Indigenous land in Australia: A quantitative assessment of Indigenous landholdings in 2000

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Foreword

The research reported in this discussion paper was prepared by David Pollack in 2000 while he was on a secondment to the Centre for Aboriginal Economic Policy Research (CAEPR) from the Aboriginal and Torres Strait Islander Commission (ATSIC). The motivations for this research are various. At the most macroscopic policy level, the issues of Indigenous land ownership and its relationship to economic development have animated CAEPR research since its establishment in 1990. Some staff at the Centre had even researched these issues for over a decade before then. In the 1990s a number of legal and statutory developments refocused policy attention on the issue of land, most notably the Mabo High Court judgment, the passage of native title legislation, and the establishment of the Aboriginal and Torres Strait Islander Land Fund and the Indigenous Land Corporation (ILC). These developments might entitle one to think that all the policy change was occurring at the federal level, but in fact a great deal of land rights statute had also been passed at the State level in the 1980s and 1990s.

In 1998, David Pollack and I undertook some research on the first five years of the Indigenous Land Corporation, and this research has subsequently been updated. In undertaking this work we became acutely aware that there was no single comprehensive data set on Indigenous landholdings in Australia and that the most comprehensive publicly-available information on Aboriginal land produced by AUSLIG was both somewhat dated (being published in 1993) and fairly broad-brush in its style of quantification.

The research reported here was in the CAEPR Research Plan 2000, but for a variety of reasons including the unexpected complexity of answering the seemingly straightforward question of how much land is under Indigenous ownership, it was delayed. Late in 2000, David moved to work with ATSIC in Melbourne, but he and I were keen for this research to be completed. David has finished the work in Melbourne, with one or two visits to CAEPR.

This research is not definitive—Indigenous land ownership is too dynamic for that—but it is important. I anticipate and hope that it will stimulate further research and debate, particularly in respect to land management and usage, and economic development outcomes from land ownership, as well as other social and cultural research and policy issues linked to Indigenous ownership of land. David and I especially hope that this research will be of use to the ILC, the Indigenous organisation that is charged with the enormously complex task of planning for and managing the Indigenous estate, estimated by this research to constitute as much as 18 per cent of the Australian landmass.

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Director, CAEPR
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Abbreviations and acronyms

AAD	(Western Australia) Aboriginal Affairs Department
AAL	Aborigines Advancement League
AAPA	Aboriginal Affairs Planning Authority (WA)
ABA	Aboriginal Benefits Account
ABS	Australian Bureau of Statistics
ADC	Aboriginal Development Commission
AGPS	Australian Government Publishing Service
AHL	Aboriginal Hostels Limited
ALCT	Aboriginal Land Council of Tasmania
ALFC	Aboriginal Land Fund Commission
ALRA	*Aboriginal Land Rights (Northern Territory) Act 1976* (Cwth)
ANAO	Australian National Audit Office
ANU	The Australian National University
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSICDC	Aboriginal and Torres Strait Islander Commercial Development Corporation
AUSLIG	Australian Land Information Group
CAEPR	Centre for Aboriginal Economic Policy Research, ANU
COA	Commonwealth of Australia
DAA	Department of Aboriginal Affairs (Commonwealth)
DAANSW	Department of Aboriginal Affairs New South Wales
DATSIPD	Department of Aboriginal and Torres Strait Islander Policy and Development (Qld)
DEHAA	Department for Environment, Heritage and Aboriginal Affairs (SA)
DOGIT	Deed of Grant in Trust (Qld)
DOLA	Department of Land Administration (WA)
DPM&C	Department of Prime Minister and Cabinet
ILC	Indigenous Land Corporation
ILUA	Indigenous Land Use Agreement
LAMP	Land Acquisition and Management Program (ATSIC)
MOA	Memorandum of Agreement
MTLRA	*Maralinga Tjarutja Land Rights Act 1984* (SA)
NARU	North Australia Research Unit, ANU
NHT	Natural Heritage Trust
NILS	National Indigenous Land Strategy
NNTT	National Native Title Tribunal

NSWALRA	*New South Wales Aboriginal land Rights Act 1983* (NSW)
NTA	*Native Title Act 1993* (Cwth)
NTDLP&E	Northern Territory Department of Lands, Planning and Environment
OAA	Office of Aboriginal Affairs
PBC	Prescribed Body Corporate
PIRSA	Primary Industries and Resources South Australia
PLA	*Pastoral Land Act 1992* (NT)
PLRA	*Pitjantjatjara Land Rights Act 1981* (SA)
QPNR	Queensland Department of Natural Resources
RILS	Regional Indigenous Land Strategies
RLF	Regional Land Fund
SAMLISA	Strategy for Aboriginal Managed Lands in South Australia
WAALT	Western Australia Aboriginal Land Trust

Summary

This paper estimates the area of land held by Indigenous people in Australia in 2000. It details the legislation and programs that have lead to the accrual of land for Indigenous people in Australia since the concept of Indigenous ownership of land under Australian law, rather than the allocation of reserve lands, was first addressed in the mid 1960s. It is based on a literature review and data provided by a variety of government agencies and Indigenous organisations around Australia. Using this information, the paper estimates that Indigenous Australians either own, control or have management arrangements over land in the range of 16 to 18 per cent of the Australian continent. The lower range is based on reliable data whereas the higher range is speculative due to the fact that the aggregated area of many small landholdings has never been quantified.

As the paper demonstrates, the types of tenures held by Indigenous Australians differ from jurisdiction to jurisdiction and within jurisdictions. This is a result not only of the federal system of government in Australia, where land management and administration is the role of the State or Territory governments, but also a product of different priorities and objectives set by Federal, State and Territory governments in addressing Indigenous peoples' aspirations for land. In some States and Territories, land rights regimes exist for lands to be claimed across the entire jurisdiction, while in other States and Territories land rights legislation is limited to the grant of specific parcels of land. The plethora of programs, statutes and government agencies involved in dealing with Indigenous land over the past decades has meant that, across Australia today, there is extreme diversity in the types of ownership, beneficiaries, tenures, property rights and governance structures available to Indigenous people.

Indigenous landholdings in Australia in 2000 can be characterised as follows:

- most Indigenous land is located in the remote rangeland regions of the continent. There are many more Indigenous land parcels in the south-east of the continent; however these parcels are very small in area;
- about half of the aggregated area of Indigenous land in Australia is located in the Northern Territory as a result of successful claims under the Commonwealth's *Aboriginal Land Rights (Northern Territory) Act 1976*;
- the aggregated area of Indigenous land in Australia was yet to be influenced by land subject to native title recognition under the common law or the *Native Title Act 1993*;
- the area of land accrued by purchase with the assistance of Indigenous Land Acquisition programs is very small by comparison with land accrued by land rights legislation. However, the significance of the acquisition programs cannot be underestimated as they may be the only means by which Indigenous aspirations to land can be addressed in many parts of Australia.

The paper also assesses the area of Indigenous land in each State and Territory. It details the programs and legislative frameworks of the Commonwealth, State and Territory governments which contribute to addressing Indigenous aspirations for land in each jurisdiction.

Acknowledgments

This paper was originally presented as part of the CAEPR seminar series in September 2000. It has benefited from comments made by participants at the seminar. Comments provided by readers Nick Peterson, Robert Levitus, and Elspeth Young have also been very helpful. Special thanks should also be made to Jon Altman, David Martin and Bill Arthur for their encouragement and comments during the development of and research for this project. Editorial assistance was provided by Frances Morphy and Hilary Bek, and layout by Wendy Forster.

I also acknowledge and appreciate the assistance and contributions of staff in many governmental agencies and Indigenous organisations around Australia. These include the staff of Land Enterprise Australia based in Canberra, the National Native Title Tribunal, the Northern Territory Department of Lands, Planning and Environment, and the Queensland Department of Natural Resources.

Introduction

The topic of Indigenous land ownership in Australia is a controversial and emotive one. The issue gained national prominence during the 1990s following the Australian High Court's Mabo decision and the enactment of the Commonwealth Government's *Native Title Act 1993* (NTA). Despite previously proposed initiatives of the Commonwealth to enact national land rights legislation, the NTA is the first Commonwealth statute which attempts to address Indigenous aspirations for land nation-wide. Because of the Mabo decision and the implementation of the NTA it has been asserted that almost 78 per cent of the area of Australia is available for claim (Department of Prime Minister and Cabinet (DPM&C) 2000). However, such predictions need to be approached with caution due to a number of factors, including the 1998 amendments to the NTA, which restrict claims on certain tenures, and the extent of existing Indigenous landholdings in Australia. While some tenures held by Indigenous interests may be claimable under the NTA, any benefits derived from that legislation need to be strategically balanced with the benefit of current tenures and the property rights enshrined in those tenures.

The purpose of this paper is to estimate the area of Indigenous landholdings in Australia in 2000 and to provide a comparative assessment of legislation and programs that have been implemented to provide land for Indigenous Australians. Importantly it identifies the extreme diversity in types of ownership, noting the broad variations in beneficiaries, tenures, property rights, and governance structures available to Indigenous Australians which result from variations in statutes and programs from jurisdiction to jurisdiction and within jurisdictions, and from different priorities and objectives set by governments over recent decades.

A number of important points need to be made at the outset. The original intent of this research was to identify outcomes from legislation and programs. The term 'outcome' was taken to refer specifically to land grants or acquisitions rather than being an assessment of other broader social or economic objectives. A grant or purchase of land for an Indigenous group was to be viewed as the end outcome from a particular legislative or program objective. The intent was to measure how legislation and programs met Indigenous aspirations for land. Of course, the term outcome could be given a much wider meaning, to incorporate the economic, cultural or social benefits accrued from land grants and acquisitions, or to measure improved socioeconomic status or improved health or housing outcomes. Such worthwhile analysis is left for future research, which would, however, require the base data in this paper as its starting point.

It should also be noted that the research reported here is based on a literature review and analysis, together with exchange of information with a broad range of agencies in Australia, and examination of information available on the Internet. It is specifically focused on quantifying landholdings and types of land tenure which result from grants of land from legislation, and acquisition by government program assistance. Land tenure searches and geographic information systems

have not been used. Hence, there has been a reliance on agency reporting systems, many of which possess sophisticated technological and mapping systems and have detailed data on Indigenous landholdings. It should also be noted that the focus of the paper has been restricted to land: areas of sea claims, although mentioned in this paper, have not been thoroughly analysed.

The paper commences with a background section that outlines the complexities involved in interpreting and analysing the available information. It analyses previous attempts to compile a comprehensive database of Indigenous landholdings Australia-wide, and brings to light many of the shortfalls in achieving precision in this exercise. The paper then provides a comparative assessment of ownership and property rights and points to the difficulties in establishing a clear definition of the term ownership as it applies to Indigenous landholdings. There then follows a historical review of Indigenous land recovery which presents a statistical analysis of the growth in Indigenous lands from the mid 1960s to 1996. A detailed assessment is undertaken of the role of Commonwealth programs and legislation which have been implemented to address Indigenous peoples' aspirations for land. This is followed by an assessment of programs and legislation applicable in each State and Territory. Before concluding, an estimate is made of Indigenous landholdings in Australia in 2000 which suggests that at least 16 per cent of the landmass of Australia is Indigenous land.

Background

The total area of Indigenous landholdings in Australia is extremely difficult to quantify because of the plethora of institutions, programs and statutes that have facilitated the transfer of land to Indigenous interests. It is not only an extremely difficult exercise but also a very time consuming one, regardless of whether one pursues it from a geographical and tenure analysis with the use of sophisticated geographical information systems, or literature review. Currently, there is no comprehensive national source which identifies all Indigenous landholdings, although the Indigenous Land Corporation (ILC) is actively in the process of compiling one. Notably, previous attempts to establish a consolidated database solely of Commonwealth land acquisition statistics, a relatively simple exercise by comparison, have been fraught with problems such as reconciling Aboriginal place names with those listed on the public record and other inadequacies in quality control such as the actual dates of acquisition (Aboriginal and Torres Strait Islander Commission (ATSIC) 1992: 9).

Furthermore, it should be noted that the collection of such statistical data is dynamic—it is a constantly moving target. While Indigenous landholdings have increased since the mid 1960s, there have been minor decreases due to the sale of properties previously acquired through land acquisition programs. It is also extremely difficult to coordinate information from the various Commonwealth, State and Territory agencies to provide accurate data at a particular point in time. The aim of this paper has been to assess the situation at 30 June 2000. While

most of the statistical information has been compiled against that timeline, not all agencies were able to meet it. There are also major complications with changing title arrangements, where parcels of land acquired for Indigenous groups have later been converted to a different title under land rights legislation. Because of the statutory framework available in some jurisdictions, land acquired or granted through one program or regime may subsequently be transferred under another to a different Indigenous corporate entity or trust. For example, in the Northern Territory, land acquired by Commonwealth land acquisition programs, with the exception of ILC purchases, has been claimed under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).[1] As a result, 32 former pastoral properties acquired with Commonwealth funding have been either claimed or granted under the ALRA. This situation is not limited to the Northern Territory. Similarly, a number of acquisitions in north-west South Australia were later included within the area governed by the *Pitjantjatjara Land Rights Act 1981* (SA) (PLRA) and the *Maralinga Tjarutja Land Rights Act 1984* (SA) (MTLRA). In Western Australia, land parcels acquired by the Commonwealth's Aboriginal Land Fund Commission (ALFC) during the late 1970s were later transferred to the Western Australia Aboriginal Land Trust (WAALT) and in one case, Pandanus Park near Derby, the title has since been handed over to a local Aboriginal corporation.

There are further definitional complications resulting from the diversity of titles and tenures, diversity of property rights, and a range of governance structures and types of control mechanisms enshrined in agreements. Essentially the question here is how to define Indigenous land and the limitations to ownership. Should ownership be defined by freehold title to land or restricted to situations where Indigenous governance structures make the sole decisions about land management and administration? Should land acquired for housing, which obviously results in the accrual of land, be included in such an analysis? Should land and housing acquired by individual Indigenous persons with their own funds be included? In the main, past analyses take the view that Indigenous land is constituted by communal ownership and title. Communal title entails communal decision-making powers, and the statutes are instructive for contrasting the extent to which each legislature has been willing to grant decision-making powers over land to Indigenous land-owning groups. Communal title is in recognition of traditional ownership and custodianship of land. Most land rights regimes have adopted this type of corporate title and pattern of ownership. Notably it is also one adopted by the ILC and indeed the NTA. Some statutes comply with Justice Woodward's ideals of autonomy and self-determination by empowering local Indigenous groups to make decisions. Others retain vestiges of the old protectionist system, vesting decision-making powers in more centralised bodies, sometimes with a strong non-Aboriginal input, and sometimes ensuring that there is ultimate ministerial control (McRae, Nettheim & Beacroft 1991: 179).

Apart from the national database of Indigenous land in Australia being developed by the ILC, the most comprehensive tenure analysis of Indigenous landholdings was undertaken by The Australian Land Information Group (AUSLIG) immediately after the Mabo decision. AUSLIG calculated that the aggregated total of

Indigenous landholdings in 1993 was 14.3 per cent of the Australian continent. This figure is still cited with some authority. However, it should be noted that the AUSLIG data of 1993 did not include all land held by or on behalf of Indigenous people, because the data were incomplete and all parcels of land of less than 5,000 hectares were not included. In 1996 the ILC completed its National Indigenous Land Strategy and Regional Indigenous Land Strategies (RILS). The RILS estimated the Indigenous landholdings of each State and Territory. Based on the aggregate area of Indigenous land in each State and Territory, Indigenous landholdings across Australia totalled 15.1 per cent in 1996. The ILC relied extensively on the AUSLIG data but also on advice from a number of Indigenous organisations around Australia. In some States and Territories the ILC did not include purchases made by ATSIC since 1993.

Other Commonwealth agencies have an interest in Indigenous land. The National Native Title Tribunal (NNTT) undertakes investigations of land tenures in the context of native title applications. The NNTT is working with the States and Territories which hold geospatial data but as yet actual mapping of areas determined under the NTA has not been completed. Under a program established by the Commonwealth's Natural Heritage Trust (NHT), the National Land and Water Resource Audit is currently undertaking a major mapping exercise of Australia with respect to a broad range of land management issues, and it is believed a category of Indigenous landholdings will be identified. There is also a possibility that the Australian Bureau of Statistics (ABS) will gather information in respect to Indigenous ownership through either its agricultural survey or its environmental census.

There are also various State and Territory government agencies with keen interests in Indigenous landholdings within their jurisdictions. The Northern Territory Department of Lands, Planning and the Environment (NTDLP&E) reports quarterly on Aboriginal Land granted under the ALRA and the *Pastoral Land Act 1992* (NT). In South Australia the recently released Strategy for Aboriginal Managed Lands in South Australia (SAMLISA) provides the most comprehensive report to date on Indigenous landholdings in South Australia. Developed by Aboriginal landholders with assistance and support from the ILC, the NHT, Primary Industries and Resources South Australia (PIRSA), and the Department for Environment, Heritage and Aboriginal Affairs (DEHAA), the report demonstrates the advantages of State and Commonwealth agencies coordinating the gathering of information for the benefit of all parties. Further studies are either in process or are planned, so that a comprehensive picture of Indigenous land ownership across Australia will be completed in the next few years. As a result more informed decision-making on Indigenous land should be forthcoming.

Diversity in rights and ownership

With the exception of Western Australia, there is presently some form of Aboriginal land rights legislation operating in each of the Australian States and Territories. The form of tenure and title for grants made under the variety of

Aboriginal land rights legislation differs from jurisdiction to jurisdiction and within jurisdictions. The Aboriginal land rights legislation operating in South Australia, Victoria, Tasmania and the Jervis Bay Territory provides for the transfer or grant of specific areas of land nominated by the relevant statute. In Queensland, the Northern Territory and New South Wales, state-wide regimes exist where land across the State or Territory can be claimed. Although the legislation applies state-wide in those jurisdictions, land available for claim is restricted. In Queensland, claims are limited to areas declared to be 'available Crown land', which is essentially land the Queensland Government declares is available for claim. In New South Wales, claims are limited to 'claimable Crown lands' which are lands which are not needed for residential land or an essential public purpose as determined by the Crown Lands Minister. In the Northern Territory, the land described in Schedule 1 of the ALRA, which comprised existing Aboriginal reserves, was transferred to various Aboriginal Land Trusts shortly after the passage of the legislation in 1977. In addition, any unalienated Crown land in the Northern Territory became available for claim by Aboriginal people claiming to be the traditional Aboriginal owners of the land (Reeves 1998: 35). Land could not be claimed in towns and cities.

Land granted under the ALRA is freehold title and held by a Land Trust established by the Commonwealth Minister for Aboriginal and Torres Strait Islander Affairs. In South Australia, the form of title is generally an estate in fee simple, or freehold. Under the provisions of the PLRA and the MTLRA the title has been described as inalienable freehold title similar to that under the ALRA. The land is held by Aboriginal Lands Trusts established under the respective pieces of legislation. In Queensland, the form of title depends on the grounds for the grant. The land is granted in fee simple if it is granted on the grounds of traditional or customary affiliation, or historical affiliation. If the land is being granted on the grounds of economic viability or cultural viability, it is granted as a lease in perpetuity. The land is granted to grantees that hold the land in trust for the benefit of the Aboriginal or Torres Strait Islander people concerned. In Queensland there is also a system of Deeds of Grant in Trust (DOGIT) to Aboriginal or Islander Councils under the *Community Services (Aborigines) Act 1984*, the *Community Services (Torres Strait) Act 1984,* and the *Land Act 1994*.

The six Victorian land rights statutes provide for freehold title, subject to various conditions, reservations and restrictions, but in each case the land is held by a body corporate. In Tasmania, land is vested in the Aboriginal Land Council of Tasmania in trust for Aboriginal persons in perpetuity pursuant to the Tasmanian *Aboriginal Lands Act 1995*. Under the legislation operating in the Jervis Bay Territory of the Australian Capital Territory, the form of title is freehold title and the land is held by the Wreck Bay Aboriginal Community Council. In New South Wales, the land is transferred either as fee simple or, where the *Western Lands Act 1901* applies, as a lease in perpetuity. The land is held by a land council established under the New South Wales *Aboriginal Land Rights Act 1983* (NSWALRA) (Reeves 1998: 36). Although land rights legislation does not exist in Western Australia a process of granting title to Aboriginal communities of lands

currently held on their behalf by the WAALT and the Aboriginal Affairs Planning Authority has begun following the recommendations of the 1996 Bonner report.

The rights and interests recognised as native title are held on behalf of the native title holders by a Prescribed Body Corporate (PBC). However it should be noted that 'native title' is the product of the relatively new common law recognition of Indigenous relations to 'country' under traditional systems of land tenure. In many respects this common law right is still evolving and therefore the role, powers and functions of PBCs, which are to hold or manage the native title, are yet to be consolidated in law. Nevertheless, the High Court has stated that native title is a communal title which takes effect for the benefit of the community as a whole, and for the subgroups and individuals within who may have particular rights and interests in the community's lands. The rights and duties that exist between individual members of the native title group are determined by traditional law and custom (Mantziaris & Martin 1999: 6).

Besides land rights and native title legislation, Australian governments have established land acquisition programs to assist Indigenous groups to purchase land. Until the 1967 referendum, the purchase of any land reserved for Aboriginal use was a State matter, not a Commonwealth responsibility, with the exception of the Northern Territory. Palmer (1988: 9) notes that properties purchased by State governments were of three types: mission-run stations, stations that were purchased by Aborigines with government support, and pastoral stations run by the State government which usually had a focus on training and education. Commonwealth activity in acquiring land for Indigenous people began in 1968 with the establishment of the Capital Fund and the enactment of the *Aboriginal Enterprise (Assistance) Act 1968*. The Fund was created to assist Aborigines to become involved in successful business enterprises, and permitted loans to Indigenous people for purchasing farms or pastoral properties that were economically viable. These loans were not for communities of Indigenous people, but for individuals or small groups of Indigenous people. From 1972, under the McMahon Government, properties were acquired for Indigenous communities under the *Land Acquisition Act* and each remained government property until it was allocated to the Indigenous community. In the Whitlam era it was decided that grants should be made to Indigenous communities to enable them to acquire titles themselves (Department of Aboriginal Affairs (DAA) 1974: 12). This process, whereby already incorporated Aboriginal organisations applied for government funds to acquire and hold title to land, was subsequently adopted by the Aboriginal Development Commission and ATSIC.

The ILC adopted a substantially different approach to that of its land acquisition predecessors. Although the ILC is permitted to make grants to incorporated Indigenous bodies to acquire land, the approach adopted is that the ILC acquires the land and later divests it. This permits the ILC to act strategically in the market place free from the time restrictions of complicated application processes, allows it to undertake improvements before divestment, and also permits it to undertake the necessary consultations with prospective land owners in order to establish the most appropriate landholding entity (Altman & Pollack 1998). The

main tenet of the ILC's policy is to divest title to land it has purchased to an Indigenous corporation which represents the traditional owners of the land (ILC 1998: 46). The ILC's rationale for its divestment policy is to prevent the ILC itself from becoming an agent for dispossession by purchasing land for one group in the traditional area of another (Altman & Pollack 1998). The ILC acknowledges the difficulties in implementing the policy in all parts of Australia. Indeed, the decision by the ILC Board to divest its Tasmanian landholdings to the Aboriginal Land Council of Tasmania demonstrates that there is a degree of flexibility within the policy, and that practical solutions can be found providing such proposals are supported within local Indigenous communities.

Property rights to land also vary considerably across Australia. In the Northern Territory Indigenous land owners who have title under the ALRA possess a right of veto to mining and development on their land which is essentially a powerful de facto property right. Under the South Australian land rights legislation, property rights are similar to those under the ALRA, while in New South Wales Indigenous land owners hold rights to all minerals except gold, silver, coal and petroleum. Native title provides a weaker right to negotiate but provides for an arbitration process should negotiation falter. For Indigenous groups who own land through market acquisition processes, their property rights and obligations are commensurate with those of non-Indigenous land owners although often the funding agency will ensure that caveats are applied so that the property is transferable to other Aboriginal interests, should the incorporated entity holding the title be required to wind up. Indigenous pastoral lease owners are required to meet the obligations of caveats and relevant State or Territory laws.

A historical review of Indigenous land recovery

Although land had been allocated for use for Indigenous people since the days of the first settlements in each Australian colony, it was not until 1966 that specific rights to land were granted to Indigenous people. Prior to 1966 no Indigenous group in Australia owned land by virtue of being Indigenous (Peterson 1981a: 1). The creation of the Aboriginal Land Trust of South Australia in 1966 was the first step by any Australian government to grant title to Indigenous Australians. The Trust comprised a chairman and two other members appointed by the Governor, together with additional members who were selected after recommendations by Aboriginal communities. Membership of the Trust was confined to people of Aboriginal descent. The main purposes of the Trust were to ensure title in existing Aboriginal reserves for Aboriginal people; to have a body to which statutory royalties could be paid and used for acquiring further land; and to have a body to which funds could be provided so that the lands vested in it could be developed (Peterson 1981b: 115).

Based on calculations compiled from the relevant State and Territory authorities around Australia, Peterson (1981a) assessed the amount of Indigenous owned land in Australia in 1980. He estimated that about 470,000 square kilometres had been granted to Indigenous Australians. With the addition of reserve lands

occupied by Indigenous people (but not necessarily owned), the area of land held by or on behalf of Indigenous people aggregated to 9.3 per cent of the Australian continent. However, as Peterson stated, the figure was only an approximation to indicate an order of magnitude, and could be qualified and re-qualified endlessly. Notably, land granted under the ALRA accounted for 98 per cent of Indigenous freehold title in 1980.

Davis and Prescott (1992: 140) note that the area of Indigenous land increased by 26 per cent in the seven years to 1987. Thus in 1987 Indigenous Australians, who formed 1.5 per cent of the population, held about 12 per cent of land in Australia. At this time, slightly over half of all Indigenous land was located in the Northern Territory, where 15 per cent of Indigenous population resided in 1986. The Northern Territory, South Australia and Western Australia, with 38 per cent of the Indigenous population, accounted for 96 per cent of all Indigenous land. Victoria, New South Wales and Tasmania, with 35 per cent of Indigenous people, contained only 0.1 per cent of Aboriginal land (Davis & Prescott 1992: 140). Davis and Prescott also identified extreme regional and geographical variations. In the desert and semi-desert country straddling meridian 130° east there were huge blocks of Aboriginal land between the trans-Nullarbor railway and Newcastle Waters. In South Australia Pitjantjatjara land occupied 10.1 million hectares, in Western Australia the Central Australia (Warburton) area covered 8 million hectares, and in the Northern Territory the Central Desert Zone measured 8.4 million hectares. There were also large blocks in the humid coastal strip of the Northern Territory, with Arnhem Land accounting for 9 million hectares and the Daly River for 1.3 million hectares. Blocks of between 480,000 and 1.1 million hectares were identified along Western Australia's tropical coast, while the largest single area in Queensland's Cape York was Aurukun with 750,000 hectares. These units are in sharp contrast to the small holdings in Tasmania, New South Wales and Victoria (Davis & Prescott 1992: 141).

Further assessments were undertaken in 1991 by McRae, Nettheim and Beacroft (1991: 138) and Young (1995: 61). Both identified 8.3 per cent of the continent as being Aboriginal or Torres Strait Islander freehold, with an additional 2.12 per cent being leasehold and 2.63 per cent being reserve lands. In total about 13 per cent of the continent was held by or for Indigenous interests. In terms of freehold land, the area of land held by trusts established under the ALRA remained conspicuous, with 72 per cent of all Indigenous freehold. Its significant reduction from the 1980 figure presented by Peterson (1981a) is attributed to the enactment of the two South Australian land rights statutes, the PLRA and the MTLRA, which resulted in approximately 18 per cent of South Australia being granted to Indigenous interests as freehold title.

Table 1 identifies the parcels of Indigenous land, the area of Indigenous land and the proportion of land held by Indigenous interests in each State and Territory as calculated by the ILC in 1996 (ILC 1996c–i). As noted earlier, the 1993 AUSLIG analysis suggested that 14.2 per cent of the continent was Indigenous land. The 1996 ILC analysis points to a proportion of 15.1 per cent. Therefore Indigenous

landholdings increased moderately during the early 1990s and native title had not had any real impact in terms of the aggregate of Indigenous landholdings across the nation.

Table 1. Parcels and area of Indigenous land by State/Territory, as estimated by the Indigenous Land Corporation in 1996

State/Territory	Parcels of Indigenous land	Area of Indigenous land (000 km^2)	Area of State/Territory (000 km^2)	Indigenous land as proportion of State/Territory (%)
NSW (inc. ACT)[a]	1,195	1.6	804	0.2
Qld	121	42.0	1,727	2.5
WA	259	326.0	2,526	13.0
NT	200	584.0	1,348	43.4
Vic	13	14.0[b]	228	0.006
SA	39	190.0	984	19.3
Tas	15	4.8	68	0.007
Total	1,842	1,162.4	7685	15.1

Notes: a. The Australian Capital Territory is included in the ILC Region of New South Wales.
b. Sources in Victoria suggest that this area of land is an overestimate and the figure has since been revised by the ILC.

Source: ILC *Regional Indigenous Land Strategies* (ILC 1996c–i).

The majority of parcels of land held by Indigenous interests, simply on a numerical basis, are located in New South Wales (approximately 70 per cent of all parcels), although by comparison to other States and Territories, there is only a very small area of land under Indigenous control in New South Wales. This might suggest, based purely on the number of parcels of land, that there may be more Indigenous landowners in New South Wales than in any other part of Australia. Indeed, there exists no empirical study to prove otherwise. What is apparent is that Indigenous landholdings in southern Australia are small, reflecting different land use and land tenure systems compared to areas of northern Australia where there are extensive tracts of pastoral and grazing tenements.

Table 2 demonstrates the distribution of Indigenous land in each State and Territory, the per capita landholdings by population and area (in km^2) as well as the proportion of the Indigenous estate in each State and Territory. As can be observed, the total area of Indigenous landholdings in Victoria, New South Wales and Tasmania, where approximately 38 per cent of Indigenous people reside, is negligible by comparison with the northern and western States and Territories. This partially reflects the great unevenness between States and Territories, firstly as to whether they have land rights regimes at all, and secondly, in those that do, in the provisions that have been made and the amount of land that can reasonably be made available through a claim process. Although land rights legislation has not been enacted in Western Australia, the proportion of the area of land under Indigenous control is comparatively higher than in many other States. As demonstrated in Tables 1 and 2, both in terms of area against per capita population (6.4 km^2 per person) and of the proportion of the area of the

State under Aboriginal control (13%), Western Australia rates third behind the Northern Territory and South Australia.

Table 2. Indigenous land in Australia and its distribution, as estimated by the Indigenous Land Corporation in 1996

State/Territory	Indigenous land (000 km²)	Indigenous population (000) (1996 Census)	Land per capita (km²)	Proportion of total Australian Indigenous land (%)
NSW (inc. ACT)[a]	1.6	104.4	0.02	< 1.0
Qld	42.0	95.5	0.44	3.6
WA	326.0	50.8	6.42	28.0
NT	584.0	46.3	12.62	50.2
Vic	14.0	21.5	0.65[b]	< 1.0
SA	190.0	20.5	9.29	16.4
Tas	4.8	13.9	0.35	< 1.0

Notes: a. The Australian Capital Territory is included in the ILC Region of New South Wales.
b. As noted in Table 1, the area estimate for Victoria appears incorrect. Therefore, the land per capita would also be an overestimate.

Source: ILC *Regional Indigenous Land Strategies* (ILC 1996c–i); ABS *Census of Population and Housing* (1996).

It should also be noted that there are extreme regional variations within States and Territories. Most Indigenous-held land in South Australia is located in the north-west of the State. Most Indigenous land in Western Australia is located in the Kimberley and Western Desert, with comparatively little Indigenous-held land in the south-west (ILC 1998: 67). Furthermore, there are comparable regional variations in the Northern Territory when assessed against land council administrative sub-unit areas. These range, for example, from 100 per cent ownership of land within the region in East Arnhem to 7 per cent in the East Sandover region of Central Australia (Pollack 1999: 145). Hence even though the Northern Territory has the highest proportion of land granted to Indigenous people, there remains some imbalance in the distribution of land amongst Indigenous people in the Territory.

Table 3. Indigenous land in Australia and its distribution, as estimated by the Commonwealth Government in 1997

State/Territory	Indigenous land (000 km²)	Indigenous land as a proportion of State/Territory (%)	Proportion of Australian share of Indigenous land (%)
NSW (inc. ACT)	0.667	0.01	
Qld	42.0	2.44	0.55
WA	350.5	13.88	4.5
NT	589.1	43.76	7.67
Vic	0.03		
SA	188.1	19.10	2.45
Tas	0.4	0.01	
Total	1170.64		15.24

Source: COA (1997).

Table 3 provides an alternative assessment of Indigenous landholdings in Australia. This estimate was submitted by the Commonwealth Government to a Parliamentary Joint Committee in 1997 (COA 1997). The proportion of land held by Indigenous people in Australia, as identified by the Commonwealth submission, is comparable to the 15.1 per cent as estimated by the ILC. Indeed, the statistics are comparable in most States and Territories. However, there are considerable variations in New South Wales and Victoria. In New South Wales the ILC estimate is more than double that of the Commonwealth. This is because the Commonwealth submission provided statistics based on grants of land from the *Aboriginal Land Rights Act 1983* (NSW) only. The submission notes that land acquired by various government agencies has not been included in the statistics for any State or Territory. Using the ILC estimates as a basis, this suggests that land acquisition programs have had as much of an impact in addressing Indigenous land aspirations in NSW as the land rights legislation. In the case of Victoria the differential between the statistics is extreme although it has little impact on the national statistics. It would appear that the ILC estimate is an overestimate or simply an error, whereas the Commonwealth estimate is based only on land granted under the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cwth) and is an underestimate. As will be noted later in this paper, there are many more parcels of Indigenous land in Victoria.

Commonwealth land acquisition programs

1968 to 1995

The Commonwealth Government established a program to acquire land for Indigenous Australians in 1968 when the newly created Office of Aboriginal Affairs (OAA) persuaded the then Prime Minister, John Gorton, to set up the Capital Fund for Aboriginal Enterprises. A more substantial commitment was made in January 1972 when the then Prime Minister, William McMahon, announced a program of acquiring properties for Indigenous communities, for which an initial $5 million plus $2 million per annum for the following four years was to be provided.[2] Under the scheme properties were acquired under the *Lands Acquisition Act*, and this involved problems in both acquisition and in subsequent allocation of the title (Department of Aboriginal Affairs (DAA) 1974: 12).

The Whitlam Government came to power in 1972 with a platform to enact legislation for Aboriginal land rights. It undertook to provide up to $5 million per annum over a ten-year period for land purchases for Indigenous interests throughout Australia. It was also decided that purchases might be by way of grants to the intended Indigenous communities to enable them to purchase titles themselves (DAA 1974: 12). Administration of the grants was undertaken by the newly created DAA. One of the more significant Whitlam initiatives was the establishment of the Woodward Royal Commission to inquire and report as to the means by which Aboriginal land rights could be recognised with specific reference to the Northern Territory. As a result of one of Woodward's recommendations, the

Commonwealth Government created the Aboriginal Land Fund Commission (ALFC), which operated from May 1975 to June 1980 (Palmer 1988: 6). ALFC acquisitions were premised on the recognition that land remained primarily of social and cultural value to Aboriginal communities. In its five years of operations the ALFC purchased 59 properties for Aboriginal communities, at a total cost of $6 million (ALFC 1980; Rowley 1986).[3] These properties were predominantly pastoral properties in rural and outback Australia as the general directives under the Act precluded the purchase of land in metropolitan areas (Bourke 1983: 254).

In 1980 the Aboriginal Development Commission (ADC) replaced the ALFC as the agency charged with the responsibility for Indigenous land acquisition. The Fraser Government established the ADC to focus on economic development for Indigenous communities (Turner 1997: 6). Indigenous enterprise development and housing programs were integrated into the new Commission. High expectations were held of the ADC concerning the potential for the economic viability of the smaller and medium-sized properties acquired in eastern Australia for the culturally fragmented Aboriginal communities then living in towns and isolated mission settlements (ATSIC 1992: 2). However, the ADC moved cautiously in acquiring land for a number of reasons. The Commission hoped that as the States and Territories began to legislate for land rights the demand on ADC's funds to purchase properties would lessen (ADC 1987: 67). It also appears that the ADC was more constrained than the ALFC had been by having to prioritise funds for housing, enterprises and land from the same appropriation (Rowse 1992: 15). As Palmer (1988: 158) notes, only a range of 2 to 6 per cent of total ADC expenditure per year was allocated for land purchases between the 1980–81 and 1984–85 financial years.

ATSIC was established on 5 March 1990 and assumed most functions of the DAA and ADC including land acquisition and management. ATSIC's Land Acquisition and Management Program (LAMP) deemed that funds were to be directed to communities where, in comparison with other areas, there were significant unmet needs (ATSIC 1994a: 19). Land could be purchased for economic, social, cultural or traditional purposes. Like the ADC, ATSIC was constrained by the need to fund land acquisitions from a single appropriation meant for a plethora of program objectives. Nevertheless, it is evident that ATSIC facilitated the acquisition of more properties than any of its predecessors. ATSIC acquired about 208 properties with expenditure in the vicinity of $95 million for the duration of LAMP. In the two financial years 1992–93 to 1993–94 ATSIC assisted with the acquisition of 119 properties, expending over $38 million (ATSIC 1993: 38; 1994b: 42). ATSIC estimates that there were 330 parcels of land acquired for Indigenous interests through specific land acquisition programs by Commonwealth institutions between 1972 and 1997, excluding ILC acquisitions and Regional Land Fund purchases.

The Indigenous Land Corporation

The ILC came into existence on 5 June 1995, in recognition of the fact that many Indigenous peoples who were dispossessed of their lands would not be able to

regain ownership of land through the NTA.[4] The purpose and primary functions of the ILC are to assist Aboriginal persons and Torres Strait Islanders to acquire land, and to assist in the management of Indigenous-held land, so as to provide economic, environmental, social or cultural benefits. A key requirement of the enabling legislation is that the Land Fund, from which the ILC is funded, become self-sustaining. The aim is that the Land Fund will hold $1,106 million (in 1994–95 terms) by June 2004 (see Appendix 1), when government appropriations to the fund cease. This will be achieved by investing approximately 66 per cent of the annual government allocations to the fund over the ten-year period and assuming a growth of 4 per cent to accumulated reserves. After the first payment to the Land Fund of $200 million in 1994–95, $121 million (indexed) is appropriated to the Land Fund by the Commonwealth Government between the 1995–96 and the 2003–04 financial years (ILC 1997: 75; and see Appendix 1), from which $45 million per annum (indexed) is allocated to the ILC for land acquisition, land management and administration.[5] The remaining $76 million per annum is invested. Government allocations are inflation-linked and the legislation provides for top-up funding should the fund not achieve its anticipated rate of return.

Stringent planning requirements are a feature of the ILC's statutory framework. The legislation requires the ILC to prepare and periodically review a National Indigenous Land Strategy (NILS). The purpose of the NILS is to inform Indigenous people and the Australian public of the strategies, policies and priorities that will guide ILC land acquisition and land management functions. The ILC is also required to prepare Regional Indigenous Land Strategies (RILS) which outline the ILC's priorities for acquisition and management of land in each State and Territory.[6] The first NILS became effective on 1 May 1996 and is essentially the Corporation's strategic operational plan for the period 1996–2001.[7] Although the ILC has legislative responsibilities for assisting Indigenous people to acquire and manage land in ways which provide social, cultural, environmental and economic benefits, the first NILS gives priority to the acquisition of land which is of traditional, historical or contemporary significance (ILC 1996b: 13). The focus on land-based cultural attachment means that land with significant commercial potential, or the acquisition of successful businesses which own land, becomes a lower priority. The ILC contends that although it has some responsibility to address issues of Indigenous economic development it is not a major player in the economic development arena. It takes the view that the acquisition of businesses which own land, or development of Indigenous commercial enterprises, falls more appropriately within the ambit of ATSIC or the Aboriginal and Torres Strait Islander Commercial Development Corporation (ATSICDC).

As Table 4 demonstrates, the ILC had expended over $128 million to acquire 127 properties up to 30 June 2000. While most acquisitions have been in New South Wales (29), Queensland (25) and Western Australia (25), almost half of the total area of land has been acquired in Western Australia (2.3 million ha). Although only nine parcels of land were bought in the Northern Territory the total area of land acquired is more than six times the amount acquired in New South Wales. The ILC has noted that the reason for few purchases elsewhere relate to

unrealistic expectations of vendors in the Northern Territory, South Australia, Victoria and Tasmania (Australian National Audit Office (ANAO) 2000: 45). It is apparent that the trend in land acquisitions by the ILC repeats that of other Commonwealth institutions in that a higher number of parcels of small areas of land are being purchased in New South Wales, where land costs are comparatively higher, while cheaper and larger areas of land are being acquired in the rangelands of Western Australia, South Australia and the Northern Territory.

Table 4. Indigenous Land Corporation land acquisitions by State/ Territory, to 30 June 2000

State/Territory	Area (hectares)	Total properties settled	Total property costs by region ($)	Average cost per hectare ($)
NSW	101,467	29	29,685,645	292
NT	621,437	9	8,081,460	13
Qld	899,420	25	30,322,431	33
SA	836,689	19	11,783,100	14
Tas	50,984	3	2,222,500	44
Vic	1,778	17	7,184,238	4,041
WA	2,287,581	25	39,333,395	17
Total	4,799,356	127	128,612,769	26

Note: Total costs are based on budget figures and all expenditure may not have taken place by 30 June 2000.
Source: ILC, July 2000.

The Regional Land Fund

Although the ILC is the prime agency for Indigenous land acquisition and management, ATSIC maintains an interest in land acquisition through the Regional Land Fund (RLF). The RLF was created by s. 68 of the *Aboriginal and Torres Strait Islander Commission Act 1989* and has operated for more than ten years. There is no direct government appropriation to this fund. It was created to allow ATSIC Regional Councils to make allocations from their respective annual discretionary budgets for future land purchases within their region. Payments to the RLF are retained and accumulated from year to year until withdrawn for land acquisition purposes by the relevant Regional Council when appropriate land purchases are identified and become available on the market. Deposits to and withdrawals from the RLF are the responsibility of Regional Councils, in accordance with their priorities. Table 5 identifies deposits, expenditure and the balance of the RLF since 1994.

The first purchases from the RLF were made in New South Wales during the 1994–95 financial year. Usage of the fund has increased in recent years, and 45 properties have since been acquired across Australia with a total area of 6,700 hectares (ATSIC 2000). As the low expenditure patterns in Table 5 suggest, the types of acquisitions made appear to be small landholdings. Typically, they appear to be small blocks or buildings acquired to provide facilities for Indigenous organisations. As the 1998–99 ATSIC *Annual Report* (ATSIC 1999) notes, three properties were acquired in that financial year. The Tasmanian Regional

Aboriginal Council made two purchases for the south-east Tasmanian Corporation. One was for office accommodation in Cygnet and another was an old church acquired for its historical connections with the local Aboriginal community. The third acquisition during 1998–99 was the purchase and upgrade of a Centre for Youth Training in Geraldton in Western Australia (ATSIC 1999: 49). Usage of the RLF appears greatest in south-east Australia and purchases by one Regional Council in Victoria account for 15 per cent (8 of 45) of all purchases in Australia.

Table 5. Regional Land Fund expenditure, 1994–95 to 1999–2000

Year	Deposits ($)	Expenditure ($)	Balance ($)
1994–95	2,286,848	64,924	
1995–96	818,772	1,284,892	7,398,200
1996–97	1,934,311	1,126,973	7,549,022
1997–98	942,527	1,941,531	8,891,867
1998–99	1,285,000	192,351	9,942,000
1999–2000	1,201,173	1,093,002	10,580,717

Note: Balance includes interest earned during the financial year in question.
Source: ATSIC *Annual Report* (1994–95, 1995–96, 1996–97,1997–98, 1998–99 and 1999–2000).

Other programs

Apart from specific land acquisition programs, the ADC and ATSIC have acquired a significant number of parcels of land for housing, using funds from other programs. For example, ATSIC's 1998–99 *Annual Report* records that $676,000 was expended during that financial year for land purchases under the Community Housing and Infrastructure Program. The area of land acquired specifically for housing or through other programs has never been quantified. The ABS (1998) records 20,424 permanent Aboriginal and Torres Strait Islander dwellings, but their survey does not report the types of land tenure on which the dwellings were sited. However, a large proportion of Indigenous community housing is located on land which was Indigenously owned prior to construction of housing.

Aboriginal Hostels Limited (AHL) also acquires properties to provide hostel-style accommodation for Aboriginal people. In some cases buildings and land have been transferred to AHL. These properties are usually in cities and rural towns and are normally no larger than a few thousand square metres, with the largest at about five acres. ATSICDC also holds a number of investments which include landholdings. Its principal investment is Bonner House which is an office and retail complex situated in Woden in the Australian Capital Territory. The retail complex contains over 7,000 square metres of retail and office space (ATSICDC 2000: 49) and was valued in 1999 at $9.35 million (ATSICDC 2000: 50). The ATSICDC is also part owner through joint venture of a number of other office and retail complexes throughout Australia, for example in Burnie, Tasmania, and Port Hedland in Western Australia. It also fully owns a number of subsidiary companies such as the Ngarrindjeri Community Orchard in South Australia. This

company leases 200 acres of land for almond and citrus orchard production (ATSICDC 1996: 56).

Other Commonwealth agencies have acquired land for Indigenous interests, either outright or as contributors. For example, the DPM&C contributed $1.7 million to purchase Bauhinia Downs in the Northern Territory, as part of the McArthur River Mine negotiations (Farley 1994: 173), and in 1994 the Commonwealth Department of the Environment contributed to the acquisition of Starke Station in north Queensland. A further $4.5 million was contributed to this acquisition by the Queensland Government, and title of the 40,000-hectare station was handed over to the traditional owners on 1 July 1999 (Department of Aboriginal and Torres Strait Islander Policy and Development (DATSIPD) 1999: 4). It is also most likely that other State and Territory programs have also contributed to the acquisition of land for Indigenous interests from a variety of programs. The extent to which State and Territory governments have acquired land for Indigenous interests is perhaps the real unknown quantity in Indigenous landholdings.

Native title

The High Court's Mabo decision of 3 June 1992 gave 'common law' recognition to Indigenous people's continuing rights to possess and enjoy their traditional lands. Native title was found to exist where people could prove a continuing traditional connection to the land and where governments had not extinguished that connection by, for example, granting the land to other parties. The DPM&C described the major challenge presented by the Mabo decision as how to integrate this newly recognised form of property right into Australia's existing land title system (DPM&C 2000). In 1993 the Commonwealth enacted the NTA. The legislation is in essence an attempt by the Commonwealth to strategically balance a very wide spectrum of interests, ranging from Indigenous interests to mining and pastoral interests, while maintaining the overall spirit of the High Court judgement. Nevertheless, for some commentators the process was seen as being of limited substantive benefit to Indigenous peoples because if native title exists at common law, it does not require confirmation by statute (Way 1999: 6).

The immediate impact of the Mabo decision resulted in the official recognition of native title to nine square kilometres on Murray Island in the Torres Strait. The first determination under the provisions of the NTA occurred in April 1997 where an agreement was reached with the New South Wales government and the Dunghutti claimants to an area of 12.5 hectares of land in Kempsey. There were a further ten claimant determinations to 30 June 2000, with all but one resulting in favourable outcomes for the Indigenous claimants. While the areas concerned in these determinations are sometimes considerable (e.g. Balangarra at 15,000 km^2; Miriuwung-Gajerrong at 7,600 km^2), it is in some sense premature to add the areas to the Indigenous estate because of pending appeals: it would appear that native title cannot be totally guaranteed without approval from the High Court. Because of European settlement patterns across Australia, and the stringent traditional linkages that are required to be proved through the NTA and court

processes, there appears a greater likelihood that successful claims will be in the more remote regions of Australia, thereby accentuating the significant imbalance in Indigenous land ownership that already exists in Australia.

Table 6. Determinations of native title, to 30 June 2000[a]

Location:	Claim name	Area affected	Date	Method
Torres Strait Qld	Merriam/Mabo	9 km^2	03/06/92	Litigated outcome
Kempsey NSW	Dunghutti	12.5 ha	07/04/97	Consent determination
Cooktown Qld	Hopevale	110 km^2	08/12/97	Consent determination
Croker Island NT	Croker Island (sea claim)	3,258 km^2	06/07/98	Litigated outcome[b]
Cairns Qld	Western (Sunset) Yalanji	25,122 ha	28/09/98	Consent determination
Kununurra WA	Miriuwung-Gajerrong #1	7,600 km^2	24/11/98	Litigated outcome[b]
Kimberley WA	Balangarra	15,000 km^2	11/05/00	Consent determination
Vic/NSW Border	Yorta Yorta	1,130 km^2	18/12/98	Litigated outcome: Federal Court found that native title does not exist[b]
Torres Strait Qld	Muagal (Moa Island)	16,970 ha	12/02/99	Consent determination
Torres Strait Qld	Saibai Island	10,400 ha	12/02/99	Consent determination
Alice Springs NT	Arrernte (Hayes)	185 km^2	09/09/99	Litigated determination

Notes: a. This information has quickly become out of date as more determinations are made—there were several determinations in the fortnight following the cut off date for this paper of 30 June 2000. See nntt.gov.au website for updated reports.
b. These claims are under appeal.
Source: NNTT, 18 July 2000 ('Timeline' nntt.gov.au).

The amount of land held under native title does not necessarily reflect ultimate ownership under Australian land law. In this sense native title differs substantially from land rights legislation. Land rights are created by acts of government and the government determines what rights Aboriginal people will get, for example freehold land. Native title, on the other hand, originates from the traditional laws and customs of Indigenous people with respect to a particular area of land, and is recognised within the common law of Australia. Despite legislative intervention through the NTA, the development of common law native title has been left, largely, to the courts. Hence, the concept of native title has changed as the law has developed, but these changes have not necessarily lead to a more coherent understanding of native title. Furthermore, native title may be applied as a range of rights and the actual rights are still being developed by the courts. Indeed, the findings of the High Court in the Wik case outlined a regime of coexistence of native title and pastoral leases. The decision allows for native title to be asserted on pastoral leases, but in circumstances of competing rights the pastoral rights prevail.

The NTA provides for a range of alternative procedures to settle native title claims, including provisions for agreements rather than litigation and meditation through the NNTT. Under the original legislation of 1993 these were known as Regional Agreements and provided for claimants, non-claimants and governments to solve native title issues and register these agreements with the NNTT. Under the 1998 amendments these agreements are known as Indigenous Land Use Agreements (ILUAs). Arguably, ILUAs permit a broader range of issues to be dealt with in an agreement. Table 7 indicates that six ILUAs had been registered with the NNTT at 30 June 2000, affecting a total of 8,542 square kilometres. In some circumstances these areas have resulted in the transfer of land to Indigenous groups, usually under freehold title.

Table 7. Indigenous Land Use Agreements registered with the National Native Title Tribunal, at 30 June 2000

State/Territory	Total no. of ILUAs in State/Territory	Total area of ILUAs in State/Territory (km^2)
New South Wales	1	8,505
Queensland	3	1
Western Australia	0	0
Northern Territory	1	28
South Australia	0	0
Victoria	1	8
Tasmania	0	0
Total (Australia)	6	8,542

Note: The Queensland ILUAs relate to three very small parcels of land, respectively .01, .07 and .04 km^2 in size.
Source: NNTT, 2000 ('Timeline', nntt.gov.au).

States and Territories

Northern Territory

The ALRA has been referred to as the principal Commonwealth land rights legislation. Passed through the Parliament during 1976 (becoming law on Australia Day 1977), the Act provides for grants of land to Aboriginal people in the Northern Territory, establishes land councils, sets out the regime for development, exploration and mining on that land, and includes a mechanism for the disbursement to Aboriginal people and their organisations of mining royalty equivalents (ATSIC 1999: 146–7). Since the commencement of the Act (and up to June 2000), Aboriginal people have gained inalienable freehold title to more than 586,500 square kilometres of land which represents more than 43 per cent of the land area of the Northern Territory.

This land has been granted through a variety of different processes within the statutory framework. With the commencement of the Act, land that was formerly gazetted as Aboriginal Reserve was passed to a series of Aboriginal Land Trusts. This land, which is detailed in Schedule 1 of the Act, accounts for almost half of

the current Aboriginal landholdings in the Northern Territory. The Act established a land claim process by which a Land Commissioner reports to the Minister for Aboriginal and Torres Strait Islander Affairs as to whether a land claim should be granted. This process has resulted in an area in excess of 293,000 square kilometres being passed to Aboriginal Land Trusts. Other grants resulted from negotiated settlements of land claims whereby land is scheduled to the ALRA by the Commonwealth Parliament, or under Northern Territory title. Finally, more than 30 former stock routes and reserves granted after the signing of an Memorandum of Agreement in 1989. Table 8 details the total area of land granted under each of the processes.

Table 8. Land granted under the *Aboriginal Land Rights (Northern Territory) Act 1976*, at 30 June 2000

Granted Aboriginal land	Area (km^2)	% of area of NT
Scheduled land at commencement of Act	257,988	19.16
Land granted following land claim hearings	293,627	21.81
Stock Routes and Reserves (1989 MOA)	2,303	0.17
Scheduled following negotiated settlements	17,847	1.33
NT Title granted following negotiated settlements	14,768	1.10
Total land granted	586,530	43.57

Source: NTDLP&E, June 2000 (www.lpe.nt.gov.au/advis/pastoral/claims.htm).

No new claims could be lodged after 5 June 1997 because of the inclusion of the so-called 'sunset clause' in the 1987 amendments to the Act. However claims lodged before that date could proceed. There remained over 100 claims to be heard at 30 June 2000, accounting for an area of 134,337 square kilometres that equates to 10 per cent of the Northern Territory. Should all claims be successful then about 720,000 square kilometres of the Northern Territory will be Indigenous land. Although land in towns and cities cannot be claimed through the processes established under the ALRA, the Northern Territory Government has created a number of Crown leases and special purpose leases which are occupied by Aboriginal organisations in towns and cities. These are commonly referred to as 'town camps'.

The figures in Table 8 do not include acquisitions by the ILC since 1995 nor do they include pockets of land granted as excisions or community living areas under the *Pastoral Land Act 1992* (NT) (PLA). Legislation relating to the grant of title for Community Living Areas excised from pastoral leases followed a Memorandum of Agreement in 1989 between the then Prime Minister, Bob Hawke, and the then Northern Territory Chief Minister, Marshal Perron. The agreement was a result of public and political pressure to deal with the urgent, unmet land needs of Aboriginal people who were unable to benefit from the ALRA, because the Act did not include provisions for people whose traditional land is under pastoral lease not held by Indigenous interests. The PLA permits pastoral lessees to sub-let part of the lease to an Aboriginal corporation for Aboriginal community living purposes (ILC 1996d: 21). A total of 89 areas comprising

186,000 hectares have been granted under excision and community living area provisions although there are a variety of tenure and lease arrangements (information from the (NTDLP&E)).

The ILC has acquired nine properties in the Northern Territory with a total area of 620,000 hectares. Properties acquired by the ILC could not be claimed under the provisions of the ALRA and therefore these are additional Indigenous landholdings to be accounted for in the Northern Territory. As noted earlier in this paper, 32 properties acquired by the ALFC, DAA, ADC, and ATSIC over the past few decades have subsequently been claimed under the ALRA. This figure includes the seven properties acquired by the ABA in the mid 1980s to early 1990s. The importance of such land acquisitions in the Northern Territory cannot be underestimated as they have been used strategically to increase the amount of land under the ALRA's inalienable freehold title, thus opening the possibility of mining royalty income to the ABA through the mining provisions of the Act. More importantly, land acquisitions have been the only method by which Indigenous residents of towns and cities could have access to land ownership.

Only two native title claims had been determined in the Northern Territory to 30 June 2000: a sea claim off Croker Island and an area of approximately 185 square kilometres in and around Alice Springs. The total area affected by claims under the NTA in the Northern Territory is 45,357 square kilometres (this figure may or may not include inland waters) (NTDLP&E June 2000 (www.lpe.nt.gov.au/advis/pastoral/claims.htm)). Native title claims may prove to be more successful in the Northern Territory than in the southern States but it is yet to be seen whether claims will be lodged on lands held under trust by the provisions of the ALRA. From a property rights viewpoint, a native title claim on ALRA land might prove to be superfluous given the comparatively stronger property rights under the ALRA. Nevertheless, the NTA presents opportunities for Aboriginal people who have not benefited under the ALRA, including those in rural towns and cities.

New South Wales, including the Australian Capital Territory

The New South Wales *Aboriginal Land Rights Act* (NSWALRA) was enacted in 1983, creating a claim process whereby land could be transferred to land councils to be held in trust. The Act resulted in the transfer of all land held by the New South Wales Aboriginal Lands Trust, which totalled about 46 square kilometres, to land councils (ILC 1996c: 16). The legislation allows Aboriginal land councils to claim and also purchase further landholdings. Since the commencement of the legislation to 30 June 2000 some 6,266 claims had been lodged, with 1,815 claims or part claims being successful. The area granted totals 65,823 hectares (Department of Aboriginal Affairs New South Wales (DAANSW) 2000b: 24). Land is held predominantly as freehold although there are some areas granted as perpetual leases under the *Western Lands Act*.

It is apparent that Indigenous landholdings in New South Wales comprised many very small parcels of land. Of the total area of land granted under the NSWALRA,

one claim alone accounts for 22,000 hectares. This single grant at Winbar in the Western Division of New South Wales in 1989 followed extensive litigation between the New South Wales Aboriginal Land Council and the Minister administering the *Crown Lands Act* (DAANSW 2000b: 22 1998: 13). Land acquisitions by New South Wales land councils have been predominantly town blocks throughout the State for residential and commercial development. One of the more significant purchases was the Weinterriga sheep grazing property of 35,000 hectares near Wilcannia (DAANSW 2000b: 22). In 1996 the ILC (1996c:16) recorded that approximately 50 properties had been acquired in New South Wales by Commonwealth land acquisition programs operated by ATSIC and its predecessors. In addition the ILC has acquired 29 properties with a total area of 101,467 hectares.

One of the more recent developments in New South Wales has been the enactment of the *National Parks and Wildlife (Aboriginal Ownership) Amendment Act 1996*. The Act contains a mechanism for Indigenous communities to claim land in national parks and it originally scheduled the handing back of five existing national park estates to Aboriginal ownership. The five areas proposed for handback were:

- Jervis Bay National Park
- Mungo National Park
- Mootwingee Historic Site and Coturaundee Nature Reserve
- Mount Grenfell Historic Site and
- Mount Yarrawyck Nature Reserve.

The Mootwingee Historic Site and Coturaundee Nature Reserve were returned to Aboriginal ownership in September 1998. The registered Aboriginal owners have since been participating in the Board of Management of the areas (DAANSW 2000b: 22). During 1998 the Biamanga National Park in southern New South Wales was added to the list of national park estates to be Aboriginal owned with the commencement of the *Forestry and National Parks Estate Act 1998* (DAA NSW 2000b: 22). The total area of National Park affected by the legislation is 113,506 hectares.[8]

The Commonwealth's *Aboriginal Land Grant (Jervis Bay Territory) Act* was enacted in 1986 and provides for grants of land in the Jervis Bay Territory of the Australian Capital Territory. On 12 October 1995 the Wreck Bay Aboriginal Community was granted ownership of the Jervis Bay National Park, with the community leasing the Park back to the Director of National Parks and Wildlife, under arrangements similar to those existing at Uluru and Kakadu National Parks in the Northern Territory (ILC 1996c: 16). A total of 403 hectares of land was granted in 1995 (ILC 1996c: 22). The Commonwealth amendments facilitating the handback provide for a by-law giving power and an expansion of functions to the Wreck Bay Aboriginal Community Council to enhance its ability both to participate in the proposed joint-management arrangements and to manage its existing lands. The Minister for the Environment appointed a Board of

Management, with two of its first tasks being to begin the preparation of a plan of management with a distinct Aboriginal cultural theme and to consider renaming the Park and gardens with an appropriate Aboriginal name (ATSIC 1997: 85–6). The National Park was subsequently renamed Booderee National Park in July 1998 from a local Aboriginal word meaning 'bay of plenty' (ATSIC 1998: 139). The transfer of land in the Jervis Bay Territory has resulted in about 93 per cent of the Territory being granted to the local Aboriginal people (ATSIC 1997: 86). In January 1997 the Wreck Bay Aboriginal Community Council requested that the Minister agree to make the remaining areas of vacant Crown land in Jervis Bay into Aboriginal land (ATSIC 1998: 139).

Queensland

Access to land for Indigenous people in Queensland was restricted until recently to allocation of reserves or through DOGIT. Notably, Aurukun and Mornington Island were not granted DOGIT status: instead they were granted 50-year leases following the passing of the *Local Government (Aboriginal Lands) Act 1978*. During the 1980s the Queensland Parliament passed a series of amendments to the *Land Act 1962* (Qld) which provided for 'deeds of grant-in-trust' to former reserves and provided for the grant of freehold estates to the relevant Aboriginal council. DOGIT as a method of landholding is far less secure than the freehold inalienable title which Aboriginal groups in the Northern Territory and South Australia enjoy. A DOGIT can be cancelled at any time; such land could revert to the Crown, or be resumed for public purposes such as air strips and recreation facilities (Kirk 1986: 62) should the Parliament agree. Under DOGIT the Aboriginal Reserve Councils are the trustees of the land but the Governor-in-Council (effectively State Parliament) can remove 'trustees' in the public interest (Kirk 1986: 62). There are currently 32 DOGITs with a total area of 1,826,462 hectares (information provided by Queensland Department of Natural Resources (QDNR)).

Expectations that the creation of the ALFC in 1975 might address Indigenous land needs in Queensland were not met, because of actions taken by the then Queensland Government. As Palmer (1988: 149) notes, proposed ALFC purchases became victim to delays on technical grounds and straight-out refusals by the Queensland Government to transfer leases intended for Aboriginal communities. Between 1975 and 1992 only about 25 properties (ATSIC 1992) were acquired in Queensland and the Torres Strait, which is considerably fewer than the number of properties acquired, for example, in New South Wales. Arguably, had this political situation not arisen, several more properties could potentially have been acquired. It was not until the 1990s that Commonwealth land acquisition programs became effective in Queensland. Under ATSIC's LAMP, 45 properties were acquired between 1990 and 1997, and the ILC acquired 25 properties between the commencement of its operations and 30 June 2000.[9]

The Goss Government attempted to ameliorate Indigenous aspirations for land with the introduction of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Act 1991*. Under the legislation, any group of Indigenous people may claim land on the grounds of traditional affiliation, historical association or

economic or cultural viability. The Acts limit claims to those areas described by the legislation as transferable lands or claimable claims. Transferable lands are defined as DOGIT land, Aboriginal reserve land, Aurukun Shire lease land, Mornington Island Shire lease land and available Crown land declared to be transferable. Claimable lands are primarily available State land, with certain land uses omitted, but include national parks provided each park is determined for claim by the minister. Claims are pursued by lodging an application with the Land Tribunal which determines the validity of the claim and recommends to the minister whether, and to whom, land should be granted. Since the enactment of the two 1991 statutes:

- 80 parcels of land have been transferred to Indigenous communities, comprising a total area of about 540,287 hectares; and
- 35 claims have been received of which nine have been recommended by the Land Tribunal and ten grants have been processed.[10] The total area of granted land is about 2,505 hectares (information provided by QDNR).

Queensland, or more specifically Murray Island in the Torres Strait, is the location of the first common-law recognition of native title. Indeed, the majority of successful claimant determinations in Australia were located in the Torres Strait and mainland Queensland to 30 June 2000. Currently, 53 per cent or 920,000 square kilometres of the State is subject to native title claim (information provided by QDNR). However this aggregate is based on the area mass of the external boundaries of claims, and many parcels of land contained within those areas are unavailable for native title recognition. Therefore, the area actually available for claim may be as low as a few percentage points of the area of Queensland and subsequently only a small portion of the State may be recognised as native title land. Greater success for land aspirations may consequently lie in ILUAs and other agreements and frameworks negotiated with the State Government. For example, negotiations are currently in progress in northern Queensland near Starke Station and Silver Plains for land to become a mixture of Aboriginal freehold land and national park.

South Australia

The creation of the Aboriginal Lands Trust of South Australia on 8 December 1966 was the first step taken by any Australian government to grant title of land to Australia's Indigenous people (Peterson 1981b: 115). The *Aboriginal Land Trust Act 1966* established the Trust, comprised of Aboriginal members, and provided for the transfer of former Aboriginal reserves to the control and management of Aboriginal communities. Up to March 1980 a total of 485,582.8 hectares of land contained in 43 separate parcels had been vested in the Trust (Peterson 1981b: 116). By 30 June 1989 the Aboriginal Land Trust controlled 5,400 square miles of land in South Australia (Altman, Ginn & Smith 1993: 11). One of the Trust's largest holdings is Yalata, an area of 770,772 hectares along the coastal region of the Great Australian Bight. The *Aboriginal Land Trust Act* still has relevance in

South Australia today in relation to all former reserve lands except the Pitjantjatjara and Maralinga lands.

The Pitjantjatjara and Maralinga lands are governed by two separate statutes. The *Pitjantjatjara Land Rights Act 1981* (PLRA) is of major political significance because it is the first negotiated land rights settlement in Australia (Peterson 1981b: 121). The legislation resulted in the transfer of 102,650 square kilometres of land to the Anangu Pitjantjatjaraku, the corporate entity which is composed of the traditional owners of north-west South Australia. The *Maralinga Tjarutja Land Rights Act 1984* (MTLRA) resulted in an area of 81,373 square kilometres being granted to Maralinga Tjarutja. This area is located to the south of the Pitjantjatjara lands. Together the PLRA and the MTLRA have resulted in the transfer of 18 per cent of land in South Australia to Indigenous owners (Way 1999: 23). It is held in a form of inalienable freehold title similar to that under the Northern Territory ALRA. Unlike the Northern Territory there is no provision for granting additional land through a claims procedure. Notably, the land conveyed to Aboriginal ownership under the two statutes is primarily confined to remote areas of the north and west of the State.

More recent evaluations of Indigenous landholdings in South Australia indicate that Indigenous owners hold at least 20 per cent of the State. The SAMLISA, completed in February 2000, reviewed about 110 properties in rural and remote South Australia which were managed by Indigenous people. The range of tenures vary considerably. Some are held under special Acts of Parliament, others have been acquired on the open market, and several parcels of land are managed by Aboriginal people under cooperative management arrangements. In some cases these managed lands are actually Crown lands. Aboriginal housing blocks and urban facilities were excluded from the study (SAMLISA 2000b: 5). The study was a combined Commonwealth and State initiative under the auspices of the Natural Heritage Trust. Although the study does not present a comprehensive quantitative assessment of all Indigenous landholdings in South Australia it is by far the most comprehensive land management study undertaken in any Australian State or Territory in relation to Indigenous land.

Apart from residents in the north and west of the State where the PLRA and MTLRA apply, Indigenous people in South Australian have relied primarily on land acquisition programs to address their land ownership aspirations. Approximately 30 properties were acquired with the use of Commonwealth land acquisition funds between 1972 and 1991. ATSIC's LAMP contributed funds for the acquisition of 28 properties, and further properties were acquired around the State from Regional Council RLFs. The ILC acquired 19 properties to 30 June 2000. It is evident that acquisitions by the ILC were predominantly in the rural areas, as the average cost was $14.00 per hectare. As of 30 June 2000, there were no native title determinations nor ILUAs registered in South Australia. A proposal exists for the development of a State-wide agreement to resolve native title claims, and community consultations have commenced.

Victoria

In Victoria there are six separate land rights statutes. Five of these were passed by the Victorian legislature and one was legislated by the Commonwealth. In the main, the statutes were passed to allocate title of small parcels of former reserve lands to local Aboriginal communities. The first statute passed was the *Aboriginal Lands Act 1970* (Vic) which resulted in the granting of freehold title to the residents of Lake Tyers and Framlingham on 24 July 1971. In 1982 the Victorian Parliament passed the *Aboriginal Lands (Aborigines' Advancement League) (Wall St, Northcote) Act 1982* (Vic) which vested the facilities and land to the Aborigines Advancement League (AAL). The grant is subject to the condition that the land continues to be used for Aboriginal cultural and recreational purposes (Way 1999: 65). A small area of land adjacent to the area managed by the AAL is subject to the *Aboriginal Land (Northcote Land) Act 1989* (Vic).

In the mid 1980s the Cain Labor Government repeatedly tried to pass limited land rights but was blocked by the Legislative Council. As a means of circumventing the deadlock, the Victorian Government asked the Commonwealth Government to pass its own legislation leading to the passing of *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987* (Cwth). The Act vests ownership of the respective areas in Aboriginal Corporations. This legislation was an abridged version of the intentions of the Victorian Government and it was site-specific rather than having State-wide application. It did not provide for further claims except near the specific areas listed in the legislation and it did not create a tribunal to hear claims as had been intended under the original proposal (Kirk 1986). Over all, the legislation resulted in half a square kilometre of land at Lake Condah being vested in the Kerrup-Jmara Elders Aboriginal Corporation and 11 square kilometres of land at Framlingham Forest being vested in the Kirrae Whurrong Aboriginal Corporation.[11]

The two other statutes in operation in Victoria are the *Aboriginal Lands Act 1991* (Vic) and the *Aboriginal Land (Matatunga Land) Act 1992* (Vic). The 1991 Act revoked the reservation of three missions (the Ebenezer Mission near Dimboola, the Ramahyuck Mission near Stratford in Gippsland and the Coranderrk Mission near Healesville) and authorised the granting of those lands to certain Aboriginal organisations (Way 1999: 65). The 1992 Act provided for the granting of a small area of four hectares of Crown land at Robinvale in north-western Victoria to the Murray Valley Aboriginal Cooperative. The legislation prescribes that the land must be used for Aboriginal cultural purposes.

Land acquisitions by Commonwealth agencies and authorities between 1972–73 and 1990–91 resulted in 13 purchases for Indigenous groups in Victoria (ATSIC 1992). It is estimated that ATSIC purchased approximately 24 properties between 1991 and 1997, while the ILC purchased 17 properties to 30 June 2000.[12] There have been eight purchases utilising the RLF by the Tumbukka Regional Council in Victoria. Parcels of Commonwealth surplus land have been handed back to communities, including Camp Jungai, the former Healesville Army School of Health (ILC 1996h: 14). This suggests that specific Commonwealth land

acquisition programs for Indigenous people have resulted in at least 62 purchases in Victoria. Although the aggregated area of the acquisitions is not precisely known it is evident, from the number of parcels of land acquired, that the Commonwealth programs have met Indigenous Victorian aspirations for land to a far greater extent than the State's land rights statutes. The Victorian Government has a capital projects program providing freehold land to Aboriginal organisations. The ILC estimates that more than 80 properties of varying sizes and forms of land tenure had been acquired under this program (ILC 1996h: 14). These are typically land and facilities for cooperatives and Aboriginal organisations. The number of Indigenous landholdings in Victoria, which includes land grants, acquisitions and cooperative facilities, could be in excess of 160 separate parcels. But these typically small areas of land aggregate to a very low proportion of the area of Victoria.

Although there is yet to be a successful native title determination in Victoria, a high proportion of the State is subject to native title claim. Indeed more than 30 per cent of the State is Crown land under a variety of tenures such as national parks, state parks and reserves. Nevertheless, the prospects of successful native title litigation seem very slim given the findings of the Federal Court in the Yorta Yorta case. At 30 June 2000 one ILUA has been registered with the NNTT for an area of eight square kilometres in the Gippsland region. There is also a proposal for the development of a State-wide framework agreement and ATSIC, Mirimbiak Nations Aboriginal Corporation and the Victorian Attorney-General have signed a protocol to progress this framework.

Tasmania

Relative to many mainland jurisdictions, the Tasmanian Parliament was late in passing land rights legislation. This may be due to the longstanding official commitment to the fiction that Tasmanian Aborigines died out with Truganinni in 1876 (Way 1999: 41). However, with the enactment of the *Aboriginal Lands Act 1995* (Tas) (ALA) 12 areas of culturally significant land were vested in the Aboriginal Land Council of Tasmania (ALCT). These areas include six of the Bass Strait islands, historical sites at Risdon Cove and Oyster Cove near Hobart, and four other cultural sites. The total area of land granted under the legislation amounted to 4,604 hectares (ILC 1996g: 14), or only 0.06 per cent of land in the State (Way 1999: 41). In addition, the Premier of Tasmania, Jim Bacon, recently handed Wybalenna mission on Flinders Island back to the ALCT to be co-managed by traditional Aboriginal owners of the island (Way 1999: 43).

In 1999 the Tasmanian Government tabled the Aboriginal Lands Amendment Bill which proposes the grant of a further eight parcels of Crown land to the ALCT. The transfer would result in almost 53,000 hectares of land on Bass Strait islands and other coastal reserves becoming Aboriginal Land. The Bill was referred to a Select Committee which did not support the transfer on the assumption that the transfer would not assist reconciliation. Debate on the Bill has since been adjourned (ATSIC 2000: 15).

As in Victoria, Aboriginal people of Tasmania have relied considerably on land acquisitions in order to create, and own, a land base. In 1978, the ALFC acquired Trefoil Island (103 hectares), a 19-hectare block on Cape Barren Island, and a small block at Launceston (ILC 1996g: 14). Thirteen other parcels of land were acquired for Indigenous organisations through DAA and ATSIC land acquisition programs. In 1996 the ILC estimated that existing Indigenous landholdings stood at about 0.007 per cent of the area of Tasmania, a figure which appears to exclude the areas granted under the ALA. Since 1996 there have been a number of acquisitions made through the resources of the RLF, and the ILC has acquired three properties with a total area of 51,000 hectares. As yet there have been no native title determinations in Tasmania.

Western Australia

Despite the fact that it has the third highest proportion of Indigenous residents of any Australian jurisdiction, Western Australia is the only State not to have a form of land rights legislation (Way 1999: 44). This is despite the fact the Seaman Aboriginal Land Inquiry in 1983 recommended a land claims mechanism in which adequately resourced Aboriginal agencies pursued claims for land before a specialist tribunal (Seaman 1984). It also recommended an Aboriginal right to veto mining on Aboriginal land comparable with the rights available to non-Aboriginal title holders in Western Australia and Aboriginal freehold title holders under the ALRA (ILC 1996i: 15). After the Seaman Inquiry an Aboriginal Land Bill was proposed, to grant reserved lands to regional Aboriginal organisations. However, this Bill was defeated in the Legislative Council.

Under the *Aboriginal Affairs Planning Authority Act 1972* (WA), Crown land reserved for the use or benefit of Aboriginal people was vested in the Aboriginal Affairs Planning Authority (AAPA). The Act establishes the WAALT which is comprised of Aboriginal people appointed by the Minister. The WAALT has responsibility for acquiring and managing land in the interests and wishes of Aboriginal people (ILC 1996i: 17). Those lands identified as 'reserves', which comprise around 20 million hectares, are vested with the WAALT for the benefit of Aboriginal people and have been leased to communities for 99 years at peppercorn rental. Other landholdings include pastoral leases and other forms of '50 year' special leases from the Department of Land Administration (DOLA) (ILC 1996i: 17). Prior to the creation of the WAALT most of the reserves and lease land were managed by other government departments such as the now defunct Native Welfare Department.

In 1996, the Western Australian Aboriginal Affairs Department (AAD) reviewed the WAALT. The review, undertaken by former Commonwealth Senator Neville Bonner, recommended that title to lands managed by the Trust, approximately 27 million hectares, be transferred to Aboriginal corporations in trust for Aboriginal people by 2002 (AAD *Community Newsletter*, February 2000: 3). The area of land under the review was 12 per cent of Western Australia, comprising 250 Aboriginal reserves, six pastoral stations, ten special leases, one Crown grant in trust and 59 blocks of freehold land (Bonner 1996). The first of the handbacks took place in

December 1999 when the Minister for Aboriginal Affairs, Dr Kim Hames, handed title of Pandanus Park, a block of 87 hectares situated 45 kilometres south of Derby, to the Pandanus Park Aboriginal Corporation. The documents include a Management Order giving the community direct control over the reserve (AAD *Community Newsletter*, February 2000: 3).

Prior to the implementation of the Bonner Report, community Indigenous ownership of land in Western Australia was restricted to those groups who had been successful in receiving grants to acquire land. Indeed it is evident that the ILC has devoted a significant proportion of their resources to Western Australia to address local Indigenous aspirations for land, simply because there is no land rights legislation. Of the total area of land acquired across Australia by the ILC to 30 June 2000, nearly half was in Western Australia. The 25 properties had a total area of about 2.3 million hectares. ATSIC acquired about 27 properties between 1991 and 1997 and previous Commonwealth programs assisted in the acquisition of between 30 and 50 properties. In the 1992–93 financial year a joint venture between ATSIC and the AAPA resulted in the purchase of Towrana and Gilford Stations near Geraldton for the Mungullah Community Aboriginal Corporation (ATSIC 1993: 38). As noted earlier in this paper a number of properties acquired by Commonwealth programs were vested in the WAALT (e.g. Pandanus Park). Therefore statistics in relation to the number of properties acquired by Commonwealth programs should be approached cautiously.

The fact that no land rights legislation exists means that the NTA may well be applied to the greatest extent in Western Australia. As Australia's largest State it has 90.9 million hectares of vacant Crown land which is 36 per cent of the State (COA 1997). In an attempt to redress the prospect of extensive areas of land being subject to native title, the Court Government enacted the *Land (Titles and Traditional Usage) Act 1993* (WA). Following a challenge in the High Court, the legislation was found to be inconsistent with the *Racial Discrimination Act 1975* (Cwth) and invalid under s. 109 of the Australian Constitution (ILC 1996i: 20). As a result extensive areas of Western Australia are currently under native title claim.

Estimating Indigenous landholdings in 2000

So what was the extent of Indigenous landholdings in Australia in 2000? It is evident that since 1996, when the ILC estimated that 15.1 per cent of the Australian landmass was under some form of Indigenous ownership or control, there has been an increase in Indigenous landholdings in Australia. The ILC acknowledges the deficiencies in its estimates, noting that it was reliant on the AUSLIG survey of 1993 which included neither land parcels of less than 5,000 hectares, nor land purchased by ATSIC since 1993. Indeed, the ILC qualifies each State and Territory statistic by noting that the data may understate, and may even significantly understate, the extent of Indigenous landholdings. Without an exhaustive assessment of the many tiny blocks all across Australia, one can only speculate on the number of parcels of Indigenous land under 5,000 hectares. Of

course the size of the parcels could vary from the average quarter-acre housing block to reasonably sized properties which are a few hectares short of the threshold. It is more likely that most fall into the former category, and there could potentially be thousands of these small blocks.

Nevertheless the ILC estimate is arguably the most accurate available and it will be used as the baseline for the present exercise. Hence the quantum estimate of land held in 2000 will be derived from accepting the statistics of the ILC in 1996, assessing the amount of land accrued by Indigenous interests since 1996, and then addressing the understated data in the ILC estimate. Table 9 indicates the minimum increase in Indigenous landholdings between 1996 and 30 June 2000. The accruals listed under the heading of Commonwealth apply nation-wide (e.g. NTA and ILC accruals) while those under each State and Territory heading relate to land accrued from relevant State and Territory statutes and programs. The Commonwealth statistics have been identified throughout this paper, with the exception of ATSIC land acquisitions between 1993 and 1996. As the area of land acquired by ATSIC during this period is not known, an estimate is provided. It is based on a comparison with purchases made by the ILC and takes into account that some land may have been claimed under the ALRA and therefore counted under the statistics of the Northern Territory. Over all, the estimate detailed in Table 9 is arrived at through a cautious approach, and should be considered as an absolute minimum increase in landholdings. For example, there may in fact have been accruals in Queensland under that State's land rights legislation. However, much of that accrual was on DOGIT lands and reserves which had previously been included in the statistics of Indigenous land in Queensland.

Table 9. Minimum increase of Indigenous landholdings, 1996–2000

	Area (km^2)	Proportion of Australia (%)
ILC estimate 1996	1,162,400	15.1
Commonwealth		
ATSIC (estimate)	500	
ILC	480	
RLF	0.7	
NTA	23,000	
ILUA	8,500	
State/Territory		
NSW	11.4	
Qld		
WA		
NT	3,500	
Vic		
SA		
Tas	0.5	
Total minimum increase	35,992.6	0.5

Based on the above estimate, and taking into consideration that the ILC data understated or significantly understated the areas in each State and Territory, it is reasonable to suggest that the amount of land held by Indigenous interests in Australia in 2000 is at least 16 per cent of the area of Australia. As more reliable and accurate data becomes available a more precise figure can be arrived at. Nevertheless, given the many remaining unknowns in the equation, including land granted or made available for Indigenous usage under management arrangements by State and Territory governments, it may be revealed that Indigenous people either own or control a proportion of Australia in the order of 18 per cent or perhaps slightly higher.

Conclusion

The aggregated total of Indigenous land in Australia would appear to fall within the range of 16 per cent to 18 per cent. The lower end of this range is based on the proportion of Australia held by Indigenous interests that can be identified with some certainty and for which reliable data exists. The upper end of the range is speculative. This range may also vary if alternative definitions are applied in respect to what actually constitutes Indigenous ownership or control. What is most important is the recognition that this aggregate area of land comprises diverse land tenures, property rights and obligations to the land, and that there are many different types of land ownership governance structures. The Indigenous estate consists of many small landholdings in south-eastern Australia and large tracts of land in the north and centre of the continent. There are significant differentials in the total area held between the remote parts of the continent, where vast areas of land are held, and the heavily populated areas of the continent where there are typically many small landholdings. This results in significant variations in the real estate values of the land which has implications in respect to the potential to attract development capital.

Major land rights legislation has facilitated the transfer of the major proportion of the land that is now held by Australia's Indigenous peoples. Significantly, grants of land through the processes of the ALRA still account for half of the Indigenous land estate Australia-wide. This is a result not only of the application of the ALRA across the entire Northern Territory, but also because of the availability of significant amounts of vacant Crown land that could be claimed. Because the ALRA is Commonwealth legislation, it could be argued that the Commonwealth has been the major contributor to addressing Indigenous aspirations for land in Australia. In South Australia, State land rights legislation also facilitated the transfer of extensive tracts of land in the north-west during the 1980s. The combined effects of the ALRA and two South Australian statutes have had an enormous influence on the size of the Indigenous estate. These statutes originate from the mid 1970s and early 1980s. Although there has been a steady accrual of land to Aboriginal people in these areas over the past two and a half decades it is important to note that, apart from the potential of the NTA, no other recent policy

decisions or mechanisms have been as beneficial to Indigenous people's aspirations for land.

Indigenous landholdings can be expected to increase in the next decade. This can be attributed primarily to the combined impact of the ALRA, under which 130,000 square kilometres remain under claim, and the NTA, under which large tracts of land across Australia are under claim. The effectiveness of the NTA in meeting Indigenous people's aspirations for land should be clarified over the next decade as a broad range of legal issues are resolved. Prospectively successful native title claims, and lands subject to ILUAs, may in time aggregate to be a significant proportion of the Australian landmass. However, it is highly unlikely to be in the vicinity of the 78 per cent of the Australian continent mooted by the DPM&C (2000). It can be anticipated that most land subject to native title will be located in the remote regions of Australia where dispossession has been less extreme.

What is evident from the available statistics is that past and current Commonwealth land acquisition programs have contributed only marginally to Indigenous aspirations for land at the national level. For example, the area of land acquired by the ILC at 30 June 2000, approximately 4.8 million hectares, represents only 0.0062 per cent of the Australian landmass. It would be anticipated that similar, if not smaller, proportions were acquired by the ILC's predecessors. While these acquisitions may have contributed only marginally in the national context, their special importance to Indigenous people in towns and cities, and in States without adequate land rights regimes, cannot be underestimated. The extent to which the ILC will be able to contribute to the growth of the Indigenous estate very much depends on its ability to maintain its momentum after government allocations to it cease in 2004. Its contribution could never be expected to be as large as those resulting from the provisions of the ALRA or the NTA.

Historically, most legislative regimes in Australia have focused on Indigenous people with traditional links to the land, and the greatest accrual of land has been to those Indigenous people with traditional affiliations. The NTA also requires proof of traditional relationships to land and the ILC has adopted a similar position with respect to its divestment policy by creating corporate entities of traditional owners to hold the title to the land. Therefore, those Indigenous people who cannot prove, or who have extreme difficulties in proving traditional relationships, are unable to obtain land through current programs or legislation. This includes groups from the Stolen Generation, and the 80 per cent of Torres Strait Islanders who reside on the mainland, who currently find themselves without legislative or program opportunities to establish a land base. In particular, those of the Stolen Generation present a unique case as they were deliberately moved from their country. This presents complex policy questions for governments and government agencies such as the ILC about how to provide land for these groups without causing further alienation of traditional lands.

Appendix 1

Projected financial operations of the Land Fund (based on 1994–95 figures)

Year ended 30 June	Income ($m)	Draw down from the Land Fund ($ m)	Investment[a] ($ m)	Accumulated reserves[b] ($ m)
1995[c]	200	25	175	183
1996	121	45	76	270
1997	121	45	76	360
1998	121	45	76	455
1999	121	45	76	553
2000	121	45	76	655
2001	121	45	76	761
2002	121	45	76	872
2003	121	45	76	986
2004	121	45	76	1,106
Total	1,289	430	859	

Notes: a. The statute requires that savings rate be set at 87.5 per cent in year 1 and 63 per cent in years 2 to 10.

b. Assuming a rate of return on accumulated reserves of 4 per cent, $1,106 million will generate a self-sustaining $44 million from 2005 for operation of the ILC. The total amount of new money appropriated ($1,289 million in 1994 dollars) is only slightly above accumulated reserves at year 10.

c. Although the ILC did not become fully operational until 1 June 1995, funds were expended during the initial implementation stages during 1994–95. However these were operational expenses and no land was acquired.

Source: Altman & Pollack (1998).

Notes

1. This includes land acquired by the Aboriginal Benefits Account (ABA). The ABA is a secretariat established under the ALRA to distribute mining royalty equivalents and to make grants for the benefit of Aboriginal people in the Northern Territory. It was formerly known as the Aboriginal Benefits Trust Account and also the Aboriginal Benefits Reserve.
2. It is estimated that the commitment of $5 million in 1972 equates to $30.5 million in 1997, and $2 million (1972) equates to $12.2 million (1997).
3. The number of purchases in each State and Territory are as follows: Western Australia 15; Queensland 5; Victoria 2; South Australia 5; Tasmania 3; Northern Territory 10; and New South Wales 19 (Palmer 1988).
4. With the establishment of the ILC, ATSIC's land acquisition and management operations were wound down. During a two-year transitional phase (1995–97) both ATSIC and the ILC received drawdowns from the Land Fund to acquire land. However, ATSIC's program responsibility effectively ceased on 30 June 1997, and specific and prime responsibility for Indigenous land acquisition and management was shifted to the ILC.
5. $200 million was allocated to the Land Fund in 1994–95 as an interim measure under clause 201 of the NTA. As the specific legislative arrangements of the Land Fund had

not been established, the Department of the Prime Minister and Cabinet was given responsibility for investing the allocation under interim arrangements (ILC 1997: 74)

6. The Australian Capital Territory is included in the New South Wales RILS. The NILS is a disallowable instrument which must be tabled in the Parliament. There is no requirement for the tabling of the RILS although there are obligations placed on the ILC by the legislation to consult with ATSIC regional councils in the formulation of strategies.
7. During that period the ILC will receive $253 million from the Land Fund.
8. This figure is the aggregated area of the Parks as listed in the NSW National Parks and Wildlife website (www.npws.nsw.gov.au/parks). There maybe some minor differential to the actual area of grant.
9. The accuracy of this figure is questionable due to the reporting methods and timeframes of the material from which it is extracted. More recent reporting by ATSIC up to 1997 includes some purchases from the RLF, and programs acquisitions are not specified. There may also be some duplication in the recording of purchases due to overlaps in operations of agencies which both functioned in the same financial year (i.e. ADC and ATSIC during 1989–90).
10. It should be noted that a claim can include more than one parcel of land.
11. Land adjacent to Framlingham was also purchased with assistance of ATSIC during the 1989–90 financial year. The Victorian Government assisted with complementary funding for the purchase (ATSIC 1990: 19).
12. The ATSIC figure has been calculated by reviewing all ATSIC *Annual Reports* up to 30 June 1997.

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