
WHAT PRICE TO PAY?

HOME OWNERSHIP ON ABORIGINAL LAND IN THE NORTHERN TERRITORY

by Leon Terrill

INTRODUCTION

About a decade ago there was a widespread debate about the introduction of home ownership into communities on Indigenous land. Often that debate was conducted in the most reductive of terms. In particular, a great deal of emphasis was placed on the role of communal land ownership in preventing home ownership and people with concerns about its introduction were characterised as ideologues and naysayers. That was not helpful, as there are a number of real barriers to the introduction of home ownership and those barriers need to be discussed and worked through. On the other hand, neither is it helpful to dismiss the potential for home ownership out of hand. There is considerable evidence that many people living in Indigenous communities would welcome its introduction.

It is nevertheless a complex issue, raising several issues that require careful attention. This article considers just one of those issues, albeit a significant one. It describes approaches to the pricing of houses in communities on Aboriginal land in the Northern Territory ('NT'). The article argues that existing approaches to the pricing of houses—and in particular new houses—are unlikely to result in the creation of a sustainable home ownership market, and put some purchasers at risk of significant financial loss.

The Australian Government is yet to adequately address this issue, although there are some positive signs. Earlier this year, the Council of Australian Governments released a discussion paper in which they identify the risk of purchasers being unable to on-sell a house they have purchased.¹ More recently, the new Minister for Indigenous Affairs acknowledged that in the past prices have been set too high,² although to date his government has not articulated how it intends to address this. As this article demonstrates, the issue does need to be addressed, particularly if the government intends to make widespread home ownership in communities on Indigenous land one of its 'chief goals'.³

The concern of this article is home ownership in discrete Aboriginal communities. It does not address the issue of home ownership on Aboriginal land in urban areas, such as on town camp land, where different market issues arise.⁴

THE HOME OWNERSHIP IN INDIGENOUS LAND PROGRAM

In 2006, the Australian Government created the Home Ownership on Indigenous Land ('HOIL') Program as part of its efforts to introduce home ownership into communities on Indigenous land. The Program has been jointly administered by the Department of Families, Housing, Community Services and Indigenous Affairs ('FaHCSIA') and Indigenous Business Australia ('IBA').⁵ While it is Australia-wide, the focus during implementation has been on communities on Aboriginal land in the NT.

The HOIL Program was devised and promoted as a complement to the Australian Government's land tenure reform program, and in particular the introduction of 'township leasing'. The benefits and risks of township leasing have been considered elsewhere.⁶ For present purposes it is sufficient to note that, for communities on Aboriginal land, township leases are one way of providing for a form of tenure that is suitable for home ownership. This occurs through the grant of 'home ownership subleases', which are long-term and transferable and are not subject to ongoing rent. There are currently three township leases in the NT, covering a total of six communities,⁷ although there have been recent reports that the traditional owners for at least two other communities may soon agree to a township lease.⁸

Under the HOIL Program, residents of communities on Indigenous land are eligible for greater support. In addition to the concessions provided by state and territory governments, such as the First Home Owner Grant and stamp duty concessions, participants in the HOIL Program can receive: a Matched Savings grant of up to \$1000 to assist with meeting the minimum deposit of \$2000; a Good Renter's Discount of 20 per cent of the purchase

price, up to a maximum of \$50 000; loan co-payments of up to \$25 000 over the first ten years of the loan; a grant of up to \$13 000 to assist with meeting up-front costs; and a reduced interest rate.⁹

In light of certain of the criticisms made in this article, it is worth clarifying that the HOIL Program itself is a positive development. One of the key issues that can restrict the creation of home ownership on Indigenous land is the availability of suitable finance. The HOIL Program meets that need in Australia. It makes finance available to people who might be rejected by mainstream lenders and provides additional subsidies that do assist with affordability. However the approach of the Australian Government has effectively been this: if reforms are introduced to enable individualised ownership of houses through long-term leases or subleases, and a suitable mortgage product is provided (with *some* additional subsidies) then the government has done its bit to 'make home ownership a reality'.¹⁰ There are two compelling indicators that this approach has not worked. The first is that the number of grants has been small. The second is that some people appear to be paying too much for houses. Each of these is described below.

THE SMALL NUMBER OF HOME OWNERSHIP GRANTS

The HOIL Program was provided with a large budget and a target of providing 460 loans in eight communities across Australia during its first four years (2006-10). The Australian National Audit Office ('ANAO') conducted a review of the Program in 2010 and found that only 15 loans had been granted during this period, all in the NT.¹¹ In the period since then, there have been at least two additional grants in the NT, bringing the current total to around 17.¹²

This is clearly far less than was anticipated. In fact, at the end of four years the Program had achieved less than 4 per cent of its target outcome. This was not for lack of trying. As part of the Program, the Australia Government funded the construction of 49 new houses for sale to Aboriginal residents: 10 each in the outstations of Wudapulli and Nama, near Wadeye, and 29 in the community of Wurrumiyanga.¹³ Wurrumiyanga, which is situated on Bathurst Island, was the first community to be made the subject of a township lease, which is why it has been a focal point for the introduction of home ownership. The outstations of Wudapulli and Nama are not the subject of a township lease, and it is less clear why they were chosen.

By July 2010 only three of these 49 houses had been sold to community residents under the HOIL Program.¹⁴ Forty

five were instead transferred to the NT Government to be used as public housing.¹⁵ The three houses that were sold to residents were all in the community of Wurrumiyanga, which is where majority of home ownership has occurred: 16 of the 17 home ownership grants known to this author occur in that community, while the seventeenth is located elsewhere on the Tiwi Islands.¹⁶

It is worth considering why there have been so few grants of home ownership under the HOIL Program. In their report, the ANAO attributes this result primarily to delays in the implementation of appropriate tenure arrangements.¹⁷ This is not a conclusion that withstands scrutiny. It cannot explain why at least 45 of the 49 houses that were constructed for sale to residents did not sell. There were no concerns with tenure arrangements here. Rather, it appears that there was too little demand for those houses at the (relatively high) price at which they were being offered. The Australian Government's approach to the pricing of those houses has been to sell them at cost. That is, the sale price reflects the costs of construction and acquisition of the land, although at least in some instances IBA has absorbed costs associated with site preparation (such as clearing the land), external works (power, water) and project management.¹⁸

While it has varied between sites, the costs of construction have been high. Four of the houses built at the outstations of Wudapulli and Nama were the subjects of a special Ministerial announcement in 2007, and received media attention at the time.¹⁹ Information provided to the Senate in 2008 shows that those four houses cost a total of \$3 434 224 at an average of \$850 000.²⁰ The reason that these houses—together with all of the other houses built at Wudapulli and Nama—were never sold, and were instead transferred to the NT Government for use as public housing, is because 'to be affordable for residents, prospective purchasers would have required a level of subsidisation beyond what was available under the HOIL program'.²¹ It appears that in Wudapulli and Nama construction costs were particularly high as the Government was pushing for quick implementation of its flagship program. Construction costs have been less in Wurrumiyanga, but it is still the case there that at least 25 of the 29 houses constructed for sale instead became public housing.

The construction of houses for sale is just one of three methods by which houses can be purchased under the HOIL Program. The other two are where existing social housing stock is made available for sale to residents and where residents engage a builder directly (sometimes

referred to as 'self-managed construction'). Of the 16 known grants of home ownership in Wurrumiyanga, it appears that eight have been from the sale of existing housing stock, while around four have been self-managed construction and four have been houses constructed by the government for sale.²²

The circumstances in Wurrumiyanga require particular attention, as it is here that the most effort has been made to introduce home ownership. For example, in addition to the programs referred to above, in 2011 the Office of Township Leasing reported that a private builder had been granted permission to build a display home for sale to residents.²³ However the uptake of home ownership has slowed considerably over time. Indeed, there appears to have been no grant of home ownership since 2010.²⁴ Of the existing grants, one was made in 2008, ten in 2009 and five in 2010.²⁵ To put this total in perspective, there remain around 280 houses in Wurrumiyanga that are still the subject of social housing (Wurrumiyanga is one of the largest Aboriginal communities in the NT).²⁶ The recent plateau may indicate that some type of saturation point has initially been reached, where all those with the immediate means and inclination have now purchased a home. However this is speculation, as there may be other

possibilities: for example, others might be watching and waiting before they enter the game.

PURCHASE PRICE AND MORTGAGE AMOUNTS

Each of the three ways in which houses become available for home ownership involves a different approach to pricing. Where existing social housing stock has been sold, the price is simply set by the government. The government takes into account the age and condition of the building, and to date prices for these houses have been set relatively low. Where individuals engage a builder to construct a new home, the price is that which has been negotiated with the builder. Where governments build houses for sale, the price is again determined by the government; however in this case the Australian Government has taken the approach of setting the price at the costs of construction. In all cases, the price is effectively reduced a little as a result of the subsidies available under the HOIL Program.

The combined results of these approaches are set out in the table below, which lists the amount of each registered mortgage for the 16 home ownership subleases in Wurrumiyanga (based on a title search conducted through the NT Land Titles Office).

Table of Mortgage Amounts for Houses in Wurrumiyanga

	Number of mortgagors	Date of registration	Amount
1	Two	1 Jun 2008	\$242 540
2	One	11 Sep 2009	\$217 000
3	Two	11 Sep 2009	\$128 600
4	Two	11 Sep 2009	\$282 070
5	One	14 Sep 2009	\$97 000
6	One	14 Sep 2009	\$110 400
7	One	14 Sep 2009	\$96 400
8	Two	16 Sep 2009	\$66 400
9	Two	22 Dec 2009	\$261 000
10	One	22 Dec 2009	\$84 884
11	One	22 Dec 2009	\$152 640
12	One	6 Jul 2010	\$231 400
13	Two	7 Jul 2010	\$300 000
14	One	7 Jul 2010	\$231 400 ²⁷
15	Two	10 Sep 2010	\$135 555
16	Two	24 Nov 2010	\$231 400

A few observations can be made about this table. First, the spread of amounts reflects the different methods of purchase. It is clear that for the eight grants made from existing social housing stock the prices are considerably lower, ranging from \$66 400 to \$152 640 (after the deduction of subsidies).²⁸ For the other eight houses, the mortgages are instead all above \$200 000, with the highest being \$300 000.

Some further indication of how the subsidies operate in this context has been provided by newspaper reports about the purchase of one of these houses by Nazareth Alfred and Greg Orsto.²⁹ This was an instance of self-managed construction, where the couple engaged a builder to construct a '\$341 000 two-storey' house.³⁰ After subsidies and the payment of a deposit (which may have been small³¹), the couple were left with a mortgage of \$282 700.³² It appears that prices for houses constructed by governments have been substantially similar to those acquired through self-managed construction (and that in Wurrumiyanga both have been far lower than the prices achieved at Wadapuli and Nama).

The second observation to be made here is that several of these loan amounts are high, much higher than has previously been suggested.³³ In 2009, Toohey referred to older houses being valued at \$80 000, giving rise to loans of around \$50 000.³⁴ Both Memmott et al and Hudson refer to the same figures,³⁵ while Hughes, Hughes and Hudson describe only a single loan from IBA for \$100 000.³⁶ In all cases the authors seem to consider only prices for the sale of existing social housing stock, for which the average mortgage has been \$108 985. However the average mortgage for new housing (whether government or self-managed construction) has instead been \$249 601.

Is this a fair or viable loan amount for houses in remote Aboriginal communities?³⁷ This is a complex issue, as it requires making assumptions about the likely behaviour of an emerging market. However the limited published research suggests that these prices are too high, with the consequence that purchasers are at risk of significant financial loss should they sell. That existing research all considers Indigenous communities in Queensland: in 2007, the Cape York Institute suggested that the target price should be around \$100 000;³⁸ in 2009, World Vision argued that an affordable mean sale price would be around \$150 000;³⁹ while in 2010 it was reported that the Queensland Department of Housing put the market value of houses in remote Indigenous communities at between \$80 000 and \$150 000.⁴⁰ It is not the case that

these figures can simply be lifted and applied directly to all Aboriginal communities in the NT. More targeted analysis is required. However, they do strongly suggest that the prices in Wurrumiyanga are being set too high.

It is not a sufficient response to this problem to state that most purchasers have no intention of selling, or do not see their houses as an investment. A person may need to sell when they move for a job, or a couple may be forced to sell when one person dies, or if they separate—there are in short any number of circumstances that might lead to an unplanned sale. And whether planned or unplanned, if vendors are unable to find a purchaser, or are only able to sell at a price that is significantly below what they paid, they will not only make a loss but also face the risk of still owing money on their mortgage. If this does occur, and other people observe this, it will surely have an impact on future participation in home ownership schemes.

How can this issue be addressed? Two approaches have been suggested previously: by providing a greater level of subsidy for new houses,⁴¹ or through the introduction of a buy-back scheme.⁴² Clearly both will require a far greater commitment of government funds than under the current approach. Importantly, this suggests that the introduction of home ownership should not—at least initially—be characterised as an alternative to government support; rather as a different type of government support. The difference between the two types of support is potentially very significant, however it does not help to approach the issue from the blinkered perspective that 'welfare' is the basal problem and therefore all government support is bad.⁴³

CONCLUSION

Until recently, home ownership was not a feature of the housing arrangements in communities on Indigenous land. There are several barriers to its introduction, and this article addresses just one of them. It argues that existing approaches to the pricing of houses for sale inhibit the development of sustainable home ownership markets and put purchasers at risk of significant financial loss. It is heartening that the Australian Government has more recently acknowledged this issue, as it is one that requires careful attention particularly if there is a renewed push for greater home ownership in communities.

Leon Terrill is a lecturer in the UNSW Law School and a Centre Fellow of the Indigenous Law Centre. The Indigenous Law Centre is collaborating with the Aboriginal Peak Organisations of the NT with respect to identifying issues affecting remote Aboriginal housing that require research.

- 1 Council of Australian Governments, Select Council on Housing and Homelessness, 'Indigenous Home Ownership Paper' (2013), 13.
- 2 Patricia Karvelas, 'Price cuts to put homes in reach of poorest Aborigines', *The Australian*, 28 September 2013, 1, 6.
- 3 Ibid, 1.
- 4 It has been reported, for example, that moves are underway to introduce home ownership in the town camp of Ilpeye Ilpeye in Alice Springs although no details have yet been published about pricing.
- 5 On 1 July 2012, the HOIL Program was consolidated with another program to form the Indigenous Home Ownership Program, see Indigenous Business Australia, *Annual Report 2011-12* (2012) <<http://ibaannualreport2012.com.au/outlook-for-the-indigenous-home-ownership-program/>>.
- 6 See, eg, Leon Terrill, 'Five years on: Confusion, illusion and township leasing on Aboriginal land' (2011) 1 *Property Law Review* 160.
- 7 Office of Township Leasing, *Current Leases*, (Australian Government, 2013) <<http://www.otl.gov.au/site/current.asp>>.
- 8 For the communities of Gunbalanya and Yirrkala, see Patricia Karvelas, 'Truancy army to get kids to school', *The Australian*, 31 October 2013, 1.
- 9 Auditor-General, 'Home Ownership on Indigenous Land Program' (Audit Report No.23 2010-11, Australian National Audit Office, 21 December 2010), 17.
- 10 Commonwealth, *Parliamentary Debates*, House of Representatives, 31 May 2006, 5 (Mal Brough).
- 11 Auditor-General, above n 10, 18.
- 12 A title search of the community of Wurrumiyanga conducted on 13 February 2013 reveals two further registered grants. The author has not seen any reports of home ownership grants elsewhere.
- 13 Auditor-General, above n 10, 59-62.
- 14 Ibid, 62.
- 15 Ibid, 61. It would appear that the remaining house was in the process of being sold, bring the total number of purchases under this aspect of the Program to four.
- 16 Ibid, 18.
- 17 Ibid, 18-9.
- 18 Ibid, 62.
- 19 See Mal Brough, 'Four Indigenous families take the road to home ownership in NT' (Media Release, 3 May 2007); Australian Broadcasting Corporation, 'Housing sector wary of Wadey home-owner plans', *The World Today*, 4 May 2007, (Anne Barker).
- 20 Community Affairs Committee, Senate, *Examination of Budget Estimates 2007-2008, Additional Information Received, Consolidated Volume 3, Families, Housing, Community Services and Indigenous Affairs Portfolio*, (26 February 2008), 103-4, 108. See also Patricia Karvelas, 'Cost blowout for NT houses', *The Australian*, 3 June 2008, 1.
- 21 Auditor-General, above n 10, 60.
- 22 See Ibid, 58, 62-3, which describes the numbers as at July 2010. Two further grants of home ownership have occurred since then: it appears most likely that one was the sale of the remaining house constructed by IBA under the 'kick start' program, and the other (based on its price) was the sale of existing social housing stock.
- 23 Greg Roche, 'Executive Director of Township Leasing Annual Report 2010-2011' (Australian Government, 2011), 4, 20.
- 24 The most recent date upon which the author conducted a title search was 13 February 2013. There were no further registered grants at that time.
- 25 See table below.
- 26 Pat Watson, 'Executive Director of Township Leasing Annual Report 2009-2010' (Australian Government, 2010), 9.
- 27 These first 14 correspond with those described in the Auditor-General's report at above n 10.
- 28 The ANAO note that all existing houses were in need of some work, and purchasers borrowed additional funds to carry out renovations, Auditor-General, above n 10, 58.
- 29 As it is not necessary to the article, the names of other mortgage holders are not provided here.
- 30 Natasha Robinson, 'Serious delays stymie remote housing', *The Australian*, 11 December 2010, 5.
- 31 The minimum deposit required under the HOIL Program is only \$2000, see Auditor General, above n 10, 17.
- 32 Alfred and Orsto are the holders of the mortgage listed at number 4 on the table.
- 33 Other than in the Auditor-General's report, which accurately states the average loan amount, albeit in a footnote, see page 22 n 5.
- 34 Paul Toohey, 'A New Lease of Life', *The Weekend Australian Magazine (Sydney)*, 10-11 January 2009, 14, 18.
- 35 Paul Memmott et al, 'Indigenous Home-Ownership on Communal Title Lands' (Final Report No. 139, Australian Housing and Urban Research Institute, November 2009), 24; Sara Hudson, 'From Rhetoric to Reality: Can 99-year Leases Lead to Homeownership for Indigenous Communities?' (Policy Monograph 92, Centre for Independent Studies, 2009), 16.
- 36 Hughes, Helen, Mark Hughes and Sara Hudson, 'Private Housing on Indigenous Lands' (Policy Monograph 113, Centre for Independent Studies, 2010), 6.
- 37 To be clear, the issues in areas such as town camps will be very different, particularly if the market is open.
- 38 Cape York Institute for Policy & Leadership, 'From Hand Out to Hand Up' (Cape York Welfare Reform Project Design Recommendations, May 2007), 110-11.
- 39 AAP, 'Mapoon land 'too expensive' for locals', *The Sydney Morning Herald* (Sydney), 4 September 2009 <<http://news.smh.com.au/breaking-news-national/mapoon-land-too-expensive-for-locals-20090904-faot.html>>.
- 40 Tony Koch and Sarah Elks, 'Making great Aussie dream come true', *The Australian*, 7 December 2010, 7.
- 41 Cape York Institute, above n 39, 110-11.
- 42 See Paul Memmott et al, 'Indigenous Home Ownership on Communal Title Lands' (Positioning Paper No. 112, Australian Housing and Urban Research Institute, January 2009), 11. See also Council of Australian Governments, above n 2, 13.
- 43 The characterisation of government benefits is a very significant issue for remote Aboriginal communities. It is beyond the scope of this article to address that issue here.