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# Private Housing on Indigenous Lands

Helen Hughes, Mark Hughes, and Sara Hudson

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### Also by Helen Hughes

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Helen Hughes, 'Strangers in Their Own Country: A Diary of Hope,' *Quadrant* 52:3 (March 2008)

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# Contents

Executive Summary.....	vii
1. Introduction.....	1
2. Property rights on Indigenous lands.....	2
<i>Indigenous lands, trusts and councils</i> .....	3
<i>Head leases and sub-leases</i> .....	5
<i>Discrimination against private housing</i> .....	6
3. 'Social' housing on Indigenous lands.....	8
<i>The failure of 'social' housing'</i> .....	9
<i>Current 'social' housing programs</i> .....	10
<i>Sale of 'social housing' to private buyers</i> .....	12
4. Perceived barriers to private housing.....	12
<i>High construction costs</i> .....	12
<i>Finance for private housing</i> .....	13
<i>Business leases</i> .....	13
5. The private property process.....	14
<i>Landowner corporations</i> .....	15
<i>Defining land boundaries</i> .....	16
<i>Local development plans and local environment plans</i> .....	16
<i>Responsibility for the wider commons</i> .....	16
<i>Secure title for private houses and business</i> .....	16
<i>Municipal services</i> .....	16
<i>Security of communal title</i> .....	17
6. Immediate progress.....	17
<i>Privatise existing 'social' housing</i> .....	18
<i>Construction on provisional leases and funding</i> .....	19
<i>Immediate business starts</i> .....	19
Endnotes.....	19



## Executive Summary

Almost 20% of Australia and almost 50% of the Northern Territory are Indigenous lands. Yet Aborigines and Torres Strait Islanders cannot build their own houses on them. Aborigines and Torres Strait Islanders living on their lands have the lowest living standards in Australia. They cannot access the benefits of the land they own. Existing territory, state and federal government legislation and programs to introduce private housing and business are seriously flawed. The governments' own data confirm that despite the billions they are spending on 'social' housing, when these programs are completed housing on Indigenous lands will remain sub-standard and overcrowded.

The conclusions that follow have two objectives: to reinforce and maintain traditional landowners' communal land rights, and to introduce individual private property rights so that Indigenous homeownership and business can develop immediately and rapidly. A million dollars spent supporting private housing would save billions of 'social' housing expenditure.

Welfare dependence can only be ended with a mainstream economy based on a mix of public facilities and private property. Giving existing 'social' housing tenants the option to take ownership—at no cost—of the homes they live in would kick start private property rights. It should be accompanied by the immediate construction of private houses.

Bipartisan political support and government bureaucracies should move away from focusing on 'social' housing to supporting private housing and business. A lifetime of government encouraged dependence has left Indigenous communities and individuals waiting for someone else to act. But Indigenous communities can and should make the decisions necessary to enable their people to build private houses and start businesses. These include:

1. **Indigenous land tenure:** The present Indigenous land title complexity is costly and counterproductive. In the process of clarifying communal and private property entitlements, the tenure of Indigenous lands on which Aborigines and Torres Strait Islanders have the right to live and do business should be consolidated and confirmed as freehold or long-term (perpetual or 999-year) head leases.
2. **Landowner corporations:** Landowners should create corporations using existing body corporate models, such as strata and company title or gated communities. Landowner corporations would operate under existing territory, state and federal laws. The corporations' function would be land management, not business or local government.
3. **Defining land boundaries:** Landowner corporations would negotiate boundaries with neighbouring groups.
4. **Local development plans:** Landowner corporations would allocate land for public use such as schools, health centres, and recreation; for private and 'social' housing; and for business and other uses, leaving areas for future development. Local environment and development plans would be agreed with local governments.
5. **Secure title and covenants:** Landowner corporations would develop covenants that determine who is eligible for sub-leases and conditions of resale, inheritance and other restrictions necessary to retain community control. Territory, state and federal regulatory agencies, notably land title registries, would be responsible for registering leases, avoiding separate rules that inevitably discriminate against Aborigines and Torres Strait Islanders.
6. **Municipal services:** Landowner corporations would identify necessary services, including roads, power, water and sewerage. They would work with existing and potential service providers to determine the cost of services, and identify how services would be funded.
7. **Transferring social housing to occupants:** Three groups of 'social' housing tenants on Indigenous lands should immediately be given the option of taking ownership at no cost of the houses they live in:

- Tenants who have been paying rent for more than 10 years
  - Tenants in locations where governments are no longer funding new 'social' housing
  - Tenants of houses that cannot be certified for occupancy, in locations where governments continue to provide new 'social' housing.
8. **Provisional leases and funding:** Provisional leasing and funding would enable immediate construction of new private houses and premises for business. Housing and business blocks could be pegged out with landowner agreement. Seed funding could be found to begin construction of private houses.

## 1. Introduction

Although large swathes of land have been returned to Aborigines and Torres Strait Islanders, economic development and high living standards have not followed. Families can now own their own homes in Russia and China. Successful homeownership programs operate on Native American and Canadian Reservations.<sup>1</sup> Australian Indigenous\* lands remain the last significant land mass—equivalent to the 20<sup>th</sup> largest country in the world—where landowners cannot own their own home.

Less than 15% of Aborigines and Torres Strait Islanders—about 70,000 of the 540,000 who identify as Indigenous in censuses—live on Indigenous lands. They are the poorest Australians. In contrast, more than 85% of Aborigines and Torres Strait Islanders—some 470,000—live in capital cities and regional towns. The majority of these urban dwellers—some 330,000—are working, and own their own homes, just like other Australians. Another 140,000 urban Aborigines and Torres Strait Islanders are welfare dependent and have low living standards like non-Indigenous welfare dependent Australians.<sup>2</sup>

**Indigenous lands are the largest area on earth where landowners cannot own their own home.**

On Indigenous lands, alcohol restrictions, additional policing, and the sequestering of portions of welfare income for food and other family uses have reduced extremes of dysfunction, but townships remain sad slums. Media reports constantly expose the dismal social conditions in remote communities.<sup>3</sup> Nicolas Rothwell, in May 2010, described the utter destitution of Galiwin'ku on Elcho Island in East Arnhem Land, quoting a community assessment undertaken by several government departments:

Dog faeces contaminate the environment, lack of privacy or non-functional health hardware forces people to leave their own home to shower or bathe their children. Extremely poor level of actual and perceived personal and property safety, high rates of property crime and violence. Vermin damage housing infrastructure including electrical wiring.<sup>4</sup>

Governments claim that their current policies will solve Indigenous housing problems and enable economic development in townships. The second six-monthly report by Brian Gleeson, the federal Coordinator-General for Remote Indigenous Services, states that 'there has been considerable progress since last year,'<sup>5</sup> but the reports of Bob Beadman, the Northern Territory Coordinator-General for Remote Services, are far less optimistic.<sup>6</sup> This paper shows that existing policies will not deliver the claimed outcomes.

Voluminous evidence shows that 'social' housing is inadequate. Most of the 70,000 Aborigines and Torres Strait Islanders on Indigenous lands live in dysfunctional townships, with only a small proportion in outstations.<sup>†</sup> Sara Hudson's *From Rhetoric to Reality* drew attention to the counterproductive effects of 'social'<sup>‡</sup> housing on Indigenous families and communities, proposing that 99-year leases should lead to homeownership in Indigenous communities.<sup>7</sup> Governments continue to spend large amounts of taxpayer funds for extremely modest results. They are not addressing core problems. Until private property rights—private housing and private business—are introduced, governments will continue to spin their wheels.

Section 2 of this paper shows that private property rights coexist with communal property rights throughout Australia. Public and communally owned facilities are located side by side

\* In the interest of simplicity, the word Indigenous, despite its ambiguity, has been used in this paper for Aborigines and Torres Strait Islanders.

† In this paper, small communities on Indigenous lands are referred to as outstations. Across Australia, they are also referred to as 'homelands' and 'communities.'

‡ In conformity with government usage, publicly funded housing is referred to as 'social' housing. On Indigenous lands, almost all publicly funded housing is managed by Indigenous housing associations. Worldwide, publicly funded housing, with varying rates of subsidy, ranges from direct state housing entities such as Territory and State Housing Departments to various forms of housing co-operatives.

with private homes, farms and private businesses. The denial of private property rights is a significant component of the policies that have kept Aborigines and Torres Strait Islanders uneducated and poor by treating them differently from other Australians. Ending the policy apartheid is essential to raising living standards on these lands to mainstream levels.

Sara Hudson's paper documented the appalling state of 'social' Indigenous housing. It pointed out that a decade of high 'social' housing expenditures failed to deliver even modestly adequate houses. Section 3 of this paper brings the sorry tale of 'social' housing for remote Aborigines and Torres Strait Islanders up-to-date. It shows that the *2008 National Partnership Agreement on Remote Indigenous Housing* mainly differs from past programs in being even more costly. If private homeownership on a significant scale is not introduced, at the end of the 2010s when the *National Partnership* program is concluded, housing on Indigenous lands will still be deficient.

Section 4 discusses perceived barriers—high construction costs and lack of mortgage finance—to private housing and business development.

Section 5 outlines the decisions and processes necessary to enable private property rights to exist side by side with communal property rights on Indigenous lands. To separate

**Until private housing and business are introduced, governments will continue to spin their wheels.**

landownership from local government and communal business functions, landowner corporations should take control. They have to identify individual landowners, boundaries of communal land, and land uses; determine conditions under which private property rights (sub-leases) can be exercised; and negotiate responsibilities for service delivery and funding.

Private property rights cannot wait. Section 6 proposes two immediate steps to kick start private housing and business. Most tenants of 'social' housing on Indigenous lands should immediately be given the option to take ownership at no cost of the houses in which they live. Homeowners can then start upgrading their own homes. Provisional leasing and funding can enable immediate construction of new private houses and premises for business. Housing and business blocks can be pegged out with landowner agreement. Seed funding can be found to start the construction of private houses.

## 2. Property rights on Indigenous lands

Throughout Australia, communal (public) and private property rights exist side by side. Schools, hospitals, libraries, government offices, city gardens, parks, roads, and bridges are public property. When Australians drive their car out onto the street, they are moving from their private property onto public property. Communities decide which areas remain communally owned and in which areas private property rights will apply. They decide on land for public facilities such as town halls and national parks; land for business; and land for suburbs where private and 'social' housing can be built. Private housing and business do not destroy communal property—they complement it. The Australian standard of living is based on most people living in private houses and working in private business. Only on Indigenous lands has there been no possibility for individual title for private homes and business.

Ownership is never absolute. Private lands can be resumed by governments—with appropriate compensation—for communal needs such as roads, public buildings, or defence installations. Easements for sewerage and power lines reduce ownership rights. Private land rarely includes sub-surface mineral deposits or air rights overhead.

While property rights confer benefits, they also entail responsibilities. Some rights and responsibilities of ownership are for individual (or body corporate) landowners, while others are for governments. Many responsibilities, such as maintaining the property to a safe standard, or noxious weed and feral animal control, are mandated by law. Landowners represent their own interests, while governments represent the interests of landowners and non-landowners.

Homeowners repaint and repair their houses. If NSW farmers do not spray serrated tussock weed to a shire's satisfaction, the council engages contractors to do the spraying and charges the landowners. In Victoria, blackberries must be kept under control.

Strata title owners also maintain their individual units, but in addition have a shared responsibility for any communal facilities such as gardens, pools, hallways and elevators. This shared responsibility is commonly managed by a body corporate that all unit owners must be members of and contribute fees to. The body corporate often outsources its responsibilities to professional managers.

All property owners, whether individual or strata title owners, pay rates to local government for services such as rubbish collection, and for maintenance of communal land such as local roads and parks. Homeowners also pay fees to utilities for services such as electricity and water.

The alignment of rights and responsibilities—established in mainstream Australia—does not work on Indigenous lands. The confusion of landownership with local government has led to the absence of individual land rights and poor local government. The shortcomings of local governance were addressed in the Northern Territory's creation of eight rural shires to replace more than 60 previous local government authorities. Several states have yet to deal with this separation of responsibilities between local government and landownership.

The intractable problems of Indigenous landownership are the result of legislative and administrative arrangements that created Indigenous landownership without defining individual landowners. In mainstream Australia, individuals living in gated communities own a share of the common property and own their house. On Indigenous lands, Aborigines and Torres Strait Islanders own a share of the common property but cannot own their own house.

Failing to identify individual landowners and create proper landowner body corporates has resulted in communal areas that are often poorly managed or not managed at all. It has also created a vacuum in which bureaucrats make the decisions about housing.

It is nearly half a century since the SA *Aboriginal Lands Trust Act 1966* initiated the transfer of land to Aborigines and Torres Strait Islanders. The 1973 Royal Commission into Aboriginal Land rights in the Northern Territory accelerated land transfers. By December 2008, 17.3% of Australia, and 48.8% of the Northern Territory, were Indigenous lands.<sup>8</sup> Degrees of ownership and control vary, but Aboriginal and Torres Strait owners of Indigenous lands consistently have only notional property rights. Even Justice Woodward, the chair of the 1973 seminal Royal Commission into Aboriginal land rights in the Northern Territory, by 2008 came to the conclusion that 'with the wisdom of hindsight, he might have not made the same recommendations.'<sup>9</sup>

**Private housing and business do not destroy communal property—they complement it.**

### *Indigenous lands, trusts and councils*

Indigenous landownership and control have been attained in a variety of ways including legislation, government grants, native title agreements, court determinations, and purchase. Indigenous lands vary widely from mineral and agriculturally rich lands and major tourist locations to less productive lands. The range of ownership and control includes freehold; a variety of leaseholds; reserves; and mere rights of access on Crown, privately owned, and leased lands. Indigenous land acquisition continues with hundreds of cases pending. Recent large determinations include the *Blue Mud Bay* decision, which affects 80% of the Northern Territory's coastline between low and high tides, and the recognition of native title rights by Torres Strait Islanders over 378,000 square kilometres of ocean between the Cape York Peninsula and Papua New Guinea. The most recent published breakdown of Indigenous land titles follows in Table 1.

**Table 1:** Indigenous land holdings by state and territory, km<sup>2</sup> (2006)<sup>10</sup>

	NSW	VIC	QLD	WA	SA	TAS	NT	Australia
Inalienable freehold		50	0	0	188,820	46	568,367	757,283
Alienable freehold	3,582	48	25,212	438	167	31	10,765	40,243
Old system	0	2	0	0	0	1	0	3
Leasehold	369	0	29,080	161,640	14,909	47	23,123	229,168
License	64	0	0	0	25	0	0	89
Aboriginal reserve	0	0	51	202,353	0	0	0	202,404
DOGIT	0	0	156	0	0	0	0	156
Not stated	167	0	259	5	1	44	2,588	3,064
<b>Indigenous land</b>	<b>4,181</b>	<b>100</b>	<b>54,758</b>	<b>364,437</b>	<b>203,923</b>	<b>169</b>	<b>604,842</b>	<b>1,232,410</b>
<b>Indigenous % of total</b>	<b>0.5%</b>	<b>0.0%</b>	<b>3.2%</b>	<b>14.4%</b>	<b>20.7%</b>	<b>0.2%</b>	<b>44.8%</b>	<b>16.0%</b>
<b>Total</b>	800,642	227,416	1,730,648	2,529,875	983,482	68,401	1,349,129	7,692,024

The table does not reveal the complexity of Indigenous landownership. This can only be appreciated by consulting the detailed National Native Title Tribunal maps. They show that titles vary widely even within relatively small areas. Some Indigenous township areas are excluded from Indigenous lands.<sup>11</sup>

Indigenous land councils range from small councils closely aligned with traditional land use to aggregations of disparate clans. New South Wales has 121 Indigenous land councils<sup>12</sup> while just two, the Northern and Central Land Councils, are responsible for all mainland

**Nearly 20% of Australia  
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Northern Territory Indigenous lands. Many communities that traditionally made their own decisions now find these made by distant land councils in which they have little say. Dissatisfaction with land councils that are not aligned with landowning groups is endemic in the Northern Territory.<sup>13</sup> High levels of aggregation are inappropriate for decisions about entitlements of individual landowners. The Tiwi Land Council and the Anindilyakwa

Land Council (Groote Eylandt) are more closely aligned with landowners than the two larger NT councils. Not surprisingly, this is where the Commonwealth government has been able to conclude head leases.

Multiple overlapping government departments and agencies deal with Indigenous landownership rights across state, territory and federal jurisdictions. A vast bureaucratic maze absorbs public revenues and a large proportion of income from Indigenous lands while severely limiting the productive use of these lands. Federal organisations alone include the National Native Title Tribunal, which manages the registration of native title claims, and the Indigenous Land Corporation, which purchases land for Indigenous organisations. Indigenous Business Australia has a role in assisting land utilisation. Head leases over townships in the Northern Territory are held by the Commonwealth's Office of Township Leasing.

Indigenous lands attract large royalties. One account, the Aboriginal Benefits Account collects just some of the royalties accruing to NT landowners. In 2008–09, its income was \$219,000,000, equivalent to \$3,000 per head for NT Aborigines. The Account had accumulated equity of \$306,000,000.<sup>14</sup> Because individual landowners have not been defined, few royalties are paid to individual landowners. Instead, they are absorbed by layers of Indigenous organisations. As their membership is undefined, these organisations have little accountability or transparency and are often not responsive to their members. Poor education has denied landowners the literacy and numeracy skills necessary to identify royalties they do not receive directly.

Identifying individual landowners is essential to ending wasted royalty payments. If royalties were paid into individual trust accounts, similar to superannuation accounts, they could be made available for targeted expenditures such as health, education and housing, as well as superannuation.

Governments have avoided the identification of individual landowners, instead hoping that aggregating or disaggregating land councils might end the waste. The umbrella NSW Aboriginal Land Council was created under the *NSW Aboriginal Land Rights Act* in 1983 to improve governance. Twenty-five years later, Aborigines in NSW cannot build a house on their land. In the Northern Territory, John Reeves QC, in his 1998 report *Building on Land Rights for the Next Generation*,<sup>15</sup> recommended the breakup of the NT land trusts and land councils. Because Reeves did not recognise that the failure to identify individual landowners is the problem, his recommendations were easily opposed.<sup>16</sup> Fifteen years later, Aborigines in the Northern Territory cannot build a house on their land.

### *Head leases and sub-leases*

Indigenous land determinations and grants included provisions for leases. The intention was to enable leases for non-Indigenous pastoral stations and mines. Leases were generally not long term, and often required ministerial approval. No thought was given to private housing or Indigenous private business.

In the 1980s, Bob Katter, then Minister for Aboriginal Affairs in Queensland, ‘dragged [the state] out of the nineteenth century’ by reforms that included the inauguration of long-term leases for individual land title—known as ‘Katter leases’—on Indigenous lands.<sup>17</sup> The *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*<sup>18</sup> introduced the leases, but without Department of Lands support, few leases eventuated. Some 200 ‘Katter’ leases were negotiated, although existing houses on the leases remained the property of the state. Another 200 were initiated, becoming the subject of lengthy court proceedings that were only recently settled in the lessees’ favour. A further 200 are still in dispute.<sup>19</sup> The leases do not fully resolve issues such as lease transfers (where the Queensland government still has discretionary powers) or rights of inheritance.

**Land councils often do not reflect traditional community boundaries.**

In 1991, the Queensland government brought in the *Aboriginal Land Act 1991*,<sup>20</sup> which stopped any further issue of ‘Katter’ leases. In April 2008, the *Aboriginal Land Act 1991* and *Torres Strait Islander Land Act 1991*<sup>21</sup> were amended to enable trustees of Indigenous lands to grant 99-year private residential (homeownership) and 30-year commercial leases on the Aboriginal and Torres Strait ‘reserves’ and on Deed of Grant in Trust (DOGIT) lands. The legislation sets out the procedure for initiating the issue of 99-year leases. Indigenous lands trusts and councils have to prepare a land use plan in agreement with local government and state authorities that delineates land use, including that for privately owned blocks. Ninety-nine-year leases for private house blocks could then be issued. Residents of Yarrabah showed immediate interest.<sup>22</sup> In December 2009, Stephen Robertson, Queensland Minister for Natural Resources, Mines and Energy and Trade, allocated \$1.5 million over two years ‘to resolve surveying issues in Yarabah, Aurukun, Hope Vale, Mornington Island, Doomadgee and Kowanyama.’<sup>23</sup> The Bligh government, however, has focused on creating Wild River reserves on Cape York and on Indigenous ‘social’ housing rather than supporting private housing on Indigenous land.

Recent Queensland lease legislation followed federal initiatives. In the 2000s, it was becoming evident that the denial of private property rights had dire consequences.<sup>24</sup> The Howard government became concerned by conditions in remote Indigenous communities and appointed Mal Brough Minister for Indigenous Affairs in 2006. Bureaucrats, focusing on major Indigenous communities, considered the communities not ready for head lease responsibilities. They thought that government would have to take this role. The Howard government expected the Northern Territory to take the head leases. When it did not, the *Aboriginal Land Rights (Northern Territory) Act 1976*<sup>25</sup> was amended to enable the Commonwealth to negotiate and take head leases over townships. It set up the Office of Township Leasing within Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) to administer these leases.

A Memorandum of Understanding for a 99-year head lease on the township of Nguiu with the Tiwi Land Trust and Tiwi Land Council was signed in May 2007. It was followed in August 2007 by a 99-year head lease.<sup>26</sup> The Tiwi Trust's reluctance to give up control over its land was soothed with a \$5 million cash grant.

In a separate process under the Commonwealth's *Northern Territory Emergency Response*,<sup>27</sup> five-year leases were compulsorily acquired in 2007 over 73 communities<sup>28</sup> following revelations of child abuse.

Mal Brough, understanding the limitations of 'social' housing, initiated several proposals for private housing. Two houses were built as rent-to-buy in Nama and Wudapuli near Wadeye. In September 2007, Brough also sought a Memorandum of Understanding with Galarrwuy Yunupingu for a head lease over Gunyangara (Ski Beach) from the Northern Land Trust with a view to building 'social' housing and also freeing up long-term leases for private homes. The Northern Land Council strongly opposed this memorandum.<sup>29</sup> In Queensland, funding was to be provided for 20 serviced lots each in Yarrabah and Palm Island, on which private homes were to be built when long-term leases became available.<sup>30</sup> Private housing did not follow because bureaucrats did not understand the processes (identified in this paper) that are necessary to enable private housing while retaining Indigenous control of communal lands.

When Kevin Rudd became Prime Minister in December 2007, the immediate focus of Indigenous policy moved to a symbolic apology to Indigenous people 'for their profound grief, suffering and loss.' There was pressure to abandon the *Emergency Response* and 99-year

**The Bligh government focused on creating Wild Rivers rather than supporting private housing on Indigenous land.**

leases. After considering the issues, however, Jenny Macklin, Minister for Indigenous Affairs, strengthened and extended the *Emergency Response* but chose to negotiate for shorter head leases of 40 years with the option of one 40-year renewal (40+40). Alice Springs town camps, which had been offered \$50 million for a 99-year lease, were subsequently offered \$125 million for a 40+40-year lease.<sup>31</sup> Similar head leases were signed in December 2008 with the Anindilyakwa Land Trust and Anindilyakwa Land Council covering Angurugu, Umbakumba and Milyakburra on Groote Eylandt and Bickerton Island.<sup>32</sup> Public policy continues

to focus on securing title for 'social' housing rather than on enabling titles for private housing.

Negotiations of other township head leases have been slow. Despite large funding offers, communities are reluctant to transfer control to bureaucrats. 'Social' housing continues to be built in communities such as Maningrida, Gunbalanya, Galiwin'ku, and Wadeye despite the failure to agree to long-term head leases. The Commonwealth's five-year *Emergency Response* head leases expire in 2012.<sup>33</sup> Some Tiwi islanders have pursued their objections to the Commonwealth head lease over Nguiu through the courts.

The *NT News* announced that in January 2010, Luke Tipuamantumirri and Florine Tipungwuti, after obtaining a 99-year lease, were the first Indigenous family to purchase a home. They obtained a \$100,000 loan from Indigenous Business Australia for a house in Nguiu. A further nine intending homeowners had also applied.<sup>34</sup> Sixteen long-term private housing leases have now been completed.

In NSW, the Australian government, in partnership with the NSW Aboriginal Land Council (NSWALC), has committed funds for the surveying and conveyancing costs of the subdivision of more than 60 former reserves.<sup>35</sup>

Australia wide, progress has stalled because of the failure of governments to understand the structural changes necessary to make head and individual leases on Indigenous lands effective. With minor exceptions, it remains impossible for Aborigines and Torres Strait Islanders to own a house on Indigenous lands.

### *Discrimination against private housing*

Currently, families wishing to own their own homes must leave Indigenous lands. This accelerates the movement of Indigenous families to mainstream towns and cities.

More remote area residents would be likely to migrate to cities and towns if they did not lack education, work and life skills.

Across Australia, government benefits available to homeowners significantly outweigh the benefit of low rent 'social' housing. Benefits range from grants such as the *First Home Owners Grant* to exemption of family homes from capital gains tax. These homeowner benefits contribute substantially to asset accumulation by Australian families, but are denied to Indigenous land residents. For example, in the Northern Territory in June 2010, homeowner benefits included:<sup>36</sup>

- \$7,000 First Home Owners Grant (FHOG)
- \$14,000 First Home Owners Boost (FHOB)
- Up to \$26,730 stamp duty concession (FHOC)
- Tax free savings account + matching government contribution to \$850/year (FHSA)
- Stamp duty rebate (PPRR)
- Low deposit + shared equity + fee assistance mortgages (Homestart NT)
- Stamp duty rebate (SPCC)
- \$14,000 for building in a specified suburb (Buildstart)
- Up to \$50,000 grant + \$1,000 matched savings (HOIL)
- Plus Energy Efficient Hardware Rebates plus Water Tank Rebates plus Retrofit Solar Hot Water Rebate and many more

In addition to benefits available to all Australian homeowners, there are further benefits for Indigenous homeowners. Low interest loans from Indigenous Business Australia are available regardless of location. The Commonwealth's *Homeownership on Indigenous Land* (HOIL) program provides grants of up to \$50,000 plus \$1,000 matched savings grants and mortgage interest concessions. These benefits are only available for housing on Indigenous land, and therefore cannot be accessed until long-term leases are available.

The absence of private property rights also has indirect costs. Communities on Indigenous lands have low savings even when welfare incomes are supplemented by substantial royalty flows. Saving for furniture, fittings, appliances, maintenance, and improvements is an alternative to spending income on drinking, smoking and gambling. Other benefits of homeownership include enhanced labour force participation and career development, which lead to lower mobility and more regular school attendance. Homeownership plays an important role in rebuilding family and social responsibility in welfare dependent communities.

Aborigines and Torres Strait Islanders living on Indigenous lands see the homes of other Australians, including their friends and relations who have moved to the mainstream. They know their own 'social' houses are sub-standard. They know that other Australian families have living rooms, kitchens, bathrooms with indoor toilets, laundries and gardens. There has long been evidence of considerable pent up demand for private housing. In a paper to the 2001 National Housing Conference, Moran, Memmott, Long, Stacy and Holt noted that:

For some years, the Aboriginal Coordinating Council [representing all Aboriginal Local Government Authorities in Queensland] has had a vision to make home ownership a practical reality on DOGIT Land in Queensland. This aspiration has been echoed by the Island Coordinating Council as well as Indigenous leaders.<sup>37</sup>

The same authors surveyed four Queensland Indigenous communities to elicit views about private homeownership. They found consistently high demand, combined with 'realistic understandings of the advantages and disadvantages of home ownership,' and a desire 'to pass a home down to future generations.'<sup>38</sup> A review of housing on Palm Island in 2006 included the following feedback:

**Government subsidies to homeowners significantly outweigh the benefits of 'social' housing.**

‘until we get land title fixed we can’t do anything’ and ‘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.’<sup>39</sup>

When secure 99-year leases finally became available in 2009 in Nguiu in the Tiwi Islands, a queue immediately formed to purchase or build private homes.

From the outset local community members in Nguiu have shown significant interest in purchasing their own homes. Approximately 30 expressions of interest have been received by residents interested in purchasing their existing homes, including two residents who have sought access to vacant land to construct new homes ... A number of these purchases were nearing completion at the time of finalising this report ... Initial indications are that the prospect of home ownership is also proving to be popular with residents of the three Groote communities ... While it is still early in the process there has already been significant interest from residents of the three communities in purchasing their existing homes.

To date, six residents have sought and been provided with valuations of their existing homes. It is anticipated that more requests will be received once IBA commence regular visits and provide detailed information sessions to residents.<sup>40</sup>

Indigenous Business Australia has also found widespread interest in private homeownership on Indigenous lands.<sup>41</sup> Research by the Cape York Institute shows that a considerable proportion of the demand for private housing on Indigenous lands is ‘effective demand,’ that is, demand from families with sufficient income to enable them to purchase competitively priced homes.<sup>42</sup>

**When a white man dies  
his family gets his house.  
When a black man dies  
the government gets it.**

Perceptions persist that Aborigines and Torres Strait Islanders do not wish to be homeowners. The Steering Committee for the Review of Government Services Provision, *Overcoming Indigenous Disadvantage*, asserted that ‘a much lower proportion of Indigenous people lived in homeowner/purchaser households (28.9%) than non-Indigenous people (72.1%).’ This is highly misleading. It compares an Indigenous population that includes those on Indigenous lands unable to own homes, plus a significant group that is also long-term welfare dependent, with a mainstream population that has a much smaller permanent welfare component. Data for working Aborigines and Torres Strait Islanders show that some 66% of Indigenous working households owned or were purchasing their homes. That is similar to overall Australian homeownership.<sup>43</sup>

FaHCSIA’s *Indigenous Home Ownership Issues Paper* repeats the misconceptions of the Steering Committee in claiming that ‘Indigenous households across Australia are half as likely to own or be purchasing their own homes as non-Indigenous Australians.’<sup>44</sup> FaHCISA’s focus on issues such as ‘financial literacy’ and ‘education outcomes’ distracts attention from the real causes of the absence of private housing on Indigenous lands.

### 3. ‘Social’ housing on Indigenous lands

Territory and state governments began to provide ‘social’ housing in major communities on Indigenous lands after World War II. When the movement from those communities back to outstations gathered pace, governments expanded ‘social’ housing to the ‘homelands.’ Indigenous housing organisations, using territory, state and federal funds, became the major providers of ‘social’ housing.<sup>45</sup> The publicly funded ‘social’ houses, as well as schools, health centres, and other ‘social’ buildings, were built on lands that are private property but communally owned by undefined groups of Indigenous landowners. The accompanying infrastructure—roads, water and power supplies—was provided by territory, state and federal funds. Rates were not levied. In mainstream Australia, ‘social’ homes and infrastructure are

on Crown or leased lands to which governments have clear title. The resolution of issues concerning building and servicing ‘social’ houses and facilities on private land has been avoided in the confusion of Indigenous ownership, entitlements and responsibilities.

The Commonwealth began to play a major role in funding ‘social’ housing on Indigenous lands in 1968 through Commonwealth State Housing agreements. Its role was expanded when the Whitlam government established a Department of Aboriginal Affairs. Its first Director, Charles Perkins, provided a then large \$30 million for Indigenous housing associations, which consequently doubled in number from 71 to 143 between 1974 and 1975.<sup>46</sup> When the Aboriginal and Torres Strait Islander Commission was established in 1990, it took over responsibility for funding housing associations. As the Commission struggled to increase the supply of housing, it decided to concentrate on larger settlements—the townships—where most of the Indigenous lands population was already concentrated. Only a handful of ‘social’ houses were built in outstations after the mid-1990s. Territory, state and federal housing ministers in 2001 formulated a new *Building a Better Future—Indigenous Housing to 2010* policy that became the *Community Housing and Infrastructure Program*. When the Aboriginal and Torres Strait Islander Commission was abolished in 2004, responsibility for funding Indigenous housing associations moved to territory, state and federal governments through regional Indigenous Co-ordination Centres. Indigenous ‘social’ housing funding increased annually. The federal share continued to grow, raising the Commonwealth’s profile and reducing territory and state responsibilities.

**The focus on ‘social’ housing has crowded out private housing**

### *The failure of ‘social’ housing’*

In the 1980s, while Australian housing standards were improving rapidly, the expectations for Indigenous housing were separate and rudimentary. Coombs, Brandl and Snowdon argued:

Present financial and construction constraints mean that many Aboriginal families, especially in isolated communities will be without dwellings for many years. While this remains true, resources should be devoted to providing more limited means of ensuring particularly:

- a) water for laundry, personal bathing etc;
- b) receptacles for reasonable care of clothing and other domestic needs;
- c) and insect proof containers for food;
- d) emergency shelter against extreme weather.<sup>47</sup>

‘Social’ houses built on Indigenous lands were better than Coombs, Brandl and Snowdon envisaged, but remain substantially below ‘social’ housing in mainstream Australia. In outstations, they usually consist of two or three bedrooms and a veranda. Many lack living rooms. Kitchens are often a cold water sink in a corner of a room or a lean-to, cold water showers are external, and communal long-drop dunnies instead of flush toilets are common. The dwellings are often poorly sited and designed, and use low quality building materials. Necessary maintenance is not provided. Although considered acceptable for Indigenous ‘social’ housing, these dwellings would not receive an occupancy certificate in mainstream Australia. Despite being included in housing statistics, many of these dwellings are decrepit sheds. Housing apartheid is rife in twenty-first century Australia. As recently as 2009, in a remote community, where standard three-bedroom houses complete with kitchens, bathrooms and indoor toilets were built for non-Indigenous teachers, a two-bedroom shack without kitchen, bathroom or toilet was built for an Indigenous head ranger.

The supply of ‘social’ dwellings has consistently fallen short of household formation, leading to severe overcrowding. Except for a favoured few, whole families occupy each bedroom. Report after report found low quality housing responsible for poor health, substance abuse and violence, and shorter life expectancy. Poor and overcrowded housing contributes to

high mobility, which is a major cause of low school attendance and a deterrent to employment. Without their own comfortable, well-furnished houses, there is little downside to families travelling for weeks at a time.

When Mal Brough became Minister for Indigenous Affairs in January 2006, his visits to remote communities showed the appalling state of Indigenous housing. He also found that the more than \$2 billion spent by the Commonwealth alone on Indigenous 'social' housing between 2001 and 2006 could not be accounted for. Brough commissioned an assessment of the national *Community Housing and Infrastructure Program* by PricewaterhouseCoopers. The review reiterated the conclusions of official, academic and media reports that housing managed by Indigenous housing associations in remote communities was far below mainstream standards. PricewaterhouseCoopers concluded that Indigenous housing associations did not have the competence or integrity to manage 'social' housing. It did not answer Brough's questions of how and where the missing \$2 billion had gone.<sup>48</sup> PricewaterhouseCoopers did not notice that during this period, the number of 'social' houses in discrete, remote and very remote Aboriginal and Torres Strait Islander communities declined from 15,453 to 13,548.<sup>49</sup>

### *Current 'social' housing programs*

Its liberal principles, underlined by findings about the state of 'social' housing in remote Indigenous communities and the failures of Indigenous housing associations, led the Howard government to consider private housing. Indigenous affairs bureaucrats advised that

**Although considered acceptable for Indigenous 'social' housing, these dwellings would not receive an occupancy certificate in mainstream Australia.**

households on Indigenous lands lacked the income to buy houses. In response, in 2005, the Howard government created the *Homeownership on Indigenous Land* program, which introduced substantial financial subsidies for home buyers on Indigenous lands. As it was evident that loans under this program could not be made without secure title, amendments were made to the *Aboriginal Land Rights (Northern Territory) Act 1976* to facilitate 99-year leases on Indigenous lands.

Bureaucrats responsible for Indigenous policies, however, continued to be absorbed by 'social' housing. Many did not consider private homeownership a realistic option for Indigenous households. Census evidence of Indigenous private homeownership

in capital cities and regional towns was ignored. Some commentators claim that private homeownership would destroy the communal content of Indigenous culture.

Following the PricewaterhouseCoopers review, Mal Brough made three decisions about new 'social' housing: it would not be built without secure title, would only be built in major communities, and would be built and managed by territory and state housing departments rather than Indigenous housing associations. FaHCSIA responded to Brough's concerns about Indigenous housing in the Northern Territory with an enhanced 'social' housing program to complement the *Northern Territory Emergency Response*. This developed into the joint Northern Territory and Commonwealth *Strategic Indigenous Housing and Infrastructure Program* (SIHIP). Economies of scale were sought by appointing three building industry consortia to undertake construction.

The *Community Housing and Infrastructure Program* was replaced in 2008 by the *Australian Remote Indigenous Accommodation* program, which in 2009 was replaced by the *Remote Indigenous Housing Program*. These programs receive funding from the *National Partnership Agreement on Remote Indigenous Housing*, a 10-year agreement between territory, state and federal governments signed in December 2008. It specifies the construction of 4,200 new and 4,876 repaired and replaced houses, with projected expenditure of \$4.8 billion over 10 years.<sup>50</sup> An additional allocation for municipal services brings the total projected expenditure to \$5.5 billion.<sup>51</sup> The proposed average expenditure for major and minor refurbishments and new houses appears to be more than \$600,000 per house.

In the Northern Territory, SIHIP is to deliver major works to 16 communities with refurbishment in a further 57 communities. This includes 2,500 refurbishments, 230 rebuilds, and 750 new houses over five years at a cost of \$672 million.<sup>52</sup> An internal review of the SIHIP program in August 2009 by FaHCSIA concluded that it was slow in delivering housing, costly and that its management was too bureaucratic.<sup>53</sup> In 2010, an NT Auditor-General's Department review concluded that the FaHCSIA recommendations had been acted on so that the target refurbishments and new houses were likely to be delivered by 2013.<sup>54</sup> These reports contrast sharply with media reports of interminable delays, low quality refurbishments, construction so fraught that a major contractor had to be sacked, and prices two to three times those of equivalent quality houses delivered to remote mining sites.<sup>55</sup>

During 2008–09, Queensland's Department of Communities (formerly the Department of Housing) completed 27 houses to replace 22 homes, and upgraded 191 houses for a net gain of five houses for the year. In March 2009, the Department announced that under the *Remote Indigenous Housing National Partnership Agreement*, it was to spend \$1.16 billion over 10 years 'to reduce overcrowding for Indigenous communities, particularly in remote areas and discrete communities.' The agreement provided 'for the delivery of 1,141 new dwellings, 1,216 major upgrades to existing dwellings, a repairs and maintenance program, provision of tenancy management services, and housing-related infrastructure and employment outcomes.'<sup>56</sup> In May 2010, more than two-thirds of the stage one housing projects in Queensland were running behind schedule.<sup>57</sup>

The *Remote Indigenous Housing Program* is operating more efficiently in Western Australia. The Department of Housing exceeded the target of 75 new homes by June 2010, delivering 89 new homes and completing 150 refurbishments to remote Indigenous communities in the six months to 2010. Western Australia earned a \$4 million bonus from the Commonwealth government. Queensland was fined \$3.1 million and South Australia \$900,000 for not being on target.<sup>58</sup> In Western Australia, a target of employing 20% Indigenous workers in construction and refurbishment was also exceeded. The Housing Minister, Bill Marmion, was perturbed in June 2010 because FaHCSIA had not released funding for 2010–11, holding up progress.<sup>59</sup> Western Australia has an *Indigenous Home Ownership* scheme for Aborigines who can obtain land titles, but this is of no benefit to Aborigines on Indigenous lands. Mining developments in the Pilbara and tourist growth in several northern towns have created acute housing shortages that could be mitigated by private housing on Indigenous lands. There is thus not only a market for Indigenous housing but there are prospects for real estate development for rent.

South Australia's share of the 10-year *Remote Indigenous Housing Program* was \$291 million. The South Australian Housing Trust has developed a large range of intervention programs involving numerous bureaucrats to alleviate the effects of overcrowding and consequent ill health and violence in Indigenous housing, attacking every problem except the inadequate number of houses. There is no provision for private housing and no indication that the housing situation will be any better in 10 years' time.<sup>60</sup>

New South Wales is to spend an additional \$397 million over 10 years 'to address overcrowding, homelessness and poor housing conditions in remote Indigenous communities.'<sup>61</sup> By July 2010, it had exceeded its target by eight houses, and 150 refurbishments were on the way.

Reliable data about houses fit for occupation on Indigenous lands are not available. In 2006, the Australian Bureau of Statistics found 15,655 permanently occupied dwellings in discrete Indigenous communities managed by Indigenous housing organisations. As noted above, 13,548 of these were in remote or very remote locations. Perhaps 500 of these are not on Indigenous lands, leaving about 13,000 occupied dwellings on Indigenous lands. However, the first meeting of the National Policy Commission on Indigenous Housing on

**The expenditure for refurbishments and new 'social' housing is more than \$600,000 per house.**

27 June 2008 reported that there were 22,000 Indigenous households in remote and very remote communities in 2008.<sup>62</sup> Some of these households are not on Indigenous lands. Nevertheless, comparing the number of Indigenous households with the number of occupied houses confirms serious overcrowding. New household formation over the next 10 years will create further demand for houses.

Of the 13,000 dwellings on Indigenous lands, many cannot be certified as fit for occupancy. An estimated 5,000 are mere sheds. Of the other 8,000, many would not receive a certificate of occupancy in mainstream Australia.

Planned construction of 4,200 new houses plus 4,876 repairs and major refurbishments will at most result in 17,000 dwellings. Of these, almost all dwellings in outstations, and some in townships, would not meet mainstream occupancy standards. The standard of township houses may improve, but the increase in household formation will offset any increase in house numbers. Clearly, outstation housing conditions will deteriorate further, and overcrowding will not be reduced in townships.

**There are 22,000 Indigenous households but only 13,000 dwellings, which confirms serious overcrowding.**

Despite political assurances, experienced observers recognise that the 'social' housing program will not deliver solutions. Adam Giles, NT Shadow Minister for Indigenous Affairs, noted that after current programs are complete, 'most communities in the Territory will not have any semblance of a housing solution for the protection of children.'<sup>63</sup> Bob Beadman, the NT Coordinator-General for Remote Services, accurately summed up the situation in his recent report:

Even with this massive investment in public housing, the chronic and acute overcrowding in many *Growth Towns* will not be fully addressed. It is absolutely vital that private home ownership and development starts to take-off in our remote towns to help address the shortfall.<sup>64</sup>

#### *Sale of 'social housing' to private buyers*

Only in communist countries was 'social' housing universal, yet most Australian housing bureaucrats believe that only a few Indigenous families will be off welfare and have the resources to own their own house. The selective use of data by the Steering Committee (representing senior territory, state and federal bureaucrats) for the Review of Government Services Provision, in *Overcoming Indigenous Disadvantage*, implies that Aborigines and Torres Strait Islanders do not have the same desire to own their own homes as other Australians.<sup>65</sup>

The bureaucratic focus is on building new 'social' houses while selling a token few to existing tenants. A drive to reserve existing serviced blocks for new 'social' housing restricts the opportunity for new private house builds. 'Social' housing is built at inflated prices—up to double the cost of a private house in the same location. These expensive houses could only be sold to tenants with extreme subsidies. If 'social' houses were offered to tenants at a realistic price, the uptake would be so high that there would be no 'social' housing left. For these reasons, bureaucrats are comfortable with unloading old dilapidated houses to Indigenous home buyers while building new 'social housing' that is too expensive to be within reach of Indigenous purchasers.

#### **4. Perceived barriers to private housing**

The common perception that high construction costs and unavailability of finance are the obstacles to homeownership masks the real barrier—the absence of secure titles.

##### *High construction costs*

The gross inefficiency of 'social' housing has led to prices ranging from \$450,000 to as high as \$900,000 for standard three-bedroom houses on Indigenous lands. The prices of other

government built houses, such as those for teachers, police and other officials are similar. But in the private sector—farms, mines and independent schools—houses equivalent to the ‘social’ houses built for Aborigines and Torres Strait Islanders are built at much lower prices. The Marrara Christian College Fabrication and Construction Trade Training Centre quotes \$200,000 for a two-bedroom house and \$250,000 for a three-bedroom house built in remote homelands.<sup>66</sup> It has built houses for Northern Territory Christian Schools Association teachers in Gawa on the tip of Elcho Island and will build these at Mapuru in East Arnhem Land. Mining companies are purchasing in Darwin fully fitted out transportable three-bedroom houses for \$150,000.<sup>67</sup>

The range of house designs suitable for remote locations, though subject to building regulations, is virtually unlimited. A wide choice of techniques—that is, combinations of raw materials, capital and labour—is also available to meet owners’ preferences and resources. On-site construction, kit houses, and transportable homes are all options. Choice of construction technique determines how local labour can be used efficiently and enables owners to decide how much ‘sweat equity’ they want to contribute. ‘Picking winners’ in construction techniques (timber vs. steel vs. mud bricks) is as wasteful as ‘picking winners’ has proved in all other industries. Indigenous owners are the best judges of the homes they want.

**Even with this massive investment in public housing, the chronic and acute overcrowding will not be fully addressed.**

### *Finance for private housing*

As Indigenous landowners already own their land, finance only needs to cover construction costs. Housing finance is not readily available without secure title. Subject to well-understood risk factors (homeowners’ income and job security), mortgages will become available when there are secure titles. Mortgage insurance is an option for mortgagors to manage their risk. Where 99-year homeowner leases are now available, the queues for homeownership demonstrate that a viable market exists in the townships, which cover the bulk of Indigenous lands population. In many Indigenous coastal settlements and tourist hubs, mining and agricultural developments, real estate markets are likely to develop quickly.

Although few Aborigines and Torres Strait Islanders on Indigenous lands have jobs, those who do can afford mortgages and are low-risk mortgagees because they are mostly public sector employees with secure job tenure. Many Indigenous artists’ incomes would support mortgage repayments. Studies by Cape York Institute document that substantial numbers of families on Indigenous lands can afford mortgage payments.<sup>68</sup> Payment of royalties to individual land owners’ secure trust accounts would finance mortgage repayments.

Once titles are available, Aborigines and Torres Strait Islanders will be eligible for the full range of government subsidies to homeowners. The *Homeownership on Indigenous Land* program will finally become usable. In July 2010, surplus funds were moved out of the program’s budget because, in the absence of individual titles on Indigenous lands, these funds could not be accessed.<sup>69</sup>

### *Business leases*

Leases for business development are as urgently needed as long-term leases for homes. Indigenous townships lack the private shops, cafés, motels, hairdressers, hardware stores, repair shops, and the many other businesses of mainstream towns. Because there are no businesses, there is no employment. Because there is nowhere to spend money, it goes on alcohol, drugs and gambling.

The few existing businesses are almost all communally owned monopolies. In smaller communities, they operate food and fuel stores; in larger communities, they may also run art, craft and tourist enterprises. Communal ownership of businesses restricts competition. Similarly sized towns in mainstream communities benefit from multiple supermarkets and petrol stations. Communal businesses were created to ensure communities were not exploited by outsiders and to retain profits in the community. Opposition to private enterprise persists but

is no longer appropriate. Private business would create employment and enable individuals in the community to build assets as business owners.

Locally owned private businesses require secure title to build premises and as collateral for business loans. Territory, state and federal politicians claim to recognise that Indigenous townships must develop like normal Australian towns if they are to attain mainstream living standards. But governments have made little progress in enabling secure titles for business on Indigenous lands. Bureaucrats have focused on supporting communal enterprises. As evidence of Indigenous business ‘success,’ the Steering Committee for the Review of Government Services Provision reported in their ‘what works’ category that an Indigenous Pastoral Program of 36 communal pastoral stations had between 2006 and 2009 ‘transitioned’ 13 CDEP (Community Development Employment Projects) positions to seven full-time equivalent and six part-time real jobs.<sup>70</sup>

Bob Beadman, the NT Coordinator-General for Remote Services, exceptionally drew attention to the absence of secure individual titles in his second *Report* in June 2010, emphasising that ‘there will still be limited private investment and economic growth in towns without the establishment of secure, long term private land tenure.’<sup>71</sup> But David Ross, CEO of the Central Land Council, dismissed Beadman’s plea for private investment as a ‘bizarre rant of antiquated ideology.’<sup>72</sup> When reporter Ian Crawshaw was following up young Pauline Shortjoe’s successful Short Joes Horse Trail eight-hour bush rides, a Palm Island Shire official told him, ‘we don’t want tourists.’<sup>73</sup>

Aboriginal and Torres Strait Islander men and women struggle to establish a business on Indigenous lands. Flower farmers Esme and Clarrie Bowen invested \$21,000 in growing heliconia flowers at Hope Vale, shipping them to Cooktown and then via Mareeba to Brisbane and Sydney. They were worried about the security of their enterprise because of the experience of Eddie Woibo—a successful passionfruit grower at Hope Vale who invested \$100,000 in his venture but was denied a ‘Katter’ lease.<sup>74</sup> Cultural factors are not responsible for a lack of entrepreneurial initiative by Aborigines and Torres Strait Islanders. There are many enterprising men and women in Indigenous lands and many business opportunities. But at present, their options are to move away from their land or remain on welfare.

**The options for enterprising men and women are to move off their Indigenous lands, or stay on welfare.**

## 5. The private property process

Australian standards of living cannot be achieved on Indigenous lands without the private property rights—housing and business—that exist side by side with communal property in mainstream Australia. Years of neglect and denial of private property rights have made Indigenous Australians ‘land rich but dirt poor.’ Flawed native title legislation and administrative arrangements created inappropriate structures and organisations that confuse the exercise of property ownership rights with local government. Considerable vested interests have built up in these inappropriate organisations and structures. Reforming the current maze now involves a formidable disentangling of organisations and arrangements so that individual landowners’ interests can be expressed and represented, and individual leases and private housing can proceed on a significant scale.

The identification of individual landowners is an essential component of a reform process. Dedicated landowners’ corporations would enable them to preserve communal property while enjoying private homeownership. The failure of current arrangements to enable landowners to exercise property rights has long been evident. In 2006, an NT Central Land Council proposal made detailed proposals for landowner corporations that would exercise individual property rights and control communal lands.<sup>75</sup> No action was taken.

The approach adopted in the Northern Territory of the federal government taking township head leases is a form of outsourcing landowners’ body corporate management.

It remains to be seen whether it is as efficient as the employment of private sector managers. The head leases already signed and proposed, moreover, include about 85% of the population but only 0.1% of Indigenous lands. No solutions have been proposed for 99.9% of NT Indigenous land.

Resolving landownership issues requires identification of individual landowners, a representative 'body corporate,' confirmation of land boundaries, land development plans, covenants on individual leases, and negotiation with local and other governments about service provision. One pathway to achieving these objectives would be:

1. The landowners of a community would set up a body corporate. The body corporate would not carry on business or take on local government functions.
2. The body corporate would define the boundaries of landowners' traditional lands, including negotiations with neighbouring communities where necessary.
3. The body corporate would work with local government to agree on a local environment plan/ local development plan.
4. The body corporate would define covenants and rules applying to sub-leases on its land, such as lease eligibility, inheritance and transferability.
5. The body corporate would identify services including roads, power, water and sewerage. It would work with service providers to determine the cost of services and would decide how services would be funded.
6. Where communities do not have existing freehold or head leases, or where their title is fragmented, they would now have qualified for a consolidated secure title which would be issued without delay. Covenants and rules for sub-leases would now apply.

There are no barriers to any community initiating such a process. Had it been carried out as lands were transferred back to Indigenous owners, private housing and private business would have created thriving economies and ample employment on Indigenous lands.

### *Landowner corporations*

In small remote communities of single clans, identifying landowners and therefore corporation membership is relatively straightforward. In complex communities (for example, Wadeye, Maningrida and Palm Island) now comprising multiple clans, identifying who has landownership entitlements may be difficult and controversial. There has been considerable intermarriage. Ownership is further complicated where clan members reside outside the community.

Bureaucrats are not in a position to decide who is a landowner. Entitlement to landownership can only be made by an Indigenous community. Communities already decide who qualifies for Indigenous entitlements using the accepted definition 'of Aboriginal or Torres Strait Islander descent, who identifies as an Aborigine or Torres Strait Islander and is accepted as such in the settlement which he (or she) lives.'<sup>76</sup> Similarly, Indigenous communities can identify the men, women or families who are landowners.

Like company title or gated community body corporates, landowner corporations would only be concerned with management of their property. They would not engage in business and would not be local governments. They would be registered with mainstream regulatory agencies to be subject to rigorous oversight. Membership of a landowner corporation may entail paying body corporate fees to cover corporation costs. As in mainstream Australia, landowner corporations could outsource their management or engage professional accountants, lawyers and managers. Templates can be developed to facilitate the formation of landowner corporations.

**Only Indigenous communities can decide who is a traditional landowner.**

### *Defining land boundaries*

The landowners' body corporate would define the physical boundaries of their lands, negotiating with neighbouring communities where necessary. Most would do so by mutual agreement, though arbitration may also be needed.

### *Local development plans and local environment plans*

Landowner corporations will have to decide on allocating land for community facilities, private housing and business, and how much to leave unallocated for the future. They can decide where they want government and independent schools, public housing, and recreation and other communal facilities. They can also negotiate with territory and state governments for the management of large public reserves.

The corporation would work with local government to agree on a local environment plan and local development plan specifying land use and zoning. These plans would include surveys where necessary. This is envisaged in the Queensland government's 99-year lease legislation. As noted above, state funding was allocated for surveys, but this funding has not been taken up.

### *Responsibility for the wider commons*

Where Indigenous lands cover large areas, a considerable proportion may remain the responsibility of the corporation. Such lands may include infestations of feral animals and weeds that pre-date the return of the lands to Aboriginal and Torres Strait Islanders. Territory, state and federal governments should contribute to the cost of the care of such lands.

### *Secure title for private houses and business*

Leasing is used worldwide to provide secure title. Private houses in the Australian Capital Territory are on 99-year leases. Businesses operate on leases. This has enabled vibrant, high employment economies with very high housing standards.

Indigenous landowner corporations would define covenants applying to housing and business leases. Covenants would include eligibility for new leases, resale, inheritance, and rentals. Housing leases would be a minimum of 99 years, while business leases can be shorter.

## **Housing lease covenants must meet landowners' preferences.**

Housing lease covenants must meet landowners' preferences. The Tiwi Islands-Commonwealth head lease agreement states that 85% of Nguiu residents must be Tiwi Islanders, and it defines who leases can be transferred to, and who can inherit. Similar covenants will be required in most Indigenous communities. Lease covenants are common. Norfolk Islanders, for example, can own houses and

businesses and pass them on to their families, but there are restrictions on selling to people outside Norfolk Island.<sup>77</sup>

Sub-leases should be registered with existing territory and state land registries so that Aborigines and Torres Strait Islanders are not disadvantaged by being treated differently to other Australians.

### *Municipal services*

The landowners' corporation would identify necessary services including roads, power, water and sewerage. It would work with existing and potential service providers to determine the cost of services and would identify how the community would fund them. For example, the access road to a community can be treated as a front drive or a public road. If it is a front drive, the landowners' corporation is responsible for its maintenance; if the landowners choose to make it a public road, the local, territory or state government maintains it. Communities decide whether responsibility for sewerage will be individual septic tanks or town sewerage.

Residents on most Indigenous lands have not been charged the normal cost of services, which instead rely on public funding. The consequence is lack of accountability and low quality of services. Local governments, perpetually short of funds, are expected to provide services to communities that have not contributed to the costs. MacDonnell Shire council, exasperated with lack of resources, withdrew its services from Mutitjulu in July 2010.<sup>78</sup>

Territory, state and federal governments subsidise rural services. FaHCSIA's *Remote Indigenous Housing Program Municipal and Essential Services Guidelines 2009–2012* states:

While the delivery of municipal and essential services are primarily a state, territory and local government responsibility, many rural and remote Indigenous communities do not receive funding to cover the costs of these services. Those that do often require additional funding to address a legacy of under-servicing, or the high costs associated with remote area service delivery.

The Remote Indigenous Housing Program provides funding to supplement the efforts of state, territory and local governments to ensure Indigenous people have access to municipal and essential services consistent with and appropriate to their needs. Funding is provided for power, water and sewerage operation and maintenance, road maintenance, aerodrome maintenance, waste disposal, landscaping and dust control, dog control, environment health, and organisational governance.<sup>79</sup>

Such subsidies cannot, however, be unlimited. It is up to individuals to decide where they want to live, but the same rules should apply to Aborigines and Torres Strait Islanders as to other Australians. Small outstations may be compared to remote farms and pastoral stations. These do not expect to have unlimited public services. Small towns do not expect to have hospitals; residents expect to travel for medical attention. It is the responsibility of families to ensure their children are schooled to compulsory leaving ages; they may have to move to fulfil that responsibility.

### *Security of communal title*

Some communities already have consolidated freehold or secure (in perpetuity or 999-year) leasehold over their traditional lands. Many do not. Title is fragmented into different tenure types including freehold, DOGIT leases and reserves. Tenures may be for different periods of time. In the Northern Territory particularly, land tenure is not aligned with traditional community boundaries. Government head leases have been negotiated for periods of 99 years and 40+40 years. Residential sub-leases under these agreements expire the day before the head lease expires. These residential leases therefore are not 99-year leases.

Titles fragmented geographically or in time should be consolidated and issued as freehold or leasehold (perpetual or 999 years). Landowner corporations that do not have secure consolidated titles should be given title upon completion of the process of taking responsibility over their lands.

**Private housing and business cannot wait. Interim measures must be devised.**

## **6. Immediate progress**

Because due process has been avoided for so long, issuing individual titles will take time. Private housing and business cannot wait. Interim measures must be devised. Long-term 'social' housing tenants should be given the choice of taking over—at no cost—ownership of the houses in which they live. Building new private houses should start immediately using provisional leases and funding.

*Privatise existing 'social' housing*

As noted above, of some 13,000 dwellings on Indigenous lands, an estimated 5,000 are mere sheds, while many of the other 8,000 would not receive a certificate of occupancy. Governments funded the construction of these dwellings, while the construction and maintenance was largely passed to Indigenous housing associations. More recently, in major townships governments have been taking back responsibility for 'social' housing.

As indicated above, the current 'social' housing program will not provide enough houses for township populations. Government decisions not to fund new 'social' housing outside townships leave the residents of hundreds of outstations in limbo. The option of living close to a township to access services but avoid its dysfunction has not been considered. Indigenous families might like such locations, though it means being responsible for their own power, water and sanitation.

Except for recent leases over major Tiwi and Groote Eylandt townships, governments and housing associations rarely have title over existing 'social' housing. Landowners who occupy these 'social' houses have a better 'ownership' claim than the housing associations.

Even after the completion of the large government 'social' housing programs, the media will still be publicising overcrowded, sub-standard houses on Indigenous lands. Private homeownership is the only solution to inadequate housing.

To kick start private homeownership, tenants of existing 'social' housing in the following categories should be given the option to take ownership and responsibility—at no cost—of the houses in which they live:

- Where governments no longer fund new 'social' housing, cannot provide adequate maintenance, and do not have title, all tenants should be given the option of ownership at no cost.
- Where governments continue to provide new 'social' housing, they face very large expenditures to bring existing houses up to standard. Tenants of houses not fit for occupancy should have the option of ownership at no cost.
- All tenants who have been paying rent for more than 10 years should also be given the option of ownership at no cost.

There are several rationales for the option of ownership at no cost. First, it would compensate for the shameful years of sub-standard 'social' housing. Second, many of these houses are so deplorable that in a non-Indigenous community they would be bulldozed. Their value is zero.

**Existing 'social' housing tenants should have the option—at no cost—of taking ownership of the house they live in.**

Third, governments faced with high rebuilding costs would be able to concentrate funds on additional 'social' housing instead.

Under many existing tenure arrangements, all 'improvements' including houses and other buildings, even where constructed or funded by housing associations, territory, state or federal governments, are owned by the relevant Indigenous Land Trusts or Councils. The existing tenants, therefore, have a better claim to 'ownership' of the house they live in than the entity that built it.

Current Indigenous 'social' housing is inequitable. It ranges from unserviced sheds to new houses. Some locations are better than others. Some rents are negligible while others are substantial. In the current situation, there is no escape from these inequities. Transferring ownership would not change inequity but it would enable families to use their efforts to improve their housing.

Not all households would choose to cease being tenants and become homeowners. Although families that choose to take ownership would acquire dwellings at no cost, they would be making a major commitment to maintain and upgrade their houses. Many would save to add kitchens, bathrooms, living rooms, bedrooms, hot water, and other amenities.

Landowners' corporations could negotiate such transfers. They could also decide whether to take over management of the remaining tenanted houses or have existing housing associations continue to manage them.

As indicated above, homeownership is highly correlated with employment, school attendance, and social and family responsibility so that there would be high social returns to the transfer from 'social' to private homeownership. Transferring ownership of existing 'social' housing as compensation for past neglect would be more appreciated than apologies.

### *Construction on provisional leases and funding*

Provisional leasing and funding measures can enable immediate private house construction. Some townships and outstations have been surveyed. Land availability is not a problem in remote Australia. Areas for private housing and individual blocks can be pegged out and recorded by mutual agreement. Government departments can make existing surveys available, and the many non-government organisations active in Indigenous lands can assist. Landowner corporations can issue formal housing leases in due course.

Seed money may be necessary for loans for the first private houses. Large accumulated Indigenous royalty funds could be used for this purpose. Non-government organisations could also play a role. Mortgage repayments from initial private houses could fund further house construction, as they do in mainstream housing markets.

Mortgage lenders are well equipped to manage risk. As in mainstream Australia, they can evaluate the land title, deposit, rental payment records, income, and security of job tenure. Finance companies are already specialising in kit, transportable, and other unconventional homes. If part of the \$5.5 billion being inefficiently spent on Indigenous 'social' housing was used as seed money for private housing, far more houses would be built for the money.

**Transferring ownership of existing housing would be more appreciated than apologies.**

### *Immediate business starts*

Indigenous lands will not prosper without private business. Hair dressers, taxi operators and fruit and vegetable growers should be able to peg out land now in an agreed business area and build their businesses. A wide variety of business models including local business, franchises and chain stores exist. These can be determined by local operators' preferences and resources.

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## **Endnotes**

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- <sup>15</sup> John Reeves, QC, *Building on Land Rights for the Next Generation: Report of the Review of the Aboriginal Land Rights (NT) Act 1976* (Reeves Report) (Darwin: AustLII, Commonwealth of Australia, August 1998).
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- <sup>19</sup> Mark Moran, et al. as above (endnote 2).
- <sup>20</sup> Queensland Consolidated Acts, *Aboriginal Land Act 1991*, AustLII.
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- <sup>41</sup> Indigenous Business Australia, HOIL program website.
- <sup>42</sup> Communications from Cape York Institute, June 2008.
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- <sup>45</sup> For the evolution of Indigenous 'social' housing policies, see Sara Hudson, *From Rhetoric to Reality: Can 99-year Leases Lead to Home Ownership for Indigenous Communities?* as above (endnote 4).
- <sup>46</sup> As above, 5.
- <sup>47</sup> Herbert C. Coombs, Maria Brandl, and Warren E. Snowdon, *A Certain Heritage: Programs for and by Aboriginal families in Australia* (Canberra: Centre for Resource and Environmental Studies, ANU, 1983), xxxiii–xxxviii.
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- <sup>60</sup> South Australian Housing Trust, *2008–09 Annual Report* (Adelaide: 2009), 35–41.
- <sup>61</sup> NSW Department of Human Services, Housing, *Annual Report, 2008–09*, 26.
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