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December 2004

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A PROFIT-RELATED INVESTMENT SCHEME FOR
THE INDIGENOUS ESTATE

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No. 270/2004

ISSN 1036 1774
ISBN 0 7315 5645 3

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ABBREVIATIONS AND ACRONYMS

ABS  Australian Bureau of Statistics
ALFA  Arnhem Land Fire Abatement (project)
ANU  The Australian National University
ASSA  Academy of the Social Sciences in Australia
ATSIC  Aboriginal and Torres Strait Islander Commission
CAEPR  Centre for Aboriginal Economic Development
CDEP  Community Development Employment Projects
CSIRO  Commonwealth Scientific and Industrial Research Organisation
IBA  Indigenous Business Australia
IIF  Innovation Investment Fund
ILC  Indigenous Land Corporation
IPRIP  Indigenous Profit-Related Investment Program
IRDB  Industry Research and Development Board
ISX  Indigenous Stock Exchange
MCATSIA  Ministerial Council on Aboriginal and Torres Strait Islander Affairs
NCRM  natural and cultural resource management
NTA  Native Title Act 1993 (Cwlth)
PBC  Prescribed Body Corporate
ABSTRACT

This paper assesses the state of commercial development and resource management on Indigenous land, particularly in remote Australia. Indigenous landowners control significant assets—over one million square kilometres of land—often with substantial resource rights and income earning potential.

The levels of inactivity and missed opportunities on Indigenous land are of such magnitude as to represent a major risk for Indigenous landowning communities in terms of their future economic and social well-being, and also for the national interest in terms of ecological vulnerability and the social and political costs of Indigenous disadvantage.

In this paper we explore the role of government as risk manager in such circumstances and outline the principles that must underpin any intervention program targeted to the commercial development of Indigenous land. Using the framework for profit-related loans recently developed by Chapman and Simes (2004) and elements of an existing venture capital support program, the Innovation Investment Fund Program, we outline a new investment scheme to assist development and natural resource management on the growing Indigenous estate. The proposed scheme can be conceptualised as a profit-related loan scheme or as a form of capped public investment. Our proposal addresses key elements of the market failure in the financing of development on Indigenous land and provides incentives for greater private sector investment. It ensures that commercial and social risks are shared equitably between government, private sector investors and Indigenous-owned corporations in order to avoid problems of adverse selection or moral hazard.
ACKNOWLEDGMENTS

In September 2004 we were invited by Dr John Beaton, the Executive Director of the Academy of the Social Sciences in Australia (ASSA), to speak at the Annual Academy Symposium *Government as Risk Manager* on 8 November 2004. The Symposium was predicated on a view that a principal responsibility for all governments is the management and distribution of risks to society. The Symposium examined how government could creatively and efficiently extend its public sector risk management on behalf of individual citizens and business, with a particular focus on one genre known as ‘income related loans’. Our challenge was to provide a case study that focused on the financing of Indigenous community investment projects. We sincerely thank ASSA for providing us with the opportunity to participate in the Symposium.

This Discussion Paper is the written version of the presentation made to the Symposium. The paper quite intentionally seeks to explore new ways to facilitate investment on the Indigenous estate, an important issue of national interest. The development of the paper has benefited enormously from a number of meetings with Bruce Chapman (convener of the Symposium) and initially also with Ric Simes, and from discussions with Boyd Hunter and Matthew Gray at the Centre for Aboriginal Economic Policy Research (CAEPR). Comments on the paper were received from a number of readers including Bruce Chapman, Matthew Gray, Nicolas Peterson and Melinda Hinkson. Research assistance was provided by Geoffrey Buchanan and John Hughes, both of CAEPR, and by Joshua Martin. We also benefited greatly from presenting the paper to some of Australia’s leading social scientists at the Symposium and thank them for their feedback, especially John Quiggin. The paper also benefited from the academic editing of Frances Morphy and the design excellence of John Hughes.
INTRODUCTION: THE INSTITUTIONAL ARCHITECTURE

Over the past 30 years, land rights have become an established component of the institutional architecture of Australia. Land rights legislation providing for the transfer to Indigenous ownership of varying proportions of the erstwhile public estate exists in all States except Western Australia, and in the Northern Territory and Australian Capital Territory. Following the High Court's *Mabo* decision in 1992, the *Native Title Act 1993* (Cwlth) (NTA) was enacted, and it too is having an increasingly expansionary impact on the extent of Indigenous land ownership nationally.

Governments have also instituted long-term acquisition programs that aim to return some proportion of the alienated estate to Indigenous ownership (Pollack 2001). Lands held under freehold or leasehold titles are generally not available for claim and transfer under land rights or native title legislation. The Aboriginal and Torres Strait Islander Land Fund and Indigenous Land Corporation (ILC) were established at the national level in 1995 to provide a means to purchase such land for dispossessed Indigenous groups (Altman & Pollack 2001). Over the past 30 years, the combined impact of these developments has seen the transfer to Indigenous Australians of an area approaching 20 per cent of the Australian continental landmass. This percentage is set to grow incrementally in the future as further claims under the NTA statutory framework are determined and the ILC continues its acquisition program. Collectively, this land will be termed here the 'Indigenous estate'.

There have been two unintended and unanticipated effects of these land transfers: limited development in mainstream commercial terms and the emergence of a natural and cultural resource management (NCRM) gap in relation to Indigenous-owned land. The underlying assumption in Australia is that landowners have responsibility for land and resource management, usually as a by-product of the commercial utilisation of the land. This assumption can be problematic; for example, in the Murray–Darling Basin in south-east Australia commercial use of land has been accompanied by environmental degradation (Quiggin 2001). It is particularly problematic in remote Indigenous Australia because the commercial utilisation that is meant to underwrite NCRM is largely absent, although it is also true that the pressures on the environment are more limited and some bio-regions are remarkably intact.

Indigenous landowners face particular challenges. Indigenous communities in remote and very remote regions are clearly among the most disadvantaged segments of the Australian community (ABS 2004a, 2004b) and the causes of this disadvantage are complex and deep-seated. Much of the land under Indigenous ownership is not commercially viable in terms of old-economy agricultural or pastoral use. In some situations the land available for claim is degraded and faces long-standing feral animal or weed infestation problems and future risks. Arguably, Australian governments have historically under-invested in the management of these Crown lands that are now being transferred to Indigenous ownership, and this has exacerbated the situation Indigenous landowners now face.
There is clearly a major gap in the public policy landscape in Australia that provides three very compelling
arguments for intervention. First, there is the international citizenship case—investment in biodiversity
conservation and environmental sustainability is needed to maintain Australia's international obligations.
Second, there is the related national interest case—there are strong public good arguments for ensuring
that the fifth of the continent under Indigenous ownership is managed effectively, especially given its
high biodiversity and conservation value (Australian State of the Environment Committee 2001). There
is an associated national interest in maintaining at least a minimum level of population density across
the continent.

The final and most compelling argument, in our view, because of its focus on people, is the political and
policy imperative to see Indigenous communities reducing their high levels of poverty, welfare dependence
and social disadvantage by utilising this land asset profitably. The degree of difficulty for the nation of
this last challenge is set to rise exponentially over the next 20 years as demographic growth trends for
Indigenous communities show remote community populations increasing rapidly beyond the capacity of
existing infrastructure and service delivery models (Taylor 2003).

The key element underpinning Indigenous disadvantage can be characterised as market failure relating
to the disjunction between the Indigenous land base and the broader market economy. This disjunction
arises from a range of factors. Perhaps the most obvious is the ownership status of most of the Indigenous
estate—group ownership and inalienable tenure inhibit access to private sector capital. Land cannot be
used as security, and commercial banks are understandably reluctant to lend to Indigenous interests without
realisable collateral.

While this is an issue relating to transactions costs and not to inalienability (since Indigenous landowners
under existing land rights statutes can in fact lease their lands, negotiate land use agreements, or surrender
tenure to the crown), the bottom line is that Indigenous landowners have generally not been able to leverage
their major land assets into significant commercial benefits. This problem is exacerbated by the remoteness
of many communities, their relatively small size—on the Indigenous estate the estimated Indigenous
population of only 120,000 is spread across over 1,000 communities (Altman 2004a)—and the lack of a
commercial banking presence in most communities. Institutional and governance issues within Indigenous
land-owning or land-managing organisations are also substantial barriers to successful commercial
enterprises on Indigenous land (Altman 2004b).

Other factors that reinforce this market failure might be characterised as state or policy failure. These
include low investments by governments, both historically and today, in basic infrastructure on the
Indigenous estate; poor educational and health service delivery outcomes leading to educational and skills
deficits within Indigenous communities; and poor incentive structures and poverty traps that often lead to
severe and deep-seated welfare dependence and associated social dysfunction. All have current and future
costs to Indigenous people and the nation.
THE INDIGENOUS LAND 'INVESTMENT DEFICIT' AS RISK

A consequence of the institutional architecture facing Indigenous landowners is that Indigenous land is often under-developed. It receives minimal or no land management public investment, and is vulnerable to ecological or environmental degradation. We term this the Indigenous land ‘investment deficit’. While this investment deficit is a potential problem for Indigenous landowners, it is also a concern for contiguous bio-regions that abut Aboriginal land, especially national parks and pastoral properties. It exacerbates environmental and ecological risks in areas such as biodiversity conservation, bio-security, feral species control, weed eradication and uncontrolled bushfires.

The most serious risks associated with the institutional architecture that presently exists on Indigenous land are the generalised social and political risks deriving from the substantial absence of economic development activity and the concomitant costs of dependency and social dysfunction. There is also a range of contingent risks related to ‘opportunity benefits’ or missed opportunities. These opportunities involve both private (Indigenous) and public benefits. An obvious example is the potential for carbon abatement and for potential trading regimes that rely on Indigenous fire management in the savannas (see Appendix A). Other contingent risks arise from poorly defined institutional arrangements and property rights, particularly where there are intersections between customary rights recognised in statute or common law and commercial rights vested in third parties.3

Altman (2004a) has argued that part of the reason for policy and state failure in relation to Indigenous development relates to inadequate analysis and conceptual understanding of the particular form that Indigenous economies take in remote and very remote situations—these are not standard two-sector economies, but have a third and distinct customary sector. The ‘hybrid economy’ framework highlights the existence of customary, market and state sectors and a high degree of articulation (or overlap) between them. A failure to recognise the contemporary interplay of kin-based and market-based economies results in inappropriate policy frameworks. Overall, the risks associated with the Indigenous land investment deficit involve significant potential costs to the nation, and deserve policy attention by governments at all levels.

It is clear that, despite the existing market failure, Indigenous landowners stand to benefit from public sector intervention that underwrites or facilitates improved management of their land and resources. They can expect to maintain links to traditional sites and estates, and this may bring concomitant cultural and social health benefits. They can also expect to achieve greater autonomy and economic independence, increased commercial leverage and political influence4 and, in some cases, commercial benefits in terms of increased income, employment and profits. It follows that there is a case for an Indigenous contribution to any public sector funded economic development or NCRM initiatives, including sharing the commercial risks involved at the corporate level.

Devising means by which Indigenous landowners might share these risks is not altogether straightforward. Indigenous land is generally held communally (reflecting the underlying group-based nature of Indigenous
land ownership systems, yet the corporations set up to hold land are rarely financially robust and are often subject to internal politicking. The market failure associated with inalienable title presents a formidable barrier to accessing capital markets for finance. Individual landowners do not have authority to act unilaterally and mostly do not have the financial resources to make significant investment contributions in development projects—individuals have limited incentives and capacity to invest.

One question to be faced is how to develop expertise and entrepreneurial skills in an organisational framework that works in partnership with, and complements, the skills and capacities of landowners in managing country. Cultural and customary relations often work to reduce incentives for individuals to pursue commercial opportunities because kin-based relations of production operate to skim off any surplus accumulated by an individual. At the communal level, competition between land-owning factions operates to negate the potential gains from co-operative behaviour. At the organisational level, opportunities abound for unethical activity that can strip resources out of corporate entities, often benefitting non-Indigenous employees to the disadvantage of the local community.

The challenge facing public policy makers is to devise a program that addresses the gap in commercial development and land management on Indigenous land in a way that recognises the existence of both market failure and parallel state failure. Such a program must build on the comparative advantage of Indigenous landowners in local economies and ensure they share a proportion of the risks, while overcoming the structural constraints facing landowners in relation to access to finance.

There is the potential for landowners to leverage themselves into investments in a wide range of commercial businesses (stores, road maintenance work, tourism enterprises), in service delivery functions of various kinds (e.g. government housing and aged person care programs) and in innovative landcare and land management enterprises such as bio-prospecting, commercial utilisation of wildlife, and the provision of ‘eco-services’ in the form of feral animal control, quarantine inspection, bush fire management, and weed eradication programs. There is also potential to invest directly in commercial enterprises or indirectly in commercially valuable tradable assets, such as fishing or crabbing licences. Such investment would not only generate market opportunity, but could also provide a future source of collateral for commercial loans.

In the few locations where such a suite of activities does occur they are always founded on a robust organisational base with an entrepreneurial focus that has the wherewithal (or good luck) to employ qualified, culturally astute, honest and ethical senior managers. Across the breadth of remote Australia, these few exceptions notwithstanding, the scale of missed commercial opportunities for development on Indigenous land is significant.

One possible approach to meeting this challenge is to utilise a profit-contingent loan or capped public investment mechanism to finance development opportunities on Indigenous land as generically proposed by Chapman and Simes (2004). The model we propose in this paper, based on a conjunction of state support, market-based incentives and projects that align with local aspirations, has the capacity to reflect the reality of the hybrid economy outlined above.
THE MODEL: PRELIMINARY CONSIDERATIONS

There is a range of issues to be considered in designing any such scheme.

1. The institutional architecture governing development on Indigenous land nationally is legally complex, dynamic, and in a state of continuing flux. In particular, the NTA is only ten years old, and is still in the early stage of development in terms of case law and precedents. Any scheme will need to be administratively flexible and versatile, and have the capacity to deal with different types of tenure and title, as well as the contingent nature of many Indigenous people’s native title rights, based as they are on claims which in many cases may be years away from being determined.

2. The Indigenous actors involved are heterogeneous, with diverse worldviews, contact histories, resource bases, and aspirations. They will wish to utilise different corporate vehicles, and work at different scales, from the individual and family level up to the regional level. Thus any general scheme will need to be flexible and adaptable.

3. Indigenous landowners face particular problems in managing complex organisations that operate primarily in a western institutional context. Legitimate aspirations to maintain distinct customary prerogatives and institutions can in many respects be antithetical to established non-Indigenous norms of good corporate governance. The scheme must employ a strategy that builds on the undoubted capacities of Indigenous landowners in cultural and environmental management, while bolstering corporate and financial management skills with help from outside. Community-controlled mediating organisations must be the site for managing these skills.

4. The incentive structures (both corporate and individual) created by any new program arrangements will be important determinants of success. Chapman and Simes (2004: 16) emphasise the need for all parties in a project to contribute financially to minimise both ‘adverse selection’ and ‘moral hazard’. In the case of Indigenous participation in any development program on their land, adverse selection might result in those least likely to succeed seeking public and private sector support. Hence it is important that Indigenous stakeholders share some of the financial risk. Similarly, moral hazard might take the form of limited or low incentive to make an enterprise succeed or to repay loans. Again joint ownership of the project might increase the cost of failure and lower potential moral hazard problems.

There are sound reasons for focusing on what Chapman and Simes (2004: 16) term ‘community based projects’, despite the problems that might potentially arise. The public good elements of commercial development on Indigenous land might justify public intervention to assist individual landowners and, in theory, this could be undertaken through an income-related loan mechanism. However, the practical difficulties of identifying appropriate individual landowners and administering such a scheme in remote contexts, where land is generally inalienable and held by groups, rule it out as a feasible option in our view.
Furthermore, it is unlikely that the tax system could be used as an efficient means to collect loans, especially given low individual capacity to pay.\textsuperscript{7}

Current funding approaches in Indigenous affairs follow a similar model. They are generally based on grants to Indigenous corporations for particular purposes, with standard reporting and acquittal arrangements, but there is never enough funding available. In relation to sectors such as home loans and enterprise development where individuals are potential recipients, government has traditionally utilised loans with mixed success. In any case, these are relatively small programs.\textsuperscript{8}

**AN INDIGENOUS PROFIT-RELATED INVESTMENT SCHEME**

In Indigenous affairs, governments have hitherto made no use of alternative funding models based on outsourcing to service providers on a competitive basis.\textsuperscript{9} The scheme we are proposing is based on just such an alternative and is modelled on a venture capital scheme, the Innovation Investment Fund (IIF) Program currently administered by the Department of Industry, Tourism and Resources. The IIF Program was introduced in 1998 to support commercialisation of innovation by small start-up firms (Ausindustry 2004). Through the IIF Program, the federal government has invested over $220 million in nine funds (an average of $24 million per fund) and has attracted $138 million in private investment. Total capital invested is $358 million. The average fund size is almost $40 million.

Both the commercialisation of early stage innovation and the development of commercial opportunities on Indigenous land confront substantial market failure, but they have very different risk profiles. In the venture capital context, commercialisation of early stage innovation is highly risky, with very few start-up firms successfully surviving beyond infancy.\textsuperscript{10} However, the potential returns are extremely large, with most start-up firms targeting a share of a worldwide market. In contrast, the commercial risks of development involving established business models on Indigenous land are much lower (although still higher than for standard projects). The potential returns are also much lower, in most cases involving a maximum 15–25 per cent return on capital, typical of most business opportunities in the economy.\textsuperscript{11} Locational and land access arrangements will generally mean that commercial projects on Indigenous land will have a degree of local monopoly power. The key point to note in this context is that the commercial risk profile confronting government and potential private sector investors in supporting a scheme such as we propose is much lower than in the IIF program, but so too are the potential returns.

The scheme we propose takes as its obvious starting point the above-documented existence of market failure in relation to commercial investment on Indigenous land, and the public good rationale for investing in NCRM programs across the one-fifth of the Australian continent under Indigenous ownership. It also addresses head-on the incentive problems and policy failure that have left Indigenous landowners amongst the poorest and most disadvantaged members of the Australian community. We propose that the federal government establishes a series of new funds for investment in partnership with Indigenous corporations.
in commercial development projects on Indigenous land. There are two distinct roles for government in establishing such a scheme, first as investor/risk underwriter, and second as a regulator.

As an investor, government would establish up to five funds under a scheme we term the Indigenous Profit-Related Investment Program (IPRIP), with an initial tranche of $100 million. Fund managers chosen by select tender would manage each fund. They would raise or contribute between 10 and 30 per cent of the fund’s starting capital. The amount of private sector capital, the commercial and track record of the individuals seeking appointment as fund managers, and the range of expertise that they can call upon would all be taken into account in a rigorous selection process. At least half of the private sector capital should come from sources not associated with the fund manager. Government would contribute the balance, that is between 70 and 90 per cent of each fund’s capital base. Each fund would be required to invest in a number of commercial projects. It would be mandatory for each project to include a minimum Indigenous financial equity holding of at least 30 per cent. Funds would have a finite life, say ten years, and would have to be wound up on a commercial basis at the expiry of that period. We expect that each fund would, on average, have around $30 million in total investor contributions.

We note that financial resources are available to Indigenous interests for development on Indigenous land. Some groups of Indigenous landowners are the recipients of royalty payments arising from resource development projects on their land and from negotiated commercial agreements. There are also substantial investment accounts associated with both the New South Wales and Northern Territory land rights legislation. The ILC receives considerable draw-downs each year from the $1.3 billion Aboriginal and Torres Strait Islander Land Fund for land acquisitions and for land management. And individual Indigenous communities receive considerable capital and recurrent funding through programs such as the Community Development Employment Projects (CDEP) scheme, that allow for employment on community projects. There are also a number of Indigenous development corporations in various parts of the country looking to invest in commercial projects. In our view there is substantial scope for many Indigenous interests to access financial resources to participate in commercial development projects, particularly where those projects are underpinned by effective and proven private sector management structures.

Investments by a fund would be at the sole discretion of the fund manager, thus minimising the risks associated with political or bureaucratic involvement in the allocation of public subsidies for commercial development. It would also minimise the risk of ‘adverse selection’ for a profit-related scheme, since the fund manager has substantial positive and negative incentives to wisely choose both potential projects and Indigenous partners. The decision to invest in particular projects would require prior commercial negotiations with relevant Indigenous landowners. A fund would never be the sole beneficiary of a commercial project, though whether a fund would hold a controlling stake in a particular project would ultimately be determined by the outcome of commercial negotiations and the extent of any Indigenous partner investment. Clearly, a portion of Indigenous equity could be leveraged by providing access, heritage clearance or long-term leases rather than just from financial investment.
At the conclusion of each fund’s term, the proceeds (less agreed fund manager’s fees contingent on performance) would be distributed on the following basis:

- Initial investments plus interest would be returned to government and private sector investors (on a pro rata basis if less than the initial investment but greater than zero—see Appendix B).
- Any surplus profits over and above initial investments would be shared between government (10%) and the private investors (90%) to reward risk taking.
- The private investor component would be shared with the fund manager on an agreed basis as a performance incentive.

Some hypothetical examples of the workings of the proposed scheme are provided at Appendix B, while a diagrammatic representation is provided at Appendix C. At this stage, we do not anticipate that profit-related loans would be repaid through the taxation system, but we do anticipate that profits would be shared on an annual basis on an equity basis between a fund (that would retain its profits) and Indigenous stakeholders. We would anticipate that projects that are going concerns after 10 years could be divested to Indigenous participants, although this would be subject to negotiation.

There would be a distinct regulatory role for government over and above its role as an investor under the IPRIP; this would be, essentially, to select and license fund managers and manage the licence agreements over the term of the fund. A sub-committee of the Industry Research and Development Board (IRDB), comprising business and academic members sourced from the research and development and innovations sector, oversees the IIF program. Serviced by a public service secretariat, the sub-committee brings a very hard commercial edge to the selection and oversight process for IIF program funds. In the case of IPRIP, it would be highly desirable to establish a similar mechanism with strong business sector involvement but with an additional range of Indigenous and non-Indigenous advisory expertise depending on each fund’s regional or industry focus.  

Government could target the funds’ operations in various ways, either through a geographic focus by region or State, or through an industry sector or thematic focus. Our view, at this stage, is that a broad focus on commercial development on Indigenous land would be appropriate. We see particular potential for projects with a NCRM focus, not least because this is where Indigenous landowners have a comparative advantage in terms of capacity, presence in remote localities, and a strong desire for involvement. There is also an emerging recognition in the science community that extant customary practice can be very effective in NCRM and especially in the management of wildfire.

The advantage of the scheme we are proposing is that it provides a substantial incentive for private sector investment in commercial developments on Indigenous land, on a basis that directly involves landowners and respects their wishes. It places a floor under the size of any potential losses for private sector investors by making repayment of the government investment contribution—at least 70 per cent of the fund—
contingent upon the fund’s commercial success within ten years. The incentive to defer profits under such an arrangement will be offset by the involvement of private sector and Indigenous landowner investors and a management fee structure directly linked to commercial performance.

While not being prescriptive regarding the type of project to be pursued, the arrangements are designed to ensure that experienced, skilled and ethical managers, advised by other experts, professionally manage projects on a businesslike basis. At the same time the scheme aims to actively involve landowners as partners on whatever basis they have negotiated, to encourage Indigenous project ownership and reduce any potential moral hazard problem. A further indirect benefit of the scheme will be the likelihood that fund managers and Indigenous interests will jointly identify further commercial opportunities on Indigenous land outside the ambit of the proposed scheme.

It is noteworthy that under the proposed scheme, there are two potential avenues for Indigenous involvement. The first is as a partner or joint venturer with a fund in a particular project. It would be mandatory for each project supported by a fund to have such an Indigenous partner. The terms of the partnership will be based on a commercial negotiation, and must involve a financial investment or contribution by the Indigenous corporation.19 The Indigenous interests will additionally benefit indirectly from the subsidised expertise of the fund manager, as well as the commercial leverage derived from the knowledge that the fund manager must find an Indigenous-owned commercial partner for each project (as well as other forms of leverage associated with land ownership or native title determination).

The second avenue available to Indigenous interests would be to contribute as a private investor in potential funds-seeking licences. Investments at this level could occur in myriad ways. For example, community or regionally-based Indigenous development corporations could use this avenue while being direct partners in a specific project.20 Government entities such as the Aboriginal and Torres Strait Islander Land Fund (and the ILC), Indigenous Business Australia,21 the Investment Fund created by the New South Wales Aboriginal Land Rights Act or the Aboriginals Benefit Account in the Northern Territory could leverage considerably the value of the funds under their control.

CONCLUSION

Innovation in policy development and policy-making is relatively rare in Australia. The normal modus operandi is incremental adjustment focused on solving or resolving specific policy problems or political issues. The relatively sudden emergence of major changes to the institutional architecture of land tenure in remote Australia has meant that a major gap in policy responses by governments has emerged, particularly in relation to commercial development and NCRM on the growing Indigenous estate. The major and growing challenges facing both governments and Indigenous communities in remote Australia deserve substantial attention by policy makers and analysts. The fact that the issues appear intractable suggests that it is time to consider innovative policy approaches and initiatives.
The scheme we have proposed, the Indigenous Profit-Related Investment Program, would involve an initial tranche of around $100 million in government funding and would leverage in something approaching $50 million in private and Indigenous sourced contributions. In contrast to existing funding for Indigenous related programs, these outlays can be conceptualised as a form of capped public investment, or a profit-related loan, with a significant prospect of repayment to both public and private investors after ten years. The scheme would target a major policy gap with substantial positive externalities and public good elements both in the Indigenous development and NCRM areas. It would underwrite a significant number of commercial development projects on Indigenous land with all the employment, income, and social esteem spin-offs that would flow from such outcomes.

The title of a recent book, *When All Else Fails: Government as the Ultimate Risk Manager* (Moss 2002), summarises a part of our overarching argument. Indigenous economic development has failed thus far in remote and very remote Australia. In the last 30 years, with the transfer of large tracts of the Australian landmass back to Indigenous ownership, the risks associated with under-investment in natural and cultural resource mismanagement has also increased dramatically. The scheme we propose has, on one reading, low risk and low return, if return is defined in strict commercial terms. On another reading it has lower risk and very high return, if the return is defined more broadly to include both private Indigenous benefit, public cost savings, and national and international positive externalities associated with better resource management on the Indigenous estate.
NOTES

1. Hence its unalienated nature or historical reservation for Aboriginal use and consequently its more recent availability for claim.

2. This is not, of course, an argument for a shift from communal and inalienable to individual and private ownership of land. Besides the crucial issue of inter-generational equity in maintaining inalienability, there is no evidence that parcels of the Indigenous estate, mostly in remote regions, would provide adequate security as collateral for individual bank loans.

3. There are strong grounds for believing that market failure in relation to land tenure is a crucial component of under-development internationally and there is no reason to believe that this is not the case in Australia (De Soto 2000; Pearson & Kostakidis-Lianos 2004).

4. For example, through the negotiation of Indigenous Land Use Agreements associated with resource developments under the native title statutory framework.

5. Such contestation can be linked to dispute within the Indigenous domain about traditional ownership that is a legacy of colonial administration, the forced movement of people, and voluntary migration. Self interest, or rent seeking, also arises as a source of conflict.

6. Arguably constituting a form of moral hazard.

7. Unlike in the Higher Education Contributions Scheme (HECS) where there is a high likelihood of capacity to pay. Note that in the Child Support Scheme also administered through the tax system there can be contribution issues associated with capacity to pay (see Chapman 1997; Edwards 2001).

8. See Aboriginal and Torres Strait Islander Commission (ATSIC) (2003) for a summary of these programs and their performance.

9. The current federal government has indicated its intention to outsource its Indigenous legal services program under a competitive tender in the near future.

10. Emma Connors (2004) notes that of the nine funds backed under the IIF Program (five established in 1998, four more in 2001), only two have returned any cash to the government; and only four of the 65 companies that secured funding have returned any money. See also Australian National Audit Office (2002).

11. Given poor market linkage we assume that return on capital would be at the lower end of this range on the Indigenous estate.

12. We suggest the federal government because it underwrote the IIF Program; there is nothing precluding a joint federal/state partnership here, perhaps sponsored by the Council of Australian Governments under its Indigenous Economic Development Framework (Powers & Associates 2004).

13. This equity stake must not be grants based because of the risk of introducing adverse selection and moral hazard, although the role of a fund manager in overseeing the management of the fund would reduce the risk.
14. See Altman (2002) for a recent summary. Currently, the Aboriginals Benefit Account created by the Aboriginal Land Rights (Northern Territory) Act 1976 (Cwlth) holds reserves approaching $100 million ($82 million at 30 June 2003) and the Investment Fund created by the Aboriginal Land Rights Act 1983 (NSW) has accumulated reserves estimated at $550 million. In both cases there are statutory restrictions on how these accumulated reserves can be used.

15. The Aboriginal and Torres Strait Islander Land Fund currently has accumulated reserves of $1.35 billion (ATSIC 2003: 327); draw-down for the operations of the ILC was $54.7 million in 2003–04.

16. For example the recently established Indigenous Capital Limited. An Australian Indigenous Stock Exchange (ISX) was established in 2003 to facilitate the presentation of proposals by Indigenous entrepreneurs seeking investment capital; see <www.isx.org.au>. This could be a vehicle for Indigenous corporations to raise their financial stake in a partnership from commercial or venture capital sources.

17. In particular this would be the case were Indigenous landowners to consider participating in a joint venture housing project on their land.

18. For example, an NCRM fund might seek suitable resource management expertise from both Western science and Indigenous ecological knowledge perspectives.

19. When we first set out to write this paper we were focusing on the potential for such a scheme to provide funding to Prescribed Bodies Corporate (PBCs). PBCs are corporations whose members comprise the holders of native title after a successful determination by the Federal Court. Under the NTA and subsequent administrative arrangements, PBCs are unfunded. While we regard this as a significant public policy issue, we also believe that the scheme proposed here could both accommodate this problem and have wider applicability.

20. For some corporations, investment both in a project and in one or several funds would provide a means to reduce commercial risk.

21. Indigenous Business Australia (IBA) is a statutory authority established under the Aboriginal and Torres Strait Islander Commission Act 1989 (Cwlth) that has an assets base of about $80 million, and that invests in small to medium sized joint ventures with Indigenous partners on a commercial loans basis (see IBA 2003).
APPENDIX A: SOME EXAMPLES OF COMMERCIAL DEVELOPMENT OPPORTUNITIES ON INDIGENOUS LAND.

1. TRADE IN CARBON CREDITS

The Arnhem Land Fire Abatement (ALFA) project, already informally underway, is looking to unite numerous traditional owners across 60,000 square kilometres of Arnhem Land to agree to early burning of their lands, both from the air and on the ground. This will result in an estimated abatement of 300,000 tonnes of carbon emissions when compared to unregulated burning. The scheme requires commercial underwriting for paying wages to on-ground community rangers who will undertake the burning, for aerial burning, for equipment and for sophisticated remote measurement of carbon abated. The scheme is predicated on future trading in carbon credits, already the subject of a futures market in Europe (see ‘Climate change: Welcome to Kyoto-land’, The Economist, 9–15 October 2004: 59–61), but that will be contingent on Australia ratifying the Kyoto Protocol. The benefits here will be local as well as global; there is emerging evidence that conservation biodiversity objectives are better served by landscape burning that approximates customary regimes (Williams & Russell-Smith 2003). And there is evidence that reducing late dry-season uncontrolled (and uncontrollable) fires in the ALFA region will have health benefits and associated cost savings for residents of Darwin (Johnston et al. 2002). There is considerable scope for similar projects across large areas of northern Australia (including jointly managed national parks).

2. COMMERCIAL OPPORTUNITIES ON JOINTLY MANAGED NATIONAL PARKS

The High Court decision in the Miriuwung-Gadjerrong native title claim held that many national parks and reserves in the Northern Territory had been invalidly alienated since 1975 thus making many existing parks available for claim under land rights legislation, which could potentially see them taken out of the parks estate. As a result, the Northern Territory government has offered Indigenous claimants joint management of 50 national parks and reserves. There are strong policy reasons, at both national and Territory levels, for ensuring that these national parks are well managed and that visitation opportunity is maximised. Yet many of these national parks have no or very limited physical infrastructure and very limited staffing. Investment in both, perhaps combining outsourced service delivery arrangements (e.g. sub-contracted ranger services and commercial concessions including guided tours, camping grounds, food and fuel outlets) could generate economic development opportunity for remote and disadvantaged regions. It is unlikely that profitable enterprises can be established in all, but a mix of local, public and private investment might provide the incentive to operate some profitable commercial concessions in some of the larger and more desirable destinations.
3. TRADEABLE LICENCES

In Torres Strait the most valuable commercial fisheries are prawning and pearl aquaculture, yet Islanders participate in neither. Under the Torres Strait Treaty, three commercial prawning licences have been reserved for Indigenous people, yet since 1985 none have been taken up. This is partly due to the very significant financial commitment needed to operate a prawn trawler. The reserved licences are not tradeable, but a mix of Islander, private and public investment could allow these concessions to be taken up and potentially sub-leased or operated as joint ventures. Under the Torres Strait Treaty, expansion of any fisheries in the Torres Strait Protected Zone is reserved for Islanders (Altman, Arthur & Bek 1994).

4. UNDER-CAPITALISED ENTERPRISES

Many profitable enterprises on Aboriginal communities are under-capitalised. Capitalisation when it occurs is underwritten by state grants or by local consumers. For example, community stores have sufficient positive cash flow to allow debt financing of infrastructure, but the cost of commercial loans means either that investment capital is generated from savings or that loan repayment periods are very short term. A mix of profit-related financing from private, public and private sources might allow for a lower discount rate on investment that will result in a lower financial burden on relatively poor customers who presently pay high store prices. This could have positive health and other benefits and create greater intergenerational equity.

5. CULTURAL AND MAINSTREAM TOURISM

Some communities have opportunity for commercial joint ventures in recreational fishing, safari hunting or cultural tourism enterprises, as well as in the provision of normal tourism sector services, but frequently lack the start-up equity to become more fully involved. There are examples of a high level of such engagement (e.g. Seisia community on Cape York Peninsula that has invested heavily in tourism infrastructure). Much of the leverage for such involvement comes from providing access-right concessions and mediating with land owners, but sources of project finance could place Indigenous stakeholders in a far stronger bargaining position, allowing them to gain a larger financial stake in such regional developments, with ensuing employment and income benefits.
APPENDIX B. THREE HYPOTHETICAL EXAMPLES OF THE FINANCIAL WORKINGS OF THE PROPOSED IPRIP

<table>
<thead>
<tr>
<th>Funding split [total]</th>
<th>Year</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Govt/Private</td>
<td>[net surplus/deficit after administration fees]</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
| Fund 1              | 18/5  | [$23m] | -4 | -2 | 1  | 2  | 4  | 3  | 4  | 6  | 5  | 3  | $22m surplus  
| Fund 2              | 24/6  | [$30m] | -2 | -5 | -2 | 0  | -1 | 2  | 3  | -2 | 1  | -3 | $9m loss  
| Fund 3              | 30/5  | [$35m] | -3 | -3 | 0  | 2  | 2  | 4  | 6  | 6  | 4  | 6  | $24m surplus  
| Total:              | 72/16 | [$88m] |     |    |    |    |    |    |    |    |    |    |  

<table>
<thead>
<tr>
<th>Year</th>
<th>From surplus, government receives $2.2m</th>
<th>From surplus, fund manager/private investors receive $19.8m</th>
<th>No surplus distribution</th>
<th>No surplus distribution</th>
<th>From surplus, government receives $2.4m</th>
<th>From surplus, fund manager/private investors receive $21.6m</th>
<th>From surplus, government receives $4.6m</th>
<th>From surplus, fund manager/private investors receive $41.4m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fund 1</td>
<td>Initial investment returned*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>From surplus, government receives $2.4m</td>
<td>From surplus, fund manager/private investors receive $21.6m</td>
<td></td>
</tr>
<tr>
<td>Fund 2</td>
<td>Initial investment returned on a pro-rata basis*</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No surplus distribution</td>
<td>No surplus distribution</td>
</tr>
<tr>
<td>Fund 3</td>
<td>Initial investment returned²</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total:</td>
<td>64.8/14.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>From surplus, government receives $4.6m</td>
<td>From surplus, fund manager/private investors receive $41.4m</td>
</tr>
</tbody>
</table>

Note: (a) For the sake of simplicity, we have ignored the interest component that would be added to the final distribution and have limited the hypothetical examples to three rather than five funds.
APPENDIX C. DIAGRAMMATIC REPRESENTATION OF THE PROPOSED IPRIP

Notes:
(a) Depending on relative equity of fund and Indigenous partners.
(b) Our scheme does not address the availability of these funds except to acknowledge that funding sources exist for good proposals.
REFERENCES


—— 2004b. National Aboriginal and Torres Strait Islander Social Survey 2002, Cat. no. 4714.0, ABS, Canberra.


