



Township Leasing and the Democratisation of Opportunity

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Introduction

The popular belief that the Aboriginal land rights movement returned to Indigenous Australians full control of their land is sadly unfounded.

When Prime Minister Gough Whitlam poured earth into the hands of Gurindji elder Vincent Lingiari in 1975 — the symbolic highpoint of the Aboriginal land rights movement — he told him “I want to promise that, through their government, the people of Australia will help you in your plans to use this land fruitfully.”¹ However, in the 46 years since then, Australia’s extractive Indigenous land bureaucracy has frequently stymied attempts by Indigenous communities to “use (their) land fruitfully.”

This reality has crushed Indigenous people living on Indigenous land.[†] The relative and absolute poverty, and its accompanying social dislocation, is well-known and a source of genuine national sadness in the broader Australian community. The disparity between those living on Indigenous land, and those living in the rest of Australia — Indigenous or otherwise — is wide and growing.²

New institutional economics offers a persuasive explanation for this disparity, arguing that the difference between rich and poor societies is the nature of their political and economic institutions. Societies with inclusive institutions, in which all citizens enjoy political and economic rights, will prosper. Societies with extractive institutions, in which political and economic power is concentrated within a narrow minority, will not.

This paper argues that Indigenous disadvantage on land covered by *The Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) should be conceptualised in this way[‡] and that its source is an extractive institutional framework. The key to lasting and genuine Indigenous prosperity is the emergence (or re-emergence) of robust, vibrant and inclusive Indigenous political and economic institutions.

It is in this framework that Township Leasing is evaluated. Township Leasing, introduced by the Commonwealth government in 2006, was a significant reform to the ALRA. It gave Traditional Owners the right, or the *de facto* right, to issue leases and licenses for economic activity on their land. These rights are held by the relevant Land Council for communities that have not taken up Township Leasing.

This paper argues that the advent of Township Leasing has made some progress towards more inclusive economic and political institutions on ALRA land in the Northern Territory. It is likely this has led, and will lead, to better socio-economic outcomes for the people living there. However, Township Leasing is not an end unto itself and should only be viewed as a worthy stepping-stone to full Traditional Owner autonomy and control over their own land. To that end, the final section of the paper makes some recommendations to enhance Township Leasing. These include: continuing to increase support for Community-Entity Township Leasing; streamline the negotiation process; extend the scope of Township Leasing; and upgrade the monitoring and evaluation of its impact.

[†] This paper is examining land subject to *The Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) in the Northern Territory. When referring specifically to land subject to ALRA it will use the term ‘ALRA land’. When it is referring to land returned to Indigenous communities in general under a range of difference legislative and legal mechanisms it will use the term ‘Indigenous land’.

[‡] This approach has been effectively utilised in conceptualising Indigenous disadvantage in developed countries elsewhere in the world including North America and New Zealand. See Anderson, T. (ed), *Unlocking the Wealth of Indian Nations* (2016).

Institutions and Indigenous land in the Northern Territory

The economic and social disparity between those living in remote Indigenous communities and those living in the rest of Australia, Indigenous or otherwise, is wide and growing. Income, employment, business creation, and home ownership on ALRA land in the Northern Territory are all well below levels experienced in the rest of Australia. With these desperate economic outcomes comes tragic social dysfunction. CIS Indigenous scholar Jacinta Nampijinpa Price recently described education levels in remote and very remote Indigenous communities as “on par with ... Afghanistan”³ and health outcomes “reminiscent of sub-Saharan Africa”.⁴ Excessive rates of violence, self-harm, alcoholism and drug abuse complete a bleak picture of life on ALRA land in the Northern Territory.

A substantial component of these problems can be attributed to institutions. Institutions in this context refers to the political, legal, economic, and cultural formal and informal mechanisms that govern and direct human activity. Institutions determine the long-term economic and social performance of any given country or community.

New institutional economists Daron Acemoglu and James Robinson famously differentiated between ‘inclusive’ and ‘extractive’ institutions in the influential text *Why Nations Fail*.⁵ They argued that countries were economically successful if they managed to develop inclusive political and economic institutions.

Inclusive political institutions allow for everyone to participate in political decision-making. In practice, these are the political institutions that are foundational to modern liberal democracies like voting rights, freedom of speech, freedom of assembly, and freedom of association. Citizens use these political rights to acquire inclusive economic institutions.

Inclusive economic institutions are those that allow all citizens to participate in economic activity and keep the profits of that participation. They protect

the property of all citizens from being expropriated by the powerful for their own benefit. These include property rights (both private and communal), freedom of market entry, and the rule of law. Inclusive political and economic institutions complement and consolidate each other.

On the other hand, Acemoglu and Robinson argue that countries were not economically successful (and therefore not successful in areas like health and education) if they developed extractive political and economic institutions. **Extractive political institutions** are those that concentrate political decision making within a narrow elite. **Extractive economic institutions** deprive broad segments of the population of the profits generated by their own economic efforts. In these environments, only the elites generate benefit from economic relations. Given there is little or no benefit for most people undertaking economic activity, the incentive to increase productivity, innovate and generally pursue economic success is removed. Extractive political and economic institutions complement and consolidate each other.

This paper argues that Indigenous people living on ALRA land in the Northern Territory operate under a largely extractive institutional environment, while people — Indigenous or otherwise — living in the broader Australian context operate under mostly inclusive economic institutions. This is the root cause of the stark difference in economic (and subsequently social) outcomes between the two.

For the situation on ALRA land to change, a set of authentic, culturally relevant and inclusive political and economic institutions needs to re-emerge organically from those communities. The first step in enabling this to happen is to remove and/or amend the extractive institutional framework currently in place. The next section outlines the institutional history of Indigenous Australia.

The institutional history of Indigenous Australia

Prior to European arrival, Indigenous Australians developed political, economic, legal, and cultural institutions that facilitated inter-tribal trade across Australia — and even internationally in some circumstances. Communal property rights existed conferring on tribes the right to use areas of land. These institutions were effective to the point that historian Geoffrey Blainey estimates that in comparing

the daily life and standard of living of the typical Aboriginal family with the typical European peasant family in 1800, “there is no decisive winner”.⁶ Blainey believes in the 10 centuries prior to 1788, during a prosperous year Indigenous people enjoyed a “conspicuous” superiority in living standards over the typical European peasant.⁷

This changed with the arrival of the British. Various formal and informal mechanisms excluded Indigenous Australians from political and economic life. From 1788 European settlers began taking land from Indigenous Australians, at times violently, a process ramped up in the early part of the nineteenth century as Australia's wool industry massively expanded.

By 1911 every mainland state and territory had introduced paternalistic policies towards Indigenous people, variously denying them the freedom of labour, movement, custody of their children, and control over their personal property. This effectively rendered them wards of the state. All adult Indigenous people did not have the right to vote in every state and federal election until 1965 (although it should be noted that some Indigenous people had the right to vote in some states as early as the 1850s).⁸ On the land

front, by the 1960s, governments, private owners and leaseholders had taken control of all of Australia.⁹ While the cultural, political, economic and legal institutions were mostly inclusive for most Australians, they were mostly extractive for Indigenous Australians.

The land rights movement began in the 1960s. The *Aboriginal Land Rights (Northern Territory) Act 1976* was passed by the Fraser government. The Mabo decision and the *Native Title Act 1993* from the Keating government followed, along with legislation at state level. Over the decades, roughly 50% of the Northern Territory and about 20% of Australia has been returned to Indigenous communities. However, far from freeing Indigenous people from the shackles of colonial-era exclusion, despite its good intentions ALRA has proven to be another iteration of it.

ALRA – An extractive institutional framework

Despite its noble intentions, ALRA created an extractive institutional framework for Indigenous people living on ALRA land. It didn't deliver sufficient political and economic rights to the majority of people living there and, as outlined above, has contributed to economic deprivation and social breakdown.

Historical background

In part, this has occurred because of ALRA's historical roots. Created in the 1970s, it was heavily influenced by two anthropological and economic assumptions. Firstly, Indigenous regeneration would hinge on ensuring Indigenous people were able to live a traditional hunter-gatherer lifestyle protected and isolated from the modern Australian economy and broader culture.¹⁰ Secondly, economic success would be achieved by eschewing the market economy and the public ownership of the means of production, particularly land.¹¹

As a result, the land rights structure — featuring powerful Land Councils — was designed to facilitate Indigenous land claims and to protect Indigenous communities from predatory commercial interests, rather than facilitate trade between Indigenous communities and outsiders — a practice that occurred for thousands of years prior to European arrival.

These unfounded assumptions have proven to be a disaster. Indigenous Australians living on Indigenous land have not pursued the traditional hunter-gatherer lifestyle. Indeed they have been largely supported by welfare since ALRA's inception. Unsurprisingly, Indigenous Australians living on Indigenous land want the benefits of living in their culture and also the benefits of participating in a modern, global economy.

Land Councils themselves appear to have belatedly recognised that Indigenous people need more than simply the acquisition of land — they need to be able to use it. The Chairman of the NLC in the *NLC Strategic Plan 2016-20* noted that the NLC "must look forward to this era of post-determination."¹² Post-determination refers to the period when all land claims are settled and the focus moves to the management and development of Aboriginal land. The very fact that this has to be spelled out indicates that the primary function of Land Councils has been to acquire land rather than facilitate the development of Indigenous land that has already been acquired. When the ALRA system was created, land use and economic development appears to have been an afterthought.

Political and economic decision-making

The ALRA status quo deprives Traditional Owners of economic decision-making and gives it to Land Councils. Arrangements for communities wishing to make commercial use of their land on ALRA land in the Northern Territory are laid out in Section 19 of ALRA. This section stipulates that Land Trusts (bodies holding Indigenous land in trust for the Traditional Owners) may only grant leases or licenses for individuals, government agencies or businesses if they have the written direction of the relevant Land Council. This includes residential as well as commercial leases.

Subsection 5 of Section 19 spells out the circumstances under which the Land Council would grant an estate or interest in land. In short, these are that the Traditional Owners understand and consent to the proposal, that the community affected has been

consulted and has had the opportunity to express their view to the Land Council, and that the terms of the agreement are “reasonable”.

In practice, this often makes the process through which approval is granted onerous and prohibitive. In its ‘Submission to the Joint Standing Committee on Northern Australia’ in January 2020 the Aboriginal Investment Group outlined the trials an Aboriginal Corporation comprised of Traditional Owners had to go through to utilise their ancestral land that ALRA has supposedly given them control over.¹³

The Traditional Owner Aboriginal Corporation had wanted to convert a vacated building into a youth drop-in café to reduce youth crime and anti-social behaviour. The Northern Land Council (NLC) told the Traditional Owners they would require a license or lease under section 19 of ALRA before any activity could occur. Furthermore, the Land Council would have to consult with the Traditional Owners before a lease or license could be agreed upon. And in accordance with its statutory duties, the terms of any lease or license must include rental or land use payments. Furthermore, the process would take six months and the Traditional Owners would have to bear the cost of Land Council consultations and agreement-making — including staff time and travel.¹⁴

To summarise, to get a small community enterprise off the ground, this group of Traditional Owners must present a proposal from themselves, to themselves, and be consulted on it by the Land Council whose costs they are paying. And they must charge themselves commercial rates of rent, otherwise the Land Council won’t approve the license or lease. And the whole process will take at least six months. This is emblematic of the extractive nature of the land bureaucracy in the Northern Territory. The fact is most Indigenous people living on ALRA land in the Northern Territory have less control over their land now than they did for thousands of years prior to British arrival.

Not only is decision-making out of the hands of Traditional Owners, and residing with the Land Councils, but the Land Councils don’t appear to reflect the interests of Traditional Owners effectively. A report from the Australian National Audit Office (ANAO) in 2017 found that the NLC “has collected insufficient information to demonstrate how effective representation (of Aboriginal people in its region) has been in practice.”¹⁵

That same report found that as of March 2017, “the NLC has no internal mechanisms to provide independent assessment of council members’ performance, or assurance that the NLC’s processes are being properly implemented.”¹⁶ The NLC has

complied with only some of the requirements for nominating councillors and conducting council meetings as set out under ALRA, and is working towards “full compliance.”¹⁷

The process for selecting council members was described by ANAO as “complicated and lengthy” and while there was no suggestion the process wasn’t being carried out according to the rules, ANAO noted the process would “need to be subject to an internal audit or quality assurance process to provide confidence that it was properly carried out.”¹⁸

Even if Land Councils were operating perfectly, individual groups of Traditional Owners often have little hope of influencing Council decision-making due to the vastness of the councils. The Central Land Council (CLC), for example, represents approximately 24,000 people, living across 777,000 kms², who speak 15 different languages. Council elections are held once every three years with the Council of 90 members meeting three times a year. Some communities and outstations can only nominate one Council member. From the Council of 90, an Executive of 9 is chosen — one member from each of the 9 sub-regions. Furthermore, a panel of 5 Council members is selected to represent the CLC on the advisory committee of the Aboriginal Benefits Account (ABA). In addition to the Council, there is an accompanying Chief Executive Officer and bureaucracy — many of whom are non-Indigenous — who advise and assist the Council.¹⁹ This unelected bureaucracy plays a significant role in carrying out the actual functions of government. The CLC has several offices, with the head office in Alice Springs.

The other major Land Council in the Northern Territory is the NLC. It also has elections once every three years. It has 83 members but only has full meetings twice a year. It too forms an Executive with members representing each of its 7 sub-regions.²⁰ The NLC has 8 offices, with the head office in Darwin. Indeed, the NLC has had to pursue a ‘Regionalisation Strategy’ aimed at improving the organisation’s regional offices — even though 80% of the Indigenous people in the region live outside the greater Darwin area, only 23% of staff are located in the NLC’s regional offices.²¹

On paper, ALRA appears to provide for the diffusion of political and economic decision-making power to all people living on ALRA land – both Traditional Owners and other Indigenous community members. However, in practice, Land Councils have frequently acted as unresponsive, opaque and extractive bureaucracies that have often been an immovable barrier to Traditional Owners influencing what happens to their land.

Transparency, Accountability, and Governance

The Land Council system has also been blighted by poor governance and a lack of transparency and accountability. These are further hallmarks of extractive institutions. In 2013, an external review of the NLC's governance framework conducted by Deloitte found a "fundamental breakdown in the governance framework at the NLC" causing serious failings in almost every aspect of the NLC's administration.²² In 2015, senior officials from the NLC appeared before the Senate Finance and Public Administration Committee after the ANAO financial statements audits found weaknesses in the NLC's financial management and reporting. The NLC had made poor progress in improving internal management systems.

The NLC's administrative functions do not adequately support the work of the council.²³ Prior to 2015 "the management and maintenance of core enabling functions, including information and communications technology systems, human resource management and records management was poor, with serious weaknesses in financial management, fraud control and the management of risk."²⁴ In terms of administration and service delivery, the NLC was operating with "failed administrative processes" and "dysfunctional information and communications technology systems."²⁵

Symbolic of the outdated administration of Land Councils, meeting fees to council members were paid partly in cash each day up until November 2016, meaning administrative staff were transporting upwards of \$90,000 in cash to meeting venues.²⁶ Furthermore, the NLC has a poorly-utilised electronic document system, meaning the organisation relies heavily on paper-based files. This has led to extensive off-site storage of files in breach of the Australian Government Digital Transition Policy.²⁷

These administrative and governance shortcomings have ramifications for the NLC's distribution of royalties — one of its most important functions. In 2015–16, the NLC were tasked with receiving and distributing \$52.6 million in royalty receipts to around 12,000 Traditional Owners with about 8,000 individual transactions per quarter. The ANAO's financial statements audit found the NLC's administration of royalty payments had been poor with regards to reporting, receipt and distribution of royalties monies prior to 2015.²⁸

Up until November 2015, the NLC's financial management and internal reporting capabilities were

substandard. They did not meet the basic reporting requirements for the various funding sources. The reporting system was so basic it didn't allow for a consolidated picture of the NLC's finances and didn't easily provide for the easy monitoring of expenditure. Before February 2016, the NLC executive and senior staff had no way of understanding the NLC's resource allocation and internal budgets.²⁹

Furthermore, unlike almost all other government agencies, Land Councils are not subject to Freedom of Information (FOI) requests. The Law Council of Australia's submission to a federal review of the FOI Act in 2012 stated "it is not clear" why this is the case. The Law Council notes that during a second reading speech by Senator Peter Durack in 1981 when the FOI Bill was introduced, he said Land Councils were exempted for "special reasons" but did not outline what those special reasons were.³⁰

In 2018, former CLC chair Maurie Japarta Ryan stated that removing the FOI exemption would improve land council performance.³¹ In 2016, Bakamumu Marika, chairman of Rirratjingu Aboriginal Corporation in Arnhem Land, said the NLC operated as a "secret society." He went on: "It is a joke that the NLC enjoys the same exemptions to basic levels of scrutiny and transparency as our most important national security, defence and counter-terrorism agencies."³² As Marika pointed out, the NLC refuse to provide anthropological data, which is of the utmost importance in deciding who is and isn't a Traditional Owner and who is and isn't entitled to land and resources. Furthermore, "If we believe they are holding money that is ours, they can not only refuse to provide it ... but refuse to confirm they have it."³³ In response, Chief Executive of the NLC Joe Morrison said Land Councils should be exempt from FOI applications to protect "Aboriginal cultural knowledge and property."³⁴

These matters are of utmost importance to the operation of ALRA. If decisions around Traditional Ownership aren't subject to scrutiny, the whole system is undermined. More broadly, the FOI system is an invaluable mechanism allowing citizens to hold governments and bureaucracies to account. Outside scrutiny improves the performance of bureaucracies and makes them more inclusive institutions. In the long term, they would assist the Land Councils in improving their performance. In addition, from a moral perspective, there is no reason why Indigenous people on ALRA land should be deprived of a right that Indigenous and non-Indigenous citizens in the rest of Australia enjoy.

In general, the ANAO report indicated there seemed to be some improvement at the NLC with regards to

rectifying the issues identified by Deloitte's external review, however, often there was simply not enough information being collected to tell either way. The report also noted that an ANAO audit report of the Land Councils and the Aboriginal Benefits Account (ABA) in 2003 also found that due to a lack of evidence, ANAO was unable to categorically state

that the Land Councils were fulfilling their functions under ALRA.³⁵ It seems that 14 years later, a similar conclusion was reached.

ANAO are scheduled to conduct reports into the governance of the Northern Territory's other three Land Councils, but these reports have been paused at the time of writing.

Reforming an extractive bureaucracy

By the start of the twenty-first century it had become clear that land rights had not delivered the political, economic, and cultural regeneration of Indigenous communities in the Northern Territory that had been hoped for. Land rights had given Indigenous people their land back, but didn't allow them to use it. The assumptions that Indigenous people would revert to living their traditional hunter-gatherer lifestyle and public ownership of land would drive Indigenous regeneration had proven to be disastrously incorrect.

Warren Mundine, Noel Pearson, the Centre for Independent Studies, and others led the charge for land tenure reform. Township Leasing was a major component of these reforms and was introduced with an amendment to ALRA in 2006. Township Leasing gave Traditional Owners the right to apply to the Land Council and the Minister to acquire a 99-year lease over a given township on their land. Before a Land Council will grant this lease they must be satisfied that all Traditional Owners and other community members have been consulted and understand the process and that the terms of the agreement are "reasonable". Township Leases can't be revoked by the Land Council. However, Township Leases only apply to townships. They don't apply to surrounding lands that Traditional Owners may have possession of, where of course many economic opportunities may exist.

The first type of township lease introduced was where the Aboriginal land trust would grant a 'Head Lease' over a township to the Executive Director of Township Leasing (EDTL) who would then manage leasing in the township in consultation with the Traditional Owners for up to 99 years.³⁶ This form of Township Leasing later became known as Government-Entity Township Leasing.

Following the election of the federal Labor government in 2007, the focus shifted from Township Leasing towards a policy of 'secure tenure'. This meant 'securing' government and other investment via Section 19 leases, issued by the relevant Land Council. This resulted in a considerable increase in leases within communities with or without Township Leasing.³⁷

Following the re-election of the federal Coalition in 2013, a new kind of Township Lease was introduced enabling a local Aboriginal corporation to enter into a Township Lease independently of the EDTL. The Aboriginal corporation would either manage the lease immediately or after an initial period of administration by the EDTL.³⁸ This was referred to as Community-Entity Township Leasing.

Township Leasing: The democratisation of opportunity?

This section examines the impact Township Leasing has had on the renewal of inclusive political and economic institutions on ALRA land. There are 51,000 people living in discrete geographic Aboriginal communities or smaller homelands in the NT.³⁹ Currently seven Township Leases cover ten of those communities. They are: Wurrumiyanga, Angurugu, Umbakumba, Milyakburra, Milikapiti, Wurankuwu, Mutitjulu, Pirlangimpi, Jabiru and Gunyungara. The combined population of those communities is 5,559,⁴⁰ meaning almost 11% of people living in discrete Indigenous communities in the NT are living under Township Leasing arrangements.

Table 1 below outlines the basic trajectory of the existing Township Leases overseen by the EDTL. In the initial years of a Township Lease, the basic elements of the lease are created. These include the creation of the Consultative Forum, cadastral survey, land valuation, and negotiation of rent with existing occupiers. Once these building blocks are in place, the Office of Township Leasing (OTL) and the Traditional Owners essentially focus on commercial activity, enhanced service delivery and in some limited circumstances, private home ownership. As the table below demonstrates, Township Leasing appears to have been generally successful in enabling enhanced commercial activity and improved service delivery, but much less so in cultivating private home ownership.

Table 1: Current Township Leases

Community	Headlease	Location	Date of Execution	Term
Wurrumiyanga	Wurrumiyanga	Bathurst Island	30 August 2007	99 years
Angurugu	Groote Eylandt and Bickerton Island	Groote Eylandt	4 December 2008	80 years
Umbakumba	Groote Eylandt and Bickerton Island	Groote Eylandt	4 December 2008	80 years
Milyakburra	Groote Eylandt and Bickerton Island	Bickerton Island	4 December 2008	80 years
Milikapiti	Milikapiti and Wurankuwu	Melville Island	22 November 2011	99 years
Wurankuwu	Milikapiti and Wurankuwu	Bathurst Island	22 November 2011	99 years
Mutitjulu	Mutitjulu	Central Australia	16 March 2017	67 years
Pirlangimpi	Pirlangimpi	Melville Island	26 June 2017	99 years
Gunyungara	Gunyungara	Gove Peninsula	18 November 2017	99 years
Jabiru	Jabiru	Kakadu	1 July 2021	

Source: Executive Director of Township Leasing: Annual Report 2019-2020, Ngarrariyal Aboriginal Corporation, Gundjeihmi Aboriginal Corporation Jabiru Town

Table 2: Township Lease Activities

Lease	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12
Wurrumiyanga	Consultative Forum established, cadastral survey and land valuations, Traditional Owner commercial activity	Rental negotiations with existing occupiers, 13 purchase private residential subleases, Traditional Owner commercial activity, enhanced service delivery	2 families purchase private residential subleases, Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	1 family purchases private residential subleases, Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery
Groote Eylandt and Bickerton Island	Consultative Forum established, cadastral survey and land valuations	Rental negotiations with existing occupiers, Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery
Milkkipiti and Wurrankuru	Consultative Forum established, cadastral survey and land valuations	Rental negotiations with existing occupiers, Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery
Multijulu (CE)	Consultative Forum established, cadastral survey and land valuations	Rental negotiations with existing occupiers, Community land use plan, Traditional Owner commercial activity, enhanced service delivery	Traditional Owner commercial activity, enhanced service delivery									
Pirihangimpi (CE)	Consultative Forum established, cadastral survey and land valuations completed	Rental negotiations with existing occupiers completed, Community land use plan, enhanced service delivery	Enhanced service delivery									

Source: Office of Township Leasing - Annual Reports 2009-2020
 *only includes leases overseen by the EDTL

The Formalisation of Property Rights

The cadastral survey, land valuation and negotiation of rent with existing occupiers constitute the formalisation of property rights at the heart of Township Leasing. Property rights are an inclusive institution. These actions take place within the first year or two of a Township Lease being signed, and provide Traditional Owners with long term, tradable tenure.

The first impact this has is that Traditional Owners are able to lease their land to business, government, NGOs, and individuals — creating a rental income stream for the community. In total, Township Leasing has generated \$18,189,682* in rental income for participating communities since its inception. Rental payments were almost non-existent prior to the tenure reforms that have taken place in the NT.

Table 3: 2019-20 Township Lease Revenue

Lease	(\$ inclusive of GST)
Wurrumiyanga	888,680
Groote Eylandt	837,387
Milikapiti	243,518
Wurankuwu	14,914
Pirlangimpi	292,454
Mutitjulu	49,052
Total Revenue:	2,326,005

Source: Executive Director of Township Leasing: Annual Report 2019-2020

*only includes leases overseen by the EDTL

Table 4: Total Township Lease Revenue

Lease	(\$ inclusive of GST)
Wurrumiyanga	8,374,870
Groote Eylandt	7,125,141
Milikapiti	1,960,953
Wurankuwu	117,641
Pirlangimpi	548,268
Mutitjulu	62,807
Total Revenue:	18,189,682

(Source: Executive Director of Township Leasing: Annual Report 2019-2020)

*only includes leases overseen by the EDTL

This appears to compare favourably with communities without Township Leasing. Those communities began to have leases over their land granted by Land Councils as part of the federal Labor government's 'secure tenure' policy which occurred at roughly the same time as the advent of Township Leasing. Below is the rental income received by communities under the jurisdiction of the CLC since the 2006/07 financial year:

Table 5: Annual rental received on s. 19 leases in communities in the CLC region

Financial Year	s. 19 community lease amount (\$)
2006/07	17,516
2007/08	17,526
2008/09	17,535
2009/10	17,540
2010/11	32,752
2011/12	37,050
2012/13	1,148,882
2013/14	1,686,982
2014/15	563,453
2015/16	2,102,929
2016/17	2,199,254
2017/18	1,868,386
2018/19	2,002,919
2019/20	2,373,655

Source: Centre for Aboriginal Economic Policy Research, 2021

This demonstrates a significant increase in rental income over the same period that Township Leasing was introduced. However, the increase doesn't appear to be as pronounced. As indicated in the table above, the 2019/20 financial year rental income derived through Section 19 leases was \$2,373,655 for communities under the jurisdiction of the CLC. The CLC represents approximately 24,000 people. In communities subject to Township Leasing, where an estimated 5,559 people live, that figure was \$18,189,682 — almost 8 times as much rental income for about a quarter as many people.

* Please also note the figure for rental income does not include Township Leases outside the auspices of the EDTL (Gunyangara and Jabiru).

While there may be differences in the level of economic opportunities present in Central Australia compared to the other Township Leasing communities — which are located on the Tiwi Islands, Groote and Bickerton Islands, and in the northern part of the NT — the evidence that the Township Leasing system generates greater rental income than the system overseen by at least the CLC is very strong.

Generating rental income shouldn't be — and isn't — the end goal of Township Leasing. However, apart from being a valuable source of money, rental income can be interpreted as a rough proxy for increased economic activity, and the establishment of inclusive political and economic institutions over the medium to long term.

Political autonomy

As outlined above, Acemoglu and Robinson argue the first step in democratising economic opportunity is broadening and devolving political power; as disenfranchised groups and individuals will use their political rights to establish economic rights. Township Leasing must broaden political authority to be inclusive and successful. The establishment of a Consultative Forum at the outset of a Township Lease partially achieves this.

Communities on ALRA land without Township Leasing do not have the right to engage in economic activity or issue licenses and leases — these leases and licenses are issued through the Land Council. Core decision-making power, therefore, is held by an off-community government bureaucracy over which any given Traditional Owner group has only a marginal influence over.

Communities that have acquired Government-Entity Township Leases also don't have the formal right to issue leases and engage in commercial activity. These leases and licenses are granted by the EDTL. Critics of Township Leasing have rightly noted this gives the government formal control of the land.⁴¹ Indeed, it is simply replacing one off-community government bureaucracy with another. However, the core difference is how the arrangements work in practice. Unlike the process outlined above with the Land Councils, the OTL acts on the advice and wishes of the Consultative Forum — a representative group of Traditional Owners of the land over which the Township Lease is held.

In practice Township Leasing has proven to be a rubber stamp for the Consultative Forums and the Traditional Owners more broadly. Former EDTL Greg Roche said in 2017 "If the traditional owners agree, I agree. If they don't, I don't agree." He went on, "I've been in the job seven years and signed

1000 subleases, all with agreement ... the Township Lease is another mechanism to advance Aboriginal determination." Traditional Owner of Wurrumiyanga Walter Kerinaiaua said "We are still the decision makers, more than ever. And we still have the land."⁴²

So while one bureaucratic barrier is being replaced by another, the latter appears to be much less prohibitive. This is further evidenced by the substantially larger rental income derived by Township Leasing communities compared to communities without, as detailed above. Communities with Township Leasing clearly have more say over what happens to their own land than those without it, meaning Consultative Forums are more inclusive arrangements than the Land Council system.

Nonetheless, while the *de facto* political decision-making rights granted to Traditional Owners are more substantial than under the Land Council system, it would be better if Traditional Owners acquired these rights formally (a position the Centre for Independent Studies has supported for over a decade)⁴³. Fortunately, the Community-Entity Township Leases described above achieve this. Indeed, while the first three Township Leases were Government-Entity Township Leases, the most recent four (Pirlamgimpi, Mutitjulu, Gunyangara and Jabiru) have been Community-Entity Township Leases.

One way greater political autonomy for Traditional Owners manifests itself is through enhanced service delivery. As the table above outlines, enhanced service delivery is a major concern of the Consultative Forums throughout the lease period. Township Leasing communities have been able to progress the priorities of Traditional Owners at the local level.⁴⁴ This is no surprise, given on-community decision-makers are more likely to understand the specific needs of the community more completely than an off-community bureaucracy charged with catering for several diverse communities.

Transparency, Accountability, and Governance

Governance is a crucial piece of the institutional jigsaw. Corruption, fraud, nepotism and bureaucratic inefficiency are extractive institutions. They disincentivise productive economic activity and enervate the entrepreneurial spirit. As outlined above, the Land Council system has been blighted by poor governance and a lack of transparency. Therefore, the impact of Township Leasing on governance is critically important.

Theoretically, holding decision-makers accountable should be more straightforward when those decision-makers are located in the community more often. This

§ It should be noted Township Leasing critics argue this is because Township Leasing communities receive favouritism from government.

means they are more likely to encounter the people impacted by their decisions on a regular or even daily basis.

In addition, communities that have opted for the transitional model of Community-Entity Township Leasing (where the EDTL controls the lease for its first years while the corporation develops capability) should have an incentive for good governance. It is probable corporations in this situation are being forced to meet much sterner thresholds of good governance before acquiring control of the lease than Land Councils or corporations elsewhere on ALRA land.

Either way establishing evidence of improved governance or otherwise should be a priority of the OTL and those enthusiastic about the possibility of Township Leasing contributing to more inclusive institutions on ALRA land.

Commercial activity

If Township Leasing is promoting the democratisation of political and economic opportunity then this will lead to increased commercial activity. As the table above outlines, Traditional Owner led and facilitated commercial activity is an ongoing feature of Township Leasing.

The first Township Lease was signed in Wurrumiyanga in 2007. In 2008, the Traditional Owners set up a private company called Mantiyupwi Pty Ltd to invest the advance payment of rent received when the Township Lease was signed. Since then, the company has become a successful enterprise developing a store complex containing a supermarket and four smaller retail outlets. They have also invested funds from the advance payment and acquired a commercial loan from a bank.

In addition to retail they have purchased a former workers camp and converted it to commercial accommodation and office complex, acquired a tour business, and established a car hire business, lawn mowing and gardening services, and further commercial accommodation facilities. These activities have generated employment in the local community.⁴⁵ After more than a decade of experience, the Traditional Owners are now engaging in more ambitious and complicated commercial activity. Recently, Mantiyupwi Pty Ltd acquired the sublease from the EDTL to construct a new pontoon and visitor centre and a connecting site across the Apsley Strait. This was a long-term vision of the Tiwi families and was constructed on time with local employment and training.⁴⁶

The second longest Township Lease is over Groote and Bickerton Islands signed in December 2008. Since its inception, the OTL has worked with Groote Eylandt and Bickerton Island Enterprises to identify small enterprise opportunities. Soon after the Township Lease was signed, a request was made by an existing

store owner to construct a new building at Angurugu, which would allow for the employment of an additional four people.⁴⁷ The Angurugu Traditional Land Owners used their upfront rent payment to purchase a car hire company on Groote Eylandt. The Umbakumba Traditional Land Owners used their upfront payment to establish a commercial fishing venture called Numanynga — a joint commercial venture with Tasmanian Seafoods aiming to supply trepang to the Asian market.⁴⁸

Mutitjulu is of special interest as it is a recently signed Township Lease (signed in March 2017) and is the first Township Lease located in Central Australia. Increased commercial activity has featured in Mutitjulu even in the short period that the Township Lease has been in place, with the Traditional Owners purchasing a contractor's camp erected by a private company fulfilling a government contract, and converting it to commercial accommodation.⁴⁹

Township Leasing has augmented commercial activity in these communities by effectively devolving decision-making down to the community level, formalising property rights, and generating rental income.

Home ownership

The advent of individual property rights is arguably the most basic incarnation of the democratisation of economic opportunity that occurs following the devolution of political rights. Township Leasing made it possible for Indigenous people living on ALRA land to own a home (or more accurately, acquire a private residential lease) for the first time.⁵⁰ Almost all the current private residential subleases held on ALRA land are in communities with Township Leasing. However, overall Township Leasing has failed to deliver private home ownership to communities beyond a small minority of families.

There are only 16 private residential subleases — all in Wurrumiyanga — of which, 15 were acquired in the first three years of the lease, with only one being issued since then (in year 9 of the lease). To put the breakdown of private to public housing in perspective, in 2015, 281 of 296 housing lots in Wurrumiyanga were held by Territory Housing.⁵¹ Public housing is still the norm in Township Leasing communities.

However, it is likely there is demand for private housing in Township Leasing communities; not least because mortgage repayments can be cheaper than the rent residents pay for public housing and private home owners gain a sense of pride and dignity from their purchase. These were reasons put forward by Wurrumiyanga's most recent home owner, Stanley Tipiloura for his purchase.⁵² Direct financial advantage and a sense of personal pride would appear to be significant incentives for individuals to pursue home ownership on ALRA land. Indeed, Tipiloura said "Around here, people do want to own their own

homes” and the OTL has frequently noted interest in private home ownership throughout its annual reporting.⁵³

However, there are a range of barriers to a private housing market in remote Indigenous communities; the cost of construction in remote areas and the cost of establishing serviced lots chief among them. Nonetheless, it is likely more could be done to meet the unmet demand for private housing on ALRA land. The EDTL’s annual report for 2015/16 stated that the path to home ownership for interested home buyers “could be made much less bureaucratic.”⁵⁴ The 2016/17 EDTL annual report stated more work needed to be done “to ensure the processes and requirements for home ownership are not overly proscriptive or unnecessarily discouraging to potential home buyers.”⁵⁵

It certainly seems as if the barriers Tipiloura had to overcome to buy a house were prohibitively onerous. He sold his boat for \$4,000 to help raise a deposit and was eventually able to gain a loan via his and his wife’s employment histories and their record of upkeep of their public housing. However, three of Tipiloura’s case managers gave up attempting to enable Tipiloura and his wife to purchase their home due to the substantial obstacles in the way of them acquiring a loan from Indigenous Business Australia. He said: “Without having a really good case manager fighting hard like I had, I really don’t see too many other people buying homes here.”⁵⁶ It appears that without a heroic case manager, home ownership is beyond the reach of Indigenous people living in Township Leasing communities and ALRA land in general. Indeed, the EDTL raised concerns about the number of case workers assigned by the Northern Territory government to assist Indigenous people trying to achieve home ownership on ALRA land.⁵⁷

Given that the mortgage repayments may be cheaper and home ownership appears to give individuals a sense of autonomy and pride, and it is apparent that Traditional Owners wish to promote more home ownership in their communities, it is likely this element of the system isn’t working. While there is more private home ownership in communities with Township Leasing than those without it, the institutional arrangements surrounding home ownership cannot yet be considered inclusive.

Socio-economic outcomes

The re-emergence of vibrant Indigenous economic institutions will lead to improved social and economic outcomes. At present there isn’t clear data on the social and economic performance of communities with Township Leasing compared to those that don’t have it. It’s not clear if there are higher levels of employment or income in communities with Township Leasing (although increased rental income is a reasonable proxy for higher employment and income). But more than that, the increased economic activity

that Township Leasing is intended to generate, is hoped to lead to improved social outcomes in areas like health, education, domestic violence, drug and alcohol abuse and more.

Culture

But beyond political and economic institutions, and their socio-economic outcomes, what is the cultural impact of Township Leasing? Are residents more hopeful and optimistic about the future? Do they feel a greater sense of pride and dignity? Do they trust other people in the community more? Economic activity isn’t valuable simply because of the material and social gains it generates. Being able to create something valuable and worthwhile, and being able to provide for yourself, your family and your community goes to the core of being human. Perhaps the most important contribution Township Leasing can make is in the area of human dignity.

A quick glance at some of the public comments made by Traditional Owners and people living in communities under Township Leasing indicate people may well be feeling more optimistic about the future.

Tipiloura said about his newly purchased home in Wurrumiyanga in 2018 “I’ve got a permanent place. It’s about being able to do what every other Australian can do.”⁵⁸ Mantiyupwi Traditional Owner Mr Kerinauia Senior said: “Tiwi people are for the first time in a position to own their own home, realising the ‘great Australian dream’ that the rest of Australia takes for granted.”⁵⁹ Spencer Martin, a mechanic at Nguui Garage operated by Tiwi Enterprises said, “I would like to see more young Tiwi men to come get involved and work like what I do, what we do here. It’s very important for us and this is our opportunity, and their opportunity, for our future.”⁶⁰

Tipiloura, who is a Traditional Owner and part of the Wulirankuwu Trust continued: “It gives you more power and people can’t just come in and do what they want to do, they have to come and respect Tiwi culture and Tiwi people.”⁶¹

“It doesn’t happen overnight. It’s work in progress. And we’re building on it. We’re building on our business. It’s opportunity. Business opportunity for the community and the Traditional Owners ... Open for business. You can make money, economic development ... it’s really, really good.”⁶²

Obviously these statements aren’t definitive proof of Township Leasing residents feeling more hopeful, trusting, optimistic and proud than prior to acquiring Township Leasing, or of other communities without Township Leasing; but it is certainly an area worth further investigation. Such comments provide some hope that institutions in Township Leasing communities are more inclusive, and that the green shoots of political, economic and cultural renewal may be occurring.

Recommendations for improving Township Leasing in the NT

The purpose of Township Leasing, and any reforms aimed at Indigenous people living on Indigenous land, should be the democratisation of political and economic institutions. It is under these conditions that Indigenous economic and cultural renewal will take place and the general well-being of people in those communities will rise above its current parlous state. The following proposals are aimed at enhancing that process with regards to Township Leasing:

Continue to encourage Community-Entity Township Leases

Ultimately Traditional Owners should set the direction for their own land with their own set of individual and communal, formal and informal property rights as fits their community. Whilst Government-Entity Township Leases have enhanced the autonomy of Traditional Owners significantly, formal rights are better than *de facto* authority. Community-Entity Township Leases are therefore a more desirable outcome. Apart from being a concrete devolution of political power this model carries important symbolic weight. Critics of Township Leasing have argued that government was too proscriptive in the early years of the reform and were slow to listen to some Indigenous voices.⁶³

Institutional regeneration on ALRA land will be an organic process. Removing or amending extractive land tenure arrangements makes regeneration possible, but ultimately it must come from the communities themselves. Returning to Traditional Owners actual decision-making power that they had for tens of thousands of years is a critical step in developing autonomy. In that vein, the EDTL should also allow existing Government-Entity Township Leases to transition to Community-Entity Township Leases in the future if that is the desire of those particular communities.

Streamline the negotiation of Township leases

At present, only 7 township leases have been signed in 15 years. This is partially due to the onerous process required to be undertaken to acquire one—which is an extractive institution in and of itself. Morally, Traditional Owners should be able to enter into a Township Lease without requiring the consent of the Land Council — given it's the Traditional Owners' land. However, perhaps as an interim measure, inserting into ALRA time limits within which Land Councils are required to process requests for Township Leasing would be of significant benefit to Traditional

Owners seeking autonomy over their land.

Furthermore, it would assist negotiations for the OTL to create and introduce template headleases and an element of equity in payments to different communities to take the pressure off negotiations and move the emphasis of negotiations away from dollar amounts and towards how the Traditional Owners actually want their community to look.

Extend the scope of Township Leases beyond the township

Ninety-nine year Township Leases cover only the township, not surrounding lands the Traditional Owners may have possession of. However, numerous economic opportunities exist beyond townships including mining, agriculture, tourism and others. Despite Traditional Owners taking up 99-year Township Leases, they still have to fulfil the onerous obligations of the Land Council system to issues leases and develop the rest of their land. Ideally Township Leases would be applied to all the land Traditional Owners hold.

Unfortunately, legislation before the federal parliament at the time of writing will remove from ALRA the ability for these Land Council powers to be devolved to Aboriginal Corporations. Section 28A of ALRA was introduced in 2006 to allow this. The justification for repealing them is the vague assertion that doing so will "provide certainty, strengthen the ALRA and make clear that community entity township leasing is the preferred model for local control".⁶⁴ However, Township Leasing, and particularly Community-Entity Township Leasing, may provide a vehicle for Traditional Owners to acquire these rights in the future.

Given the nature of these potentially vastly more complex and significant commercial agreements, it may be more realistic to gradually transition Traditional Owners to this outcome after they have successfully navigated Township Leasing over their townships, have a good governance record and have had an opportunity to develop sufficient capacity. Nonetheless, this is the ultimate destination Township Leasing should be moving towards. If Traditional Owners have the right to decide how their land is used, there is no reason why that right shouldn't extend to the most economically valuable land.

If Traditional Owners are in the future permitted to negotiate leases on their land outside of the township, then the breakdown of mining royalty distribution set out in Section 64 of ALRA should be re-worked

to reflect this fact. In negotiating leases, they are undertaking some of the functions of the Land Council. Therefore, they should receive some or all of the compensation being received by the Land Council.

Apart from the basic fairness of the fact that if the Traditional Owners are taking over some of the functions of the Land Council, they should receive some of the Land Council's payment, amending these royalties would likely have a number of positive impacts for affected communities. Firstly, it is likely to improve decision-making around how royalties and monies are spent. An in-community body like a Traditional Owners corporation is better placed to effectively spend royalties and other incomes for the benefit of the community than external bureaucracies like Land Councils and the ABA. Apart from having local knowledge of the unique challenges faced by their community, local decision-makers are situated within the community itself; meaning they are more directly accountable to community members. Furthermore, as outlined above, Traditional Owners would transition to negotiate these agreements having

established a track record of good governance. Land Councils and the ABA have never had to establish such a track record.

Receiving a larger share of the royalties income should also lift living standards in communities and create a larger incentive for Traditional Owners to engage in more economic activity.

Measurement and Evaluation

So far, most evidence for improved socio-economic outcomes in Township Leasing communities is anecdotal. The OTL should establish a measurement and evaluation model that tracks the economic and social performance of the communities beyond simply the rents collected. This would help develop a fuller picture of how Township Leasing is impacting communities. In addition to standard socio-economic measures like employment and life expectancy, this should include less tangible things like trust, optimism, hope for the future and community pride.

Conclusion

Deprivation on ALRA land and other Indigenous land in Australia should be understood as the result of the extractive institutions that don't deliver political and economic rights to the broad spectrum of people living there. Genuine Indigenous economic, cultural and social renewal in these places won't happen until that is rectified.

There is some evidence that Township Leasing has contributed to the green shoots of this necessary institutional regeneration in participating communities. However, Township Leasing should only be recognised as a worthy first step – not the destination. Full Traditional Owner autonomy and control over their

own land must be the endgame. This process can be achieved by continuing to increase support for Community-Entity Township Leasing; streamlining the negotiation process; extending the scope of Township Leasing; and upgrading the monitoring and evaluation of its impact.

More broadly, anyone interested in Indigenous advancement must recognise the importance of institutional regeneration so that Indigenous Australians on Indigenous land can live with the same hope, aspirations and opportunities as the rest of the country.

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