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UNMET POTENTIAL

The Commonwealth Indigenous managed capital funds and self-determination

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Introduction

Since the late 1960s, a strand of Indigenous policy has focused on the establishment of separate capital funds for a number of related, but conceptually distinct purposes. This chapter focuses on the development, rationales and operations of two longstanding and largely Indigenous managed Commonwealth entities: Indigenous Business Australia (IBA); and the Indigenous Land Corporation (ILC) and its associated Land Fund (LF).² There are similar entities operating in state and territory jurisdictions, and Indigenous interests have themselves established a number of capital funds in different contexts.

1 I wish to acknowledge the helpful comments of Tim Rowse, Laura Rademaker, Neil Westbury and Jon Altman on earlier drafts of this chapter. Of course, responsibility for the content is entirely mine.

Declaration of interest: The author was personally involved in a number of the matters discussed in this paper: he worked on the development of the ATSIC legislation, including the Commercial Development Corporation (CDC), and on the development of the *Native Title Act* and the subsequent LF legislation. He worked for three federal ministers responsible for Indigenous affairs at various times between 1986 and 2011, and worked for the ILC from 2013 to 2015.

2 Each of these entities has undergone various name changes. IBA was originally named the Aboriginal and Torres Strait Islander Commercial Development Corporation. While this book was in press, the ILC was renamed the Indigenous Land and Sea Corporation. The LF, which was originally named the Aboriginal and Torres Strait Islander Land Fund and is currently titled the Aboriginal and Torres Strait Islander Land Account was, as of 1 July 2019, renamed the Aboriginal and Torres Strait Islander Land and Sea Future Fund.

This chapter explores the effectiveness of IBA and the ILC/LF in contributing to Indigenous self-determination to identify approaches that may operate more generally to advance self-determination in public sector capital funds.

Capital funds and self-determination

For almost 50 years, the notion of self-determination has been at the heart of Indigenous policy in Australia. Facilitating Indigenous citizens to make choices about the ways in which they engage with the wider Australian society has been a key driver for policy design and policymakers' rhetoric since the establishment of the Council for Aboriginal Affairs in 1967.³ Self-determination through increased involvement in decision-making at all levels has been a longstanding aspiration of Indigenous people.

The salience of self-determination for both policymakers and Indigenous people has varied, but the idea of self-determination retains significant normative force throughout this period, notwithstanding the varying definitional interpretations, emphases and levels of commitment that infuse any discussion of the concept. While the policy of self-determination replaced policies directed to assimilation, in substantive terms, self-determination does not rule out Indigenous choices to assimilate. In addition, the 'shadow' of assimilationist policy continued well into the era of self-determination, embedded in institutions both formal and informal. For present purposes, therefore, assimilation ought not to be seen as the opposite of self-determination.

In tracing the evolution of IBA and the ILC/LF over the past half-century, the present analysis identifies the policy intentions behind the multiple innovations and reforms wherever possible, but is more concerned to identify their actual outcomes against the yardstick of strengthening self-determination.⁴ The specification of such a yardstick is itself open to multiple formulations. The broad approach adopted here focuses on substance rather than rhetoric and, following Wilson and Selle, emphasises two complementary elements of self-determination: degrees of autonomy

³ Rowse, *Obligated*, 30.

⁴ Because most policy innovations are the product of negotiation and iterative development processes, it is extremely rare for there to be a single policy intention involved. As well, most policy innovations have unintended consequences both positive and negative. These factors reinforce the utility of focusing on outcomes over intention.

or self-rule, and levels of participation and influence over decisions on matters that affect Indigenous people.⁵ While these elements can operate at local, regional or national levels (both IBA and the ILC/LF are Commonwealth entities with nationwide remits) the yardstick is applied at a national level.

There are at least two ways in which government-established capital funds might facilitate self-determination of Indigenous citizens. The first, and potentially most significant, emerges if the funds raise the economic and/or political status of Indigenous peoples generally. Even an ostensibly compensatory fund such as the ILC/LF can have the effect of advancing Indigenous interests economically and politically (and thus advancing self-determination) through the restitution of expropriated assets. This focus on the achievement of substantive and formal policy aims could be termed the ‘outcomes perspective’ on self-determination. Implicit in it are assumptions regarding Indigenous world views and choices that may not in fact be accurate for all Indigenous groups or individuals.

The second way these funds might facilitate self-determination is by enabling Indigenous representatives to make decisions related to each capital fund’s operations and, in particular, the disbursement of investment income. This might be termed the ‘process perspective’ on self-determination. Government-appointed boards, which comprise a majority of Indigenous members, govern both IBA and the ILC, raising fundamental questions regarding self-determination. But who do those appointed represent, to whom are they accountable, and how independent can they be from ministers and the government (even if legislation provides for formal independence)? Importantly, the LF was originally conceptualised as holding funds in trust for Indigenous interests, akin to a fiduciary relationship. The statute establishing the LF specified automatic drawdowns of funds from the LF to the ILC that were not subject to ministerial discretion. Nonetheless, the executive arm of government, assisted by an advisory committee that included ILC representation, retained control over the LF’s investment policy.

The ‘outcome’ and ‘process’ senses of self-determination are often in tension, so that IBA and the ILC/LF have needed to trade off desired ‘outcomes’ against adherence to ideal ‘process’.

5 Wilson and Selle, ‘Indigenous’, 8–12.

Indigenous Business Australia

The genesis of IBA is the *Aboriginal Enterprise (Assistance) Act 1968*. This law established a fund to which Aboriginal people could apply for business related loans.⁶ Tim Rowse describes this legislation as one of the Council for Aboriginal Affairs's (CAA) 'few political victories of 1968'.⁷ He documents the role of the CAA in advocating for 'programs to develop and strengthen the capacity of Aboriginal people to manage their own affairs' and notes that this terminology was soon referred to by others as 'self-determination'.⁸ From the very beginning, the capital fund policies were intended by the CAA to advance self-determination broadly defined. This capital fund was rolled into the Aboriginal Loans Commission in 1974, which in turn was subsumed within the Aboriginal Development Commission (ADC) in 1980.

The continuing policy thread or rationale weaving through each of these institutional iterations was to help Indigenous business operators to access capital. A deeper, and questionable, policy assumption that emerged over time was that Indigenous economic development must involve the development of Indigenous-owned or controlled commercial enterprises, rather than merely raise Indigenous income levels. This assumption has its origins in assimilationist or anti-communal ideas as well as in progressive ideas linked to self-determination and Indigenous aspirations for autarky (at least in economic terms). The increased focus on Indigenous procurement policies over the last decade is the most recent embodiment of this assumption. A parallel issue (discussed below) is the tension between communally based land acquisitions and more individualised support for housing loans and finance.

In 1985, the *Report of the Committee of Review of Aboriginal Employment and Training Programs* (the Miller Report), which included Mick Miller as chair and Dr H. C. Coombs as a key member, provided the first major policy assessment of federal government economic programs in Indigenous affairs. The Miller Report was explicitly critical of the ADC for prioritising the funding of housing over enterprise development. The report recommended that the government transfer responsibility

6 I will refer to IBA as a 'fund' because it comprises a significant and growing financial asset embedded within a statutory corporation with a remit to use its resources for Indigenous benefit.

7 Rowse, *Obligated*, 40.

8 Rowse, *Obligated*, 107.

for the support of commercially viable small businesses from the ADC to a new unit in the Commonwealth Development Bank.⁹ While this recommendation was never adopted, the analysis fed into the momentum for a new approach to supporting Indigenous economic development.

In 1989, the Hawke Government established the Aboriginal and Torres Strait Islander Commercial Development Corporation (CDC) at the same time as it legislated the Aboriginal and Torres Strait Islander Commission (ATSIC). Breaking from the previous approach, the CDC was a largely Indigenous-led corporation with a statutory remit to invest and take up equity positions in commercial projects relevant to Indigenous interests. A small capital base (\$10 million (m) per annum over four years plus the transfer of ADC assets of around \$10m) funded these investments. The rationale for this new approach was less to provide access to capital for Indigenous businesses (an autonomy focus) and more to build Indigenous political and economic influence at local and regional levels (a participation focus). CDC sought to make strategic investments in key businesses within regional economies, and thus gain access to the business and political networks that had excluded Indigenous interests. The prototype was an Indigenous-owned corporation, Centrecorp, that invested a proportion of royalty revenues in businesses that would particularly benefit Indigenous residents of Central Australia.

In 2001, the Howard Government renamed the CDC 'Indigenous Business Australia'. In 2005, the abolition of ATSIC led to further legislative change. ATSIC's enterprise loan function, and the housing loan function that ATSIC had inherited from the ADC, transferred to IBA.¹⁰ These changes added programs, funded by budget appropriations, that duplicated, albeit in concessional terms, a private sector bank's lending operations. They were therefore a reversion to the earlier 'access to capital' policy rationale. While IBA's investment remit was not affected, the 2005 changes returned IBA – at least in some years – to the annual budget appropriation process. Since its lending capability was based on funds appropriated by government, IBA was more beholden to government.

9 Miller, *Report*, 303–11.

10 *Aboriginal and Torres Strait Islander Amendment Act 2005* (Cth).

In practice, IBA continued to favour housing over enterprise. By June 2017, IBA controlled net assets of \$1.33 billion (bn), up from \$987m in 2008–09 and \$81m in 2003. Over half (\$679m) were concessional home loans, only \$30m (or 2 per cent) were enterprise loans, with the balance in a range of investments and cash, term deposits and an unspecified category termed ‘other’.¹¹ Thus, IBA ignored the Miller Report’s critique of underinvestment in enterprise support. Furthermore, while these lending decisions built an asset base, they also made IBA primarily a housing loan provider, changing and undermining IBA’s character. Notwithstanding this emphasis on housing finance, IBA continues to support Indigenous entrepreneurs and small business owners and also invests directly in commercial opportunities via partial or full ownership of around 20 active subsidiary corporations.¹²

In recent years, IBA has also become a fund manager. In 2013, it established an Indigenous Real Estate Investment Trust (REIT), and in 2015 it established a number of ‘prosperity funds’. IBA’s intention in each case was to provide a secure vehicle for Indigenous investors to invest in a diversified and actively managed portfolio. The minimum investment is set at \$500,000, suggesting that IBA is primarily seeking to support Indigenous landowners and native titleholders who gain money from agreements with resource developers. According to the IBA website, as at June 2016, the IBA REIT was invested in six commercial properties and had a value of \$102m; the prosperity funds comprise separate growth, income and cash funds, and have a gross asset value of \$78m. According to its 2017 Annual Report, IBA provided investment support to 109 Indigenous organisations, and co-invested with 36 Indigenous investors holding a total of \$129m in equity.¹³ This suggests that the IBA equity contribution to the funds is \$51m (\$129m minus \$78m).

How should we assess the performance of IBA in relation to its statutory remit, and the overarching policy challenge of Indigenous economic development?

11 Indigenous Business Australia, *Annual Report 2016–17*, 105.

12 Indigenous Business Australia, *Annual Report 2016–17*, 156.

13 Indigenous Business Australia, *Annual Report 2016–17*, 9.

IBA's three major programs are all worthwhile, and its design is fundamentally sound. However, over its 30-year history, IBA has made only a marginal contribution to improving Indigenous economic status and it has not increased significantly the political and economic influence of regional Indigenous interests. Not only has IBA been under-capitalised, but also its boards have concentrated on concessional home loans at the expense of making strategic commercial investments. While concessional home loans do build Indigenous wealth, it is unclear whether the same quantity of home loans could have been provided by private sector institutions. If IBA home loans are merely substitutes for loans that could be obtained from other lenders, then perhaps it would have been better for IBA to give priority to strategic investments. However, governments have encouraged the IBA Board's emphasis on concessional home loans, and this may also be what Indigenous Australians prefer IBA to do, as the benefits of home ownership accrue in much more targeted ways than the more abstracted political benefits of increased commercial engagement. An Indigenous constituency favouring IBA home loans over strategic commercial investment may be growing as the Indigenous population in south-eastern Australia grows.¹⁴

While IBA continues to give priority to home lending, it has also renewed focus on the investment portfolio and on managed funds. The Indigenous corporations that face the challenge of managing their financial assets sustainably welcome both. However, IBA and its predecessor the CDC have never been funded sufficiently to lift the economic status of the Indigenous population generally (around 650,000 individuals in the 2016 Census). Moreover, the impact of IBA's strategic investments in changing the structural underpinnings of Indigenous economic and commercial exclusion has been slight, given the magnitude of the challenges facing Indigenous Australians. In terms of self-determination, IBA has been unsuccessful in driving major improvements in Indigenous autonomy and has been unable to increase substantially Indigenous influence within mainstream decision-making.

14 Markham and Biddle, 'Indigenous', 2017.

Indigenous Land Corporation and the associated Aboriginal and Torres Strait Islander Land Account

The antecedent of the ILC and the associated Land Fund was the Aboriginal Land Fund Commission (ALFC), established in 1975.¹⁵ Notwithstanding its name, and the formal creation of a ‘fund’, the ALFC got its money from annual appropriations of the Australian Government Budget. While there was a commitment to make \$50m available over 10 years,¹⁶ even in its first year the ALFC was allocated only \$2m. Palmer outlined the ALFC’s five-year struggle for funding: when the Department of Aboriginal Affairs (DAA) decided in 1976 to offer up \$1m of the original allocation as savings, the ALFC refused to repay the funds.¹⁷ In this dispute, the DAA and the ALFC were in conflict over policy. A series of ministerial directives constrained the ALFC’s ability to acquire properties without consulting the department and gaining the minister’s approval.

The ADC replaced the ALFC in 1980. Four functional responsibilities came together within the ADC: enterprise support, housing, training and land acquisition. Because of the ADC’s commitments to enterprises and housing – inherited from the Department of Aboriginal Affairs – ADC funds for land acquisition were limited. The Miller Report lamented that in the transition from ALFC to ADC the concept of a fund dedicated to supporting land acquisition had been lost. The need for land was even greater than when first noticed in 1972 and the report argued that the economic status of Aboriginal people had continued to deteriorate: ‘We therefore recommend that immediate action be taken to re-establish a specific land fund vote within the ADC’.¹⁸

The overarching pressure of recurrent housing needs and the significant funding and policy effort involved in making even small land acquisitions pushed the ADC away from capital acquisitions and towards investment in a recurrent housing program. From 1980 to 1985, ADC expenditures totalled \$279m. Of this, \$178.7m or 64 per cent was allocated to housing

15 Ian Palmer’s book *Buying Back the Land* recounts in detail the establishment of the ALFC and the bureaucratic policy struggles which dogged the ALFC’s short lifespan (1975–79). Palmer, *Buying*.

16 Miller, *Report*, 318.

17 Palmer, *Buying*, 50–56.

18 Miller, *Report*, 319.

loans and grants, \$38.2m or 13.6 per cent to enterprises, and only \$9.5m or 3.4 per cent to land acquisition.¹⁹ The Miller Report noted that, against the 1972 commitment to allocate \$50m to land acquisition over 10 years, actual expenditure had been merely \$17.5m.²⁰

In 1989, the establishment of ATSIC effectively absorbed the ADC. Sections 14 and 15 of the Commonwealth *Aboriginal and Torres Strait Islander Commission Act 1989* empowered the commission to purchase and grant land. In addition, Section 68 established a Regional Land Fund (RLF) that enabled the regional councils that were constituent parts of ATSIC to accumulate funds for land acquisition. The RLF provisions were largely not utilised. ATSIC's major programs were the Community Development Employment Projects (CDEP) program, the community housing and infrastructure program and the law and justice program, and it continued the ADC approach of allocating little for land acquisition. In 1994–95, from a budget of around a billion dollars ATSIC spent \$22m on the acquisition of 21 properties and on 282 land management projects.²¹

Following the High Court of Australia's Mabo no. 2 decision in 1992, the Commonwealth legislated to respond to the implications of 'native title'. The Keating Government's response to the High Court's recognition of 'native title' was intended to provide greater certainty for all interests, whether native title claimants, Indigenous landowners or third parties with potentially invalid titles. Certainty was no problem for most titles issued by the Crown, because the High Court had found that native title was entirely vulnerable to actions by the Crown that resulted in the issue of a title to a third party. However, titles granted by the Crown over native title since the enactment of the *Racial Discrimination Act 1975* (RDA) were now suspect. Any title issued since the RDA came into force on 31 October 1975 would be invalid because – without the Crown compensating for native title loss – such acts of extinguishment were inconsistent with the RDA's requirement that governments not act in a racially discriminatory way. This new obligation primarily affected titles issued by the states and territories since 31 October 1975, as the states and territories are primarily responsible for land administration and the Commonwealth Parliament has the power to amend or override

19 These figures were calculated from data provided in Palmer, *Buying*, 157. The balance of 19 per cent presumably related to administrative costs of the ADC.

20 Miller, *Report*, 319.

21 ATSIC, *Annual Report 1994–95*, chapter 4.

the RDA. One purpose of the *Native Title Act 1993* (NTA) was to set up a process that would validate any grants of title by the Crown that might be suspect, subject to the provision of ‘just terms’ compensation. However, the NTA offered nothing to native title owners whose native title right had been extinguished *prior to the commencement of the RDA*. By law, no compensation was due to these owners, because the High Court’s judgement was that the Crown’s extinguishment of native title had always been lawful. However, it was arguable that the difference between the native title holders who had to be compensated and those who did not have to be compensated was essentially arbitrary.²²

The Keating Government agreed with Indigenous negotiators that governments had a moral and political obligation to purchase land for those legally dispossessed. Accordingly, Section 201 of the NTA established a Land Fund to assist Indigenous peoples to acquire land and to manage the acquired land in a way that provides economic, environmental, social and cultural benefits to the new owners. The Act effectively made clear that the purpose was not a narrowly defined focus on economic development. The operational details and quantum of funding allocated were to be set out in subsequent regulations. Within two years, the parliament enacted the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*, which repealed and replaced Section 201 of the NTA. The process of parliamentary consideration was both long and contentious.²³

The Keating and Howard governments built up the LF over 10 years, beginning with a payment of \$200m and followed by payments of \$121m (indexed) in each of the subsequent nine years. After 10 years, the value of the LF stood at \$1.4bn. In the following 14 years, it has grown to just over \$2bn. The establishment of the LF (which was renamed the Land Account in 2005) has raised three issues.

The first is how quickly the LF can accumulate funds and thus spending power. At the insistence of the Department of Finance, the legislation limited LF investments to a range of very conservative options – term deposits, government bonds and the like – that severely restricted the fund’s potential growth. The ILC Board under each of the last three chairs (Shirley Macpherson, Dawn Casey and Eddie Fry) requested

22 Dillon, ‘Emerging’.

23 Tickner provides a detailed account of the legislation’s contentious passage. See Tickner, *Taking*, 221–36.

the government of the day to broaden the LF's investment parameters. The boards' persuasive arguments were that the Commonwealth Future Fund had performed well without such restrictions on its portfolio, over a period of strong performance since the 2007 global financial crisis, and most recently that the Commonwealth had found it necessary in its 2016 Budget to include a package rescuing the ILC from its debts. In early 2018, Prime Minister Turnbull announced that the government would widen the Land Account's investment parameters. It did so in November 2018 by transferring the Land Account and its management to the Future Fund, with broader investment parameters.²⁴ While the change in investment parameters will enable the LF to grow faster, this improvement is arguably 23 years too late. The Commonwealth has not compensated the LF for the foregone revenues over the past quarter century. Moreover, in a global economic environment in which growth rates are slowing, there is no guarantee that the Future Fund managers will achieve the levels of return enjoyed since 2007. When Prime Minister Turnbull predicted that the changed arrangements would make Indigenous interests 'better off' to the tune of \$1.5bn over 20 years, he was optimistically assuming that global economic growth would be so high as to enable a real rather than a merely nominal improvement in the fund's growth.

The second policy issue is how much money the LF is allowed to transfer to the ILC so that the ILC can acquire lands, divest them to Indigenous Australians and then support Indigenous owners in their land management. Policymakers have struggled to devise a workable formula that both protects the capital base (the LF) and allows 'drawdowns' to the ILC that are not subject to wide fluctuations. Drawdowns were previously determined by a formula, but the most recent amendments provide for ministers to control the drawdowns on an ad hoc basis. This will diminish the scope for the ILC to plan its program strategically over several years.

The third, and least obvious, policy issue is the question of the underlying purpose of the LF. The legislative intention in 1995 was clearly to give a government agency, rather than Indigenous interests, the responsibility for managing the LF's assets, while providing for the ILC's majority Indigenous board to decide what lands to acquire and what land management projects to support. A Consultative Forum that included ILC Board members advised the LF on its investment policy.

24 This was effected by amending the *Aboriginal and Torres Strait Islander Act 2005* (Cth) and by enacting the *Aboriginal and Torres Strait Islander Land and Sea Future Fund Act 2018* (Cth).

While there was no explicit statutory requirement that the government limit itself to the role of fiduciary trustee, it is clear that the intention of the LF's architects was that the ILC Board have wide scope to make decisions. The Commonwealth, as fiduciary trustee, took a back seat. Yet the transfer of the LF into the Commonwealth Future Fund not only failed to acknowledge this fiduciary intention, but also further diluted that relationship by embedding the LF more deeply within the Commonwealth's financial architecture.

Taking into consideration the ways that the Australian Government has dealt with the three issues discussed – investment portfolio, drawdown decisions and the role of the ILC Board – it is apparent that, since 1995, the original intentions underpinning the creation of the LF have been progressively diluted. The tension between whether the ILC exists to fulfil the purposes of the compensatory LF, or the LF exists to fulfil the remit of the government-influenced ILC, has increasingly been resolved in favour of the latter. The ILC is now conceived by policymakers as just another Commonwealth statutory corporation (nominally independent, but in practice subject to substantial ministerial influence) rather than an independent statutory mechanism to deliver compensation within a fiduciary policy context. In fact, to align with the original policy intentions, both entities ought to be considered intertwined strands of the same independent institution.²⁵

Finally, the operations of the ILC require brief assessment. The ILC has, over 20 years, acquired hundreds of properties, large and small, for Indigenous groups and communities and provided significant and innovative assistance towards the management of Indigenous lands, including path-breaking work on carbon farming in northern Australia. A recent ILC media release indicated that the ILC had invested \$1.0bn in the Indigenous estate over the life of the ILC (1995–2018) and purchased 257 properties totalling 6 million hectares.²⁶ However, the ILC has slowed the pace of its property acquisitions. In its first eight years, the ILC had acquired 151 properties totalling over 5 million hectares.²⁷ In the following 12 years, it acquired only another 75.²⁸ The slowdown

25 Michael Dillon, 'The Devil in the Detail: The Government's Proposed Indigenous Land Fund Legislation', *A Walking Shadow* (blog), 2 April 2018, accessed 24 October 2019, refragabledelusions.blogspot.com/2018/04/the-devil-in-detail-governments.html.

26 Indigenous Land Corporation, 'Indigenous Land Corporation Welcomes New Era'.

27 Indigenous Land Corporation, *Improving*, 8.

28 Indigenous Land Corporation, *Land*, 15.

can be attributed to a number of factors. First, there has been an increased demand for land management as native title claims came to fruition and as the ILC's own former acquisitions have sought assistance. Second, the ILC has focused more on the operations of its own subsidiaries. Third, the financial commitments arising from the 2010 purchase of the Ayers Rock Resort (ARR) have been huge. The second and third of these factors are arguably strategic mistakes by successive ILC boards.²⁹

Under its statutory remit, the ILC must consider land not only as an income-generating asset but also as meeting an Indigenous need to hold land in accordance with broader social and cultural aspirations.³⁰ In considering land as an income-generating asset, the ILC has used its power to establish subsidiaries to build a commercial portfolio on its own behalf (rather than in partnership with landowners as was originally intended). By establishing and operating subsidiaries in pastoral operations, tourism and cultural support, the ILC has sought to create jobs and economic opportunities. As Sullivan persuasively argues, the architects of the ILC's initial and amended legislation intended that any subsidiaries would work in partnership with Indigenous groups of landowners.³¹

The most egregious example of the ILC's misplaced confidence in operating unilaterally via its subsidiaries has been the \$300m acquisition of the ARR. The ILC paid a price above commercial valuation for this asset and borrowed significant sums to finance the acquisition. Servicing this debt has effectively crippled the ILC's ability to fulfil its primary legislative remit. Even if the ARR eventually becomes commercially successful, and the ILC's outstanding bank borrowings are repaid, there will have been an effective 20-year hiatus in land acquisition and management across the nation, with all the opportunity costs which that entails.

The ILC has also faced problems in its relationship with pastoral operations. Contrary to its statutory obligations, the ILC has not always divested acquired pastoral leases in cases where it wished to directly

29 In a related vein, a 2010 Strategic Review of Indigenous Expenditure commissioned by Cabinet noted that the ILC's then current emphasis had been on employment and training (effected through its subsidiaries) rather than land acquisition. While noting the ILC's independence, the review recommended a reorientation towards support for the management of land acquired under native title settlements. Department of Finance, *Strategic Review*, 278.

30 Altman and Pollack, 'The Indigenous', 77.

31 Sullivan, 'Policy Change'.

manage the enterprise. This has antagonised local groups whose lands were acquired but not divested to the traditional owners. More recently, the ILC has changed tack and is now in the process of withdrawing from direct involvement in pastoral operations. That is, it is divesting those pastoral stations it retains to their traditional owners, selling its substantial cattle herd (which less than six years ago was among the 15 largest herds in the country) and returning management of pastoral operations to local communities, notwithstanding that they will face significant challenges given low economies of scale. The ostensible reasons for this process of divestment include the high capital costs of operating a national business and the pressure of local Indigenous communities.

It is a mistake to retreat from managing a national pastoral enterprise that returns economic benefits to local communities. While the ILC has a statutory obligation to divest land it acquires to local Indigenous groups within a 'reasonable period', there is nothing to stop the ILC leasing the lands back on a commercial basis to build a single integrated enterprise managed in cooperation with local communities that has economies of scale and access to the ILC's expertise and capital. Most successful pastoral operations in northern Australia operate across multiple properties and have access to professional management and adequate capital. One effect of the divestment of the national pastoral enterprise is that substantial ILC capital is freed up: the ILC herd of around 68,000 head is worth around \$38m. However, the sale of the cattle herd has reduced the value of the herd by almost \$18m.³² The ILC's desire to free up funds through asset sales is a direct result of the financial pressures flowing from the misguided acquisition of the ARR.

Perhaps the ILC would not have made (or would not be making) these strategic mistakes were its boards more accountable to broader Indigenous interests such as land councils and other peak bodies. The process of Indigenous self-determination is compromised by the power of ministers to appoint directors. This opens up risks of politicised appointments and, ultimately, inappropriate or informal interference.

From this review of risks and failures we can draw three conclusions relevant to the quest for greater Indigenous control over the ILC and related institutions.

32 Indigenous Land Corporation, *Annual Report 2017–18*, 102.

First, the tension between acquiring land for economic development and acquiring land in order to compensate dispossessed people is ongoing. While both goals are important and intertwined, there is also a history – and thus ongoing risk – of ministers and bureaucrats substituting a focus on economic development that is invariably interpreted in narrow terms focused on individual entrepreneurship (or worse, a focus on the rhetoric of economic development) for an ongoing substantive policy of compensation via the operations of the ILC. Both prospectively focused economic development and retrospectively focused compensation for dispossession (if the quantum aligns with the prior loss) will contribute to Indigenous self-determination. They will facilitate both Indigenous autonomy and the capacity to participate in wider decisions from a position of greater strength and resilience. It seems likely that uncompensated loss of identity, culture, land and political agency is a core factor in the creation of intergenerational deep-disadvantage and the high-level policy failure seen in the failure of successive governments to make progress in ‘closing the gap’.³³ If so, the failure to pursue substantive and effective policies focused on compensation risks undermining policy efforts across the breadth of the Indigenous affairs domain. This failure is a potential contributor to the ongoing high-level policy failure in Indigenous affairs over recent decades.

Second, the establishment of the ILC/LF within the public sector has clear drawbacks for self-determination: in setting policy for the LF, governments have wound back Indigenous influence and increased government control. The obvious alternative is to establish the ILC/LF outside the public sector as a truly independent and self-determining entity.

Third, accountability between government, ILC directors and the broader Indigenous community has been a systemic problem. The operation of the LF and the ILC has lacked transparency, and this has contributed to strategic missteps that have disadvantaged Indigenous interests and led to both sub-optimal outcomes and processes in terms of advancing Indigenous self-determination. The missteps have weakened Indigenous autonomy and reduced Indigenous capacity to influence mainstream decision-making.

33 Morrison, *Closing*, 2019.

Conclusion

This chapter has examined two models of statute-based Indigenous capital accumulation – IBA and the ILC/LF. Neither led to a leap from capital accumulation to broadly based self-determination, either in terms of greater autonomy or in terms of greater political influence for Indigenous interests. Nor does it appear likely that, either separately or together, they have the capacity to make this leap. While each has a majority Indigenous board and Indigenous chair, board members have not been accountable to the wider Indigenous community. Reasons include the ‘light touch’ regulatory oversight of all Commonwealth statutory corporations, the informal control exercised by ministers derived from their powers of appointment and reappointment, and the variable quality of boards over time arising from the political lens applied to board appointments by ministers. In addition, in the case of the LF, government control over investment strategy and, in the case of IBA, governments’ use of budget appropriations as an incentive to shape board decisions, have militated against Indigenous self-determination.

Both IBA and the ILC/LF have been starved of start-up capital and revenue flows. Each has confronted management and governance challenges that are a systemic source of under-performance. Strategic mistakes by both organisations have constrained their long-term impact. Importantly, each has been the subject of serious and sustained bureaucratic and political pushback. Statutory land rights and native title have had more impact than the capital fund institutions. Legislation to recognise land rights (including ‘native title’) has returned very substantial areas of land to Indigenous ownership and control and this has increased the political and social leverage of Indigenous interests vis-a-vis other interest groups and governments at all levels.

However, to compare policies related to capital funds and land rights in this way ignores the synergies between land and capital. We should assess the impact of the array of economic, social, cultural and political institutional frameworks established since 1966 as a systemic whole, each element contributing to the extent and quality of the Indigenous domain. It is likely that these capital funds do contribute to increased self-determination through their synergistic and largely intangible supplementation of the value of land rights and native title to Indigenous interests.

In the medium term, these capital funds would contribute more to self-determination – in terms of both increased autonomy and greater capacity to influence public policy – were governments to give them more money and to transfer control to an appropriate Indigenous ownership structure outside the public sector.³⁴ Clearly, such a policy turnaround would require a shift in public sentiment and strong political commitments at a government level.

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