



Cape York Institute For Policy and Leadership
Submission in response to ‘Indigenous Home Ownership Issues Paper’
21 September 2010

Creating opportunity and choice for home ownership and economic development in Indigenous townships

1 Introduction and overview

Progress is needed on two fronts for achieving home ownership in Cape York Indigenous communities. First, it is necessary to renew the effort in existing but lagging policy areas, and second, the policy reform agenda must account for negative unintended consequences created by social housing policy.

The current social housing system in Cape York Indigenous communities remains a permanent destination that undermines and erodes positive incentives and individual motivation. In this regard, the Federal Government’s current push to tie social housing investment to 40 (plus 40) year leases threatens to further crowd out incentives for housing choice and fail to make necessary enabling investments in the land administration system. The net effect of this policy push will be to further entrench the current problems of social housing and delay home ownership and housing choice for many years.

The Cape York Institute is seeking to drive policy reforms for housing and land across Cape York Indigenous communities that will result in the creation of opportunity for individuals and families to take control of their housing situation and to be able to use their land for home ownership or other purposes.

It is critical that public expenditure on Indigenous land and housing in Queensland Indigenous communities is used to create a permanent platform of tenure and rights that can enable home ownership and other purposes. The Cape York Institute perceives at least four new priority areas of work to support Indigenous home ownership on Cape York:

1. Support ‘Katter’ leaseholders by strengthening property rights and supporting lessee aspirations for home ownership and economic development.
2. Seek reform and investment in the land administration system operating in Cape York indigenous communities to allow home ownership and other purposes to become a transaction that has the same support and characteristics as a transaction in an equivalent mainstream township.
3. Ensure that the titling and leasing provisions available in Queensland Indigenous communities can enable the creation of secure and transferable interests in the land.
4. Development of a policy to guide what price people living in Cape York Indigenous communities should reasonably pay to gain individual ownership of their land and by what process.

This submission builds on housing policy (including tenancy reform and home ownership) already articulated in previous work by the Cape York Institute in the two volumes of *From Hand Out to Hand Up* (CYI, May and November 2007) and the principles outlined in *The Cape York Agenda – “fundamental transformation through radical reform”* (CYI 2005).

2 The protection and strengthening of existing rights and support for home ownership aspirations: Katter leases on Cape York

Many indigenous people from Cape York already hold perpetual leasehold titles that could enable home ownership. The leases are held in the form of 'Katter' leases – perpetual leases that were granted in the mid to late 1980's by the Hon Bob Katter MP in his role as a Queensland Government Minister.

There are several hundred 'Katter' leases on Cape York with a high concentration of these leases in Kowanyama and Pompuraaw town areas. These leases include vacant serviced land and serviced land with housing. Katter leases are a valuable property right, but have never been given the necessary institutional or legal support to enable the realisation of the rights and benefits that they were intended to proffer.

The Cape York Institute has been made aware of recent instances where government has approached Cape York Katter leaseholders with the proposal that they voluntarily surrender their leases in return for the right to occupy new social housing. New social housing would be constructed on a 40 year social housing lease held by the Queensland Government and granted on the basis of lease payments to the local Indigenous council (the process of voluntary surrender would see a Katter lease revert to DOGIT tenure and then a 40 year social housing lease could be granted to the Queensland Government by the local Indigenous Council).

The Cape York Institute has very strong concerns with the principle of voluntary surrender of a perpetual leasehold title. The objective for Indigenous home ownership is to create the opportunity for individuals and families to take control of their housing situation and choose to have a secure and transferable title for home ownership. If lessees have no aspiration to pursue home ownership they would still reasonably expect to have the choice to sell or sublease their land, rather than voluntarily surrender their land.

The Cape York Institute has become aware of many Katter leaseholders of vacant serviced land who have expressed their plans and desire to build their own home on their lease. This is an excellent opportunity for the Australian and Queensland Government to support and achieve the construction of new homes for home ownership within Indigenous communities. For example, IBA could immediately begin to test the aspiration and circumstance of known Katter lessees for existing home ownership support programs.

There are several legal and administrative issues that policymakers and government must address to support this group of landholders:

- Strengthen the security and transferability of leases, including the removal of discretionary government powers over lease transfers.
- Resolve outstanding issues of probate. There are many instances where lessees have passed but with no instructions about who the lease is to transfer to.
- Resolve the issue of Katter leases that were issued but not formally registered. A legal precedent has been set in *Murgha v State of Queensland [2008] FCA 33* (25 January 2008)).

3 The land administration system in Cape York Indigenous communities requires significant investment to enable home ownership and other purposes

Efforts to progress home ownership as part of the Cape York Welfare Reform project have highlighted the inability of the land administration system in Cape York Indigenous communities to facilitate the creation of secure and transferable interests in the land. Housing and other buildings have been built in Cape York Indigenous communities for thirty years or more without any cadastral surveys or complete town plans.

An unintended consequence of the Australian Government's policy push on Indigenous social housing is that the Queensland Government has abandoned existing plans to holistically invest in the land administration system in Cape York Indigenous communities.

With regard to home ownership, the operation of the land administration system is a primary determinant of the transaction costs faced by individuals and families. Without a significant shift in current policy focus and effort it is very unlikely that aspirant home (or business owners) in any Cape York Indigenous community will ever be able to meet the administrative and regulatory burden required to create a private interest in the land. High transaction costs and uncertainty have, and will continue to overwhelm individual enterprise and aspiration.

Land administration in non-Indigenous communities operates in stark contrast as a carefully managed and well resourced cornerstone of economy designed to facilitate simple transactions that empower and protect individual and family rights.

Therefore, a land administration system must be designed and implemented in Cape York Indigenous communities that delivers equivalent level of land administration services as provided to non-indigenous communities of a similar size and location. This means that land administration issues, including cadastral survey, reconfiguration, retrospective development approvals and native title, are resolved to the point that registered lots are created for all land in township areas and for leases that were previously created or were promised in townships and surrounding areas.

As a first step, RSD communities in Cape York (which are the same as the Welfare Reform communities) and Mapoon (World Vision Home Ownership project) should be given the immediate commitment and subsequent investment to achieve a cadastral standard that is equivalent to a mainstream township of comparable size and location.

The necessity of town and development planning must not be misread by government as a green light to apply an 'off the shelf' planning scheme. Town plans must capture and articulate the vision that local people have for their communities. What is critical for the longevity and ultimate success of planning schemes is that there is 'buy in from those who really care about the village, the residents who live, work and raise their families there' (From Hand Out to Hand Up: vol.2, 2007, p. 168).

The implementation of a land administration system will also require development of a system of rates and charges that can be used by Indigenous councils to levy rates and charges for land that is used for home ownership or other purposes. There is evidence to suggest that the issue of rates and charges has been badly neglected in the

rush to create 40 year social housing leases with these agreements using a one-off rating formula negotiated between government and councils.

4 Testing the adequacy of Queensland leasing provisions to create secure and transferable titles on Indigenous land

Registered lots and permanent survey lines (and all associated steps needed to achieve this) must form the basis of land administration reform in townships. The tenure that registered lots should be held under is, however, a question that requires investigation. Some of the critical issues that need to be considered are:

- The tenure over registered lots must be able to create a secure private interest that is transferable.
- The titling and tenure system must be recognised by financial lenders and understood by potential purchasers.
- There must adequate institutional and legal support for the tenure and titling system.

There are significant risks if these issues are not addressed including that transaction costs will be too high and that secondary markets will not be able to form. A significant yet poorly understood risk to the current 99 year lease approach in Queensland is the untested commitment of the Queensland Government to support a special land tenure instrument through legislation and administrative support that does not fit easily into the existing institutional and legal framework. The experience with Katter leases, as a special titling instrument, highlights the types of issues that require forethought and attention.

The Cape York Institute will seek to test the efficiency, effectiveness and equity of lease provisions available to Queensland Indigenous communities and compare them to legal and administrative arrangements that support similar mainstream tenures.

5 Determining a price and process for local individuals and families to gain private ownership of their land

Local people in indigenous communities that have a local historical or family connection are beneficiaries of the arrangements that are meant manage the land for their benefit. Although 99 lease provisions have been created in Queensland, there is no policy or process to guide access and control of the land for private ownership. Work is urgently needed to settle this critical issue.

The Queensland Department of Environment and Resource Management has proposed a land valuation model where people pay a proxy market land valuation for access to serviced land (as an 'upfront rental charge' for access to a 99 year lease) with proposed DERM valuations ranging from \$4000 in Aurukun to \$20000 in Yarrabah for a standard house block. The payment would be made from the individual to the trustee of the community. Cape York Partnerships has challenged this position by supporting a principle that local people should not have to pay an 'upfront rental charge' to access land for home ownership because it is already their land. For example, for the sale of existing houses to tenants, there would be no cost associated with the land component.

Of significant concern for the construction of new homes for home ownership is that vacant serviced land in communities is a scarce commodity and the Queensland Government is seeking to hoard existing serviced land for future social housing through the creation of 40 year social housing leases. This action will directly crowd out local people interested in building new homes for home ownership or developing land for other purposes. Therefore, a policy should be adopted that requires government to surrender any vacant land held under 40 year leases to local people wanting to gain private ownership of the land to build a house or invest in a business.