

'Privatising' Aboriginal land is no panacea

By Jennifer Clarke – On line Opinion Friday, April 15, 2005

Moves to “privatise” Aboriginal land risk throwing the baby out with the bath-water - just as land rights and “self-determination” did when they displaced “welfare” as Aboriginal policy.

In considering proposals to increase the commercial value of Aboriginal land or improve the housing of its occupants, it is vital to identify exactly the obstacles presented by existing land rights legislation - and to take a reality check on other obstacles.

There are significant differences between the land rights regimes of each state and the Northern Territory, and between these and the Native Title Act. And there are big differences between the Indigenous populations of the southern states and those of remote Australia when it comes to resources for property investment.

The land rights legislation of some jurisdictions (notably Queensland, where most communities are still on old Bjelke-Petersen style titles) is far more complex and bureaucratic than it need be. Even more workable legislation contains traces of paternalistic constraints which should be removed immediately (for example the Northern Territory requirement that an Aboriginal person who wants a lease for a home must obtain the Commonwealth Minister’s approval).

Parliament added another layer in 1993 by deciding to preserve native title claims to land rights land, rather than cashing them out or converting them into property rights more compatible with the existing regimes. This created extra complexities in NSW and Queensland, where land rights legislation was not based on traditional ownership.

But this doesn’t mean that all land rights legislation is a primary cause of Aboriginal exclusion from the mainstream economy. The facts remain that land rights land can be sold in one jurisdiction, leased in most others, and that at least some of these leases can be mortgaged. AustralAsia Railway Corporation’s partial funding of the Alice-Darwin rail link by mortgages over leased Aboriginal land shows that commercial lenders can be interested in these arrangements.

On the other hand, it seems unlikely that banks will lend against leases over native title land, at least where the courts have limited native title to a malnourished set of rights. Banks may also be reluctant because of native title’s vulnerability, since 1998, to discriminatory interference by governments and third parties. The latter defects do not result from “socialist” 1970s experiments - they are the work of the present government. Any proposals to “rationalise” land rights legislation to make it more like native title legislation must be viewed with suspicion from an economic point of view.

Much has been made recently of tension between communal decision-making and individual interests in the Aboriginal land context. But this tension may sometimes stem from factors other than the title itself.

For example, there has been a joint Commonwealth-NT Indigenous public housing body in the NT since the mid-1990s, but where is the critique of its performance at Wadeye?

Aborigines in New South Wales could obtain houses on Aboriginal land in one of three ways:

- First, by having the house provided by land councils on land owned by the council. But land councils which provide housing are acting not under the NSW Land Rights Act, but under the Aboriginal Housing Act 1998. If they do not distribute houses equally among those of their members who need them, this is because of poor governance, not defective title.
- Second, Aborigines with jobs who can afford to build houses could obtain private freehold title to land rights land if 80 per cent of members of a Local Aboriginal Land Council agreed to the land being sold. This majority must be satisfied that the land is not of cultural significance. Here, there can be a tension between the land council's desire to realise a profit and individual members' capacity to pay for land, or between some members' desire for private housing and others' inability to afford it, particularly in markets like Sydney.
- The alternative is for the land to be sold to a private developer, who builds housing for sale to land council members or the public. Again, where the land is valuable, there could be friction over the sale.

As even Warren Mundine's paper to the National Indigenous Council points out, these arrangements have been associated with serious corruption problems. There has not been the same corruption elsewhere. NSW land rights shows us that making it easier to sell Indigenous land may come at a serious cost.

Jurisdictions which prevent the transfer of freehold title to Aboriginal land may still allow commercially valuable leases to be created over it. Besides the Ghan leases, the NT Act allows Aboriginal land to be leased to commercial housing developers and providers, including Aboriginal companies. If it doesn't already permit individual Aboriginal lessees to mortgage residential leases to raise money to build houses, a minor amendment would correct the anomaly.

But in remote Northern Territory Aboriginal communities, do people really have the income to support mortgages? Most are unemployed. Many are single mothers who, unlike many single mothers in Sydney, do not receive child support payments from ex-partners. Nearly half of Wadeye's residents are non-income-earning children. Annual adult income in Wadeye is about \$12,000, depending on whether you have kids: to gain access to the NT's low-income housing loans scheme, three adults will have to club together. A depressingly large number of Aboriginal men in particular do not live long enough, or stay out of jail long enough, to pay off a 25-year mortgage.

Any property market in Wadeye is likely to be an artificial one, but the costs of a house may be higher than they first appear. Not only are construction costs high for transport and seasonal reasons, but traditional owners, like other Australian property owners, may understandably seek some return by way of rent.

While joint ownership of houses may be culturally appropriate, in a culture which obliges you to share resources on demand, joint mortgages could get pretty onerous. And what happens if the mortgage is defaulted on? Are people who've lived in Wadeye all their lives to be evicted? If so, they will probably do what Aboriginal people do when evicted from public housing - move in with their relatives. The alternative is to go somewhere else, usually town. Are towns like Katherine and Darwin ready for an increase in Aboriginal homelessness? Should we be concerned that home equity refunds might not be reinvested under such stressful conditions?

Then there is the ongoing maintenance problem, which Senator Vanstone's DIY scheme does not address. Do plumbers and electricians service remote communities regularly? You bet they don't. Can you duck down to Bunnings or Kennards when the sink blocks up? No, you have to swim with it. Can you order a plunger over the internet? Wadeye residents may be about to obtain the computers and skills to do this, but without credit cards, imagination may still be required to find the funds.

Even ignoring the effects of evictions, remote Aboriginal houses are usually full for cultural reasons. This increased strain on housing stock means that a person - or a bank - who has "invested" in Wadeye property, even on a 99-year lease, may find it impossible to realise that investment later.

The main villain here is not, as Helen Hughes and Jenness Warin have argued, frozen property rights or the permit system, but Australia's highly urbanised distribution of population and wealth. Even if there are enough people and enough housing problems in remote communities to keep a tradesperson in regular work, there isn't enough money to attract the service there from places where people can pay more. If permits were barriers to commerce, they would keep the snake oil, vacuum cleaner and life insurance salesmen out - as well as genuine traders.

Perhaps it is good social policy to force the traditional owners of land rights land to lease it for Aboriginal housing, as Mundine has suggested. This may be particularly true where traditional owners hold a lot of land. It may even be desirable to restrict the amount of rent which traditional owners claim from unlanded Aborigines who have lived on their country since "equal wages" pushed them off their own country on pastoral stations, although kinship links and the land's low value may impose their own limits.

But why stop there? Why not require tradespeople to provide services, hardware stores to provide goods, and banks to provide low-interest loans? Why should the burden of Aboriginal poverty be reallocated only to other Aborigines? Isn't this just selective "socialism" in another guise?

History shows where the limits should be drawn on plans to "privatise" Aboriginal land. In the 19th century, Congress legislated to divide US Indian reservations into individual "allotments". This plan's results revealed objectives beyond the assimilationist one of converting hunters into farmers. First, government was thereby licensed to sell off "surplus" Indian land. And secondly, impoverished native Americans eventually did the same with their only valuable assets.

Malaysia's experience illustrates the likely consequences of creating a more limited market in Aboriginal freehold. There, land was made alienable, but only to other "natives". The result was the emergence of a native landholding class at the expense

of those who lacked the resources to maintain title, a problem partly caused by the fact that banks refused to lend against land which, as non-"natives", they couldn't repossess.

Even if it is possible to convert people whose culture values housing mainly for its social utility into property investors, if Wadeye's social marginalisation is not addressed at the same time, its residents will remain "dirt poor". It is important that they don't become "land poor" as well.

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