

Submission to the Expert indigenous Working Group advising the COAG Investigation into Indigenous land administration and use

June 2015

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Terms of Reference

The Council of Australian Governments (COAG) announced on 10 October 2014 that it would conduct an urgent investigation into Indigenous land administration and use, to enable traditional owners to readily attract private sector investment and finance to develop their own land with new industries and businesses to provide jobs and economic advancement for Indigenous people.

The Investigation is an opportunity to focus all governments’ attention on how Indigenous land administration systems and processes can effectively support Indigenous land owners to leverage their land assets for economic development

1. The Senior Officers Working Group will focus its investigation and advice on improving the Indigenous land legislative, regulatory, administrative and operational systems and processes to:
	1. enable Indigenous land owners to derive economic benefits from their land
	2. enable jobs and economic advancement for Indigenous peoples
	3. enable Indigenous home ownership and commercial enterprise
	4. attract private sector investment and finance
	5. develop industries and businesses support service delivery and infrastructure investment.
2. The Senior Officers Working Group will:
	1. work with the Expert Indigenous Working Group to identify issues and develop options for COAG’s consideration
	2. consult with key stakeholder groups including land councils, native title organisations, traditional owners, native title ministers, industry associations and financial institutions
	3. consider, including with the Expert Indigenous Working Group, and report on proposals raised by native title ministers
	4. provide a report to the first COAG meeting of 2015

Executive summary

The *Aboriginal Land Rights (Northern Territory) Act 1976* (henceforth referred to as ALRA), is the high water mark of land rights legislation and demonstrates how underlying communal title can be preserved whilst also providing for transferable property rights.

Traditional owners have consented to approximately 1954 leases in the CLC region since the commencement of the NTER in June 2007[[1]](#footnote-1). This includes leases over community housing, NT Government infrastructure, Commonwealth government infrastructure, stores, arts centres, Regional Council and NGO assets. Taken in conjunction with similar progress in the Northern Land Council (NLC) region there is likely to be more leases on Aboriginal land in the Northern Territory (NT) than in any other jurisdiction in Australia. These leases are voluntary, require traditional owners’ informed consent, have flexible and negotiated terms and conditions, are transferable and can be used to secure a mortgage.

Current policy debates must acknowledge the significant progress that has been made in the past eight years in formalising tenure arrangements in remote communities in central Australia, and improving the land administration system required to underpin the recognition of formal leasehold interests. The formation of a specific unit within the NT Government to coordinate remote tenure issues proved very useful. It resulted in a coordinated approach within the NT agencies, and a close collaboration between the CLC and NT departmental officials. Drawing on funding provided by the Australian Government the NT Government has almost completed the cadastral survey work which was urgently needed to ensure compliance with the subdivision requirements of the *Planning Act (NT)* and registration of leases. This is a major achievement and applies to 27 communities in central Australia.

The roll-out of leasing arrangements has focused primarily on existing assets and infrastructure, and, as predicted, the formalisation of tenure has not resulted in increased applications for new business or commercial opportunities. There are numerous and complex barriers to economic development in the arid and remote region of the CLC, and these barriers must be addressed if further development is to proceed.

Historically there has been a poor correlation between stated government policy objectives in relation to land tenure reform in the Northern Territory and the measures devised in pursuit of them. Over the last decade, advocates of legislative reform of the ALRA, and those seeking to demonise ‘communal title’ have tended to:

* deliberately mischaracterise the efficacy of existing ALRA provisions;
* ignore the intended beneficiaries, the Aboriginal land owners, in devising tenure ‘solutions’;
* overemphasise the likely outcomes of major legislative reform;

and, more recently,

* ignore the significant extent to which the formalisation of land tenure on Aboriginal communities in the Northern Territory, by means of leasing, is now well advanced.

As we move forward into the fourth decade of land rights in the Northern Territory, it is critical that governments focus on how to facilitate thriving and sustainable Aboriginal communities in the Northern Territory and respond by devising effective tenure policy and reforms based on evidence rather than ideology.

**Challenges for Future Development**

With land tenure formalisation within most remote communities in central Australia almost complete, the CLC asserts there remain five major challenges to facilitating further development on Aboriginal land:

1. development of a consistent and sound tenure policy framework which addresses genuine areas of concern and is supported by Aboriginal landowners;
2. continued investment in the institutional infrastructure required to more efficiently administer land;
3. regularising and expanding the delivery of infrastructure;
4. ensuring that there is access to finance for economic development; and
5. supporting Aboriginal governance and capacity building to enable development in the NT.

Focusing solely on tenure and communal title as the key barrier to economic development and individual home ownership has distracted focus from the other critical factors requiring urgent attention. The most pressing and ubiquitous barriers to economic development and home ownership on remote communities in the Northern Territory continue to be neglected. These include major power, water and sewerage constraints and serious limitations on available serviced land. They also include the high cost of construction, the quality of infrastructure, low average incomes, the caution of mortgage lenders and a range of other market factors. These are the same barriers that exist in other primarily Aboriginal towns in the CLC region which are on ordinary Northern Territory freehold title, where the tenure system does offer private ownership. These include Aputula (Finke) and Kalkarindji, where economic development and private home ownership are no further advanced than in communities situated on Aboriginal land.

There is also a need for continued investment in land administration systems and institutional infrastructure relating to land use. Resources now need to be applied to ensure that surveys are undertaken for proposed new development areas, and to refine the systems allowing for all leases to be registered and publicly accessible.

It is worth noting that recent tenure reforms have been largely focused on reforming arrangements within remote communities, with little attention paid to broadacre Aboriginal land where leasing and mining exploration consultation and consent processes are clear and efficient. There is an identified need in some communities to negotiate a settlement in relation to future land use that acknowledges the interests of long-term Aboriginal residents in addition to those of the traditional owners of that community. Where this is applicable and desired the Australian Government needs to enable whole of community leasing models that are held by Aboriginal community corporations rather than the representative of the Australian Government, the Executive Director of Township Leasing.

There is an urgent need for to support Aboriginal governance and capacity building as a critical foundation to sustainable development. This includes capacity building for the community corporation model discussed above, and the intensive support required to enable corporations, family groups and individuals to implement economic or enterprise development initiatives in the challenging remote context.

This submission briefly provides some broad context for the Aboriginal land tenure debate, summarises the history and outcomes of tenure reform over the past eight years in the NT and outlines a number of key barriers to economic development beyond land tenure. The Central land Council (CLC) is a member of the National Native Title Council (NNTC) and native title issues will be addressed comprehensively in the NNTC submission to this investigation, as such, they are not addressed here. This submission draws on a paper published previously by the CLC, titled ‘Land Reform in the Northern Territory: evidence not ideology’.[[2]](#footnote-2)

Recommendations

**Recommendation 1.** That this investigation recognise that the ALRA is the high water mark of land rights legislation and provides a unique and effective model for recognising and preserving customary authority and communal ownership of land whilst also providing for development through the granting of leasehold interests.

**Recommendation 2.** That the ALRA and other Indigenous land and native title legislation, not be amended without the informed consent of relevant Aboriginal landowners.

**Recommendation 3.** That this investigation recognise the extent to which the formalisation of leasehold interests in the CLC region has progressed, with 1954 leases consented to since June 2007.

# Recommendation 4. That further collaborative work be undertaken to ensure that the policy settings to enable remote home ownership are appropriate and comprehend the behaviour of remote markets, the financial risk for purchasers, and issues relating to transferability.

**Recommendation 5.**  That the Australian, State and Territory governments work with Aboriginal landowners and their representative organisations to develop a comprehensive and consistent Aboriginal land tenure policy relevant to their jurisdiction.

**Recommendation 6.** That resources continue to be invested in land administration institutional infrastructure as a precursor to development. In the NT, surveys should now be undertaken on potential areas of new development in large communities.

**Recommendation 7.** That the Australian Government respond to the investment recommendations made in the Infrastructure Australia Audit of North Australia (2015) and the report of the joint Select Committee on Northern Australia (2014).

**Recommendation 8.** That the Australian Government ensure that Aboriginal development proposals are considered a high priority for access to the recently announced North Australian loan facility, and that all development loan applications are required to detail how the infrastructure proposal will benefit Aboriginal landowners and communities.

**Recommendation 9.** That further work be undertaken to investigate options for more innovative and targeted financial products to support development on Aboriginal land, including government guarantees and specific loan products.

**Recommendation 10.** That remote housing policies reflect that fact that private home ownership will not be a solution to remote housing shortages and continued investment in public housing over the next decade will be required to reduce overcrowding.

**Recommendation 11.**  That the Australian Government recognise that s.19A township leasing to an arm of government (EDTL) is not the preferred approach to tenure reform in central Australia, and work cooperatively with Aboriginal land owners to progress an alternative model whereby a whole of community lease may be held by an Aboriginal community corporation.

**Recommendation 12.** That the Australian Government review the incentives currently offered to communities and traditional owners encouraging consent to a township lease to the EDTL, and ensure these are applied equitably to an alternative community corporation model. This should include legislative exemptions and financial incentives.

**Recommendation 13.** That the Australian Government recognise that programs supporting Aboriginal governance and capacity building are critical to ensuring future social, cultural and economic development and governance development should be added to the five priority funding areas under the IAS.

Introduction and Context

The Central Land Council (CLC) welcomes this opportunity to provide a submission to the Indigenous Expert Working Group providing advice to the COAG Inquiry into Indigenous land administration and use.

The CLC is a statutory authority established under the *Aboriginal Land Rights (Northern Territory) Act 1976* (‘ALRA’). Amongst other functions, it has statutory responsibilities for Aboriginal land acquisition and land management over an area of approximately 780,000 km² covering the southern portion of the Northern Territory. The CLC is also a Native Title Representative Body established under the *Native Title Act 1993* (‘NTA’). Through its elected representative Council of 90 community delegates the CLC continues to represent the aspirations and interests of approximately 17,500 traditional landowners and other Aboriginal people resident in its region, on a wide range of land-based and socio-political issues.

The CLC aims to improve the lives and futures of its Aboriginal constituents through sustainable development and change. The CLC’s approach to sustainable development is based on an integrated and strengths-based strategy of building economic, social and cultural capital. Significant work is being done under the various functions of the CLC in each of these related areas through initiatives in: natural and cultural resource management; the development of remote enterprise and employment pathways; innovative community development work, ensuring land owners use income generated from land use agreements for broad community benefit; and land administration and land use agreements for third parties and traditional owners.

The CLC is both a strong Indigenous representative body and a land administrator. This submission draws on the CLC’s forty years of experience in order to counter the considerable misinformation about the barriers to remote Indigenous economic development, demonstrate the workability of the ALRA, and to propose solutions to the barriers inhibiting development on Aboriginal lands.

# Land tenure in central Australia

Pursuant to the ALRA more than 50% of the NT and more than 85% of the NT coastline is now held by Aboriginal Land Trusts on behalf of traditional owners. The CLC region covers approximately 780,000 km² of land, and 417,318 km2 is Aboriginal land under the ALRA. Given existing pastoral land was not able to be claimed this Aboriginal land tends to be very arid and remote. In addition, rights have been asserted and won under the Native Title Act 1993, and traditional owners unable to claim land under the ALRA have succeeded in obtaining rights to small areas known as Community Living Areas, under NT legislation. Still others have purchased pastoral properties in order to access traditional lands and engage in pastoral activities, for example the Huckitta and Ooratippra pastoral properties have been purchased by traditional owners and are now Aboriginal-owned pastoral leases.

There are also 20 NT parks in the CLC region which are jointly managed, of these 12 are on Aboriginal land. All are leased back to the NT Government for 99 years. The Uluru-KataTjuta National Park is also on ALRA land with a lease back to the Commonwealth for 99 years, commencing in 1985.

Of the 30 major communities in the CLC region (excluding the many homelands), 20 are situated on ALRA land and 10 are situated on Community Living Areas on a form of NT freehold title. An additional two, Finke and Kalkaringi, have the same characteristics as other remote Aboriginal communities but are actually normal NT freehold towns. Recent tenure reforms have been largely focused on reforming arrangements within remote communities, with little attention paid to broadacre Aboriginal land where leasing and mining exploration consultation and consent processes are clear and efficient.

# Context for the COAG investigation

The announcement of this investigation did little to reassure Aboriginal people in the NT that this process was not simply another attempt to wind back their hard-won land rights. At the COAG joint press conference following the meeting, the Chief Minister of the NT, Adam Giles said,

In regards to the white paper, that presents an opportunity for the Northern Territory…..to talk about the *Aboriginal Land Rights Act* and the ownership or the management of land tenure of 50% of the jurisdiction. It also gives us an opportunity to talk about the ownership of National parks in the Northern Territory, something that is really important to Territorians in how we move forward progressively in an economic sense…..The *Land Rights Act* has held Aboriginal people back in the Northern Territory. We continue to hear about it, we continue to hear negative statistics about it. If we are going to be serious about Aboriginal reform in COAG we have to address these fundamental issues.

Further, Chief Minister Giles stated ‘I firmly believe that the protracted and complicated processes for approving development projects on Aboriginal land are prohibiting Indigenous Territorians from pulling themselves out of poverty through economic development’ and‘I am pleased that the Prime Minister has agreed to work with the Northern Territory on ways to remove those barriers to the development of Aboriginal land.’[[3]](#footnote-3) These types of ill-informed, inflammatory comments draw on a long history of opposition to land rights in the NT, and illustrate the point that tenure debates tend to be ideologically driven and distract from the work required to identify genuine areas of concern. Fortunately, useful and cooperative work with NT departmental officials has ensured steady progress on the roll-out of cadastral surveys and leasing arrangements on Aboriginal land despite the politicised nature of the tenure debate generally.

ALRA tenure reform

Since 2004 there has been considerable debate around Indigenous communal land ownership at the national level.[[4]](#footnote-4) The Australian Government has participated in the debate around communal title and has devised a range of ‘land reform’ policies, ostensibly in response to this debate. [[5]](#footnote-5) Then Minister for Indigenous Affairs Amanda Vanstone, and Mal Brough after her, relied on criticism of communal title to justify amendments to the ALRA which passed in 2006.[[6]](#footnote-6) Those amendments provided, among other things, for the leasing of whole remote Aboriginal townships to a government entity for ninety-nine years.[[7]](#footnote-7) The amendments were characterised as heralding an end to the ‘days of the failed collective.’[[8]](#footnote-8) Then minister for Indigenous Affairs Mal Brough said the changes would facilitate economic development and increase private home ownership*.* Introducing the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (the Bill), then minister for Indigenous Affairs Mal Brough asserted that it would:

provide more choices in life for Aboriginal people in the Northern Territory… [by providing] for a new tenure system for townships on Aboriginal land that will allow individuals to have property rights. It is individual property rights that drive economic development. The days of the failed collective are over.[[9]](#footnote-9)

Minister Brough noted that ‘many of the proposed amendments come from a joint submission by the Northern Territory government and land councils.’[[10]](#footnote-10) Those amendments that the NT Government and the Land Councils had jointly proposed were directed toward addressing technical aspects of the ALRA that had been acknowledged as increasing transaction costs and impeding, to some extent, the fungibility of ALRA land. [[11]](#footnote-11)

Under the jointly agreed amendments, leasing for up to 40 years would be permissible without federal Ministerial consent (previously this was 10 or 21 years depending on the purpose). Further, Ministerial consent would only be required where $1m or more was to be paid or received on behalf of a Land Trust (previously such consent was required for transactions in excess of $100,000). Another jointly proposed amendment clarified that, in order for leased land to be used as a security, land-owner consent could be provided upfront for the transfer of the leasehold interest by a mortgagee. The existing drafting of the relevant provision was considered by some to restrict a mortgagee’s ability to enforce their mortgage over an ALRA lease.[[12]](#footnote-12) The jointly proposed amendments were directed towards ensuring the existing ALRA regime facilitated:

long term leasing, security transactions and the use of equity capital to promote both home ownership and businesses…without undermining the role of traditional owners in the enjoyment and management of their traditional lands or effecting a transfer of institutional and power relationships at play in those lands.[[13]](#footnote-13)

From the CLC’s perspective, a sensible approach would have been for the Australian Government to monitor the extent to which these jointly proposed amendments achieved their purpose of making the ALRA more ‘workable’ before introducing more radical land reform initiatives. As it happened, the amendments were introduced alongside the whole of township leasing provisions, which did not come from this joint submission, had not been subject to consultation with the Land Councils,[[14]](#footnote-14) were light on detail (which was largely left to regulations) and were premised on the alleged failure of the existing ALRA leasing provisions.

**Whole of township leasing**

The 2006 amendments introduced section 19A into the ALRA, which provided that a Land Trust may lease an entire ‘township’ to an NT or Australian entity. Though a voluntary option, the CLC and the NLC were concerned by apparent pressure applied in negotiations with the Tiwi Islanders and others to sign up to the township model in exchange for delivery of basic services and financial incentives.[[15]](#footnote-15)

While inalienability of title would be legally preserved under the new township leasing provision, the Land Councils considered that the practical effect of such an agreement was to negate some of the primary benefits of land ownership, including rights that a lessor would ordinarily retain. Maureen Tehan described entering into a whole of township lease as effectively resulting in the ‘[passage] of control of the land from traditional owners to the entity which will control all land dealings within the township for [99 years] and will be empowered to sublease portions of the land.’[[16]](#footnote-16)

Both the CLC and the NLC were critical of the township leasing provisions, arguing that:[[17]](#footnote-17)

* They are unnecessary. The outcomes sought can be achieved through leases under section 19.
* They restrict the freedom of traditional owners to bargain commercially, through legislative restrictions on what may be provided for in the head lease.[[18]](#footnote-18)
* The expectation that traditional owners would forgo their right to engage in commercial development over large areas of vacant land for ninety-nine years in return for a rental determined by valuation rather than negotiation was unreasonable.
* They promote private investment in housing and entrepreneurship by community residents while denying such investment and entrepreneurship to non-resident traditional owners.[[19]](#footnote-19)

Tehan observed that in the development and discussion of the township leasing amendments ‘little serious argument was made to support the assumptions underlying the changes – that [they] will inevitably produce economic, social and political development as an antidote to the social and economic alienation of Indigenous peoples within Australia.’[[20]](#footnote-20) Moreover, despite free market rhetoric having been used to promote the township leasing model, it has been argued that in practice the effect of the model ‘is to introduce a higher level of government control over private decision making.’[[21]](#footnote-21)

Terrill considers that, commencing with the whole of township amendments, the Australian Government’s approach to land reform in the Northern Territory has been disappointingly simplistic and ‘characterised by a tendency to jump directly from debate at a fairly ideological level to implementation of the reforms.’[[22]](#footnote-22) The Australian Government missed the important step of clarifying the aims of its reform and has not necessarily devised policy in a way that directly responds to the debate:

While the public debate in Australia has been dominated by references to economic development and home ownership, government practice has instead focussed on implementing a new decision making structure.[[23]](#footnote-23)

Such a practice was evident in the next iteration of land reform policy in the Northern Territory: the compulsory acquisition of five year leases under the NTNER.

**Compulsory five year leases**

Under the *Northern Territory National Emergency Response Act 2007* (Cth), the Australian Government compulsorily acquired five year ‘leases’ over sixty-four communities across the Northern Territory. Thirty-one of these are in the Central Land Council region and twenty are on ALRA land.[[24]](#footnote-24) Minister Brough described the acquisition of the leases as ‘crucial to removing barriers so that living conditions can be changed for the better in these communities in the shortest possible time frame.’[[25]](#footnote-25) The leases gave ‘the government the unconditional access to land and assets required to facilitate the early repair of buildings and infrastructure.’[[26]](#footnote-26) The provisions went further than this, giving the Australian Government control over entire communities. No leases were negotiated. Despite a change in government in 2007, compulsory five year leases were retained with only minor changes. Significantly, however, the new Labor Government agreed to begin negotiations for the payment of rent and compensation for this compulsory acquisition. Further, they committed to voluntary lease negotiations at the expiry of the five year leases.[[27]](#footnote-27)

The compulsory acquisition of five year leases damaged relations between the Australian Government and Aboriginal people in remote communities in the NT. It stalled the formalisation of tenure in communities and tainted the ongoing consultations for leasing in communities placed under five year lease.[[28]](#footnote-28) Five year leases ended in August 2012 and protracted negotiations between the Central and Northern Land Councils and the Australian Government over valuation methodologies for the payment of fair rent and compensation were finally completed in 2012. Negotiations for voluntary leases under the pre-existing s.19 provisions of the ALRA, rather than through township leasing, are now significantly advanced throughout the CLC region (see below).

**‘Secure’ Tenure Policy**

It is largely unknown and unacknowledged that, until recently, governments routinely built infrastructure on Aboriginal land not only without a lease but sometimes without permission or consultation. It is therefore unsurprising that ownership of a building, defining who has an interest in it and the responsibility for its ongoing maintenance has often been unclear. Roll-out of new housing under the *Strategic Indigenous Housing and Infrastructure Program* (SIHIP) was contingent upon a long-term lease over community housing lots being entered into. This was effectively the first manifestation of the new ‘secure tenure’ policy.[[29]](#footnote-29)

In practice, the ‘secure tenure’ policy was a policy for formalisation of tenure arrangements. It has resulted in almost all existing occupiers of premises in remote communities on Aboriginal land, and Community Living Areas applying for leases. In the vast majority of cases these leases have been consented to by traditional owners. The Central Land Council supports the policy to the extent that it is concerned with formalising occupancy and clarifying the responsibilities of third parties, and the payment of rent to land owners.[[30]](#footnote-30)

**Tenure reform significantly advanced in the NT**

Traditional owners have consented to approximately 1954 leases in the CLC region since the commencement of the NTER in June 2007[[31]](#footnote-31). This includes leases over community housing, NT Government infrastructure, Commonwealth government infrastructure, stores, arts centres, Regional Council and NGO assets. The roll-out of leasing arrangements has focused primarily on existing assets and infrastructure, and, as predicted, the formalisation of tenure has not resulted in increased applications for new business or commercial opportunities. Most of these leases provide rent to traditional owners with the main exception being the forty housing headleases over community housing. The Australian Government refused to pay rent to traditional owners for these leases on the basis that consent to such a lease would attract government investment in housing infrastructure and repairs and maintenance[[32]](#footnote-32). Traditional owners also regularly agree to a ‘peppercorn’ rent where the asset is used to benefit the community, for example youth facilities.

Taken in conjunction with similar progress in the NLC region there is likely to be more leases on Aboriginal land in the NT than in any other jurisdiction in Australia. These leases are voluntary and require tradition owners’ informed consent, have flexible and negotiated terms and conditions, are transferable and can be used to secure a mortgage.

**Recommendation 1. That this investigation recognise that the ALRA is the high water mark of land rights legislation and provides a unique and effective model for recognising and preserving customary authority and communal ownership of land whilst also providing for development through the granting of leasehold interests.**

**Recommendation 2. That the ALRA and other Indigenous land and native title legislation, not be amended without the informed consent of relevant Aboriginal landowners.**

**Recommendation 3. That this investigation recognise the extent to which the formalisation of leasehold interests in the CLC region has progressed, with 1954 leases consented to since June 2007.**

**Policy trends since September 2013**

Since the election of a new Coalition Government in September 2013 the policy framework applying to Aboriginal land reform has again shifted. The ‘secure tenure’ approach adopted by the previous Labor government has been abandoned. There is still no overarching land tenure policy paper and the policy objectives of the Australian Government must instead be pieced together through media announcements and funding guidelines. It is, however, very clear that the preferred tenure outcome in the NT is township leases to the EDTL, to provide for ‘tradeable tenure and private home ownership’. The Minister for Indigenous Affairs, Nigel Scullion, states,

While Government regularly leases or controls individual lots of land in remote Aboriginal communities to assist in the delivery of services, these individual arrangements have not led to significant economic development opportunities for Aboriginal people. Township leasing is starting to change this in the Northern Territory….Land tenure reform is not about benefiting government and it is not about giving government control of the land. It is about giving Aboriginal people the same opportunities and responsibilities as other Australians to own their own homes, and leverage their assets to generate wealth for the benefit of themselves, their families and their communities.[[33]](#footnote-33)

The current Australian Government is effectively dismissing the rapid, and almost complete, roll-out of voluntary s.19 leases in remote ALRA communities, and similar arrangements on Community Living Areas. Approximately 90% (in some cases more) of most remote communities are now held under lease. Further, in relation to housing specifically, the tenure goalposts simply keep shifting. For example, in mid 2012 most communities in central Australian were sent letters of offer to enter into a voluntary s.19 lease over all community housing for forty years to provide for a better remote public housing system. If the lease was not entered into the Australian Government would not fund any building programs or housing upgrades, and only a basic level of repairs and maintenance would be provided. When faced with this choice the overwhelming majority of communities and traditional owners agreed to enter these leases.

By November 2014 the Australian Government decided that forty years was no longer sufficient to underpin continued housing investment. Instead, the position now seems to be that capital investment in public housing will be contingent on ‘arrangements that allow for long term, tradeable land tenure, such as but not limited to 99 year township leases.’ [[34]](#footnote-34) This position is reinforced by a NT Government home ownership initiative encouraging remote community residents to purchase public housing stock. This program is only being offered to communities that have entered into a s.19A township lease to the EDTL. There is no reason why s.19 leases cannot be used to enable private home ownership. While there are few residents in the CLC region who will be in a financial position to purchase their own home, limiting the choice to those people living in communities with a township lease is not reasonable or useful. Getting the policy settings right to enable private home ownership in such a complex environment will require collaboration of all parties and the CLC is disappointed that this work has proceeded without engagement of the land councils.

# Recommendation 4. That further collaborative work be undertaken to ensure that the policy settings to enable remote home ownership are appropriate and comprehend the behaviour of remote markets, the financial risk for purchasers, and issues relating to transferability.

Remaining issues and challenges

# Development of a consistent and sound tenure policy framework

The development of a sensible tenure policy should comprehend the rapid changes of the past eight years, and clearly articulate what objectives now need to be pursued. This must be developed in close collaboration with Aboriginal land owners. This is entirely consistent with the recommendation from the parliamentary committee undertaking the inquiry into the development of Northern Australia,

5.134 The Committee recommends that the Australian Government pursue, through the Northern Australia Strategic Partnership, the harmonisation and simplification of land tenure arrangements in the jurisdictions across Northern Australia. The Committee acknowledges the unique nature of the statutory inalienable freehold title under the *Aboriginal Land Rights (Northern Territory) Act 1976* and that it is particular to the Northern Territory. The Committee also acknowledges the limited range of rights in land that are derived from the *Native Title Act 1993.* The Committee recommends that Governments and business work constructively with Aboriginal and Torres Strait Islander people and organisations such as land councils and native title representative bodies or prescribed bodies corporate to maximise the economic development and employment opportunities on Aboriginal land and/or land over which there is native title.[[35]](#footnote-35)

Developing clarity regarding the objectives of tenure reform is critical. In a 2015 paper Terrill argues that not only have the objectives of Australian Government tenure reform been poorly articulated but the language to debate Aboriginal land reform in Australia is ‘poorly defined and ill-suited’ resulting in ‘a great deal of confusion about what the reforms actually do and what they mean for affected communities.’ [[36]](#footnote-36) From the perspective of the CLC, there has often been a poor correlation between stated government policy objectives and measures devised in pursuit of them. It is often asserted that the proposed measures will better facilitate economic development or home ownership without sufficient articulation of precisely how, and without complementary initiatives to overcome non-tenure-related barriers. Significantly, technocratic land tenure ‘solutions’ are largely developed without the input of their would-be beneficiaries: the Aboriginal land owners.[[37]](#footnote-37) The Expert Indigenous Working Group has an important role in ensuring this COAG investigation provides an evidence-based, positive and rigorous contribution to the ongoing consideration of land tenure issues.

**Recommendation 5. That the Australian, State and Territory governments work with Aboriginal landowners and their representative organisations to develop a comprehensive and consistent Aboriginal land tenure policy relevant to their jurisdiction.**

# Investment in Land Administration Institutional Infrastructure

A genuine commitment to formalising tenure and facilitating the grant of individual interests requires a range of further matters to be comprehensively addressed (and funded). These include what the World Bank refers to as the ‘institutional infrastructure’ necessary to underpin the recognition of formal leasehold interests:

The establishment of secure property rights, that is, rights that are defined with sufficient precision and can be enforced at low cost so as to instil confidence in economic agents, requires considerable investment in both technical infrastructure, such as boundary demarcation and generation and maintenance of maps and land records, and social infrastructure, such as courts and conflict resolution mechanisms.[[38]](#footnote-38)

The roll-out of the secure tenure policy in the NT triggered negotiations and collaboration between the NT land councils and the NT Government. A dedicated remote tenure unit was established within the NTG to coordinate negotiations over template leases, ensure applications from various government agencies, and attend consultations with traditional owners. As a result, all NTG infrastructure is now leased in remote communities, providing clarity of ownership of assets and a rental income stream to traditional owners.

Numerous challenges were encountered and overcome. For example, The *Planning Act (NT)* treats any lease for twelve years or more as a subdivision, which in turn requires a survey in registrable form. Eight years ago none of the NT’s remote communities had surveys and subdivision arrangements which would enable long-term leases to be granted or registered. The Australian Government provided funding for the NT to roll-out cadastral surveys in all remote communities to provide for survey plans and subdivision applications and subsequently the registration of all leases with the Land Titles Office.

The fieldwork component of these surveys is now complete. Subdivision applications are being prepared and survey plans are being approved by the Surveyor General. With cadastral boundaries of individual lots adequately defined, the Northern Territory Land Title system can ensure proper visibility of the registered interests granted over discrete lots (administrative lots) within communities. Existing NT Government leases will be registered first, and processes for ensuring registration of leases held by land councils will follow.

This is a very significant step towards an improved land administration system for Aboriginal land. There is still work to be done, and this should be recognised and resourced. Importantly, these surveys only deal with existing serviced lots, meaning that any new development will require the developer to fund a survey to enable registration. The NT Government should now work with land councils to discuss arrangements for identifying the future development needs of major communities and ensure that survey work, and essential services infrastructure is rolled-out to facilitate future development.

**Recommendation 6. That resources continue to be invested in land administration institutional infrastructure as a precursor to development. In the NT, surveys should now be undertaken on potential areas of new development in large communities.**

# Regularising and Expanding the Delivery of Infrastructure

There are major essential services infrastructure constraints in most of the remote communities in the CLC region. A systematic upgrade of power and sewerage infrastructure, as well as sustainable potable water sources, is required if future development opportunities are to be realized. In many communities there are no serviced lots available to enable the development of home ownership or business initiatives. This is recognised in an independent review of the National Partnership Agreement on Remote Indigenous Housing (NPARIH) program, which notes that:[[39]](#footnote-39)

significant need remains for reliable infrastructure and essential services in many communities. The infrastructure gap will grow without further investment in capital works for asset replacement and upgrades...Already, in some locations, infrastructure in remote Indigenous communities is at capacity. [[40]](#footnote-40)

Infrastructure provision beyond essential services is also a major barrier to development.

Investment in road and transport systems, and telecommunications infrastructure is urgently required. Recently, the parliamentary committee undertaking the inquiry into the development of Northern Australia noted that,

 the development of physical infrastructure is critical to the overall development of Northern Australia. The absence of economic infrastructure, particularly water, power and transport, impedes opportunities for economic development and liveability, as does poor access to telecommunications and global digital technologies.[[41]](#footnote-41)

The recent 2015-2016 budget papers stated that the government would ‘establish a concessional loan facility of up to $5 billion, with the objective of increasing private sector investment in infrastructure in northern Australia.[[42]](#footnote-42) Applications will be accepted from 1 July 2015. There is no detail about the criteria, assessment or governance arrangements for the loan facility. Consistent with submissions from Aboriginal organisations to the northern Australia development inquiry, there must be explicit and specific provision for Aboriginal development aspirations to be supported, developed and funded.

**Recommendation 7. That the Australian Government respond to the investment recommendations made in the Infrastructure Australia Audit of North Australia (2015) and the report of the joint Select Committee on Northern Australia (2014).**

**Recommendation 8. That the Australian Government ensure that Aboriginal development proposals are considered a high priority for access to the recently announced North Australian loan facility, and that all development loan applications are required to detail how the infrastructure proposal will benefit Aboriginal landowners and communities.**

# Access to Finance for Economic Development

In late 2011 the Northern Territory Government convened a forum in Darwin considering ‘Access to Finance on Aboriginal land’. It looked specifically at ALRA title and involved participants from all the major banks, from Land Councils, the Northern Territory and Australian governments and Indigenous Business Australia (IBA). At the forum, representatives of the major banks generally expressed the view that there were no major legislative impediments to providing finance on Aboriginal land through the leasing provisions of section 19. Bankers stated that they are used to dealing with diverse legislative and planning regimes with complex consent and approval processes (some far more complex than those under the ALRA).

According to a Northern Territory Government account of the forum:

A consensus emerged that appropriate land tenure arrangements, though important, are not a ‘golden ticket’ to resolving the barriers to private home and commercial property ownership on Aboriginal land.

Bankers noted that issues such as remoteness, low demand, the high cost of construction and risk profile are significant. They highlighted that there is a gap between the cost of building and what people can afford to repay (and therefore realistically borrow), whether for private home ownership or enterprise development. Financiers emphasised that it is not their role to bridge this gap and also expressed concern about the retention of value in built infrastructure in remote communities. Such matters are major barriers to commercial lending and combined with infrastructure constraints make finance for home ownership under standard commercial arrangements problematic. In turn, these matters indicate that the scope for borrowing against a home in order to access finance to start a business may be limited.

Bankers expressed a further concern about public relations should they ever need to enforce their rights of foreclosure under a mortgage. It was stated, frankly, that it would be a public relations nightmare for a bank to be on the news for evicting an elderly remote Aboriginal person from their first home due to default on a bank loan. These concerns mean that banks may be reluctant to lend on a traditional 'one on one' basis and would be more comfortable if there was, for example, government guarantees or other assurances provided. The CLC is not aware of any response by the Australian or Northern Territory Government to these suggestions.

The CLC is concerned that, on initial evidence, resale prices are likely to be lower than the amount a remote Aboriginal person or family would need to lend from a bank. This factor is seriously problematic for prospective home owners, for the creation of a market for private home ownership in remote areas. For land assets to be leveraged as capital they need to be both subject to a formal land administration system and desirable to the market as property– not only to entice lessees or purchasers, but also to convince financial institutions that the land is valuable as collateral for a loan (i.e. that the interest may be sold for a good price if the loan is defaulted on). Even where a land market emerges, there are also potentially significant implications for the make-up of a remote Aboriginal community should a bank wish to foreclose on a mortgage and sell their interest in land to an outsider.

It is evident that all parties need to undertake more detailed work to address the range of barriers to economic development and home ownership that are particularly apparent in remote communities throughout the CLC region. The CLC agrees that tenure plays a role and that access to finance will require transferable and marketable leases to be developed to meet a range of aims. Some templates that permit transfer and assignment have been developed and utilised in the CLC region. However, the CLC would welcome the opportunity to work with lenders and governments to develop a range of commercial lease templates that all parties agree would support Aboriginal aspirations for economic development on Aboriginal land.

Further, while there is some interest in home ownership in central Australia, under ordinary commercial arrangements it is seriously doubtful that it will be a feasible option for the majority of remote Aboriginal people at present, much less a solution to housing shortages. Altman et al, echoing some of the concerns the bankers raised, makes the observation that ‘unless income levels increase dramatically in remote Indigenous communities, a push to private ownership will not result in private financing of the construction of a significant number of new dwellings…primarily because the cost of constructing housing is far higher than the likely value of the land.’[[43]](#footnote-43) This is supported by the fact that the current NT Government home ownership scheme in communities with a township lease applies only to existing public housing stock and will therefore do nothing to decrease overcrowding.

**Recommendation 9. That further work be undertaken to investigate options for more innovative and targeted financial products to support development on Aboriginal land, including government guarantees and specific loan products.**

**Recommendation 10. That remote housing policies reflect the fact that private home ownership will not be a solution to remote housing shortages and continued investment in public housing over the next decade will be required to reduce overcrowding.**

Governance and capacity building to enable development in the NT

1. An alternative to township leasing to the Executive Director of Township Leasing

Under the provisions of the ALRA, affected communities have an opportunity to express their views about proposed dealings in land, but it is ultimately traditional owners who are the decision makers. Accordingly, the distinction between those who fall within the definition of traditional owners under the ALRA and those who do not has begun to have more of an impact on community-level decision making than was previously the case. The fact that traditional owners rather than residents are entitled to rental payments for community land use has also had an impact.

In performing its functions under the ALRA in relation to land use in communities, the CLC strives to ensure an appropriate balance between the interests of non-resident traditional owners and all community residents. Such a balance is important to facilitate good relations and minimise the potential for disputes. To an extent, the CLC’s role in ensuring that this balance is appropriately negotiated without giving rise to ongoing disputes is a role that is prescribed in section 19 itself.[[44]](#footnote-44) This work is becoming increasingly complex and has led to the consideration of alternative negotiated arrangements for decision making on community land. In 2010, the CLC submitted an alternative proposal for voluntary whole of community leasing to the Australian Government which responds to the need for clarification of the above issues while also delivering other land use efficiencies.[[45]](#footnote-45) It should be noted that the proposal is premised on the strong view that the ALRA scheme works very well in recognising and giving legal effect to traditional Aboriginal ownership and decision making on Aboriginal land generally. It is directed toward the very small proportion of Aboriginal land comprising larger Aboriginal communities. Key features of the proposal are as follows:

* A community land corporation is established for the purpose of holding leasehold title to the land within the community boundaries.[[46]](#footnote-46)
* The relevant Land Council would provide administrative and legal support in relation to a range of land use matters such as sub-leasing, licensing and the granting of permissions.
* The community land corporation holding the community lease would be a decision-making body comprising Aboriginal residents andtraditional owners.

The ongoing administrative and legal support the Land Council provided the corporation would be entrenched in both the head lease and rules of the community land corporation. The model provides a delegated and expedited process for the formalisation or creation of individual leasehold interests by shifting decision making from an often dispersed group of traditional owners to an Aboriginal community corporation comprising a specified number of residents and traditional owners. Contrary to the section 19A model whereby township leases are held by the Executive Director of Township Leasing, it would achieve this while retaining maximum Aboriginal control over the future development of communities, and would ensure that both traditional owners and community residents benefit from land reform. The ongoing role of the relevant Land Council in supporting the community land corporations would provide land users with certainty with respect to the processing of land-use applications.

The implementation of such a model would require a detailed negotiated settlement between traditional owners and community residents and the free prior and informed consent of traditional owners in accordance with the ALRA. Such a model is not necessary or desirable for all communities but could provide an important opportunity to address the issues raised above while also providing a mechanism for responding to the ‘stress on traditional decision making processes that community issues, such as planning, can cause.’[[47]](#footnote-47)

A variation on this proposed model is being considered for Mutitjulu, a small community situated within Uluru-KataTjuta National Park. The current Minister for Indigenous Affairs, and departmental officials, have signalled an interest in pursuing an alternative to township leasing to the EDTL, and this progress is acknowledged and welcome.

**Recommendation 11. That the Australian Government recognise that s.19A township leasing to an arm of government (EDTL) is not the preferred approach to tenure reform in central Australia, and work cooperatively with Aboriginal land owners to progress an alternative model whereby a whole of community lease may be held by an Aboriginal community corporation.**

**Recommendation 12. That the Australian Government review the incentives currently offered to communities and traditional owners encouraging consent to a township lease to the EDTL, and ensure these are applied equitably to an alternative community corporation model. This should include legislative exemptions and financial incentives.**

# Investment in governance and capacity building programs

The rights and interests of Aboriginal people include the equitable sharing of any benefits arising from development and equitable access to development opportunities. This entails taking note of the development aspirations of Aboriginal people and investing in developing local capacities. To realise these development aspirations it is essential that significant investments are made in the areas of human and social capital; particularly health, education and governance.[[48]](#footnote-48) It is also important that any investment in these areas is done in collaboration with Aboriginal people or their representative organisations to maximise the relevance and positive impact of any policy changes. For example, the maintenance of Indigenous languages and culture, Aboriginal customary institutions, and the transfer of Indigenous knowledge across generations are essential building blocks that play important roles in enterprise development such as the art and cultural tourism sectors.

In the CLC region there is an urgent need to support corporations, family groups and individuals to achieve their aspirations for economic and enterprise development. The scale and intensity of this need is well beyond the capacity of the CLC to deliver. Low educational attainment and limited work experience means that even modest enterprise proposals generally require intensive support. There are no programs available to provide ongoing comprehensive mentoring and assistance in both small business and enterprise support.

The CLC has an effective Community Development approach[[49]](#footnote-49) which supports traditional owners and communities to ensure long-term and sustainable benefits from income from land use agreements and royalty streams. The CLC has been very effective at building the governance capacity of Aboriginal groups to set development objectives, prioritise and plan community projects and programs, and set up partnerships with qualified organisations to deliver them. However, the CLC is not resourced to provide the intensive support required to establish and successfully operate individual initiatives, including enterprise projects. The Aboriginal Peak Organisations NT[[50]](#footnote-50) has also recognised this gap in relation to governance support and has implemented an Aboriginal Governance and Management Program which aims to provide support to existing Aboriginal organisations to build their governance capacity and strength. These programs require ongoing support and investment if they are to continue and expand to meet demand. More investment is urgently required in this area, and in the CLC’s view this governance and capacity building support remains a central barrier to the generation of new small enterprises in remote communities.

**Recommendation 13. That the Australian Government recognise that programs supporting Aboriginal governance and capacity building are critical to ensuring future social, cultural and economic development and governance development should be added to the five priority funding areas under the IAS.**

Conclusion

The ALRA provides a model for preserving underlying communal title and allowing for the granting of leasehold interests. Voluntary negotiated leases under s.19 of the Act have been progressed throughout the CLC region at a rapid rate. Voluntary leasing is a welcome development for Aboriginal land owners, particularly after the recent experience of compulsory acquisition of community land and the historic lack of negotiation about terms of occupancy. While these leases formalise land tenure arrangements resulting in greater clarity about ownership and responsibility for assets and infrastructure in remote Aboriginal communities in the NT, they do not necessarily lead to greater economic development or private home ownership. They were never going to.

Significant non-tenure barriers to economic development and home ownership on ALRA land remain. A genuine effort to break down such barriers will require the Australian and Northern Territory governments to fund major infrastructure adequately to address infrastructure constraints and the lack of vacant serviced lots in remote communities. It will also require all parties to work together with Aboriginal land owners to develop innovative ways to improve access to finance, as well as considered models for community leasing, home ownership and governance and capacity development support for nascent Aboriginal enterprise initiatives. Such a collaborative effort will require a commitment to evidence not ideology, acknowledging the extent of the barriers and the hard work and enduring commitment that will be required to address them.

1. These figures include leases progressed to consent on ALRA and CLA land between June 2007 and June 2015 (on a lot by lot basis). It does not include leases that have been applied for but have not yet been processed, or leases refused or withdrawn. [↑](#footnote-ref-1)
2. Central Land Council, 2013, Land reform in the Northern Territory; evidence not Ideology, accessed at <http://www.clc.org.au/publications/content/land-reform-in-the-northern-territory-paper/> [↑](#footnote-ref-2)
3. Adam Giles , Chief Minister of the Northern Territory, 10 October 2014, Media release ‘Australian leaders back NT gas pipeline and Indigenous economic reform’. [↑](#footnote-ref-3)
4. The debate was probably at its height between 2004 and 2007. There was considerably less public debate from 2008 to 2012 but there has been a recent upsurge in disappointing commentary on this issue. See e.g. A Anderson, ‘New measure brings us home’ *Northern Territory News* (26 January 2013); N Rothwell, ‘The great unmentionables of remote life’, *The Australian* (6 February 2013); H and M Hughes, ‘With apologies, PM, home ownership is the key’, *The Australian* (15 February 2013). [↑](#footnote-ref-4)
5. Including through its Indigenous advisory body, the National Indigenous Council, appointed after the abolition of ATSIC. See in particular the early contributions of Warren Mundine, e.g. ‘Indigenous groups debate role of land ownership’ (6 December 2004) <http://www.abc.net.au/pm/content/2004/s1259072.htm> accessed 11 June 2013. [↑](#footnote-ref-5)
6. It should be noted, however, that though framed in response to the communal title debate, many of the 2006 amendments go back to earlier discussions emerging out of the John Reeves QC report, *Building on Land Rights for the Next Generation. Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976* (1998); House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs [response to Reeves’ report](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/reeves/inquiryinf.htm); and an earlier Options Paper by Phillip Ruddock as minister for Indigenous Affairs, *Reform of the Aboriginal Land Rights (Northern Territory) Act 1976* that was critical of the role of the Land Councils and points to the failure of the ALRA to deliver economic development and, in particular, better facilitate mining. However, leasing and recommendations for tenure reform did not feature prominently in Reeves’ recommendations. Reeves appeared to be more focused on addressing the development interests of non-Aboriginal people on Aboriginal land. [↑](#footnote-ref-6)
7. The terms township and community are used interchangeably in this paper. Community is the term Aboriginal residents most commonly use, whereas township is the term used in the 2006 amendments and the debates surrounding them. [↑](#footnote-ref-7)
8. Second Reading Speech, Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Cth), House of Representatives, 31 May 2006, 4 (Brough). [↑](#footnote-ref-8)
9. Second Reading Speech, Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Cth), House of Representatives, 31 May 2006 (Brough), 3–4. [↑](#footnote-ref-9)
10. Ibid, 4. [↑](#footnote-ref-10)
11. See NTG, ALC, NLC, CLC, TLC, *Detailed Joint Submission to the Commonwealth – Workability Reforms of the Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)*, 2003. [↑](#footnote-ref-11)
12. That is, transfer would be possible ‘subject to the terms and conditions on which the initial grant of the estate or interest was made.’ Commentators included Neville Jones, then director of the NT Government’s Office of Aboriginal Development, who highlighted what he considered a problem with s 19(8) for prospective financiers in his paper Commercial Use of Aboriginal Land in the Territory(1998), Office of Aboriginal Development (Unpublished). The paper incorporated concerns expressed by the Australian Bankers Association. A version of this paper formed the basis of chapters 17 and 18 of the Northern Territory Government submission to the Reeves review. [↑](#footnote-ref-12)
13. M Tehan in Godden and Tehan (Eds), above n 15, 367. [↑](#footnote-ref-13)
14. See CLC evidence to Senate Standing Committee on Community Affairs, *Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2006* (21 July 2006) [transcript of evidence](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=@Hansard/S9506.pdf), 24. [↑](#footnote-ref-14)
15. ABC News Online. Brough ‘bullying’ Wadeye into signing 99-year lease. Available at: <http://www.abc.net.au/news/2006-11-17/brough-bullying-wadeye-into-signing-99-year-lease/1312246> accessed 11 June 2013; evidence of the NLC to Senate Committee re Elcho Island, transcript p 17. [↑](#footnote-ref-15)
16. M Tehan in Godden and Tehan (Eds), above n 14, 367. [↑](#footnote-ref-16)
17. Senate Standing Committee on Community Affairs, *Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, respective [CLC](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/aborig_land_rights/submissions/sub12.pdf) and [NLC](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/aborig_land_rights/submissions/sub13.pdf) submissions. [↑](#footnote-ref-17)
18. As Brennan notes in [his submission](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/completed_inquiries/2004-07/aborig_land_rights/submissions/sub11.pdf) to the Senate Standing Committee on Community Affairs , *Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*,this constrains traditional owners’ ordinary bargaining position under the ALRA. [↑](#footnote-ref-18)
19. Though the township leasing scheme appeared, on the face of the legislation, to marginalise traditional owners, Terrill notes that in practice the Wurrumiyanga/Nguiu township lease ‘has been promoted, and apparently also been received, as a vehicle for giving traditional owners greater input into land-use decisions. This is because, previously, [informal] decision-making about land use tended to occur at the community level, and at times traditional owners have been excluded from that process. The Wurrumiyanga township lease has increased the authority of traditional owners. This sits awkwardly with earlier arguments by the Australian Government that township leasing would allow non-traditional owner residents to escape the “feudal” control of traditional owners.’ L Terrill, ‘5 years on: Confusion, illusion and township leasing on Aboriginal Land’(2011) 1 *Property Law Review* 160, 173. [↑](#footnote-ref-19)
20. M Tehan in Godden and Tehan (Eds), *Comparative perspectives on communal lands and individual ownership: sustainable futures,* 355. [↑](#footnote-ref-20)
21. L Terrill, ‘Days of the Failed Collective: Communal Ownership, Individual Ownership and Township Leasing in Aboriginal Communities in the Northern Territory’, (2009) 32(3) *UNSW Law Journal*, 814, 816. [↑](#footnote-ref-21)
22. L Terrill, Indigenous land reform: what is the real aim of reforms?Presentation by the author at the 2010 National Native Title Conference (Unpublished), 9. [↑](#footnote-ref-22)
23. Ibid, 9. [↑](#footnote-ref-23)
24. Of the remaining eleven, one is on ‘vacant crown land’ under a land claim and the other ten are on Community Living Area (CLA) title, a form of NT Freehold excised from pastoral leases and held by an Aboriginal association or corporation. [↑](#footnote-ref-24)
25. Commonwealth of Australia, House of Representatives, Parliamentary Debates, 7 August 2007 (Second Reading Speech, 13 (Brough). [↑](#footnote-ref-25)
26. Commonwealth of Australia, House of Representatives Parliamentary Debates, 7 August 2007 (Second Reading Speech), 8 (Brough). [↑](#footnote-ref-26)
27. Despite this welcome commitment, the Australian Government’s preferred model for securing voluntary leases remained that of whole of township leases (see below). [↑](#footnote-ref-27)
28. The [Australian Government’s own evaluation of the NT Emergency Response](http://www.fahcsia.gov.au/sites/default/files/documents/05_2012/nter_evaluation_report_2011.pdf) (at page 11) recognised the problems caused by the compulsory acquisition of five year leases. [↑](#footnote-ref-28)
29. L Terrill, ‘Indigenous Land Reform: An economic or bureaucratic reform?’(2010) 7(17) *Indigenous Law Bulletin*, 5. [↑](#footnote-ref-29)
30. In the context of housing precinct leases, the CLC has been concerned by the transfer of housing from community housing organisations to Territory Housing that occurred under compulsory five year leases. In negotiating subsequent voluntary leases the CLC negotiated to prevent complete institutionalisation of government ownership and responsibility for housing through leases to the Executive Director of Township Leasing (EDTL – a Commonwealth statutory entity) rather than directly to Territory Housing. In all cases Territory Housing has been granted a shorter-term sub-lease and the EDTL can grant subsequent sub-leases to ‘any appropriate body.’ The agreed lease provides oversight through performance reviews of any sub-lessee (including Territory Housing). It is hoped that, following the dissolution of Indigenous Community Housing Organisations, this will provide Indigenous organisations with the time and opportunity to develop sustainable models in order to re-enter the housing sphere as housing managers following the first sub-lease to Territory Housing. [↑](#footnote-ref-30)
31. These figures include leases progressed to consent on ALRA and CLA land between June 2007 and June 2015 (on a lot by lot basis). It does not include leases that have been applied for but have not yet been processed, or leases refused or withdrawn. [↑](#footnote-ref-31)
32. It is worth noting that only three communities in the CLC region – Lajamanu, Yuendumu and Hermannsburg – were offered new houses. Other communities received housing upgrades and a rebuild of existing houses classified as ‘beyond economic repair’. [↑](#footnote-ref-32)
33. Minister for Indigenous Affairs quoted in the Koori Mail, 26 March 2014 at http://minister.indigenous.gov.au/media/2014-03-26/land-reform-future-published-koori-mail [↑](#footnote-ref-33)
34. Letter from the Department of Prime Minister and Cabinet to a community in the CLC region, dated November 2014 [↑](#footnote-ref-34)
35. The Parliament of the Commonwealth of Australia,

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<http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/Inquiry_into_the_Development_of_Northern_Australia/Tabled_Reports> [↑](#footnote-ref-35)
36. Terrill, L 2014-5, ‘The Language we use to debate Aboriginal Land Reform in Australia’, *Australian Indigenous Law Review*, vol. 18, no.1, University of New South Wales [↑](#footnote-ref-36)
37. In a [submission](https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=6dbe7577-ca18-4870-9d72-e4e69213905a) to the Senate Standing Committee, *Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and Two related Bills*, Leon Terrill notes that ‘In 2008, the Australian Government released a two volume report called *Making Land Work*, in an attempt to better understand the complex issues affecting customary land reform in the Pacific. The report drew on the input of around 80 experts and practitioners in land reform and development… During the same period the Australian Government began its involvement in Aboriginal land reform in the Northern Territory. It did not commission a detailed report, nor call on the advice of experts. It did not establish a steering group, it did not even prepare or publish a land reform policy. It simply implemented a series of reforms as if the task were self-evident… The result has been an ad hoc, confused, expensive and at times contradictory approach to the implementation of land reform. On the whole, the outcome of these reforms has been very poor.’ It is beyond the scope of this paper to fully consider the policy rationale for recent reforms but this comparison is demonstrative. [↑](#footnote-ref-37)
38. K Deininger, *Land Policies for Growth and Poverty Reduction*, World Bank Research Report (Oxford University Press, 2003), 25. [↑](#footnote-ref-38)
39. [National Partnership on Remote Indigenous Housing – Progress Review](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.fahcsia.gov.au%2Fsites%2Fdefault%2Ffiles%2Ffiles%2Findigenous%2FFinal%2520NPARIH%2520Review%2520May%252020132.pdf&ei=M7y3UZ7mGKP-iAe-loAw&usg=AFQjCNETib9_sHeqyplW_ZsDXwkOvch1Yw&sig2=EP-5szUXIA7Ex4QetgjBBg&bvm=bv.47810305,d.aGc) (2008–2013), 10. [↑](#footnote-ref-39)
40. [National Partnership on Remote Indigenous Housing – Progress Review](http://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&cad=rja&ved=0CC4QFjAA&url=http%3A%2F%2Fwww.fahcsia.gov.au%2Fsites%2Fdefault%2Ffiles%2Ffiles%2Findigenous%2FFinal%2520NPARIH%2520Review%2520May%252020132.pdf&ei=M7y3UZ7mGKP-iAe-loAw&usg=AFQjCNETib9_sHeqyplW_ZsDXwkOvch1Yw&sig2=EP-5szUXIA7Ex4QetgjBBg&bvm=bv.47810305,d.aGc) (2008–2013), 10. [↑](#footnote-ref-40)
41. The Parliament of the Commonwealth of Australia,

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<http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Northern_Australia/Inquiry_into_the_Development_of_Northern_Australia/Tabled_Reports> [↑](#footnote-ref-41)
42. Commonwealth of Australia 2015, Budget 2015-2016, Budget Measures, Budget Paper No.2, p.174 [↑](#footnote-ref-42)
43. J Altman et al,[*Land Rights and Development Reform in Remote Australia*](http://caepr.anu.edu.au/sites/default/files/Publications/DP/2005_DP276.pdf), Centre for Aboriginal Economic Policy Research Discussion Paper No. 276 (2005), 14. [↑](#footnote-ref-43)
44. Section 25 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) also confers a duty upon Land Councils to attempt conciliation of disputes relating to land. [↑](#footnote-ref-44)
45. [CLC Paper – Community Leasing – an Alternative Proposal.](http://www.clc.org.au/files/pdf/CLC_tenure_proposal_Dec_2010_final.pdf) It should be noted that this model was developed to promote discussion and the Council has endorsed it for this purpose. It is not a model on which there has been any specific community consultations to date, although a similar scheme is being considered in relation to Mutitjulu. [↑](#footnote-ref-45)
46. Existing leases would be recognised and incorporated within the model. [↑](#footnote-ref-46)
47. M Dillon and N Westbury, above n 67, 130–6. Many of the other concerns Dillon and Westbury raised have now been addressed through formalisation of tenure under section 19 of the ALRA. [↑](#footnote-ref-47)
48. [↑](#footnote-ref-48)
49. CLC 2009, Community Development Framework, accessed at <http://www.clc.org.au/articles/info/community-development> [↑](#footnote-ref-49)
50. Aboriginal Peak Organisations NT comprises the Central and Northern Land Councils, the North Australia Aboriginal Justice Agency, the Central Australian Aboriginal Legal Aid Service, and the Aboriginal Medical Services Alliance NT - the governance program can be found at <http://aboriginalgovernance.org.au/> [↑](#footnote-ref-50)