterly. See <www.iba.gov.au> for full detail on the Home Ownership Programme.

58 M. Moran, Home Ownership for Indigenous People Living on Community Title Land In Queensland: Scoping Study Report, produced by Queensland Aboriginal Co-ordinating Council and the Aboriginal and Torres Strait Islander Commission, 1999.



We cannot, however, assume that all peoples have equal access to such lending institutions. This applies regardless of whether the land in question is subject to native title, or whether it is land granted by the Crown to Indigenous communities (land rights land).

As Chapter 2 explained, the geography of land owned by Indigenous peoples is largely in regional and remote parts of Australia. The Parliamentary Joint Committee on Corporate and Financial Services⁵⁹ found in its inquiry into banking and financial services that there are many barriers to access these services for people in rural, regional and remote areas of Australia. These barriers will affect Indigenous peoples' opportunities to engage with lenders should they be in a position to service a loan.

The Committee's inquiry into the level of banking and financial services in rural, regional and remote areas of Australia concluded in January 2004 with the handing down of the Committee report *Money Matters in the Bush*. According to the terms of reference, the inquiry was to place particular focus on:

- options for making additional banking services available to rural and regional communities, including the potential for shared banking facilities
- options for expansion of banking facilities through non-traditional channels including new technologies
- the level of service currently available to rural and regional residents
- international experiences and policies designed to enhance and improve the quality of rural banking services.⁶⁰

The inquiry noted that Indigenous people make up a high proportion of the population in regional and remote districts with around 1,200 discrete Indigenous communities of which over 1,000 were very small and very isolated communities.⁶¹ Limited commercial opportunities and viable labour markets in these communities means that they often lack some of the most basic services, including access to banking and financial services and institutions. Reconciliation Australia stressed that:

We are not talking about the removal of banking services from these remote communities; we are talking about the fact that there are no banking and financial services.⁶²

In addition, Reconciliation Australia explains that Indigenous Australians experience further difficulty in accessing banking and financial services as a result of comparably low levels of financial and technological literacy and low levels of education and English proficiency.⁶³ The Centre for Aboriginal Economic Policy

59 Parliamentary Joint Committee on Corporations and Financial Services, *Money Matters in the Bush: An inquiry into the Level of Banking and Financial Services in Rural, Regional and Remote Areas of Australia*, January 2004, accessed via <www.aph.gov.au> on 10 August 2005.

60 Parliamentary Joint Committee on Corporations and Financial Services, *Money Matters in the Bush: An inquiry into the Level of Banking and Financial Services in Rural, Regional and Remote Areas of Australia*, January 2004, pvii, accessed via the internet on 10 August 2005.

61 *ibid.*, p231.

62 *ibid.*, p235.

63 *ibid.*, p235.

Research (CAEPR) has similar concerns regarding Indigenous peoples and access to banking services.⁶⁴



Practical considerations

The diversity of views and evidence regarding economic development demonstrates that there are many ideological and political differences over the extent to which communal ownership does, or does not, promote economic growth. Conversely, there are competing views about the extent to which individual ownership can alleviate the concerns over communal ownership. Putting both these issues aside, there are more practical considerations relevant to this debate that require investigation. Attention to real estate values and logistical concerns needs to be addressed if any proposal is to have a realistic chance of improving such things as home ownership, capital accumulation and investment.

From the sociological perspective, it is critically important that the owners of communal lands ***are provided with detailed, yet technically basic, information about what rights they are waiving, and what obligations they will have or not have, in agreeing to long term leasing of their traditional lands.*** The provision of this information should not be rushed and must be transmitted through an independent and impartial party. From a traditional owner's perspective they will always own the land and have a responsibility to care for the land, however, this latter responsibility is transferred to the lessee and the traditional owner may have no rights to intervene or renege during the lease period.

Land value

In relation to home ownership on Indigenous lands, land value relative to construction costs needs to be examined prior to any changes to communal title to ensure that any changes support the desired outcome. Data obtained by Oxfam estimates that in the Northern Territory the average cost per hectare for land acquired in the Territory by the Indigenous Land Corporation was \$13. In more remote townships, the average Unimproved Capital Values for property sold in 2004-05 ranged from \$5 per square metre in Tennant Creek to \$25 per square metre in Pine Creek and \$36 per square metre in Katherine.⁶⁵ The Oxfam report suggests that unless Indigenous people's incomes increase significantly, there will be little or no change in Indigenous private home ownership or private financing.⁶⁶ Regardless of the cost of building a home, its value will only be as much as a buyer is willing to pay for it. Clearly, individuals may have difficulty obtaining sufficient finance for the building of a home, where the cost of building exceeds the amount that would be recouped following its sale.

64 The CAEPR submission to the Parliamentary Joint Committee on Corporations and Financial Services inquiry into the level of banking and financial services in rural, regional and remote areas of Australia at: <www.anu.edu.au/caepr/Publications/topical/CAEPRbankingsub.pdf>.

65 Oxfam Australia, *Land rights and development reform in remote Australia*, 2005, p16.

66 *ibid.*, p16.



The housing challenge – cost, design, demand

The Oxfam report provides an indication of some of the building costs on *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (ALRA (NT)) lands. Through information sourced from the Indigenous Housing Authority of the Northern Territory, Oxfam highlights that the cost of building a house in a remote community is \$225,000 to \$350,000 depending on the style and location.⁶⁷ Oxfam also indicates that the depreciation of the housing stock is also very high in remote communities due to environmental conditions and difficulties accessing trades people.⁶⁸

Coupled with this, there is a critical housing shortage for Indigenous peoples. According to the Australian Bureau of Statistics (ABS), estimates put the figure at \$2.1 billion as being required to address Indigenous housing needs. There are an estimated 21,287 dwellings managed by Indigenous housing organisations, 8% requiring replacement and 19% requiring major repairs. Approximately 70% of the dwellings are located in remote and very remote locations, where around 106,000 Indigenous people live.⁶⁹ A recommendation is provided at the end of this chapter regarding housing funding.

According to the ABS, the design, construction and maintenance of Indigenous housing play a crucial role in housing sustainability. Housing must also be culturally appropriate in their design. In some parts of Australia, kinship structures and practices and population mobility may impact on the use of housing and the level of occupancy. Community mobility and household size is vital in planning and designing the usage loads placed on housing, particularly health facilities such as water, waste removal and power (should these facilities be available in the first instance). Should crowding result in the failure of facilities, a range of serious health problems can occur resulting in unsafe and ultimately uninhabitable housing, creating greater stress on existing facilities. Geographical location, climate and cultural lifestyle also impact on the design and construction of Indigenous housing.⁷⁰

Where housing is poorly built, or where there is no systematic approach to their repair or maintenance, minor problems can escalate over time and shorten the life expectancy of houses. Given the serious backlog of housing need in rural and remote communities, it is important that resources are well targeted and provide the maximum benefit to Indigenous Australians. While constructing a house in a remote locality can be difficult enough due to professional building skill shortages, limited availability of materials and the expense and logistics involved, providing [culturally] appropriate housing can be even more challenging.⁷¹

Appropriate planning and consultation is essential, so too is an understanding of such factors as 'geographic location, population fluctuations experienced in communities, family and kinship structures and the specific lifestyles of communities and their use of housing. The diversity of contemporary Indigenous

67 *ibid.*, p15.

68 *ibid.*, p15.

69 S. Etherington and L. Smith, (ABS and ATSI contribution), *The design and construction of Indigenous housing: the challenge ahead 2004*, 2004. Available online at: <www.abs.gov.au>, accessed 26 August 2005.

70 *ibid.*

71 *ibid.*



cultures and the locations in which they live, means that what is appropriate will vary considerably between communities.⁷²

Measuring the value of land

Understanding the value of Indigenous land is needed in order to comprehend the extent to which land can be used to promote economic development. However, there are different ways of measuring that value that deserve consideration. The value of land can be seen in terms of:

1. its location as a site for production or consumption
2. the extent to which it can be used as collateral or leverage (as a commodity)
3. in terms of its value in culture (which is of particular importance for Indigenous lands).

1. Location value

The value of Indigenous lands understood in terms of location relates to land being the physical site of production or consumption (or both). Viewpoints that fall into this category focus on the need to develop industries or markets on Indigenous land, either by attracting external developers or starting up enterprises on the land. Economic development for Indigenous communities on the land can be generated from:

1. jobs generated and flow-on wealth through compensation or royalties and local spending in the case of external developments
2. through business profits and jobs generated in the case of Indigenous businesses
3. Indigenous equity established in external businesses where the two approaches are combined (joint ventures)
4. the liquidation of real assets and business.

The distinguishing feature of viewing land in this way is its focus on using or developing the land itself for economic gain. It focuses on the *use* value of the land which hinges on the resources and characteristics peculiar to its particular location. Strategies for economic development in this perspective broadly take three forms:

- Encouraging and engaging with external developments on Indigenous land, such as mining, agriculture, and large scale development projects
- Using funds from government, resource rental or the private sector to establish Indigenous businesses on Indigenous land to service local or external markets
- Joint ventures.

72 *ibid.*



External business on Indigenous land

Options for doing business on Indigenous land are primarily: mining, pastoralism, agriculture, and tourism.⁷³ Statutory provisions in land rights and native title legislation offer a mechanism for traditional owners and native title claimants or holders to engage with some of these industries.

For example, the right of consent in the ALRA (NT) requires traditional owner consent to be secured for mining on Aboriginal land. In a more limited way, the right to negotiate in the *Native Title Act (1993)* (NTA) gives native title claimants a procedural right to negotiate for the doing of certain types of future acts that will affect native title rights. Agreements can cover a range of matters including financial payments for compensation or 'resource rent', employment and training, preferential tendering for Indigenous businesses, community development, equity in the business and so on.⁷⁴

Under the ALRA (NT), traditional owners have the right to statutory mining royalty equivalents, and can also negotiate royalties above this minimum. Under the NTA, the property rights are weaker, being limited to a 'right to negotiate' within a set timeframe (6 months). After this time, if agreement has not been reached between the parties, the National Native Title Tribunal must arbitrate. There is also no provision for any share of mining royalties paid to government to be given to native title interests.⁷⁵ Despite these limitations, the right to negotiate and ALRA (NT) consent provisions provide a mechanism to negotiate for greater benefits and practical outcomes not mandated by the legislation.

Indigenous business on Indigenous land

Issues such as access to markets, the availability of capital for investment in Indigenous businesses and the options for viable enterprises on Indigenous land, given its location, must be examined prior to establishing Indigenous enterprises on Indigenous land. While there are potential enterprise activities associated with government funded initiatives, their long term funding cannot be assured so enterprise activity and viability must consider non government funding sources and activities.

Ideas for viable Indigenous businesses tend to centre on enterprises that are familiar to the mainstream economy including: the cattle industry,⁷⁶ fishing companies,⁷⁷ construction, agricultural enterprises, small businesses to service development project staff and Indigenous consumers like the Ngaanyatjarra

73 J.C. Altman, 'Indigenous communities and business: Three perspective, 1998-2000' CAEPR Working Paper No. 9/2001, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2001.

74 C. O'Fairceallaigh, 'Native Title and Agreement Making in the Mining Industry: Focusing on Outcomes for Indigenous Peoples', *AIATSIS Land Rights, Law: Issues of Native Title* Vol. 2 No. 35, 2004.

75 J.C. Altman, *op.cit.*

76 P. McEntee, 'Strengthening Community, Land & Enterprise: Indigenous Cattle Franchises', *Australian Prospect*, 2004; D. Fuller and E. Cummings, 'Indigenous Small Enterprise in Northern Australia: A Case Study of the Warai', *Journal of Small Business Management*, Vol. 41, No.1, 2003, pp109-115.

77 W.S. Arthur, 'What's new? The 1997 parliamentary inquiry into Indigenous Business' *CAEPR Working Paper No. 177/1999*, Centre for Aboriginal Economic Policy Research, Australian National University, 1999, p4.



airline,⁷⁸ community stores, and Indigenous experiential tourism where being on country is prized by consumers. Arthur⁷⁹ found that significant proportions of Indigenous businesses are concentrated within three industry areas: agriculture, construction and the retail sector. As I noted in the *Native Title Report 2004*, innovative options for Indigenous business are particularly important in areas that are not typically resource rich like areas that are the focus of mining interests.⁸⁰ Some suggestions are provided later on in this Chapter.

Investment partnerships on Indigenous land

Joint ventures encourage external investment in developing Indigenous business.⁸¹ Joint ventures combine external capital investment, technical expertise, management and business contacts with Indigenous skills, labour, land and water.⁸² The Central Land Council (CLC) considers that access to finance is a far more significant barrier to joint-ventures operating than the communal tenure of Indigenous land:

The lack of seed funding needed to bolster Aboriginal equity in these activities creates major issues for the viability of joint-venture activities. The experience of the CLC is that even when all elements of the joint-venture are negotiated, including 99 year lease arrangements, these joint-ventures fail because the Aboriginal partners have not been able to access finance to provide for additional equity in the business. The CLC considers that access to finance is a far more significant barrier to joint-ventures operating than tenure related issues.⁸³

Altman and Dillon propose a model to encourage joint ventures in which government funds are managed and required to be invested in a number of commercial projects which include a minimum Indigenous financial equity holding of at least 30%.⁸⁴ Profits would be shared annually on an equity basis between the government fund and Indigenous stakeholders; and after a set period of time, the project could be divested to Indigenous participants. This model is explored in more depth later on in this Chapter.

Observations

The strategies for using Indigenous land for Indigenous economic development as the location for consumption or production may not be viable in all areas of Australia and can vary depending on the fertility of the land. Land rights and native title land is generally considered to have low commercial productivity for

78 L.T. Udo-Ekpo, *The Aboriginal Economy in Transition: Inspiring Visions of the Future*, CM Digital, Adelaide, 2001.

79 W.S. Arthur, *op.cit.*

80 *Native Title Report 2004*, p68.

81 W.S. Arthur, *op.cit.*

82 Central Land Council Policy Paper: *Communal Title and Economic Development*, 2005, p11.

83 Central Land Council, *ibid.*

84 J.C. Altman, and M.C. Dillon, 'A Profit-Related Investment Scheme for the Indigenous Estate' *CAEPR Discussion Paper No. 270/2004*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2004.



purposes other than mining due to geographic remoteness from major trading centres, and/or poor soils and rainfall.⁸⁵

Alternatively, Indigenous businesses may turn a profit by building an external market for their goods or service on Indigenous lands, such as by cultural, eco or other forms of experiential tourism.⁸⁶ Such businesses will be confined to areas in which infrastructure are established. One final option for Indigenous business is to use Indigenous land as the site of production, but not the site of consumption. This would entail transferring the goods or service produced on country to markets located off Indigenous land – such as by exporting Indigenous art, trucking bush foods to cities for sale, or using the internet to mesh with potential consumers in other parts of Australia or the world.⁸⁷

2. Land as leverage

Another view of the value of land is as property which can then be used as security against loans for homes and businesses, leased to others to use for a fee (rent), or sold for profit. From this perspective, Indigenous land should be made 'fungible' – or able to be represented in a form that can be exchanged, such as title deeds – and entered into the real property market.⁸⁸ This is the view of land evident in the NIC Principles and related debate.

The distinguishing feature of this perspective is that it treats land as a commodity. It objects to the *inalienable* nature of most land rights land and of native title rights on the grounds that this inhibits the freedom of the owner(s) to freely contract to dispose of their property to the purchaser willing to pay the highest price, as other property owners can.⁸⁹ It also views the *communal* nature of Indigenous land as hindering the free dealing in land required by the real property market due to the time-intensive group consultation required.

Similar to looking at location value, the focus here is on the land itself as the key to economic development; neither take account of, or see value in the Indigenous use or valuing of the land. It seeks to make land detachable from its owners in order to be tradable where this is economically rational. Land as leverage is the bases for De Soto's theory of development discussed earlier. It is application of this perspective that interests Noel Pearson, when linking economic development to Indigenous land in Australia:

the reason that Indigenous Australians are unable to build capital is that they lack the necessary proprietary legal infrastructure to leverage the assets that they do have...Indigenous communities living on Indigenous lands (though we own 'property') are locked out of the Australian property system that enables capital formation. All of our assets, in the form of

85 E.K. Fisk, *The Aboriginal Economy in Town and Country*, George Allen and Unwin, Sydney and Australian Institute of Aboriginal Studies, Canberra, 1985; O. Stanley, 'The potential use of tax incentives for Indigenous businesses on Indigenous land', *CAEPR Working paper No. 17/2002*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2002.

86 J.D. Finlayson, 'Aboriginal employment, native title and regionalism' *CAEPR Discussion Paper No. 87/1995*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 1995.

87 L.T. Udo-Ekpo, *op.cit.*, p86.

88 N. Pearson and L. Kostakidis-Lianos, 'Building Indigenous Capital: removing obstacles to participation in the real economy', *Australian Prospect*, Vol. 2, No. 3, 2004.

89 R. Edwards, 'Native Title: Dead Capital?', *Singapore Journal of Legal Studies*, 2003, pp80-115.

lands, housing, infrastructure, buildings, enterprises etc are inalienable and as a result, have no capital value.⁹⁰



However, Pearson is concerned to retain the inalienable title of Aboriginal land. He proposes increasing the fungibility of Indigenous land through simplifying the existing legal procedural requirements for granting leases to individuals on communal lands. While existing legislation allows for communal land to be leased to others, Pearson argues that the process is convoluted so 'inefficient property law unique to Indigenous people reduces valuable assets into valueless capital'.⁹¹ The process for selling and leasing land in existing land rights and native title legislation was examined in Chapter 2.

Observations

Strategies that rely on improving Indigenous economic status through Indigenous land advocated in, the land as leverage perspective, rely on the real property market. It is likely that these strategies will be successful only where there is land desired for property investment – not only to entice lessees or purchasers, but also to convince financial institutions that the land is valuable collateral against loans (that is, that the land may be easily sold if the loan is defaulted). Examples might include locations where Indigenous land abuts growing cities and towns that are land-hungry or the land is coastally located. The former was the experience of the Lhere Artepe Aboriginal Corporation representing Arrernte native title holders in Alice Springs. This was the first time commercial residential development has been agreed on native title land inside a municipal area. The traditional owners were able to negotiate a significant agreement with the Northern Territory Government which includes a development lease at no cost, with the first stage of land release currently being developed by a consortium that includes the Lhere Artepe.⁹²

3. Land as cultural value

Land can also be viewed within the framework of economic development as a cultural commodity. The value of Indigenous land for economic development in this view stems from Indigenous use of that land. The Aboriginal customary economy, continuing connection to land and practice of cultural norms in relation to country are things that might support economic enterprises. For example, wildlife harvesting, natural resource management, fishing, cultural tourism and art produced for sale. This perspective encourages the retention of the distinctive nature of Aboriginal ownership and use of land for the comparative economic advantage it gives Indigenous people in the mainstream markets. In addition, it supports the right of self-determination and the right of indigenous peoples to maintain a distinct culture.

Viewing land in this way takes account of Indigenous customary economic activity. This approach supports more diverse options for economic development that build on or are consistent with cultural practices. Strategies promoted in this perspective are based on continuing customary practices and the development of 'Indigenous' industries. Broadly, they are:

90 N. Pearson and L. Kostakidis-Lianos, *op.cit.*

91 N. Pearson and L. Kostakidis-Lianos, *op.cit.*

92 Productivity Commission, *Overcoming Indigenous Disadvantage Key Indicators 2005*, 2005, p11.22.



- Building on the comparative economic advantages Indigenous people already hold in certain products and industries.
- Developing the 'hybrid' economy.

Building on Indigenous culture

Arguably, to be economically successful, Indigenous businesses in remote areas needed to obtain a comparative economic advantage to make up for the small scale of their operation and costs of being so far from the main markets.⁹³ This comparative advantage might be conferred by proximity to a scarce resource or through utilising particular Indigenous skills that are in demand in the market place. For example, this could include the crayfish industry in the Torres Strait or Aboriginal art and cultural tourism industries. Understanding land in this way requires strategies to:

- a) improve Indigenous people's connection to the markets that already exist for products and services deriving from cultural practices on country
- b) strengthen Indigenous control of supply to and profit from these industries
- c) protect and promote cultural practices.

Current estimates indicate that tourism is worth around \$70 billion per year to the Australian economy and that around 90% of overseas visitors to Australia would like to have an Indigenous tourist experience while in Australia.⁹⁴ According to Tourism Australia, over 130,000 international visitors came to Australia last year to experience Indigenous culture and spent \$426 million on Indigenous tourism. Over 410,000 visitors, or 10 per cent of all visitors to Australia, said they experienced Aboriginal art and crafts and cultural displays and around 200,000 tourists visited an Aboriginal site or community. In 2002, Australians made around 730,000 visits to Indigenous cultural activities.⁹⁵ While these figures demonstrate the significance of Indigenous culture to the Australian economy, the ability to protect, nurture and promote Indigenous art and tourism products has highlighted many shortcomings for Indigenous people.

An example that demonstrates the need for greater Indigenous control and protection of Indigenous arts is the failure of current Australian intellectual property laws to recognise and protect Indigenous communal moral rights. Indigenous culture and intellectual property means Indigenous people's rights to their cultural heritage.⁹⁶ Indigenous art and culture are intrinsically intertwined. Where communities are custodians of particular cultural messages produced in art, their protection is not only important to the artist(s) but to the community from which the meaning is derived. Moral rights have provided some protection to individual artists for rights of:

93 E.K. Fisk, *op.cit.*

94 L. Allen, 'Black Art Gold Rush', *Background Briefing*, ABC Radio National, 25 September 2005, which can be accessed via <www.abc.net.au/rn/talks/bbing>.

95 See Tourism White Paper at <www.tourism.australia.com>.

96 For detailed analyses of Indigenous intellectual property refer to *Our Culture; Our Future* by T. Janke, a publication commissioned by the Australian Institute of Aboriginal and Torres Strait Islander Studies in 1999.



- attribution (which provides an artist's right to be named as the creator of a work)
- integrity (which means that the artist's work must not be used in a way that could damage the artists reputation or honour)
- against false attribution (which means another person cannot claim or be named as the creator of another artists work).

However, there are shortcomings in relation to protecting Indigenous rights. These shortcomings include failure to protect artists for more than 70 years (when culture is ongoing), protection for individuals only, and not for communities, and failure to protect oral history, Indigenous ecological knowledge or sacred sites.

John Oster of Desart, which provides support and services to Indigenous art centres in Central Australia, has raised concern that there are questionable practices being undertaken by commercial dealers in relation to their treatment of Indigenous art and Indigenous artists. Oster raises concern over regular unconscionable conduct, entrapment, legal duress and fraud. Oster believes that there are issues with artists being induced by social benefits that are not normally available in remote locations. Anecdotal evidence suggests that in some cases artists are producing works in poor conditions such as sheds and garages in high temperatures in Alice Springs and that they are not necessarily paid in terms of the value of their art works but are paid in 'slabs of beer', clothing, transport, and looking after the artist's family.⁹⁷

Developing the hybrid economy

This view builds on the work of Altman, who, as discussed earlier in this chapter, suggests that remote Indigenous communities are sustained by 'hybrid' economies comprised of customary, market and state components.⁹⁸ He sees a convergence in continuing Indigenous aspirations to live on, manage and make a living from being on country; global concerns with sustainable development and protecting biodiversity; and public policy objectives in relation to Indigenous socioeconomic status and the environment. He suggests this convergence could be harnessed in the form of industries like:

- State-sponsored Indigenous land management
- Indigenous arts produced on country
- Exports of harvested wildlife
- Carbon trading markets
- Coastal surveillance on behalf of State border patrol services
- Services exports such as eco and cultural tourism and recreational fishing or hunting
- Local sales of bush foods and wild game.

Altman suggests such industries would fulfil dual policy objectives: to generate real jobs and real income for Indigenous people; and effect sustainable land management of Australia's most bio-diverse regions. Such a model is already exemplified in the work of the 'Caring for Country' Unit of the Northern Land

97 Comments by John Oster, Executive Officer of Desart, on ABC Radio National, Background Briefing, 'Black Art Gold Rush', 25 September 2005.

98 J.C. Altman, *op.cit.*



Council.⁹⁹ Similarly, the native title representative body, the North Queensland Land Council, last year called for it to be granted a license to export native flora and fauna harvested by traditional owners to help stop the illegal trade, create employment for Indigenous people that encourages traditional practices, and ensure conservation.¹⁰⁰

Observations

Building on Indigenous comparative economic advantage will be most effective where Indigenous communities are located close to and have access rights to scarce resources; or where customary practice is maintained and the community is comfortable with commodifying that practice. For cultural tourism, this will be land where the local Indigenous community's culture and customary practices are strong, the area is accessible, and engagement with tourism is desired by the community.

For arts and crafts products for sale, land is less of a determining factor since the market has shown interest in modern Indigenous art made off country that reclaims and reinterprets Aboriginal culture, as well as 'traditional' art made through customary practice on country. At the same time, art that is made 'on country' offers communities a source of income and link to the mainstream economy in remote areas that have little else to attract external developers or sustain local businesses.

However, as I touched on earlier, intellectual property laws are currently inadequate to protect Indigenous knowledge – for example, ecological communal knowledge and traditional law about flora and fauna that might be used to develop new pharmaceuticals through bio-prospecting. Indigenous customary practices on country are not currently recognised by the state as a national benefit that should be subsidised or funded.

The legal landscape must also be considered in efforts to build on the hybrid economy. As was noted in Chapter 1, native title laws currently fail to allow native title holders to exercise their native title rights commercially. Rights are limited to the satisfaction of domestic or ceremonial consumption needs. Similarly, the ALRA (NT) does not and was not intended to provide Aboriginal people with economic or needs-related entitlements, such as mineral rights, commercial fishing rights, or rights to commercially harvest native fauna.¹⁰¹

While lack of recognition has proven a barrier to realising the potential for economic development regarding harvesting fauna, there are other barriers that should also be acknowledged. The cost of commercial licenses to harvest and sell wildlife and water is often prohibitive for Indigenous individuals and communities. Rights to carbon credits in any trading are currently presumed to accrue to the nation state, not individuals or communities. Without a change to the laws and subsidisation by government to address these issues, the legal landscape will continue to hinder economic development more than the physical landscape.

99 Northern Land Council, *Caring for country*. Available online at: <www.nlc.org.au/html/care_menu.html>, accessed 10 April 2005.

100 ABC NEWS ONLINE. 'Aborigines seek license to export native animals', 10 January 2005. Available online at: <www.abc.net.au/news/newsitems/200501/s1279433.htm>, accessed 11 January 2005.

101 J. Reeves, *Building on Land Rights for the Next Generation – Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, Commonwealth of Australia, Australian Government Publishing Services, Canberra, 1998, p54.



Similarly, protecting Indigenous artists and artefacts from cheap imitations in the tourism industry remains problematic. The flooding of the market with fake artefacts made overseas has forced some Aboriginal communities across Australia to outsource their work in order to compete.¹⁰² Conversely, Indigenous art has enormous appeal in the mainstream art industry yet the artists are not necessarily enjoying the benefits that flow. The late Warangkula is one of many examples:

One of the original 1970s Papunya painters, he is believed to have sold his painting *Water Dreaming at Kalipinyapa* in 1973 for \$150. It sold at Sothebys in June 1997 for \$210,000; three years later, it fetched \$486,500. He died, poor, seven months after that, in February 2001.¹⁰³

Examples like these not only illustrate the difficulties communities face in protecting their livelihood and meeting goals for development, but Indigenous culture is at risk of being bought and sold to the highest or even in some cases, the lowest bidder.

Creating incentives – banks, loans, homes and investment

As this Chapter has explored, there are many factors that influence economic development on Indigenous lands besides land tenure. These factors extend beyond the need for capital to, for example, access to financial services and market dynamics. Importantly, these factors should not be divorced from the socioeconomic conditions and indicators that characterise life on Indigenous lands. Arguably, the NIC Principles will affect just one of these factors, that is, access to capital, without an emphasis on sustainable outcomes. While capital is an important part of economic development, there are innovative strategies in place elsewhere in the world that should be explored for applicability here. A number of alternative proposals are suggested below that could be explored to promote economic development or effect increased home ownership without putting existing rights to land at risk. Recommendations relating to these proposals are provided at the end of this Chapter.

Overseas experience

In the United States, one of the policy goals of the federal Department of Treasury is to expand the capacity of financial institutions to provide credit, capital and financial services to under-served populations and communities.¹⁰⁴ The Community Development Financial Institutions Fund was created to promote economic development and community development through investment in and assistance to community development financial institutions (CDFIs). CDFIs are responsible for providing financial services (such as credit unions). The CDFI Fund promotes access to capital, investment and community development in the following ways:

102 S. Williams, 'Should a fake didgeridoo', *Australian Financial Review*, 29 July 2005, p3.

103 D. Jopson, 'Whitefella dreaming', *Sydney Morning Herald*, 15 November 2003.

104 CDFI Fund Vision and Mission statement. Available online at: <www.cdfifund.gov/overview/index.asp>, accessed 24 August 2005.



- by directly investing in and supporting and training CDFIs that provide loans, investments, financial services and technical assistance to under-served populations and communities
- through its New Markets Tax Credit Program by providing an allocation of tax credits to community development entities (CDEs) that enables them to attract investment from the private-sector and reinvest these amounts in low-income communities
- through its Bank Enterprise Award Program by providing an incentive to banks to invest in their communities and in other CDFIs
- through its Native [American] Initiatives, by taking action to provide financial assistance, technical assistance, and training to Native CDFIs and other Native entities proposing to become or create Native CDFIs.

Tax incentives

The New Markets Tax Credit Program may be of particular interest to Australian policy makers. It allows taxpayers to receive a credit against federal income taxes for making qualified investments in community development entities (CDEs) which are domestic corporations or partnerships that act as vehicles for providing loans, investments or financial counselling in low-income communities. The CDEs are required to demonstrate that they have a primary mission of serving, or providing investment capital for low-income communities or persons, and are accountable to the residents of the community that they serve.

Potential investors compete for the allocated tax credits worth over \$3.5 billion and the credits are staggered over 7 years. The credit investors receive tax credits of 39% of the investment (where the investor receives 5% p.a. in the first three years and 6% p.a. in the remaining four years).¹⁰⁵ Since its inception, the CDFI Fund has made \$729 million in awards to community development organisations and financial institutions. It is estimated that the New Markets Tax Credit program has attracted private-sector investments of around \$8 billion. This is an avenue worth exploring for Australian Indigenous communities on communal land. Indeed, the National Party of Australia has flagged it is interested in zonal taxation rates for people in depressed regional communities.¹⁰⁶ There is no reason why a tax credit incentive program could not also be extended to Indigenous low-income communities.

Shared equity

As this report and many others have highlighted, Indigenous Australians do not enjoy the income levels of non-Indigenous Australians. Therefore, besides the increased costs of building and maintaining a home in regional and remote locations, the ability of Indigenous peoples to meet these costs and/or service a loan is more difficult (should this type of service be available).

¹⁰⁵ New Markets Tax Credit program. Available online at: <www.cdfifund.gov/program/nmtc>.

¹⁰⁶ National Party politician Barnaby Joyce was quoted in news.com.au 'Joyce proposes cap on bush rates' on 29 August 2005 seeking zonal taxation rates for people in depressed regional communities to help stimulate economic growth, accessed online 29 August 2005.



The ACT Government is currently investigating the possibility of assisting low-income earners to own their own home through a shared equity scheme. This scheme would enable low income earners to buy a 60% share in their property with the bank owning the remaining equity. The ACT Government envisages that families with a combined income of \$70,000 or less could access the scheme and buy a percentage stake in the property. Households would be able to reassess their payments on a periodic basis and perhaps purchase a greater share in the future.

The ACT government hopes that this will be embraced by the community and that it will generate some competition between financial institutions to take part in the scheme. An arrangement such as this with governments and financial services (with appropriate incentives) could be considered in the current context, notwithstanding any variations between building costs and incomes between Indigenous and non-Indigenous people around the country.

Model for a profit-related investment scheme for Indigenous lands

The Centre for Aboriginal Economic Policy Research (CAEPR) has constructed a model to provide incentives for investment in Indigenous land, that they term the 'Indigenous estate'. According to CAEPR, the emergence of Indigenous interests and rights in land has not been accompanied by a co-ordinated government focus on policy and investment in Indigenous communities. Rather, an issues-based approach has been adopted coupled with under-investment in the management of Crown lands transferred to Indigenous ownership. According to CAEPR, this has exacerbated the situation that Indigenous landowners now face.¹⁰⁷

CAEPR see any investment scheme on Indigenous lands needing to satisfy the following characteristics:

- *Flexible and adaptable scheme*: given the diversity of views, histories and resources bases, the scheme should be able to take into consideration a multitude of Indigenous views.
- *Flexible and versatile administration*: Indigenous land rights and interests are still in a state of flux and the scheme would have to deal with a potential wide range of titles and interests.
- *Strategy must build on existing cultural capacity and develop corporate and financial management skills*: Indigenous owners may wish to maintain distinct customary rights. At the same time, understandings about western norms of good governance are needed.
- *Appropriate Incentive structures*: incentives of any scheme need to be in place for individuals and corporations to ensure that the risk is shared and to ensure that there are increased incentives to succeed for all involved.¹⁰⁸

107 J. Altman and M. Dillon, *op.cit.*, p1.

108 *ibid.*, p5.



CAEPR sees the need for alternative funding models based on outsourcing on a competitive basis. The Indigenous Profit Related Investment Program (IPRIP) is modelled on the Innovation Investment Fund (IIF) program operated by the federal Department of Industry, Tourism and Resources. The IIF was introduced to support commercialisation of innovation by small start up firms. The federal government has invested over \$220 million in nine funds and has attracted \$138 million in private sector investment since it began in 1998.

In comparing the two, CAEPR notes that the degree of risk and return are very different. CAEPR envisage that the monetary outlay and return on investment in Indigenous lands would be low, compared to the IIF projects, which are characterised by high risk and potentially extremely high returns. CAEPR note that very few start-up firms in IIF successfully survive beyond infancy. Out of nine funds in the program, only two have returned any cash to the government and that only 4 of the 65 companies that secured funding have returned any money.¹⁰⁹ The IPRIP proposal is that the federal government establish a series of funds for investment in partnership with Indigenous corporations in commercial development projects on Indigenous land. The role of the government would be twofold – as an investor, and as a regulator. The government would set up five funds, which, following a rigorous selection process, would be managed by a funds manager responsible for raising or contributing capital. Each fund would be required to participate in a number of commercial projects which include a minimum Indigenous financial equity holding of 30%. Profits would be shared annually on an equity basis between the government fund and Indigenous stakeholders, and after a set period of time, the project could be divested to Indigenous participants.

Financial modelling proposals for home ownership

As canvassed earlier, there is a significant financial burden associated with home ownership regardless of land tenure. Home ownership on communal, rural and remote lands carries with it extra characteristics that need to be acknowledged. Under commission from the Queensland Aboriginal Co-ordinating Council the Aboriginal and Torres Strait Islander Commission and the Queensland Department of Housing, Mark Moran has devised a number of financial models that take into consideration the unique circumstances of communities based on community owned lands.¹¹⁰ While comprehensive analysis of their suitability for communal lands would be required prior to adopting any of these models, they are outlined briefly below.

1. *Depreciated lease-to-purchase model*

In this model, it is estimated that the life cycle of a house in a remote community is 30 years. Therefore, it is argued that it should be possible to depreciate the initial construction value (say \$150,000) to zero over this period. With this scheme, an equity stake is gradually accumulated through payments until it meets the depreciated value of the house. In the United States, indigenous

109 *ibid.*, p6.

110 M. Moran, *Home Ownership for Indigenous People Living on Community Title Land In Queensland: Scoping Study Report*, Queensland Aboriginal Co-ordinating Council and the Aboriginal and Torres Strait Islander Commission, 1999.



housing is dominated by a lease-to-purchase program called the Mutual Help Home Ownership Opportunity Program.

2. Subsidised Mortgage Options

In this model, Moran suggests subsidised financing including interest-subsidised (or interest free) loans, up front payments, down payment subsidies and exemption from stamp duty.

3. Interest Free Mortgage Schemes

Under this model, the initial construction cost of the house is not depreciated but allowance is made for interest or inflation. An equity stake is gradually accumulated through payments until it meets the initial cost of the house.

4. Subsidised repayment schemes

Under this model, repayments required under various finance options could be subsidised through government rental assistance payments. This could be undertaken through a lease-to-purchase basis or some other modified program based on a repayment system.

5. Schemes to reduce building costs

This model recognises that there may be ways to cut down the cost of housing construction and therefore the amount that needs to be borrowed. While still adhering to national building standards, it may be appropriate to engage CDEP, family, group, and community labour (sweat equity) in the house construction. There may also be opportunities to use locally available materials, shared equity (as outlined above) or perhaps a co-operative self build program of around 10-12 people. The Canadian Rural and Native Housing Demonstration Program may be a useful model.

6. Non-Profit and Concessional Mortgage Schemes

This model suggests that government, non-profit groups and concessional lenders provide low interest rate home loans to borrowers. This model is based closely on the current Indigenous Home Ownership Programme administered by Indigenous Business Australia (and the Aboriginal and Torres Strait Islander Commission before it was dismantled).

7. Commercial lending institutions

This scheme considers the need for a guarantor, possibly through the government. In Canada, there are finance arrangements between families, community and the bank. Government makes a subsidy towards the construction costs, which is used by the community as a loan deposit. There are other programs that cap interest rates to 2%. All loans are government guaranteed.

Recognising commercial rights from Indigenous ownership

Finally, as I highlighted in the *Native Title Report 2004*, Indigenous people's participation in the mainstream economy should not be conditioned upon their ability to buy into it. Traditional owners should not be forced to purchase licenses to exercise their native title rights commercially. Another approach is required which recognises the commercial or economic rights that should flow from



Indigenous ownership of land and resources. Options that ought to be given consideration include:

- directing a proportion of catch/harvest profits or mining royalties to traditional owners as 'resource rental' (in recognising their traditional property right to the resources being exploited)
- subsidising the purchase of, or granting without a fee, commercial licenses
- providing an equity stake for traditional owners in development on Indigenous land
- granting seed funding for Indigenous enterprises
- offering contracting concessions to Indigenous businesses in development projects and other means of facilitating the exercise of commercial rights that flow from native title rights and interests.¹¹¹

Chapter summary – when one size does not fit all

In drawing analogies and commonalities between any strategies, including those outlined above, policy makers must be mindful not to pursue 'one size fits all' strategies where outcomes warrant differential approaches due to different circumstances. For example, the shared equity strategy outlined above operates from the basis that it is geared towards low income earners. As I have highlighted, many Indigenous peoples fall into this category. In that regard, it may be useful to apply to Indigenous and non-Indigenous peoples alike. In contrast, the NIC Principles are supposedly geared towards home ownership and stimulating the economy, yet the circumstances that facilitate these outcomes will vary markedly for a number of reasons, many of which are outlined in this Chapter.

Current Government language suggests that the Government seeks to 'normalise' the legal frameworks, opportunities and responsibilities of Indigenous peoples. While arguments promising Indigenous peoples equal ('normal') access to home ownership is seductive rhetoric, the ability of the NIC Principles to achieve this objective is another matter. A comprehensive strategy and policy framework to address economic development that is designed with the full participation of Indigenous peoples, and makes the goals of traditional owners central, is required. And it is important that the entire debate about land tenure must not overshadow governments responsibilities and obligations to address basic services, infrastructure and citizenship rights for Indigenous peoples living in remote communities on Indigenous land.

As this Chapter highlights, there are a multitude of theories regarding the necessary conditions for promoting economic development. These range from ideas that development goes through incremental phases to a point where traditional values and cultures are abandoned to make way for a modern society. At the other end of the spectrum there are views that modern and traditional customs and skills can be utilised simultaneously to promote economic development, in a way that enables Indigenous communities to freely decide their development future and maintain and promote traditional culture and

111 *Native Title Report 2004*, p64.



practice. It is important to keep in mind that the right to development requires that humans are at the centre of development goals and this is discussed in detail in the next Chapter.

The outcomes that the NIC and others seek to promote are diverse and include home ownership, capital accumulation, business investment and employment. In addition, there are many views about what problems communal ownership creates and what advantages individual ownership will provide.

I am of the view that there are differing levels of merit in the numerous proposals illustrated in this Chapter. However, critical to determining which proposal, or combination of proposals, are suited to Indigenous Australians and on Indigenous communally owned lands, is a human rights consideration.

Policy makers need to be clear about what outcomes they seek to achieve in any reform proposal and ensure that the goals are sustainable, realistic, consider the commercial and non-commercial value of Indigenous land and do not disenfranchise Indigenous Australian from our lands or drive us deeper into poverty. Indigenous peoples have a distinct connection to land and have fought tirelessly to have their ownership recognised in Australian law – with native title recognition occurring only 13 years ago. The value of land to Indigenous peoples is not merely monetary and its value for future generations must be assured.

Recommendation 2: Housing options

If Indigenous groups consent to leasing options, home ownership options may be supported through:

- extending the Home Ownership Programme administered by Indigenous Business Australia to offer affordable home loans over Indigenous communal lands
- establishing a ‘good renters programme’ for tenants in community housing on communal lands to accumulate equity through regular rent payments.

These initiatives need to be developed in genuine partnership with Indigenous land holders and must take account of the socioeconomic factors particular to communities on communal lands, including: annual incomes, existing infrastructure, building and maintenance costs, low land value, skill bases, health and life expectancy levels to prevent inter-generational debt.

These new initiatives must receive additional funding that is not drawn from existing Indigenous housing programs such as the Commonwealth Community Housing Infrastructure Program and Aboriginal Renting Housing Program.



Recommendation 3: Housing programs and human rights standards

That all governments ensure that Indigenous housing programmes are designed so that they are consistent with human rights obligations relating to progressive realisation and an adequate standard of housing. This requires that housing programmes are resourced and supported at a level commensurate with need and with targets and benchmarks established in collaboration with Indigenous peoples.