

8 September 2015

Mr Wayne Bergmann
Chair
Expert Indigenous Working Group
COAG Investigation into Indigenous land administration and use
C/O COAG Secretariat
Commonwealth-State Relations Branch
Department of the Prime Minister and Cabinet
1 National Circuit, BARTON ACT 2600

via email: EIWGsecretariat@pmc.gov.au



Dear Mr. Bergmann

RE: COAG Investigation into Indigenous land administration and use

Following a face-to-face meeting with members of the Minister's appointed Indigenous Expert Working Group in May 2015 and in line with the Expert Panel's request, I am pleased to provide the enclosed submission on behalf of the Indigenous Land Corporation (ILC).

This submission details the ILC's role in delivering economic and other benefits to Indigenous landowners. Further, the submission makes recommendations to the Inquiry with regard to the function of the Aboriginal and Torres Strait Islander Act and draws on the ILC's twenty years of experience working with Indigenous landowners to provide commentary on the necessary preconditions for Indigenous economic development. The submission identifies key principles to guide any policy changes recommended by this investigation.



M. C. Dillon

Chief Executive Officer



Australian Government
Indigenous Land Corporation

COAG Investigation into Indigenous Land Administration and Use

INTRODUCTION

The Indigenous Land Corporation plays a fundamental role in the development and management of the Indigenous estate, now covering up to 30 % per cent of the Australian continent. After 20 years of operation, working across a uniquely broad spectrum of tenure regimes, the ILC is well placed to advise on 'what works' in generating economic development on Indigenous-held land.

The ILC Board is pleased to make this written submission to the COAG Investigation into Indigenous Land Administration and Use. The investigation is focused *on improving the Indigenous land legislative, regulatory, administrative and operational systems and processes to:*

1. *enable Indigenous land owners to derive economic benefits from their land*
2. *enable jobs and economic advancement for Indigenous peoples*
3. *enable Indigenous home ownership and commercial enterprise*
4. *attract private sector investment and finance*
5. *develop industries and businesses support service delivery and infrastructure investment.*

Following a face-to-face meeting with members of the Minister's appointed Indigenous Expert Working Group in May 2015 and in line with the Expert Panel's request, this submission details the ILC's role in delivering economic and other benefits to Indigenous landowners. The ILC is also providing further commentary, based on the ILC's experience, on the preconditions of Indigenous economic development and on the principles that should underpin any policy changes recommended by this investigation.

SUMMARY AND RECOMMENDATIONS

SUMMARY POINTS

In relation to the terms of reference of this investigation, the ILC's position can be summarised as follows:

- Tenure is only one of multiple elements determining economic development on Indigenous land. The ILC submits that additional preconditions are equally important in enabling economic development on Indigenous land.
- The specific form of tenure is not crucial in allowing commercial development on Indigenous landholdings. Rather, the flexibility to create alienable mechanisms (such as long-term leases and Indigenous Land Use Agreements) is essential in assisting commercial activities.
- Existing land rights and native title legislation are adequate, when effectively used, to allow for economic development on Indigenous land.
- The ILC's experience is that social, cultural and environmental objectives are just as important to Indigenous landholders as economic objectives. The ILC's consultations with its Indigenous stakeholders strongly suggest that economic benefits are most effectively realised where cultural, social and environmental objective are also met.
- Land management, including natural resource and heritage management, can be a key source of employment for Indigenous communities in remote Australia. Indigenous people in the north of Australia in particular are well placed to benefit from innovation and long-term investment in the development of ecosystem services and the carbon economy.
- Governance and capacity building, both personal and corporate, are crucial to enabling Indigenous groups to derive benefits from landowning.
- Effective and transparent regulation and oversight of land owning corporations is a key role of government, and, as much as tenure, is a key determinant of the success or failure of land-based enterprises.
- Property-rights infrastructure (cadastral surveys, town planning) and other infrastructure (e.g. access roads) are necessary to achieving economic development on Indigenous land. This points to the need for urgent investment by governments at all levels in addressing widespread infrastructure deficits, in particular across remote Indigenous Australia.

RECOMMENDATIONS TO THE INVESTIGATION

The ILC asks that this investigation make recommendations on two issues relating to the operations of the ILC, requiring amendments to the *Aboriginal and Torres Strait Islander Act 2005*.

Recognising sea in the same respect as land

The ATSI Act should be amended to extend the ILC's remit to the sea. The current definition of land in the ATSI Act prevents the ILC from working with Aboriginal and Torres Strait Islander groups and corporations that hold rights over seas (such as rights acquired through the operation of the Native Title Act). The ILC supports¹ the use of sea rights to assist the economic development and independence of Indigenous groups, and advocates the inclusion of 'sea' in the same respect as land in defining the scope of the ILC's functions within the ATSI Act.

The ILC made a submission to this effect to the Senate Community Affairs Legislation Committee inquiry into the Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014, following representations made to the committee by the Torres Strait Regional Authority.²

Enabling the Land Account to grow

The Land Account that funds the ILC's operations has a fixed capital base. Real growth in the size of the Land Account is necessary to ensure it is adequate to meet the land needs of a growing Indigenous population, estimated to reach almost one million by 2026, as well as the land management needs of a growing Indigenous estate. A mechanism to enable real increases in the balance of the Land Account is included in the Stronger Land Account Bill, currently before Parliament. However, this Bill is unlikely to be legislated, given lack of support from the Senate committee. The ILC has made other representations to relevant Ministers and their departments, requesting that the Government explore widening the investment parameters of the Land Account and shifting its management to the Future Fund Management Agency. This reform would provide the ILC with more resources to pursue land-related benefits for Indigenous Australians and build on the corporation's many demonstrated successes.

¹ <http://www.nigelscullion.com/media-hub/indigenous-affairs/increased-commercial-fishing-opportunities-torres-strait-islander-and-a>

² http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/Stronger_Land_Account/Submissions

1. ABOUT THE ILC

The ILC is an independent corporate entity of the Australian Government, established originally under the ATSIC legislation in 1995 and latterly under the *Aboriginal and Torres Strait Islander Act 2005* (ATSI Act)³. The ILC assists Indigenous Australians to acquire land, and manage Indigenous-held land, however it was acquired, 'so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders' (s.191B of the ATSI Act). The ILC uses revenues from a perpetual fund, the Aboriginal and Torres Strait Islander Land Account (Land Account) and has two programs to support its purpose: land acquisition and land management.

The Land Account (then called the Land Fund) and the ILC were established as key elements of the negotiated settlement after the High Court's *Mabo* judgment (1992) recognised native title to land at common law. The *Native Title Act 1993* (NTA), and the later Wik amendments, not only confirmed prior extinguishment of native title over much of the Australian continent, but validated grants by the Crown since 1975 over native title tenure that would otherwise have been invalid by virtue of inconsistency with the *Racial Discrimination Act 1975*. In return for tenure certainty for non-Indigenous Australians, Indigenous interests gained access to a Land Fund, subsequently implemented through the establishment of the Land Account and the ILC. The Land Account and ILC provided recognition of, and partial compensation for, the 'vast majority of Indigenous Australians (that) have been dispossessed of that which is most precious to their sense of history and spirituality, that most essential component of their heritage—their land'⁴.

The ILC is established as a perpetual entity, recognising the intergenerational impact of dispossession and the need to ensure the sustainable management of the Indigenous estate into the future.

Land acquisition

The ILC acquires interests in land for the purposes of delivering social, cultural, environment and economic benefits to Aboriginal and Torres Strait Islander peoples. Since its inception, the ILC has acquired properties totalling more than 6.1 million hectares, of which 3.1 million hectares has been granted to Indigenous corporations in accordance with s.191D of the ATSI Act. Land acquisitions have ranged across remote pastoral and tourism properties, urban commercial properties and significant cultural properties. **Figure A** maps ILC purchased and granted properties across Australia.

³ http://www.austlii.edu.au/au/legis/cth/consol_act/aatsia2005359/

⁴ ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994, Second Reading

In its early years the ILC's main focus was on redressing dispossession through acquiring properties and, as quickly as possible, divesting them to Indigenous corporations to contribute to the expansion of the Indigenous estate. During this time, the challenges faced by Indigenous land owning corporations in using and benefiting from their land became increasingly evident. A proportion of divested properties were at risk of being lost from the Indigenous estate and subsequently re-acquired by the ILC. Early ILC acquisitions focused mainly on redressing dispossession served to demonstrate that landownership is a complex responsibility that requires commitment, good governance, sound property management and financial skills and a sustainable income source in order to generate lasting benefits for Indigenous landowners.

The ILC's land acquisition policies and processes have been incrementally refined to ensure that sustainable benefits are achieved through land ownership. Benefits are optimised when:

- Indigenous land owners hold clear aspirations and a plan for the delivery of achievable and sustainable benefits
- Indigenous land owners have the capacity and skills to implement viable activities on the land
- the land sustains the activities and delivers sufficient income to cover the costs arising from land ownership.

This refinement has driven an increased focus on income, training and employment generation as a vehicle for retaining acquisitions in the Indigenous estate and for supporting Indigenous economic development. Nevertheless, the ILC continues to give appropriate attention to Indigenous people's environmental, social and cultural aspirations in its decision making on land acquisition.

Most often, the ILC's land acquisition function works to acquire alienable title (such as fee simple or long-term leasehold from the Crown) on behalf of an identified Indigenous corporate entity. Where there is no immediate prospective grantee group for a property, the ILC seeks to bring the land into production through a variety of innovative land-use arrangements (e.g. share farmer use agreements, subleasing). All properties currently held by the ILC, including properties on which subsidiary businesses operate (see below), have active divestment plans. In general terms, these plans set out the aspirations of the prospective title holding body and seek to realise these aspirations by building the governance capacity of the organisation and maximising the achievement of benefits for local Indigenous people.

Where land is granted, the ILC applies caveats designed to ensure that land acquired by the ILC is not lost from the Indigenous estate. The caveat does not prevent land owners from using their property to access finance through commercial loans. The caveat merely requires that the ILC Board endorse the mortgaging of the property. No reasonable request has ever been refused. It does however provide a further barrier to loss from the Indigenous estate in situations where fraud or intimidation is a factor in the land owners' consideration. Land owners are able to negotiate commercial lease agreements, negotiate changes in land use or, in some cases, sell portions of the property granted if this is endorsed by the ILC Board. Land owners are encouraged to come to the ILC early in their planning and to consider the endorsement process as an additional layer of due diligence ensuring the financial viability of the option being pursued.

Land management

The ILC also has a statutory obligation to assist in the management of Indigenous land, however it was acquired. Indigenous land is defined in the ATSI Act as follows:

- (1) For the purposes of this Act, land is indigenous-held land if, and only if:*
- (a) an interest in the land is held by an Aboriginal or Torres Strait Islander corporation; or*
 - (b) an interest in the land is held by an Aboriginal person or a Torres Strait Islander.*

The ILC has a mandate to work with Aboriginal and Torres Strait Islander people and corporations across the breadth of Australia (excepting marine areas), irrespective of the tenure and property rights regimes operating in the areas of land owned, to deliver Indigenous benefits.

The ILC's land management program works with Indigenous land owners to develop their land holdings, responding to land owner aspirations and, where necessary, brokering third-party support from industry, government or the not-for-profit sector. Land management assistance is provided in two streams:

- regional projects embracing multiple properties and more complex structural or environmental challenges, such as the Indigenous Pastoral Program in the Northern Territory and Indigenous Landholder Services in Western Australia
- smaller projects that may deliver planning, capacity building, infrastructure, plant and equipment on single properties.

Figure B shows the geographical spread of ILC land management activities at 30 June 2015.

The ILC's land management projects may focus on the protection and maintenance of cultural and environmental values, as well as the development of land-based enterprise. In fact, the ILC's experience is that social, cultural and environmental objectives are just as important to Indigenous land owners as economic aspirations—this was reflected in the consultations undertaken by the ILC to inform the National Indigenous Land Strategy 2013–17.

Land management itself can be an important source of employment for Indigenous people living in regional and remote Australia. On Indigenous Protected Areas, now making up one third of Australia's Natural Reserve System and established on many properties acquired and granted by the ILC, Indigenous owners manage their land for its cultural and environmental values, while being paid for ecosystem services.

The ILC has also facilitated significant investment and innovation in the environmental services sector. As the proponent of the Fish River Fire Project⁵, Australia's first controlled savanna burning project to be approved under the Carbon Farming Initiative, the ILC is assisting Indigenous Australians to be at the forefront of the carbon economy. In developing the project, the ILC has worked in collaboration with the North Australian Indigenous Land and Sea Management Alliance (NAILSMA) and the Nature Conservancy to establish an innovative land management enterprise offering significant opportunities for Indigenous landholders to derive economic and broader benefits, while investing in the development of scientifically endorsed methodologies. Fish River is currently being used as a demonstration project to assist development of other controlled savanna burning projects by Indigenous groups across northern Australia.

In March 2015 the ILC launched a new way of doing business, called *Our Land Our Future*. These new arrangements allow the ILC to operate more flexibly and responsively along a spectrum of assistance ranging from existing small land management grant funding to working with land holders in joint venture and business partnerships, potentially involving multiple parties. Features of the new arrangements include:

- open timelines and simplified processes
- more engagement with stakeholders, driven by landholders
- co-investment and partnerships—bringing groups together across regions with multiple funding partners

⁵ <http://www.fishriver.com.au/>; <http://www.abc.net.au/news/2013-06-14/the-indigenous-fire-project-generating-carbon/4756114>

- sustainability, with a focus on impact—the ILC will work with landholders to develop clear visions and projects that support the achievement of these visions.

These new program arrangements are consistent with recent Indigenous advocacy for place-based development, for example in the *Empowered Communities: Empowered Peoples* report to the Australian Government (March 2015). This report, from an alliance of Indigenous organisations across Australia, contends that Indigenous groups need to lead their own development, based on locality and culture. Governments should not bring prescriptive programs, but should provide assistance (whether direct funding or the brokering of third-party support) tailored to realisable local aspirations.

Commercial activity through ILC subsidiaries

As part of its land management function, the ILC engages in commercial activity through three wholly-owned subsidiaries that operate according to sound business principles, as required by s.191F (1) of the ATSI Act. These businesses are run on behalf of, and to provide benefit for, Indigenous peoples. The ILC's commercial subsidiaries operate in one or both of two circumstances:

- i) to ensure land acquired, but not yet diverted, is managed and put to effective use so as to benefit Indigenous interests (eg. By building up infrastructure on the land and/or by providing Indigenous employment); and
- ii) to assist Indigenous landholders derive maximum benefits from their land by leasing it from them on commercial terms, and delivering long term benefits to Indigenous people through the application of specialist commercial skills and expertise.

Two subsidiaries manage the operation of the ILC's pastoral and tourism businesses respectively. National Indigenous Pastoral Enterprise (NIPE) Pty Ltd manages 14 pastoral properties, across three States and the Northern Territory. All but one are cattle enterprises. Voyages Indigenous Tourism Australia (Voyages) Pty Ltd was established in 2011 to own and manage Ayers Rock Resort and operate the ILC's other tourism assets (Mossman Gorge Centre and Home Valley Station) as well as assist in the development of Indigenous tourism more generally. The third, National Centre of Indigenous Excellence Ltd, manages the urban community hub owned by the ILC in Redfern, Sydney.

Through its subsidiaries, the ILC invests in critical business assets such as, in the case of agricultural businesses, infrastructure and herd development. It brings intellectual capital to partnerships in addition to funds—the ILC and its subsidiaries apply sound operational methods, model best

practice, test new ways of gaining income from the land, monitor the health of the land and look for ways of improving the land in the longer term. ILC-run businesses are key links in wider networks supporting Indigenous enterprises and other land-based projects in the regions in which they operate.

ILC-run businesses are also important sources of employment and training for Indigenous Australians, particularly in remote Australia. The *Our Land Our Jobs* training-to-employment program is delivered at residential training facilities established on the enterprises managed by NIPE and Voyages. The program is integrated into the operation of the businesses, helping to create a highly skilled Indigenous workforce for the pastoral, tourism and related industries. For the financial year ending 30 June 2014, ILC-run enterprises provided traineeship or employment positions for 908 Indigenous participants.⁶

Other ILC contributions to Indigenous economic development

The development of Small to Medium Enterprise (SME) is recognised as a key driver of economic growth in the mainstream economy. Likewise, incentives and support for SME development by Indigenous people are important enablers of economic development on Indigenous land. The ILC supports the development needs of small and medium enterprises through its regular 'Small Land Management Assistance' grant rounds. Over the 2014–15 rounds, nine individual enterprises have received capital and infrastructure development funding, five entities have been funded to develop plans to further their business operations, and more than \$560,000 has been invested in property management planning to establish the viability of land-based enterprises. In total, the ILC has invested more than \$1.3 million in the development of SMEs on Indigenous-held land through grants in 2014–15.

The recently released Commonwealth Indigenous Procurement Policy⁷ recognises that Indigenous business needs demand-side support. This is critical to creating successful enterprises, especially in areas where opportunities may be harder to come by: regional and remote Australia. The ILC has a legislative imperative to 'give priority' to: *maximising the use of goods and services provided by businesses owned or controlled (whether directly or indirectly) by Indigenous people.*⁸ Through its procurement activities and those of its subsidiaries, the ILC supports the achievement of the objectives of the Indigenous Procurement Policy.

⁶ ILC Annual Report 2013–14, pp.22–3.

⁷ <http://www.dpmc.gov.au/indigenous-affairs/publication/commonwealth-indigenous-procurement-policy>

⁸ *Aboriginal and Torres Strait Islander Act 2005*, s.191F(2)(c)
http://www.austlii.edu.au/au/leqis/cth/consol_act/aatsia2005359/

2. IMPORTANT FACTORS UNDERPINNING THE ILC'S ACHIEVEMENTS

Longer term focus with 'patient capital'

The Land Account is the basis of the ILC's independence from political/budgetary cycles, allowing it to make investment decisions over the medium to long term. Unlike commercial and other providers of business and enterprise finance (such as Indigenous Business Australia) that have a legislative or commercial requirement to achieve minimum returns on investment, the ILC may engage in commercial enterprise under sound business principles (subject to s.191 of the ATSI Act) while effectively discounting the associated acquisition or sunk capital costs over a significant period. As a grant maker, the ILC may invest in land acquisition or management activities that provide for a medium to long term financial return to Indigenous land holders, without regard to immediate return on investment. This patient capital provides flexibility and enables the ILC to assist in bringing Indigenous-held land into production (for land-based enterprises) or in developing infrastructure (e.g. for tourism or service ventures) to help Indigenous landholders to realise their aspirations.

Where the ILC operates through its subsidiaries, significant investment in the delivery of training and employment allows the delivery of immediate benefits while simultaneously building Indigenous peoples' capacity in both business and land management, in line with their aspirations.

See **Attachment: Patient Capital Case Studies** for examples of the ILC's development work.

Working across varied land tenure arrangements

To generate Indigenous benefits, the ILC works with a complex array of land tenure systems. The ILC's operations provide evidence that Indigenous economic development can be achieved across existing tenure types. National Indigenous Pastoral Enterprises currently operates across 14 properties spanning different tenure types: fee simple properties, either owned by the ILC or where the ILC leases them through the relevant Aboriginal Land Trust (*Aboriginal Land Rights [Northern Territory] Act 1976*); Crown Lands (pastoral) Leases in Western Australia; and State Term Leases in Queensland. Across these tenure types, various levels of native title determination are held, from determinations of exclusive possession native title (as in the case of Merepah Station, Qld) to areas where (subject to s.47A of the Native Title Act) native title may be expected to have been significantly extinguished. Voyages-operated tourism enterprises are conducted on land held under fee simple (Ayers Rock Resort), Crown Lands Lease (Home Valley Station) and freehold (Mossman Gorge Centre).

The ILC has successfully negotiated adequate security of tenure across these varied types of land arrangements to allow for medium to long term business investment and the establishment of viable enterprises. This supports the ILC's position that existing legislation is adequate, when effectively used, to allow for economic development on Aboriginal land.

Roebuck Plains Station, near Broome, WA, provides an example of the ILC/NIPE's working with Indigenous landowners through innovative arrangements. Roebuck Plains Station was acquired by the ILC in 1999 and subsequently developed with ILC investment into one of the foremost cattle stations in Australia. The Roebuck Export Depot was developed by the ILC on an adjacent property. A native title claim was determined in 2006, giving the Yawuru Traditional Owners underlying exclusive possession native title co-existing with the operations of the pastoral lease. In September 2014 Roebuck Plains Station was granted to the Prescribed Body Corporate, Nyamba Buru Yawuru Ltd, and an ongoing partnership established between the ILC and Yawuru. Features of this partnership include:

- the sub leasing of the cattle operations to the ILC for 15 years
- income security to Yawuru through commercial rent of land for the cattle production
- a discrete lease arrangement for the export cattle yards facility
- financial support for Yawuru to manage ecological and cultural significant area of Roebuck Plains through an Indigenous Protected Area
- processes for agreement over Yawuru use of Roebuck plains for Yawuru cultural/ecological management, tourism and horticulture.

Cementing an innovative and long-term relationship between Yawuru and the ILC, the divestment and leaseback provide opportunities that balance protection of country and cultural and social enhancement with the generation of economic benefits. Patrick Dodson, Yawuru leader and chair of Nyamba Buru Yawuru Ltd, described the divestment as 'highlight(ing) the fundamental importance of native title; producing cultural, social and economic dividends for the Yawuru and broader community'. The determination of exclusive possession native title underlying the Roebuck Plains Station pastoral lease based on s.47A of the Native Title Act demonstrates an additional ILC contribution to the achievement of positive native title outcomes through the Federal Court's definition in the *Adnyamathanha* decision (February 2014) of the beneficial effect of the ILC's landholdings.

3. PRECONDITIONS FOR INDIGENOUS ECONOMIC DEVELOPMENT

The ILC urges this investigation to take an evidence-based approach to the issues under investigation, including consideration of past reviews, research and accounts of successful Indigenous land-based projects. As the experience of the ILC demonstrates and as discussed below, the preconditions for advancing Indigenous economic development are complex and multi-faceted. Communal title is not necessarily a cause of Indigenous under-development, as commonly characterised. An evidence-based approach to reform would note different economic-development outcomes occurring across tenure types and seek to identify the real common denominators of economic development on Indigenous-held land.

The need for individual and corporate capacity building

As was demonstrated in the early history of the ILC, Indigenous land owners and corporations have often lacked the capacity to manage the responsibilities arising from their land holdings and associated ventures. Integral to the ILC's current programs is the development of individual and corporate capacity in the land sector.

Since 2007 the ILC's *Our Land Our Jobs* program has invested approximately \$27 million⁹ in employment and training activities on ILC-run agricultural and tourism businesses. The ILC makes this investment on the basis that other responsible State and Australian Government agencies 'match' the ILC's funding, or at least provide adequate co-investment. In April 2015, the ILC co-invested \$3.74 million with the Australian Government committing \$3.19 million through the Indigenous Advancement Strategy to deliver over 300 Indigenous jobs through ILC subsidiaries for 12 months from 1 February 2015.

Our Land Our Jobs provides participants with workplace-based training, culminating in employment in an ILC enterprise or with an industry partner. Participants benefit from the holistic support provided by the program including pre-vocational and life skills training as well as a supportive residential component. *Our Land Our Jobs* works to break the cycle of training for training's sake, producing graduates with the skills and personal capacity to succeed in their chosen industry.

Equally important is corporate or community capacity building. Indigenous individuals can gain economic benefits because the community of which they are a member has organised itself (put in place credible, culturally-based governance processes, clarified its collective vision, undertaken

⁹ Board Decisions: 294, 307 & 406; LM Decisions 136, 172, 204.

effective planning) to work collaboratively on projects that provide opportunities for its people. Successful community-based development is also dependent on factors outside the group including assets to build on (that could be supplied through ILC funding), rights to leverage from (native title or other rights flowing from land rights legislation), the availability of infrastructure, and access to appropriate services and support from government, non-government organisations and/or the private sector. The ILC's *Our Land Our Future* arrangements allow the ILC to focus on supporting landholding corporations to build corporate and governance capacity, as they actively develop their ideas and aspirations.

Government under-investment and its attendant responsibilities

Remote Indigenous Australia, where most Indigenous land is located, is characterised by conspicuous under-development. This under-development relates not just to basic infrastructure such as roads and telecommunications but also to functional and formalised land administration systems on much Indigenous-held land. Remote Australia must be made more amenable to self-development by its resident Indigenous landowners.

Economic development cannot proceed without robust land administration (e.g. cadastral surveys and town plans) and rates generation as well as the application of the Building Code and other mechanisms that protect individuals' property rights and financiers' interests. These matters are the responsibility of State and Territory Governments, and are critical to unlocking the capital value of Indigenous land assets.

Agencies of both the Northern Territory¹⁰ and the Queensland Governments have made significant inroads in the provision of these 'catch up' property-infrastructure developments over the past 3–5 years, after the Australian Government's remote housing programs created the structural pre-conditions for investment that exist in mainstream, serviced settings.

The need for more resources and prudential supervision in the native title system

The operation of the Native Title Act has benefited many Indigenous groups; however, recent reviews have also highlighted the difficulties faced by native title holders in using their rights to leverage economic development. One issue relates to the capacity of and support for the organisations that hold determined native title locally, Prescribed Bodies Corporate (or Registered Native Title Bodies Corporate). The Australian Government-commissioned *Review of the Roles and*

¹⁰ http://www.dlgcs.nt.gov.au/about_us/remote_service_delivery/land_tenure

Functions of Native Title Organisations (Deloitte Access Economics, March 2014) found that ‘for the native title system to deliver meaningful benefits for Indigenous Australians, the system must provide scope for RNTBCs to develop their capacity. Well-functioning RNTBCs could play an important role in empowering Indigenous communities ...’ Over the last two financial years, the ILC has allocated an average of 30 per cent of its small land management funding to PBCs, but is not in a position to meet all funding deficits in the native title system. The Australian Government announced more direct funding to PBCs, as well as a capacity building panel, in the *White Paper on Developing Northern Australia* (June 2015). However, considerable investment in this sector is required if increasing numbers of PBCs are to become effective brokers of community development

The report of the Native Title and Traditional Owner Benefits and Governance Working Group (2013)¹¹ also documented the numerous problems encountered by native title holders in realising their economic aspirations. The ILC supports the recommendations of this group to support land owners/native title holders with prudential supervision, appropriate tailored investment vehicles and sound advice to maximise the prospect of sustainable economic development. Current arrangements whereby many land access payments are placed in charitable trusts or similar vehicles inhibit economic development on Indigenous-held land, though these arrangements are tax efficient and enable long-term accumulation of funds. Legislative restrictions make it difficult for a charitable trust to operate a for-profit business. The ILC believes that consideration should be given to the establishment of an Indigenous Community Development Corporate entity, as recommended by the Working Group, as a viable vehicle of economic development through income generated through land-access payments, including through native title settlements.

The need to seek innovative land-use arrangements within existing legislative regimes

The argument is often made that Aboriginal land ownership regimes, which confer communal interests, restrict the ability of remote Indigenous communities and/or native title holders to leverage financial value from their land to achieve economic outcomes. In this context Australia sits well behind other jurisdictions, such as Canada, where creative mechanisms have been developed and governments, major financial institutions and Indigenous interests have worked in genuine partnership to address the tension between the inalienability of Indigenous rights over and connection to land and the ‘bankability’ of title to enable Indigenous communities to participate in economic development.

¹¹ <http://www.treasury.gov.au/Policy-Topics/Taxation/Native-Title-Working-Group/~media/Treasury/Policy%20Topics/Taxation/Taxation%20of%20Native%20Title/Government%20Response/PDF/Native%20Title%20Government%20Response.ashx>

In Australia there have been only limited efforts to explore opportunities arising from the leasing or other regimes established by land rights legislation and the Native Title Act, in particular the flexibility available under the Indigenous Land Use Agreement provisions of the latter Act. The mining industry is the one exception, and has successfully employed these and related mechanisms in reaching negotiated agreements to secure exploration and/or mining operations on lands either held under Indigenous ownership or the subject of native title claims.

The Australian Government has the opportunity to provide leadership by offering direct incentives to key stakeholders (especially the States and Territories) in adopting alternative settlement framework agreements to resolve outstanding native title claims. This is the approach supported by the ILC in its own Native Title Policy (2013). The Australian Government should also engage directly with Indigenous interests (via land councils and Native Title Representative Bodies) and major financial institutions to explore and identify means of overcoming existing barriers to private investment in land held or under claim by Indigenous interests. The availability of secure (alienable) tenure options, without compromising underlying communal and inalienable title, has the potential to stimulate private investment.

4. PRINCIPLES THAT MUST UNDERPIN ANY REFORM

Representation and consent

The ILC contends that it is vitally important to ensure that processes underpinning decision making about land use support the full, informed and prior consent of Indigenous land owners and native title holders.

Institutions such as the Northern Territory land councils and Native Title Representative Bodies have supported Indigenous people to secure and manage their land rights and ensure that decisions about land receive due consideration and consultation with appropriate land holding groups. Land councils play an important role in ensuring that Traditional Owners are aware of the potential impacts of decisions on their intergenerational interests in land. They are critical brokers of economic development on Indigenous land, ensuring that Traditional Owners are appropriately heard and represented in dealings about country.

The ILC considers that the management and assurance of free, prior and informed consent is especially critical where decisions are made to convert landholdings to freehold parcels (as provided under recent Queensland legislation). The level of consent required from Traditional Owners should increase depending on the nature of the tenure changes being sought: ranging from short term leasing, to long term or township leasing, to agreeing to freehold tenure for their land.

The ILC submits that the lease-making and agreement-making arrangements available under existing land rights and native title legislation are largely adequate to support alienable land tenure, so long as these arrangements are effectively utilised and the informed consent discussed above has been established.

Attachment: Patient Capital Case Studies

ILC agricultural businesses ILC agricultural businesses are operated as commercial enterprises using sound business principles in accordance with section 191F (1) of the *Aboriginal and Torres Strait Islander Act 2005*. The ILC operates businesses to increase on-the-job training and employment opportunities for Indigenous people, not only in pastoral activities, but also in natural resource management. Through these businesses, Indigenous-held land is making a significant contribution to the economic activity of the region in which each business is located and is bringing large areas of previously undeveloped land into production. During the past seven years, the ILC has been developing its businesses and establishing each one as an autonomous business entity. Now that process has largely been completed and the individual businesses are fully operational, their activities are being integrated, where practical, to increase productivity and profitability.

Gunbalanya Station and Meats, Gunbalanya, NT The ILC's lease-back of Gunbalanya Station and Gunbalanya Meat Supplies from Traditional Owners has enabled the development of a floodplain pastoral operation, small commercial abattoir and pastoral and meat processing training centre in a remote community with few options for sustainable economic activities. Gunbalanya receives cattle from ILC properties in the Northern Territory for the meatworks and finishes cattle for live export. Gunbalanya Meats operates a small abattoir and retail butcher shop in the community of Gunbalanya. Beef and buffalo meat is processed and sold to a wide range of customers, including eight Indigenous community supermarkets, various Northern Territory meat wholesalers and retailers, and Voyages Indigenous Tourism Australia which operates Ayers Rock Resort, Mossman Gorge and Home Valley Station.



How the ILC is working

- Injected more than \$4 million capital investment.
- Provided training, support, planning and management support to develop a pastoral business and meatworks.

Collaboration

- The ILC and Traditional Owners entered into a 15-year agreement with Gunbalanya Meat Supply Pty Ltd, the Arnhem Land Aboriginal Land Trust and the Northern Land Council.

Outputs

The business has brought Indigenous-held land back into production, increased throughput at the meatworks and improved food security for the region

- Gunbalanya Station produced a cash operating surplus of \$328,000 for the year ending June 2014.
- Gunbalanya Meats achieved a cash operating surplus of \$76,000 for 2013–14.
- In 2014, 24 Indigenous people were employed by Gunbalanya Meats and Gunbalanya Station; integration of the businesses enables a wider range of employment opportunities for local workers.
- In 2013–14, there were 18 new training commencements and 18 training participants were carried over from 2012–13; 59 Indigenous trainees completed training across the two businesses.

Cultural, environmental and social benefits

- Income received by Indigenous staff and trainees benefits individuals and families living in the Gunbalanya community.
- Gunbalanya Meats supplies fresh affordable meat to eight Indigenous community grocery stores.
- *Mimosa pigra* weed has been controlled over more than 1000 hectares of Gunbalanya Station.

ILC tourism businesses the ILC's tourism businesses at Ayers Rock Resort, Mossman Gorge Centre and Home Valley Station provide Indigenous traineeships in hospitality and tourism resulting in employment at one of the businesses or with an employment partner. In 2011 the ILC Board established a wholly-owned subsidiary company, Voyages Indigenous Tourism Australia Pty Ltd (Voyages), to manage and operate the ILC's tourism business portfolio and act as a vehicle to assist the development of Indigenous tourism across the nation. Voyages' vision is to help create a skilled Indigenous workforce for Australia's hospitality and tourism industry.

Mossman Gorge Gateway Centre is an example of expanding and developing the Indigenous estate to establish a nationally significant Indigenous tourism business and training facility to create Indigenous employment and drive economic development.

The ILC (through Voyages) will manage the centre for an estimated ten years, ensuring the business is secure and bearing a significant portion of the risk associated with the 'start up' phase of such a large venture. This 'patient capital' enables Traditional Owner corporation Bamanga Bubu Ngadimunku Inc develop capacity—both corporately and in working with Mossman Gorge community members to gain skills and training in hospitality and business management, ensuring that, post divestment, the centre remains an Indigenous-held opportunity for local indigenous employment



How the ILC is working

- Acquired 9-hectare property at the entrance to the Mossman Gorge Aboriginal Community.
- Constructed a world-class \$16m visitor centre at the site, opened in June 2012.
- Constructed a residential training college to provide accredited training in the tourism, hospitality and related industries.
- Provided a dedicated, locally-based human resources officer for on-ground co-ordination, community engagement, and liaison with employment and training providers, host employers and government agencies.

Collaboration

- Mossman Gorge Aboriginal Community identified an opportunity to develop businesses from the more than 500,000 tourists that visit the gorge each year. The community had the vision of transporting tourists from outside the community up to the gorge to reduce the impacts of traffic on the environment and their community. However, it did not have the capital or capacity to take advantage of the opportunity.
- The ILC project leverages funding and in-kind support from a range of State and Australian Government agencies and the Mossman Gorge Aboriginal Community.
- ILC is the principal funder, contributing around \$20m; the investment is expected to be recouped in 10 years.

Outputs

- 148 Indigenous people have been employed at the centre since its opening in June 2012 and the centre currently enjoys an 89 per cent Indigenous employment rate.
- Over 2011–15 the Mossman Gorge Centre business hosted 73 Indigenous trainees.
- In its second full financial year, Mossman Gorge Centre welcomed more than 279,000 visitors generating approximately \$3.3 million in total revenues.

Divestment

As part of the development and delivery of the Mossman Gorge Centre, the ILC and Bamanga Bubu Ngadimunku Inc (BBNI) have had regular discussions and meetings to develop a shared understanding on future divestment of the centre. In recent discussions a range of divestment options have been considered by the BBNI board, including the establishment of a separate corporation for the purpose of holding title to the Mossman Gorge Centre.

ILC and the carbon economy: The ILC provides support to Indigenous people to assist in managing environmental challenges and heritage values on their land and to create sustainable land-based economic development opportunities. The ILC seeks innovative solutions to environment, carbon and heritage challenges in the development of policy, the design and implementation of new initiatives and the conduct of research and development.

The ILC is committed to collaborating with Indigenous landowners, the Australian Government and industry to maximise opportunities for Indigenous people in the emerging carbon economy.

Indigenous people are well placed to take advantage of opportunities in the carbon economy, including through tropical savanna fire management, revegetation, forestry, native vegetation management and improved cattle management. These land-based activities offer opportunities for generating income under carbon-offset schemes, at the same time helping to protect the cultural and environmental values of Indigenous-held land.

Fish River Fire Project Fish River is Australia's first controlled savanna burning project to be approved under the Carbon Farming Initiative (CFI) to produce Kyoto-compliant Australian Carbon Credit Units (ACCUs). Fish River is a largely pristine 178,000 hectare property located in the Daly River catchment of the Northern Territory. Management of this nationally significant conservation property is guided by a comprehensive plan and an Indigenous Advisory Group representing four Traditional Owner groups: Larbaganyan, Wagiman, Malak Malak and Kamu. The project links traditional burning practices with the latest satellite imagery and mapping technologies and provides training and employment for Indigenous Australians on country. Traditional pattern or mosaic burning is used to protect the country from devastating wildfires.



How the ILC is working

- Acquired 178,000 hectare property in Daly River region, NT.
- As the proponent of the Fish River CFI project, the ILC manages the creation and sale of ACCUs.
- Provides technical guidance and support to other Indigenous groups across the north of Australia, with Fish River being used as a demonstration project to assist development of other controlled savanna burning projects.

Collaboration

The North Australian Indigenous Land and Sea Management Alliance Ltd (NAILSMA) was responsible for developing the Carbon Farming (Reduction of Greenhouse Gas Emissions through Early Dry Season Savanna Burning) Methodology used on Fish River. NAILSMA and project partner, The Nature Conservancy, helped develop the project, together with funding from the Caring for our Country program.

Outputs

- 49,041 ACCUs produced through the Fish River Fire project between 2010 and 2014.
- The employment of local Indigenous people, many of whom have familial connection to Fish River, is facilitating access of Traditional Owners to the property, reconnection with cultural values and protection of important cultural sites.
- Under the comprehensive Plan of Management, Fish River is managed as an International Union for Conservation of Nature Category II Protected Area. The reduction of late dry season wildfires helps protect the many rare and threatened animal and plant species found on the property.
- The project is expected to continue to deliver around 13,000 tonnes of CO₂-e emissions abatement each year, making a positive contribution to the challenge of tackling climate change.

Divestment

The ILC is working with the Northern Land Council and the Indigenous Advisory Group to establish an appropriate Aboriginal corporation to which the property will be granted. Fish River is a culturally significant landscape for the Labaganyan, Wagiman, Malak Malak and Kamu people who are the Traditional Owners of the property.

Figure A:

**ILC Held and Granted Properties
Australia, 06 May 2015**

- ILC and acquisition less than 15,000 ha
- ILC Acquired Property
- ILC Granted Property
- ILC and acquisition greater than 15,000 ha
- ILC Acquired Property
- ILC Granted Property
- Protected Area
- Decided Indigenous Protected Area (DIPA 2012)
- COAG Protected Area (CPA 2012)

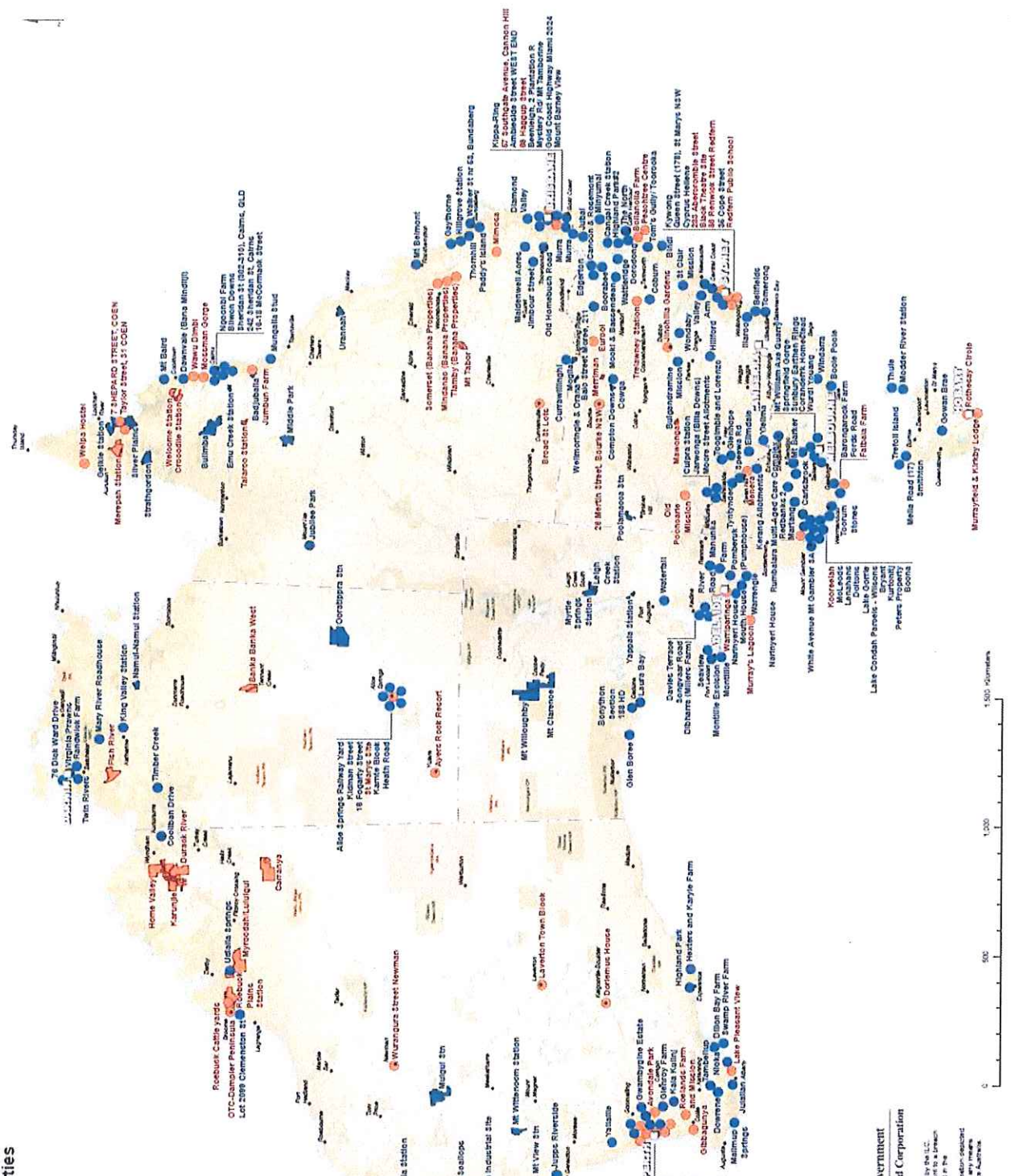
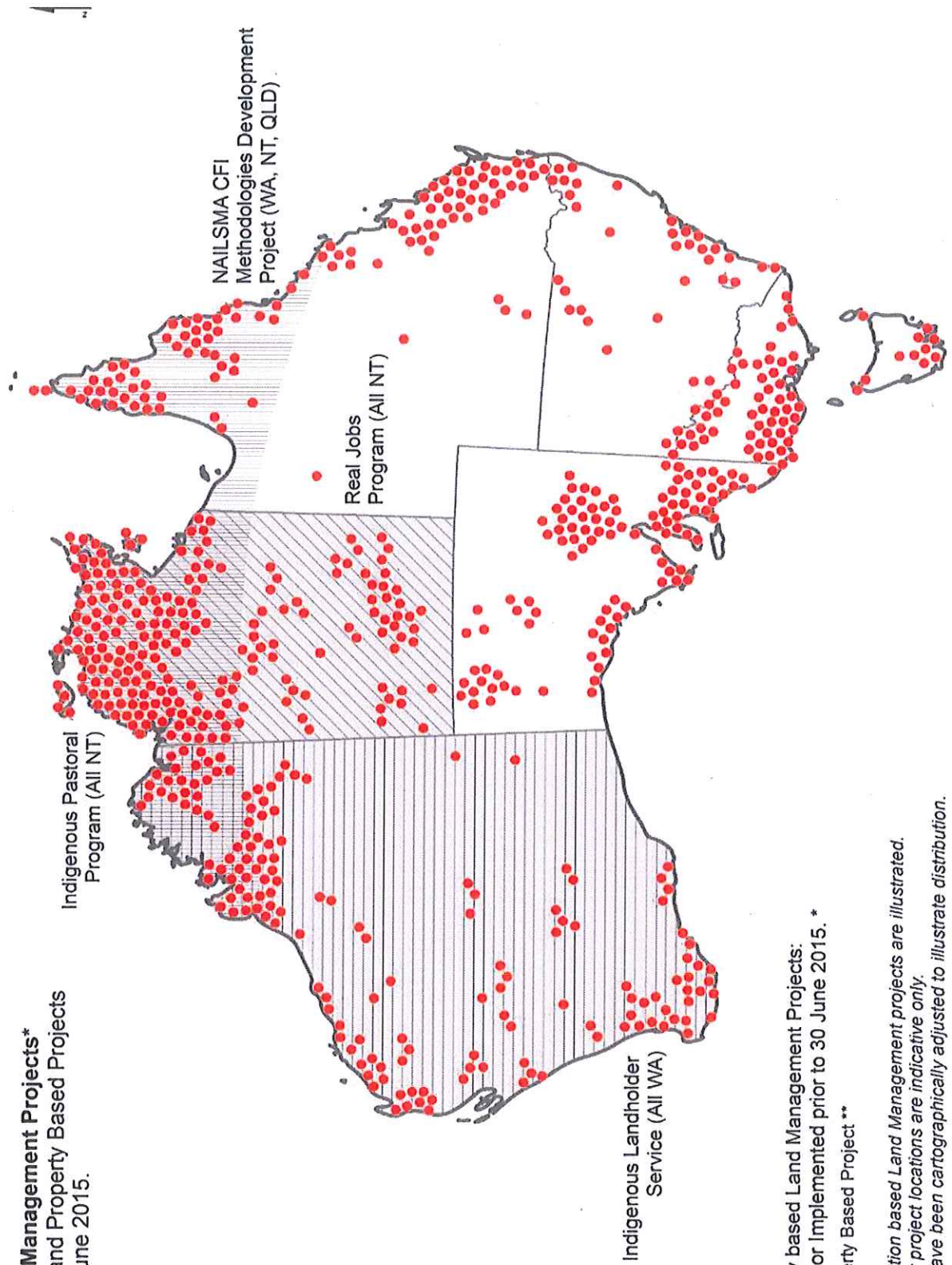


Figure B:

**ILC Land Management Projects*
Regional and Property Based Projects
as of 30 June 2015.**



ILC Property based Land Management Projects:
Completed or Implemented prior to 30 June 2015. *

● Property Based Project **

* Only location based Land Management projects are illustrated.

** Property project locations are indicative only.

** Points have been cartographically adjusted to illustrate distribution.