



CENTRAL LAND COUNCIL

Community Living Area Land Reform in the Northern Territory Discussion Paper- Central Land Council Response

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Introduction

The Central Land Council (CLC) welcomes the opportunity to respond to the Commonwealth’s Community Living Area (CLA) discussion paper. The CLC provides legal and administrative support to title holding bodies of Community Living Areas throughout the CLC region (see Appendix 2). The CLC continues to emphasise the need for comprehensive reform to CLA title in order to provide residents with control over their affairs, certainty and effective administrative and legal support. Such reform is also necessary in order for the support currently provided by the CLC to be sustainable. The submission of the CLC to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills (‘Senate Committee submission’) remains relevant in this respect and provides useful background for the purpose of this submission.¹

CLAs were granted by the Northern Territory Government and there is a suite of Northern Territory legislation that constrains land dealings on CLAs. These include, but are not limited

¹ <http://www.clc.org.au/publications/content/senate-inquiry-submission-into-the-stronger-futures/>

to, the inability (in all but a few limited circumstances) to grant leases and licences to third parties and constraints imposed by the Planning Scheme on permitted uses.

There is a genuine and increasingly urgent need for reform of the Northern Territory legislation affecting CLAs in order to allow for the residents of CLAs to have more control over their land. This includes the ability for leases or licences to be granted by the Aboriginal land owners for existing and proposed stores, art centres, police stations, power and water assets, offices and other businesses. There is also a need to address the inequitable situation that currently exists under the planning scheme whereby CLAs face much greater restrictions than apply for communities on Aboriginal land.²

Though reform would ideally be led by the Northern Territory Government it is evident to the CLC that there has been insufficient movement by the Northern Territory Government towards addressing this important matter. Accordingly, the CLC supports the Commonwealth using its regulation making powers under the Stronger Futures in the Northern Territory Act 2012, *provided* that the regulations respond to the issues identified in consultations with residents of CLAs and the Land Councils.

Constraints on the rights of CLA land owners to control decisions about land use

As the discussion paper notes, constraints on how CLA land can be used mean that currently, CLA land owners have less control over the use of their land than the owners of other Aboriginal communities in the NT. While it is not true to say that land cannot be used at all for economic development (community stores, for example, are permitted under the planning scheme though they cannot be granted a lease)³ the ongoing and anachronistic constraints on CLA land use are in urgent need of change.

The CLC supports the Commonwealth's stated objective that CLA land owners ought to have the same opportunities to manage their land as other remote Indigenous communities in the NT. It is important to the CLC that the Commonwealth commit to comprehensive reform of CLA title. The CLC, therefore, remains somewhat cautious about the risk of an inchoate staged approach that lifts restrictions on leasing and land use but fails to address more fundamental issues relating to the vulnerability of title and administrative uncertainty.

The discussion paper is right in saying that the legislative and administrative framework which currently applies to CLA land has contributed to uncertainty for CLA land owners in dealing with their land. The CLC does not share the view that this has historically *caused* problems in providing key government services. It must be noted that it is the 'secure tenure' policy of government that insists on leases being in place.⁴ The provision of key government services does not, *per se*, require that leases be in place and government services have

² References to Aboriginal land in this submission have the meaning in the Aboriginal Land Rights (Northern Territory) 1976 Act (ALRA); being inalienable freehold title held in trust on behalf of the traditional Aboriginal owners.

³ http://www.lands.nt.gov.au/__data/assets/pdf_file/0004/25258/Part-6.pdf, *Associations Act* (NT), s 110

⁴ Though historically funding wasn't jeopardised by constraints on CLA title, as noted in the CLC Submission to the Senate Committee submission the CLA communities are now being underserved because of the restrictions and problems associated with formalising third party interests on CLAs.

historically been delivered on CLAs under informal arrangements.⁵ The CLC does, however, agree that opportunities for economic and social enterprise development have been limited by the constraints on the use of CLA land. This has been a problem for CLA communities both large and small.⁶ The CLC, further, supports the payment by governments and third parties of rent to land owners for their occupation and use of CLA land. As well as the payment of rent, the CLC considers that such formalisation appropriately recognises the need to seek permission of the land owners for continued land use.

CLC function to provide assistance

The CLC has historically provided administrative and legal assistance to most CLAs in our region in relation to dealings in their land and other matters (including the initial struggle to secure CLA title). A function reflecting aspects of this work has now been inserted into the ALRA. The CLC happily provides such assistance to CLA communities,⁷ but does not agree that the insertion of a function into the ALRA will always mean that associations and corporations now have the necessary administrative and legal support to deal effectively with their land. In order to be effectively supported by the CLC to make decisions about their land CLA landowners ultimately need comprehensive reform to strengthen the way CLA title is held and to systematise the available support.

The level of administrative and legal support available to CLAs is not as strong as on Aboriginal land because a legislative scheme such as that established by the Land Rights Act does not apply. The ALRA legislative scheme delivers legal and administrative support and provides certainty in relation to leases and licences for third parties. The procedures allow Aboriginal land owners to make binding decisions as a group and decisions are validated by the land council. Certainty is delivered to lessees and licence holders because they can be confident that the correct people were consulted and gave their informed consent to the grant (see Appendix 1 for what would be required to achieve such comprehensive reform).

The 10 larger CLA communities in the CLC region have requested that the CLC assist them in relation to leasing and related matters. However, there is nothing that requires CLA land holding corporations and associations to make decisions through the land council. There is, accordingly, a risk that the CLC will not be aware of existing grants of unregistered interests in land or financial dealings that the corporation or association may be involved in that could jeopardise CLA title (and therefore any third party interests granted).⁸ This situation means

⁵ As noted in the CLC Submission to the Senate Committee submission there is anecdotal evidence that service delivery organisations are choosing not to base themselves in CLA communities and are not prioritising initiatives in CLA communities because it is impasse over obtaining secure leases (which has funding implications because of the secure tenure policy).

⁶ A range of examples are provided in the Senate Committee Submission.

⁷ 22 of the 90 members of the Central Land Council represent Community Living Areas and many more have connections to CLAs.

⁸ There is nothing to prevent an association or corporation that holds title to a CLA for running a business through the same entity which potentially exposes the association or corporation to financial liabilities and renders the title more vulnerable than is the case for a Land Trust under the ALRA which cannot receive monies or engage in other activities.

that the level of certainty provided to lessees and licensees under the ALRA cannot be delivered.

Changed requirements for CLA land owning associations and corporations

The CLC agrees that it is important to lessen the burden of administrative requirements for entities that do not engage in any other activities beyond holding title to CLA land. The best way to achieve this would be to allow for the voluntary conversion of title held by an association or corporation into land held by a CLA Land Trust and not subject to association/corporation reporting requirements that are, in many ways, a poor fit with the purpose of land holding.⁹ No change in beneficial ownership should accompany the conversion to stronger title. The CLC believes that such voluntary conversion to CLA Land Trust title would obviate the need, addressed in the discussion paper, for assistance to be provided to resurrect CLA land owning associations and corporations that are non-operational (see Appendix 1 or further detail).

Ensure the right processes are in place for land dealings

Given the Commonwealth's objective that CLA land owners should have the same opportunities to manage their land as other remote Indigenous communities in the NT, the CLC considers that, as under the ALRA, only a lease period of 40 years or above should trigger the need for NT Ministerial approval. Similarly, in furtherance of the above objective, the planning scheme should apply in the way that it does for towns on Aboriginal Land, rather than being more restrictive.

Other issues about CLA land not listed in this paper that people need to think about

If there is a genuine commitment to economic development and private home ownership the Commonwealth needs to urgently invest in addressing infrastructure constraints around power water and sewerage on CLA communities. Such investment is also needed to increase the availability of serviced lots for future growth of communities as there is currently a critical shortage of such serviced lots in almost all communities.

A related matter that would better facilitate the grant of leases for economic development and achieve 'secure tenure is the need for whole of community cadastral surveys to be funded and implemented as soon as possible so as to minimise the transaction costs associated with formalised land use.¹⁰

⁹ In addition to the issues outlined in footnote 8 the Senate Committee submission notes that most of "[t]he Aboriginal associations and corporations that hold CLA title were incorporated solely for that purpose and generally have no other function than to hold the title. These bodies are often deregistered by the regulator because of failures to comply with technical requirements under the relevant legislation such as reporting requirements and maintaining office bearers and membership."

¹⁰ Part V of the Planning Act treats that grant of any lease of 12 years or more as a subdivision, for which a plan of survey is required. The individual survey of lots would be prohibitively expensive for nascent Aboriginal businesses seeking a formal interest in land. Registration of leasehold interests also improves certainty for third parties and, as such, will further the Commonwealth objective of 'secure tenure'.

Appendix 1: What should a comprehensive CLA reform model look like?

Only comprehensive reform will provide certainty for all parties who are interested in the grant or receipt of derivative interests (whether for commercial activity or service delivery in community living areas).

The three main elements required in order to deliver certainty of dealings with respect to CLAs are:

1. Removing restrictions on dealing with CLA title
2. Addressing the vulnerability of the titleholder
3. Establishing administrative processes for obtaining valid and secure leases

To resolve these restrictions and constraints several relevant Northern Territory laws would need to be amended, in concert, including:

- Associations Act (NT) – Part 6 stipulates that associations or corporations holding title to CLAs cannot deal with land (including granting a lease for more than 12 months)¹¹ without the consent of the Minister. Under section 110, the Minister cannot consent to a dealing in the land except in a very limited number of circumstances such as to provide health, education or housing services to the residents of the CLA (as members of the association or corporation).
- Planning Act (NT) – Part 6 of the Northern Territory Planning Scheme provides for only a limited range of permit uses of CLA land without consent. The extent of these restrictions has fettered economic development in CLA communities more so than ALRA communities.

The key principles that must underpin comprehensive CLA reforms are:

1) Titles to CLA should be held by an entity that exists in perpetuity

A new CLA freehold title should be created with the following features:

- title would be held in perpetuity (and so not vulnerable to resumption under the Pastoral Land Act or winding up by ORIC or the NT Commissioner for Consumer Affairs)
- title held by a 'CLA Land Trust' that solely holds title to and makes decisions with respect to the land of the CLA

¹¹ This applies to CLA land holding bodies that are NT Associations. For CLA land holding bodies that are CATSI corporations the grant of an interest in land of any length requires Ministerial consent.

- the CLA Land Trust would, in a similar manner to Aboriginal land, be able to grant leases, licences and otherwise deal in land (but not alienate the land or encumber the land)

The CLC supports establishing a statutory land trust similar to those the Northern Territory has created through the Parks and Reserves (Framework for the Future) Act and Regulations or the Kenbi Land Trust Act 2011 but, given we are talking about small areas used primarily for community living mineral and petroleum exploration should not be permitted.

2) The transition to CLA title must be voluntary

Existing associations and corporations that hold title to CLAs should have the choice of converting their title to the new CLA Land Trust title.

3) There should be no effective change to the beneficial ownership of CLAs

A CLA Land Trust would be established to benefit the existing members of the association or corporation that currently holds title to a CLA.

4) There should be parity between communities situated on CLAs and communities situated on Aboriginal land under the Land Rights Act

Provisions similar to those in the Land Rights Act in relation to the divestment of interests in Aboriginal land should be replicated in relation to CLA Land Trusts. That is interests may be granted where the landowners understand the nature and purpose of a proposed grant, as a group consent to it and the terms and conditions of the grant are reasonable.

CLA Land Trusts would then be:

- permitted to grant leases, licences and other interests in land to any person for any purpose
- entitled to effective and systematic administrative and legal support by the land councils
- resourced to function effectively and responsively, which will require the provision of administrative and legal support
- able to receive and distribute money received from leases

Appendix 2- Community Living Areas in the CLC Region

Main settlements on CLA title include (brackets indicate name of station/NP/ALT located on):

1. Alpurram (Lake Nash)
2. Atitjere (Harts Range)
3. Bonya (Jinka)
4. Laramba (Napperby)
5. Imangara (Murray Downs)
6. Imanpa (Mt Ebenezer)
7. Irrerlirre/No.5 (MacDonald Downs)
8. Lilla (Watarrka NP/Kings Canyon)
9. Mbunghara (Narwietooma)
10. Mulga Bore/Atartinga (Woodgreen)
11. Tara (Neutral Junction)
12. Titjikala (Maryvale)
13. Ulpanyali (Watarrka NP/Kings Canyon)
14. Wanmara (Watarrka NP/Kings Canyon)
15. Wilora (Stirling)
16. Wutunugurra (Epenarra)

CLAs in the CLC region also include

17. Akapertatyeke (Andado)
18. Akwerrnge (Neutral Junction)
19. Alatyeye (Alkwert ALT/ previously Alcoota PPL)
20. Alngirrweltye/Snake Well (Yambah)
21. Allagara/Annangara (Mount Skinner)
22. Aluralkwa (Arletherre ALT/previously Loves Creek PPL)
23. Alyuen (Aileron)
24. Angal (Pine Hill)
25. Angula (Atartinga)
26. Anyungyumba (Pine Hill)
27. Areyn (Derry Downs)
28. Bamboo Springs/Jirngow (Malngin 2 ALT/previously Waterloo PPL)
29. Djudngaridi/Blue Hole (Limbunya)
30. Dinnie (Elkedra)
31. Ilpurla (Henbury)
32. Imperrenth (Elkedra)
33. Inelye (Huckitta)
34. Injulkama (Amburla)
35. Irlentye (Goyder Stock Route)
36. Irretety (Ooratippra)
37. Irtnwere Tyewelkere (Tyurretye ALT/West MacDonnell NP)

38. Jungarrayiwarnu	(Newhaven)
39. Jurntu Jungu	(Phillip Creek)
40. Karrayarra	(Ngalurrju ALT/previously Central Mount Wedge PPL)
41. Karu Mutu	(Erlunda)
42. Kurripi	(Mount Denison)
43. Mamp	(Coniston)
44. Maperte	(Lucy Creek)
45. Meercantie	(Mount Doreen)
46. Menge	(Tyurretye ALT/West MacDonnell NP)
47. Moondabijerra	(Malngin ALT/previously Mistake Creek PPL)
48. Mount Maiyo	(Kirkimbie)
49. Ngkerralye	(Dneiper)
50. Pantharrpilenhe	(Ambalindum)
51. Pawuwa	(Phillip Creek)
52. Pulkurru	(Lyndavale)
53. Pwerte Marnte Marnte	(Orange Creek)
54. Jutamuling/Swan Yard	(Limbunya)
55. Tyarne	(Huckitta)
56. Ukaka	(Tempe Downs)
57. Ulbulla	(Umbeara)
58. Umalka Tjintjira	(Lyndavale)
59. Urlampe	(Tobermorey)
60. Urremerne	(Deep Well)
61. Utyerrkiwe	(The Gardens)
62. Waju	(Mount Cavenagh)
63. Wanarkula	(Mulga Park)
64. Wapirrka	(Victory Downs)
65. Welere	(Derry Downs)
66. Wirrmalyanya	(Umbeara)
67. Yanginj	(Anningie)
68. Yuturminyi	(Phillip Creek)