



Indigenous Law Centre

RESEARCH BRIEF

What is Township Leasing?

Never Stand Still

Law

Introduction

Township leasing was introduced in 2006 as a new model for leasing in communities on Aboriginal land in the Northern Territory. There are currently three township leases in the Northern Territory, covering a total of six communities. It has been reported that the traditional owners for at least three other communities are considering a township lease.

The Australian Government would like to see township leases over all major communities on Aboriginal land.

This brief explains what township leases do and how they relate to other recent reforms.

Aboriginal land in the Northern Territory

For historical reasons, there are three different types of Aboriginal land in the Northern Territory:

- town camp land,
- Aboriginal community living area land (CLA land) and
- land held under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA land).

Town camps are small residential areas situated in and around urban centres such as Darwin, Katherine, Tennant Creek and Alice

Springs. There are around 47 town camps in the Northern Territory.

Both CLA and ALRA land are instead situated in more remote areas. CLA land tends to be smaller and is usually situated inside of a pastoral lease. They were historically created as a place for Aboriginal people who had lived and worked on pastoral leases.

ALRA land now comprises around 45% of the Northern Territory. This includes several former reserves – such as Arnhem Land and the Peterman Land Trust – as well as other areas that were returned following a land claim.

Communities on Aboriginal land

There are several hundred Aboriginal communities situated on ALRA and CLA land across the Territory. The majority of these are small, comprising just a handful of houses. There are also 68 larger communities, whose populations normally exceed 100 people, of which 52 are on ALRA land and 16 on CLA land.

It is these communities – and particularly the 52 larger communities on ALRA land – that are the primary focus of township leasing. These communities vary considerably. Smaller communities – such as Milyakburra

and Nturiya – usually have just over 100 residents. Larger communities – such as Wadeye and Maningrida – have over 2,000. In all cases, the majority of residents are local Aboriginal people. As well as residential housing, communities may contain such other infrastructure as stores, council offices, health clinics, schools, visitor accommodation, garages and care facilities for the elderly. Most of that infrastructure has been installed or funded by governments.

The relationship between residents and traditional owners

The terms ‘traditional owner’ and ‘traditional Aboriginal owner’ are used to describe those Aboriginal people who are the owners of land under Aboriginal law. This is complex, and varies between areas, but tends to be based primarily on membership of descent groups called clans.

The ALRA provides for ownership of land by traditional owners. It does so through a three-part ownership system. The formal legal owners of land are bodies called ‘Aboriginal Land Trusts’, however a Land Trust cannot do anything to the land (such as grant a lease) unless it is directed to do so by an ‘Aboriginal Land Council’. In turn, the Land Council cannot give a direction to a Land Trust unless it has consulted with the traditional owners and they have consented to the action. The Land Council must also consult with other Aboriginal people who may be affected, such as local Aboriginal residents. However it is the traditional owners who have the final right to say yes or no.

Not all Aboriginal people living in a particular community will be traditional owners for that land. In fact, in many larger communities the majority of residents are not traditional owners for the community (they may of course be traditional owners for another area of land).

Earlier arrangements in communities on Aboriginal land

It has always been possible to grant leases over ALRA land. Prior to 2007, however, there were very

few such leases inside of communities. There are several reasons for this. The consequence was that land and infrastructure were instead allocated under informal arrangements. For example, while the local council was the exclusive occupier of council buildings (offices, workshops, etc), their rights to do so were unwritten or informal.

The same unwritten or informal arrangements applied to most other infrastructure, although there were exceptions. There were some leases, particularly with respect to store buildings, and some government departments and missions held legacy rights to land under the ALRA. However, most infrastructure was occupied under informal tenure arrangements, as depicted in Diagram One.

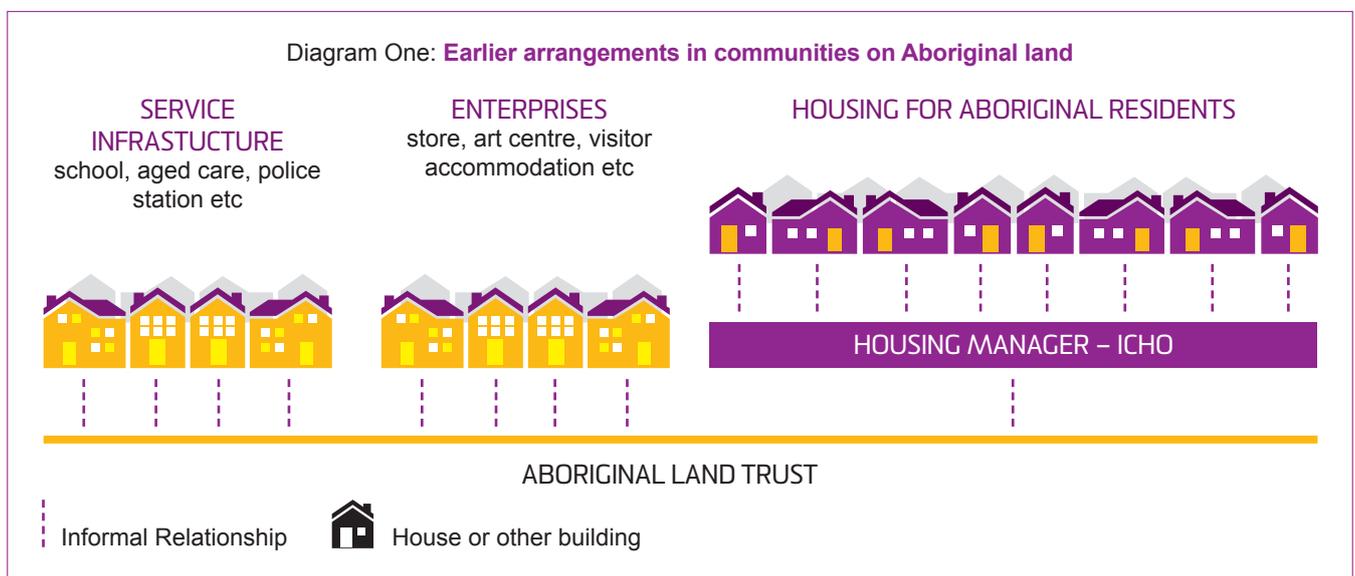
At first these informal arrangements might seem chaotic or uncertain, but they were relied upon for several decades with few reported concerns. For the most part, landowners, residents and organisations operating in communities managed to work together cooperatively.

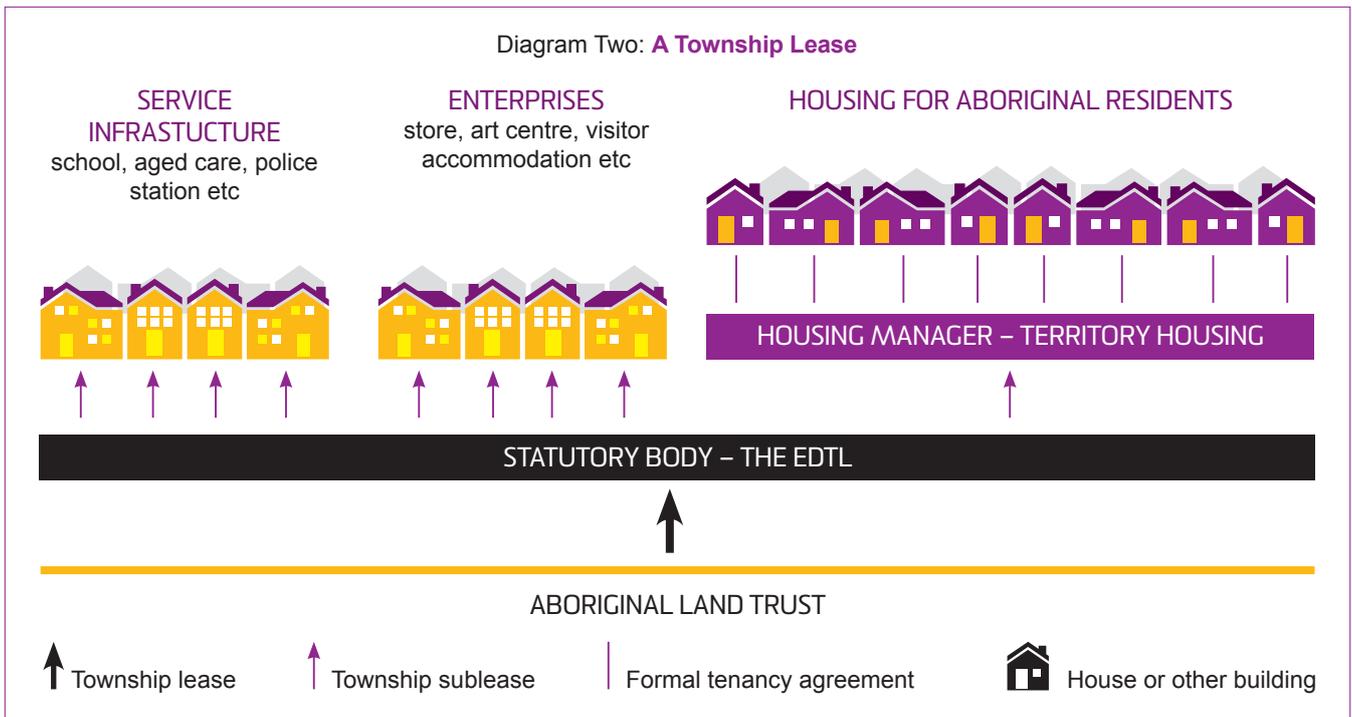
Diagram One also shows how arrangements with respect to housing for Aboriginal residents (residential housing) were slightly more involved. Residential housing was managed by Indigenous community housing organisations (‘ICHOs’), whose job it was to allocate houses to particular individuals and families, conduct maintenance and collect rent.

Township leases

Township leases are one method of ‘formalising tenure’, or introducing more formal arrangements for the allocation and use of land in communities. This occurs through a two-step process.

The first step is that an entire community is leased to a statutory body called the ‘Executive Director of Township Leasing’, or EDTL. This is the township lease itself. The second step involves the EDTL granting subleases to each occupier. This step takes a little longer. When the process is complete it means, for example, that a local council that





previously occupied infrastructure (offices, workshops, etc) informally will now do so under a sublease. The situation after both steps have been completed is depicted in Diagram Two.

Again, Diagram Two shows how the situation with respect to residential housing is different. This is partly because there has been a separate reform in this area. Since 2007, the Australian Government has required that housing in remote Aboriginal communities be leased or subleased to the NT Government's department of housing ('Territory Housing'). This means that there has been a change in housing management as well as more formal arrangements. The change in management has been a shift from community housing (management by a community organisation) to public housing (management by the mainstream government housing department).

This is a reform that affects remote Indigenous housing across Australia. In the Northern Territory, every large community has been affected by this reform, not just communities with a township lease.

Other communities on ALRA land

While the Australian Government would like to see a township lease in all major communities, to date only six out of 52 have agreed. There are still 46 larger communities on ALRA land without a township lease.

However, there have been significant changes in those communities as well. Since 2007 there has been a big jump in the number of leases. For example, in the community of Lajamanu between 81% and 94% of all land portions in the community have now been leased, while at Alekarenghe the number is between 71% and 82%.¹ This is a significant change. Prior to 2007 there were only a handful of leases in those communities.

This leasing process is different in communities without a township lease. The Land Council consults with traditional owners and community residents, often in relation to a number of leases at the same time. If the traditional owners consent, the Land Council directs the Land Trust to grant a lease to occupiers. For residential housing the lease is granted to the NT Government rather than directly to residents.

What is the consequence of a township lease?

So what is the actual consequence of a township lease? With all the leasing that has been going on – including in communities without a township lease – this can seem confusing.

The key issue here is governance. On a township lease, it is the EDTL who manages the process for the grant of subleases. The EDTL is appointed by the government and has staff in Canberra and Darwin.² The EDTL consults with traditional owners through a body called the 'Consultative Forum' but does not need their permission. In other words, it is the EDTL that has the power to make decisions. Where there is no township lease, Land Councils and traditional owners have more control over the process, as it is they who are granting leases to occupiers.

Of course the only way in which a township lease can be granted in the first place is if the traditional owners consent. Township leases are not forced on traditional owners. This may change, if for example the Government decided to only give housing funding to communities with a township lease. Until then, the process for granting a township lease is voluntary. However, once a township lease has been granted control over decisions shifts to the EDTL.

The Government argues that there are advantages to this. As the EDTL does not have to consult traditional owners on

every sublease, it can make decisions more quickly. The EDTL may also have greater resources than Land Councils for community planning.

However, some traditional owners and community residents are concerned about the loss of legal control over community land. Land Councils also argue that they are now able to grant leases just as quickly as the EDTL can grant subleases.

There is another important difference with respect to rent. This is discussed further below.

What about home ownership?

One of the reasons the Australian Government created township leases was to support home ownership. In the past, communities on Aboriginal land in the Northern Territory have not had home ownership.

A township sublease is one way of providing a suitable form of ownership or 'tenure' for homeowners. However, tenure is just one of the elements required for successful home ownership in remote Aboriginal communities. On their own, township leases do not address the other elements. While a considerable amount of money has been spent on supporting home ownership in communities with a township lease, so far there have been only 16 grants.³ Most residents in communities with a township lease still live in rental housing.

It is also possible to have home ownership without a township lease, provided that the traditional owners consent. This can occur through a transferable lease directly from the Land Trust. While this has not been common, it may become more widespread if the other elements of home ownership are addressed.

What about economic development?

The other major reason for township leases was to increase economic development.

Initially the government said that township leasing would increase economic development by creating 'individual ownership' and making it easier for 'individuals to start businesses'. So far this is not what has happened. There has not been a change to individual ownership of businesses.

Instead, the main economic impact of township leasing has been with respect to rent. Previously very few businesses or services providers in communities on Aboriginal land paid rent; now nearly all do. This has been to the benefit of traditional owners, while making it more expensive for businesses and service providers.

Rent is now also being paid in other communities where leasing is widespread, however there are some important differences. First, on a township lease the traditional owners receive a one-off upfront payment, the amount of which depends on the size of the community and what the

government agrees to. For the existing township leases, it has been between \$190,000 and \$5,000,000.

Secondly, on a township lease the EDTL sets the amount of rent whereas in communities without a township lease the Land Council and traditional owners set the rent. So far this is not a big difference as they have been setting similar amounts of rent.

And thirdly, the EDTL collects rent on township leases while the Land Council collects rent in other communities. In both cases the rent is then paid to the traditional owners, however there are some differences. The EDTL is required to deduct its expenses before it pays rent to traditional owners. Land Councils do not deduct expenses because they already receive government funding to perform their role. Also, the EDTL does not pass rent on to the traditional owners until the upfront payment has been repaid or 15 years have passed. So on a township lease the traditional owners get a big upfront payment but may have to wait several years before getting more rent.

Are there alternatives to township leasing?

Several people have suggested alternatives to township leasing. The main differences have been about who has control over and responsibility for community land use. Under a township lease, it is the EDTL. Without a township lease, it is the traditional owners and Land Councils. The Central Land Council has suggested that it should instead be a body called a 'Community Land Corporation', made up of representatives from the community. In the past, the Thamarrur Council suggested it should be a body called a 'town corporation', which would be controlled by the traditional owners. There are also further possibilities; however so far the government has not agreed to any other model. It argues that township leasing is the best model for communities on Aboriginal land in the Northern Territory.

This research brief was written by Dr Leon Terrill, who is an Indigenous Law Centre Fellow and a Lecturer in the UNSW Law School.

- 1 Central Land Council, 'Land Reform in the Northern Territory: evidence not ideology' (2013), 3.
- 2 See <http://www.otl.gov.au/site/>.
- 3 See Leon Terrill, 'What price to pay? Home ownership on Aboriginal land in the Northern Territory' 8(9) *Indigenous Law Bulletin* 14.

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