



**SUBMISSION OF THE
INDIGENOUS LAND CORPORATION**

**HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON
ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS**

INQUIRY INTO INDIGENOUS BUSINESS

SUMMARY

The Indigenous Land Corporation (ILC) has legislative responsibilities for assisting indigenous peoples to acquire and manage land in ways which provide social, cultural, environmental and economic benefits. While the ILC's activities necessarily include some involvement in economic development issues, the ILC focus is primarily on restoring and enhancing an indigenous land base. To that end, the ILC's key criterion in the acquisition of land is the cultural significance of that land to the indigenous people on whose behalf it is acquired. Wherever possible, land is divested to traditional owners. Assistance is provided for land management activities that provide social, cultural and environmental as well as economic benefits.

The ILC believes that while there are economic dimensions to the acquisition and management of land, strictly 'commercial' models of enterprise cannot always apply in the indigenous context. Because of the different values of land to indigenous peoples and the complex legacy of dispossession, account also needs to be taken of social and cultural aspirations and environmental issues. The right to negotiate as currently provided for in the *Native Title Act 1993* gives indigenous peoples the means to engage in economic development, consistent with their own laws and customs. Specific provision needs also to be made to ensure adequate indigenous preparation for and involvement in economic development initiatives, such as that envisaged in the Social Justice Package.

Where the ILC operates in a commercial environment it endeavours to ensure that its activities are conducted according to sound business principles in order to guarantee value for money and to ensure the success of the ventures in which it is involved. That success must be measured in cultural, social and environmental as well as economic terms in order to ensure the long-term sustainability of the enterprise.

The legislatively determined scope of its activities and the financial resources available to the ILC to fulfil those responsibilities mean that the ILC is **not** a major player in the economic development arena. **Nor should it be.** The ILC's primary function is to address dispossession through the restoration of an indigenous land base. The ILC does however see itself as a partner in the move toward greater economic well-being for indigenous peoples. It views the major vehicles to achieve this as the retention of the right to negotiate provisions of the *Native Title Act 1993* and the implementation of the Social Justice Package. In addition, the ILC seeks to work cooperatively with indigenous peoples and other agencies, at State and Federal level, to address complex consequences of dispossession.

The following attachments have been provided for reference and information:

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1. *The Aboriginal and Torres Strait Islander Commission Amendment (Land Fund and Indigenous Land Corporation) Act 1995*
2. The National Indigenous Land Strategy 1995 - 2001
3. The Guide to the First Land Management Policy 1997-1999

1. Introduction

The Indigenous Land Corporation (ILC) is an independent statutory authority which was established to assist Aboriginal peoples and Torres Strait Islanders to acquire and to manage land in a sustainable way to provide cultural, social, economic or environmental benefits for themselves and for future generations.

The legislative framework within which the ILC operates reflects the unique place of land in indigenous culture and existence. For indigenous peoples, land is not just a tradeable commodity, the purpose of which is to extract income and raise capital. Land, as indigenous people view it, is central to religion, culture and social order. The significance of land to indigenous people has been recognised both in the common law of Australia and in statute law, principally in the *Native Title Act 1993*.

While land has played an important economic role in indigenous culture, its significance is far greater than that. In addressing dispossession, the ILC recognises both the complexity of indigenous relationships to land and the consequent complexity of dispossession.

Arguably, the state of economic ‘well-being’ of indigenous Australia may have been quite different, had indigenous people not been subject to generations of legislatively enforced poverty at State and Commonwealth level. Legislation in various States and Territories saw many millions of dollars taken from indigenous wage earners over several generations and placed in ‘trust funds’ to which indigenous people had limited or no access. Similarly, indigenous peoples’ opportunities to participate in education were restricted by legislation, as were their opportunities to earn wages equal to non-indigenous people as a result both of discrimination and the restricted range of occupations available to them.

Not only were indigenous people dispossessed of their land, language and culture, they were not permitted to engage in the non-indigenous economy on an equal footing and have generally been marginalised from the social and economic life of Australia. The cumulative and combined effects of dispossession and discrimination have resulted in complex and interrelated areas of disadvantage.

The challenge for Governments is to respond to the contemporary manifestations of dispossession in a systematic and holistic way, rather than by focussing on one aspect of many interrelated aspects of dispossession. That is not to say that the agencies with major legislative responsibility and funding, namely ATSIC, the Commercial Development Corporation (CDC) and the ILC should be amalgamated or one subsumed in the other. The complexity of dispossession and the differing circumstances of indigenous people across the

country mean that there are groups for which one agency will be more relevant to addressing the particular effects of dispossession that are most pressing. There is however a need for those agencies to continue to work co-operatively to ensure that their respective policies and funding priorities are complementary.

1.1 Background

The establishment of the Aboriginal and Torres Strait Islander Land Fund (the Land Fund) and the ILC formed the second part of the Commonwealth's proposed three part response¹ to the High Court's decision in *Mabo v. Queensland* (No.2) 175 CLR 1², which recognised native title as a unique form of indigenous property right at common law.

In the Explanatory Memorandum, the legislation was described as “an important and necessary complement to the native title legislation” and an historic step “which recognises the injustice flowing from dispossession and goes some way towards redressing it by providing a means for indigenous communities to acquire, manage and maintain land.”³ The primary aim of the legislation was to rebuild an indigenous land base and maintain it for future generations.⁴

1.2 Enabling Legislation

The ILC came into existence on 1 June 1995 with the commencement of the *ATSIC Amendment (Land Fund and Indigenous Land Corporation) Act* 1995⁵, with land acquisition and land management functions (s. 191B). The purpose of the *ILC Act* is to help redress the dispossession of Aboriginal people and Torres Strait Islanders by assisting indigenous people to acquire and manage land so as to derive social, cultural, environmental and economic benefits.

¹ The establishment of the Land Fund was the second part of the Commonwealth's three tier response, the first part being the enactment of legislation to provide a process for the recognition and protection of native title (the Native Title Act), while the third proposed tier was to have been a package of social justice measures, broadly described as the “Social Justice Package”

² The “*Mabo* case”

³ House of Representatives, Tuesday 30 August 1994, *Hansard*, p588

⁴ House of Representatives, Tuesday 28 February 1995, *Hansard*, p1109

⁵ The “*ILC Act*”

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1.3 Functions and Powers

The ILC's core functions are land acquisition (s. 191D) and land management (s. 191E). It may do 'anything incidental or conducive to the performance' of these functions (s. 191C(d)). In addition, it has a general power 'to do all things that are necessary or convenient to be done for or in connection with the performance' of its land management and land acquisition functions (s.191H(1)). The powers of the ILC are enumerated in s. 191H(2) (see Attachment 1).

Essentially, the ILC's powers allow it to operate flexibly in the commercial property market through a range of structures while being responsive to the land needs of Aboriginal and Torres Strait Islander peoples.

In relation to the performance of its functions, the ILC must act in accordance with sound business principles whenever it performs its functions on a commercial basis (s. 191F(1)). According to the Explanatory Memorandum to the *ILC Act*, the presence or absence of a profit motive in the activity undertaken should determine whether a function is being carried out on a commercial basis⁶.

In undertaking its functions (s. 191F(2)), the ILC is required to give priority to:

- (aa) ensuring that as far as is practicable, indigenous people derive social or cultural benefits as a result of the performance of the ILC's functions
- (a) ensuring that it has access to necessary skills and resources required to perform its functions, and
- (b) and (c) maximising the employment of indigenous peoples and the use of goods and services provided by businesses owned or controlled by indigenous people.

1.4 Land Acquisition and Land Management Functions

The ILC's land acquisition and land management functions are enumerated in sections 191D and 191E respectively of the *ILC Act*. With regard to land acquisition the ILC must give priority to acquiring and granting interests in land to Aboriginal and Torres Strait Islander corporations. It is prohibited from making loans to Aboriginal and Torres Strait Islander corporations for the purpose of acquiring land or to grant funds or interests in land to individuals or unincorporated groups. The National Indigenous Land Strategy (NILS), established as a requirement of the Act, gives priority to acquiring land that has

⁶ Parliament of the Commonwealth of Australia. Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill 1994. **Explanatory Memorandum. Part B** p.8.
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an underlying cultural significance to the people on whose behalf the ILC acquires it. Wherever possible, the ILC will divest land that it acquires to an Aboriginal corporation that represents the traditional owners of that land.

The NILS reflects the purpose of the ILC, namely, to address dispossession through the restoration of an indigenous land base and to give priority to ensuring that indigenous peoples derive social and cultural benefits. The *ILC Act* and the NILS also recognise and are consistent with the law of native title in that the social, cultural and environmental importance of land as well as its economic importance are recognised.

The emphasis of the ILC's land management functions is on co-operation between landholders and the ILC to manage land in an environmentally sustainable way. The First Land Management Policy (FLMP – See Attachment 3) is focussed on agreements between indigenous land holders and the ILC to undertake specific activities or projects which provide economic, environmental, social and cultural benefits to those land holders. Consistent with the NILS, the FLMP requires that the land must be central to the activity. The FLMP distinguishes between projects which have cultural, social or environmental imperatives and those which have commercial imperatives. Such a distinction puts into practice the intent of the legislation by ensuring that the ILC's land management functions and the funding applied to carry out those functions is directed towards sustainable land management practices.

While the *ILC Act* makes a distinction between land acquisition and land management functions and priorities, both functions are consistent with the central importance of land in indigenous cultures. While the ILC's land management functions can be directed towards establishing, maintaining and enhancing economic development through land-based enterprises, they are also (and equally importantly) directed at ensuring that land management activities provide cultural, social and environmental benefits. The ILC's First Land Management Policy reflects the priorities of the Act with regard to land management functions.

1.5 The Indigenous Land Corporation and Economic Development

The core business of the ILC is land. While land is a factor of production, the fact that its meaning to indigenous people is of an entirely different order is becoming increasingly recognised both in law and in public perceptions. The ILC does not see its role as being a promoter of economic development as such, but primarily as a vehicle for addressing dispossession. Neither, however, does it consider the furthering of economic development to be necessarily inconsistent with addressing dispossession. The *ILC Act* clearly enables the ILC to act commercially and to engage in business relating to land. The *ILC Act* is specifically designed to enable not just the acquisition of land

but its management including importantly, management which encompasses economic or commercial benefits. In many cases the acquisition of land gives the potential for economic empowerment and is in itself an act of economic development when the condition of the land and its uses can be productive assets. In many instances however, land can be characterised as a liability such as where land is degraded and requires considerable resources to be applied in order to achieve some environmental rehabilitation and productivity.

The ILC has a legislative obligation to give priority to ensuring that Aboriginal peoples and Torres Strait Islanders derive social and cultural benefits as a result of the performance of its functions. While the Act provides clear direction to the ILC to be a ‘good corporate citizen’ when acting commercially (or assisting indigenous peoples to engage in commercial activity), economic development is **not** the primary role and function of the ILC.

One of the major issues confronting the ILC is the fact that the present indigenous estate consists of a considerable proportion of land which has been degraded by inappropriate (non-indigenous) land uses in the past. The challenge for the ILC is to assist indigenous landholders to identify land uses that are consistent with their cultural, social and economic objectives and that are designed to rehabilitate degraded land. In many cases indigenous landholders have also ‘inherited’ past land uses, such as unsustainable pastoral operations. The ILC sees its major immediate role in land management as assisting these landholders to identify and implement more appropriate land uses. These land uses will sometimes have a commercial focus. Where this is the case, the ILC’s policy priorities are directed at sustainability and facilitating access to other ‘mainstream’ funding programs in view of its own very limited resources. The Corporation’s land management initiative is fully explained in the accompanying “Guide to the First Land Management Policy” (Attachment 3).

2. Responses to the Terms of Reference

“The Committee shall inquire into and report on the existing opportunities and arrangements for encouraging sound Aboriginal and Torres Strait Islander economic initiatives at the small and medium business level. In particular, the Committee will focus on:

2.1. the success of existing Commonwealth programs that help Aboriginal and Torres Strait Islander people (including those in joint ventures with non-indigenous people) to acquire, control and develop sustainable commercial opportunities;

The ILC and indeed the government must be primarily concerned with the long term effectiveness of any approach and the creation of sustainable outcomes. These are the ultimate benchmarks of success.

2.1.1 The ILC's Core Business

The ILC has entered into the business arena as a result of having acquired land on behalf of indigenous people. This has occurred according to a model whereby the ILC retains ownership of the business associated with these properties as subsidiary companies under various 'buy back' arrangements with the new indigenous owners of the property. The ILC currently owns three such subsidiaries, all pastoral properties running sheep, in South Australia, the New South Wales/Queensland border region and in Western Australia. The model was developed to deal with situations in which the land was extremely significant to indigenous people but in which the sale of the land, without the business, was unable to be effected due to vendor insistence on a "walk in/walk out" single transaction. The ILC acquired the businesses only after every other avenue had been exhausted. With the exception of a few instances in which ATSIC has provided some capital and operating costs, the ILC has had limited success in attracting alternative financing interests. As a result, the ILC has spent around \$2.5m, to date, to purchase the plant and equipment, sheep and (apart from the exceptions referred to above) providing appropriate working capital.

The ILC is facing two challenges. First, as the owner of pastoral properties it needs to manage those businesses effectively so that they each continue to be profitable. Effective management in turn depends upon having adequate financial and human resources. Second, the ILC at present is the (almost) exclusive financier of those businesses and each dollar spent on business operations cannot be spent on land acquisition or land management, which are the ILC's core functions.

The structure of each of these businesses is similar. The ILC has incorporated a subsidiary company to manage the pastoral business. That pastoral company is expected to repay the loan from the ILC out of income generated by the business at a prudent repayment rate. That company also enters into an agreement with the Aboriginal Corporation which holds the title to the land. The titleholders are paid a negotiated rent pursuant to that agreement. The agreement incorporates a 'put option', whereby the title holding corporation can progressively contribute to the buy-out of the ILC's interest using the rents

and income it receives. This situation however should not be seen as a benchmark or the only financial model the ILC wishes to pursue in the long term. Conversely, the ILC recognises that part of its purpose is to assist indigenous people in the acquisition and management of land and is prepared to discount its rate of return from such businesses in order to achieve those goals.

As the ILC continues to acquire land and, almost inevitably, businesses on those lands, it will have increasing responsibilities (and face increasing pressure) to ensure that indigenous people, if they so choose, have an opportunity to engage in enterprise. Establishing separate subsidiaries for each enterprise may not be tenable in the longer term on cost and other resource-related grounds. Other mechanisms are currently under consideration by the ILC Board.

2.1.2 The Right to Negotiate

The right to negotiate procedures as currently defined under the *Native Title Act 1993* provide an important mechanism by which indigenous people can negotiate beneficial economic outcomes through striking agreements with other parties regarding future land uses. In addition, the right to negotiate provides a mechanism for protecting the cultural integrity of the land and some control over the negative social impacts related to development on the land. Examples of such agreements are now plentiful and clearly demonstrate the utility of the right to negotiate provisions as a vehicle for economic development.

Resource development and other agreements that arise from the exercise of the right to negotiate do not just provide economic benefits for indigenous peoples. Rural and remote Australia has been hardest hit by economic recession and by cuts to Government and other services. In small communities, closure of government offices, banks and other services means not only a loss of employment for those individuals, but a significant decrease income being put into the local economy and a flow-on effect for local and regional employment and economic well-being generally. Agreements arising from exercise of the right to negotiate provisions, which include agreement regarding local employment, provision of goods and services (by local sub-contractors and service providers) and training provide a means by which whole communities (indigenous and non-indigenous) can generate income and keep it in the local economy.

Importantly, the right to negotiate and any agreements achieved as a result of indigenous peoples exercising that right, reflect the inextricable link between respect for and exercise of native title rights and economic development. The *Native Title Act 1993* fundamentally is about the preservation and protection of native title rights and interests and a recognition of indigenous peoples' unique

relationship to land. The right to negotiate provisions are not just some property right bestowed by statute but a statutory expression of an essential part of indigenous law and custom namely, to control access to and use of traditional country.

It is not surprising that the agenda of the recent 'Doing Business with Aboriginal Communities' conference held in Alice Springs 24 – 26 February 1998 had as one of its primary areas of focus the operation of native title law, including the operation of the right to negotiate. Those industry leaders who have successfully negotiated agreements with native title holders recognise that the law of native title is here to stay and has been a major impetus to including indigenous people in the economic benefits to be derived from major resource development projects.

2.2. “possible future policy directions and administrative arrangements at the Commonwealth level to encourage indigenous commercial initiatives”;

2.2.1. Equity Investment

In order to deal with dilemmas such as those described above, the ILC has been investigating alternative means of providing assistance to indigenous people wishing to engage in enterprise activity. One particular area of investigation is the development of a concept of equity investment, whereby indigenous groups or individuals can buy equity in a company established and owned by the ILC by means other than cash. On current indications this may well prove to be an important factor in stimulating and maintaining indigenous enterprise activity and can be applicable to other than land related commercial activities.

The simple rationale of the model is that people will work to protect and improve something in which they have a direct stake and have made some form of sacrifice to obtain. This stake could, for example, take the form of money, labour or materials. In a situation where ownership has not been 'earned' it could be said that there is a limited amount at stake, or risk. If there is not much at stake, then there is little to lose. The ILC will continue to examine this option.

The ILC recognises that the success of any endeavour involves an optimal combination of several factors including financial, physical and human resources. How best to harness the human resource base is one of the major challenges in creating sustainable outcomes. The injection of grant funds cannot, by itself, enable the wide ranging social change that is required to reverse indigenous disadvantage. The international experience of development based on the use of non-returnable funds is not good and Australia is no exception. In order to effect social change the ILC considers that some quite

radical departures need to be made in the formulation and implementation of policies for indigenous peoples. Neither governments nor indigenous peoples can afford to rely on grant and loan systems that have, to date, often proved to be ineffective.

The ILC is firmly of the opinion that government has a role in the provision of services and resources to indigenous groups, particularly for social and cultural outcomes. Its opinion is also firm that ways must be found to ensure that indigenous people, as self-determining and self-managing groups, are provided with the means to exercise fundamental responsibilities for their own land, lives and businesses. The “equity model” is one method that the ILC is considering to achieve this and which may well benefit other agencies, particularly those with a specific enterprise development focus.

The Corporation wishes to emphasise, however, that it is currently developing this concept with a view to considering its introduction. It does not form the basis of current operations, and has not yet been the subject of formal consideration by the ILC.

2.2.2. Other Considerations

i. “Culturally Appropriate” Success

‘Success’ in this context needs to be measured in terms of the outcomes sought by indigenous commercial operators rather than against some externally determined definition of commercial success. An enterprise may reflect social and cultural imperatives as well as commercial imperatives. For example, an enterprise involving the creation of works of art or craft may include reinforcement of indigenous culture, transfer of knowledge and pride of the artist or community in tangible demonstrations of cultural knowledge. In the same way that the right to negotiate provisions of the *Native Title Act 1993* encompass multiple objectives (cultural protection, control of social impacts and economic development), the pursuit of enterprise also has multiple objectives.

Other positive spin offs from the enterprise might include artistic training and skill development for young people within the community. The success of such a venture should not simply be measured by the size of its profit margin but by other considerations such as the ability of the enterprise to sustain itself while still producing such social and cultural outcomes. Ultimately, however, if the activity does not generate sufficient income to sustain itself, then the enterprise will not continue and **all** benefits will be lost.

The importance of the activity itself needs to be considered. While it can be argued that the key objective of an enterprise is the generation of profit and that the activities which generate that profit are incidental, it is also true that in

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many small (family) businesses the activities in which those people engage are also culturally and socially important. For example, non-indigenous family businesses that build skills and knowledge in a particular area of commerce, such as in the retail, food manufacturing or pastoral industry may provide a focus for family life outside of the commercial setting. Similarly, in many indigenous enterprises the activity has primacy of purpose while the profit provides a means of ensuring that the activity continues. This fact was recognised by the Royal Commission into Aboriginal Deaths in Custody. The Royal Commission recommended:

311. That ATSIC ensure that in the administration of its Enterprise Program a clear distinction is drawn between those projects that are supported according to criteria of commercial viability and those that are supported according to social development criteria.

and;

312. That the intention of Section 17 and 18 of the *Aboriginal and Torres Strait Islander Commission Act 1989* be clarified, by amendment to the legislation if necessary, in order to facilitate the funding of enterprises which are not necessarily commercially viable on the basis of social development criteria.

These recommendations were implemented through ATSIC's Community Economic Incentives Scheme, which has now been subsumed into the Indigenous Business Incentive Program. The ILC land management initiative also seeks to incorporate this principle by dividing its activities into two separate categories; one that addresses mainly commercial activities and the other which focuses on those having broader cultural, social and environmental outcomes.

ii. The Importance of Coordination

There is an even greater need in the current budgetary climate for indigenous groups and relevant agencies (including ATSIC, the CDC and the ILC) to develop and better co-ordinate enterprise activities.

There appears to be very real need to increase the level of inter-agency coordination to ensure optimal use of government funds and to ensure that where agencies have similar or complementary functions, those functions are carried out in a way that provides maximum benefit to indigenous people. For example, ATSIC, the CDC and the ILC have complementary functions; a strategic alliance between these agencies, including ear-marking of funds for joint projects may well reap considerable benefits for their common clientele.

In times of tightening fiscal circumstances there is a tendency for agencies to seek to minimise calls on their own funds by establishing boundaries of responsibility which enable them to direct clients to another agency whether or not that agency agrees that it has responsibility for that type of activity.

Inevitably, this approach leaves many groups in a ‘responsibility vacuum’ in which no agency will accept them as clients. In other cases, where responsibilities are agreed and shared, agencies can go to considerable lengths to devise co-funding arrangements that make matters overly complex and cumbersome for the client.

These demarcation disputes are often the result of shifts in governmental and departmental policy, bureaucratic intransigence and suspicion and ambiguous or unclear legislation. Such matters can only be resolved through the formation of strategic alliances and compacts forged between, and which bind, the relevant agencies.

If government has as an objective a robust indigenous business community, then agencies with responsibilities in this area need to ensure that their policies and implementation strategies are complementary and that the mechanisms of cooperative action are clearly spelled out and in place. It is crucial that this complementarity proceeds beyond high-sounding and inspirational statements to the level of project administration. One very simple example of where this does not presently occur is in the lack of synchronisation in agency funding cycles.

This highlights a need for the establishment of joint agency forums to ensure continuing liaison, consistency and synchronisation of approach.

The ILC is convinced, moreover, that in times of fewer resources and increased demand, one important means of stimulating indigenous business activity may be to increase the access of indigenous entrepreneurs to mainstream sources of funding, including financial houses. This will require that agencies with existing responsibilities in the indigenous portfolio increasingly assume a brokerage role in facilitating and encouraging this access. It will also require considerable negotiation with financial houses and mainstream agencies, all of which should be required to demonstrate that they are applying access and equity principles. The ILC considers that this Inquiry would benefit considerably from an investigation into the practice of access and equity principles by banks and financial houses and that the establishment of ground rules for their application by these institutions should be an outcome of the Inquiry.

iii. Social Justice Package

A major policy direction of the Commonwealth government should be to implement the Social Justice Package which was to be the third stage response to the Mabo Decision. The ILC considers that the absence of this package to some extent makes less effective the other two aspects of the Commonwealth’s response to the Mabo decision, viz, the creation of the ILC and the enactment

of the *Native Title Act 1993*. Indigenous people were not just dispossessed of their land but of the economic and cultural structures that the land supported. Changes in social and economic structure cannot simply be effected through the recognition of native title rights and the activities of the ILC. While these are extremely important mechanisms they stand no chance, under the present circumstances, of addressing the wide range of social and economic disadvantage suffered by indigenous people from the time of colonisation and which have been compounded since by the attitude of the dominant society.

In many circumstances land can no longer function as the economic base it was at the time of colonisation and initial dispossession. The pastoral industry and other introduced land uses have resulted in enormous changes to the landscape and to the ability of the land to support indigenous groups. The land uses and the forms of tenure that have been required to facilitate them have forever changed the indigenous map of Australia. There are few circumstances under which indigenous groups will be able to re-possess, through native title or the ILC, the totality of their former estates and arguably none in which the land is able to support the cultural constructions which have developed as a response to decades of marginalisation.

The ILC maintains strongly that the Social Justice Package needs to be pursued by the Commonwealth in order to address the social and economic disadvantage that is a consequence of dispossession. The Corporation also sees a major role for itself in the development of such a package in order to coordinate with its own activities. The resources of the Corporation are sufficient to meet the land needs of small numbers of indigenous people in the course of any year. While it recognises that the effects of its activities are cumulative and that over time it will progressively meet the needs of more groups, it is not the function of the Corporation to meet many of the needs which arise as a result of land ownership. Its land management function under the legislation is fairly broad, but clearly the entire resources of the Corporation are not sufficient to meet even a small proportion of the potential commercial and economic land uses that may be consequent on the acquisition of land by indigenous groups.

For these and other reasons, the Social Justice Package should be developed to dovetail into the roles of the CDC, ATSIC and the ILC. All three agencies should be resourced appropriately and charged jointly with the development and implementation of the package.

The Social Justice Package is, in the Corporation's view and in that of most indigenous and many non-indigenous Australians, an urgent necessity. Further delays in its implementation can only accentuate existing difficulties in achieving reconciliation.

2.3 “any barriers to the establishment, acquisition or development of indigenous controlled businesses or businesses in which indigenous people are joint venture partners; and”

2.3.1 General Issues

The general legislative or administrative requirement to vest businesses in ‘a community’ has been seen as a barrier to business development and success⁷. This can create significant problems where interest in running an enterprise is not shared equally by all members of the community. Communal holding structures may not necessarily be the best means in every case of managing an enterprise. On the other hand however, it might be argued that ‘community’ ownership is the most appropriate means of ensuring that profits are distributed to all landholders or at least that decision-making is undertaken collectively and represents the broad intentions and aspirations of the ‘community’.

Barriers to the effective management and conduct of an enterprise may also be created by unclear or ‘unshared’ motivations for the establishment of a particular business. Where these motivations are not clearly understood or may be based on unrealistic expectations of success where there exists no broad consensus about the *raison d’etre* for a particular business, its prospects for success will be limited. Is motivation to engage in business artificially promoted by officials to meet targets set in a distant place, without reference to the communities involved? Is the motivation seen in terms of employment, money or improved lifestyle? Clear identification of these underlying issues and their capacity to be fulfilled should be a threshold issue. Until indigenous landholders are actually empowered to engage in commercial negotiations over land use, including employment and training, cultural rejuvenation and other outcomes, the ‘success’ of indigenous enterprises will often continue to be limited. The right to negotiate over land management and development, combined with training and skills development (through the Social Justice Package) provides a framework in which negotiations can take place in a meaningful way.

2.3.2 Tenure Issues

The ILC’s primary purpose as described in the NILS is to purchase and grant land to those dispossessed Aboriginal and Torres Strait Islander peoples who are unable to have their land needs met through the *Native Title Act 1993*.

Section 145 of the *Land Act 1994 (Qld)* prevents corporations from purchasing and owning Grazing Homestead Perpetual Leases (GHPL) and Grazing

⁷ see WS Arthur, “The Aboriginal and Torres Strait Islander Commercial Development Corporation: a new approach to enterprise?” **CAEPR Discussion Paper** No 113/1996:11
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Homestead Freeholding Leases (GHFL) within Queensland. These leases represent 5,805 properties covering a total area of 37,100 square kilometres.

A consequence of this constraint is that the ILC, as a corporation, is prevented from purchasing such leases in Queensland. Moreover it would be prevented from divesting such leases to Aboriginal corporations as required under section 191D(1)(a) of the *ATSIC Act*. Queensland legislation regulating the ownership of Crown leases thus prevents the ILC from performing its primary function in a substantial proportion of Queensland.

It appears that the intent of section 145 of the *Land Act 1994 (Qld)* was to prevent substantial areas of Queensland from coming under the concentrated control of a few corporations. The Queensland Government's rationale was that the economic development of these areas would be better accomplished through individual and family ownership of the leases rather than corporate ownership.

Ironically, most Aboriginal corporations could be characterised as 'family business' rather than as a 'corporation' that exists exclusively to pursue profit. GHPL and GHFL properties would ideally suit the needs, capabilities and circumstances of Aboriginal corporations and would represent good opportunities for realistic and sustainable economic development.

The nature of native title and traditional ownership is such that indigenous title is held collectively. This section of the Queensland legislation prevents Aboriginal people from holding title to these leases collectively through corporate structures and in so doing it prevents them from holding title in accordance with their laws and customs.

The Act presents a major obstacle to the acquisition and development of indigenous land-based enterprise in that State. Indigenous peoples whose land is covered by this type of tenure are not able to have their land needs met either through the *Native Title Act 1993* or through purchase by the ILC.

2.3.4 The Funding Cycle

Funding cycles of government and of agencies generally do not allow for the adequate consideration of seasonal factors that are vital to land based enterprises. The wet and dry seasons of northern Australia for example do not allow for work to be done all year round and money coming into a pastoral operation in November may not actually be used until March, by which time there may only be a few weeks or months to spend the money. Moreover, the opportunity for timely activity to rectify a problem or undertake a particular project may have passed or there may be negative impacts to land and infrastructure as a result or both.

Funding is normally provided on an annual basis. Often the resources applied are short-term and inadequate and are affected by program and policy changes which prevent the grant recipient from being able to rely on eligibility for funding from one year to the next. Indigenous groups are almost invariably required to provide a business plan as a prerequisite for business funding. As with any (non-indigenous) land based activity, business plans and similar documents usually have a 3 or 5 year outlook, which reflects the time that it takes to develop a business's structure and resources. The Commonwealth's own Property Management Planning Initiative is based upon planning over such a time frame. It is ironic that an insistence on a medium or long term plan is then matched (or rather mismatched) with short term funding, and often no guarantee that funding will continue beyond one year.

2.3.5 Joint Ventures

The ILC has begun preliminary discussions with a major pastoral house with a view to developing joint ventures between them and indigenous landholders. One of the major barriers to the development of joint ventures is a lack of shared knowledge and understanding of priorities, aspirations and internal structures. A way forward may perhaps be no more complex than further discussion and sharing of knowledge and information. There needs to be, however, on the part of corporate Australia, a more open commitment to dialogue and a shared future in Australian rural industry. The right to negotiate has finally provided indigenous people with their rightful place at the negotiating table and having sat down, they should be included as an equal partner in decisions that affect their land and their economic future.

2.3.6 Industry Advisory Services

Where a property has been purchased bare and indigenous landowners are looking to develop a new enterprise, a common obstacle is the lack of any form of industry infrastructure which would (a) link them with other industries operating in their region, (b) link them to the market and (c) provide advice and assistance.

The ILC is specifically seeking to overcome such difficulties through the provision of support to producer groups in Central and Northern Australia. ILC pastoral companies also include a local pastoralist on the management board and access expert advice when necessary.

The options for addressing such obstacles on a national level might include the forging of links with Regional Development Boards. There are at present few formal links between these Boards and indigenous groups. The formation of strategic partnerships would benefit both local indigenous communities,

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through access to regional expertise networks, and the Boards, through greater recognition of the contribution of indigenous finance to the region, whether through grant or welfare funds.

2.3.7 Locational Problems

Much indigenous-held land is in remote and rural areas where access to services is made more difficult by distance. Costs associated with running an enterprise in a rural or remote location are therefore often greater. There are limited local markets and many enterprises depend entirely on use of transportation links to major cities to access markets, with a consequent increase in costs. Communications are also more difficult to sustain and more costly in remote areas.

2.3.8 Raising Capital

The fact that much indigenous land is held under inalienable title has often been taken to mean that it cannot be used to raise capital. Recent analysis from the United States of America and Canada however suggests that this need not necessarily be the case. It is certainly true that the unchargeability of inalienable land has been taken to be a fact in Australia to date and that the matter has largely been untested. Native land in the United States and Canada is also inalienable but this has not prevented banks from making loans to native communities. In order to tap into the vast development potential of the indigenous estate it will be necessary for Australian banks and financial houses to become less asset-oriented and move to more creative finance provision models.⁸

2.3.9 Institutional Racism

The existence of institutional racism in Australia particularly in regional and remote areas is a further impediment to the establishment of sustainable indigenous enterprises. For example, an indigenous entrepreneur who claimed that a local bank refused even to peruse the books of the business recently approached the ILC for land management assistance. The ILC believes that, unless properly addressed and acknowledged, institutional racism will continue to drive indigenous entrepreneurs away from mainstream sources of finances. The ILC will be asked, in effect, to subsidise racist attitudes and behaviours by

⁸ see Joe Nagy "Raising Finance on Native Title and Other Aboriginal Land" in **Land, Rights, Laws: Issues of Native Title**. Issues Paper No 11, eds. P Burke and A Jackson-Nakano) August 1996. Native Titles Research Unit. Australian Institute of Aboriginal and Torres Strait Islander Studies House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs Inquiry into Indigenous Business

making its own funds available simply because it is not within its or the indigenous communities' powers to overcome entrenched institutional racism.

2.4 “means of raising the profile of indigenous controlled businesses or businesses in which indigenous people are joint venture partners.”

In discussing this particular issue, it is important to understand the context in which the term “profile” is used. The ILC has assumed that *raising the profile* involves in this context the construction of a view of business that is positive and conducive to its growth and prosperity.

Before attempting to raise the profile of indigenous business it is necessary to ask why doing so is thought to be desirable. The answer is crucial in determining the nature of the strategy used to raise the profile. If for example, the intention is to build indigenous confidence in indigenous peoples' ability to engage in business, the strategy would need to be focussed in such a way as to convince indigenous audiences. If it is to attract investors or to make the wider society feel more comfortable with the economic well being of indigenous people then the strategy will vary accordingly.

Each of the following groups would benefit from a clearer understanding of the problems and potential of indigenous commercial enterprise and each would have different approaches to ‘profile raising’:

- Existing indigenous business owners and operators.
- Non-indigenous business participants or joint venture partners.
- Potential investors or joint venture partners.
- Agencies and organisations with a stake or role in business or potential business.
- The wider indigenous community.
- The wider non-indigenous community.

In each case the interests of indigenous stakeholders need to be taken into account and related to any ‘profile raising’ activities.

If the Commonwealth is seriously considering further promotion of commercial enterprise among indigenous groups, appropriate and relevant training in all facets of commercial endeavour must be an integral part of the exercise. Underlying educational disadvantage must also be addressed as a long term imperative. The Commonwealth also needs to place a realistic emphasis on the

considerable risks that are involved in enterprise activity, especially considering the very high rate of business failure in Australia.

Indigenous peoples are clearly disadvantaged in entering the enterprise field. (The many reasons for this have been discussed in the response to Term of Reference 3). One way of overcoming the effects of such disadvantage is to promote indigenous enterprises to government agencies in line with Recommendation 326 of the Royal Commission into Aboriginal Deaths in Custody which sought an increased role for Aboriginal communities in the construction industry. The ILC considers that there is an increasing potential role for indigenous enterprise in a range of public works, especially in the delivery of services relating to land management and land rehabilitation. This wider role needs to be promoted to a range of public authorities (including local government) and to the private sector (with particular emphasis on mining companies).

Indigenous peoples and others are beginning to see that the range of enterprise options for communities extends well beyond 'traditional' opportunities such as the pastoral industry. The ILC sees one of its major functions as helping to identify appropriate alternatives to current often unsustainable land based enterprises. There is also an important role for governments in encouraging investigation of and experimentation with alternative land uses and a particular role for the Commonwealth in encouraging the States and Territories to remove degraded lands from the pastoral estate (whether indigenous owned or not). The ILC believes that this is a major means of encouraging successful indigenous enterprise activity especially in the rangelands.

Viable alternative land uses also need to be promoted among indigenous communities and their promotion should ideally be accompanied by a focus on the factors which create sustainable and positive outcomes.

Along with the promotion of alternatives among indigenous groups, many of these alternative land uses will require access to and stimulation of new markets including those overseas. The support of governments is obviously critical in this regard.

3. Conclusion

Indigenous enterprise activity, as with enterprise development generally, is an area fraught with problems and risks. Indigenous peoples stand to lose much as they struggle to emerge as a self-managing and self-determining force in contemporary Australia. There is, however, considerable potential for indigenous enterprise to grow and improve, particularly in land related activities. The ILC seeks to contribute to the economic empowerment of indigenous people within the constraints of its legislation and limited resources.

The ILC strongly urges the retention of the *Native Title Act 1993* and the allocation of additional resources through the implementation of the Social Justice Package to stimulate and resource the development of indigenous business.