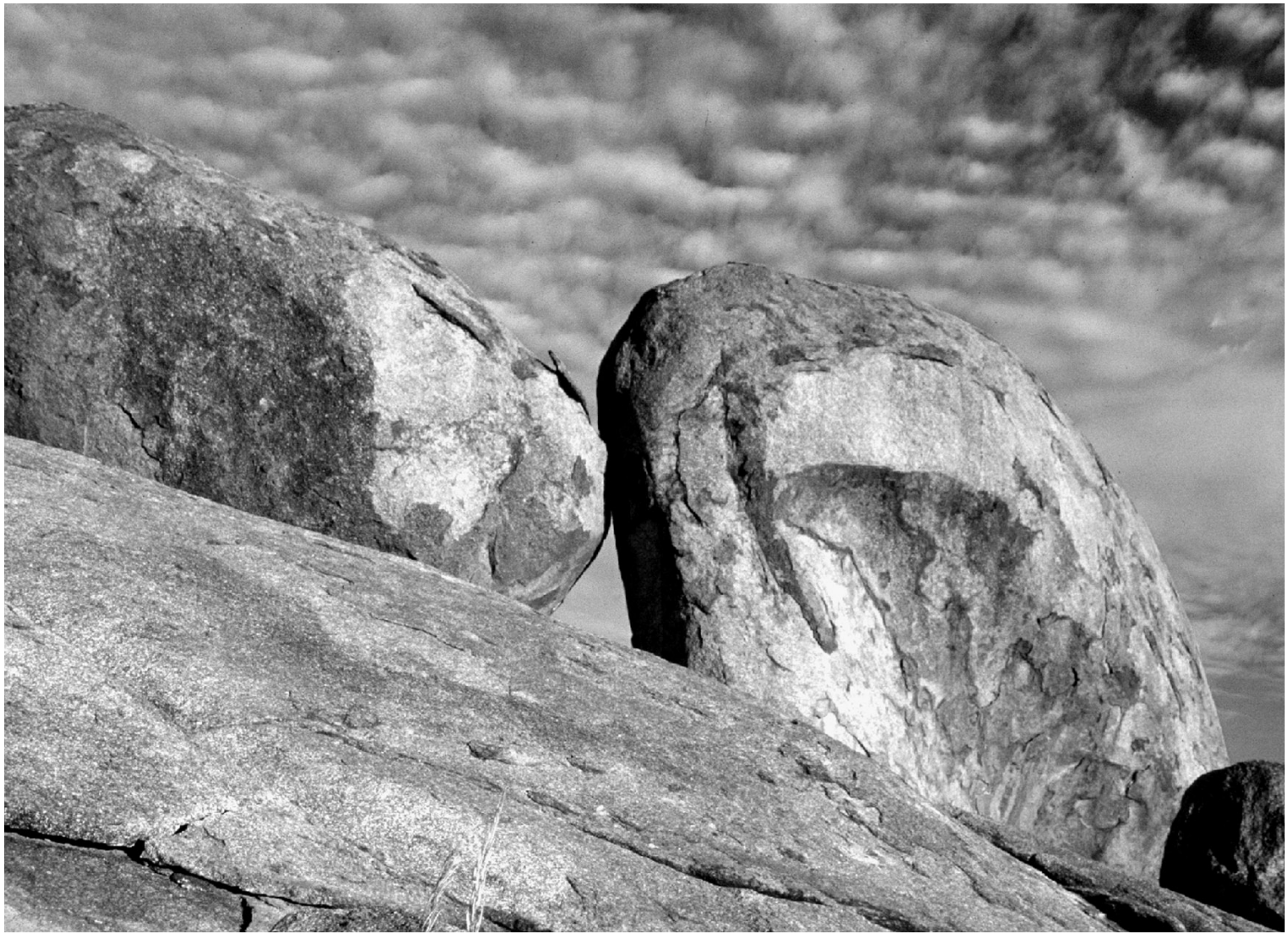




Land rights and development reform in remote Australia



Published August 2005

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This report is available online at
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Acknowledgements

The authors would like to acknowledge Matthew Gray for assistance with economic analysis whilst a research fellow at CAEPR. We also thank Peter Whitehead and CAEPR colleagues Boyd Hunter, John Taylor, Will Sanders, David Martin and Geoff Buchanan for their comments on this paper. Oxfam Australia also arranged for a number of readers who made very valuable comments. We thank Donna Clay for managing this consultancy.

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Foreword

Early in 2005, Prime Minister Howard intimated that both the *Aboriginal Land Rights Act (Northern Territory) 1976* and the *Native Title Act 1993* may be amended to facilitate individual title to Indigenous land, with the aim of increasing economic development and private home ownership for Indigenous Australians.

The Prime Minister has asked the Attorney-General to explore options for legislative change, although Mr Howard says the Government “does not seek to wind back or undermine native title and land rights,” but wants to “add opportunities for families and communities to build economic independence and wealth through use of their communal land assets”.

Approaches to these issues need to be based on a careful consideration of the evidence. The costs of ‘getting it wrong’ are great, both to the development goals and cultural assets of Indigenous Australians, and to the sense of ourselves as a nation.

The Mabo decision of 1992 overturned the doctrine of terra nullius, the idea that Australia was a ‘land belonging to no-one’ at the time of European colonisation. This decision, which led to the enactment of the *Native Title Act 1993*, held a promise that we could redefine our nation. However, amendments to the *Native Title Act* in 1998 wound back Indigenous Australians’ abilities to own, use, and enjoy their traditional lands, and to generate economic benefits. The amendments instead advantaged non-Indigenous interests, including industries such as mining and pastoralism. This diminishment of Indigenous rights was criticised by the United Nations Committee on the Elimination of Racial Discrimination.

Oxfam Australia commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) to produce this report as an independent research organisation with long experience and expertise in Indigenous policy research. In publishing this report, Oxfam Australia does not profess to represent the views of Indigenous Australians. Rather, we seek to provide evidence-based research as a contribution to an important public policy debate. This report examines development issues on Aboriginal land in the Northern Territory as a case study.

It has been argued that land rights and native title are barriers to the social and economic development of Indigenous Australians. Yet this report confirms that Indigenous rights to land in the Northern Territory have generated economic benefits for Aboriginal Territorians.

The critical question is: will changes to land rights and native title legislation help achieve the development goals of Aboriginal and Torres Strait Islander Australians?

While the subject of this report is Aboriginal land in the Northern Territory, this question is relevant to Indigenous Australians in all states and territories. The answers to it must be examined in light of the different social, political, economic and legal contexts in which Indigenous Australians live, and in light of Indigenous people’s rights and aspirations.

Oxfam Australia takes a rights-based approach to our work on poverty and injustice. This approach reflects the view that poverty and suffering are primarily caused and perpetuated by injustice between and within nations, resulting in the exploitation and oppression of marginalised peoples.

This rights-based approach to development further implies that states have obligations and citizens have rights expressed through international covenants, agreements and commitments. These include, among others, the United Nations *Universal Declaration on Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, all of which highlight the right to self-determination as central to the international human rights framework.

Oxfam Australia believes that any changes to land rights and native title should advance the interests of Indigenous Australians, must be undertaken with appropriate accountability to Indigenous land owners and native title holders, and must respect their collective rights as Indigenous Peoples – rights to land, culture and identity.

Finally, land and economic development cannot be examined in isolation from other Indigenous rights issues. Unless Indigenous disadvantage and the systemic issues that entrench it are addressed as part of a broader national vision, achieving social and land justice for Indigenous Australians will remain an unattained goal, to the detriment of all Australians.



Andrew Hewett
Executive Director



Executive summary

Recent Indigenous policy debate has centred on whether encouraging private individual land ownership might increase economic development and address acute housing needs in rural and remote Indigenous communities. Proponents suggest that individual land ownership will stimulate economic growth and improved housing, by providing incentives for individuals or families to raise finance, establish business ventures and build and maintain housing.

Oxfam Australia commissioned the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University to examine this issue through a literature-based case study focusing on Aboriginal land in the Northern Territory (NT). This report investigates the extent to which individual ownership of land is likely to boost economic development on Aboriginal lands and produce better housing outcomes, by examining the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ('the ALRA').

The report confirms deeply entrenched Indigenous disadvantage on NT Aboriginal land, including in housing. Yet it finds no evidence to suggest that individual land ownership is either necessary or sufficient to increase economic development or housing construction.

The evidence does not support the notion that private individual ownership of low-value land in remote settings can be the driving force in addressing housing or other needs. The principal issues for any new policy framework continue to be contemporary Indigenous poverty, and the historic lack of services, housing and associated infrastructure.

The notion that land rights reform can be the main driver for economic development should be reconsidered in light of the legacy of disadvantage, cultural difference and structural factors faced by these communities.

Such debates must also recognise that there are fundamental Indigenous cultural reasons for attachment to land, irrespective of its commercial potential, as well as unique and diverse Indigenous perspectives on what development is appropriate for their communities and country.

The report concludes that very significant structural issues must be addressed to encourage economic development and address housing needs, including: the remoteness of communities from mainstream markets; relatively low populations and population densities; the need for greater investment in education and vocational skills; poor infrastructure; and the generally economically marginal nature of most Aboriginal lands.

This research confirms that the ALRA framework can meet Indigenous housing and economic development objectives. However, we argue that present levels of Ministerial involvement in decision-making about land use are excessive and burdensome. Furthermore, we note that state agency occupation of Aboriginal-owned land generally remains on a non-commercial footing, largely to the disadvantage of Indigenous interests.

Past experience in Aotearoa/New Zealand demonstrates that individualising land title can actually compromise sustainable economic development on Indigenous land. Innovative policy and partnerships are now addressing the long-term consequences of economic marginalisation, and issues such as home ownership on Maori-owned land. One important lesson is that land fragmentation can create unhelpful barriers between people and increase asset management costs.

Indigenous aspirations for development are diverse, and might well differ from those of non-Indigenous Australians; what is realistic and sustainable on most Aboriginal land certainly differs.

Summary of recommendations

Aboriginal Land Rights (Northern Territory) Act 1976

We recommend careful analysis of what can be achieved under the ALRA. Any amendments should focus on diminishing the state's role in controlling land use decisions, while retaining checks and balances necessary to protect owners' rights. State use of Aboriginal land should be on a more business-like footing as part of a larger process to encourage realisation of opportunities presented by land ownership.

Housing

High levels of Indigenous poverty and unmet housing need mean that policy reform should include enhanced state investment in community—and possibly publicly-owned—housing on Aboriginal land. Reform should follow exploration of the structural changes needed to enhance prospects for public, community and private housing, all on secure leases, as viable and sustainable options on Aboriginal land.

Economic development

Indigenous aspirations for development are diverse, and might well differ from those of non-Indigenous Australians; what is realistic and sustainable on most Aboriginal land certainly differs. We recommend increased resourcing of land management work on Aboriginal land, especially natural and cultural resource management.

We also recommend exploration of innovative forms of development finance for mainstream and Indigenous businesses, and options for better use of development capital already generated by the ALRA framework and other avenues.

Aotearoa/New Zealand

Australia should learn from Aotearoa/New Zealand's past experience of individualising land interests, and from more successful recent innovations supporting collective land use and housing on multiply-owned Maori land.

Conclusion

Economic development on Aboriginal land has historically been blighted by initiatives that did not adequately recognise geographic, economic, social and cultural realities. This pattern will not be broken by reforms uncritically committed to particular forms of private ownership. We argue for an evidence-based approach, drawing on analysis of the real achievements of the ALRA and international experience of the benefits derived from communal land ownership.



1. Introduction

The discourse of policy failure

In the past two years, Australian Indigenous affairs has undergone a fundamental shift. The Aboriginal and Torres Strait Islander Commission (ATSIC)—the national Indigenous representative organisation—was effectively abolished in early 2004 and replaced after the October 2004 federal election by a government-appointed advisory board, the National Indigenous Council (NIC).

Popular discourse has increasingly represented the past 30 years of Indigenous policy as a failure, although this is counter to available official social indicators that show improvement in most areas at the national level (Altman, Biddle and Hunter 2004). From 1 July 2004, key conceptual policy planks such as self-determination, self-management and Indigenous-specific programs have been replaced by mutual obligation, shared responsibility and mainstreaming.

On 1 July 2005 the Liberal-National Coalition took control of both Houses of Federal Parliament, providing a clear opportunity for reform. Since the 2004 federal election a number of Ministerial presentations and discussion papers have reinforced the discourse of policy failure, building an argument that land rights and native title may be perpetuating, rather than addressing, Indigenous disadvantage.

The history of land rights law in Australia began in the 1960s with a South Australian Act that did not actually authorise claims. A decade later, the Federal Parliament passed the *Aboriginal Land Rights (Northern Territory) Act* 1976. The ALRA remains the most extensive land rights legislation passed in Australia.

Since 1966, substantial amounts of land have been returned, by various means, to Indigenous ownership. Pollack (2001) estimated that Indigenous Australians own, control or have management arrangements over up to 18 per cent of the Australian continent—around one million square kilometres. Recent native title determinations make it likely this will have increased to more than 20 per cent by 2005.

Land rights and economic development

Both Indigenous and non-Indigenous commentators have focused recent discussion of policy failure on land rights and native title, particularly on the question of why restitution of land has not resulted in marked improvements in Indigenous socio-economic status.

The logic underlying this question is: the dispossession of Indigenous Australians from their land without agreement or treaty since 1788 has resulted in their socio-economic marginalisation. Therefore, restoration of lands since 1966 should have seen an improvement in socio-economic status. Yet recent statistics (ABS 2004a, 2004b) indicate that Indigenous people in remote and very remote Australia—where most land transfers have occurred—have the lowest socio-economic status relative to both other Indigenous Australians and non-Indigenous Australians.

This can be partially explained by the remoteness of these areas, but also by governments' failure to provide adequate services to these communities. In addition, the Aboriginal reserve areas and un-alienated Crown land that has formed the vast majority of land returned to Indigenous ownership has had marginal commercial value—hence its availability for claim in the case of unallocated Crown land.

Furthermore, while substantial tracts of land have been returned, this did not generally include property rights in commercially valuable resources. Finally, it is often overlooked that land rights policy historically encompasses both social justice and development goals; as Justice Woodward—the Commissioner charged with inquiring into NT land rights—noted before the ALRA was passed, land rights was but a first tentative step to economic and social equality for Indigenous people.¹

This report focuses on the Northern Territory, where 44 per cent of the land mass (594,000 square kilometres) has returned to Aboriginal ownership under the ALRA.² A further 9.6 per cent (or 120,000 square kilometres) is still subject to claim.³ Despite this, some communities are in economic and social crisis, while in many others there is a large shortfall in housing, and much existing stock is in poor repair (Taylor 2004).

Oxfam Australia became concerned about the direction of these high-profile public discussions in the absence of a national representative organisation to represent Indigenous interests.

In recent times, some commentators have begun blaming this apparent policy failure in part on the nature of property rights. In early 2005, Hughes and Warin (Centre for Independent Studies, 2005: 1) argued that communal ownership of inalienable freehold title is an important explanation for housing shortages and economic underdevelopment (cf Duncan 2003; Altman 2004).

This was echoed in 'Privatising Indigenous Land', a paper sponsored by NIC member Warren Mundine that received widespread media coverage in March 2005, but is not yet publicly available. In April 2005, on a visit to Wadeye in the NT, Prime Minister Howard supported the view that land privatisation and individuation might improve housing and economic development prospects for remote Indigenous peoples.⁴ However, at the National Reconciliation Planning Workshop in late May 2005 he appeared to have adjusted this position, suggesting that the inalienable and communal nature of Indigenous land must be maintained.⁵

In June 2005, the NIC released a set of Indigenous Land Tenure Principles that sought to maintain communality and inalienability, while acknowledging the possibility of compulsory leasing of such lands from owners to individual community residents for home ownership or business development (NIC 2005).

About this research

Oxfam Australia became concerned about the direction of these high-profile public discussions in the absence of a national representative organisation to represent Indigenous interests. In mid-May 2005, Oxfam Australia commissioned ANU researchers to produce a report aiming to inform public debate about housing, development and land rights reform.

We focus on the NT for a number of reasons. First, the ALRA is Australia's second-oldest, most comprehensive statutory land rights regime.

Second, as Commonwealth law it is amenable to federal reform, which has rarely occurred due to party-partisan standoffs and Indigenous opposition over 28 years. Third, research estimates that more than 70 per cent of the NT Indigenous population resides on Aboriginal-owned land (Taylor, 2003), and that this population will probably grow rapidly in the next 20 years (Taylor, 2002). This is likely to exacerbate housing and economic development problems.

In preparing this report we are conscious of the enormous complexity of the issues—the ALRA and its limited reform since 1976; the apparent intractability of remote Indigenous disadvantage; and growing shortfalls in housing and infrastructure.

We make three frequently-overlooked observations at the outset:

Property rights

Much of the current debate began with a call for land rights law to be amended to allow the sale of land held communally (by groups of traditional owners) under inalienable title. This quickly changed to calls for long-term leases to individuals, already possible under the ALRA with landowners' agreement. The ALRA attempts to accommodate customary ownership rights and land uses within a Western legal framework. There seems to have been no analysis to date of how those customary rights might be affected by proposals to individualise rights to use land through long-term leases or stronger measures.

The limits of ALRA land

There is a view that land restoration should guarantee economic development—this is at best naïve. Land made available and returned is generally remote and of low commercial value. In addition, residents have often experienced decades of marginalisation and relative neglect, resulting in poor health, housing, education and employment status. These factors provide a much stronger explanation for economic and social exclusion than the nature of land tenure.

Commentators also frequently overlook that native title rights have rarely included property rights or exclusive control over commercially valuable mineral resources (Altman 2002). Contrast this with Canada and the United States, where sub-surface mineral rights are not distinguished from land ownership rights. John Reeves conducted a comprehensive review of the ALRA in 1998, including its apparent failure to deliver development (Reeves 1998). However his recommendations were heavily criticised by academic and other commentators (eg Altman, Morphy and Rowse (eds) 1999 and the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Commonwealth of Australia 1999) and never implemented.

Contexts for development

Remote Indigenous communities are fundamentally different from other Australian—and many international—development contexts. They are often in sparsely populated regions, geographically and culturally distant from markets. These regions were colonised relatively late; some parts of Arnhem Land and central Australia only in the past 50 years.

Customary kin-based, non-market systems, worldviews and practices—including wildlife harvesting and fire management regimes—remain strong. Yet too often in these debates, cultural differences are paid only lip service, and vibrant ongoing contests between Western and customary economic and legal frameworks ignored.

We are conscious that others will provide considered inputs to these debates (eg Central Land Council 2005 and Armstrong 2005). We aim to address some policy issues around land rights, housing and economic development in the NT, for further consideration by the Australian and NT governments, Indigenous organisations and land interests.

In the next section, we briefly summarise, in lay terms, relevant aspects of the ALRA.⁶ We then address public policy concerns about how housing shortages on Aboriginal land might be met, and capital for economic development raised on Aboriginal land. We briefly discuss creative approaches to financing housing on communal Maori land in Aotearoa/New Zealand,⁷ and in the final section make some suggestions for policy reform.

Remote Indigenous communities are fundamentally different from other Australian – and many international – development contexts. They are often in sparsely populated regions, geographically and culturally distant from markets.



2. The legal framework

Here we explore issues around who controls land use decisions about land held under the ALRA, and how people or organisations obtain rights to use the land. We highlight two anomalous features: Ministerial control over land use decisions, and state occupation of land. Land leased back to the state for conservation purposes under the ALRA is not examined.

The nature of title to Aboriginal land

The ‘Aboriginal land’ created by the ALRA is freehold title with some added rights to control mining. The freehold is inalienable—it cannot be sold or surrendered, except to another Land Trust or the Crown. However, lesser interests like leases and licences can be granted. The law usually provides that someone who owns land owns ‘fixtures’ (permanent structures) on it. This means that non-portable housing provided by the state on Aboriginal land normally belongs to the Land Trust. Only the Commonwealth can acquire Aboriginal land by compulsory process; the NT government cannot as it lacks the constitutional powers to do so.

The role of Land Councils and Trusts

The ALRA creates a three-way relationship between traditional owners, Land Trusts and Land Councils, aiming to balance various customary imperatives about use of and responsibility for land with Western legal accountabilities. The ALRA defines ‘traditional Aboriginal owners’ as people of common ancestry with ‘primary spiritual responsibility’ for land. Unless the ALRA or some other law says so, their consent is always required before others may use the land.

However, the ALRA also recognises another aspect of Aboriginal tradition—multiple, overlapping rights to different areas of land. A person can be traditionally entitled to use land for limited purposes without being a traditional owner. These purposes usually do not extend to building a house or conducting a business without the traditional Aboriginal owners’ consent. Many such people live in townships established on former reserve land before the ALRA was enacted, either because their ancestors were moved there by the state or because they were attracted by the availability of services. They must be consulted about development, but cannot veto proposals. There is a third category of Aboriginal people living on Aboriginal

land, particularly former reserve land—those without any traditional entitlements to use it, who are also usually people whose ancestors were moved or attracted there. Like people with limited traditional entitlements, they are entitled only to be consulted about developments on the land.

Land Trusts are statutory corporations that hold land under the ALRA for the benefit of Aboriginal people entitled by tradition to use or occupy the land, whether or not that entitlement is qualified by place, time, circumstance, purpose or permission. Land Trust members are usually traditional owners. The role of Land Trusts under the ALRA is as passive land-holding entities.

Land Councils service the Land Trusts. These are larger, regional statutory corporations with specified functions under the ALRA. Broadly, they represent the interests of traditional owners and other Aboriginal people with traditional interests in land, and provide administrative support to the Land Trusts. If someone wants to use land, the relevant Land Council must conduct negotiations with the traditional landowners and affected persons. Once a proposal is agreed, the Land Council directs the Land Trust to enter into the transaction.

Land Councils must respond to the views of traditional Aboriginal owners and use traditional or agreed processes to obtain their informed collective consent. This is a substantial obligation compared with mainstream collective decision-making processes such as majority voting. It is made more challenging when a proportion of traditional owners live away from the land, perhaps for economic reasons.

There are many people living on Aboriginal land in the NT whose traditional rights to use of the land do not extend to decision-making about development. Some have no traditional rights to the area in which they live. There may also be significant numbers of non-Aboriginal people in such communities. Although this last group are not entitled to formal consultation under the ALRA, development issues should be considered with them in mind.

The Minister's powers to control dealings in land under the ALRA are striking ... they appear particularly paternalistic in the context of other leasing and licensing of land.

Access to and use of Aboriginal land

Entering ALRA land is not like walking up to someone's front door in the suburbs. Access, even to visit communities, is restricted and largely subject to a permit system for people without traditional rights or who are not on government business.

Beyond visiting or living on the land, the process of obtaining formal rights to use land held under the ALRA depends on the length of time for which rights are sought and the type of applicant. In broad terms the system for obtaining rights for non-mining uses is as follows: Interests in land such as leases or licences can be granted by a Land Trust, at the direction of the Land Council, to state entities for public purposes or to any person for 'any purpose' for up to 10 years without Ministerial consent. The same sorts of interests can be granted to an Aboriginal person, council or association for Indigenous-owned business and community purposes for up to 21 years without Ministerial consent. Grants of interests in land for longer periods require the consent of the Minister responsible for the ALRA. Any rents are paid to, or for the benefit of, traditional Aboriginal owners.

Two further points are touched on here. First, grants of interests for residential purposes to Aboriginal people and employees of Aboriginal groups appear to always require Ministerial consent. Second, if a right has been granted that required Ministerial consent it cannot be traded or made subject to subsidiary grants without further consent, and the Land Council's consent is required for any trade in granted interests. This includes, for example, a leaseholder who wants to mortgage their interest.⁸ The Land Council and Minister can both consent in advance to these further interests, as with the leases for the Alice Springs to Darwin rail corridor.

The powers to grant and consent to interests in land are subject to judicial review by the Federal Court. The Minister also has powers to override Land Councils and Land Trusts in certain circumstances.

Mineral exploration⁹ on Aboriginal land requires the Minister's and the Land Council's consent (or the Governor-General's in national interest cases). A detailed exploration proposal must be presented to a Land Council to be canvassed with affected Aboriginal people within one year.

A Land Council may only consent to the licence where the traditional owners collectively agree and the Council is satisfied that the terms (also the subject of negotiation or failing that, arbitration) are reasonable. Terms and conditions of consequent mining leases are the subject of similar consultation and negotiation, and cooling-off periods are imposed before miners can reapply to explore an area.

Exploration and mining agreements can provide financial rewards, to be distributed in line with the agreement or to Aboriginal people affected by the mine. However, the financial benefits of mining are not limited to these negotiated monies.

The Aboriginals Benefit Account

The ALRA maintains the former Aborigines Benefits Trust Fund as the Aboriginals Benefit Account (ABA). The ALRA requires the Commonwealth to pay into the ABA monies from Consolidated Revenue equivalent to royalties paid to the Crown for mining on Aboriginal land. Most royalties are paid to the Crown in right of the NT as the owner of most minerals there. However, some are paid to the Commonwealth as the owner of *in situ* uranium in territories.

Forty per cent of ABA money is statutorily required to be paid to the Land Councils for administration. Thirty per cent is paid through them and royalty-receiving associations to Aboriginal people affected by mining. Unspecified proportions must be granted to Aboriginal people and used to pay the ABA's administrative costs, and other amounts may be granted to Land Councils to 'top up' their administrative budgets. See section 4 for further discussion of distribution issues.

Ministerial powers

The Minister's powers to control dealings in land under the ALRA are striking. We do not discuss here whether they are warranted in the case of mining. Yet they appear particularly paternalistic in the context of other leasing and licensing of land.

Justice Woodward in 1974 stressed that legislation resulting from his recommendations should be amended as social conditions changed. Yet, until recently, the view seems to have been that conditions had not changed enough to warrant removing Ministerial override/oversight.

Existing state occupation of Aboriginal land should be put on a proper legal and commercial footing via negotiation of leases.

This will counter any perception by government agencies that there is no need for proper tenurial and commercial bases for use of Aboriginal land.

The 1998 Reeves Review recommended substantial changes to land-holding structures, and scrapping the consent and approval role of the Minister for dealings in land. Aiming to promote greater independence, Reeves proposed a very limited review role for the Minister over major transactions referred by Indigenous-controlled entities. This was a significant shift from Justice Woodward's original view that Indigenous peoples' land dealings required state supervision, a position only slightly adjusted by 1983 when Justice Toohey's *Seven Years On* review resulted in the extension of thresholds for categories of dealing in land from 5 and 10 years to 10 and 21 years (Toohey 1983).

An alternative mechanism

It is important that avenues remain for landowners to have recourse to judicial review by the Federal Court of their dealings with Land Councils. Aside from the right to have processes scrutinised through litigation, we accept that some checks and balances mechanism may be appropriate. However, there are a number of questions to explore:

- Is any scrutiny warranted over the Land Councils' work arranging dealings in land?
- If so, would it be more appropriately discharged by an Indigenous-controlled entity?
- Should this merely be an audit role to ensure process requirements are met (eg that informed consent was obtained) in case of a complaint, or is there need for an active protector/regulator, additional to Land Councils, addressing substantive matters such as whether a transaction is in landowners' best interests?

Historically there have been few significant disputes between Land Councils and their constituents. Yet as land rights move to a more developmental phase, potential for such disputes may increase. We would argue for an inexpensive and accessible protection mechanism, like that of an ombudsman, which is able to accommodate Indigenous norms.

Such a mechanism would allow the state to withdraw from superintending dealings to simple oversight of the ALRA system. As with any statute, the ALRA's

ongoing relevance should be kept under review and the law amended from time to time. Landowners would then be responsible for the consequences of their decisions about land use, limiting parliamentary intervention to medium-term policy adjustment on the basis of successes and failures in policy application, as opposed to the current micro-management of transactions by the state.

Various other issues need resolution: what should be the threshold for dealings requiring supervision, bearing in mind these thresholds were last extended in 1984 after the Toohey Review? What type of dealing should be supervised—those on commercial or non-commercial terms, those involving the state or private enterprise? Similar issues should be explored regarding other Ministerial roles under the ALRA, including the power to override decisions of Land Trusts and Land Councils, and to appoint the chairperson of the ABA.

State occupation of land

The ALRA permits indefinite ongoing 'occupation' of Aboriginal land by state agencies—like education or health services—after it becomes Aboriginal land, without owners' consent. Rent is payable only where the occupation is not for a 'community' purpose, and then on terms set by the Minister. At a minimum, even for a statutory occupation, one would expect to see a bargaining process for setting rents with a mediation/arbitration/adjudication route for disputes under the ALRA.

Leases or licences are currently the replacement mechanisms for these occupations. However, landowners cannot compel a state agency occupier to move to a lease or terminate the occupation. And while traditional owners have historically been willing to accept nominal or no rents for much-needed services, the equity of such practice needs to be considered, especially as service delivery is often sub-standard.

Again Woodward (1974) provides historical context. At that time there was a consensus that if land were returned to Indigenous ownership it should be subject to existing rights, including prior interests in mineral leases, and that the new owners would be entitled

to all future fees payable and the right to negotiate arrangements on terms acceptable to themselves. It was assumed there would be no difficulty negotiating leases with state entities, missions or groups of Indigenous people.

However, the consensus appeared to go further. Justice Woodward indicated that no rent should be charged for government occupation of Aboriginal land for the benefit of local communities (eg schools, medical facilities) although rents should be charged for state occupations for broader public purposes (eg civil aviation facilities). For mission occupations it was accepted that nominal rental should be paid for short-term leases. Both mission and state occupation would include areas for staff accommodation.

Despite expressing concern about underlying transaction costs, including negotiation costs, the Reeves report does not appear to have focused on the benefits foregone by landowners of providing state agencies with rent-free use of land. Justice Toohey, in his 1983 review, also saw no reason to overhaul the initial rationale.

Thirty years on from Justice Woodward's final report the time has probably passed for this form of uncompensated occupation. Existing state occupation of Aboriginal land should be put on a proper legal and commercial footing via negotiation of leases. This will counter any perception by government agencies that there is no need for proper tenurial and commercial bases for use of Aboriginal land. The case will be even stronger if there are moves to further clarify the rights and obligations of all who occupy townships on Aboriginal land. If government policy is to expand the footprint of the mainstream economy, to increase economic opportunities for landowners, it is incumbent on governments to put their own dealings on a normal footing, setting an example for the standards and behaviour expected of others doing business with Aboriginal landowners.

We also question whether there are still grounds for maintaining distinctions between community and broader public services. Although land is owned for the benefit of traditional owners, services benefit all residents, Indigenous and non-Indigenous. Traditional owners are a minority in many larger townships on Indigenous land. In other circumstances the state purchases land it requires. That option is not available on Aboriginal land because the land is inalienable.

Yet this does not mean the state should have rent-free use of land. So, while traditional owners can always maintain the prerogative not to charge rents, the option to do so should be clearly provided.

Compulsory acquisition of land

There is also a question of whether the NT government should be permitted to compulsorily acquire Aboriginal land. The NIC Indigenous Land Tenure Principles propose that, 'to maximise the opportunity for individuals and families to acquire and exercise a personal interest in [Aboriginal land], whether for the purposes of home ownership or business development ... a mixed system of [underlying perpetual communal] freehold and [overlapping transferable individual] leasehold interests' be developed. According to the NIC (2005):

'Effective implementation of these principles requires that:

- the consent of the traditional owners should not be unreasonably withheld for requests for individual leasehold interests for contemporary purposes;
- involuntary measures should not be used except as a last resort and, in the event of any compulsory acquisition, strictly on the existing basis of just terms compensation ...'

If support from traditional owners was obtained, the ALRA could be amended to require that traditional owners not withhold consent unreasonably to leases for, say, local housing projects. This could be enforced, if necessary, by a court in a civil suit by the party seeking the lease. However, it is by no means clear that such arrangements would be better achieved by amending the ALRA or by involuntary measures such as the state (Commonwealth or NT) exercising compulsory acquisition powers. It has not been demonstrated that the NT government cannot achieve such objectives with traditional owners' consent. Such acquisitions would also mark another Indigenous-specific departure from the general Australian practice of compulsory acquisition of land for public purposes only.¹⁰



3. Housing on Aboriginal land

The housing tenure of Indigenous households is very different to the general population. The 2001 Census showed 70 per cent of Australian households living in a fully owned or mortgaged dwelling, compared with just 14.6 per cent of Indigenous households in the NT (Table 1). Differences are most pronounced for Indigenous Australians living in very remote areas. In outer regional areas (eg Darwin) 34.3 per cent of households are living in fully owned or mortgaged dwellings, in remote areas 18.1 per cent and in very remote areas just 2.5 per cent. In very remote areas, 90 per cent of Indigenous households¹¹ are in rented accommodation, compared to 74.9 per cent in remote areas and 62.7 per cent in outer regional areas.

Australia has one of the OECD 's highest rates of home ownership. This is seen as desirable for a number of reasons, including accumulation of equity that provides financial security and collateral for loans. It also provides secure and, in the longer term, more affordable housing. There have been suggestions that it is desirable to increase home ownership by Indigenous Australians in remote areas. One argument is that this might result in greater private financing of dwelling construction, reducing the need for government funding.¹² We argue that such a view needs further interrogation, as does the extent of Aboriginal aspiration to home ownership as a means of wealth creation.

Current and future needs

On ALRA land the majority of dwellings are community rental, the result of a 30-year government effort to build 500 to 1,000 dwellings per year Australia-wide in discrete Indigenous communities, with ongoing

management vested in Indigenous community organisations. Legally, these houses are fixtures and thus owned by Land Trusts. Capital provided by Commonwealth and, to a lesser extent, state and territory governments has been via grants rather than loans (or debt financing), not requiring repayment. Dwellings have generally been built on land to which Indigenous groups already have reasonably secure title, and should therefore be referred to as 'community-owned' housing (Sanders 2005).

It is thoroughly documented that housing in remote Indigenous communities is inadequate (eg Jones 1994; Neutze, Sanders and Jones 2000; NT Government 2004). This is likely to worsen given projections for the rate of increase of Indigenous populations in remote areas. Research estimates that by 2023 the Thamarrurr region (Wadeye or Port Keats) will experience an 88 per cent population increase and a housing shortfall of 760 houses (Taylor 2003; 2004 and Taylor and Stanley, 2005). The estimated cost of providing houses for this small region alone is \$167.2 million.

Although it is not just focused on Aboriginal-owned land, the most recent NT Government research (2004: 13–14) shows significant unmet need in Indigenous housing throughout Australia, particularly in the NT. Taking into account homelessness, overcrowding and unacceptable dwelling conditions, this need is quantified at \$806 million for the NT, out of a national estimate of \$2.3 billion.

There are also housing-related infrastructure needs (sewerage, water and power) of \$98 million in the NT, out of a national estimate of \$227 million. It is likely, given Thamarrurr-type projections, that these are considerable underestimates.

Table 1 Indigenous housing tenure by region, NT, 2001.

	Outer Regional	Remote	Very Remote	Total
Fully owned	8.6%	5.2%	1.6%	4.3%
Being purchased	25.7%	12.9%	0.9%	10.3%
Being purchased under a rent/buy scheme	0.9%	1.1%	0.1%	0.5%
Rented	62.7%	74.9%	90.0%	79.3%
Being occupied rent-free	1.5%	2.7%	5.2%	3.6%
Being occupied under a life tenure scheme	0.1%	0.1%	0.1%	0.1%
Other tenure type	0.5%	3.0%	2.2%	1.9%
Total Indigenous households	2,461	2,002	4,616	9,079

Note: Households whose housing tenure type was not stated on the census form are excluded from this table.

Table 2 Economic status by region of residence, Indigenous households, NT, 2001.

	Outer Regional	Remote	Very Remote	All
Average individual income (\$ pa)	\$22,268	\$17,040	\$10,216	\$13,460
Average household income (\$ pa)	\$43,630	\$39,405	\$42,748	\$42,257
Employment rate (%)	52.0%	42.7%	30.2%	36.0%
Rent (\$/week)	\$131	\$97	\$48	\$75

The feasibility of private housing

The private housing market in many remote communities in the NT is extremely limited or non-existent. Mainstream models are difficult to transpose to areas with such a limited economic base, low land market value,¹³ limited capacity of Indigenous people in these areas to borrow money and the general absence of financial institutions.

The feasibility of private housing on ALRA land must be examined in the context of income and employment levels. According to the 2001 Census, in very remote areas the average individual income was just \$10,216 p.a. and the average household income \$42,748 (Table 2). The employment rate in very remote areas was 30.2 per cent. However, this includes Community Development Employment Program (CDEP) employment and so greatly overstates the mainstream employment rate of just 14.9 per cent (see Altman, Gray and Levitus 2005: 6). Another indicator of economic stress is that in remote areas, 73 per cent of Indigenous adults stated they would be unable to raise \$2,000 within two weeks for an important expenditure.¹⁴

Low mainstream employment rates, incomes and savings mean that commercial lenders would be unwilling to lend, or would lend only relatively small amounts, irrespective of the nature of the land title. Consider what a commercial lender would be prepared to lend a household of four adults and five children, with the average monthly income for very remote areas of the NT of \$3,405.¹⁵ One major bank's home loan calculator estimates the maximum loan available at \$160,157 for 30 years at 7.32 per cent. Monthly repayments would be \$1,109 (including an \$8 monthly service fee) with total repayments of \$395,278 (including \$235,121 total interest).¹⁶

In contrast, the current average household rent in remote areas is \$192 a month. Furthermore, home loan calculators assume living costs based largely on those in large Australian cities.¹⁷ In remote areas the costs of groceries, electricity, petrol and so on are much higher (Taylor 2004).

Armstrong (2005) explored the attitudes of financial sector experts to proposals that Indigenous land be individualised via leasehold or freehold titles for home loan or business development purposes. She received responses indicating that conventional reasons for not advancing loans would likely apply, in particular that the land is not generally commercially valuable, and that prospective borrowers will generally struggle to demonstrate that they have reliable income streams.

Construction costs versus land value

The cost of building a house in a remote community is \$225,000 to \$350,000 depending on style and location (G. Chambers [Indigenous Housing Authority of the Northern Territory] 2005, pers. comm., 15 June)—beyond the means of most Indigenous people in remote and very remote communities. In addition, the rate of depreciation of the housing stock in remote areas is very high for reasons including environmental conditions and difficulties getting access to tradespeople. Furthermore, houses are generally not built to accommodate culturally distinct ways of living,¹⁸ often resulting in overcrowding. People often move around so there are also frequent changes in occupants.

The other major issue is that if ALRA land could be freely traded, its remoteness means it would generally sell for a low price. An indication of possible value is provided by the average \$13 per hectare

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Table 3 Details of property sales in selected remote townships, NT, 2004–05

Location	**Population	Distance from Darwin	No. of sales (04/05**)	Median Block Area (sq m*)	Median Land Value (Unimproved cap. value)	Median sale price*	Median Unimpr. Capital Value/Area*
Pine Creek	619	248kms	13	800	\$20,000	\$43,000	\$25
Elliott*	419	850kms	7	1,390	\$6,000	\$15,000	\$4.32
Tennant Creek	3,286	1000kms	71	1000	\$5,100	\$78,000	\$5
Katherine	6,719	317kms	123	948	\$34,000	\$157,000	\$36

Sources: * Australian Valuer-General NT 2005, pers. comm., 10 June ** 2001 Census.
For Elliott data for the period 2003 to 2005 is used because of the small number of sales per year.

for land acquired in the NT by the Indigenous Land Corporation. However, this was primarily pastoral leasehold with a potentially higher economic value than much ALRA land, particularly in the arid zone.

Another indicator is house sales in small, more remote NT townships not on ALRA or native title land. 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 (Table 3).

Clearly, unless income levels increase dramatically, private ownership will not result in private financing of a significant number of new dwellings in remote Indigenous communities. This is primarily because the cost of construction is far higher than the likely land value, even if individuated or privatised. Thus land would be of insufficient value to use as mortgage collateral, even if the commercial sector was disposed to provide loans on Indigenous leasehold land.

Approaches to funding

The real policy challenge is how to fund the housing requirements of remote Aboriginal communities, both on and off Aboriginal land. We acknowledge that a small number of Indigenous people would, if granted rights in land acceptable to lending institutions (eg a licence to occupy or a long-term lease), earn enough to borrow money to purchase, renovate or build if they desired. However, economics make it unlikely that private financing by individuals (or community organisations) will result in very many new dwellings, unless there are substantial increases in people's incomes. Given this, Indigenous communities and governments must consider alternative models.

One possibility is for NT or Australian governments to continue to fund housing construction and maintenance, for example constructing publicly-owned housing on land leased from traditional Aboriginal landowners.

Another is for governments to build, then transfer ownership to Indigenous organisations representing landowners. They might, in turn, lease these assets to a trading subsidiary with day-to-day responsibility for tenancing and maintaining the dwellings. Loans, grants or a mixture could fund this approach. Alternatively, the trading organisation might take a lease and take full responsibility for housing constructed on it.

Potential pitfalls of this approach are demonstrated in North Queensland with Katter leases, where housing stock in poor condition was transferred to individuals on perpetual leases without sufficient consideration of funding for maintenance, repairs or replacement dwellings (see Moran et al. 2002 and the similar example from Minginui, New Zealand, below).

Another approach is for governments to fund Indigenous organisations to construct and manage dwellings, as with Aboriginal Housing Associations in the 1970s (see Sanders 2000). Projects might be in partnership with aid organisations (see section 5), funded with a mix of grants and loans. Facilitated loan funding might come from private-sector institutions to the housing entity, providing an opportunity for landowners' housing organisations to form relationships with financial institutions.

Residents might enter renewed housing relationships with these organisations rather than the financial institution, addressing concerns about the security for loans. The housing organisation might, for example, have a lease of land it could pledge as security, although it is not certain that financial institutions would support this approach given likely limitations on recovery methods for defaulted loans. In the US, government guarantees have a place in the architecture of lending for housing on Indigenous land—this possibility should be explored here. There is also the issue of whether rent collected by the housing entity would be sufficient to service loans.

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One advantage of households entering housing relationships with a local landowners organisation is that this can accommodate local circumstances. Most residents might be tenants. However, some may be in a position to buy. Their contractual relationship would be with the local organisation. A rent-to-buy scheme, based on the accumulating equity the borrower has in the asset, might be appropriate. The borrowers would require occupancy rights over their dwelling, which could be obtained via a licence to occupy or a (sub)lease. If the borrowers default, their obligation is to an organisation representing the landowners rather than an outside entity, avoiding the possibility of outsiders taking control of inalienable Indigenous land. Defaulters might revert to a temporary or permanent rental relationship, with appropriate protection of their accumulated equity.

The question of who would purchase such an interest is important. It may be unrealistic for many, not only because of income levels. Some mainstream lenders require life insurance to cover their mortgage obligations. Actuarial measures and demographic indicators might make this unrealistically expensive for would-be borrowers where the term of a loan might exceed their life expectancy.¹⁹ It might be more appropriate for borrowers to be a family group involving, say, two generations, rather than an individual or couple. This would give borrowers as much flexibility as possible to meet debt obligations in light of changing employment and other life circumstances. It seems more likely that local housing organisations could tailor loans to such considerations than mainstream financial institutions, at least in the short term.

Funding sustainability

In a pure public funding model, governments meet maintenance expenses from rents. This cannot be assumed for mixed or private models. Quantitative modelling on different options is not yet available to inform policy makers of the financial viability of the alternatives to publicly-funded stock.

The question is whether housing costs can be lowered or incomes raised to sustainably meet these communities' housing needs. By sustainability, we mean that housing organisations' incomes meet the replacement costs of houses they are responsible for.

If a sustainable solution can be found, it might make one-off transition costs more palatable to governments. However, given employment and income levels in the short, medium and possibly long term, it is hard to envisage a model without substantial government funding. It is unlikely that current rents could fund more than a modest proportion of the cost of replacement dwellings. Current rent levels (an average of \$48 per week per household in remote NT areas) are low by Australian standards, but are likely fair given the low quality of much housing stock (NT Government 2004). Looking forward—and with hopes for higher quality, more appropriate dwellings—it will be important to explore carefully how much households can afford to pay.²⁰

This discussion has not addressed what should be done to clarify rights and obligations over current stock. On remote Aboriginal NT land there may be many buildings constructed since the land was returned, built with government money without a licence to occupy or lease of land first being obtained, which do not constitute an ongoing occupation by a state agency. Complex legal issues would arise should there be disputes about their use. There is a level of uncertainty, and in some cases those occupying buildings (particularly state agencies that have never sought a lease or licence) may find they have no right to do so.



4. Economic development

This section addresses three key issues. First, Indigenous Australians have the right to define their own economic development objectives, and be cautious in adapting ideas from elsewhere for their lives and their land. Second, there are many structural barriers to undertaking economic development on ALRA land of greater relevance than any challenges posed by communal land ownership. Changing the ALRA will not change the land's isolation from markets and its land-use profile.

Third, although access to capital for economic development could be improved, we argue it is not the most critical issue, given other challenges. However, we do note that existing sources of funds could be used more innovatively to finance existing economic development options.

Indigenous development perspectives

One perspective with some influence in current debates is that Indigenous people do, or should, aspire to 'mainstream' economic development. Yet Indigenous people in remote areas have diverse views about development for themselves, their families and communities. These range from a desire for full engagement with the mainstream economy—as in full-time jobs—to significant engagement in the customary economy—as in wildlife harvesting (Altman 2004; Rowse 2002).

Indigenous views about development often diverge substantially from non-Indigenous views, yet with a few notable exceptions receive relatively little attention in national policy debates. The extent to which Indigenous people living on Indigenous land should pursue mainstream economic development objectives is contested.

Indigenous aspirations in remote communities generally involve a smaller role for the market and a greater role for the customary economy, and by

default a greater role for income support payments (including from the Community Development Employment Program). Indigenous views and aspirations, including in very remote areas, must be taken seriously by those interested in Indigenous economic development.

The argument for individualised tenure

There is a widely-accepted position among economists that secure, individualised land tenure is essential (eg Demetz 1967; Duncan 2003) to economic development and environmental sustainability. Duncan (2003) and Hughes and Warin (2005) have argued that secure, individualised tenure is also important to maximise rates of economic development on Indigenous land. Duncan (2003: 314) defines such tenure as when:

'individuals hold the rights to use the land for whatever purposes they wish, except for illegal activities and activities that attenuate the rights held by others ... The title may be freehold or it may be leasehold; but to give leaseholders the incentive to develop the land to its full potential the lease should be sufficiently long.'

Duncan (2003: 314) identifies three important theoretical consequences of having such property rights:

- individuals who have secure property rights over land will be more likely to take care of it since they will be keen to see it increase in value in order to generate a higher future income stream;
- loans for investment and consumption purposes can be raised by mortgaging the land; and
- the holder of the right to the land knows that they will be able to receive the benefit of any investments they make in the land.

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The argument that individual title would maximise economic development on Indigenous land is not necessarily valid just because existing rates of development are considered unsatisfactory. It should be remembered that there is much more large-scale economic development—such as long-life mines and railways—on Aboriginal land than off it in the NT.

Assumptions about transporting models from urban and regional Australia to remote Indigenous Australia need to be carefully considered in light of the nature and remoteness of the land, the resources available, and the social structure, commercial capacities and aspirations of land-owning groups.

It is nonetheless worth examining Duncan's theoretical consequences. We argue that the first and third 'benefits' of secure, individualised property rights can also be achieved through communal property rights vested in traditional owners of ALRA land. Communal ownership of ALRA land has not resulted in its unconstrained use and associated 'tragedy of the commons' (Ostrom 2003) resource depletion. Indeed, there is growing evidence that remote Indigenous land is amongst Australia's most environmentally intact (Australian State of the Environment Committee 2001; Altman 2003).

The costs of communal land ownership should be considered against the costs of environmental damage associated with private land ownership and commercial pressures, for example in the Murray-Darling Basin (see Quiggin 2001). There is ample evidence that the cost of repairing environmental damage is several factors higher than the cost of prevention, and a growing view that communal ownership and inalienability is associated with intergenerational sustainability (Altman and Whitehead 2003; Whitehead et al. 2005).

The situation of townships on remote ALRA lands is more complex, in no small part due to ill-defined rights and responsibilities over township assets between landowners, state entities and residents. Yet individualising land rights is not necessarily the solution to these problems either.

The benefits of communal ownership

Acting as a group involuntarily associated by kinship is often more complex, but no less valid, than acting individually or in voluntary association (eg associations, partnerships and companies). In kin-based societies that act collectively in most economic endeavour, less value is placed on individuals 'striking out' on personal business ventures. This is not prohibited, but if someone wants to use communal property for individual business purposes, they must obtain the group's informed consent. It should also be noted that where communal decision-making is the culturally legitimate form of decision-making, pressure to comply adds to the security of agreements.

Benefits of communally-made agreements are usually distributed according to local systems. Individual incentive to drive the establishment of a business, take full responsibility and put in the long-term effort required to establish and make a business profitable can work with, rather than just ignore, these sociological dynamics.

It is worth recalling the various forms of economic return Indigenous people have already generated from having rights in ALRA land:

- The right to harvest resources allows people to hunt and gather for personal consumption (non-market production), generating economic and health benefits. Altman (1987, 2003) has documented the continuing significance of the customary economy in Arnhem Land in imputed income terms, while more recently Burgess et al. (2005) have summarized the social health benefits of living on country.
- The right to harvest resources enables businesses to be established to sell produce such as bush foods in local and regional markets, especially if commercial licences for live species sales (eg crocodile hatchlings) are also available.
- The right to exclude people from the land allows fees for entry for recreational purposes, such as the permits for recreation, tourism, fishing and so on.

- Land can be leased to third parties for purposes such as tourism, safari hunting and recreational fishing lodges and infrastructure.
- The need to obtain traditional owner consent to mineral exploration allows negotiation of payments that supplement the transfer of mining royalty equivalents to the ABA, as well as for employment and business contracts at mine sites.

The use and 'sale' of a number of these rights can be used to raise finance for a range of purposes including consumption and investment. The central questions are whether communal ownership is limiting landowners' economic returns and, if so, how much might they increase if tenure was individualised. Critical social and environmental costs must also figure in the equation. These are difficult questions to answer.

Commercial loans and land

So what of Duncan's second benefit, loans via mortgaging the land? There is some validity to the argument that communal ownership makes it more difficult for Indigenous people to obtain finance for business purposes from mainstream institutions focused on doing business with the 'individualised economy'.

However, communal ownership has not prevented Indigenous people borrowing money. Property rights held by Indigenous people in ALRA land can be used to raise capital and undertake joint ventures, although the legal and traditional processes required can make it more complex, time consuming and costly for both owners and business partners. These processes should be examined periodically to see whether change is warranted. For example, we suggested in section 2 that the Minister's consent role is a complexity no longer justifiable.

Investors may take the view that business prospects are better elsewhere, given that resolving disagreements may be more difficult and costly, even though the landowners' agent, the Land Council, represents the group. There are many other investment opportunities within and beyond Australia based on individualised rights that are well understood by prospective investors, which may:

- reduce the number of people willing to undertake major investments on ALRA land, either as a joint venture or a sole investor;
- mean that some business opportunities which would be profitable by conventional commercial criteria on individually owned land will not be considered on ALRA land; and

- skew investment towards large-scale, high value, low risk investments or, for higher risk investments, higher returns to reward the greater risk taken. (For further discussion see Altman and Dillon, 2005).

There is some evidence of this pattern of investment, with a relatively large number of mines and the leasing of land for the Alice Springs to Darwin Railway. This is also a likely result of the nature of the investment opportunities given low population density, average income and agricultural land value.

There are many features of ALRA land, of remote Indigenous communities, and of the economic activities they undertake that are fundamentally different from other development contexts in Australia and overseas. We argue that these are more important than communal land ownership in determining economic development prospects. In particular the relative low levels of education, poor health and issues of substance abuse must be addressed, however development is defined.

Alternative approaches to generating development

Indigenous participation in the customary sector, and in natural and cultural resource management is generating considerable benefits on a regional and national level, including biodiversity conservation, fire abatement and weed and feral animal control (Altman 2003, Altman and Cochrane 2003, Altman and Whitehead 2003, NLC 2004, Whitehead et al. 2005).

Indigenous people also participate in bio-security, coastal surveillance, and land and sea management activities (NLC 2004) that benefit their communities, regions and the nation, providing a case for increased government support of these activities. Expenditure on natural resource management in Kakadu National Park is far higher than in adjacent Arnhem Land, which can be seen as a significant under-investment in Aboriginal land management. Equitable investment in natural resource management is one way to generate employment and stimulate regional development (Altman and Dillon 2005).

Although it may be difficult to attract more significant investment on Aboriginal-owned land, 'Indigenous' interests currently hold significant capital that could be better used to stimulate development. This includes holdings by Indigenous Business Australia and the Indigenous Land Corporation for Australia-wide use, and by the ABA for NT use (Altman 2002). Space precludes a full analysis of all Indigenous financial assets, however the ABA is a significant source of potential capital and/or collateral, and warrants closer analysis because it generates finance for Indigenous development predicated on land rights.

The ABA as a source of capital

The Office of Indigenous Policy Coordination administers the ABA, with net accumulated assets of an estimated \$100 million ultimately controlled by the Minister for Immigration, Multicultural and Indigenous Affairs.

There is ongoing debate about the mining royalty equivalents (MREs) paid to the ABA. From an Aboriginal perspective, they are Aboriginal moneys generated by mining activity on Aboriginal-owned land. From a bureaucratic perspective they are public moneys because they are paid from consolidated revenue. There is a clear tension here between customary and Western perspectives. Aboriginal people want control of the ABA and have clearly stated so since a review of the Aboriginal Benefits Trust Account in 1984 (Altman 1984).

The historic philosophical underpinning for MREs is clear—Justice Woodward in 1974 (and Paul Hasluck before him in 1952, see Altman 1983) believed that mining royalties raised on Aboriginal land should be resources for Aboriginal people's economic advancement in a manner consistent with Aboriginal-chosen forms of economic development, independent of government controls and bureaucratic strictures. Practically, however, the control of ABA funds has increasingly come under Ministerial control.

Of particular concern is the decision that the ABA's equity be maintained at an arbitrary minimum of \$46 million, as a buffer to guard against falls in revenue. This is based on the Auditor-General's 2003 statement that '[t]he overall outlook for natural resource development in the Northern Territory is neither certain, nor strong, leading to uncertainty with regard to royalty equivalents' (cited in ABA 2003: 19). In 2005 this would seem at odds with the strong performance of the mining sector, the high number of recent exploration agreements on Aboriginal land (ABA 2003, 2004, 2005) and consistent ABA incomes of over \$50 million p.a. since 2002.

Current use of ABA funds

Despite this, payments to or for the benefit of Aboriginal people were set at only \$5 million p.a. in 2002–03 and 2003–04 and even these were 'subject to the approval of the Minister on advice of the ABA advisory committee'. In 2003 the Minister also wrote to Land Councils advising that following a thorough investigation of the issues, 'he is of the view that he does have the power to make grants with conditions' (ABA 2003:11)—the implications became evident in the 2004 election campaign when the Federal Government proposed using the ABA to fund election promises made in the NT (Liberal Party of Australia 2004).

Grants earmarked to or for the benefit of Aborigines living in the NT are extremely low (well below \$5 million p.a.) considered against the \$100 million accumulated corpus. Significant amounts of the ABA's income are allocated to its own administrative expenses, a practice that began in the late 1990s. The relationship between direct grants and the cost of administering them seems extraordinarily high (see ABA 2002, 2003, 2004)—in some years, administrative expenses have run at over 100 per cent of distributions.

The ABA raises a number of important issues:

- Is it appropriate that in 2005 the Minister has final approval over the expenditure of monies derived from Indigenous land specifically designated to be spent for the benefit of Aboriginal people?
- How might Indigenous or other alternative views of development be given credence in this context?
- Could the ABA's asset base of approximately \$100 million be better utilised to raise capital or to underwrite borrowings for Indigenous communities for enterprise development, infrastructure or customary land management?
- Is making payments to and through Land Councils the best way to maximise benefits for Indigenous communities?

While the ABA represents one possibility for stimulating economic development in remote communities, it cannot provide all the answers. Additional resources are needed, due to the complexities of Indigenous circumstance, the social and historical legacy of entrenched disadvantage and the diversity of Indigenous development aspirations.

The diversity of Indigenous perspectives must be heard in the current debates, and all possible avenues for appropriate and sustainable development explored, lest mistakes of the past be repeated. Equally, Indigenous interests and capital holdings must be better aligned and more independent of government control, to maximise their capacity to stimulate diverse forms of economic development.



5. Lessons from Aotearoa/New Zealand

Approaches to housing on Maori-owned communal land in Aotearoa/New Zealand offer Australia both warnings and possibilities. The warnings relate to the consequences of individualising land interests, including fragmentation of land and ownership rights through succession and partition. The possibilities relate to approaches including state lending to assist with housing finance, cooperative endeavours to lower housing costs to communities, and separating occupation rights for housing from title to the land.

Maori land

The communal 'Maori land' discussed here is the statutory category of Maori freehold land,²¹ held and managed under *Te Ture Whenua Maori/Maori Land Act 1993* ('the 1993 Act').²² Since 1865, ownership of most Maori land has been determined by the Maori Land Court. Land blocks were brought before the Court or an equivalent title investigation process, to determine who had ownership rights. In simple terms, the group of confirmed owners was awarded a title enabling them to deal with the land. Ownership is divided by shareholdings or held in common. In this sense, most Maori land, even where it has multiple owners, has already been individualised.

This process has attracted much criticism. It is now generally accepted that until recently the system overemphasised the granting of individual rights to divide and deal with separate interests at the expense of Maori legal norms about community rights in land. Many consider that enabling Maori to deal in individual interests without reference to the community of owners undermined the customary bases for Maori land tenure, such as group rights and group decision-making (eg Ward 1999). This has contributed to excessive sales of Maori land to outsiders, contrary to the long-term interests of those communities. There is now greater emphasis on retaining Maori land for the benefit of its owners and tribal communities.

Over time, succession to the legal interests of deceased owners has led to proliferation of owners for many blocks of Maori land.²³ As ownership lists swelled, the number of land parcels also grew via subdivision, often creating uneconomic land holdings. This has recently led to moves to encourage extended family and tribal groups to vest individual land holdings in trustees for the benefit of the group, lowering administrative costs and avoiding the need for individual successions.

Despite the availability of these remedies the administrative state of Maori land titles continues to hinder development. Maori land comprises about 1.5 million hectares, or six per cent, of Aotearoa/New Zealand's total land area. However, ownership of that land is divided into more than 2.3 million interests, a figure comparable to the number of ownership interests for the remaining 94 per cent of the country. Ownership varies from 10 per cent of blocks with a single owner (possibly representative) through to 10 per cent with an average of 425 owners each. The overall average is 62 owners per title (New Zealand Controller and Auditor-General 2004).

Finance and security

Having sufficient income to repay a loan is a key issue affecting many would-be occupiers of housing on multiply-owned Maori land. State-owned lenders provide loans to low-income earners who can demonstrate ability to repay.²⁴ Housing New Zealand Corporation (HNZC) lending for housing on multiply-owned Maori land is secured against the building rather than the land. A 15 per cent deposit is required, and loans are available for houses near road access in the mainland North or South Islands. This is so that the house (generally a single-storey pile foundation home) can be removed as a final measure in the event of loan default.

HNZC also has a low-deposit (three per cent) loan program for low and modest income earners wanting to buy or build in rural and regional areas. This scheme connects with a self-build program targeted at Maori called Kapa Hanga Kainga/Group Self Build. This is for people who want to build their homes as an extended family group (*whanau*), and includes grants to help with architects and other project management costs.²⁵

Rights to use land for housing

Land used for housing might be owned by a narrow or wider group of owners. An example of the former is a *whanau* that owns outright a parcel of Maori freehold land, is prepared to operate as a single economic unit for housing purposes, and wishes to build or renovate a house or houses on the land. Assuming the owners have the means to repay a loan, the land could be mortgaged to a lender prepared to make loans against it.²⁶

It is now generally accepted that until recently the system overemphasised the granting of individual rights to divide and deal with separate interests at the expense of Maori legal norms about community rights in land.

The situation becomes more complex where ownership is more widely held, especially if only some of the owners live on the land, and others in regional or urban centres. The land may be unable to house all owners because of size, location or topographical limits. Broadly, the owners have at least three options: partition, leases or occupation orders.

The Maori Land Court can order the partition of Maori freehold land to provide an owner with a dwelling site, although this is not encouraged. The Court must be satisfied the partition is necessary for the effective utilisation and development of the land.

Owners may lease the whole or a portion of a block to some of their number for housing, on market rental or other terms. Where the land is Maori freehold and the lease is for three years or longer, the Maori Land Court Registrar must note the lease. The Court must approve leases of more than 52 years (including renewals), and agreement must be obtained from half the owners (where land is held in common) or 50 per cent of the shareholders (for all defined interests).

The Maori Land Court may make occupation orders in favour of owners for a set term or to terminate on an event, such as death. Orders may also be made in favour of people entitled to succeed as owners of the land. An occupation order entitles a landowner to exclusive use of part or all of the land as a dwelling site. A number of orders may be made for different areas in one title.

Before making an order the Court must have regard to the best overall use and development of the land, the effect on the owners' interests, and the opinions of the owners as a whole. The Court must be satisfied that the owners have had sufficient time to discuss the proposal; that there is a sufficient degree of support from the owners; that the owners understand the interest may pass by succession; and that the applicant's interest is sufficient to justify an occupation order.

Under this arrangement, the community of owners remains intact and there is no further fragmentation of land titles. No survey is required; the applicant simply provides the court with a sketch plan of the proposed house site or an existing dwelling.

The occupier is liable for rates for the area and costs such as connections to power and telephone. Rent may or may not be payable by the occupant to the owners, either once or periodically. The terms of the order will address whether ownership of the building will pass to the landowners at the conclusion of the order, with or without compensation to the holder of the order or their estate.

If Maori freehold land is vested in trustees or owned by a Maori Incorporation, the consent of the trustees or committee of management is needed for any occupation order. The terms of trust may also authorise the trustees to directly negotiate and grant licences to beneficiaries to occupy portions of the land for a dwelling, which has the same effect as an occupation order and is noted by the Registrar of the Maori Land Court.

The following two examples illustrate the practical challenges of providing housing on Maori land.

Torere: an example of partnership

Habitat for Humanity is an international non-government organisation founded in 1976 to eliminate poverty in housing. It partners with local communities to address housing problems, claiming to complete a new home somewhere in the world every 26 minutes. Its Aotearoa/New Zealand operations are with a range of communities, including Maori groups.

In 1999 the Ngai Tai *iwi* (tribe) formed a partnership with Habitat for Humanity to eradicate substandard housing on land owned by tribal members at Torere in the Eastern Bay of Plenty region, North Island. Habitat for Humanity treated Te Hinahina o Te Rangimarie Housing Project as a pilot for attracting government funding to joint ventures with *iwi* around Aotearoa/New Zealand.

The core problem was that 20 families were living in substandard housing. Ngai Tai and Habitat presented a proposal to government for housing funded by contributions from the *iwi* (\$10,000 per house), Habitat for Humanity (\$20,000 per house) and the state (\$40,000 per house). In 2000, the government agreed to provide an interest-free loan of up to \$800,000 through Housing New Zealand Corporation.

Twenty-one houses were built to house more than 55 *iwi* members between September 2000 and October 2003. The house recipients contributed 500 hours of 'sweat equity' labour towards their own and each other's houses. Under the system the occupying family purchases the house through a no-interest, no-profit mortgage, while the *iwi* develops the skills to build more homes for its members.

Minginui: an example of a tribal village

Minginui is a former state-forestry village in the tribal area of Ngati Whare. It is remote, by New Zealand standards, located in an inland valley away from major roads. It is surrounded by exotic production and indigenous protection forest. By 1987 structural economic reforms that began in 1984 meant the state was no longer interested in owning this village, which comprised a number of houses on fenced allotments and community infrastructure. Land was owned by the state and administered by the New Zealand Forest Service. Private owners of a mill near the village, owned a number of the houses on parts of the land leased from the state.

The New Zealand Government decided to return ownership of the whole village to Ngati Whare at no cost. This was achieved by 1988. By then the 38 houses and accompanying mill-owned leases had been transferred to their occupiers as part of a redundancy package when the mill closed.

By then, the Forest Service village assets were not well maintained. In agreeing to take ownership of the village, Ngati Whare committed to a situation requiring significant reinvestment to protect and grow this asset base. The sewerage and water systems were at the end of their useful economic lives. An August 1987 study rated 50 of 84 houses surveyed as substandard. (This has similarities with the Katter leases situation in Northern Queensland, mentioned above). The local municipal authority had earlier refused to take responsibility for the village unless the infrastructure was first repaired.

The Crown returned the land to the tribe in one title. Title was vested by the Maori Land Court in an ancestor of the *iwi* in trust. The trustee administrators leased the land to a trading company, which operates the village.

Around the time of the return about 94 per cent of villagers were of Maori descent. About 80 per cent identified as *tangata whenua* (people belonging to the traditional tribal groups of that area). The villagers then comprised mostly skilled forestry workers and their families, most of whose jobs were made redundant by the economic restructuring process. Very little other work was available.

The return of the land meant a new landlord for the villagers—the trading/administrative arm of the Ngati Whare tribe. It was intended the tribal trust would sell the houses to their occupants to generate capital to fund infrastructure needs, in addition to the modest weekly levy the villagers pay the trading company to run the village. Over time, the occupants' rights were formalised by the sale of houses and granting of occupation licences for the house plots by the tribal administrators. The levy paid is the annual income source for maintaining the village.

The community now numbers around 200, down from an estimated 500 in its heyday as a timber village. Unemployment remains entrenched given the village's isolation, and alternatives such as art or eco-tourism have yet to become established.

A recent study (Hutton 2004) found that despite good intentions the village administration is beset by a lack of capacity and money. Basic house repairs have been financed privately or through Housing New Zealand Corporation's rural financing programs. The infrastructure continues to deteriorate; the only significant upgrade since 1986 has been resealing of the main road. There are issues about the establishment of a market to facilitate the transfer of houses and occupation licences, given restrictive conditions requiring consent of the Ngati Whare trading enterprise to transfers. This situation plays out the tension between the rights of individuals and those held by the group. Yet balanced against these difficulties for Ngati Whare must be a sense of pride at being one of very few communal owners of a village in Aotearoa/New Zealand.



6. Summary and recommendations

A new approach to Indigenous affairs has emerged in 2005, raising issues of land rights, native title and development. Although these issues have a national focus from the National Indigenous Council's perspective (NIC 2005), comments by the Centre for Independent Studies (Hughes and Warin 2005) and Prime Minister Howard (2005), have so far focused primarily on remote communities and the NT.

The ALRA—a Commonwealth statute in place for nearly 30 years—represents the apex of Australian land rights law. More than 70 per cent of the NT Aboriginal population live on Aboriginal land, which makes up nearly 50 per cent of the NT land mass. Oxfam Australia has therefore looked to the NT for evidence-based research on issues associated with potential land rights reform.

This is not the first time the ALRA has come under scrutiny since the Howard Government's 1996 election. In 1998, a far-reaching review by Reeves (1998) found that land rights had failed to deliver development. However Reeves' recommendations have not been actioned, perhaps because they were heavily criticised by a parliamentary inquiry (Parliament of Australia 1999) and academics (see Altman, Morphy and Rowse (eds) 1999).

Those matters are not revisited here, because the issue is now being approached from a different direction, focussing on the ALRA's shortcomings in delivering finance for housing and development on Aboriginal land held under inalienable communal title. One critical difference in 2005 is that with the demise of ATSIC—a policy development and service organisation directly elected by Indigenous Australians—the issue is left to be articulated by the Government's own appointed NIC (2005) and mainstream bureaucratic agencies. Another is that from 1 July 2005 the Government has a Senate majority that could see reform of the ALRA, which was previously unlikely due to the lack of wider political support.

Land use

We have examined ALRA land use provisions with regard to housing and development, for the most part leaving aside issues of mining, finding that:

- Many of the objectives for enhancing development and improving housing can be achieved under the existing law, or with very minor modifications;

- The scope of Ministerial powers makes dealings in land more complex from a regulatory point of view and restricts the freedoms of owners, through their agents, to control development and take responsibility for their actions. In the non-mining context at least, these powers appear excessive and burdensome.
- Some state agencies maintain a privileged position in occupying Aboriginal land without payment, at odds with ideas of extending commercial business practice to Indigenous Australia; and
- No case for increased compulsory acquisition powers over Aboriginal land has yet been made.

We recommend:

- More in-depth exploration with Land Councils and state agencies of what is legally possible at present with leases and sub-leases;
- Winding back ministerial controls over non-mining uses of Aboriginal land, and related in-depth examination with Land Councils and state agencies of appropriate replacement accountability mechanisms; and
- Putting Australian and NT governments' dealings with traditional owners of Aboriginal townships on a more business-like footing, including payment of fair rents for agency-occupied land.

Housing

The key issue, especially in townships on Aboriginal land, is the enormous unmet need that in urban and regional Australia would be addressed through public housing. Yet Aboriginal communities continue to experience under-provision of such services despite rapid population growth and relative population stability on Aboriginal land. Historic forms of housing provision has been grants-funding of community housing. This is one reason for the very low rates of home ownership, which is now regarded as problematic. We have found:

- Considerable evidence that state investment in housing and infrastructure has been inadequate and will need to increase dramatically to deal with backlogs and high population growth;
- Individualising title or occupancy rights will not result in a sudden inflow of commercial finance for housing due to the lending requirements of

commercial banks, relative poverty of Aboriginal people living on Aboriginal land, and relatively high costs of housing in these areas; and

- Australia can learn from the costs of individualising Maori land in Aotearoa/New Zealand, including land fragmentation; and from more recent positive developments encouraging housing on multiply-owned land via licences to occupy portions of the land.

We recommend:

- Reform that will lead to rapid enhanced investment in community housing to meet the unmet and forecast needs identified by the NT Government;
- Exploration with Land Councils and state agencies of structural options for increasing and improving provision of community, public and private housing that better articulates the accountabilities of landowners and residents. Options include:
 - Community housing involving partnerships, or significant financial relationships, with state agencies and/or the private sector;
 - Public housing on land leased from traditional owners to allow it to be debt-financed by government;
 - Private housing via leases and sub-leases, where household income levels make this viable and where it is sought; and,
- Examination of options to enhance household income in Aboriginal communities, critical to improving rates of sustainable housing through community or private ownership.

Economic development

Mainstream assumptions must be adjusted when it comes to development on Aboriginal land in the NT, in large part due to the remoteness and generally low commercial value—although relative environmental intactness—of much of this land. Debate about what might constitute appropriate development on Aboriginal land has been limited, and most contributions informed by little direct experience of remote situations. We have found that:

- There are many more important barriers to development than accessing capital, including remoteness, absence of economies of scale and historical legacies of disadvantage;
- Those arguing that communal inalienable title is the main barrier to raising commercial finance fail to recognise the particular features of remote Australia, including what development is possible, and whether individualised land tenure is really the answer;

- They also generally fail to recognise the nature of Indigenous aspirations—including the importance of kin-based decision-making—and that individualised tenure may not be necessary to or even compatible with such aspirations;
- There is little recognition of development already occurring on Aboriginal land that reflects local realities and aspirations, and little remuneration for activities (such as biodiversity conservation, fire abatement, and weed and feral animal control) that generate national benefits and could readily be re-defined as employment;
- Communal ownership does make investment complex and generates high transaction costs. However, as with housing issues, some ALRA provisions including anachronistic Ministerial approval requirements add further and unwarranted administrative complexities to investment on Aboriginal land; and,
- ALRA mechanisms that generate capital from mining on Aboriginal land—the most valuable potential economic benefit from much of this land—are channelled to the ABA, which could be used much more innovatively and effectively for development.

We recommend:

- Seeking out diverse Indigenous views on aspirations for development on Aboriginal land, and giving them higher profile in public debates;
- Rigorous evaluation of what mainstream commercial development is realistically possible or appropriate on Aboriginal land and how environmentally, economically and socially sustainable it might be;
- Greater recognition and more equitable state resourcing of successful development projects on Aboriginal land, especially in the customary sector and in natural and cultural resource management;
- Exploration of innovative forms of development finance for Aboriginal development, including profit-related loan and no-interest loan schemes where there are social and economic benefits, as well as positive national benefits; and
- Debate on whether the approximately \$100 million accumulated reserves held by the ABA should be placed under Aboriginal control and be more readily available for development (via grants and/or loans) on Aboriginal land.



Endnotes

- ¹ Altman (1996) and Taylor (1999) have noted that there is no official statistical basis upon which to measure the impact of land rights on Indigenous socio-economic status.
- ² Northern Territory Department of Infrastructure, Planning and Environment, Aboriginal Land Rights (NT) Act, Summary <www.ipe.nt.gov.au/whatwedo/indigenouland/pdf/lclaim.pdf> [accessed 22 June 2005]
- ³ In addition there have been acquisitions by the Indigenous Land Corporation (ILC) since 1995 and pockets of land granted as excisions or community living areas under the Pastoral Land Act 1992 (NT).
- ⁴ The visit was in the week of 3–8 April 2005. It followed a February 2005 address by the Minister for Indigenous Affairs (Senator Vanstone) to the National Press Club that highlighted the apparent inability of land rights to deliver socio-economic outcomes and made clear the Australian Government was contemplating changes to land rights.
- ⁵ The Prime Minister's address is available at <www.pm.gov.au/news/speeches/speech1406.html>
- ⁶ In discussions about the Northern Territory we generally use the term Aboriginal.
- ⁷ An international focus on other settler colonies was included in our brief. Serendipitously an expert researcher from NZ was visiting CAEPR. The NZ experience provides positive comparative information, so we did not delve into the complexities of Canada and the US at this juncture beyond basic information about the block grant housing program for Indigenous land in the US and the guide produced by the Bank of Montreal concerning Indigenous borrowers.
- ⁸ The ALRA may need amending if Ministerial consent to land dealings is retained as at present for situations where consent is obtained for a purpose restricted to Aboriginal people but the grantee of that land interest wants to create a subsidiary interest, say a mortgage, in favour of a non-Aboriginal person.
- ⁹ Part IV of the ALRA has been the subject of extensive review between the Australian Government, the NT Government and Indigenous land councils in 2003–04.
- ¹⁰ Since 1998, the *NT Land Acquisition Act* has allowed the Crown to acquire land compulsorily for 'any purpose whatsoever'. This was a response to the *Native Title Amendment Act 1998* (Cth), which permitted the compulsory acquisition of native title for private purposes where other titles are similarly permitted to be acquired by law. However, the *Native Title Act* does not require that in practice both native title and other titles be so acquired, and it remains to be seen whether these powers will be used to acquire native title more than other titles.
- ¹¹ The standard definition in the 2001 Census Dictionary of an Indigenous Household is a household where any family in the household is defined as an Indigenous family or a lone person household where the lone person is of Aboriginal and/or Torres Strait Islander origin. Group households are not included. An Indigenous Family is one where either the reference person and/or spouse/partner is of Aboriginal and/or Torres Strait Islander origin.
- ¹² Although housing and infrastructure provision is primarily the responsibility of state and territory government, in the Northern Territory the Commonwealth Government is the major source of funding for Indigenous housing (Sanders 2005).
- ¹³ As will be discussed later, much of the land has significant biodiversity conservation value as landscapes are relatively intact.
- ¹⁴ Data from the *National Aboriginal and Torres Strait Islander Social Survey (NATSISS) 2002*.
- ¹⁵ The Census records gross income but for the purpose of this exercise we assume that none of the household members are in paid employment and their after-tax income is the same as their gross income. This income level seems low for a family of this composition who rely on income support and would receive a pension or allowance plus substantial amount of Family Tax Benefit Part A and B. However, for the purposes of this paper we take the census data on incomes in very remote areas in the Northern Territory at face value.
- ¹⁶ Calculations from the Commonwealth Bank of Australia Home Loan Calculators at <www.commbank.com.au> (accessed 23 June 2005)
- ¹⁷ In addition to low employment rates and incomes, there are a number of other factors which are likely to make it difficult for Indigenous people in remote areas of the Northern Territory to borrow money from a commercial lender. For example, there is often a substantial movement of occupants into and out of a dwelling. This means there can be substantial fluctuations in household incomes. This can be problematic since in order to have a high enough household income to pay back a substantial mortgage a number of adults will need to agree to contribute to the loan repayments.
- ¹⁸ For example in Wadeye the average number of residents per house is 16 (Taylor and Stanley 2005) and in Maningrida it is between 15 and 20 persons per house owing to substantial seasonal variation and movement between township and outstations (Altman, calculation based on discussion with Town Clerk, June 2005).
- ¹⁹ Given the 20-year gap in Indigenous and non-Indigenous life expectancies. At the Good Shepherd Micro Credit conference in Melbourne (9–10 June 2005) a major difference noted between Indigenous and non-Indigenous

- borrowers under the no interest loans scheme (NILS) was that Indigenous borrowers were more likely to default over a short repayment period of 12 months owing to unexpected death.
- 20 Rental assistance is available as a supplementary payment to people receiving other support and who rent private or community-rental dwellings. Income-related rents are available to tenants of public housing. Rental assistance contributes money towards rent over a threshold up to a maximum (currently \$80 per week threshold with a maximum of \$100 assistance (dollar for dollar matching to a top rent of \$280). The NT Government (2004: 17) provides nation-wide data that indicates that Commonwealth Rent Assistance, the Australian Government's largest housing program is not accessed on an equitable (needs) basis by Indigenous people.
 - 21 Maori freehold land is land the beneficial ownership of which has been determined by the Maori Land Court by freehold order.
 - 22 By way of general context the 2001 census records show 86 per cent of Maori live in urban areas and that approximately 30% of Maori aged 15 years and over own or partly own their usual place of residence. Private housing stock, on general land, owned by Maori in the major urban and regional centres away from their tribal lands is not the focus of this discussion. Sanders (2005) gives ownership by dwellings containing indigenous households in Australia as 28.2 per cent in 2001. These statistics are not directly comparable.
 - 23 In broad terms, unless altered by will, succession to Maori land is generally by all children equally to their parent's estate.
 - 24 One of these products (Kiwibank Welcome Home Loan) contains options for no deposit as well as low deposit lending and will consider up to six sources of household income where people living in an extended family situation want to purchase a house. Loan insurance matching outstanding debt is available (payment in full on death of outstanding balance; repayments for up to two years for loss of work because of illness or injury).
 - 25 Tribal groups may apply to HNZC for a grant, low interest loan or capital funding from the Housing Innovation Fund. This is designed to assist non-profit groups increase their involvement in provision of rental housing or home ownership for low-income households where the private market is not meeting demonstrated needs. An example would be where a tribe wanted to develop housing for elders near the tribe's traditional meeting house complex (*marae*). Te Puni Kokiri (Ministry of Maori Development) and HNZC collaborate on a Special Housing Action Zones program. This program is to assist communities to repair or build housing. Te Puni Kokiri funds a Community Housing Plan that identifies needs and community resources (eg labour) and recommends a way forward. HNZC loans funds for capital expenditure to implement the plan.
 - 26 There is resistance by private-sector housing lenders to accept Maori freehold land as adequate security for such loans which are typically granted by state lending institutions. There is not room to explore this 'market failure' here.



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