

## **From Rhetoric to Reality:**

Can 99-year Leases Lead to Homeownership for  
Indigenous Communities?

Sara Hudson

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## ABBREVIATIONS

AACAP	Aboriginal Army Community Assistance Program
ADC	Aboriginal Development Commission
AFRS	Aboriginal Family Resettlement Scheme
AHRP	Aboriginal Rental Housing Program
ARIA	Australian Remote Indigenous Accommodation
ATSIC	Aboriginal and Torres Strait Islander Commission
CDEP	Community Development Employment Projects
CHIP	Community Housing and Infrastructure Program
DAA	Department of Aboriginal Affairs
DFCS	Department of Family and Community Services
DFCSIA	Department of Families, Community Services and Indigenous Affairs
DOGIT	Indigenous Deed of Grant in Trust
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs
HOIL	Home Ownership on Indigenous Land program
IBA Homes	Indigenous Business Australia Homes
SIHIP	Strategic Indigenous Housing and Infrastructure Program
SLAP	Serviced Land Availability Plans

## Executive Summary

The lack of private property rights on communal title land has prevented Aborigines and Torres Strait Islanders from becoming homeowners. Even for those who can afford to purchase a house, banks will not provide financing for home loans without legal title over land. But the choice to become a homeowner should be available to all Australians regardless of who they are or where they live.

Private homeownership provides benefits and responsibilities that are absent from communal land ownership and public housing. Owning a home may provide the incentive to get a job, stay in employment, or look for a better paying position.

Recognising the benefits of homeownership, the Commonwealth government established a Home Ownership on Indigenous Land (HOIL) program to enable even low income Aborigines and Torres Strait Islanders to purchase a home. But three years after it was initiated, only one HOIL loan has been granted. For the HOIL scheme to be properly implemented, individual land tenure arrangements need to be established.

To allow individual 'ownership' of land, the Howard government introduced 99-year leases over communal title land in the Northern Territory. But these head leases were to be held by the government and not communities. Fearing this was a ploy to take away their land, few Indigenous communities have taken up leases.

The Rudd government has put the 99-year leases on the backburner, and is instead 'encouraging' traditional owners to sign agreements for 'block' or 'housing' leases for shorter periods of around 40 years. These leases are being used to provide security of title for new public housing but not private homeownership.

Though it may be appropriate for some low income families, public housing should not be the only option for Indigenous people living on community title land. During the last 30 years, governments have spent billions of dollars on public housing in Indigenous communities without fixing the appalling condition of housing.

The cost of building public housing in the Northern Territory ranges from \$400,000 to \$900,000, but the market value of these houses is much lower. Current government programs for the resale of publicly constructed houses for private ownership only appear to make sense for purchasers of old, derelict houses valued at \$80,000 or so. If new public housing is made available for Aborigines and Torres Strait Islanders to purchase, then it will have to be heavily subsidised to be an affordable option. Nor should the purchase of publicly built houses be the only, or even principal, way that Indigenous families can acquire their own homes.

In Queensland, 99-year leases involve charging traditional owners to lease their own land. This is likely to be a further disincentive for homeownership. Indigenous families are unlikely to build their own homes because the subsidised rents charged for new, publicly constructed houses are considerably lower than what mortgage payments would be.

Historically, simply converting rents into mortgage repayments has not made Indigenous owners more engaged in or committed to the maintenance and protection of their homes. Unfortunately governments appear set to repeat the failed policies from the past. Instead of putting millions of dollars into more public housing and then selling them below cost, governments should step back and enable communities to decide how to lease their land.

Head leases held by communities could operate like company title with eligibility rules for membership. Communities, along with local governments, could draw up town plans setting aside areas for public, residential or commercial use. With security of tenure for homes, the HOIL scheme could be extended by shifting funding from public housing to subsidise private homeownership. In time, Aborigines and Torres Strait Islanders will be able to reap the benefits that leasing their land and private homeownership will bring to their communities.

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You know the difference between a black man and a white man is this, when a white man dies his family gets his house. When a black man dies the government gets it.

—‘*Doing Housing*’  
*A report on housing issues in Palm Island  
 from an Aboriginal perspective.*

## Introduction

In spite of spending billions of dollars, governments in Australia have failed to provide decent housing for Aborigines and Torres Strait Islander communities. It is widely acknowledged that public housing in Aboriginal communities is poorly designed and constructed, with few of the amenities that most Australians take for granted. Inadequate maintenance and overcrowding have resulted in many of the houses becoming uninhabitable within 10 years of construction. Housing in these communities compares poorly with other public housing—not to mention the private homes enjoyed by most other Australians. This paper argues that alternatives to public housing need to be considered, and explores how to make homeownership a reality for Indigenous families living on communal title land.

The lack of private property rights on most Indigenous land is the principal barrier to private homeownership. Some 70,000 Aborigines and Torres Strait Islanders live on communal title lands, mostly in the far north of Australia.<sup>1</sup> Their housing plight contrasts sharply with the more than 300,000 Aborigines and Torres Strait Islanders working and living in mainstream society, who own or are buying or commercially renting their homes. In the Northern Territory and Queensland, recent legislative changes have enabled 99-year leases to be established on communal land. Although the Commonwealth government has promoted these lease schemes as a way of facilitating private homeownership on Indigenous land, leases are largely being used to enable more public housing to be built. Under amendments to the *Aboriginal Land Rights Act (Northern Territory) 1976* (the *Land Rights Act*), the Commonwealth government has taken control of head leases. As a consequence, only a few communities have agreed to 99-year lease agreements, and there has been little progress in implementing HOIL—the Commonwealth’s Home Ownership on Indigenous Land program administered by Indigenous Business Australia Homes (IBA Homes).

The benefits of homeownership are generally well known and recognised. Homeowners tend to maintain their homes and be in regular employment. Owning a home can also encourage better saving habits and a greater sense of individual responsibility. The personal, family and social benefits associated with homeownership are strong arguments for shifting government funding from unsuccessful public housing to programs like HOIL, which would enable Aborigines and Torres Strait Islanders living on communal title land to become homeowners.

## The state of remote housing

Herbert Coombs said in 1978 that ‘there is no element in social policy for Aborigines the results of which have been so disappointing and so confusing as that related to housing.’<sup>2</sup> This statement is as applicable today as it was then. Despite widespread awareness since the 1980s of the link between poor housing, poor health, and the low life expectancy of Aborigines and Torres Strait Islanders, few improvements in these areas have been achieved.<sup>3</sup> A chronic shortage in the number of houses in remote communities has created a vicious cycle. Not only is there a lack of housing but many houses are so badly designed and constructed that tenants are lucky if the buildings last 10 years.<sup>4</sup> The shortage in housing (and number of bedrooms in houses) has resulted in serious overcrowding.<sup>5</sup> This, combined with insufficient maintenance, has contributed to the rapid deterioration of the houses and further reduced the supply of housing.

**Houses are so badly designed and constructed that tenants are lucky if the buildings last 10 years.**

In 2006, Clare Martin (the then NT Chief Minister and Minister for Aboriginal Affairs) estimated that the Northern Territory needed a further 4,000 houses within a year to keep pace with demand.<sup>6</sup> But as the NT Minister of Housing admitted, 'not only are we failing to meet needs—we are ... falling behind.'<sup>7</sup> If the current rate of construction continues, it will take more than 33 years to address the backlog in housing.<sup>8</sup>

ABS statistics from the 2006 census suggest that the average household size in remote Indigenous communities is 4–5 persons.<sup>9</sup> Yet, these figures are not consistent with the overcrowding that is observed in many Indigenous communities. In Mowanjum, an Aboriginal community in Western Australia, the community's 350 people live in just 42 houses, most of which have only three bedrooms.<sup>10</sup> Some houses have as many as 35 people under one roof.<sup>11</sup> Not surprisingly, such living conditions increase the risk of the spread of infectious diseases such as meningococcal disease, rheumatic fever, tuberculosis, and respiratory infections.<sup>12</sup>

Derelict houses offer no privacy or security. In one top-end community, girls are showering in their clothes because they cannot lock the bathroom door and feared being walked in on.<sup>13</sup> Young children are frequently exposed to adult sexual behaviour, pornography, substance abuse, and household violence.<sup>14</sup> Children are afraid to go to sleep at night for fear of being abused. Mothers do not know how to keep intruders out as the houses do not have doors that shut or locks that work.

Although vandalism to houses is evident in some communities, the widespread assumption that Aborigines destroy their houses is false. Studies conducted over a seven-year period (from 1999 to 2006) found that the major causes of 'house failure' were lack of routine maintenance and faulty construction and design.<sup>15</sup> Of the 4,343 houses surveyed in 132 communities, only 11 percent passed national standard assessments for electrical safety. In 50 percent of houses, there was no tub or bath to wash a child in, and only 35 percent of houses had a functioning shower.<sup>16</sup>

In most remote communities, kitchens and bathrooms are often non-existent or woefully inadequate. Residents of Mapuru in northwest Arnhem Land cook in an outdoor kitchen over a fire. They have no sink and wash their dishes in a bucket.<sup>17</sup> Many houses have no power. In 2003, a Queensland Department of Housing survey found that fewer than 35 percent of Aboriginal and Torres Strait Islanders live in communities with electricity, cooking facilities, refrigeration, and bathrooms.<sup>18</sup>

Maintenance work is rarely carried out, and even then it is done by unskilled and poorly supervised CDEP (Community Development Employment Projects) program workers.<sup>19</sup> Residents complain that they apply for funding for repairs but never receive it.<sup>20</sup> Many of the houses in these communities are substandard with rusting walls and water coming through the sideboards.<sup>21</sup>

Statistics from the NT Department of Local Government and Housing for 2006 indicate that 385 houses in the Northern Territory needed demolition and 713 needed renovations.<sup>22</sup> Yet these figures appear to have underestimated the scale of housing needs. In 1999, one-third of the 14,500 community owned (Aboriginal housing association)<sup>23</sup> houses were found to need major repairs or demolition (Aboriginal Housing Survey 1999).<sup>24</sup> In a study conducted in Queensland in 2003, 30 percent of houses on Aboriginal land were found to need a major upgrade and 20 percent to be demolished.<sup>25</sup> A recent state and federal government audit of housing in remote WA Aboriginal communities found that more than 90 percent of the 2,400 homes in the 130 communities across the state needed major repairs.<sup>26</sup>

Once a house has been condemned and declared unfit for human habitation, local government is required to shut off the electricity and water supply. Presumably, this is to discourage people from living there. But with the shortage of housing, many of the condemned houses continue to be occupied.<sup>27</sup>

The waiting lists for houses are so long that in some communities, applicants are likely to die before receiving one. The waiting time for a house in the Tiwi Islands is around 50 years, while the average life expectancy of a Tiwi man is only 48 years.<sup>28</sup> Thousands of Aborigines and Torres Strait Islanders live in temporary dwellings or rely on the goodwill of relatives to house them.

## Housing polices today

As part of the ‘Apology to the Stolen Generation,’ the Rudd government promised to spend \$1.6 billion on a new five-year housing strategy for remote Indigenous communities—the Australian Remote Indigenous Accommodation (ARIA) program.<sup>29</sup> Initially set up under the Howard government, this program replaced the failed Community Housing and Infrastructure Program (CHIP). So far, most of the government’s attention and resources have been given to the Northern Territory. The 2008–09 budget and the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) plans for 2008–09 highlight the partnership between the Commonwealth and the Northern Territory on the Strategic Indigenous Housing and Infrastructure Program (SIHIP) (an offshoot of the ARIA program). The Commonwealth government is contributing \$547 million to SIHIP over the next four years, while the NT government is providing \$100 million.<sup>30</sup> In addition to the money provided for SIHIP, the Commonwealth government is giving extra money (in the vicinity of \$10 million) to three communities that have agreed to long-term leases.<sup>31</sup>

First in the order of priority for ARIA funding are main urban centres and communities likely to experience growth, followed by smaller communities. In total, 73 communities have been targeted as recipients of SIHIP funds. The program is expected to deliver 750 new houses, replace more than 230 houses that need to be demolished, and provide upgrades for 2,500 houses.<sup>32</sup> Under the MoU between the Northern Territory and the Commonwealth, ‘no Commonwealth Government funding will be provided ‘to construct housing on outstations/homelands.’<sup>33</sup> The NT government has also indicated that it is not prepared to bear the cost of providing housing in these communities.<sup>34</sup> Residents though will have access to HOIL funding.<sup>35</sup> Before any residents can become homeowners, however, land tenure arrangements on communal title land would need to be in place.

The construction of new public housing in the Northern Territory was delayed while housing policies were being reconsidered by Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs. A factory in Alice Springs, which provided wall and roof frames and sheet and steel joinery for about 40 homes in Aboriginal communities in 2007, did not receive any orders in 2008.<sup>36</sup> In Maningrida, residents are complaining that while workers have come and inspected their houses, nothing has been done to fix them.<sup>37</sup> A brick-layer who moved to Maningrida expecting work has not built a single house. Instead, he has been doing maintenance and repair work for non-Indigenous people in Maningrida.<sup>38</sup>

However, building programs are expected to commence in the dry season in 2009. Work on the first new houses for Groote Eylandt and the nearby Bickerton Island will start in April 2009. About 80 extra houses will be built and 55 houses upgraded in the communities of Angurugu, Umbakumba and Milyakburra. In Nguiu on the Tiwi Islands, 90 new houses will be built and 145 houses upgraded.<sup>39</sup>

Once construction starts, it is expected that there will be training and employment opportunities for local Indigenous people. Contractual arrangements for SIHIP tenders supposedly require construction companies to meet targets for local Indigenous employment.<sup>40</sup> Unfortunately these sentiments appear to be largely rhetorical. According to the SIHIP program director, Rick Harris from Territory Housing, there was no formula in the contracts to ensure that Aborigines would be engaged in the building of the houses.<sup>41</sup>

**Government is only concerned about negotiating new leases where it is building new public housing.**

These building projects are all for more public housing. Instead of the 99-year township leases for public and private housing envisaged under the previous government, the Rudd government has decided to obtain ‘block’ or ‘housing’ leases to provide security of tenure for the new public houses planned under SIHIP.<sup>42</sup> In the 16 communities where new housing will be built, traditional owners are required to sign a ‘block’ or ‘housing’ lease with the government before any construction work starts.<sup>43</sup>

Jenny Macklin announced earlier this year that she will be promoting homeownership amongst Aborigines and Torres Strait Islanders, but how this will be achieved remains to be seen.<sup>44</sup> A joint fact sheet released by the Commonwealth and NT governments outlines their priorities.<sup>45</sup> New leases are to be sought only in those communities that will receive significant investment in new housing under SIHIP, but communities only receiving 'housing refurbishments' will not require leases. In other words, the government is only concerned about negotiating new leases where it is building new public housing. The fact sheet makes no mention of the link between land leases and private homeownership.<sup>46</sup> The only 99-year township lease agreed to so far is in Nguiu. Residents there will be able to access HOIL funding, but few others will. It is possible that the government intends to extend the rent-to-buy scheme it started in Wadeye. Although this will enable people to become homeowners, it does not give Aborigines and Torres Strait Islanders the range of homeownership choices that other Australians have. Current policies to promote homeownership may be well intended, but as the history of Indigenous housing shows, the past is littered with good intentions that have not been realised.

## History of Indigenous housing

### *Missions and government reserves*

Traditionally, Aboriginal people were nomadic, moving camp depending upon the season or for food. Although they built shelters, these were not permanent and seldom lasted for more than a season.<sup>47</sup> Following European settlement, Aborigines and Torres Strait Islanders were persuaded by missionaries and government officials to abandon their traditional hunter-gatherer lifestyle and move to missions and government reserves.<sup>48</sup> The availability of materials such as canvas, calico and corrugated iron enabled Aborigines to build more permanent dwellings (although these were mostly lean-to structures known as 'humpies'). By the end of the nineteenth century, many Indigenous people were living on cattle stations and in towns and mining settlements. Cattle stations provided basic accommodation generally consisting of single room huts for their employees. In northern Australia, Indigenous people continued to live in such dwellings well into the 1980s.<sup>49</sup>

### *Resettlement and transitional housing*

In the 1950s, some states and the Northern Territory decided to move Aboriginal people from traditional camps to conventional housing.<sup>50</sup> The Northern Territory developed the 'transitional house,' which was very basic, consisting of only one or two rooms. Some structures had floors, but none had water or sewerage. Most of these houses were unsuited to hot climates, so Aborigines and Torres Strait Islanders tended to live *around* rather than *in* them. This created the long-standing myth that Indigenous people wanted separate 'Aboriginal' style housing.<sup>51</sup> Throughout the 1950s and 1960s, the NSW government under the Aboriginal Family Resettlement Scheme offered public housing in towns and cities to encourage Aborigines to move to areas with more opportunities for jobs and education.

### *The origins of an Aboriginal housing bureaucracy*

In the 1960s Aboriginal affairs became a significant and growing social issue, with the most prominent concerns being equal pay in the pastoral industry, land rights, and the 1967 referendum.<sup>52</sup> These campaigns generated public recognition of Indigenous disadvantages and led to the Commonwealth government becoming more involved in the funding and administration of Aboriginal Affairs. The 1973 budget provided more than \$100 million for Aboriginal programs, with \$30 million for a 'massive housing program' to meet Labour's election policy promise that all Aboriginal families would be properly housed within 10 years.

**Table 1:** The evolution of Indigenous housing

<b>Year</b>	
<b>1950s</b>	Government initiatives were introduced to move Aborigines and Torres Strait Islanders from traditional camps into conventional housing—these included the ‘transitional house’ used in the Northern Territory and the Aboriginal Family Resettlement Scheme in New South Wales.
<b>1968</b>	The Commonwealth became involved in the funding and administration of Aboriginal housing through Commonwealth State Housing Agreements.
<b>1972</b>	The Whitlam government established the Department of Aboriginal Affairs and provided \$30 million for a ‘massive’ housing program. Aboriginal Housing Associations were the direct beneficiaries and their numbers rapidly expanded from 71 to 143 by 1974–75.
<b>1972</b>	The Royal Australian Institute of Architects’ Aboriginal Housing Panel was formed with funding from the Department of Aboriginal Affairs.
<b>1972</b>	‘Town Campers Assistance Program’ was established.
<b>Mid- 1970s</b>	Aboriginal Housing Boards were established to provide a voice for Indigenous people in the allocation of housing under Commonwealth State Housing Agreements.
<b>1973</b>	Aboriginal Hostels Limited was established to provide ‘essential and urgent accommodation’ for people moving to cities and towns.
<b>1973</b>	Under the Homelands Movement, the Commonwealth government provided grants of up to \$10,000 for groups wanting to return to their ‘traditional lands.’
<b>1974-75</b>	The Aboriginal Loans Commission was given \$5 million to provide low-income families with loans for the purchase of houses at low rates of interest (now provided by Indigenous Business Australia Homes).
<b>1979</b>	The Aboriginal Rental Housing Program was established for rural and remote areas without public or private housing markets (funds were provided through Commonwealth State Housing Agreements).
<b>1990</b>	The Aboriginal and Torres Strait Islander Commission was established and assumed responsibility for the housing programs administered by Aboriginal Development Commission and the Department of Aboriginal Affairs.
<b>1990</b>	ATSIC, the former commission for Aboriginal and Torres Strait Island affairs, developed the Home Purchase Incentive Scheme.
<b>1992-1993</b>	The Commonwealth Community Housing and Infrastructure Program (CHIP) was established under ATSIC.
<b>2001</b>	At the 2001 Housing Ministers Conference, ministers agreed to implement a new policy framework called ‘Building a better future—Indigenous housing to 2010.’
<b>July 2004</b>	ATSIC was disbanded and CHIP was transferred to the Department of Family and Community Services.
<b>2005</b>	A Homeownership on Indigenous Land (HOIL) initiative was proposed by the Howard government.
<b>2006</b>	Legislative amendments to the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i> provided for 99-year lease on communal land.
<b>2007</b>	An independent review of CHIP undertaken by consultant PricewaterhouseCoopers found that CHIP was not meeting the housing needs of Indigenous Australians. The CHIP program was abolished.
<b>2008</b>	The Australian Remote Indigenous Accommodation Program (ARIA) was introduced to replace CHIP.
<b>2008</b>	Included under the ARIA Program is the Strategic Indigenous Housing and Infrastructure Program (SIHIP)—a partnership between the Commonwealth and the Northern Territory.

The Whitlam government established the Department of Aboriginal Affairs to replace the states' largely inept Aboriginal welfare authorities.<sup>53</sup> Under the principle of 'self-determination,' the Commonwealth government funded Aboriginal associations to construct and manage their own houses. Funds for Aboriginal housing associations increased from \$8.1 million in 1973–74 to \$13 million in 1974–75, doubling the number of local housing associations from 71 to 143.<sup>54</sup> Unfortunately, allegations of mismanagement of Aboriginal housing association funds were reported. Some associations were found to have exceeded their budget allocations by substantial amounts. Other associations failed to complete their approved building programs.<sup>55</sup>

Self-determination policies were also responsible for the Commonwealth government providing money to groups wanting to return to their 'traditional homelands.' These included a range of settlements from towns such as Wadeye and Maningrida to outstations of a few families. Each group was given up to \$10,000 for housing. A combination of traditional and conventional materials were used to build houses, which ranged from humpies and lean-to structures to 'transitional' houses (provided by the NT government). Most dwellings in the homelands did not have reticulated water, sewerage or electricity. Government support for the homelands movement was based on

**From the very beginning  
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the belief that Aborigines and Torres Strait Islanders should be free to live traditional lives and manage their own affairs. Yet from the very beginning the notion of self-sufficiency was a myth. Most of the Aborigines and Torres Strait Islanders living in the homelands relied on income from social welfare payments.<sup>56</sup> Rather than hunting and gathering, they consumed packaged food and drink. In most cases, homeland associations were run by non-Indigenous managers. Very

few Aborigines and Torres Strait Islanders had the education or were taught the skills to manage their own communities.<sup>57</sup> Although the failure of the homelands was evident by the 1980s, a report released by the House of Representatives Standing Committee on Aboriginal Affairs, 'Return to Country: the Aboriginal Homelands Movement in Australia' (also known as the Blanchard Report) advocated the continued and increased support of the homelands movement.<sup>58</sup>

In addition to providing funding directly to Indigenous communities and organisations, such as Aboriginal housing associations, the federal government also supported state expenditure on public housing through Commonwealth State Housing Agreements. These were formal agreements between the Commonwealth and each state and territory setting out a framework for the supply of 'appropriate, affordable and secure' public housing. Included under these agreements were funds for the Aboriginal Rental Housing Program.<sup>59</sup>

*Healthy homes and other initiatives*

In the mid-1980s, the link between the poor health of Indigenous people and their housing became more widely recognised. The first detailed study (known as the UPK report) was conducted in 1987 on the Anangu Pitjantjatjara Lands.<sup>60</sup> A range of healthy 'living practices' were identified, and the housing stock and immediate surrounding environment were assessed to determine the availability of the 'health hardware' needed to carry out these 'living practices.'<sup>61</sup> Not surprisingly, the study found that many of the homes did not have functioning 'health hardware' and that water and sewerage systems were frequently breaking down. While there was widespread agreement amongst officials that Indigenous housing and infrastructure had to improve, many of the recommendations contained in the report were ignored.

Two years later, in 1989, the National Aboriginal Health Strategy was launched with the aim of addressing the poor health outcomes of Aborigines and Torres Strait Islanders. One of its first goals was to improve sewerage and water supply in Indigenous communities. Government funding was provided for large-scale capital works that Aboriginal housing associations were unable to deliver. The strategy targeted specific communities and attempted to build greater collaboration between the various agencies responsible for Indigenous housing and infrastructure.<sup>62</sup> Although the strategy did provide some additional housing and improvements to infrastructure, many of its objectives were never fully implemented.<sup>63</sup> Houses were not built at a rate high enough to meet demand.<sup>64</sup>

### *The 1990s: ATSIC and beyond*

In the 1990s, ATSIC (the Aboriginal and Torres Strait Islander Commission) was established and assumed responsibility for the housing programs administered by the Aboriginal Development Commission and the Department of Aboriginal Affairs. ATSIC introduced CHIP to manage Aboriginal housing associations and Indigenous community housing organisations. These associations and organisations were responsible for administering about 20,000 dwellings in 'discrete Indigenous communities.' Of these, 15,000 were located in remote 'homelands' and 5,000 in urban fringes and major cities.<sup>65</sup>

Indigenous housing associations were matched by an equally large number of government and non-government agencies providing housing services to Indigenous communities. A number of health-focused housing programs were funded through CHIP, including the Healthy Indigenous Housing Initiative, the Fixing Houses for Better Health projects, and the Aboriginal Army Community Assistance Program (AACAP).<sup>66</sup> The result was an organisational maze that amplified confusion and limited coordination within and between governments.<sup>67</sup> By the late 1990s, housing ministers began to admit that the sharing of responsibility between the Commonwealth, states and territories had resulted in the duplication of services and lack of coordination between housing and infrastructure programs.<sup>68</sup> However, once again little action was taken to address the problem.

**The organisational maze amplified confusion and limited coordination within and between governments.**

In yet another attempt to improve housing standards, the National Framework for the Design, Construction and Maintenance of Indigenous Housing was released by the Federal Minister for Families and Community Services in 1999. This framework outlined the key principles that should underpin the design, construction and maintenance of Indigenous housing. Compliance standards for Indigenous housing were outlined in the National Indigenous Housing Guide, which provided practical examples learnt from research done on healthy homes. As the standards for Indigenous housing slowly increased, so did the costs involved in construction. Between 1996 and 2006, the cost of new dwellings rose from \$120,000 per home to an average of \$330,000 per home.<sup>69</sup> The spiraling costs associated with building new houses stalled any attempts to reduce the backlog in unmet housing needs. Overcrowding continued to be a significant problem and prevented any improvements in housing and health outcomes.<sup>70</sup>

### *2000s: Time for change*

In 2001 housing ministers once again launched a new policy framework. This one was called 'Building a better future—Indigenous housing to 2010.'<sup>71</sup> Alongside the framework were national reporting requirements outlining the data that needed to be collected from each jurisdiction. This data was expected to provide 'benchmarks' to measure the failure or success of Indigenous housing programs. But none of the Indigenous community housing authorities reported to government on their incomes and expenditure.<sup>72</sup> It soon became evident that the framework was simply rhetoric, and the housing situation remained unchanged.

Statistics from the *2006 ABS Housing and Infrastructure Survey of Aboriginal and Torres Strait Islanders Housing Organisations* showed that there were 616 Indigenous community housing associations administering 21,584 houses.<sup>73</sup> More than 80 percent of these housing associations managed fewer than 50 dwellings. The average rent collected by Indigenous community housing organisations was only \$40 a week. Many tenants paid no rent. Although the Commonwealth government had spent almost \$3 billion on housing and related services through CHIP, the number of occupied houses in remote areas fell from 15,453 to 13,548 between 2001 and 2006.<sup>74</sup>

Concerns about the poor management of Indigenous housing associations led the Howard government to commission Pricewaterhouse Coopers to conduct an Independent review of CHIP in 2006. Pricewaterhouse Coopers largely relied on previously published (and out of date) data to draw its conclusions. Pricewaterhouse Coopers concluded that CHIP was not meeting the housing needs of Indigenous Australians, particularly those living in remote and very remote areas. The principal reason for CHIP's failure was attributed to the poor performance of the many small

Indigenous community housing organisations.<sup>75</sup> Pricewaterhouse Coopers itemised a long list of bureaucratic entities that had received most of those housing funds but were unable to account for how this money was spent and why it was not used to build more houses.<sup>76</sup>

#### *Australian Remote Indigenous Accommodation program (ARIA)*

Following the Pricewaterhouse Coopers review, the Howard government abolished CHIP and replaced it with the ARIA program (which is now being implemented by the Rudd government). Funding was to be transferred from the 600 or more Indigenous community housing associations to territory and state departments of housing. The government argued that state housing authorities would provide better economies of scale and management because they had the property and tenancy management experience to ensure that appropriate rent was collected and that housing stock was maintained at an acceptable level.<sup>77</sup> In exchange for improvements to services and housing, Indigenous people in remote areas were expected to face the same rental obligations as other public housing tenants. This approach, however, failed to take into account the inefficiencies of state and territory housing authorities. State owned and managed Indigenous housing organisations only perform marginally better than Indigenous housing organisations.<sup>78</sup> In 2003–04, the national shortfall of revenue to costs for state and territory Indigenous housing was estimated to be \$44 million per year—an annual operating deficit of \$2,415 per dwelling, compared to \$269 for mainstream public housing.<sup>79</sup>

### Homeownership

The repeated and prolonged failure of government attempts to improve housing conditions in remote communities via public housing suggests that private homeownership deserves a trial. There are few incentives or opportunities for public housing tenants to take responsibility for their dwellings and to care and maintain the houses they occupy. Good behaviour is not rewarded in public housing as it is in the market through a good tenancy record or asset growth. Neglect or even wilful destruction has little or no penalty.<sup>80</sup>

In marked contrast to public housing, ownership of private property confers many benefits and responsibilities. When houses are owned, the choice of location and size rests with the individual or family. The motivation to develop an asset provides an incentive to care for and maintain a dwelling.

According to a recent study on Aboriginal homeownership, homeowners' income levels increased in the years after they purchased their homes, from an average of \$55,000 at the time of application to \$85,000 over a period of six years—with some of the new homeowners' incomes doubling during that period.<sup>81</sup> This indicates that having a house could provide the necessary incentive for people to work and to look for better employment opportunities. The researchers noted: 'A desire to make improvements to their homes pushed many new Indigenous homeowners to seek higher incomes.' Almost all the families had undertaken improvements and extensions, including adding verandas and extra rooms and upgrading kitchens and bathrooms. Three-quarters were ahead in their loan repayments. The study also found that homeowners were less likely to allow their extended family members to stay for long periods and, as a consequence, overcrowding in privately owned properties was rare.

However, the Aborigines and Torres Strait Islanders who own their own home or rent privately predominantly work and live in mainstream society. According to the 2006 census, 34 percent of Aboriginal and Torres Strait Islander households owned their own home and a further 30 percent were renting privately.<sup>82</sup> While only 4 percent of all Australians (304,430 out of 7,144,096 households) live in state and territory public housing, a high proportion (29 percent) of Indigenous households rely on state and territory housing and Indigenous community housing (47,752 out of 166,669 households).<sup>83</sup> There are two reasons for the low rate of homeownership and reliance on public housing among Aborigines and Torres Strait Islanders in remote communities. Typically, homeownership rates are connected to people's socio-economic status. Demand for public housing

**Owning a house could provide the necessary incentive for people to work and to look for better employment opportunities.**

of application to \$85,000 over a period of six years—with some of the new homeowners' incomes doubling during that period.<sup>81</sup> This indicates that having a house could provide the necessary incentive for people to work and to look for better employment opportunities. The researchers noted: 'A desire to make improvements to their homes pushed many new Indigenous homeowners to seek higher incomes.' Almost all the families had undertaken improvements and extensions, including adding verandas and extra rooms and upgrading kitchens and bathrooms. Three-quarters were ahead in their loan repayments. The study also found that homeowners were less likely to allow their extended family members to stay for long periods and, as a consequence, overcrowding in privately

is associated with high rates of unemployment and corresponding reliance on welfare. But due to the lack of private property rights on community title land even those Aborigines and Torres Strait Islanders in steady employment and artists earning substantial incomes cannot obtain normal mortgage financing to build houses in remote communities. Without the prospect of being able to own a home, the choice to remain on welfare instead of working is a rational response.

### Land tenure

Communal land ownership is held by undefined groups of people of Aboriginal and Torres Strait Islander descent. Land is held in trust by Indigenous trusts and community councils. In the Northern Territory, land trusts hold land under the *Land Rights Act* for the benefit of Aboriginals entitled by tradition to use or occupy the land.<sup>84</sup> In 1981, a tripartite definition attempted to define 'an Aboriginal or Torres Strait Islander' as 'a person of Aboriginal or Torres Strait Islander descent who identifies as an Aboriginal or Torres Strait Islander and is accepted as such by the settlement in which he (she) lives.'<sup>85</sup> The definition did not indicate the proportion of Aboriginal descent required, relying on 'acceptance by a settlement' for proof of Aboriginality. The definition has consequently proved to be a major source of conflict in determining rights of residence on Aboriginal land, and hence also to rights to royalties and other benefits. Disputes over who is a 'traditional' owner take up much of the time of land trusts and councils, creating deep divisions amongst many Aborigines and causing unrelenting conflict.<sup>86</sup>

In discussions about Indigenous land ownership, it is common for people to confuse land rights with native title. There is overlap between what is recognised by the courts as native title and land that is covered by specific land rights legislation. However, fundamental differences exist between native title and land rights. Native title is not granted by governments; it is the recognition, under Australian common law, of Indigenous rights and interests according to traditional Indigenous laws and customs. In some cases it may mean that Indigenous Australians have exclusive use of the land, but generally native title exists alongside (and is often subject to) the rights of other people in the same area, for example, people with leases and or licences to use that land. Although native title can lead to land rights being conferred, the court does not hand over a title deed for that land.<sup>87</sup>

In contrast, land rights are created by the Commonwealth government or state and territory governments and consist of various bodies of legislation that grant freehold or perpetual lease titles to Indigenous Australians. The Northern Territory, Queensland, New South Wales, South Australia, and Victoria all have land rights legislation. A title document for the land is issued, which is generally held by a community or an organisation and not by individuals.<sup>88</sup>

As each state and territory has its own forms of land tenure (see table 2) it is difficult to find precise information on Indigenous-held land in Australia. The Indigenous Land Corporation compiles data on land held under Indigenous titles and land held by government for Indigenous purposes (this does not include private land holdings or native title lands). Although the Indigenous Land Corporation has not published this information, the Steering Committee of the Review of Government Service Provision published it in a report called 'Overcoming Indigenous Disadvantage' in 2007.<sup>89</sup>

**Table 2:** Indigenously owned or controlled land by state/territory, December 2006

Tenure type	NSW	Vic	Qld	WA	SA	NT	Australia*
Freehold inalienable km2		50.1			188819.9	568366	757 282.8
Freehold alienable km2	3581.5	48.2	25212.2	438.4	167.1	10765.1	40243.3
Old system km2		1.7					2.9
Leasehold km2	369.2		29079.5	161640	14909.3	23122.6	229167.6
Licence km2	63.6						88.9
Aboriginal reserve km2			51.2	202352.9	25.3		202404.2
Deed of Grant in Trust (DOGIT) QLD km2			156.2				153.2
Tenure not stated km2	167		258.9	5.1	1.3	2587.8	3064.2
Total Indigenous land km2	4181.2	100	54758	364436.7	203923	604842.2	1232410.1
Proportion of total Indigenous land	0.3%	NS	4.4%	29.6%	16.5%	49.1%	100%
Total land area of state/territory km2	800642	227416	1730648	2529875	983482	134912	7692024
Indigenous land as a proportion of total land area	0.5%	NS	3.2%	14.4%	20.7%	44.8%	16%

\* Total for Australia includes some Indigenously owned/controlled land in Tasmania, which was not included in table as there is no Land Rights legislation for Tasmania. The ACT is excluded from the table for the same reason.

**Source:** Productivity Commission Overcoming Indigenous Disadvantage, Key Indicators 2007 Melbourne, Section 11.3 of the report—table 11A.3.1

### Without legal title over the land, banks were reluctant to provide financing for home loans.

According to the report, 16 percent (more than a million square kilometres) of Australia is indigenously owned or controlled land. Most of that land is inalienable and is, therefore, outside the Torrens system for land title registration and land-related securities registration. Although leasing arrangements were in place for Indigenous land in the Northern Territory and most states, under the *Land Rights Act* those wanting a long-term lease over their home or place of business had to go through a difficult and expensive process involving traditional owners; land councils; and the Minister for Families, Community Services and Indigenous Affairs. As a result, it was virtually impossible for anyone to acquire a lease for private residential or business purposes. The only leases granted were to mining companies and pastoralists willing to pay the considerable sums of money demanded by the land councils.<sup>90</sup>

Studies conducted by the Queensland Aboriginal Co-ordinating Council and ATSIC during the 1990s highlighted the deficiencies of communal title land. Without legal title over the land, banks were reluctant to provide financing for home loans. As a result, any houses built on communal title were in a closed market, with limited resale opportunities.<sup>91</sup>

The Reeves Report<sup>92</sup> on the *Land Rights Act* released in August 1998 found that most Aborigines

had not gained any significant benefits from inalienable freehold title, and recommended that all Aboriginal communities should be afforded the opportunity to obtain individual title over their land.<sup>93</sup> This—and other recommendations made in the report—were considered so contentious at that time that the commissioning minister, John Herron, referred the report to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs for review. The committee's report, 'Unlocking the Future: The Report of the Inquiry into the Reeves Review of the *Aboriginal Land Rights (Northern Territory) Act 1976*,' was critical of the Reeves Report and dismissed all its recommendations.

Fortunately, the argument for changing the form of land tenure on Indigenous land continued. Prominent Indigenous spokesmen Warren Mundine<sup>94</sup> and Noel Pearson continued to argue in favour of individual property rights on communal title land.<sup>95</sup> A paper titled 'A New Deal for Aborigines and Torres Strait Islanders' released by the Centre for Independent Studies in March 2005 also contributed to the debate.<sup>96</sup> The National Indigenous Council, set up to provide Indigenous Policy advice when ATSIC was abolished in 2004, published a set of 'Indigenous land tenure principles' in 2005. It recommended legislative changes to allow for individual title of land held under communal and inalienable titles.<sup>97</sup> This set the stage for Mal Brough, as Minister of Indigenous Affairs in 2006, to introduce a range of reforms to encourage homeownership for Indigenous people living on communal land.<sup>98</sup>

#### *99-Year leases in the Northern Territory*

In 2006, the *Land Rights Act* was amended to allow for 99-year township leases on Indigenous communally owned land. Originally, it was envisaged that an 'entity' of the NT government would hold the head lease and then sub-lease the land in consultation with traditional owners and land councils.<sup>99</sup> But, the NT government failed to establish such an entity. Therefore, amendments were made to the bill to allow an entity of the Commonwealth government (the Office of Township Leasing) to hold the head lease.

Under this arrangement, the Commonwealth government is required to negotiate with traditional owners on the terms and conditions of the head lease. The head lease is a large lease covering a whole township area. Once the head lease has been negotiated, smaller leases called sub-leases can be issued by the government. The issuing of sub-leases is subject to the terms and conditions of the head lease. Once they have been issued, sub-leases can be sold, transferred to someone else, or mortgaged—that is, used as security to get a loan for a home or a business. While the head lease can contain provisions limiting or governing the manner in which sub-leases are issued, the *Lands Rights Act* does not allow traditional owners to decide on the issuing of any particular sub-leases. The rationale for this decision was to place as few restrictions as possible on sub-leasing.<sup>100</sup> It was feared that having communities responsible for head leases would prevent any agreements to lease the land from being reached.

This move, however, prompted widespread concern amongst Aboriginal communities—especially following the compulsory acquisition of five-year township leases as part of the Northern Territory Intervention. Their concerns were fuelled by academics who argued that it was a ploy by government to 'grab' Indigenous land.<sup>101</sup> As a result, very few communities were willing to sign 99-year head lease agreements. Even though the Howard government offered financial incentives to encourage communities to sign lease agreements, they were successful in negotiating only one 99-year lease agreement—with the Tiwi Land Council.

To facilitate the agreement between the Mantiypwi people (the traditional owners of Nguiu in the Tiwi land) the Commonwealth government agreed to give the traditional owners an upfront payment of \$15 million for the first 15 years of the lease, with a yet-to-be-determined rent formula for the remaining decades. The government also agreed to build 25 new houses and repair all the houses in Nguiu, provide \$1 million extra for health initiatives, make improvements to the cemetery, and conduct a community profile study to evaluate what further improvements might be needed in Nguiu.<sup>102</sup>

Under the Nguiu town lease, a cap on the leasing of land to non-Tiwi Islanders stipulates that the town must retain an 85 percent Tiwi population.<sup>103</sup> New buildings are to be limited to no more than two storeys high to keep the bush nature of the township. Although permit restrictions

will be lifted for people who hold a lease, people who have sub-leases must comply with relevant drug and alcohol management plans, and all sacred sites will continue to be protected.<sup>104</sup>

An attempt to negotiate a 99-year lease agreement was also made by Galarrwuy Yunupingu on behalf of the Gumatj people from Gunyangara 'Ski Beach' in North East Arnhem Land.<sup>105</sup> An MoU was signed between Yunupingu and the Commonwealth of Australia to work towards a 99-year lease. The proposed lease differed from the Nguiu lease in that the head lease was to be held by the Gumatj people instead of the government. Questions arose as to how Gumatj people could hold a head lease but not the Tiwi Islanders. As this was only an MoU and not a legally binding agreement, the legal technicalities of the document were not tested. Presumably, however, the head lease could have been granted under section 19 (not section 19A) of the *Land Rights Act*.<sup>106</sup>

In any case, members of the Northern Land Council were unhappy about the processes used in seeking the MoU. Council members argued that the Commonwealth government had bypassed the normal consultation procedures by negotiating directly with a traditional owner, and that the signing of the MoU had put other traditional owners from the Northern Land Council under duress.<sup>107</sup> With the Northern Land Council so opposed to the memorandum, it could not be implemented. To date, there have been no discussions with the new Federal Minister for Indigenous Affairs to advance the agreement.<sup>108</sup>

When Jenny Macklin was the Shadow Minister for Indigenous Affairs, she argued that 99-year leases would alter the principles underpinning land rights.<sup>109</sup> But since coming to office as the Commonwealth Minister for Families, Housing, Community Services and Indigenous Affairs, she has taken a more pragmatic view. She has recognised the benefit of allowing for more secure title over Indigenous communal land. To encourage more communities to enter into lease agreements, she has reduced the possible length of leases to 40 years. She has also introduced 'block leases' over community living areas and town camps. Her turnaround reflects the shift in the debate on Indigenous land tenure in recent years. By 2008, even Edward Woodward, the chairman of the Royal Commission into Aboriginal Land Rights in the Northern Territory, which led to the *Land Rights Act*, admitted that 'with the wisdom of hindsight, he might not have made the same recommendations [about communal title].'<sup>110</sup>

Three Groote Eylandt communities in the Northern Territory have now signed 40-year leases. Yet, as journalist Paul Toohey from *The Australian* points out, there is an element of smokescreen about this approach—since the government has the option of renewing the leases for another 40 years if it wants to. In reality, these 40-year leases are actually 80-year leases.<sup>111</sup> Leases have also been negotiated at Maningrida, Gunbalanya, Galiwinku, and Wadeye.<sup>112</sup>

The Commonwealth government is also working with other state governments to develop the right conditions for secure tenure over Aboriginal and Torres Strait Islander housing. Agreement in principle has been reached for 50-year leases in the Anangu Pitjantjatjara Yankunytjatjara (APY) Lands in South Australia.<sup>113</sup> Options for leasing are also currently being considered in Western Australia and New South Wales.<sup>114</sup> Last year, the Queensland government passed legislation allowing for 99-year leases of Indigenous land.

Jenny Macklin has argued that the government's approach to tenure is neither prescriptive nor coercive. But the government is telling traditional owners to agree to Commonwealth leases if they want new houses.<sup>115</sup> The rationalisation for this approach is that the government wants to make sure it has secure title over the land before investing in housing.<sup>116</sup> The 'trade off' for communities in this instance is access to new public housing, although the government has promised to pay rent or compensation once traditional owners agree to leasing whole towns.<sup>117</sup>

It would seem more logical to negotiate for township or community leases in the first place. Under the *Land Rights Act*, land councils in the Northern Territory are responsible for ensuring that traditional owners understand the nature and purpose of proposed head leases and consent to them. The council is also responsible for ensuring that the terms and conditions of the lease are reasonable and that any Aboriginal community or group affected by the lease has been consulted and given the opportunity to express its view. However, unless the process of granting head leases and sub-leases is simplified and clearly defined, homeownership on 99-year leases cannot become a reality. The obstacles that prevented leases from being negotiated in the past will continue to prevent progress.

### *Queensland's 99-year leases*

Prior to the recent legislative amendments for 99-year leases in Queensland, all leasing was limited to 30 years on Indigenous Deed of Grant in Trust (DOGIT) land and reserves. By permitting long-term leasing, the amendments under the *Aboriginal and Torres Strait Islander Land Amendment Act 2008* are expected to encourage economic development and homeownership. Residential leases for 99 years are available to non-Indigenous persons subject to criteria—that is, the person must be a spouse of an Indigenous person or have some connection to an existing commercial lease of the land. Strict criteria must also be met before a commercial lease can be obtained for more than 30 years. This includes a business plan to show why a lease of more than 30 years is needed and evidence that the trustees of the land have agreed to the lease.<sup>118</sup> A trustee is a registered entity appointed by the minister and responsible for the management of the Aboriginal land. The trustees have some particular association with the land and local community. In most cases, Aboriginal shire councils are the trustees of DOGIT land so trustees and councillors are the same group of people.<sup>119</sup>

Inexplicably, however, the Queensland government has decided to value the land (and any dwellings on that land) before granting a lease. Leases for residential purposes must be 'purchased' through an upfront lump sum payment equal to the value of the land. The value of the land is to be decided by a certified practising valuer using methodology and benchmarks prescribed under regulation—what these are exactly is not clear. If there is no house/dwelling on the land, then the leaseholder is required to build a dwelling within eight years of the lease being granted. The situation becomes even more complicated if there is a dwelling on the land, and if that dwelling has been used for public housing. In this case, the lease cannot be issued until the housing chief executive has agreed to the lease and has had the dwelling valued.<sup>120</sup> These elaborate bureaucratic measures are likely to make the process of acquiring individual title over land unnecessarily difficult.

**Elaborate bureaucratic measures are likely to make the process of acquiring individual title over land unnecessarily difficult.**

### *New South Wales*

In New South Wales, homeownership on Indigenous land is still a long way off. Despite the Commonwealth government's recent announcement that Aborigines living on former Aboriginal reserves will be able to buy their own homes, this proposal is in its infancy. The Commonwealth government and the NSW Aboriginal Land Council have agreed to contribute \$6 million each to cover the costs of surveying the land in 63 Indigenous communities. These communities are not listed on town plans because they are former Aboriginal reserves. Surveying the land provides the potential for leasing and homeownership, but this was not the most immediate concern of the NSW Aboriginal Land Council. The Council agreed to the scheme because they wanted the funds for infrastructure, water and sewerage in these communities. Once the former reserves become part of town plans, communities will be eligible to receive funds from shire councils for infrastructure. The decision to have the land surveyed is up to each of the 63 Indigenous communities. If the majority (80 percent) of the members agree, then the scheme will go ahead. Although having the land surveyed will provide certain benefits, such as proper management of essential services and rubbish collection, residents might also have to pay rates for the first time. Surveying the land and being incorporated under the shire councils is an important step, but it will not immediately lead to homeownership. It appears that neither the Commonwealth government nor the NSW Land Council have considered how to proceed once the communities have been surveyed.<sup>121</sup>

### *Problems with leasing schemes*

In summary, schemes in the Northern Territory and Queensland have serious problems. In the Northern Territory, negotiating township or community head leases with the land councils is likely to be a protracted and difficult process. How agreements are to be reached is not clear. Is it with an 80 percent majority as it is in New South Wales, or does everyone have to agree? Questions also arise over terms such as 'non-Tiwi Islander.' What constitutes a Tiwi Islander, do they need to be of Aboriginal descent or just be an existing resident of the community?

Can non-Indigenous persons be eligible for a lease if they are married to an Indigenous person (as is the case in Queensland)? Will a person with a commercial interest in Nguiu be able to lease for residential purposes?

In the Northern Territory, the holding of head leases by the Commonwealth government is a top-down approach and is unlikely to significantly increase private homeownership. Although traditional owners are able to have some input into the conditions of the head leases, the government decides who can have a sub-lease. In addition, people with a sub-lease will be required to make lease payments—or rent—to the government, not the traditional owners.<sup>122</sup> While the government is offering some compensation to traditional owners for this, it is perhaps understandable that only the Tiwi Land Council has agreed to township leasing. Brian Clancy, the development adviser for the Tiwi Land Council, says people would never have agreed to township leases if Nguiu had not been such a ‘basket case.’<sup>123</sup>

It is also not clear whether the smaller ‘block’ leases will provide the potential for homeownership. According to the Commonwealth, once the public houses have been built, sub-leases will be issued to relevant housing bodies. It is envisaged that tenants may have the option of purchasing public houses at a later date and entering into a sub-lease of their own. But assuming private ownership only via the purchase of a publicly constructed house removes the choice that most other Australians have when purchasing their own homes.<sup>124</sup>

In Queensland, the decision to ‘value’ the land, irrespective of whether or not the potential leaseholder is a traditional owner or an Aboriginal resident of the community, means that some owners will end up paying to lease their own land. One of the perceived advantages of building houses on Indigenous land is that there are no costs associated with acquiring the land for Aborigines and Torres Strait Islanders.

In Canberra, 99-year lessees are not required to pay rent.<sup>125</sup> Even though the leasing scheme in Canberra is very different to that envisaged in the Northern Territory and Queensland, it does set a precedence for rent-free leases. The leasehold system in Canberra kept land cheap and avoided land speculators from pushing up prices.<sup>126</sup>

Leasing would provide long-term economic benefits to Aboriginal communities and could compensate for any loss in revenue from not receiving rent for the land.

#### *Leases should be held by communities*

The idea of communities holding head leases has been raised before,<sup>127</sup> but there have always been concerns that communities would have difficulty agreeing on how to sublet the land. Community management of head leases and sub-leases would undoubtedly raise difficulties, just as company title arrangements raise difficulties. But remote communities should not be denied the rights of other Australians because they are Aboriginal or Torres Strait Islander communities. Template guidelines for the negotiation of head leases with land councils and other relevant bodies would smooth the negotiating processes.

With such templates to guide them, communities could determine eligibility for community membership and what conditions or covenants they place on leases. With increasing intermarriage, deciding on eligibility of community membership and entitlement to leases are becoming an increasingly important issue. Company title arrangements are a model that could be followed. Under company title, an owner has a right to occupy a defined area in a company’s building (for example, an apartment) by virtue of owning shares in the company that owns the building. Under company title, all shareholders (apartment owners) get to decide who can or cannot live in the building.

In conjunction with shire councils, a community would need to draw up town plans and determine how much land to set aside for public use and demarcate areas as residential or commercial. Some towns may already have been surveyed. Where services such as power and water are available, these services may have been differentiated on simple plans required by the NT government known as SLAP (Serviced Land Availability Program) plans.<sup>128</sup> The SLAP plans can be used to help determine suitable areas for new housing. Instead of having another bureaucratic entity holding the head lease (such as the Executive Director of Township Leasing) leases should be held by existing Land Titles Offices.

As the needs or wants of communities are not static, covenants over the use of the land could also be contained in town plans, which are regularly reviewed and updated.

### **Schemes to promote Indigenous homeownership**

Government programs to support and encourage Indigenous homeownership have been in existence since the 1970s. But due to the absence of private property rights on Indigenous land, all these schemes have primarily benefited Aborigines and Torres Strait Islanders living in mainstream society.

In 1975, the Aboriginal Loans Commission was given \$5 million by the federal government to provide low-income families with loans for the purchase of houses at low rates of interest.<sup>129</sup>

Over the years, various attempts have been made to help tenants of Indigenous housing associations purchase public houses at discounted rates. Examples include the private leases in perpetuity on Aborigine-owned land in Queensland during the 1980s, known as the ‘Katter’ leases (after the Hon Robert Katter, who was the Minister for Aboriginal and Islander Advancement in Queensland).<sup>130</sup> This scheme was unsuccessful because the ‘gifted’ houses were in poor condition and nearing the end of their lifespan. The families were not required to make any financial or other commitments and were not informed about their responsibilities as homeowners. As a result, the families’ sense of responsibility and ownership remained unchanged, and the houses deteriorated and became uninhabitable.<sup>131</sup>

In 1990, the Aboriginal and Torres Strait Island Commission developed a program called the Home Purchase Incentive Scheme, which allowed tenants of Indigenous housing associations to purchase a house for 30 percent less than the market price. However, these loans were not available for houses on communal title lands.<sup>132</sup>

Indigenous Business Australia (operating under the moniker IBA Homes) runs the housing program originally set up under the Aboriginal Loans Commission and later administered by ATSIC. In its 32-year history, IBA Homes has approved more than 12,920 loans—which is a little more than a loan a week Australia wide. IBA Homes provides concessional home loans and associated support services to eligible Indigenous borrowers. The loans are highly subsidised, and as a result attract a number of applicants who would be entitled to standard mortgages from mainstream providers. The minimum interest rate is 3 percent for applicants with family income below \$35,000 and 4.5 percent for applicants with family income above \$35,000. The rate of interest increases by 0.5 percent a year until it reaches the IBA Homes’ ceiling loan rate, which is set at least 1 percent point below the Commonwealth Bank of Australia’s standard variable interest rate.

IBA Homes applies a ‘point system’ that considers family size, current housing tenure and expenditure, and savings history to rank applicants. IBA Homes also has regional purchase price caps above which it will not lend. These are based on IBA Homes’ criteria of a ‘reasonable’ or ‘adequate’ home in that area. Purchase price caps are updated on a quarterly basis with reference to relevant real estate data. IBA Homes also has a household income threshold above which it will only lend a proportion of the purchase price. IBA Homes aims to lend more than 75 percent of all its home loans to applicants whose combined household income is less than the National Average Weekly Male Earning, which in 2008 was \$1,190 a week or \$61,880 a year.<sup>133</sup> Applicants are able to earn up to 125 percent of the National Average Weekly Male Earning before IBA Homes reduces the amount it will lend. Not surprisingly, IBA Homes admits that at least a quarter of its clients could have secured home loans through mainstream banks or other lenders. Demand for the subsidised loans offered by IBA Homes is strong, with waiting lists in 2006–07 averaging between 500–700 applicants. Partly because of these long waiting lists, IBA Homes’ pre-approval process takes an average of five months compared to two weeks for mainstream lenders.<sup>134</sup>

#### *Homeownership on Indigenous Land (HOIL)*

Amongst the Howard government’s package of reforms to encourage homeownership in 2005 was the proposal to establish the Home Ownership on Indigenous Land Program (HOIL) in conjunction with IBA Homes.<sup>135</sup> Under the HOIL program, potential purchasers only need to have a \$2,000 deposit to access a range of concessions, including low interest home loans,

co-payment grants (additional loan repayments made for eligible borrowers over 10 years), loan establishment costs assistance (to cover most of the basic start-up costs associated with buying a house), and ongoing home loan aftercare. The Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) is also offering money management education,<sup>136</sup> matched savings grants of up to \$1,000 and a good renter's discount (providing a 20 percent grant towards the property purchase to a limit of \$50,000).<sup>137</sup>

Approval for the good renter's discount requires evidence that the applicant has had a good rental history for the past 12 months. If the applicant does not have a rental history, then assessment can be based on satisfactory participation in the money management program.

The maximum HOIL loan amount is \$300,000. The actual amount that can be borrowed is tied to the applicant's annual gross income. The interest rate payable also depends on the owner's gross income at the time of the loan approval. The minimum gross annual income required to qualify for a home loan is \$15,000. A borrower in these circumstances would start with a zero percent interest rate, which would rise by 0.2 percent a year, to a maximum of 6 percent a year. Most home loans are expected to have a 30-year repayment term.

The Commonwealth government, through IBA Homes, has indicated that it will facilitate an independent valuation of each house in a township once there is a clear indication that the community is going to proceed with a head lease and participate in the HOIL initiative. In the Tiwi Islands, the market valuation of \$80,000 given to most houses means that homeownership is affordable. Three years after it was established, the first HOIL loan was finally approved in December 2008.<sup>138</sup>

#### *Wadeye Rent-to-Buy project*

IBA Homes is also working with FaHCSIA and the NT government on the Wadeye Rent-to-Buy project. IBA Homes has constructed and tenanted two homes in Nama and two in Wudapuli (outstations). Despite these homes costing nearly \$900,000 each to build, IBA Homes been contracted to construct a further 20 homes in these two locations.<sup>139</sup> The houses are to be made available to current tenants for purchase after two years of good rental history, provided they meet the lending criteria.<sup>140</sup>

#### *Is public housing likely to be a disincentive to homeownership?*

The expectation of new public housing is likely to create a disincentive for Aboriginal and Torres Strait Islander communities to become homeowners. Families will have the option of living in a brand new public house instead of buying a rundown public house, or building their own house. The cost to build a public house in the Northern Territory runs between \$400,000 and \$900,000, but the actual market value of the house is often a lot less.

It is hard to determine a market value for public houses where there has been no market. But if average rental returns are used, the actual market value of houses could be as low as \$100,000.<sup>141</sup> In the Tiwi Islands, houses aged 10 years and older have been valued at around \$80,000.<sup>142</sup> Both the NT and Queensland governments are reluctant to write off the high cost of new housing. They want to sell houses at their book value. If governments are serious about encouraging Indigenous families to purchase public houses, then they will have to write off a large proportion of the costs.

The Cape York Institute has calculated the sums that families at various income levels could afford if they have access to a HOIL loan.

They estimate that a family with an income of \$40,000 could afford a house priced at \$250,000.<sup>143</sup> Although purchasers do not always choose to buy a house primarily for economically rational reasons, if it costs substantially more to service a mortgage than it does to pay rent there will be few takers. Why would a family pay to buy a rundown existing publicly built house, or build their own house, when they can pay less to rent a brand new public house?

A range of construction options substantially cheaper and quicker than public housing are also available.<sup>144</sup> The trend today is to build public houses from materials that are complex and require

**The expectation of new public housing is likely to create a disincentive for Aboriginal and Torres Strait Islander communities to become homeowners.**

specialist labour. Even with supervisory assistance, these houses cannot be built by unskilled Aborigines and Torres Strait Islanders.<sup>145</sup> If Aborigines and Torres Strait Islanders are able to lease blocks of land, then they can decide for themselves what type of house they would like to have.<sup>146</sup> They could purchase modular or kit housing systems. Or build a house from local materials, such as stone, sand, clay, bamboo, or forest timbers.<sup>147</sup> In Arnhem Land wood-frame houses were built for around \$15,000.<sup>148</sup> When people have some degree of control over the development and construction of their house, they feel a greater sense of ownership than if the houses were simply built for them.<sup>149</sup> Being involved in the construction of their own home would also provide the opportunity for Aborigines and Torres Strait Islanders to learn building and maintenance skills.

## Conclusion

Plans for homeownership on communal title land owe more to rhetoric than reality. Governments appear set to revise policies from the past that simply converted rents into mortgage repayments. Although this enabled people to become homeowners, such a transfer on paper did not cause individuals or families to become more engaged in and committed to the maintenance and protection of their homes. Instead of putting millions of dollars into more public housing and then selling these houses below cost, the governments should step back and enable communities to decide what form of land tenure arrangements they want in place. If communities have control of head leases, they can feel secure that their land is still under their control and enjoy the benefits of private homeownership.

While it has to be seen whether IBA Homes can cope with greatly increased demands on its services, the HOIL program should be extended to enable a major shift from public housing to private homeownership to occur. Many Aborigines and Torres Strait Islanders would like the opportunity to become homeowners.<sup>150</sup> As the government has acknowledged: 'Home ownership ... must be among the choices available to all Australians.'<sup>151</sup>

**Governments appear set to revise policies from the past that simply converted rents into mortgage repayments.**

## Endnotes

- 1 The 2006 census identified 455,000 Australians as Aborigines and Torres Strait Islanders. The revised estimates for 2006 (issued in 2007) gave an Indigenous population of 517,000, and the current population is estimated to be around 540,000 or 2.3 percent of the Australian population. More than half of the 540,000 Indigenous Australians are estimated to be owning, buying or renting commercially. The four main sources for data on Indigenous housing and tenure are:
  1. **Australian Bureau of Statistics census data:** ABS 2001 Census of Population and Housing Tables Cat. No. 2068.0, 'Tenure and Landlord Type by Household Type and Weekly Household Income—Australia' and ABS 2006 Census of Population and Housing Tables Cat. No. 2068.0, 'Tenure type and landlord type by dwelling structure by Indigenous status of household.' [www.censusdata.abs.gov.au](http://www.censusdata.abs.gov.au).
  2. **National Aboriginal and Torres Strait Islander Social Survey (NATSISS):** A National Aboriginal and Torres Strait Islander Social Survey was conducted by ABS in 2002 to follow up a 1994 National Aboriginal and Torres Strait Islander Survey. In 2002 information was collected from 9,400 Indigenous Australians aged 15 years and above in all states and territories of Australia.
  3. **ABS Housing and Infrastructure surveys in 2001 and 2006:** The ABS Housing and Infrastructure Survey of Aboriginal and Torres Strait Islanders Housing Organisations provides data for the number of dwellings in a number of Aboriginal settlements. See 'ABS Housing and Infrastructure in Aboriginal and Torres Strait Communities 2001,' Cat. No. 4710.0 (Canberra: ABS, 2002) and 'ABS Housing and Infrastructure in Aboriginal and Torres Strait Communities 2006,' Cat. No. 4710.0 (Canberra: ABS, 2007 reissue).
  4. **Australian Institute of Health and Welfare:** The Australian Institute of Health and Welfare used data from ABS, NATSISS, and previously unpublished surveys from ABS census tabulations to compile reports and tables on Indigenous households. See 'ABS Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples 2005,' Cat. No. 4704.0 and AIHW Cat. No. IHW 14 (Canberra: ABS and AIHW, 2005), [www.aihw.gov.au/publications/](http://www.aihw.gov.au/publications/)

- index.cfm/title/10172; 'Health and Welfare of Australia's Aboriginal and Torres Strait Islanders Peoples 2008,' ABS Cat. No. 4704.0 and AIHW Cat. No. IHW 21 (Canberra: ABS and AIHW, 2008), [www.aihw.gov.au/publications/index.cfm/title/10583](http://www.aihw.gov.au/publications/index.cfm/title/10583).
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  - 3 Paul Pholeros, 'The State of Health Hardware in Aboriginal Communities in Rural and Remote Australia,' *Australian and New Zealand Journal of Public Health* 32:1 (18 February 2008), 7–11.
  - 4 The Australian government's Indigenous Housing Reforms to Benefit Remote Indigenous Communities, 'Questions and Answers,' [www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-chip\\_qanda.htm](http://www.facs.gov.au/internet/facsinternet.nsf/indigenous/programs-chip_qanda.htm).
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  - 7 James Dawson, 'A Hidden National Crisis: Indigenous Housing in Australia's Top End,' *Indigenous Law Bulletin* 6:21 (September 2005); and NT Government, 'Report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle* or 'Little Children are Sacred' (2007) (also known as the 'Little Children are Sacred' report), [www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa\\_report\\_summary.pdf](http://www.nt.gov.au/dcm/inquirysaac/pdf/bipacsa_report_summary.pdf), 195. The figure of 4,000, although widely circulated, was never actually substantiated. However, it is a fact that the supply of housing has never matched the need. In 2002, ATSIC estimated that it would take more than 20 years to clear the backlog in housing. John Garden, 'Indigenous Affairs,' *Budget Review 2007–08* (Canberra: Parliament of Australia, 2007).
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  - 9 Helen Hughes, *Lands of Shame: Aboriginal and Torres Strait Islander 'Homelands' in Transition* (Sydney: CIS, 2007), 134.
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  - 11 Natasha Robinson, 'Macklin Pushes for Indigenous Leases' *The Australian*, 5 March 2008.
  - 12 'Little Children are Sacred,' as above, 195.
  - 13 James Dawson, 'A Hidden National Crisis: Indigenous Housing in Australia's Top End,' *Indigenous Law Bulletin* 6:21 (September 2005).
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  - 15 Paul Pholeros, 'The State of Health Hardware in Aboriginal Communities in Rural and Remote Australia,' *Australian and New Zealand Journal of Public Health* 32:1 (18 February 2008), 7–11. See also, 'Uwankara Palyanku Kanyintjaku: An Environmental and Public Health Review within the Anangu Pitjantjatjara Lands,' *Nganampa Health Council Report* (31 December 1987), also known as the UPK report. According to the report, 'During the review the [R&D team] were often confronted with the opinion that most housing failures were the result of vandalism. Whilst some vandalism could not be denied, there is substantial evidence to show that most vandalism occurs after a building has failed (and is therefore vacated and judged useless),' 40.
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  - 27 James Dawson, 'A Hidden National Crisis: Indigenous Housing in Australia's Top End,' *Indigenous Law Bulletin* 6:21 (September 2005).
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