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# CUTS BOTH WAYS: TENANTS' RIGHTS AND THE DOUBLE-SIDED CONSEQUENCES OF 'SECURE TENURE' IN REMOTE ABORIGINAL COMMUNITIES

by Elly Patira

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On 7 February 2016, public housing tenants from the remote Aboriginal community of Santa Teresa in the Northern Territory commenced unprecedented legal action against the CEO of the Northern Territory Department of Housing ('the Department') in an attempt to address the poor state of housing in their community. In total, 70 individual tenants filed applications in the Northern Territory Civil and Administrative Tribunal (NTCAT), seeking orders under s 63 of the *Residential Tenancies Act 1999* (NT) ('the RTA') requiring the Department, as landlord, to attend to over 600 housing repairs.<sup>1</sup>

Despite almost a decade of reform activities in the area of property and tenancy management, the poor condition of remote Aboriginal housing throughout Australia remains a critical issue. For Aboriginal tenants in Santa Teresa, the filing of applications in NTCAT followed weeks, months and, in some instances, years of tenants repeatedly requesting that the Department attend to housing repairs. At the time of filing, 78 per cent of tenants' households did not have fully functioning facilities required for personal hygiene and the safe removal of human waste and 61 per cent of tenants' households lacked infrastructure required for the safe storage and preparation of food.

The direct and indirect impact of poor housing conditions on the health and wellbeing of Aboriginal people is well documented. Substandard and badly maintained household infrastructure is considered to be a contributory factor in the poor nutritional status and high rates of respiratory, skin and gastrointestinal infections in Aboriginal populations.<sup>2</sup> Furthermore, poor housing in Aboriginal communities has been linked to mental health issues,<sup>3</sup> educational underachievement<sup>4</sup> and criminal offending.<sup>5</sup> As a corollary to these social impacts, housing has also been identified by Aboriginal people in the Northern Territory as their most frequently experienced legal problem, with a startling 54.1 per cent of participants in one survey identifying housing issues as their paramount legal concern.<sup>6</sup>

The Santa Teresa housing claim is the first collective community legal action of its type. It is also the first time that remote Aboriginal tenants in Central Australia have sought to hold a government department to account for the condition of their housing by enforcing provisions of the RTA which required a landlord to repair and maintain housing to a safe and habitable standard.

While the claim is still on foot, it has already had an immediate and significant impact. Upon commencement of the legal action, and without awaiting orders to be handed down by NTCAT, the Department—in an unprecedented departure from its standard repairs and maintenance procedures—engaged a number of private contractors to carry out immediate, wholesale housing repairs in the community. Shortly thereafter, the Northern Territory Minister for Housing, Bess Price, acknowledged that housing in Santa Teresa and other Aboriginal communities 'was not fit for humans', and that the system for delivery of remote public housing services in the Northern Territory required reform.<sup>7</sup>

Thus, while involving relatively routine applications brought under the RTA, the Santa Teresa housing claim represents a significant opportunity to redefine and advance Aboriginal housing rights and standards in Australia.

Given its simplicity, a number of media commentators have questioned why such legal action has not been utilised before. Interestingly, the legal relationship established between the Department (as landlord) and remote Aboriginal tenants is a relatively new one, emerging out of the Commonwealth Government's centralist policy of acquiring 'secure tenure' for government bodies that provide services on Aboriginal land.

This article seeks to understand the Santa Teresa housing claim within this broader context. To this end, it first provides a historical overview of property and tenancy management arrangements in remote Aboriginal communities in the Northern Territory, before exploring those aspects of the Commonwealth Government's

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land tenure and property and tenancy management reforms that have brought remote housing within the purview of the RTA. In turn, it examines the impact of the RTA—and, in particular, the jurisdiction of NTCAT to enforce the Department's obligations as landlord under that Act—on the future management and funding of public housing in remote Aboriginal communities. It concludes that, ironically, despite clear centralist intentions, reform may have actually limited government power and discretion in this area.

## THE APPLICABILITY OF THE RTA IN REMOTE ABORIGINAL COMMUNITIES

### LAND TENURE IN ABORIGINAL COMMUNITIES

Approximately 50 per cent of the Northern Territory's land mass consists of discrete parcels of communally held, inalienable, freehold Aboriginal land, granted under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ('the ALRA'). The land on which Santa Teresa's public housing is located is Aboriginal land of this nature.

However, it must be noted that land tenure in Aboriginal communities is not uniform—the nature of ownership, conditions of land use and legal structure and identity of Aboriginal owners varies greatly throughout the Northern Territory and throughout Australia.<sup>8</sup> Notwithstanding this lack of uniformity, the Commonwealth Government's 'secure tenure' policy and property and tenancy management reforms have been pursued nationally, in various iterations.

Thus, the legal relationship between the Department and public housing tenants in Santa Teresa is analogous to relationships arising between government bodies and public housing tenants in many other (but certainly not all) Aboriginal townships and living areas throughout Australia. While an examination of these different types of land tenure and property and tenancy management arrangements is beyond the scope of this article, it is nonetheless important to acknowledge both the potentially far-reaching implications of the Santa Teresa housing claim, as well as limitations that may arise in invoking the RTA in Aboriginal communities where land tenure or property and tenancy management arrangements considerably differ.

### HISTORICAL APPROACHES TO ABORIGINAL PROPERTY AND TENANCY MANAGEMENT

In order to understand how recent reforms have enlivened the RTA, it is first necessary to examine the historical practices and policies underpinning remote property and tenancy management in the Northern Territory.

Prior to 2008, the Northern Territory's remote Aboriginal housing stock—consisting of approximately 6000 dwellings housing

63 per cent of Aboriginal adults in the Northern Territory<sup>9</sup>—was managed by a number of discrete, community-based Indigenous Community Housing Organisations ('ICHOs'). Approximately 75 per cent of ICHOs were constituted by, or closely intertwined with, local Aboriginal community councils.<sup>10</sup> While very few ICHOs held formal tenure over community housing lots—such as legal ownership or leasehold interests—they were nonetheless responsible for, and funded to manage, tenancy and housing maintenance services.<sup>11</sup>

In Santa Teresa, housing was historically managed by Ltyentye Apurte Community Government Council, even though the land on which the housing was situated was owned by the Santa Teresa Aboriginal Land Trust (on behalf of the traditional Aboriginal owners of Santa Teresa). Despite the fact that s 19 of the ALRA permitted the long-term leasing of land in Santa Teresa, the Community Government Council did not hold a lease over the community housing lots.

Informal land use arrangements of this nature were commonplace in Aboriginal communities throughout Australia. According to Leon Terrill, Research Director at the Indigenous Law Centre at the University of New South Wales, land was allocated for use in accordance with community needs, with informal arrangements considered preferable to the expense of negotiating and granting formal leases.<sup>12</sup>

For Aboriginal residents, informal land use arrangements significantly impacted the statutory protections available to them as residential housing tenants. This is because tenancy rights and obligations arising under the RTA only inhere to tenancy agreements under which a person grants to another person for valuable consideration a right ... to occupy premises for the purpose of residency.<sup>13</sup>

While ICHOs were responsible for community housing and collected a management fee or 'rent' from individual residents,<sup>14</sup> they did not grant individual occupancy rights to those residents. In fact, the informal nature of land use arrangements meant that, legally, they had no such right to grant.<sup>15</sup> Accordingly, these residential housing arrangements fell outside the purview of the RTA.

Even to the extent that ICHOs *could* or *did* grant a right of occupancy to individual tenants, ICHOs were organisations managed and operated by local Aboriginal community members (some of whom were also traditional owners). Housing services were based on flexible and customary tenancy arrangements in which 'rent-setting, occupancy numbers and management of property damage tended to be personalised and poorly enforced'.<sup>16</sup>

Entirely reliant on government funding to deliver housing services, the scope of ICHOs' operations was limited by the adequacy of such funding. Thus, there was little utility in, and even less local appetite for, enforcing tenancy rights against ICHOs. Indeed, the applicability of the RTA was beyond the contemplation of both Aboriginal residents and legal service providers operating in remote Aboriginal communities.

Furthermore, there existed no clear legal obligation on the Commonwealth or Territory Government that could be enforced by Aboriginal tenants to ensure that remote housing was repaired and maintained to a safe and habitable standard. Accordingly, the condition of and level of investment in housing infrastructure in remote Aboriginal communities was subject to the whim of government policy, with funding allocations characterised by a long-term failure to adequately provide for Aboriginal populations in remote communities.<sup>17</sup>

### **THE 'SECURE TENURE' POLICY AND PROPERTY AND TENANCY MANAGEMENT REFORMS**

From at least 2005, a paradigmatic shift in the Commonwealth Government's Aboriginal land tenure policy began to emerge, underpinned by a critique of communal ownership that characterised individual property rights as necessary for economic and social development in remote Aboriginal communities, and communal title as inevitably inhibiting such development.

In parallel with the Northern Territory National Emergency Response of 2007, the Commonwealth Government aggressively pursued interventionist reforms in the areas of land tenure, and property and tenancy management.<sup>18</sup> These reforms were underpinned by a 'secure tenure' policy focused on government bodies obtaining formal leasehold interests over Aboriginal land.

The Memorandum of Understanding on Indigenous Housing, Accommodation and Related Services, entered into between the Commonwealth and Territory Governments in 2007, was an early iteration of this 'secure tenure' policy.<sup>19</sup> Relevantly for the purposes of this article, the memorandum made continued government investment in new housing and refurbishment works in remote Aboriginal communities—delivered through what became the Strategic Indigenous Housing and Infrastructure Program—contingent upon long-term leases being granted by Aboriginal landowners to the Department.<sup>20</sup>

While the Commonwealth Government initially sought 99-year whole-of-township leases for this purpose,<sup>21</sup> it later settled on a minimum requirement of 40-year leases over existing and future community housing. Corresponding property and tenancy

management reforms transferred responsibility for housing to the Department, to be managed under a 'mainstream' public housing framework. Separate legislative reforms had the effect of disbanding most ICHOs.

While these reforms were initiated by the Howard Government, they were also pursued by subsequent Labor and Coalition governments, with only minor modifications. Ultimately the arrangements contained in the memorandum, including with respect to property and tenancy management reforms and funding conditions relating to 'secure tenure', were incorporated into, and subsumed by, the Council of Australian Governments' 2008 *National Partnership Agreement on Remote Indigenous Housing*.<sup>22</sup> This 10-year national funding agreement continues to be implemented today.

**Poor housing in Aboriginal communities has been linked to mental health issues, educational underachievement and criminal offending.**

### **'SECURE TENURE' IN THE NORTHERN TERRITORY**

In the Northern Territory, the Commonwealth Government primarily pursued its 'secure tenure' policy through the 'negotiation' of rent-free, 40-year leases over community housing lots in 73 remote Aboriginal communities. In pre-contractual representations aimed at inducing Aboriginal landowners into consenting to the leases, the Commonwealth committed to providing funding for a program of capital works to refurbish existing housing in each community. Despite chronic overcrowding in Santa Teresa, no funding was committed to the construction of new housing.

While the 40-year housing precinct leases were characterised as 'voluntary' in nature, the Commonwealth made expressly clear that the funding of capital works, and all future government funding of housing infrastructure and services, was entirely conditional upon Aboriginal landowners consenting to the leases. The only alternative, Aboriginal landowners were told, was for communities to take direct responsibility for housing. With the dismantlement of IHOCS, and no further funding offered, there was, in essence, no other option.

Thus, despite significant hostility towards the Commonwealth Government in the wake of the Northern Territory National Emergency Response, frustrations about the non-negotiable nature of the terms of the 40-year housing precinct lease, and

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serious doubts about the Department's capacity to manage public housing, Aboriginal landowners agreed, in all but a handful of cases, to enter into the leases.

In the case of Santa Teresa, the 40-year housing precinct lease was finalised on 21 September 2015, with the Santa Teresa Aboriginal Land Trust granting a head lease over housing lots to the Commonwealth Government's Executive Director of Township Leasing (Executive Director), and the Executive Director simultaneously granting a housing precinct sublease, for a term of six years, to the Department ('the sublease').

While different leasing models were ultimately adopted in different regions of the Northern Territory, the practical effect of these leasing arrangements was largely consistent; that is, implementation of the Commonwealth's 'secure tenure' policy through the formal grant of leasehold interests to the Commonwealth and/or the Department, subject to which a right of occupancy could be granted to individual housing tenants without requiring further consent from the underlying Aboriginal landowners.

## **ENFORCING THE RTA IN REMOTE ABORIGINAL COMMUNITIES**

### ***ENLIVENING THE RTA***

Subject to a number of exemptions (which do not apply in the Santa Teresa housing claim), the RTA governs all tenancy agreements in the Northern Territory—whether written, verbal or implied—that grant a right of occupancy to a person for residential purposes and for valuable consideration.<sup>23</sup> For the purposes of the RTA, a landlord is taken to be the person who grants a right of occupancy under any such tenancy arrangement.<sup>24</sup>

Upon commencement of the Santa Teresa 40-year housing precinct lease, and the simultaneous grant to the Department of the sublease, the Department became the proprietor of a leasehold interest over the community housing lots in Santa Teresa. In accordance with the terms of the sublease, the Department was permitted to grant residential tenancy agreements to Aboriginal residents. In practice, this occurred on a house-by-house basis, either expressly (by way of entry into written residential tenancy agreements incorporating the Department's Remote Public Housing Tenancy Rules), or impliedly, through the Department's continued delivery of property and tenancy management services. In all but a few circumstances rent was payable to, and collected by, the Department in accordance with its Remote Public Housing Management Framework.<sup>25</sup>

Thus, the effect of the Commonwealth Government's 'secure tenure' policy—which pursued the formalisation of the

Department's proprietary interest in and direct management of community housing lots—was that residential tenancy arrangements came to fall within the purview of the RTA.<sup>26</sup> Notwithstanding the underlying Aboriginal ownership of community housing lots, the Department—as both sublessee and grantor of sub-interests in the form of residential tenancy agreements—assumed the legal identity, and the rights and obligations, of a landlord under the RTA.

It is relevant to note that in the case of 'legacy dwellings' (that is, community housing that is considered by the Department to be too deteriorated to meet acceptable community standards, and in respect of which the Department has entered into 'agreements to occupy' and charged, what it asserts, is a housing maintenance levy, rather than rent), the Department has previously expressed the view that such dwellings are outside of the purview of the RTA.<sup>27</sup> However, two months into the Santa Teresa housing claim, this position has not been advanced on behalf the Department before NTCAT.

While landlord rights and obligations are many and varied, they importantly include enforceable obligations to repair and maintain housing to certain standards. In particular, s 48 of the RTA requires that the Department ensures that housing is habitable, meets health and safety requirements and is reasonably clean when a tenant enters occupation; s 57 places an obligation on the Department to maintain housing in a reasonable state of repair and to respond to tenant's requests for repairs with reasonable diligence; and s 63 stipulates strict timeframes for the carrying out of broad-ranging emergency repairs. In Santa Teresa, each of the 70 houses surveyed not only failed to meet the standards set by ss 48 and 57, but also required the carrying out of emergency repairs. Importantly, s 63 also empowers NTCAT to order that the Department carry out such emergency repairs where it has otherwise failed to do so within statutory timeframes (being five or 14 days from receipt of a tenant's notice, depending on the circumstances).

In turn, s 122 of the RTA empowers tenants to apply to NTCAT for compensation for loss or damage (including loss of amenity) suffered by a tenant where the Department fails to comply with its statutory obligations, including with respect to repairs and maintenance. Importantly, parties to a tenancy agreement cannot contract out of these provisions of the RTA.

## **THE FUTURE OF TENANCY AND PROPERTY MANAGEMENT IN ABORIGINAL COMMUNITIES**

There is no doubt that the Commonwealth and Territory Governments understood that the RTA would apply to tenancy

agreements between the Department and remote Aboriginal tenants as a result of 'secured tenure'. Furthermore, the 'mainstreaming' of remote tenancies was an express object of tenancy reform.<sup>28</sup> However, governmental attention focused on the manner in which the Department could use the RTA to enforce obligations against a tenant.

Expectations about Aboriginal tenants' behaviour, and the authority of the Department to control tenancy arrangements, were emphasised by then Prime Minister Kevin Rudd in the course of delivering the government's 'Closing the Gap Report' to Parliament in February 2009:

Indigenous tenants—like all public housing tenants—will be expected to pay rent on time, to cover the cost of any damage and to not disturb the peace of their neighbours.

If people fail to pay their rent, action will be taken to deduct it from their accounts automatically as a condition of remaining. People who damage their homes will be made to cover the cost of any damage and be required to enter into acceptable behaviour agreements. People who allow unacceptable behaviours to occur on their premises will be subject to further action including orders by the Commissioner for Tenancies. And people who wilfully fail to meet these commitments will face eviction.<sup>29</sup>

This approach to tenancy management was consistent with the general nature of government reforms, which, while couched in terms of assisting Aboriginal people to drive economic and social development on their land, had the practical effect of increasing centralised government control and authority over Aboriginal communities.<sup>30</sup>

That the RTA could or would be used by Aboriginal tenants to enforce obligations against the Department was contrary to the thrust of these interventionist reforms and seemingly beyond government's contemplation. In practice, the Department's policies and procedures openly disregarded various tenant-friendly provisions of the RTA. In particular, obligations imposed on tenants under the Department's Remote Public Housing Tenancy Rules extended beyond parallel obligations in the RTA.<sup>31</sup> For example, while the RTA provided that tenants must not keep premises in an unreasonably dirty condition, the Rules require tenants to keep premises in a neat, tidy and clean state.<sup>32</sup>

Similar issues arise in the context of repair and maintenance timeframes. In an effort to minimise the costs involved in contractor services, as well as the difficulties in regulating suppliers working remotely, the Department adopted a practice of 'saving up' tenant requests for repairs until a sufficient number were lodged to

justify engaging a contractor. The result was that the Department intentionally and routinely carried out repairs weeks and months later than statutory timeframes require.

**This approach to tenancy management was consistent with the general nature of government reforms, which had the practical effect of increasing centralised government control and authority over Aboriginal communities.**

For many tenants, this meant significant loss of amenity. In one example, the Department took eight months to engage a contractor to attend to repairs where electricity was not being supplied to half of a tenant's property, even though the occupants were effectively unable to use that part of their property for the intervening period. On a systemic level, the Department's policy of delaying repairs exacerbated the deterioration of housing stock. In one case, a leaking air conditioner in a roof cavity—left unrepaired by the Department for several months—resulted in water damage to, and the ultimate collapse of, the ceiling in a tenant's house.

Against this background, the enlivening of the RTA introduces statutory obligations that are enforceable against the Department by an independent arbitrator applying objective, legal standards. This has significant repercussions, particularly in terms of management arrangements. The enlivening of the RTA means that the Department's management policies and practices, including with respect to the timeliness of repairs and maintenance, must be determined by reference to the RTA. This necessarily requires something of a shift in the Department's autonomous and authoritative approach to property and tenancy management, and also transforms the role of disempowered Aboriginal tenants, who now have the capacity to influence the Department's policies and practices through the enforcement of their statutory rights. This sense of empowerment is complimented by NTCAT's power to order mediation for the resolution of disputes,<sup>33</sup> which provides a forum for discussing systemic issues and reform required to property and tenancy management arrangements in order to ensure compliance with the RTA.

**THE FUTURE OF FUNDING FOR TENANCY AND PROPERTY MANAGEMENT IN ABORIGINAL COMMUNITIES**

There are numerous factors that negatively impact upon housing conditions in remote Aboriginal communities, including chronic

overcrowding, cultural differences relating to housing use, problems with design, siting and quality of construction of existing housing and the practical difficulties in conducting routine maintenance and repairs.<sup>34</sup> Ultimately, however, the standard of housing in Aboriginal communities has historically been dictated by government funding allocations, which have been characterised by a long-term failure to adequately provide for Aboriginal populations in remote communities.<sup>35</sup>

The 'secure tenure' policy was implemented on the premise that clarification of legal responsibility and authority over fixed assets would provide the certainty required for the government to properly invest in public housing in remote Aboriginal communities and ensure access for repairs and maintenance.<sup>36</sup>

In Santa Teresa, the Commonwealth Government committed \$9 million for the Department to carry out housing refurbishment works in the community, in exchange for traditional owners' consent to enter into the 40-year housing precinct lease. Yet, despite the fact that housing in the community does not meet RTA standards, a request for tender has still yet to be issued for these works. Even in communities where capital works under the Strategic Indigenous Housing and Infrastructure Program and the *National Partnership Agreement on Remote Indigenous Housing* have been completed, such refurbishment has done little to deal with systemic problems such as over-crowding and the Department's failure to carry out timely repairs and maintenance. The result is that over-worked houses in harsh climatic conditions quickly revert to a poor and unhealthy state.

Within this context, the enlivening of the RTA has significant repercussions vis-à-vis funding, insofar as budgetary imperatives no longer dictate housing standards. Instead, the level of funding expended will necessarily be determined by the RTA, with the Department obliged to undertake whatever works are necessary to bring housing in line with statutory standards, irrespective of whether adequate funding has been allocated for that purpose.

## CONCLUSION

For Aboriginal people dissatisfied with woefully inadequate housing infrastructure and services, and otherwise disempowered by centralist government policies and reforms that have the effect of undermining Aboriginal ownership and control over their communities, the Santa Teresa housing claim has placed an important focus on the RTA as an tool of empowerment, through which Aboriginal tenants can demand repairs to their housing in accordance with legislative standards. This sense of empowerment is reflected in the growing momentum around the enforcement of Aboriginal tenants' rights, with two

further housing claims lodged on behalf of tenants in Papunya Community and Larapinta Town Camp.

Enlivening the RTA also importantly refocuses the drivers of Aboriginal housing standards, with policy and funding constraints no longer dictating the standard of housing in remote Aboriginal communities. While it is early days, pressure is now mounting on the Commonwealth and Territory Governments to review the delivery of property and tenancy management services in remote communities. With current arrangements under the *National Partnership Agreement on Remote Indigenous Housing* finishing in 2018, it is an opportune time for these issues to be brought into the light. Whatever direction is ultimately taken, it is clear that compliance with the RTA should and must underpin any future arrangements.

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- 1 The *Residential Tenancies Act 1999* (NT) sets out rights and responsibilities of tenants and landlords as well as a dispute resolution mechanism through the NTCAT.
- 2 Australian Indigenous HealthInfoNet, 'Review of the impact of housing and health-related infrastructure on Indigenous health' (Edith Cowan University, 2008), <<http://www.healthinfonet.ecu.edu.au/determinants/physical-environment/reviews/our-review>>.
- 3 B Hunter and R Schwab, 'The determinants of Indigenous educational outcomes' (Discussion paper No 160, Centre for Aboriginal Economic Policy Research, Australian National University, p vi).
- 4 Australian Institute of Health and Welfare, 'Indigenous young people in the juvenile justice system' (Bulletin 109, November 2012, p 4), <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129542188>>.
- 5 Alison Vivian and Eloise Schnierer, 'Factors affecting crime rates in Indigenous communities in NSW: a pilot study in Bourke and Lightning Ridge' (Community Report, University of Technology, Sydney, 2010, p 17), <<https://www.uts.edu.au/sites/default/files/FinalCommunityReportBLNov10.pdf>>.
- 6 Chris Cunneen, Fiona Allison and Melanie Schwartz, 'Access to Justice for Aboriginal People in the Northern Territory', (2014) *Australian Journal of Social Issues* Vol 49(2) 223.
- 7 Radio National, 'NT Housing Minister Bess Price responds to legal action from Indigenous communities', *RN Breakfast*, 25 February 2016, <<http://www.abc.net.au/radionational/programs/breakfast/bess-price/7199564>>.

- 8 Leon Terrill, 'Indigenous Land Reform: An Economic or Bureaucratic Reform?'; (2010) 7(17) *Indigenous Law Bulletin* 3.
- 9 Australian Bureau of Statistics, 4704.0 – *The Health and Welfare of Australia's Aboriginal and Torres Strait Islander Peoples*, (2008), <<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=6442458617>>.
- 10 Rae Porter, 'From community housing to public housing in Northern Territory remote Aboriginal communities: the policy context' (*Working Paper 44*, Desert Knowledge CRC, 2009, p 10), <[http://www.nintione.com.au/resource/DKCRC-Working-paper-44\\_From-community-housing-to-public-housing-in-Northern-Territory-remote-Aboriginal-communities\\_the-policy-context.pdf](http://www.nintione.com.au/resource/DKCRC-Working-paper-44_From-community-housing-to-public-housing-in-Northern-Territory-remote-Aboriginal-communities_the-policy-context.pdf)>.
- 11 Above n 8.
- 12 Above n 8, citing Michael Dillon and Neil Westbury, *Beyond Humbug: Transforming Government Engagement with Indigenous Australia* (2007), 132.
- 13 *Residential Tenancies Act 1999* (NT) s 4.
- 14 Arguably, such management fees—based on a poll tax system—did not constitute valuable consideration.
- 15 This argument is consistent with the approach adopted by NTCAT in the Santa Teresa housing claim, where the capacity of the Northern Territory Government to grant a right of occupancy to individual housing tenants was treated as conditional upon the existence and validity of formal land tenure arrangements.
- 16 Daphne Habibis, Rhonda Phillips, Peter Phibbs and Julia Verdouw, Australian Housing and Urban Research Institute, 'Identifying effective arrangements for tenancy management service delivery to remote Indigenous communities', <[https://www.ahuri.edu.au/\\_data/assets/pdf\\_file/0021/2838/AHURI\\_Positioning\\_Paper\\_No165\\_Identifying-effective-arrangements-for-tenancy-management-service-delivery-to-remote-Indigenous-communities.pdf](https://www.ahuri.edu.au/_data/assets/pdf_file/0021/2838/AHURI_Positioning_Paper_No165_Identifying-effective-arrangements-for-tenancy-management-service-delivery-to-remote-Indigenous-communities.pdf)>.
- 17 Above n 10, p 11.
- 18 See Greg Marks, 'Two sides of the same coin: Outstations policy and land tenure reform' (2014/15) 18(1) *Australian Indigenous Law Review* 49, which makes the important distinction that these reforms occurred in parallel, but not as part of, the Northern Territory National Emergency Response.
- 19 Australian Government and Northern Territory Government, *Memorandum of Understanding – Indigenous Housing, Accommodation and Related Services September*, (2007).
- 20 Ibid.
- 21 See generally and for further discussion of township leasing, Leon Terrill, 'The Days of the Failed Collective: Communal Ownership, Individual Ownership and Township Leasing in Aboriginal Communities in the Northern Territory' (2009) 32(3) *University of New South Wales Law Journal* 814.
- 22 COAG, *National Partnership Agreement on Remote Indigenous Housing* (2008), <[http://www.federalfinancialrelations.gov.au/content/npa/housing/remote\\_indigenous\\_housing/national\\_partnership.pdf](http://www.federalfinancialrelations.gov.au/content/npa/housing/remote_indigenous_housing/national_partnership.pdf)>.
- 23 *Residential Tenancies Act 1999* (NT) s 4.
- 24 Ibid.
- 25 Three houses in Santa Teresa, categorised as 'Beyond Economic Repair' are not subject to rent, and the RTA does not apply to occupancy arrangements.
- 26 At present, approximately 3 per cent of community housing in Santa Teresa has been assessed as 'Beyond Economic Repair'. The Department does not collect any rent or occupancy charges for these properties, and as such they fall outside the RTA.
- 27 See Commonwealth Ombudsman, *Remote Housing Reforms in the Northern Territory*, (2012), <[http://www.ombudsman.gov.au/\\_data/assets/pdf\\_file/0026/29627/Remote-Housing-Reforms-in-the-Northern-Territory.pdf](http://www.ombudsman.gov.au/_data/assets/pdf_file/0026/29627/Remote-Housing-Reforms-in-the-Northern-Territory.pdf)>, 24.
- 28 Commonwealth, *Parliamentary Debates*, House of Representatives, 26 February 2009, p 2031 (The Hon K Rudd, Prime Minister), <<http://www.aph.gov.au/Hansard/rep/dailys/dr260209.pdf>>.
- 29 Ibid.
- 30 Leon Terrill, 'Indigenous Land Reform: An Economic or Bureaucratic Reform?'; (2010) 7(17) *Indigenous Law Bulletin* 3.
- 31 Nadia Rosenman and Alex Clunies-Ross, 'The New Tenancy Framework for Remote Aboriginal Communities in the Northern Territory'; (2011) 7(24) *Indigenous Law Bulletin* 11, 14.
- 32 Above n 28.
- 33 *Northern Territory Civil and Administrative Tribunal Act* (NT) s 118.
- 34 T Lea and P Pholeros, *This is not a pipe: the treacheries of Indigenous housing*, (2010) *Public Culture* 22(1), 187, 191.
- 35 Above n 10, p 11.
- 36 Above n 16, p 20.

Waangenga Blanco  
Jacob Nash  
Bangarra Dance Theatre

