

ENABLING INDIGENOUS PROSPERITY

Sara Hudson says Indigenous prosperity on Indigenous lands is possible only when we stop treating Aboriginal people as inherently different

What are the factors needed for Indigenous prosperity? Why, the same factors that enable prosperity for everyone else. We don't need to view Aboriginal people as different and needing special programs. We just need to make sure they have the same opportunities as all other Australians.

The denial of private property rights to Aboriginal people on Indigenous land is a significant component in a raft of government policies that treat Aboriginal people differently from other Australians.

Indigenous people's opportunities and life experiences differ depending on where they live. Most Aboriginal people living in cities and towns—about 60%—are working and 68% of those who work own their own homes. A quarter of Aboriginal people living in cities and towns are welfare dependent. Like other non-Indigenous welfare dependent Australians, their problems stem primarily from a culture of low expectations—not from a lack of opportunity.

Communal landownership

There are only around 80,000 Aboriginal people living on Indigenous lands—and it is in these places that the real problems and discrimination lie. Land is owned communally so there is no private business, homeownership or economy.

Many people argue that because of the lack of opportunities on Indigenous land, Aboriginal communities should be closed down and people moved to places with proper education facilities, services and jobs.

We at CIS do not agree. As a classical liberal think tank, it has never been our intention to tell people where—or indeed how—they should

live their lives. We believe there should be strong disincentives for people to go on welfare and equally strong incentives to encourage people off welfare, but ultimately, if they choose to spend all their lives on welfare in public housing—that is their choice.

However, residents on Indigenous lands currently have *no choice* but to live in public housing. Even those people with good jobs cannot own their own home on their own land. The communal nature of Aboriginal land means there is no individual title—and therefore no security of tenure. They cannot apply for a mortgage, insure their property, or leave it in their will to their children.

This is a bigger human rights issue than many of the issues raised by Amnesty International and such. But it is one that has largely gone unnoticed because Aboriginal people are perceived as different from other Australians. Individual ownership is not believed to be part of Aboriginal 'culture.'

But where is it written that Aboriginal culture must remain static and unchanged? No culture, if it wishes to be a 'lived' culture, does that. Culture is dynamic and all cultures adapt when they encounter another.



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Everyone deserves a home

Research by the CIS' Indigenous Affairs Program has also found that contrary to popular opinion, many remote Aboriginal people do want to own their own homes—for example, when 99-year leases became available in 2009 in Nguiu in the Tiwi Islands, more than 30 residents submitted forms expressing interest in purchasing their own homes.

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I was recently invited to the Yarrabah community (outside Cairns) to discuss 99-year leases and private homeownership. Unlike many other Aboriginal communities I've visited over the years, residents in Yarrabah have built a number of dwellings themselves. Although some of the houses were made from driftwood and other debris, some were kitset houses with sewerage sumps. But despite building the houses themselves, the residents do not legally 'own' them.

Residents of the Banyala community in East Arnhem Land are so keen to own their own houses that in March 2011, they lodged a petition in the Senate asking the Minister for Indigenous Affairs, Jenny Macklin, to help them get leases for private housing. They have not yet received a reply.

The following response by Kim Hill, former chief executive of the Northern Land Council, to Banyala's petition illustrates the myopic thinking of land councils: 'Residents should be well aware that leasing is not required for charitable construction on Aboriginal land.'¹

Hill's comment completely misses why residents are applying for leases on their land. They know charitable organisations can help construct houses. In fact, the CIS—along with Andy Buttfield and his team of Rotarians—has already helped build a three-bedroom house in Banyala. But until individual leases are issued for private housing, residents cannot legally own their own house.

The situation is a farce. Land councils happily lease land to mining companies for commercial operations but won't lease land to residents.

Legislation provides land councils with a lot of discretionary power. Under the *Aboriginal Land Rights (Northern Territory) Act 1976*, two large Northern and Central land councils are responsible for all the mainland Indigenous lands. Most royalties go to land councils rather than to individuals. The NT Aboriginals Benefit Account has \$380 million in the bank and made an income of \$200 million a year over the past two years. Distributed to individual landowners, this would fund mortgages for every remote Indigenous family in the Northern Territory.

Defining traditional landowners

Unfortunately, when land rights legislation was passed in the 1970s, utopian ideals of Aboriginal communities—where everyone coexists happily and shares their resources—meant that identifying individual landowners was not deemed necessary. As a result, the legislation is ambiguous on identifying and defining traditional owners of the land. Land councils may (not 'must') compile and maintain a register of who *in the opinion of the council* are the traditional owners.

The definition of a traditional owner is also vague: 'Traditional Aboriginal owners ... means a local descent group of Aboriginals who have common spiritual affiliations to a site on the land ... and are entitled by Aboriginal tradition to forage as of right over that land.' However, townships where most remote Aboriginal and Torres Strait Islanders live grew from missions and government stations. Land that traditionally belonged to one clan now houses people from many different clans.

It is little wonder that identifying the rightful traditional owners is often marred with disputes.

Justice Woodward, chair of the 1973 Royal Commission into Aboriginal land rights in the Northern Territory, concluded that with the wisdom of hindsight, he might not have recommended communal ownership of land or given all the decision-making powers to the two large land councils.²

In mainstream Australia, ownership of communally owned property, such as strata title, is managed by having a list of owners, governed by rules and legislation to cover committee decisions and ensure corporate bodies (such as a body corporate) are elected democratically. Owners maintain their own property but are also members of a body corporate with responsibility for communal areas such as gardens, tennis courts, and swimming pools.

In contrast, much of Indigenous land has no list of traditional owners, and therefore, no democratic elections or management of the land.

Communal versus individual landownership

Growing recognition of how communal landownership has made Aboriginal people 'land rich but dirt poor,' led to the Howard government amending the *Aboriginal Land Rights Act* (NT) to facilitate 99-year leases for homeowners in 2006. In 2007, the government negotiated a head lease with the Tiwi Land Council over Nguiu Township. Under this lease, the Office of Township Leasing manages the town and issues sub-leases. To date, only 16 private housing leases have been issued in Nguiu.

When the Labor government came into office, Macklin negotiated Office of Township Leasing head leases with the Groote and Bickerton Islands Land Council, but reduced the head lease term to 40-plus-40 years. Sub-leases for homes expire with the head lease. If someone on Groote Eylandt were to take out a lease today and build a house with a 30-year mortgage, six years after paying off the mortgage, the ownership of the house could transfer to the Commonwealth for \$1. Not surprisingly, no one from Groote Eylandt has taken up a private home lease.

Similar obstacles to homeownership exist in Queensland—the only other state in Australia that has amended Aboriginal land rights legislation to supposedly facilitate private homeownership. The *Aboriginal and Torres Strait Islander Land Amendment Act 2008* (Queensland) permits trustees of Aboriginal DOGIT (Deed-of-Grant-in-Trust) land to issue 99-year residential leases without having to seek consent from the minister. But although they are given

license to lease all or part of the DOGIT land, trustees must not mortgage the land without the approval of the minister.

What's more, before a lease can be issued, the Queensland government has to value the land (and any dwellings on that land). Leases for residential purposes must be 'purchased' through an upfront lump-sum payment equal to the value of the land, which is to be decided by a certified practising valuer using methodology and benchmarks prescribed under regulation. Yet what these are exactly is not clear (particularly in areas where there is no property market). 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. If the dwelling has been used as public housing, the lease cannot be issued until the housing chief executive has agreed to the lease and has had the dwelling valued.

Governments may be making all the right noises about Aboriginal homeownership... but they are not walking the talk.

These elaborate bureaucratic measures have made the process of acquiring individual title and private homeownership on Aboriginal land unnecessarily difficult. Although 13 housing blocks have been set aside in Yarrabah for people to own their own homes under a 99-year lease arrangement, the complexity of the legislation has prevented anyone in the community from applying.

Governments may be making all the right noises about Aboriginal homeownership—Macklin has even said, 'Homeownership must be among the choices available to all Australians'—but they are not walking the talk.³

Make public housing private

Instead of removing barriers to homeownership for Aboriginal people living on Indigenous lands, governments have concentrated on securing title for public housing. But despite record levels of investment in Aboriginal housing (\$5.5 billion over 10 years in the Northern Territory alone),

overcrowding has increased in some communities and infrastructure is at crisis point.

Though it may be appropriate for some low income families, public housing should never be the only option. Utopians can dream all they want, but nowhere in the world has a high level of prosperity been achieved without a mixture of private and public ownership.

One solution to kick-start private property on Indigenous lands is to immediately transfer all existing public housing (in certain areas) to the tenants of those homes at no cost. This should also include 99-year leases to the block of land the public housing is on.

Transferring ownership of public housing to existing tenants would save governments millions in rebuilding and maintenance costs. However, this is not about allowing government to pass the maintenance costs to Aboriginal people—rather, it is about giving existing tenants more opportunities than they have.

Although transferring ownership of houses to existing tenants won't immediately resolve that inequality, it will provide Indigenous Australians the chance to improve their lives.

Aboriginal people today have no choice about the quality or type of house they live in. As *The Australian* reported, some tenants pay rent to sleep on the veranda, while others pay no rent for living in a house.⁴ There is no equality.

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Homeownership also comes with social and economic benefits such as incentives to work and look for better employment opportunities. According to a study on Aboriginal

homeownership, homeowners' income levels increased in the years after they purchased their homes. Homeowners also get access to a number of financial benefits such as homeowner grants and tax-free capital gains on the family home that are not available to tenants.

Of course we are not naive enough to believe private property rights will transform Indigenous communities overnight. Not everyone will maintain their houses properly, but it will be their choice. As is the case everywhere, some people spend time and money looking after their homes while other do not.

But we will never know what remote Aboriginal people are capable of until they receive the same opportunities as all other Australians.

Conclusion

Much has been written about the cultural determinants of remote Indigenous poverty and dysfunction. But poverty and dysfunction are not cultural in origin. They are the product of 40 years of counterproductive and essentially apartheid government policies. The problems facing Aboriginal people in Australia are not unique to them. Around the world, communities deprived of individual property rights and decent education (but showered with welfare) are poor and dysfunctional.

To enable Indigenous prosperity on Indigenous lands, we need to stop treating Aboriginal people as inherently different.

Endnotes

- 1 Natasha Robinson, 'Outstation petitions on bar to home grants,' *The Australian* (15 March 2012).
- 2 Stuart Rintoul, 'Homeownership a Natural Step: Land Rights Architect,' *The Australian* (22 February 2008).
- 3 Healthy Homes Government Budget 2008–09.
- 4 Amos Aikman, '\$27 a week for a bed by the chook house,' *The Australian* (20 August 2012).