

Secretariat
Expert Indigenous Working Group
COAG Land Investigation Indigenous Affairs
Department of the Prime Minister and Cabinet
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Dear Secretariat,

Thank you for accepting my submission to the Senior Officers Working Group investigation into improving legislative, regulatory, administrative and operational systems and processes in relation to communal holdings that constitute the Indigenous estate and the market economy.

NSW Aboriginal Land Rights Act 1983

I write to draw the Working Groups attention to the features and the evolution of the NSW Aboriginal Land Rights Act 1983 (herein NSW ALRA). Particularly I bring to your attention my recent study of the NSW ALRA as detailed in my book ([What Do We Want? A Political History of the Aboriginal Land Rights in NSW \(2015\)](#)) and more broadly the experiences of the NSW Aboriginal community in seeking to give expression to self-determination through the creation of an economic base through their estate. While the abovementioned study largely examines the NSW ALRA through the lens of political power it does necessarily canvas the significance and innovation of the laws and the determination and optimism of NSW Aboriginal people to realise Aboriginal economic power. More recently the NSW Aboriginal Land Council (NSWALC) has initiated an enterprise fund along with the statutory function of Local Aboriginal Land Councils (LALCs) to develop enterprises and land related economy to service the needs of their

membership. However, more research is required about the possibility and the limits of enterprise development through the Indigenous land estate in NSW to understand and measure profitability and value.

The NSW ALRA, now 32 years in operation, was conceived as a social justice package that encompassed a land recovery mechanism and local level representative body networked across the state that has afforded a high level of political engagement, participation and advocacy. The land recovery provisions were mostly detached from traditional relationships to land and instead the Government's rationale was to compensate for loss of territory, attendant knowledge and connection by creating a nexus between land, revenue generation and political power.

On the part of government I argue there was a lack of comprehension of the enduring importance of land in relation to culture and tradition that has since been actively pursued by many NSW Kooris and Murris through the Native Title laws that came a decade later. That said, the ALRA continues to be the leading site for NSW Aboriginal community participation. The network includes some 116 LALCs (at east initially a 13 member regional council network) and state Council. But significantly, the ALRA also included a 15-year funding stream that was in equal parts to sustain the network into the future and support enterprises initiated by the local and regional Council.

Initially, land recovered by Aboriginal Land Councils was inalienable. Amendments from 1991 allowed for the sale of land and this combined with the end of the funding stream, which had supported a range of enterprises, has seen land emerge as the leading means by which Local Aboriginal Land Councils (LALCs) can generate profit. In most cases this has included the outright sale of land in order to have sufficient cash flow to deliver member services. While the compensation fund was available to LALCs and RALCs they initiated a host of enterprises from bull bar manufacturing to fishing businesses, manufacturing of

cultural artefacts and agriculture and pastoral enterprises. However, in my study of the political history of the NSW ALRA there were very few enterprises that survived beyond annual reporting cycles. Several enterprises have been subject to extensive investigations by the Independent Commission Against Corruption (ICAC) and therefore documented in detail. The reasons for the success or failure of those enterprises were varied and ranged from unscrupulous dealings by non-Aboriginal business people, in one instance high level political corruption alongside limited community capacity at that time and the uneasy alignment of individual effort and collective benefit. My study of the ALC initiated enterprises in the opening decade of the ALRA showed that most were multi layered in their objectives with the central aspiration to create the conditions to grow culture, connection to country and create a sense of belonging for younger people that also encompassed skills for future work. A few were more conventional businesses such as the above-mentioned bull bar manufacturing purchased by the then Wiradjuri Region, but even this business, for the brief period it operated, encompassed reference to the language group. In other cases the recovery of pastoral stations when combined with other income sources, such as CDEP and other Commonwealth and state employment and training funds created jobs - and most importantly, reconnection to country through the old people who recalled the time between traditional worlds and the arrival of sheep and cattle. That is to say, the enterprises were never not connected to aspirations guided by notions of culture.

Indigenous enterprises: significant developments

One of the most significant developments in the Australian Indigenous economy over the last decade has been an increasing growth in the importance of Indigenous enterprises and Indigenous entrepreneurs: the number of Indigenous self-employed almost tripled from 4,600 to 12,500 for the period 1991 and 2011 (Hunter 2013). Despite this, the rate of Indigenous entrepreneurship is substantially below the average for the Australian people – only 3% of the working-age Indigenous population is self-employed compared with greater than

10% of the non-Indigenous population as a whole and much higher for some immigrants groups such as those born in Korea (Collins and Shin 2014). The growth of indigenous entrepreneurship is central to any strategy for 'closing the gap of Indigenous socio-economic disadvantage in Australia. Indigenous entrepreneurs are much more likely to employ Indigenous workers than other Australian enterprises: Hunter (2014, 16) estimated that "Indigenous businesses are still about 100 times more likely to employ an Indigenous Australian than non-Indigenous businesses". Indigenous entrepreneurship in Australia takes different forms: partnerships between corporate Australia and Indigenous corporations/communities; Indigenous community-owned enterprises; Indigenous social enterprises and Co-operatives and Indigenous private enterprises. Studies by Foley (2003, 2006) and Collins (2004) suggest that Indigenous businesses are not homogenous, with the issues facing these businesses differing according to location (urban, regional/remote) and business type (community / privately owned). While there has been considerable recent research into Indigenous private enterprises, Indigenous community-owned enterprises and Indigenous Co-operatives (Collins 2014a; 2014b; Collins et al 2014; Collins 2013) there is an absence of contemporary research into community-owned Indigenous enterprises that emerge because of the landmark passage of the NSW ALRA.

As the peak Aboriginal representative body in the state, with over 116 LALCs engaged in a host of social, cultural and economic activities, a near billion dollar investment fund and more than one billion dollars in land holdings, the ALRA has returned significant assets to Aboriginal community control and created an important structure for realising social and political power. The architects of the ALRA, and more so with subsequent amendments (1990, 2007, 2014), intended a structure that would achieve *economic power* through LALC run enterprises.

Despite an enormous amount of effort and commitment my research shows (2012, 2015) that most of the enterprises in the opening decades from 1983 did not return a 'profit' and ceased to function beyond a year. Since 1991, many

LALCs have relied on land sales to raise revenue. This local level striving has largely gone without thorough examination of the successes, failures or values that have guided LALC initiated enterprises, or examined as offering insights into the 'Aboriginal economy' or policy settings for these communal enterprises. Despite this, governments continue to hold Aboriginal economic engagement as a leading public policy objective.

New work is needed

The limited theoretical or empirical research examining communal Indigenous economic activity and its public policy implications has meant that much of the debate about the success or failure of Indigenous policy, particularly self-determination and economic empowerment, has been in an ideologically charged environment with limited reference to what works, what doesn't and why. An emerging body of research from New Zealand (Dana, & Anderson, 2007), North America (Anderson et al 2006; Dombrowski 2001; Blaser et al. 2004; Buntin, 2010) and Oceania (McCormack & Barclay, 2013) combines empirical data and critical theory to consider Aboriginal engagement with capitalism. In Australia, economic anthropologist Jon Altman offers a critical body of work about the 'Aboriginal economy' (Altman 2001, 2004) with particular emphasis on the conditions of the traditional north. Literature on the social embeddedness of economies (Polanyi, 1944), the indigenous hybrid economy (Altman, 2004) and critical development theory emphasise unique local engagements with capitalism and how these can be applied in development practice to better serve the needs of local communities and account for their activity (Curry and Koczberski in McCormack and Barclay 2013, 338).

Altman offers a potentially useful model for interpreting the Aboriginal economy in NSW. In his analysis he shows the considerable cross-over between western and Indigenous perspectives on economic development which challenges conventional notions of property and institutions embedded, as he argues 'in the dominant cultures ideology' (ie 'the market and materialism'; 2004, 10). Altman's

conceptualization of the hybrid economy embraces Indigenous economic logics within capitalism, that is the co-constitution of society and economy and the significant role indigenous values play in shaping contemporary forms of socio-economy. Hybrid economies recognise there are social as well as material gains from engaging with capitalism through a process where Indigenous and social forms condition introduced elements of the market economy.

Another useful analysis of the economy is that developed by economic historian and anthropologist Karl Polanyi (1944) where he argues that economies reflect how they are socially and culturally embedded. This analytical framework creates the space for considering how place-based economic and social forms emerge. Polanyi argues that socially embedded economies challenge some of the common assumptions about modernity and the workings of market capitalism and offers a different account of engagement with capitalism and the way it is adapted to changing environments. Polanyi's analysis brings to the fore the role *people* and *communities* play in shaping their futures by pursuing their own notions of development as opposed to the narrative of an all-powerful capitalism that transforms non-capitalist socioeconomic forms. Altman (2001), and Barclay and McCormack (2013) show how Indigenous people shape their own modernity and pursue their own culturally defined goals – to inflect development to forge modernities compatible with their own Indigenous 'register of values'.

Anthropologist Marcia Langton in her compelling 2012 Boyer Lecture series highlighted that 'more needs to be done in the policy area to create an enabling economic environment for Aboriginal people' (a sentiment echoed by other leading scholars. Cf. Altman, 2004; Anderson, Dana, & Dana, 2006; Anderson and Peredo 2006; Anderson et al 2004; Anderson 1999). Langton argued research is required to better understand how land recovery provisions might translate into economic and social opportunity to 'ensure the benefits of agreements can be fully realised for this generation and the next' since 'the ability of [Aboriginal land-holder] groups to join the economy and achieve parity is at

stake' (2013, 22). Langton (2013) argues that 'maintaining our ancient cultural values, and aspects of the old ways of life, is not inimical to economic progress'. Instead she views *ideology* as the constraining factor in Aboriginal expressions of modernity where 'the refusal among the romantics, leftists and worshippers of nature to admit that Aboriginal people, like other humans, have an economic life, are caught up in the transforming encounter with modernity, and have economic rights' (2013, 101). The limited understanding of this encounter, she suggests, by the 'soft left' has cast Aboriginal people as perpetual mendicants of the state and by environmental groups as the 'new noble savage' trapped in a fixed and imagined non-economic relationship with their land and water. Instead, she argues, land rights provides leverage to 'negotiate' and realize particular rights including unprecedented mobilization into the industrial work force and land management.

Noel Pearson (2000) on the other hand, argues a fundamental tension persists between welfare (broadly referring to 'social services' and arguably social enterprises) considerations and profit generating communal enterprises, arguing: 'The essential ingredients for business success – reward, incentive – are absent in communal enterprise and it is no wonder they routinely fail' (Pearson 2000, 89).

A review of the literature reveals diverse theoretical perspectives and limited empirical research to understand how Indigenous Australians *engage with capitalism differently* and the *possibilities for shifting enduring disadvantage of Indigenous people's in settler society*.

The ALRA: a changing landscape

Over the 30-year operation of the ALRA there have been significant economic and political change: recognition of Native Title rights, alternate nation-based modes of organizing, increased Aboriginal urbanisation, declining bush industries and new mining interests all place land rights and LALC activities in difficult and

contested spaces as they pursue economic development. At the same time, the NSWALC endures as the leading Aboriginal representative body in NSW where significant financial and land assets guarantee the network well beyond a hostile government or policy reset. However, the pressure on ALCs to generate profit is increasingly critical as Government services contract.

Since 2007 there have been three key developments in Aboriginal land rights that have refocused ALC efforts on profit-generating enterprises. 1) LALCs have been required, since 2008, to adopt a five-year 'Community Land and Business Plan'. These plans, conceived and approved by LALC members for the development of land and other assets and for carrying out business enterprises and investments, provide a rich site of inquiry to discern the priorities that local Aboriginal people are setting for themselves and the possibility and limits of economic engagement to address disadvantage; 2) amendments to the ALRA in 2014 permit LALCs to establish separate corporations to run enterprises on their members' behalf, and 3) the NSWALC has renewed its commitment to enterprise development with the creation of a multi-million dollar fund from 2015. As part of this initiative NSWALC has, as at March 2015, identified 6 new priority enterprises for funding and monitoring the progress of these enterprises from 2016 to mid-2018 will be a central part of this research project.

The Aboriginal Land Council is here to stay; it offers a site of power at the local level for Aboriginal people to organise and have their interests represented – all with a significant resource base. However, more research is required to add rich detail to understanding the success and failures and to ensure evidence informs future directions and targeted funding.

The NSW Aboriginal Land Council network has realised a form of self-determination and the possibility of an 'Aboriginal economy'. The challenge into the future will be negotiating the increasing entanglement with modernity and an Indigenous register of values that negotiates the often exploitative and individual

character of capitalism and the extension of state power into the lives of Aboriginal people.

Kind regards,

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