

Indigenous Improvement: Secure, Individual, Land Tenure is the Key

This submission is based on my many years of experience working and living in Papua New Guinea and the Pacific island countries.

I am concerned here only with the less than 75,000 Aborigines living in remote communities. I argue that better delivery of basic services such as education, law and order, health, water, sanitation, and communication and transport is critical to reducing the abysmal conditions in these remote Aboriginal communities, which are living on indigenous lands and are welfare-dependent with few or no economic opportunities. But how to overcome the failures that have been experienced in service delivery to Aboriginal communities over so many years and at such expense? I believe that without improvements in service delivery none of the problems that are the concern of this Inquiry will be dealt with.

Sara Hudson (in “Mapping the Indigenous Program and Funding Maze”, CIS Research Report, August 2016) detailed the huge amount of money provided by Commonwealth (49), State and Territory governments (236), as well as by non-government organisations (797), and the multitude of projects through which these funds have been distributed in attempts to improve the delivery of services to Aboriginal communities. More recently, Josephine Cashman (“Impact Investing: harnessing capital markets to solve social problems”, CIS Occasional Paper 158, 2017) has described a new approach to having corporations invest in remote Indigenous communities. In all these efforts the focus is on improving the delivery of services, i.e. it is on what I call the Supply-Side in the delivery of services. All such forms of service delivery have what are called Principal/Agent problems (i.e. the Agent always has more information than the Principal and will most likely act in a way that is to the Principal’s disadvantage). Moral hazard problems are also common. Somehow the Demand Side of the equation has to be enhanced.

As I see it, the key problem is that without appropriate incentives for the Indigenous communities’ involvement in service delivery, the situation will not improve. Aboriginal peoples will only seek to do better with respect to utilising government services and demanding better delivery of services if they have “skin in the game”. What can be done to ensure that Aboriginal peoples have a direct interest in the improved delivery of services?

The fundamental basis for economic development hasn’t changed since Adam Smith wrote about it over 200 years ago. Smith argued that the prerequisites for economic development were four: (i) law and order; (ii) secure, individual property rights; (iii) impartial enforcement of contracts; and (iv) contestable, i.e. competitive, markets. Smith’s thinking has only been reinforced by Professor Deirdre McCloskey’s recent work showing that these fundamentals have provided the basis for innovation, entrepreneurship, and productivity growth since the Industrial Revolution, and which has accounted for by far the bulk of the manifold increases in incomes since that time.

When we look at the Aboriginal situation in remote Australia, we can see that the broader Australian society provides an Aboriginal with three of Smith’s fundamentals (law and order, impartial enforcement of contracts, and contestable markets) through nation-wide institutions; however, it doesn’t provide the fourth—individual property rights. Individual Aborigines have virtually no property rights. Without this fundamental incentive for saving, investment (in both physical and human capital), and, most importantly, innovation, I argue that Aboriginal people have no incentive to pursue economic development and, in the process,

utilise the services that governments and NGOs have been trying to provide to them. (In a sense, Aboriginal communities are better off than the developing countries that are still locked into communitarian systems. In those cases, all the institutions necessary to provide Smith's four fundamentals may be missing and have to be developed.)

I argue, therefore, that Aboriginal peoples living on land held under Native Title must be granted secure, individual, title to land for housing and businesses. Thus, having an asset that they will wish to protect and build upon will provide them with the incentive to educate themselves and their children, improve their health, work, and, in some cases, set up businesses; and, in doing so, make good use of the funding provided by governments and non-government agencies. At present, there is no interest by Aboriginal communities in ensuring that the services provided function as intended, as there are no individually-owned assets to which the services will add value.

It does not really matter whether the individual land title is long-term lease (preferably 99 years) or freehold; both are accepted as collateral by financiers—providing there are NO conditions attached to the transfer of the titles. I admit that the full transferability of the title—lease or freehold—will raise concerns that titles will be taken from loan defaulters and sold to outsiders, or that title holders will sell to outsiders. I do not regard these as serious problems as compared to the virtually complete failure of the policies and projects attempted so far.

We hear endless anecdotes of how facilities such as houses are provided in Aboriginal communities but how such facilities are allowed to deteriorate—really, an economically rational decision. However, if the houses are owned by individual households they will have an incentive to maintain or improve their assets. Similarly, if funds are provided to build roads or telephony facilities to Aboriginal communities, individually-owned homes or businesses will have a direct interest in seeing that such services are provided as intended (just as you and I have an interest in seeing that various services are effectively delivered in order to maintain the value of our homes). Presently, a “collective-action” problem arises in these Aboriginal communities whereby no individual in the community has any such interest.

Moving to a situation where households in all remote Aboriginal communities have access to secure, individual, land tenure may appear to be a bridge too far. I would point to the fact that Papua New Guinea (PNG)—where service delivery has experienced the same difficulties as in our Aboriginal communities—has embarked on this journey. In 2009 legislation was passed that allows customary landowners in PNG to lease out parcels of their land for up to 99 years—to both individual landowners and outsiders. It is a process that involves the settlement of disputes over land tenure, the registration of all members of clans, and the registration and identification of land that clans are willing to lease for up to 99 years on an individual basis. It is hoped that this process will make customary land (over 90% of all land in PNG) more productive and give individual PNG peoples strong incentives to see that the delivery of services by governments and aid agencies is effective—instead of the ineffectiveness, waste, and corruption seen with the billions of kina and dollars expended over many years. To my mind, Papua New Guinea is undertaking an incredible effort to promote economic development in one of the most disadvantaged societies in the world. If Papua New Guinea can attempt such a feat, why should not Australia?

What are the obstacles likely to face moves in this direction in Australia? I recognise that there are cultural obstacles such as the lack of a trading or “owning” culture and that cultural

norms can take a long time to change. As regards business development based on secure individual land rights, joint ventures with outsiders can help—so long as government subsidies are not involved. We have seen how subsidies have led to what has been called “black cladding”.

“Humbugging” also creates a serious problem in these communities for individuals trying to establish businesses. There is also the problem of what Noel Pearson has called “passive welfare”. But as Warren Mundine has said, people will work if they do not have “free money”. I admit that things are easier to change in developing countries where there is no “sit down money”.

The existence of State laws and the many state-based bodies controlling Aboriginal affairs makes moving to secure, individual land title very difficult. For example, in the Northern Territory the Northern Land Council and the Central Land Council manage virtually the entire region on behalf of the traditional owners. In New South Wales, there are 120 Aboriginal Land Councils. In Queensland there are over 80 Indigenous Prescribed Body Corporates. These bodies will likely be reluctant to concede control. This is different to PNG where there is a unitary government. In PNG it has been the Lands Department that has been the main obstacle to the land reform.

To effect change in this direction in Australia “baby steps” are needed. Crucially, as seen in the land reform in PNG, local leaders are essential. Thankfully, we have seen some positive baby steps in Australia. In the Northern Territory, amendments to the Aboriginal Land Rights Act, 1976, led in 2007 to several remote communities signing 99-year township leases, which allows what are called in PNG lease-lease back leases to Commonwealth officials and, in turn, sub-leases for private housing and businesses.

More positively, township “head leases” are also now held by local indigenous corporations (in contrast to control by Commonwealth officials). To my knowledge the Gunyangara community holds head leases under which 17 houses were being built. Other communities are following suit. I believe that it would be a very useful research project to see whether this access to secure, individual land title for housing is having the desired impact on service delivery that I am hoping for. If so, it would indicate a very desirable move in the right direction.