



*Final Report*

# Community Land Trusts and Indigenous housing options

authored by

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## ACRONYMS

ACT	Australian Capital Territory
AHO	Aboriginal Housing Office (NSW)
AHURI	Australian Housing and Urban Research Institute Limited.
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALA	Aboriginal Land Act (Queensland)
ALRA	Aboriginal Land Rights Act (NSW)
ANAO	Australian National Audit Office
APRA	Australian Prudential Regulation Authority
ATSIC	Aboriginal and Torres Strait Islander Corporation
BEND	Bega Eco-Neighbourhood Developers Inc.
CLT	Community Land Trust
COAG	Council of Australian Governments
DOGIT	Deed of Grant in Trust
FaHCSIA	Australian Government Department of Families, Housing, Community Services and Indigenous Affairs
FANMAC	First Australian National Mortgage Assistance Corporation
HOP	Home Ownership Program
HOIL	Home Ownership on Indigenous Land program
IBA	Indigenous Business Australia
ICHO	Indigenous Community Housing Organisation
LALC	Local Aboriginal Land Council
LIHTC	Low Income Housing Tax Credit scheme (USA)
LVR	Loan to valuation ratio
NAHA	National Affordable Housing Agreement
NIMBY	Not In My Back Yard
NRAS	National Rental Affordability Scheme
NSW	New South Wales
NT	Northern Territory
SA	South Australia
UK	United Kingdom
US	United States of America
WA	Western Australia

## EXECUTIVE SUMMARY

There is considerable interest in Australia at present in increasing home ownership rates among Aboriginal people and Torres Strait Islanders (hereafter Indigenous people). There is a current drive for housing policy reform to enable innovation and nuance and appropriate tenure adjustments for an important group within the Australian population. As a body of commissioned research in response to a targeted application process, this research project is a direct result of that interest.

While a strong political and policy objective, increasing Indigenous home ownership is a complex issue that gives rise to many legal, policy and practical challenges. Core challenges relate to: existing Indigenous land tenure systems; income and employment profiles of Indigenous households; the capacity and viability of Indigenous organisations; and, diverse conditions across local housing markets. Existing land tenure arrangements on Indigenous lands might not readily enable mainstream forms of home ownership, especially where land is held collectively and not currently subdivided. Many Indigenous households—especially in remote areas—experience low and fluctuating income levels that suggest mortgage-backed home ownership could be problematic. Many Indigenous organisations that operate in the housing field and support local communities have come under pressure from policy and regulatory changes and face uncertain futures. Lastly, many Indigenous communities have small populations and would not open their market to non-community members, so the potential market for ownership in such situations would in all likelihood be very small. In other locations such as mining areas and tourist towns, market conditions are displacing Indigenous people and are unfavourable to affordable home ownership. Local housing market characteristics are especially relevant to policy positions that are considering home ownership as a wealth creation and economic development vehicle for Indigenous communities and households, as the reality of markets in many Indigenous communities would suggest these objectives would most likely not be realised. Policy interventions and program developments therefore need to be considered carefully in order to not unduly expose Indigenous populations to any unreasonable risks of market-based ownership.

Previous research shows that there is interest amongst Indigenous communities in core traits associated with home ownership, such as stability, a sense of ownership and inheritability (Memmott et al. 2009). That research found less interest amongst Indigenous communities in the house as an asset or a wealth creation vehicle; in many locations it may also be unreasonable to expect housing to act as a wealth creation vehicle due to market constraints. Consideration of these aspirations highlights the potential relevance of utilising hybrid tenure forms to diversify appropriate housing options for Indigenous people and communities. ‘Hybrid tenure forms’ refers to a suite of tenure options that span the gap between rental and full ownership models (see Figure 1). The terms ‘intermediate tenure’ ‘shared equity’, ‘shared ownership’ and ‘shared equity home ownership’ are also used to describe models in this space. These include various forms of housing co-operatives, dual mortgage schemes, deed-restricted mortgages and Community Land Trusts (CLTs), which are the focus of this study. All of these hybrid variants reflect attempts to provide accessible tenure forms that can offer stability without undue exposure or vulnerability, most often by balancing or sharing the equity of the housing with a partner organisation. Such hybrid tenure forms exist in marginal numbers in Australia, despite ongoing and growing affordability concerns. There is a need to explore the potential of such models in the Australian housing market in general and in Indigenous communities, as they might be more responsive and appropriate to local housing aspirations and market conditions. Given the challenges of achieving home

ownership among Indigenous households just outlined, consideration of alternative tenure models must begin with recognition that what is required is a range of housing options that do not present unnecessary risk to the resident nor 'trap' residents in a housing tenure and location from which there is no viable exit pathway.

## **Research aims and questions**

This report presents the findings of AHURI-funded research into the potential relevance of models based on Community Land Trusts (CLTs), one form of hybrid tenure, for the Indigenous housing sector. The aims of the project have been to tease out relevant aspects of CLTs as developed overseas and to investigate their resonance with and applicability to Indigenous housing policy objectives, with a practical focus on their potential operation in New South Wales (NSW) and Queensland.

To address these aims five research questions were posed:

1. What are the key features of CLTs as implemented overseas?
2. What outcomes have been achieved?
3. What are the possible applications of CLTs for Indigenous households and how would this vary geographically?
4. What are the legal implications of CLTs?
5. For Indigenous housing policy and housing programs, what are the implications (especially financial) of establishing CLTs?

## **Research process**

Research for the project was undertaken in two phases. Phase 1 addressed the first two of the above research questions and consisted of a desk-based literature review combined with material collected from previous discussions with CLT researchers and practitioners in the United States of America (US) and the United Kingdom (UK). The second phase responded to questions three through five via field work with communities in NSW and Queensland, and by examining Indigenous land title and relevant Acts, undertaking financial modelling and exploring potential governance issues.

The outcomes of Phase 1 were presented in the Research Report 'Principles and practices of an affordable housing community land trust model' (Crabtree et al. 2012), which is a companion report to this Final Report. This Final Report presents findings from the second phase of the project, responding to the remaining questions listed above and documenting the processes through which the research was undertaken.

An Indigenous Advisory Group (IAG) formed at the commencement of the project was central to bringing Indigenous knowledge and engagement to the project. The IAG: workshopped core research questions with the research team; provided guidance on case study selection criteria developed by the team; reviewed the case study shortlist; provided feedback on fieldwork findings and scenarios; and, provided feedback on the draft Final Report. Following the field work, the IAG was expanded to include members of communities that were visited over the course of the research.

Primary research for the project was centred on a case study approach to assessing the potential for adopting or adjusting CLT models for Indigenous housing in specific locations in two state jurisdictions, NSW and Queensland. This fieldwork was supplemented by expert analysis of three areas that would be critical to the successful establishment of a CLT type model for Indigenous housing. First, specialist advice about legal issues that would need to be addressed in order to implement CLTs was

obtained. In particular, expert legal consideration was given to the implications of the NSW Aboriginal Land Rights Act (ALRA) and the Queensland Aboriginal Land Act (ALA). Second, preliminary financial modelling of the costs of core CLT activities in different market contexts was performed, supplemented by interviews with Indigenous and mainstream financial agencies. Third, possible governance mechanisms for delivering CLT programs were examined, in the context of both the existing institutional arrangements for the delivery of Indigenous housing in Australia and international best practice.

## **What is a Community Land Trust?**

As discussed in detail in Crabtree et al. (2012), CLTs are a form of common land ownership where land is held by a private non-profit entity and leased on a long-term basis to members of the community or other organisations. Buildings and services on that land are then held as owned or leased properties by residents, businesses and/or other community housing providers. Ground leases are inheritable, and properties on leased land can be bought and sold at prices determined by a resale formula. This arrangement can offer many of the widely acknowledged benefits of home ownership, including resident control over a dwelling, security of tenure and transfer of occupancy rights, and the potential for asset-based wealth building. Further, this arrangement provides housing that is affordable to residents—whether buying or renting—and which remains affordable for subsequent residents. Affordability is retained most commonly through a locally-determined resale formula contained within the ground lease.

Crabtree et al. (2012) found a high degree of flexibility in CLT programs in the US and UK, whereby CLTs can and do deliver affordable rental, co-operative and owner-occupied housing, as well as provide opportunities for additional commercial and/or community facilities. The sector in the US has provided secure and affordable housing, and has experienced much lower default and foreclosure rates than the open market average during the recent US mortgage crisis. That sector is a few decades old, having started in the 1960s and experienced exponential growth since, fuelled partly by interest in the sector's ability to provide affordable and stable home ownership for lower-income households. There are now over 240 CLTs in the US. The UK sector is only a few years old and emerged from interest in the success of the US sector.

In considering the applicability of CLTs to the Australian context, Crabtree et al. (2012) found that the US and UK sectors are defined perhaps more by a suite of principles than by particular operating parameters. Core principles include the aim of balancing the rights and responsibilities of the householder with those of the community, and the stewardship of community assets and householder wellbeing. These principles are translated into many diverse operating models, outlined in Crabtree et al. (2012), that all work to retain affordability, provide modest equity gain to households, and involve multiple stakeholders in stewardship. For example, CLTs might involve residents, members of the broader community and public representatives on their Boards, and can provide housing via rental, cooperative or mortgage ownership.

## **Testing the potential of the CLT model**

Fieldwork was carried out in three locations in NSW and Queensland. The data obtained from these case studies has been used to generate six indicative scenarios that could be representative of varying housing markets, organisational arrangements and Indigenous housing aspirations relevant to the creation of a CLT.

These scenarios were reviewed by the IAG and community attendees at the final IAG meeting and confirmed as indicative of key issues and attributes on the ground. The six scenarios analysed are:

1. A non-metropolitan housing market region in NSW with an established Indigenous housing organisation operating regionally.
2. A metropolitan housing market in NSW with an established Local Aboriginal Land Council (LALC).
3. A regional housing market in NSW with an established Local Aboriginal Land Council (LALC).
4. A regional housing market in NSW with an established Aboriginal corporation.
5. A regional Queensland housing market with an established Deed of Grant in Trust (DOGIT).
6. A regional Queensland housing market with an established Aboriginal corporation.

## Findings

While each scenario raised particular issues depending on local circumstances, five broad themes that apply across all scenarios emerged from the case study research. The first is the need for public subsidy to underpin any future home ownership schemes for Indigenous households aspiring to move from rental housing into some form of low cost home ownership. Depending on whether new build or existing dwellings are used, funds will be needed for: backlog repairs and maintenance; construction of new homes on existing Aboriginal lands; spot purchases, or land acquisition and new development. Depending on the scale of a CLT and the fee revenue that it can raise, support may also be needed for stewarding a product, ongoing repairs and maintenance and/or training potential buyers. Where moving households into ownership would deplete the pool of affordable rental housing, funding to cover the gap between sales revenue and replacement cost will be required.

Second, all scenarios highlight the issue of access to land that is ready to be developed. Many organisations visited had spare capacity in their land holdings, but little capacity to bring this to development. Others had little or no extra capacity and so would need assistance to bring more land into their portfolios.

Third, market scale was a consistent issue, with most scenarios (other than urban LALCs) representing markets that would in all likelihood be very small and effectively closed, as many communities would wish to limit eligibility to community members and kin. This raises issues regarding the need for workable exit strategies if a household wishes to leave but a suitable buyer cannot be found, which would most likely mean the organisation having the capacity to buy back the property.

The fourth issue concerns the legal treatment of the model and how to separate houses (fixtures) from land, and how ground leases would be treated under the various Acts governing Indigenous land holdings, as well as potential governance models. While unfamiliar and currently not a common treatment of property, the separation of fixtures from land has existing precursors in aspects of the Retirement Villages Acts of NSW (1999) and Queensland (1999), as well as the Australian Capital Territory's Land Rent Act (2008) (see Section 2.1.4). Long-term leases are permissible under the NSW ALRA, subject to approval processes and ministerial notification (see Section 5.2.2). In Queensland, long-term leases can be granted under the ALA as long as core conditions are met – namely, that the lessee is an Indigenous person (see Section 5.2.3). The legal form and treatment of potential CLT-

type models on Indigenous lands has been highlighted by this project as in need of more in-depth research with Indigenous communities. At the time of writing, several members of the research team are also involved in research into the legal treatment of the separation of fixtures from land under Australian law and investigation of the range of legal mechanisms currently available to perform the core functions of hybrid tenure models in Australia; these mechanisms include long-term leasehold, contracts and covenants. That work will continue through 2012 alongside further financial modelling work with Indigenous communities and in broader hypothetical housing market contexts.

The final issue is the need for and capacity of organisations and models to be responsive to Indigenous housing aspirations. Previous research has shown interest in home ownership in Indigenous communities due to the perceived stability and autonomy conferred by this tenure form. Consequently, CLTs may provide a tenure form that can resonate with such aspirations without undue exposure to risk on the part of the resident or organisation. Moreover, CLTs may provide a pathway between other tenure forms. In the US, the model has provided pathways for households to transition from renting to owning and—in some instances—back again, as their circumstances vary.

The project has highlighted a set of legal and financial questions that will need to be addressed if CLT models are to operate successfully in Australia. These questions apply both to potential developments of models in the Indigenous housing sector (as outlined above) and more broadly to the feasibility of CLTs developing in Australia. Currently, the separation of fixtures from land is unfamiliar as a housing model in Australia. However, there are precursors in Australian jurisdictions, as discussed above. This suggests that further work will be needed to determine whether specific legislation is required to enable CLTs, or whether they can exist and function under current law.

This research report proposes three mechanisms through which stewardship and shared equity might be delivered:

- A 'traditional' CLT model involving the separation of fixtures from land and a long-term ground lease between the resident and the partner organisation.
- A long-term lease to the house and land from the partner organisation.
- A dual mortgage scheme with a sector-specific partner that would carry additional conditions regarding eligibility, resale restrictions and so forth.

Each of these models has advantages and disadvantages. A traditional CLT model may work best where organisations have existing land, where there is a strong desire to retain this in community ownership and where the retention of affordability is a core concern. Long-term leasehold of the house and land may be more readily implemented under current law, but does not confer 'ownership'. A resale-restricted dual mortgage scheme may similarly be readily implemented but experience with such models in the UK suggests there is a risk of a loss of affordability under such a model.

A major policy consideration for promoting CLT-type innovation in Australia concerns whether a national definition, as applies in the US and UK, is desirable to build familiarity with, and consistency in, a suite of models. Legislation may also provide a sure way of enabling the ready separation of fixtures from land. This requires further examination that has been beyond the scope of this research, but which will be undertaken at the University of Western Sydney in 2012. Governance and capacity building are also outstanding issues. There is a range of organisational factors that can support an affordable home ownership model, including asset management and

appropriate governance, as well as external framing factors, such as facilitation of resident access to appropriate mortgage products and training for households and organisations. Some participants in the research referred to the possible development of delivery mechanisms at the regional or state level; this is an issue that warrants further exploration as the scale of potential local markets suggests that a degree of consolidation may be necessary to achieve viability. However, this would have to be carefully structured to reflect local differences.

## **Next steps**

Overall, throughout this study substantial interest has been shown in the principles of applying a CLT-type model in Indigenous housing, amongst the IAG and participant communities, and immense goodwill towards the research project and possible housing models in the sector has been demonstrated by participants in the research. This suggests that the ideas and issues raised by this project are worthy of deeper exploration to extend the research conducted so far and to build on the level of interest shown by Indigenous participants, with a view to implementation of a CLT-type model. Such work would be able to explore viability more thoroughly and engage more substantially with legal issues. One way to progress this would be for government to establish and invest in a pilot program to develop and apply specific mechanisms that could yield a replicable and sustainable approach. As outlined above, members of the research team are already involved in further work to examine the legal mechanisms for enabling hybrid tenure models and in financial modelling work, in Indigenous and broader contexts.

The authors of this report have identified CLT-type models as potentially offering a range of housing choices for Indigenous people that is currently not available. Social rental housing in the Indigenous sector is insufficient to meet demand and frequently does not provide a pathway into other tenure forms without displacement from community. On the other hand, in the context of rising housing costs (see Chapter 2) and likely persistence of low income and unemployment, pressuring Indigenous people into predominant forms of market based home ownership may present unacceptable levels of financial risk and maintenance responsibilities to households.

Indigenous aspirations for stability and autonomy in housing, coupled with marginal market contexts, suggest that hybrid tenure models may be relevant to this group. In many locations, housing is unlikely to be a wealth creation vehicle for Indigenous households and this has not been documented as a primary housing objectives for many households, so models that can embody desired traits such as stability and autonomy might be more relevant than mainstream market-based models. In particular, there is a need to avoid market-based models that could expose marginalised populations to unmanageable financial risk. The desire for ongoing recognition of the cultural significance of Indigenous lands suggests that models that can allow collective or community ownership of land might also be culturally appropriate. Consideration of overseas programs suggests that programs that provide additional support services and training to residents and balance rights and responsibilities between the resident and the provider or land holder, would be desirable and effective in the Indigenous housing sector. Shared ownership could therefore provide a more workable and appropriate option for those whose only current housing options are social rental housing or market ownership. The options represented by consideration of CLTs in Indigenous housing can help to address the current gap that exists between these two tenure forms and present a range of intermediate or hybrid tenures that will help to diversify the housing market for Indigenous households and their service organisations and thereby offer Australia's first peoples greater housing choice, flexibility and mobility.

# 1 INTRODUCTION

This report presents findings from an AHURI-funded research project that examines the potential of Community Land Trusts (CLTs) as a housing option for Indigenous Australians. A separate research report, 'Principles and practices of an affordable housing community land trust model' (Crabtree et al. 2012) provides a comprehensive overview of CLTs in the US and UK, as well as a discussion of general issues to be considered if CLTs are to be developed in Australia. Consequently, this Final Report does not provide detail on CLTs as developed overseas, but rather on issues arising from a consideration of CLTs in the context of Indigenous housing. For the purposes of this report, an overview of CLTs is provided in Section 1.3.; readers should refer to Crabtree et al. (2012) for a fuller discussion of the history, implementation and outcomes of CLTs overseas.

This chapter proceeds as follows. Section 1.2 describes the genesis and context of the study. This is followed by a detailed outline of the research questions and the methods by which they have been addressed. A brief introduction to CLTs is provided in Section 1.3, drawing from the companion review of this model by the authors (Crabtree et al. 2012). The chapter concludes with an outline of the structure of the remainder of the report.

## 1.1 Background and context

Community Land Trusts are a form of common land ownership where land is held by a private non-profit entity and leased on a long-term basis to members of the community or other organisations. Buildings and services on that land are then held as owned or leased properties by residents, businesses and/or other community housing providers. Ground leases are inheritable, and properties on leased land can be bought and sold at prices determined by a resale formula. This arrangement can offer many of the widely acknowledged benefits of home ownership, including resident control over a dwelling, security of tenure and transfer of occupancy rights, and the potential for asset-based wealth building. CLTs are specifically designed to achieve these benefits under financing, pricing and regulatory arrangements that improve affordability for residents, while also protecting the long-term affordability of the housing for future generations. CLTs have succeeded overseas, especially flourishing in the US where there are over 240 CLTs currently in operation. More recently, CLTs have begun to develop in the UK.

While CLTs may have widespread potential application in Australia, this research project is specifically concerned with examining their suitability and attractiveness for Aboriginal and Torres Strait Islander households, Australia's first peoples, and their communities.<sup>1</sup> In 2006, households with at least one Indigenous member had a home-ownership rate of 34 per cent, which is around half of that of non Indigenous households (69%) (ABS 2006d). This situation varies by location, with higher rates of home ownership occurring in towns and cities than on communally owned lands that are typically—though not exclusively—in discrete settlements<sup>2</sup> (ABS 2006a). Factors

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<sup>1</sup> We are mindful that there may be distinctive issues about the suitability and desirability of CLTs for Aboriginal and Torres Strait Islander peoples and communities, which we endeavour to identify through the research, such as by locating case studies in both NSW and Queensland. For convenience in this report, we refer to these two groups as Indigenous (Australians) but in so doing we do not intend to detract from the distinctive cultural identities and heritage of Aboriginal peoples and Torres Strait Islander peoples.

<sup>2</sup> Memmott and Moran (2001) describe three types of discrete Indigenous settlement: discrete settlements geographically separate from other centres; discrete urban settlements and town camps

that may be contributing to lower rates of home ownership on communal land include land tenure issues, a lack of market drivers and low levels of economic activity associated with low household incomes (Sanders 2008; Memmott et al. 2009). In recent decades, rates of home ownership among Indigenous Australians have been increasing slowly but steadily (up from 19% in 1991). There is now a strong intergovernmental commitment to further expand home ownership among Indigenous households in urban, rural and remote areas (FaHCSIA n.d., see also Department of Communities n.d., COAG 2008a).

While Indigenous home ownership is a key national policy objective, the form and viability of home ownership options for these communities will be influenced by geographical variations in: incomes, household formation and size; cultural expectations; family structures; mobility patterns; housing policy settings; and existing tenure and dwelling forms across urban, regional and remote Indigenous communities (Sanders 2008). It is in this context that CLTs have been identified by policy makers and researchers as a potential option for contributing to the expansion of home ownership among Indigenous households and communities. In part this is because of the potential of CLTs to simultaneously address affordability issues and to foster and sustain an ongoing relationship between resident households and their community, including, for some, the benefit of being able to live on traditional land. On community owned lands in particular, there is an additional synergy in that the model allows for collective ownership of land and hence for the protection of cultural and/or political values that are associated with the reservation and preservation of Indigenous land.

### *1.1.1 Indigenous housing aspirations*

Previous research by Memmott et al. (2009) has shown that Indigenous Australians aspire to home ownership primarily due to a desire for stability and a sense of ownership, and the means that it provides to transfer a secure place of residence to their family or kinship group through inheritance. Some additional putative benefits of home ownership, including those of asset accumulation and wealth creation, did not figure as strongly in Indigenous attitudes towards home ownership.

The Australian Government is currently seeking to provide the option of home ownership to more Indigenous people, as one means of closing the gap in economic, social and health conditions between Indigenous and non-Indigenous Australians. The research of Memmott et al. (2009) shows there is interest amongst Indigenous communities in core traits associated with home ownership, such as stability, a sense of ownership and inheritability. Those researchers undertook 86 structured interviews with Indigenous households in urban, regional and remote areas of Queensland, Western Australia, the Northern Territory and NSW, and combined those findings with earlier surveys undertaken by research team members in other projects. The researchers found that:

- There is a significant awareness of, and interest in home ownership among Indigenous people, including those living on communal title land. Of the 86 people surveyed, 52 per cent were aware of the Australian Government's home ownership initiatives and 42 per cent had investigated home ownership.
- Attitudes towards home ownership among those surveyed did not differ according to whether they lived on Indigenous communal title land or other rental housing.

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within or on the outskirts of an urban or rural centre; and, outlying discrete settlements dependant on a larger centre for infrastructure or services, e.g. outstations, homelands and pastoral settlements.

- Indigenous people value the social benefits of home ownership, in particular the ability to pass a house down in the family. Ninety two per cent gave this as their reason for interest in home ownership.
- By contrast, Indigenous people were less attracted to the economic benefits of home ownership, showing little interest in buying a house as an investment or asset. Two thirds of respondents commented upon the economic burden of home ownership.
- Income was not a barrier to home ownership for all of the surveyed Indigenous households. Taking into account several eligibility criteria, the survey found approximately one quarter of the 86 people interviewed would be able to take on home ownership (Memmott et al. 2009).

Memmott et.al (2009) found that providing valuations in accordance with affordability and income—that is, for example, valuing homes at between \$100 000 and \$200 000 for households with a threshold income of at least \$40 000—would be key in facilitating home ownership. Memmott et al. (2009, p.2) caution against selling poor quality high maintenance homes at a low valuation in the interests of affordability as a potential recipe for disaster. While the report focuses on home ownership on communal land, it is just as relevant for other situations where separate lots exist with existing housing or where there is an opportunity for new build. This study also found a strong aspiration to some form of home ownership as long as it was affordable (especially the case in the high cost areas visited). Chapter 4 outlines the aspirations of participants in the case studies conducted for this research. Broadly, their comments echo those found by Memmott et al. (2009) in terms of what people valued about home ownership—stability, a sense of ownership and having ‘their own place’.

## **1.2 Research questions, methods and process**

### *1.2.1 Research questions*

Five research questions were set by AHURI to be addressed by this study of the potential of CLTs as a housing option for Indigenous Australians. These are:

1. What are the key features of CLTs as implemented overseas?
2. What outcomes have been achieved?
3. What is the possible application of CLTs for Indigenous households and how would this vary geographically?
4. What are the legal implications of CLTs?
5. For Indigenous housing policy and housing programs, what are the implications (especially financial) of establishing CLTs?

### *1.2.2 Research phases*

#### **Phase 1**

The first phase involved a primarily desk-based analysis of the CLT models in the US and UK and an overview of Indigenous land tenure systems in Australia. The project had specialist input from the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) on Indigenous land tenures, subsequent to the team briefing AIATSIS on the CLT model and potential relevance in the Indigenous Australian context. The analysis of international CLTs was substantially informed by previous visits to CLTs in the US and discussions with individuals involved in the emerging sector in the UK. Those activities included visits to individual CLTs as well as attendance at sector conferences and participation in a United Nations-sponsored field study visit to Champlain Housing Trust in Burlington, Vermont. Eminent CLT

researcher Dr John Davis provided regular feedback to the project. In 2010 Dr Louise Crabtree and Aboriginal housing professional Ms Nicole Moore attended the National CLT Network Conference in Albuquerque. The development of the AHURI CLT project and conversations with the US sector over 2010 generated the first dedicated Tribal Lands session and roundtable at that conference, at which both Ms Moore and Dr Crabtree were participants. Ms Moore continued to work on the project as a research assistant.

In addition to providing information about the key operational mechanisms of CLTs, the desk-based review and discussions with CLT sector workers and residents started to shape the core issues for consideration in the project's second phase. The CLT overview and sector discussion highlighted that the US and UK sectors are both characterised more by a suite of foundational principles than by a suite of consistent operational mechanisms. Both sectors reflect and embody a concern for community capacity building and development, on a non-profit basis and with a primary focus on affordable housing provision. Both sectors have proposed and adopted fairly broad definitions of CLTs, which help build a degree of familiarity amongst stakeholders such as government and financiers, while allowing each CLT to be fairly flexible and innovative in how it chooses to address community development and affordable housing.

Through achieving a deeper understanding of the CLT model, the research team started to identify the issues that would be pertinent to this research project. The emerging questions started to focus the team not only on the legal and financial possibilities for and implications of separating land titles from housing titles, or how to finance housing on the basis of this, but also on uncovering and articulating differing community concerns and ambitions for housing, self governance, and to an extent, community and economic development. The team was particularly keen for discussions to capture community intentions and ambitions, as these have been the primary determinants of the forms and trajectories of CLTs and their sectors, in both the US and UK. These phase 1 review activities formed the basis of the research paper produced as Crabtree et al. (2012).

In preparation for phase 2, the project also had specialist input from the Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) on Indigenous land tenures, subsequent to the research team briefing AIATSIS on the CLT model and potential relevance in the Indigenous Australian context.

Ethics approval for the project was also sought during this phase in consultation with Badanami, the University of Western Sydney's Centre for Indigenous Education. The approach to obtaining ethics approval ensured that processes and explanation of consent and the project's objectives were clear and appropriate, and helped refine the information materials provided to research participants and the Indigenous Advisory Group (IAG), including the development of a user-friendly one-page outline of CLTs and their possible relevance to the Indigenous housing sector, developed by the team's Indigenous research assistant. That resource is provided in Appendix 1. Ethics clearance was granted by the University of Western Sydney on 28 March 2011 and ratified by the University of New South Wales (UNSW) on 3 May 2011.

### **Establishment and role of the Indigenous Advisory Group**

In order to ensure Indigenous guidance to the second phase of the project, the first level of the engagement strategy was to form an Indigenous Advisory Group early on in the project. In order to promote and assist with engagement of Indigenous stakeholders, various Aboriginal leaders were approached in NSW and Queensland to act in an advisory capacity. After some of those approached accepted the offer to

assist, a small, high level Indigenous Advisory Group (IAG) was established to provide strategic guidance to the research team.

IAG members were drawn from the Board of the Aboriginal Housing Office (NSW), the Department of Aboriginal Affairs (NSW), the Aboriginal Legal Service (NSW/ACT) Ltd and Mununjali Housing and Development Company Ltd, Queensland. The purpose of the IAG was to inform the conduct of the local research from Indigenous perspectives. Specifically, the IAG:

- Provided advice on all issues of interest and relevance to Indigenous stakeholders about the potential development and operation of a CLT type model in the Indigenous housing sector in Australia, with a specific focus on conditions and opportunities in NSW and Queensland.
- Provided advice about possible participants in the research. Specifically, advice was sought on selection of case study communities for feasibility studies, other relevant agencies to interview for the Project, and appropriate channels to engage these organisations.
- Reviewed and commented on the draft project findings (including the case study findings) and the draft Final Report.
- Provide advice on further engagement of the Indigenous stakeholders in the outcomes of the project.

As the project progressed, the IAG played an integral role in all of these areas.

The IAG met in March, July and September 2011. The March meeting performed several functions: the Group's terms of reference were defined, the project's scope discussed and core questions raised. At the July meeting the IAG advised on the selection criteria and the shortlist of potential communities selected for possible case studies, and made any additions deemed relevant and appropriate. The final meeting took place in September 2011. In addition to IAG members, participants from case study communities were invited to attend and were involved in the final meeting of the IAG after the fieldwork and during the drafting of this report. The community members provided commentary on household types and on the scenarios that had been generated from the fieldwork.

## **Phase 2**

The second phase of the project focused on case study work in NSW and Queensland. These two jurisdictions were selected to achieve coverage of a mix of geographical areas (urban, regional, remote) and a range of governance, legislation and land tenure or title types, while also being logistically manageable for the team and timeframe. Within each jurisdiction, the IAG was heavily involved in advising on the fieldwork locations chosen and comment on the results of the fieldwork. Fieldwork took place in August and September 2011 and involved in-depth interviews with Indigenous housing providers, communities and other stakeholders such as financing bodies. The template used to guide the semi structured interviews is provided in Appendix 2.

To report on the findings of the field work, the researchers decided to de-identify the communities in discussion with the IAG and research participants. The case studies were used to form the basis of scenarios which could be applied to a variety of communities in different areas, to generate key economic parameters, thresholds of program viability and possible variations of the model. These processes are discussed in more detail in Chapter 4.

The project also undertook a review of legal parameters of a CLT model, based on the existing legislation relating to land and Aboriginal land in the jurisdictions of NSW and Queensland. Financial modelling of two scenarios and consideration of governance issues were also undertaken.

### 1.2.3 Approach to research questions

This project seeks to combine existing data on the development and performance of CLTs in the US and UK with primary data on the possible utility of similar developments in Indigenous communities in Australia. The project is not concerned with the wholesale deployment of a specific or singular CLT model. Individual CLTs and the CLT sectors in the US and UK are characterised by their flexibility, nuance and sensitivity to place. In other words, CLTs are flexible and innovative, based in and responding to local constraints, opportunities and aspirations. The project team is aware of the need for housing programs and policy interventions in Indigenous communities to be similarly responsive to local conditions and aspirations, and accessible and understandable to communities.

As a result, as well as providing documentation of the operating features of CLTs, the project has sought to tease out the core operating *principles* of CLTs. These have then been used as the basis for consultation and fieldwork, along with discussion of the various possible operating features. The team has been careful to not uphold a singular model and to focus instead on the core lessons learnt and principles enshrined in the CLT sector.

In the US and UK CLTs are predominantly community-based organisations. Therefore, research into the viability and applicability of CLT principles for Indigenous housing has to be community anchored and responsive to community values and views. Further, the research team is highly conscious of the importance of incorporating Indigenous knowledge in any research project concerned with Indigenous housing and for such projects to help build capacity in the Indigenous housing sector.

The approach taken to each research question on this basis is discussed below.

#### 1. What are the key features of CLTs as implemented overseas?

To answer this question, extensive use has been made of existing data and case studies from the US and UK sectors, as well as discussions between members of the research team and CLT researchers and practitioners in those countries. Dr John Emmeus Davis, a leading CLT researcher in the US, provided guidance and editorial input to the material presented in Crabtree et al. (2012), where this question has been addressed in detail. That report attempts to both document the key operational features of CLTs and to tease out some of the underlying principles behind the activities of CLTs that perhaps set them apart from other members of the shared equity housing spectrum.<sup>3</sup>

#### 2. What outcomes have been achieved?

As with the first question, this question was approached via existing data on the outcomes of programs and projects in the US and UK sectors, as well as existing academic literature on CLTs. The aim here was to also document the scope and variety of CLT outcomes that can range beyond housing, so discussions which had taken place prior to this research with stakeholders in the US that highlighted non-

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<sup>3</sup> Shared equity is defined as the 'division of value of a dwelling between more than one legal entity' (Whitehead & Yates 2007, p.6). See Crabtree et al. (2012) for an overview of CLTs in relation to other shared equity mechanisms.

housing outcomes were also drawn on. As most of the non-housing activities of CLTs have not yet been assessed or substantially documented, sector workers and residents were key sources of stories.

### 3. What is the possible application of CLTs for Indigenous households and how would this vary geographically?

This research question was answered via in-depth and open-ended interviews with stakeholders in case study communities, as well as other relevant stakeholders. The case studies were selected by the research team on the basis of criteria determined after review of CLTs overseas and discussion with the IAG. The IAG reviewed the selection criteria and the resultant shortlist of communities, but the research team took responsibility for the final determination of case study sites. Case study sites that reflected a diversity of land tenure forms and varying degrees of proximity or remoteness (urban, regional and remote) were chosen in NSW and Queensland. Further explanation of the case study selection criteria and process is provided in Chapter 4.

The review of CLTs overseas highlighted the relevance of lenders and regulatory authorities in enabling or constraining the development of hybrid tenure forms such as these. Consequently, analogous local agencies were interviewed as part of the fieldwork, to establish issues of relevance, such as the lending concerns of financial institutions.

The response to this question aimed to not only track basic variables such as land tenure forms, incomes and demographics across geographically diverse contexts, but also to tease out local Indigenous housing aspirations, experiences, expectations and opportunities. As such, providers and residents were directly interviewed where possible; otherwise agencies working with communities were interviewed where these were deemed appropriate proxies for direct access to communities, given the logistical constraints of the project. The team was also mindful to respect local communities' and agencies' desired levels of involvement. To achieve their participation, selected communities were first approached on the phone and then sent introductory and explanatory materials, including a user-friendly one-page outline of CLTs and their possible relevance. This was then followed up by email or phone calls.

The suite of issues emerging in the field led to the decision by the research team, in discussion with the IAG, to use the primary data from the case studies to create de-identified scenarios that are indicative of core variables, such as employment, land holdings, housing aspirations, issues and opportunities as identified by communities.

### 4. What are the legal implications of CLTs?

This question was examined using primarily desk-based reviews of relevant legislation in NSW and Queensland and primary legal documents, such as ground leases and deeds, from the US and UK. The investigation also drew on issues and relevant legislation or concerns that were raised by interviewees, as well as discussion at the IAG meetings. An overview of Indigenous land title forms across Australia was provided to the project by AIATSIS and formed the basis of the subsequent exploration of legal issues.

The first issue addressed was the idea of separating fixtures from land, as well as issues surrounding land dealings under the NSW Aboriginal Land Rights Act and the Queensland Aboriginal Lands Act. Guidance was also provided by Derek Mortimer of DF Mortimer and Associates, a specialist legal firm with extensive knowledge of the CLT sector in the US.

5. For Indigenous housing policy and housing programs, what are the implications (especially financial) of establishing CLTs?

This issue was addressed through multiple team workshops during the field work phase, as well as extensive discussion with the IAG and community representatives at the final IAG meeting. Considerations about framing policy drew heavily on the issues identified in the field, as well as issues emerging from the desk-based research. A core stance taken is to address the articulation of CLT principles through policy and programs, rather than the development of a particular model. This approach is elaborated in the discussion of an enabling framework in Chapter 6.

### **1.3 Introduction to Community Land Trusts**

This section provides a basic overview of CLTs. For a full discussion, refer to Crabtree et al. (2012). Community Land Trusts are not property trusts as understood in Australia. At their base, CLTs are private non-profit entities holding title to land for the dual purposes of affordable housing and community benefit. That reasonably broad definition has enabled CLTs to be highly diverse and flexible in their activities. As a result, CLTs can and do provide boarding houses, affordable rental housing, cooperative housing (with or without an equity component) and resale-restricted home ownership, as well as a range of community and commercial activities and spaces. CLT housing represents a bridging mechanism between social housing and outright market ownership, providing a range of stable tenure options and other spaces. Currently there are over 240 CLTs in the USA and an emerging sector in the UK.

The separation of title to land from title to buildings is a core component of CLTs in the US<sup>4</sup>; the CLT holds title to the land, the property holder holds title to the building and is granted full usage rights to the land via a renewable, inheritable 99-year ground lease. The ground lease spells out the terms of eligibility, use, occupancy, inheritance, resale, maintenance, renovation and any other issues of relevance; each CLT is free to vary this in response to its local conditions. Where CLTs provide resale-restricted home ownership, the resale formula set down in the ground lease aims to balance equity gain to the seller with retained affordability for the next buyer. Ground leases are highly variable and again can be quite nuanced, depending on local conditions and objectives.

In addition to the provision of housing, CLTs provide a range of support programs, or partner with other agencies that provide these. These aim to enhance the ability of households to maintain their housing and to ensure that all parties are aware of the conditions and responsibilities of the arrangement. CLT home ownership represents an assisted home ownership model, in which the rights and responsibilities of residents and the broader community—including future buyers—are balanced. This, for example, often results in delineation of repairs and maintenance responsibilities between home owners and their CLT. The CLT sectors in both the US and UK share a twin focus on affordable and appropriate housing and community development. This dual focus is then articulated in variable and locally sensitive ways that are perhaps best summarised as driven by an ethic of stewardship. This ethic of stewardship might be described as a defining feature of the two sectors; it is manifest in CLTs' approach to and treatment of their residents, their communities and their housing stock, such that the sector is sometimes referred to as 'developers who don't go away' (Davis J E, pers. comm., April 2008). This ethic underpins several core characteristics of CLTs. The most widespread and notable are: a concern to balance the interests and

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<sup>4</sup> This applies to CLTs that have land in their portfolios; a minority do not, and, in such instances, these act as stewards over other forms of restricted ownership or rental housing. See Crabtree et al. (2012) for more on this.

objectives of residents with those of the broader community; and, the desire to retain a stock of affordable housing, ideally without compromising resident choice or mobility. Most CLTs aim to supplement and diversify local housing markets by addressing perceived gaps or pressure points in the broader market, and to balance the retention of affordability with equity gains to residents where home ownership models are developed. Both sectors are characterised by a high degree of community membership, participation and representation.

## **1.4 Report structure**

The CLT research report (Crabtree et al. 2012) primarily addressed the first two research questions (Section 1.2.1). Its central purpose was to introduce CLTs and to review the main aspects of their utilisation in the US and the UK. The review covered consideration of the key factors, resources and events that have shaped the genesis and development of CLTs in those countries, an assessment of their utility for low-income populations, and an examination of a selection of operating CLTs that were chosen on the basis of variations in scale, establishment trajectories, governance structures and performance.

This Final Report discusses the current landscape of Indigenous housing policy and programs in which the principles of CLT-type housing would emerge or could be developed, presents data from the case study phase for this research project and reflections on key issues for development of CLTs.

Chapter 2 discusses existing affordable housing provision in Australia, provides an overview of the evolution of affordable home ownership provision and outlines stakeholder perspectives of shared equity identified in previous research. It concludes with thoughts regarding the current relevance of hybrid tenure forms.

Chapter 3 presents the Indigenous housing context, starting with an overview of Indigenous demography and housing tenure forms. It then presents core policy debates in the area, describes existing programs and institutions operating in this space, and concludes with a brief review of Indigenous home ownership programs in Canada and New Zealand.

Chapter 4 presents data from the case study phase of the project. Six scenarios are presented, reflecting differences in organisational structures, local housing and employment markets, housing activities and legal parameters. These are:

1. A NSW regional umbrella organisation.
2. A NSW urban Local Aboriginal Land Council (LALC).
3. A NSW regional LALC.
4. A regional NSW Aboriginal corporation.
5. A regional Queensland Deed of Grant in Trust (DOGIT).
6. A Queensland non-DOGIT community.

Chapter 5 examines the general operating requirements for CLTs including options and pathways, given the variety of existing arrangements in the Indigenous housing sector encountered in the case studies. Three sets of operational parameters are examined. First, in-depth consideration is given to legal issues within the context of the existing legal framework relating to Indigenous lands in NSW and Queensland. Second, financial analysis relating to land and housing costs, replacement costs, subsidies, viability and scale is presented for two scenarios—an urban LALC and a regional umbrella provider. Third, issues of governance of CLTs are examined and related to the Australian Indigenous context.

Chapter 6 discusses the role of government in enabling the development of CLTs. Specifically, it discusses the need for an enabling policy and support platform, and for developing appropriate tenure choices and pathways based on CLT lessons and principles and appropriate to the Indigenous housing sector. Chapter 6 also provides conclusions and future directions for research and possible implementation.

## 2 AFFORDABLE HOUSING IN THE AUSTRALIAN CONTEXT

Affordable housing is experiencing substantial growth in Australia in response to ongoing affordability issues in both rental and ownership markets. Currently, affordable housing provision focuses on rental models, increasingly through the growth of community rental housing providers. While a welcome addition to the housing tenure landscape, the provision of affordable rental housing alone may not address existing bottlenecks in the housing system, and might not provide workable exit strategies for households wishing to transition into home ownership but as yet unable to access market-rate ownership. Figure 1 shows the wide range of possible tenure options lying between social rental and market ownership housing, based on models in the US, UK and Australia. These models present a range of options that can articulate some of the core desirable attributes of home ownership, such as stability, inheritability and increased household autonomy; most represent some hybridisation of collectivised and individualised property rights. Some can and do deliver equity gains to households as well; these gains vary from modest to near-market rates of return. As discussed below in Section 2.1.3 and Section 2.2, Australia has explored low-income home ownership in the past, and is engaging with dual mortgage schemes in some states. However, there is scope to expand the hybrid or intermediate tenure forms on offer to households, to provide pathways between existing tenure options and more effectively balance the risks and responsibilities of home ownership between the household and a provider.

The increasing scope for hybrid tenure forms is based on increasing frustration with the traditional home ownership product. There is mounting evidence that access to home ownership has become more difficult in Australia, especially for lower income households and younger first home buyers.

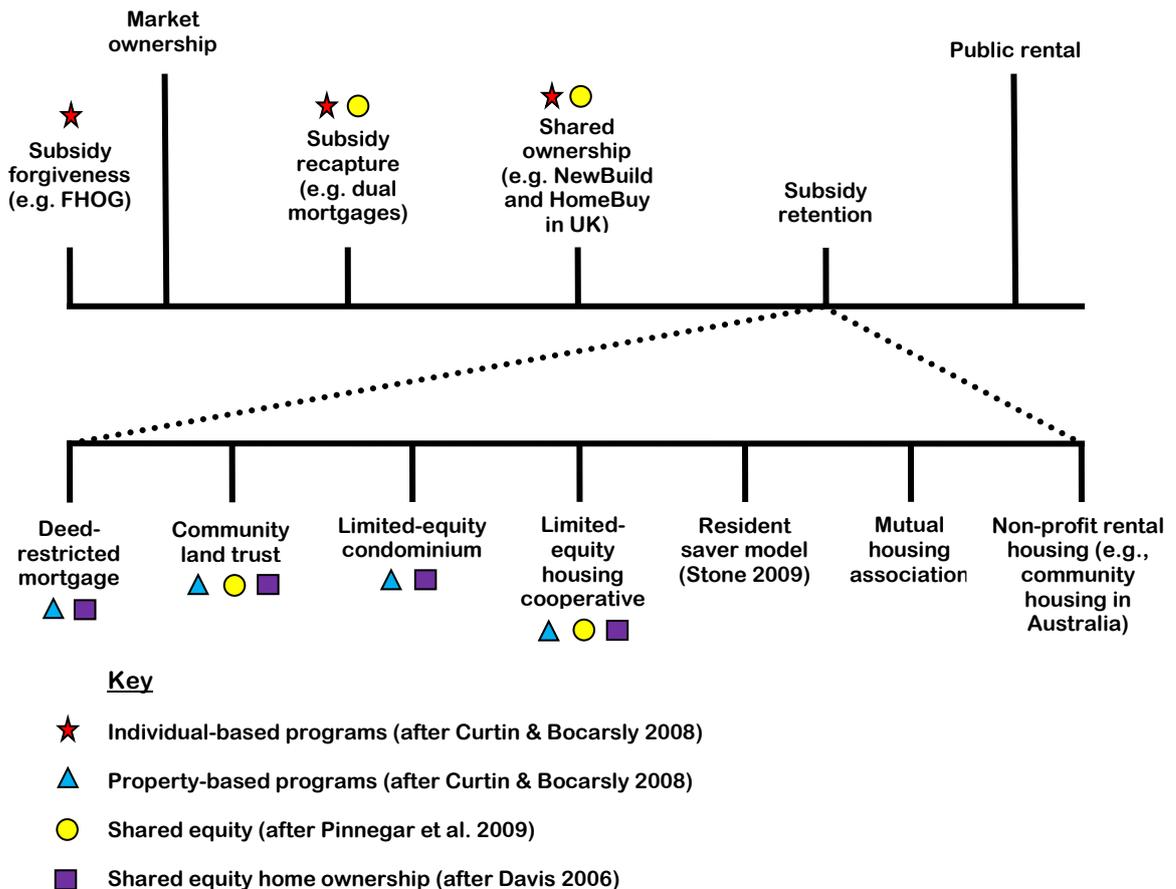
It is getting progressively harder for low-moderate income households to purchase a home and avail themselves of the potential financial and other benefits of ownership. If the purchase patterns of the last decade are sustained into the future, overall rates of home ownership will fall. (Hulse et al. 2010, p.3)

Additionally many existing home buyers face higher debt burdens than in the past, which has contributed to higher levels and longer periods of affordability stress among lower income buyers (Yates & Milligan 2007; Flood & Baker 2010). On top of these trends, the aftermath of the global financial crisis, which itself was triggered in the US by unsustainable home lending to lower income households (many of whom belonged to minority groups) has contributed to a much more volatile and challenging environment for home lending worldwide.

In this context, researchers and policy makers in Australia and abroad have been exploring the potential to shift away from traditional private ownership to different forms of affordable home ownership for lower income households (see e.g. Bouelhower et al. 2005; Jacobus & Lubell 2007; Pinnegar et al. 2008, 2009; Monk & Whitehead 2010). CLTs are one member of a suite of options falling between social rental housing and private home ownership that are being suggested as potentially workable options for such households in the contemporary housing market environment. There appear to be three main factors driving the widespread interest in using different mechanisms for achieving many of the attributes that can be obtained through home ownership, especially security and stability, control over housing and wealth creation. The first of these is the hope that such schemes can be constructed

to be more flexible, less risky and more affordable for marginal buyers than conventional mortgage-backed home purchase, in an environment of high land and house prices, more constrained housing finance lending and more uncertain housing careers. The second is continuing political pressure on governments to assist households to meet their housing aspirations, which for many remain strongly tied to achieving home ownership. The third is governments wanting to offer housing assistance in forms that cost governments less than traditional options, such as social housing or directly subsidised private home purchase, especially by leveraging in private debt or equity.

**Figure 1: Spectrum of housing tenure models across the US, UK and Australia<sup>1</sup>**



This key refers to programs or models covered by the stated authors and readers should refer to those sources for full descriptions. It is arguable that mutual housing associations and Stone's (2009) proposed resident-saver model could be classified as shared equity homeownership. Rent-to-buy schemes and the ACT Land Rent scheme are closest to shared ownership or subsidy recapture models.

<sup>1</sup> See Appendix 3 for an explanation of subsidy forgiveness, recapture and retention; many of the models in the figure are also explained in Section 2.1.

Source: authors, after Davis (1984), Pinnegar et al. (2009), Jacobus and Lubell (2007)

There is a deep and ongoing Australian interest in home ownership; historically this form of tenure has provided stability and delivered significant financial and non-financial benefits to owners, partly generated by significant government subsidies and partly because of rising house prices, resulting in capital gain (Australian Government 2008; Yates 2009). Despite recent global financial turmoil, Australia's housing markets

are largely unchanged, to the extent that significant affordability issues are continuing to manifest in the ownership and private rental sectors. The growing inability of low- to moderate-income households to enter the ownership market is creating bottlenecks in the system, driving rents up and increasing demand on the public and community housing sectors. Moreover, Australia's private rental system is characterised by short-term leases and relative insecurity for tenants as the sector is more geared towards speculative gain for investor owners than to housing quality and tenant rights (Hulse et al. 2011). Consequently, a product that provides many of the benefits of home ownership to low- to moderate-income households is clearly worthy of further research. The general housing market and policy context for affordable housing in Australia provides an important backdrop for giving general consideration to additional housing options that may be appropriate to Indigenous households and communities.

More specifically for the purposes of this project, there are many relevant factors that provide directions for policy that is seeking to articulate Indigenous housing options. These include: 'closing the gap' goals for reducing Indigenous disadvantage (COAG 2008a); calls from Indigenous leaders for policies and programs that can actively assist in generating stronger and more resilient Indigenous families and communities; and Indigenous cultural values that are centred on collective ownership of land and community building. Such directions and values are all pertinent to considerations of the applicability of CLTs for Australia's first peoples.

Accordingly, this chapter provides a brief overview of key aspects of the Australian affordable housing policy and market contexts that form part of the landscape in which CLTs would need to be grounded. This will be followed by a chapter dealing with those aspects of the local housing and policy settings that apply more specifically to Indigenous households and communities and their institutions. The material included in this chapter identifies major aspects of the current environment within which CLTs could be developed and sheds light on the diverse issues that need to be considered in adapting CLTs to Australian conditions. In keeping with the focus of the research, the chapter is intended as an overview of the current Australian scene rather than offering a comprehensive account, which can be located in other government documents and research reports that are referenced throughout the section.

## **2.1 The affordable housing landscape in Australia**

The affordable housing industry in Australia is experiencing substantial growth and diversification, with new investment and development of affordable housing occurring across the public, private and non-profit rental sectors, as well as exploration of various innovative low cost home ownership schemes. This situation is creating a growing capacity for further development of innovative housing models, although unfortunately too little effort has been directed to generating opportunities for Indigenous organisations and communities so far (Milligan et al. 2010, 2011). Additionally, the major government initiative of recent years, the National Rental Affordability Scheme (NRAS) has been slow to start with implementation being adversely impacted by the credit crunch following the global financial crisis, among other factors. In December 2011, only 13 per cent of the national rental incentives offered by the scheme had resulted in tenanted properties for eligible households. Participation in NRAS by Indigenous organisations has been extremely limited (Australian Government 2011).

Below we highlight some key areas of policy and activity that have relevance to CLT type models and how these might fit into the Australian context. There is much scope to draw on relevant aspects of these and to develop a policy platform that supports a package of integrated, effective schemes, including low cost Indigenous home

ownership. This section outlines characteristics of programs and models operating in the affordable housing landscape in Australia that CLT-type home ownership programs could draw on, complement and sit alongside. These types can be found within the spectrum presented in Figure 1.

### *2.1.1 Affordable rental housing*

A major new financing instrument for affordable rental housing in Australia is the National Rental Affordability Scheme (NRAS), which commenced in 2008. NRAS has some strong similarities with the US Low Income Housing Tax Credit (LIHTC) scheme on which its design was partly based. Between 1986 and 2005, the LIHTC helped to fund 1.53 million units of affordable housing in 27 410 developments across the US (Gilmour & Milligan 2009). A critical issue under these kinds of schemes is the fate of the rental housing after expiry of the tax credits and associated regulation of affordability—currently 10 years in Australia; originally 15 years in the US, but now 30 years as a minimum and longer in some states. In the US, many CLTs have used the LIHTC program to construct affordably priced rental housing on CLT lands and some states are now transferring housing with expiring affordability controls to CLTs. There could be a similar role for CLTs in retaining Australia's NRAS stock as affordable housing beyond the life of NRAS credits and in promoting a form of home ownership for NRAS tenants. Mainstream community housing organisations and Indigenous housing organisations, whether accessing NRAS funds or not, may also see benefit in partnering with CLTs to reduce land costs in their development activities and enable greater community and resident participation. Such partnerships are a common occurrence in the US CLT sector. These can also help prevent or ameliorate the 'NIMBYism'<sup>5</sup> frequently encountered by affordable housing developers.

### *2.1.2 Cooperative housing*

Australia's cooperative housing sector comprises a very minor part of the housing system, but has the capacity to expand into roles more in line with that played by housing cooperatives overseas. In the US, the cooperative housing sector has the capacity to deliver to residents a sense of ownership and a range of equity gains based on models tailored to local conditions and aspirations. In Australia, cooperatives are either affordable rentals provided by the state or private ownership models, which are minimal in number and varying in their activities, objectives and outcomes. To date only one housing cooperative—Pinakarri in Fremantle, Perth—has combined market ownership and affordable rental units within a single development (Crabtree 2006), although BEND in Bega, NSW is also developing a mixed-tenure model involving a rental cooperative.

The maintenance of self governance within small scale organisations is a core challenge for the Australian housing cooperative sector. Currently this sector is comprised of small groups of households (usually less than 50 households and frequently less than 20) and is perhaps more akin to the intentional community sector<sup>6</sup> than to large-scale cooperatives. Anecdotal evidence suggests that skills deficits, overwork and burnout on individual cooperative Boards are issues. In contrast, individual housing cooperatives in the US and Europe tend to encompass entire high-rise buildings, representing a stock in the hundreds of units. This provides economies of scale not just in terms of construction, but also in terms of having a large enough

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<sup>5</sup> 'Not in My Back Yard'.

<sup>6</sup> Intentional communities are groups of individuals or households that decide to live together as a community with a shared focus or goal and an increased degree of teamwork or cooperation amongst residents.

pool of individuals to draw on for management responsibilities to be able to access skills and avoid burnout over time.

Aspects of the cooperative model may be of relevance to Indigenous housing in that the model can enable a sense of ownership, the capacity for local self governance and, potentially, equity gains, without requiring that residents enter into mortgage-based models of ownership. It also represents collectivisation of ownership, so is of relevance where this is desired. Housing cooperatives have partnered with CLTs in the US to bring down costs to residents. However, the multiple layers of administration and governance are often seen as unwieldy.

Australia's cooperative housing sector is a marginal sector, with the majority of stock held in zero-equity models in which shares hold no value and carrying charges (rent) are paid as a percentage of income. Victoria and more recently NSW have adopted a model (the 'Common Equity' model) in which a peak organisation holds title to the entire sector's stock and borrows against that to grow the sector, with individual cooperatives responsible for tenant selection, rent collection and minor maintenance. Rents are split with the asset company to enable the asset company to perform major maintenance and expand the sector.

Unlike in many European countries and North America, practices and perceptions surrounding cooperative housing in Australia are heavily oriented towards social housing and zero-equity models. Other countries have widely divergent cooperative housing sectors, that both enable core aspects of ownership and opportunities for wealth creation, as well as income diversification, within their sectors. In the US, there are three types of cooperative: zero-equity, limited-equity and market-rate. Zero-equity is analogous to Australia's rental cooperatives. Limited equity allows shares to carry a value of a few thousand dollars, with the value indexed to allow limited equity gain over time while retaining affordability. Market-rate cooperatives allow shares to carry an open market value. Recently in the US, forming a cooperative alone has not been sufficient to generate affordability; hence many cooperatives are looking to partner with CLTs. At the same time however, the administrative burden created by layering cooperatives on CLTs is driving the conversion of many cooperatives on CLTs to condominium ownership instead.

In Australia, there is growing interest amongst the cooperative sector and beyond in both increasing the stock within the sector, and diversifying the cooperative housing sector to accommodate individuals either with existing equity or wishing to build equity. The NSW and Victorian models do allow individuals on moderate incomes to join cooperatives, and place no income limits on members should their incomes increase after occupancy. However, the recent adoption of the Common Equity model in NSW has placed an income cap on moderate-income members wishing to join cooperatives, and still does not involve any form of equity building for members.

It may be that the future of Australian cooperatives does not require that equity creation be tied to the housing form at all. Here the 'resident-saver' model of Michael Stone may be of relevance (Stone 2009). In this model, Stone proposes a modified mutual housing association (effectively a cooperative) that holds title to the entirety of the physical stock. Residents are members of the mutual/cooperative. Similarly to a rental cooperative, the share holds no value and residents pay a carrying charge to maintain a capital reserve and cover maintenance, as well as cover any debt the cooperative may be carrying, although ideally there is no debt carried by the cooperative. The resident is obliged to pay a deposit, which is set at an affordable level. On top of their carrying charges, residents also agree to pay an agreed percentage of their income as savings into an affiliated investment vehicle, which ideally is investing in socially and environmentally responsible programs and stocks.

Should a resident leave, their equity gain is then the return on that investment and their deposit. This represents an innovative potential new direction for cooperatives as it allows for equity gain, while tying this to social investment rather than speculation on the built form. This would seem to resonate with the overall ethos of cooperatives. As with limited equity cooperatives, this could sit on CLT land. There is opportunity and desire for the cooperative sector to grow and diversify, and the possible mechanisms for this require further exploration beyond this research.

### *2.1.3 Shared equity and dual mortgage ownership*

Shared equity options are relatively underdeveloped in Australia compared to many other countries. Broadly defined, this terrain includes CLTs, various forms of housing cooperatives, dual mortgage schemes and co-ownership schemes. These can involve government or community housing providers as equity partners with the housing resident. The AHURI research report 'Principles and practices of an affordable housing community land trust model' (Crabtree et al. 2012) explores that landscape in some depth; see also Pinnegar et al. (2008, 2009). This section focuses on models and issues of particular relevance to the Indigenous sector.

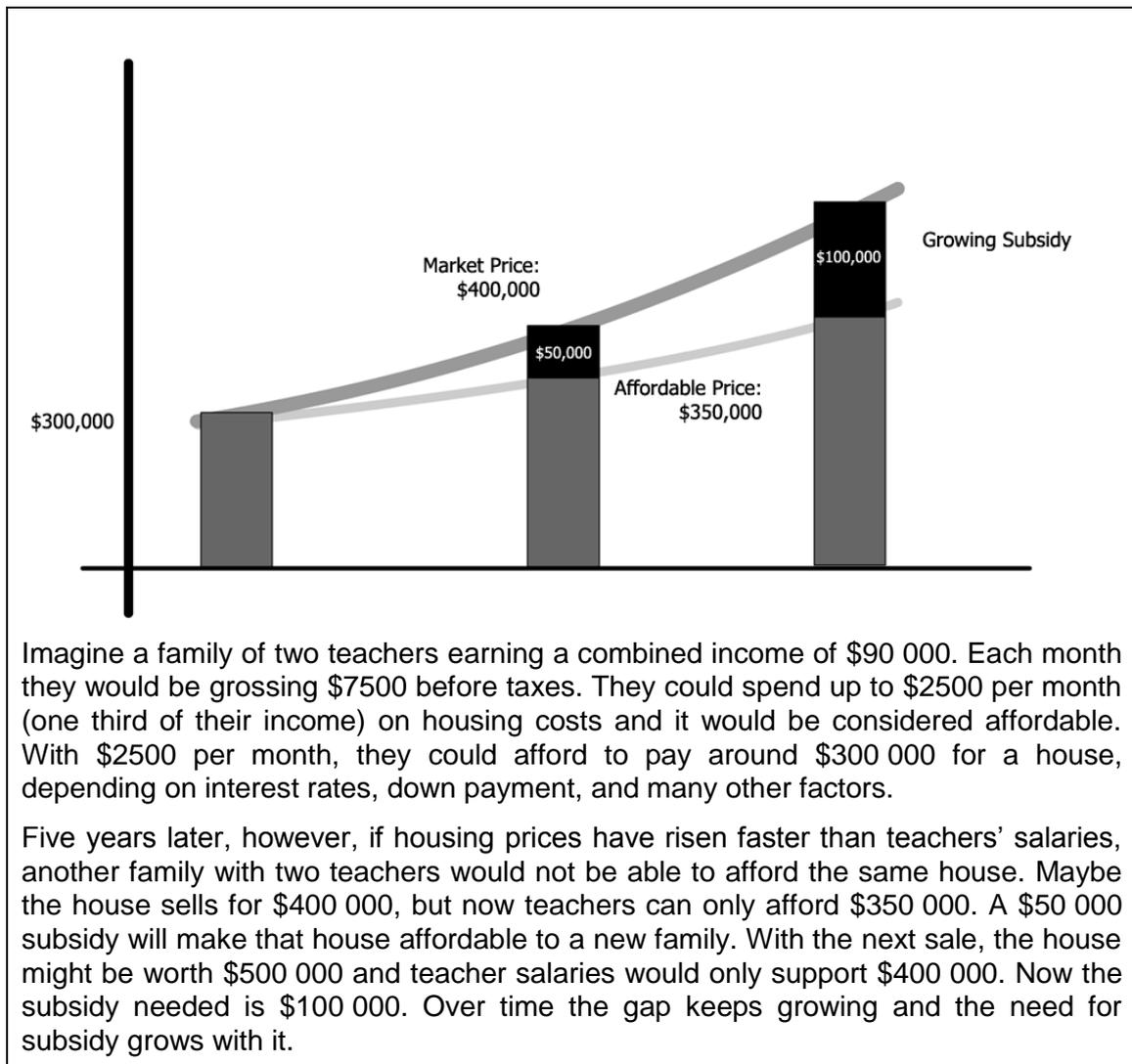
Currently the most significant policy directive towards affordable home ownership in Australia is the ongoing provision of first home owner grants and transaction cost concessions and waivers (such as stamp duty exemptions) for eligible households. To date, most policy attention seeking to address the longer-term affordability of ownership has focused on dual mortgage schemes. In these, the state or a specialist provider holds a mortgage for a certain percentage of the home's value alongside the home owner. These generally carry the assumption and intention that the home buyer will eventually buy the partner out and take full ownership, with the funds returned to the state or social investor then being used for a similar relationship with a new home buyer. As such, the funds in such schemes are not tied to a physical housing stock. That is, the dual mortgage product can be used to buy any house at the appropriate price point in the market, and at sale, the funds are then targeted to another household which can also then buy any house at the appropriate price point. This provides choice for the buyer, rather than maintaining a certain pool of houses as permanently resale-restricted. This can represent a form of slow subsidy leak however, with the pool of money available to re-loan to another home owner falling relative to increasing house prices and requiring further subsidisation to retain affordability (see Box 1). This outlines the differences between subsidy recapture, which is the operational basis for shared equity models of financing and subsidy retention, which is the operational basis for CLTs and other models of tenure such as deed restrictions and limited equity cooperatives.

Pinnegar et al. (2008) provided an overview and exploration of existing dual mortgage schemes in Australia. To date, the vast majority of these have been provided by state and territory government agencies rather than private entities, although the community sector is mobilising around dual mortgage schemes for people with disabilities. While providing a much needed entry-level product, as a demand-side strategy these schemes may add to existing pressure on the housing market. That is, the subsidy provided in dual mortgages is not generally tied to the expansion of physical housing stock, and so may in fact overstimulate heated markets by increasing the numbers of potential buyers without a concomitant increase in the number of units. In contrast, CLTs can represent a supply-side strategy that uses subsidy retention rather than recapture, and hold subsidies in a dedicated stock of affordably priced owner-occupied housing. It is worth exploring whether CLTs would represent better use of funds targeting first home owner grants and dual mortgage schemes, or if CLTs sit well with the policy intentions underpinning these programs.

Dual mortgages schemes, such as those discussed by Pinnegar et al. (2008, 2009), may have relevance in the Indigenous sector as a way to further reduce housing costs once a CLT-type landholding mechanism is in place. This is suggested because it may be that in areas where land value is minimal and construction costs elevated, removal of land value alone via a CLT-type model may not be enough to create affordability. However, it would not be desirable to double up administrative layers by having a standard dual mortgage scheme in operation on top of a landholding mechanism. Rather, the presence of a shared equity partner (the landholder) could provide the basis for differentially allocating equity based on an affordable mortgage level to the home owner, rather than according to delineated costs of land versus the improvements. This may require a more substantial degree of subsidisation to maintain program viability.

In addition to dual mortgage schemes, demand-side support for the affordable home ownership sector can be provided by socially motivated lenders subsidising mortgages to assist home purchase. Typically a dwelling is purchased via a mortgage offered by the lender at favourable interest rates and over a longer repayment period. The buyer is also given assistance in managing the application process.

**Box 1: The growing affordability gap requiring growing level of subsidy**



Source: based on Davis & Jacobus 2008, pp.7–8

#### 2.1.4 Land rent schemes

The land system in the Australian Capital Territory (ACT) is different from the states in that the Crown owns all ACT land. Even though the Crown stopped charging ACT residents ground lease fees in 1971, these powers remain. In 2008 the ACT Government introduced a land rent based affordable home ownership scheme, the first of its kind in Australia. Using a land rent mechanism which has some similarities with the ground lease of a U.S. CLT, the ACT Land Rent Scheme allows home buyers to rent land (from the ACT Government) at a cost of 2 to 4 per cent of the unimproved land value per annum, depending on their income level (ACT Government 2011). This reduces entry costs for home buyers because they are not required to borrow for capital payment on the Land Rent Lease, and only need to fund the purchase or construction of a home on the Land Rent block.

The scheme aims to reduce the up-front costs associated with owning a house, and improve housing affordability (ACT Government 2011). The scheme is also expected to be used as a means for some people to advance their entry into homeownership.

The discount rate of 2 per cent is means tested and is only available to moderate income first home buyers who reside in a dwelling built on the land. If the household income in subsequent years moves past the eligibility benchmark, the land rent increases to 4 per cent of the unimproved value. The land rent increases as the value of the unimproved land increases but in order to assist affordability, rent increases are capped at the growth of average weekly earnings in the ACT.

Lessees participating in the land rent scheme may choose to convert to a 99-year Crown lease<sup>7</sup> on the block of land at any time. A land rent lot can be sold at any time. The new owner can continue with the land rent scheme or alternatively the new owner can choose to purchase the 99-year Crown land lease from the ACT Government.

By early 2011, 750 land rent contracts had been entered into in the Australian Capital Territory (ACT), suggesting there is positive consumer sentiment in that (small) market (ACT Government 2011). It is important to note that the early history of the scheme was marked by some difficulties in getting a finance provider to act as a financing partner. The big four banks did not participate. Instead a large credit union has taken on the role of mortgage provider, entering into a Memorandum of Understanding with the ACT Government. Another credit union is about to enter the market to offer a similar mortgage product (advice ACT government officials).

The form of the land rent lease, the approach taken by mortgage financiers and consumer profiles are potentially useful by-products of this scheme to inform the development of similar aspects of a CLT in an Australian context.

The ACT is in a unique position of retaining its land in government ownership but there are other land rent arrangements, such as in retirement villages, on western lands in NSW, and in national parks (such as at Thredbo), that may also offer useful insights for progressing CLTs.

#### 2.1.5 Rent-to-buy schemes

Mortgage support can also be provided via rent-to-buy schemes. In these, a tenant enters into an agreement to buy a property on a future date, at which time a portion of the rent paid to date is applied as equity. The tenant/buyer then enters into a mortgage for the remainder of the purchase price. These schemes can work well in facilitating home ownership access, particularly when they help residents prepare for

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<sup>7</sup> A 99-year Crown Lease is the standard form of land tenure in the ACT.

home ownership, both financially and behaviourally. However, they must be carefully constructed to enable exit pathways without equity loss where possible.

Rent-to-buy schemes were utilised during the 1950s and 1960s as a pathway to home ownership for public housing tenants but have not been active in Australia since. Consideration of these models by some not-for-profit housing providers is re-emerging in the context of growing entry barriers to home ownership among their clients. A scheme is being considered by one Local Aboriginal Land Council, as discussed later in this report.

### *2.1.6 Sweat equity schemes*

Sweat equity or self-build arrangements operate to reduce the costs of construction of new housing by substituting labour and trade skills for construction costs. This may take place in advance of a household moving into their home, or a household may move in and subsequently contribute their sweat equity by building homes for others participating in the scheme (Pinnegar et al. 2010).

The most widely known program is run by Habitat for Humanity, which has helped to provide over 300 000 'simple, decent, affordable' homes for those in need internationally (Habitat for Humanity 2009). Habitat for Humanity and the US CLT Network recently signed a Memorandum of Understanding at a national level in the US to work more closely together, due to the synergy between the core aims of the two models. In Australia, more than 90 homes have been completed, working in partnership with local communities in all mainland states with a further 40 projects in the pipeline (Habitat for Humanity Australia 2010).

Sweat equity contributions assist with ongoing affordability because lower mortgages will be needed to cover the built cost of homes. They could have particular applicability for assisting Indigenous households to achieve affordability in those, typically remote, areas with high construction costs that are one barrier to affordability. In those situations, sweat equity arrangements would complement the potential role of CLTs in protecting ownership of community land made available for house building, as well as offering other forms of non-financial support to residents on a continuing basis (as already described). The self build model could be supported by a local Indigenous community housing organisation or other local housing enterprise.

### *2.1.7 Mechanisms to preserve affordability*

There are few programs that attempt to maintain affordability in home ownership in Australia. Shared equity (dual mortgage) schemes probably come the closest but resale can occur without restriction should the residents eventually become the 100 per cent owner. A relevant example is the Homes on Indigenous Lands scheme (HOIL) which, has rules pertaining to resale (see Section 3.3.1).

Traditionally, affordability in Australia has been maintained by provision of rental housing only. Home ownership is primarily seen as a route out of rental and payment of 'dead money' and into wealth creation; this is the expectation expressed in federal and state discussion papers on increasing Indigenous home ownership. Forms of restricted ownership such as that provided by CLTs and other models are relatively new to an Australian audience, even though they are well-established in other similar high housing costs countries, such as the UK and US, where restrictions on sale have become more accepted as a means of balancing individual asset accumulation with the preservation of the rising cost of public home ownership subsidies (Jacobus & Lubell 2007).

## **2.2 Overview of the evolution of government-assisted home ownership schemes in Australia**

The contemporary policy landscape for assisting lower income households into home ownership in Australia has been described as devolved and fragmented (Milligan & Pinnegar 2010). Subsidisation of home ownership takes many forms, some more overt than others. More attention is coming to bear on the hidden subsidisation of 'private' home ownership via the taxation system (see Australian Government 2008), in addition to overt subsidisation streams such as first home owner grants.

Notwithstanding the diversity of interventions that can be termed subsidised home ownership, this report is focussed on models and programs that are of most relevance to improving choices and pathways for Indigenous households who face a variety of impediments to achieving the desired benefits associated with that tenure. This involves especially programs that aim to facilitate entry into home ownership for lower-income households or to make better use of subsidies over time, such as various shared equity housing models.

There is long history of government supported assistance for lower income households and first home buyers in Australia (Dalton 1999), which has been integral to achievement of high rates of home ownership among non-Indigenous households. Large scale program elements at different times over the 20th century have included: government loans; facilitated access to private mortgage finance (especially via regulatory controls placed on banks and building societies that were aimed at channelling finance to home buyers at capped interest rates); large scale sales of public housing to sitting tenants or other eligible buyers on a concessional basis; and various forms of deposit assistance and mortgage subsidies, especially for first home buyers and those at risk of losing their home (Milligan 2003; Pinnegar et al. 2010).

In the early 1990s, there was a fundamental shift in the landscape for government-assisted home ownership that has ongoing relevance to future prospects for the support of governments in this field. In the context of deregulated finance markets, the growing availability of private mortgage finance and the emergence of a secondary mortgage market, state governments began switching from on-budget lending for home ownership to government-backed privately financed schemes. These schemes offered innovative ways of improving access to home ownership for government target groups—typically those waiting for public housing and public housing tenants judged able to purchase—but, at the same time, aimed to reduce the demand for budget outlays, especially in the emerging context at the time of house price inflation and declining housing affordability. The new direction was given further impetus after 1988 by changes to the Commonwealth State Housing Agreement that curtailed the use of public funds for home purchase assistance. The main form of innovative product offered was a 'low start loan', which linked initial mortgage repayments to income, moving thereafter to an annual inflation-linked payment adjustment regime. Interest forgone on the mortgage in the early years was capitalised into the loan term to be paid off in later years, thus reducing the need for government subsidy of interest payments for marginal buyers.

The main rationale for low start home loan schemes at the time was that households would have a growing capacity to pay the increasing costs of their mortgage as their income increased over their life. By the beginning of the 1990s, such schemes were expanding rapidly but, in a dramatic turnaround, by mid-decade they had closed down in NSW, Victoria and Queensland (where the greatest expansion had taken place) after becoming engulfed in a financial crisis and ensuing political turmoil. There were many intersecting reasons for the collapse of the schemes that have been well

documented in government inquiries and elsewhere (see, e.g., Select Committee upon HomeFund and FANMAC 1994; Dalton 1996). In summary, they included:

- The impact of an economic downturn in the early 1990s on the capacity of many borrowers to make escalating payments (because of static incomes and higher unemployment rates) and slower growth in house prices (which contributed to ballooning mortgages and negative equity outcomes for some buyers).
- The fixed rate structure of the financing product itself, which resulted, after inflation fell, in the schemes having to maintain interest rates that were significantly higher than contemporaneous mainstream home loan interest rates.
- Administrative failures.
- Liberal allocations and overzealous marketing, which were linked to ambitious political objectives to push home ownership towards low income households.

The experience offers salutary lessons for the development and promotion of any government-backed home ownership product. These include that it should be: skilfully designed and tested; well governed; carefully allocated to appropriately qualified and well-informed consumers; and, robust across economic and housing market cycles. Similar principles have already been well incorporated into the CLT model as operating in the US, often as a result of similarly unfortunate instances of trial and error (Davis 2009 pers. comm.; see also Retsinas & Belsky 2002 for similar lesson from the non-CLT sector). Consequently, CLTs as currently manifest are a result of: various experiments in balancing equity gain and affordability retention; recognition of a need for, and the development of, appropriate governance structures; an awareness of the need to prepare and educate buyers; and, an ability to offer what is termed *counter-cyclical stewardship* (Davis 2010). This latter refers to the ability of CLTs to assist lower income households secure housing in overheated markets and to then protect these residents from foreclosure or eviction when the housing cycle turns down.

A wider consequence of the closure of the Australian schemes in three states has been ongoing reluctance shown by their governments to re-enter the field. Since the collapse of the new directions in the 1990s, only the smaller jurisdictions of Western Australia (WA), South Australia (SA) and the Northern Territory (NT), which had not escalated low start lending to the same extent as the more populous eastern states, have maintained home purchase programs for lower income households, including some of the more innovative product forms discussed earlier in this chapter. Outside of those jurisdictions, current forms of government-supported home ownership are very small scale and, consequently, access is highly circumscribed (Pinnegar et al. 2010). As the empirical research for this study is confined to NSW and Queensland details of general schemes from other states are not presented in this report. More information on them can be obtained from relevant government websites.<sup>8</sup> However in the context of this study, it is worth including some specific information on ways that schemes in those states assist local Indigenous households. This is reported in Section 3.3, along with a description of the government-backed Indigenous Business Australia (IBA) Home Ownership Program, which provides mortgages and other assistance to support Indigenous people wishing to take up conventional home ownership throughout Australia.

While successful examples of state government assisted home ownership products remain, these are not available to the majority of Australian households seeking

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<sup>8</sup> See HomeStart Finance (n.d.), KeyStart Country (2010) and Department of Housing, Local Government and Regional Services (2011).

assistance, including Indigenous households living outside of NT, WA and SA. At the same time, the nationally available IBA lending fund earmarked for Indigenous households is fully allocated with a long waiting list (see Chapter 3). The latest national housing policy framework, the National Affordable Housing Agreement (NAHA), which has been operating since 2009, includes a commitment to comprehensive housing policy and improving mobility and pathways between tenures. Through the National Partnership Agreement on Remote Indigenous Housing (COAG 2009), the NAHA incorporates large scale initiatives for Indigenous housing provision in remote areas, including promoting opportunities for asset-based home ownership through possible changes to land tenure. However, a nationally equitable approach to improving housing choices and promoting tenure pathways for lower income households more broadly, including for the vast majority of Indigenous households who live in urban and regional areas, has not been forthcoming so far under that agreement.

This situation gives rise to a significant paradox for policy makers charged with increasing Indigenous home ownership. On the one hand, there is a strong and well-intended desire from governments and many Indigenous leaders to encourage entry into home ownership for more Indigenous households who aspire to their own home. On the other hand, there is a lack of funding for well-conceived forms of home ownership assistance at a time when the extent of unaffordable housing across Australia has never been greater. We return to these issues later in the report.

### **2.3 Stakeholder views of innovative home ownership options**

In considering the expansion of the affordable housing sector into innovative low cost home ownership models, stakeholder sentiments need to be taken into account. Currently, very little is known about views of CLTs among Australian stakeholders, although interest in the model is growing amongst public and community groups. Previous research in Australia indicates there is interest in a broader spectrum of shared equity products in the general housing market (Pinnegar et al. 2009). That research referred to a variety of models including deed-restricted mortgages, limited equity cooperatives, CLTs and dual mortgages under the term 'shared equity', referring to the former three as 'community equity' and the latter one as 'individual equity'. The research found that there was greater interest in individual equity amongst potential home owners. However, the report focused on shared equity as a financial mechanism alone, rather than the overall program of housing and community development articulated by CLTs.

The focus group participants who took part in the Pinnegar et al. study discussed the desirability of the differential allocation of equity between parties in two hypothetical dual mortgage schemes. The individual equity model presented a 75:25 mortgage split between the home owner and the equity partner respectively, with a corresponding 75:25 split in equity gain, and the community equity model presented a 50:50 split, with a flat rate of equity gain to the home owner based on the consumer price index (CPI). Perhaps not surprisingly, the focus groups favoured the former. This echoes the experience of the CLT sector in the US, which has found that flat equity returns based on CPI or Area Median Income (AMI) tend to be unpalatable to their residents. As such, most US CLTs use an appraisal-based formula that returns a set percentage (generally 25%) of the equity gain of the land and home package to the home owner, in addition to their amortisation and the agreed return on any improvements. Moreover, sector workers in the US see appraisal-based formulae as much easier to administer than other formulae.

The Pinnegar et al. (2009) report did not explain the relationship with the equity partner (whether a government agency, specialist dual mortgage provider or CLT) to focus group participants, which could have deterred expressions of interest in a CLT-type model. Both the US and UK sectors find that genuine stakeholder participation in governance is crucial for the acceptability of affordable housing projects generally. This is especially the case for leaseholders when the partner organisation is retaining much of the equity to maintain affordability for future residents and broader social goals. In general terms, people seem more comfortable sharing equity with another entity when that entity is known, transparent, responsive and accessible for genuine engagement. The existing body of research on innovative home ownership models highlights the need for stakeholder perceptions to be considered as part of this research into the viability of CLT-type models.

## **2.4 Concluding comments**

The current policy interest in expanding home ownership in Indigenous households needs to be considered within the broader context discussed in this chapter. Earlier research shows interest amongst Indigenous communities in core traits associated with home ownership, such as stability, a sense of ownership and inheritability (Memmott et al. 2009). That research found less interest amongst Indigenous communities in the house as an asset or a wealth creation vehicle. Consideration of these aspirations highlights the potential relevance of utilising hybrid tenure forms to diversify housing options for Indigenous communities. Wider policy interest in promoting tenure pathways and intermediate tenure forms is also pertinent, as discussed in this chapter.

The persistence of high housing costs and narrow choices low to moderate income people face (social housing/private rental or market-based home ownership) and low likelihood of any increase in house price affordability (at least in the short to medium term) despite the Global Financial Crisis (GFC) effects in the US, suggest that hybrid tenures forms are worth exploring, to identify more nuanced policy approaches, as well as sustainable models, principles and objectives. Sharing of equity (and risk) could provide a 'third way' in the housing spectrum. This can build on the lessons of the past in Australia that were discussed in Section 2.2, as well as on the articulation of hybrid tenures as developed in other national jurisdictions to identify the parameters of realistic and appropriate models.

As with in the US and UK, there is scope in Australia to develop a range of tenure forms that are underpinned by an ethic of stewardship and that aim to facilitate stability and mobility. Australia's affordable housing landscape is diversifying and this offers a contemporary opportunity to broaden activities in this sector to provide additional options to households who aspire to and can achieve independent housing. As with the sectors in the US and UK, it is pivotal that expansion in the sector be locally appropriate and responsive and supported by enabling policy and/or programs.

### **3 THE INDIGENOUS HOUSING CONTEXT**

This chapter discusses the current housing policy environment in relation to Indigenous people in particular. The first section will give a brief overview of household characteristics, while the latter sections will address the policy debates and currently existing programs that have been employed to increase home ownership amongst Indigenous people.

#### **3.1 Indigenous population, economic circumstances and tenure**

It is well known that, on a variety of measures, Indigenous persons are more disadvantaged than non-Indigenous persons. In relation to housing, this is characterised as a greater concentration in rental tenures, lower rates of home ownership, overcrowding and poorer housing quality (AIHW 2009).

##### *3.1.1 Population*

Aboriginal and Torres Strait Islander (ATSI) people comprised an officially estimated 2.5 per cent (517 000 people) of the total Australian population in June 2006; this is expected to reach between 640 700 and 643 800 people by 2016 (ABS 2010a). The Indigenous population is increasing faster than the average due to a higher birth rate. In 2008, the Total Fertility Rate (TFR) for Aboriginal and Torres Strait Islander females was estimated to be 2.52 babies per woman, compared with 1.97 babies per woman for all Australian females. States with the highest number of registered Aboriginal and Torres Strait Islander births were Queensland (4400 births) and NSW (4000 births) although the TFR was lower than in other states (ABS 2010a).

Most Indigenous people live in urban settings and the majority live in NSW or Queensland. In 2006, 152 685 ATSI people lived in NSW and 144 885 lived in Queensland. This represented 30 per cent and 28 per cent of all Indigenous persons respectively. In NSW, 4.2 per cent of Indigenous people lived in remote areas in 2006, while in Queensland the figure was much higher at 22 per cent (ABS 2010a).

The ABS uses Indigenous Regions that are geographical areas, and these are generally larger than other ABS areas such as Statistical Division (SD) areas. Indigenous Regions are often an amalgam of several SD areas—for example the Coffs Harbour Indigenous Region encompasses the entire coastal area from Gosford to the NSW/Queensland border (ABS 2006c). According to the 2006 Census, the Indigenous regions with the largest populations were Sydney (46 900), Brisbane (46 300) and Coffs Harbour (43 800). The Indigenous regions with the highest proportion of Indigenous residents were outside major population centres (ABS 2010a). However in terms of total numbers, 75 per cent Indigenous people are urban dwelling, with a minority living in remote areas—9 per cent (47 900 people) lived in remote areas and 15 per cent (79 500 people) lived in very remote areas (ABS 2010a).

Nationally, nearly two-thirds (64%) of Aboriginal and Torres Strait Islander people lived in one-family households with dependent children in 2008, with nearly one quarter (23%) in one-parent families (ABS 2010a).

Indigenous households were more likely to be mobile and experience extended visits from extended family members. This means that overcrowding can occur and households can change size more often.

### 3.1.2 *Employment and income*

In 2010, the unemployment rate for the Indigenous population remained steady at 18.2 per cent, with an estimated 36 600 unemployed Indigenous people aged 15 years and over. The non-Indigenous unemployment rate was 5.1 per cent. Likewise workforce participation rates were lower for Indigenous persons at 58.3 per cent compared to 76.8 per cent for non-Indigenous persons (ABS 2010b).

The unemployment rate for Indigenous people was 16 per cent in major cities, 23 per cent in regional areas and 12.8 per cent in remote areas (ABS 2010b).<sup>9</sup> In NSW the unemployment rate was 18.1 per cent while in Queensland it was 19.6 per cent (ABS 2010b).

### 3.1.3 *Tenure*

Indigenous persons are more than twice as likely to be renting rather than living in a home that they own or are purchasing. In 2008, 68.5 per cent were renting, of which 38.6 per cent were in social housing or Aboriginal housing, and 29.8 per cent were in private rental (ABS 2010b).

Overcrowding is a significant problem with rates of overcrowding highest in Aboriginal housing rental at 49.5 per cent. Rates are lower amongst home owners and private renters.

Indigenous persons are less likely to be home owners than non-Indigenous persons (36% compared to 71% nationally) (FaHCSIA n.d., p.8). Table 1 below shows regional tenure types in NSW and Queensland. Broadly speaking, home ownership is more prevalent in peri-urban and regional centres (e.g. 42% in Central Coast, NSW; 43% in West Moreton, Queensland) and lowest in remote areas (28% in mid-western NSW; 18% in far north Queensland). In remote areas, Aboriginal housing rental and social housing rental are more predominant reflecting the lower incomes, lack of employment and access to home ownership options. Private sector rental was also predominant in peri-urban and regional areas especially where housing costs were higher than average, and less prevalent in rural and remote areas.

However there has been a steady increase in home ownership rates, especially in urban and regional areas. Between 2001 and 2006 there was an increase in urban and regional Indigenous home ownership, from 35 per cent to 39 per cent, more than double the rate for Indigenous households in remote areas (FaHCSIA n.d., p.9). This is attributable to steady employment and incomes, and programs designed to assist Indigenous persons into home ownership (discussed in more detail below).

Unsurprisingly, higher incomes are also correlated with higher home ownership rates. The gap between Indigenous and non-Indigenous home ownership rates is narrowest in the highest income quintile (FaHCSIA n.d., p.9).

As summed up by COAG (2008a), the main factors explaining the tenure position of Indigenous households in urban and regional areas are: the profound economic disadvantage of Indigenous Australians; discrimination in the private rental market; broader social exclusion processes impacting on Indigenous people; the comparatively poor physical and mental health of Indigenous Australians; and a lack of culturally appropriate housing forms, such as larger housing suitable for extended families and visitors. In remote areas, the absence of public and private infrastructure, communal land tenures and high construction costs present additional barriers.

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<sup>9</sup> The ABS cautions that this statistic is probably not accurate as persons in remote areas may not be identified as unemployed or in the labour force (ABS 2010b).

### 3.2 Policy debates and Indigenous home ownership

A major focal point of recent directions in Indigenous housing policy is the thrust by governments to facilitate additional home ownership opportunities for Indigenous Australians. Community Land Trusts have been recognised as one potential model for contributing to this goal (FaHCSIA n.d, pp.16–17). The rationale for and feasibility of aspects of this policy direction are being strongly contested. In this section, we briefly review a number of debates that have a key bearing on policy thinking and validity in this area. The aim is not to present a full account of these complex debates, but to set the context for considering how Indigenous housing policy goals could be effectively addressed through development of a CLT type option.

**Table 1: Indigenous tenure type by region, NSW and Queensland, percentage**

<i>Region</i>	<i>Own or purchasing own home</i>	<i>Private sector rental</i>	<i>Social housing rental</i>	<i>Rental from persons not in household <sup>(a)</sup></i>	<i>Other tenure types <sup>(b)</sup></i>
<i>Central Coast, NSW</i>	42	40	14	n/a <sup>(c)</sup>	4
<i>Coastal Sydney, NSW</i>	31	35	25	n/a	1.3
<i>Hunter, NSW</i>	43	33	30	n/a	5
<i>Illawarra, NSW</i>	38	29	28	n/a	5
<i>Mid-Western NSW</i>	28	31	26	n/a	5.7
<i>New England/North West NSW</i>	32	31	31	n/a	6.9
<i>North Coast, NSW</i>	34	37	24	n/a	6
<i>Riverina/Murray, NSW</i>	35	31	28	n/a	6.4
<i>Western NSW</i>	33	22	35	n/a	10
<i>Western and south western Sydney, NSW</i>	36	30	29	n/a	5.3
<i>Brisbane, QLD</i>	36.7	28.8	15.6	10.4	9.4
<i>Gold Coast, QLD</i>	38.1	32.8	7	12.9	9.2
<i>Sunshine Coast, QLD</i>	38.5	30.7	7	14.6	9.2
<i>West Moreton, QLD</i>	43.1	22.2	5.7	15.1	14
<i>Wide Bay/Burnett, QLD</i>	36.8	23.4	10.8	10.8	18.2
<i>Darling Downs, QLD</i>	34.3	27.1	13.7	11.6	13.2
<i>South West, QLD</i>	34.6	13.8	19.2	9.7	22.8
<i>Fitzroy, QLD</i>	34	19.7	17.6	9.5	19.3
<i>Central West, QLD</i>	33.9	3.5	21.5	10.4	30.9
<i>Mackay, QLD</i>	40.8	16.5	14.8	10	17.9
<i>Northern QLD</i>	28.2	22.2	22.7	6.9	20.2
<i>Far North QLD</i>	18.2	15.7	20.3	6.9	39
<i>North West QLD</i>	24.1	6.4	27.1	5.3	37.1

(a) Comprises dwellings being rented from a parent / other relative or other person

(b) Includes Community/co-op housing, Other and Tenure Not Stated for Queensland. Where the percentage is higher (for example, for the Central West and North West of Queensland) there is a significant community housing component.

(c) There are differences in the data on tenure types for NSW and Queensland. For more details, see the sources.

Source: Aboriginal Affairs (2009a, 2009b, 2009c, 2009d, 2009e, 2009f, 2009g, 2009h, 2009i, 2009j); Queensland Government (2006).

### 3.2.1 *Government aims to increase home ownership for Indigenous people*

The driving ambition behind current policy making and action in Indigenous affairs in Australia is to 'close the gap' in Indigenous disadvantage (COAG 2008a). In housing, 'closing the gap' includes achieving greater consistency between the outcomes for Indigenous and non-Indigenous Australians across mainstream housing indicators, such as home ownership and homelessness (COAG Reform Council 2011, p.39). Increasing access to affordable home ownership is a specific outcome measure under the National Affordable Housing Agreement (NAHA) (COAG 2008b).

While operating under COAG leadership, Indigenous housing policy frameworks and responsibilities across spheres of government are partitioned by location and type of market. The Commonwealth government is responsible for outcomes in areas classified as remote and very remote (where mainstream services do not operate) and state and territory governments are responsible in all other urban and regional areas,<sup>10</sup> where 75 per cent of Indigenous people live. Chapter 2 of Milligan et al. (2010) provides more detail on the current policy arrangements.

So far, the priority areas for reform in housing have been those specific remote and very remote locations identified in the National Partnership Agreement on Remote Indigenous Housing, which provides for \$5.5 billion capital funding over 10 years for new housing and backlog maintenance (COAG 2008c). In addition to investment in new housing and refurbishment, much of the effort in these locations and other remote areas to date has been focussed on achieving government control of housing assets and housing management; for example, through 40-year lease agreements between Indigenous land owners and state and territory governments. While this mainly concerns social housing, next steps are intended to increase home ownership options on communal lands, as the Commonwealth's discussion paper on this issue foreshadows (FaHCSIA n.d). Several jurisdictions are investigating land reform options to enable this direction and FaHCSIA has established a special unit tasked with looking at land administration issues on remote Indigenous lands.

In urban and regional areas, in the absence of additional identified resources for Indigenous housing, the key goal is improving Indigenous access to mainstream housing and private home ownership options. However, little progress has been reported on the latter (see e.g. COAG 2009) and broad indicators are discouraging. The COAG Reform Council is the body charged with monitoring outcomes, and its analysis of housing affordability for Indigenous households showed that only 1.4 per cent of housing sold in mainstream markets in 2007–08 would have been affordable to low income Indigenous households and 11.4 per cent to those on moderate incomes (COAG Reform Council 2010, Figure 8.7, see original for method of calculation). The Council also reported that nationally, 49.2 per cent of Indigenous households with low-income and a mortgage in 2007–08 were in mortgage stress—that is, their mortgage payments exceeded 30 per cent of their gross household incomes. This proportion was significantly higher than for non-Indigenous households (35.9%) (COAG Reform Council 2011, Figure 6.2).

These and other indicators (see Section 3.1) suggest that there is a very long way to go before mainstream home ownership will be a sustainable option for many more lower income Indigenous Australians, especially in the prevailing housing market context that is discussed next.

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<sup>10</sup> This geographic classification is defined in ABS (2006b).

### *3.2.2 Home ownership policies for lower income and excluded households – international perspectives*

Consistent with an older tradition in Australia (described in Chapter 2), promotion of home ownership was a growing policy trend across most of Europe and in North America for much of the latter part of the 20th century. According to Lawson & Milligan (2007), the main national objectives driving this direction to greater or lesser extent in different countries have been: to protect and grow home ownership as the preferred market-based tenure; to extend home ownership to specific ethnic groups and lower-income households; to contribute to tenure mix in disadvantaged areas; and, to reduce long-term reliance on social security, through the creation of asset-based welfare. Such objectives have strong echoes in current aspirations for Indigenous home ownership in Australia. Attempts to fulfil such objectives elsewhere have centred on: discounted sales of public housing (such as the 'right to buy scheme' in the UK) or, as occurred across Eastern Europe, gifting of public housing; innovative government-backed home lending products geared to marginal buyers; and regulatory controls and incentives designed to increase private lending to lower income households and communities. One example of the latter is the 1985 Community Reinvestment Act in the US, which encouraged lenders to lend in underserved areas such as low income neighbourhoods, followed by facilitation of subprime lending.

Stimulation of home ownership generally has had contradictory effects. On the one hand, countries with previously lower rates of ownership than Australia have achieved rapid growth in the tenure, some of which could be attributed to driving home ownership further down the income ladder and to minority groups. On the other hand, growing reliance on the housing market and stimulation of demand has widely tended to be accompanied (until recently) by house price inflation and declining affordability. In the US, ultimately this placed larger numbers of households than previously in situations of high indebtedness and mortgage stress, which had contributed to a rising trend of mortgage foreclosures, even before the GFC. In the US and in Europe, the GFC dramatically halted the cycle of optimistic policy about, and expansion of, lower income home ownership, and produced a fundamental change in the conditions for achieving such goals in future. As argued by Pinnegar et al. (2010), sub-prime lending in the US has exposed the severe risks not only to vulnerable households themselves but also to the whole global economy of pushing unsustainable forms of home ownership to low income households, and opened up the need to fundamentally rethink government objectives and responsibilities in this policy area. While Australia's home ownership market has not seen similar cooling, the US situation provides precautionary lessons regarding the over-commitment of households caught when the market softens.

Although Australia's home ownership system appears so far to have weathered the GFC relatively well and housing markets here have not been subject to correction to anywhere near the same extent, the general outlook for low and even moderate income new home buyers is unpromising, not only because of persistent affordability constraints, but also less favourable lending conditions than in the past with banks becoming more risk averse, and greater economic and labour market volatility. These contemporary conditions, which are fundamentally different to those applying in the heydays of home ownership, need to be strongly born in mind in any policy setting, especially that applying to Australia's first peoples who have borne the brunt of many policy failures in the past.

### *3.2.3 Indigenous home ownership on communal lands*

Debate about the relationship between land tenure and Indigenous economic and social development in Australia has escalated in recent years as successive Commonwealth governments have sought to promote forms of individualised land tenure as a core component of an economic development strategy for Indigenous Australians and, as one integral component of this, a key means to increase home ownership rates in areas where land is currently communally owned. As discussed in more detail in Wensing and Taylor (2011), the case for achieving home ownership in community-titled areas through reform of land tenure centres on the role of land in providing security for mortgage finance and the ability conferred on land owners to trade their asset. This is largely an economic and inherently Western-centred view. The case against this approach privileges recognition of the cultural values of Indigenous peoples and respect for their concepts of the value of land. The link between economic development and land tenure reform is also questioned, as there is little evidence to demonstrate this is a simple causal relationship. As argued by several researchers, home ownership in remote areas in Australia has become a policy goal that assumes a causal relationship between ownership and economic development and reduced disadvantage, without solid evidence (Memmott et al. 2009; Tehan 2010; Wallace 2010). At a practical level, critics of individualising title also question the extent to which its intended benefits will be achieved in places with limited housing markets, low asset values and chronically low and unstable incomes, and point to the many risks to traditional values, and drawbacks for individuals, of a simple mainstream privatised model of home ownership. An emerging viewpoint (see Wensing & Taylor 2011) is that these competing perspectives could be brought closer together through a more nuanced policy approach that seeks at its core to preserve collective title and promote the option of individual home ownership concurrently, alongside of offering financial and non-financial support to residents that is flexible and locally appropriate. Such a vision aligns closely with the essential tenets of a community land trust type model.

### *3.2.4 Creating housing options and tenure pathways*

As we have shown above, a key barrier to Indigenous home ownership is the low and uncertain income of many Indigenous households. There is evidence that Indigenous households may be becoming increasingly reliant on social housing in those parts of major cities, resource areas and regional towns where they are more congregated.<sup>11</sup> This situation partly reflects the deepening affordability pressures in local housing markets across much of Australia, but also winding back of funding to Indigenous community housing organisations that were offering different options and pathways, albeit at small scale.<sup>12</sup> This trend occurs at a time when state and territory social housing systems themselves are under increasing financial strain and have large stocks of poor quality or poorly located housing that is often ill matched to the needs Indigenous clients.<sup>13</sup> The recent past has also been characterised by an erosion of security of tenure provisions and tenant rights in social housing—changes that can have unduly deleterious impacts on vulnerable Indigenous households.

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<sup>11</sup> For data on allocations rates of Indigenous households to social housing see Milligan et al. (2010, Table 8).

<sup>12</sup> This was highlighted by Indigenous participants in this study as a particular problem in Queensland, because the 'one social housing system' policy and regulatory model operating in that state is in effect restricting the legitimate client base of government funded providers to those who are and remain social housing eligible. Since the abolition of ATSIC, many Indigenous housing providers are not receiving funding because of dispute about, and non-compliance with, this policy in Queensland.

<sup>13</sup> Milligan et al. (2011) gives a recent account of many of the problems being experienced by Indigenous households and local service providers in the social housing system in NSW, Queensland and Victoria.

In this context, there is a growing view among both Indigenous and non-Indigenous stakeholders that much more should be done to create other housing choices and pathways for Indigenous people. The establishment of CLTs may provide one specific opportunity to develop a range of housing options that sit between the two traditional tenure forms of social housing and home ownership, including affordable rentals, cooperatives and resale-restricted ownership. Similar to the US experience of the model, this could enable flexibility to address issues of mismatch between household form and housing stock type. Conceived this way, an intermediate model such as a CLT represents a shift from looking to increase home ownership per se towards looking to determine core housing objectives as identified by communities and respond to these in appropriate and enabling ways. At the home ownership end of the spectrum, a CLT approach also does have the potential to reduce the overall cost of owning a home and to provide a safety net, as well as maintaining affordability into the future by applying caveats to resale, which freehold unencumbered mortgages do not. In these ways CLTs could complement already-existing programs by providing an alternative to both social housing and mainstream home ownership.

### *3.2.5 Barriers to Indigenous home ownership*

The barriers to Indigenous home ownership are multilayered. Assuming that it is a desirable thing in itself, there are many obstacles for Indigenous people wanting to own their own home. The most significant of these is entrenched disadvantage characterised by lower levels of education, employment and income. By definition entering into home ownership requires stability of income and the ability to meet the requirements of a lending institution. Increasingly home ownership is out of reach of lower-income Australians, and Indigenous people even more so. However, while cost is one factor, land tenure forms have increasingly become at the centre of debate around remote communities.

Hughes, Hughes and Hudson (2010) argue that communal land title acts as a barrier to home ownership, concluding that common property rights and management have historically failed to generate growth and productivity. They posit home ownership as a pathway to wealth creation, and advocate giving title of some current social housing dwellings to tenants at no cost, plus land administration reform to create definite land parcels. Individual property rights are seen as key to kick-starting economic activity and businesses.

Wensing and Taylor (2001) offer a different view, which problematises the 'superiority' of Western individualised property rights. They discuss the existing community title tenure arrangements in remote communities as something that government sees as a barrier to the expansion of the Commonwealth's home ownership program. Moreover, those authors argue that the government's position is that economic development is hampered by a lack of home ownership, since community-titled land lacks the planning sub-division and fungibility necessary for the provision of individual titles to land that would enable prospective home owners to use their title, and the housing asset on it, as security against a loan (Wensing & Taylor 2001). Hence, Wensing and Taylor (2001, p.v) state that:

Within this framework in which land is viewed purely as an economic asset, Indigenous lands are, above all else, a factor of production for which the most appropriate form of land tenure (if economic development is to be achieved) is some form of freehold, individualised title, with the intended long-term effect of integrating Indigenous people into the mainstream economy.

The authors mount a critique of the argument that since land cannot be sold or otherwise alienated, collective land ownership is somehow an inferior tenure form

leading to economic stagnation and poverty. In contrast, the authors posit other 'goods' such as cultural continuity through tenure security, and an ethical/spiritual legal matrix of rights, obligations and community relationships that rest on land. They find, based on the analysis of various international studies, that:

... for Indigenous groups at least, privatisation does not necessarily evolve towards economic efficiency. More commonly, it has led to the dissipation of Indigenous holdings as parcels of land are sold off or lost through foreclosure to non-Indigenous owners (Wensing & Taylor 2011, p.3).

Wensing and Taylor (2011) discuss non-Western views and different cultural expectations—especially in areas where people live a more traditional lifestyle—which may mean that less value is placed on individual property rights, where there is a strong ethic of communal land guardianship.

For those living in remote areas, apart from the land tenure issue, there may be no housing for sale and no possibility of entering into a mortgage without relocating. Without an economy that can generate employment or incomes there will be little demand for home ownership and a small market. Wensing and Taylor (2011) point to this lack of a housing market as a key barrier that governments need to accept as an economic factor militating against home ownership. With very little effective demand, if a household with a mortgage decides to sell their property because of a change in economic circumstances, there may be no buyers. This increases their level of financial risk compared to an equivalent household in a 'deep' market where there are a large number of buyers and sellers. They also make the key point that there is a lack of an evidenced causal relationship between home ownership and improvement in other indicators (health, income, education). In conclusion, Wensing and Taylor (2011) favour hybrid forms that allow continued ownership and retention of land and avoid the necessity of having Indigenous people buying something on the open market that they already own.

The final factor is that for those in rental situations, rent is set at very affordable levels and there is a good level of security of tenure. Consequently, there may be little incentive to enter into a tenure form that is relatively more expensive, risky and involves responsibility for maintenance, repairs and rates, unless the household wishes to pursue goals such as accruing equity and being able to leave the home to kin.

Notwithstanding the barriers facing Indigenous people who want to go into home ownership, the rate amongst Indigenous people has improved, indicating that access to employment and better incomes, as well as tailored finance products such as IBA loans, have resulted in people living in lower-cost housing areas being able to buy. Perhaps the starting point for increasing Indigenous home ownership should be to establish a realistic and desirable target rather than one that is based on a success rate that was achieved at another time (the 1970s) in a very different context.

### *3.2.6 Diversifying housing tenures beyond ownership and rental*

The evolution of Australia's housing system since WWII has created a binary housing choice between renting and home ownership. Unlike in Europe and to an extent the US, Australia has a very limited tradition of providing hybridised and affordable forms of housing. Crabtree et al. (2012) discuss the range of models that can sit between rental and ownership options, such as co-operatives, housing associations, deed restricted mortgages and CLTs, as also summarised here in Section 2.1.

The escalating price of housing is increasingly entrenching renters in the rental sector. Because of higher rent in the private market, saving for a deposit is often a difficult

and lengthy process. For those in social housing, there may be disincentives to taking on employment due to consequential increases in income related rents and, in some jurisdictions, the potential loss of eligibility for a continuing tenancy. (See Hulse & Randolph 2004; Wood 2009, for an expanded discussion.) For those who can afford to enter into a mortgage, debt levels can become unworkable. Although banks have better lending restrictions than in the US and default rates are generally low in Australia as a result, many households increasingly have to sacrifice a large part of income for many years in order to secure 'a home of their own'.

There is growing interest in models that can sit between renting and owning and which may be less risky, but which are still relatively unknown in Australia. Current interest in home ownership amongst Indigenous communities needs to be considered in the context of this binary, as a desire to enter market-rate ownership may be driven more by a lack of alternatives than by a genuine desire to enter into substantial debt predicated on anticipated capital gains.

### **3.3 Current Indigenous home ownership support**

There are current mechanisms for supporting Indigenous home ownership and which provide the context within which hybrid tenure models would emerge. Indigenous home buyers can currently utilise a variety of programs of Commonwealth and state government agencies. Chapter 2 outlined the range of general measures that are available to assist eligible households with home ownership. In this section we describe special purpose forms of assistance that are provided for eligible Indigenous households.

Typically, the schemes described are designed to assist Indigenous people on lower incomes who face barriers to obtaining commercial loans, such as having a low deposit, adverse credit history or a high level of debt. Generally, they are focussed on assisting individual households to access traditional home ownership, via a tailored affordable home loan product that is often combined with provision of access to support and advice about buying a home and financial budgeting. In a number of jurisdictions, loan schemes have also been adapted for communal lands. More information on various schemes can be found in FaHCSIA's issues paper on Indigenous home ownership (FaHCSIA n.d.).

#### *3.3.1 Indigenous Business Australia home ownership support*

Indigenous Business Australia (IBA) was established as an independent statutory authority in 2001 and sits within the FaHCSIA portfolio. IBA has been responsible for home lending to Indigenous families since the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2005. IBA facilitates access to home ownership for Indigenous people in a number of ways: by providing mortgages directly (or part of a mortgage); offering a discount rate of interest; having a long repayment period (standard is 32 years); and advising their clients on financial planning. Assistance from IBA can be combined with other assistance such as the First Home Owners Grant, state stamp duty concessions and some other specific forms of assistance offered by FaHCSIA.

The most significant program offered by IBA is the Home Ownership Program (HOP), which operates throughout Australia. HOP is targeted towards Indigenous people who may not be able to access a mainstream mortgage. It has provided over 14 000 loans to Indigenous Australians since 1975 (IBA 2010, p.39). As at the end of 2009/10 there were over 3300 active HOP loans with a combined value of \$403.5 million (IBA 2010, p.47). In that financial year 2009–10, over 363 new loans with a total value of \$82.2 million were issued (IBA 2010, p.43).

The average value of purchased properties in 2009–10 was \$244 300 (IBA 2010, p.44). There is evidence that HOP works best in low to medium housing cost areas, with notable take up in 2009–10 in regions such as Coffs Harbour (53 loans), Wagga Wagga (43 loans), and Rockhampton (34 loans). By way of contrast, 42 loans were issued in Brisbane, 32 in Sydney, and 20 in Perth (IBA 2010, p.43), suggesting that the HOP may work better in lower housing cost areas.

Since 2005, IBA, in conjunction with FaHCSIA, has also offered a Home Ownership on Indigenous Land (HOIL) program which seeks to enable home ownership within Indigenous lands that are on one or several titles or perpetual leasehold.<sup>14</sup> In such situations, home ownership is being extended via granting 99-year subleases on delineated lots. The program has three main components: low interest loans and home purchase incentives; money management education for prospective home owners; and construction of additional houses specifically for purchase (Australian National Audit Office 2010).

The HOIL program has been slow in take up and lacked effectiveness due to tenure and land use issues needing to be resolved in all jurisdictions before leases can be entered into enabling home ownership. A recent report by the Australian National Audit office (ANAO) found that, in the program's initial four year period to June 2010, IBA had been able to provide only 15 loans—all for homes on the Tiwi Islands in the Northern Territory— against a target of providing 460 loans across eight communities. Forty-five homes built by FaHCSIA under the program had not been sold and had been transferred to social housing (Australian National Audit Office 2010, p.18).

The ANAO found that implementation had been affected by: delays in promised amendments to land rights legislation followed by administrative delays; hesitancy of communities to use new leasing options; and the existence of native title over much Indigenous land. Further constraints on the program's effectiveness noted were the high cost of building and lack of employment opportunities in remote areas, as well as long standing tenancy arrangements in Indigenous communities that were seen to act as a disincentive to home ownership (Australian National Audit Office 2010, p.19). The auditors concluded that a more realistic and longer term approach to achieving home ownership objectives on communal lands would be required.

Demand for IBA products exceeds the IBA's capacity to respond. As explained by Pinnegar et al. (2010), the IBA essentially operates on a closed funding model, rather than issuing debt and borrowing funds within the financial market as do state and territory home lending agencies (discussed in Chapter 2). Funds available are tied to the capital held within the portfolio, and thus new loans can only be provided as those capital levels allow. Initial establishment funds were allocated by the Commonwealth government and there have been further capital injections over time. New loans are now funded from repayments and redemption through refinancing.<sup>15</sup> This provides a controlled and safe funding structure, avoiding exposure to risks in capital markets. However, it also limits IBA's ability to leverage lending capacity in the way that other lending agencies do. Thus once the portfolio reaches a certain size and if redemption profiles do not keep up with the demand for the product, waiting times increase and demand is deterred. The waiting period for accessing a loan through HOP has historically been approximately 18 months (IBA & Urbis, 2010, p.i). A 20 per cent drop in the waiting list from 1323 in 2008–09 to 1069 in 2009–10 has been attributed to

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<sup>14</sup> Loans to residents of the Torres Strait are made through the Torres Strait Regional Authority (Department of Communities n.d, p.4).

<sup>15</sup> IBA receives expense appropriations from the government, meaning that they can re-invest portfolio growth straight back into their loans.

there being insufficient funds to meet the unmet demands of the waiting list (IBA 2010, p.41). In its 2007 evaluation of IBA activities, the Department of Finance and Deregulation noted that the IBA-Homes program 'appeared to be diligent within its resource limitations' (Department of Finance and Deregulation 2007, p.45), but highlighted a number of concerns, including the length of the waiting list to access an IBA loan due to capital constraints.

### *3.3.2 State initiatives*

The First Home Owners Grant is a generically available nationally-operating program administered via the states and territories and provides \$7000 per first home owner for purchase of new or established houses. In addition to this, concessions for first home owners such as stamp duty waivers apply on some dwellings in Queensland and NSW. Periodically other specific forms of assistance with home purchase may also operate in a particular state. Indigenous first home buyers can avail themselves of these generally available grants and combine them with other Indigenous-specific programs (where they exist).

State schemes geared towards providing mortgages are generally of the assisted mortgage variety with South Australia and Western Australia offering specific Indigenous-targeted loans. These are for market-based home loans, with some favourable terms, similar to those offered by the IBA via HOP. However the NSW and Queensland state governments do not currently offer any home ownership product specifically for Indigenous people.

A summary of programs that have been designed for Indigenous clients in other jurisdictions is given below.

#### **South Australia, HomeStart Finance: Nunga Loan**

HomeStart Finance South Australia, a statutory body responsible for specialised lending programs designed for lower income households, conducted research into why Nunga customers (generally Indigenous people in southern SA) had previously been unsuccessful in gaining approval for existing home loan products. They found that a lack of funds for a deposit, adverse credit history and a high level of consumer debt were the main barriers to home loan approval (FaHCSIA n.d, p.12).

In response, Nunga Loans were developed and became available from 2004. The loans are available to Indigenous people buying established homes in the metropolitan areas of South Australia. Applicants are required to have 3 per cent of the value of the dwelling as deposit and \$1000 savings held for at least three months. First home buyers can also access the First Home Owners Grant. Initial repayment rates are fixed in line with CPI (HomeStart Finance n.d.). Since the start of the program in 2004, 423 Nunga Home Loans have been issued (HomeStart Finance 2010, p.17). Nunga loans are one of a suite of products provided by HomeStart Finance SA. Offering such a product is made possible by the expertise and operating scale of this special purpose lending agency.

In the decade between 1996 and 2006 Indigenous home ownership in SA has increased from 30 per cent to 36 per cent according to Census data, the highest increase over that period of all states in Australia (FaHCSIA n.d, p.12).

#### **Western Australia: Aboriginal Home Ownership Scheme**

As part of the Keystart scheme in Western Australia, the WA Department of Housing offers an Aboriginal Home Ownership Scheme. The scheme is similar to the general programs offered by this agency, which cover low deposit loans and shared equity loans, and the service includes advice, assessment of financial circumstances and

ongoing support after the loan has been taken out. While originally directed at low income earners, higher income earners whose income level previously made them ineligible are now able to apply (FaHCSIA n.d, p.12). Additionally, Aboriginal people who are not eligible for first home buyer assistance are eligible for some additional cash assistance to help meet their purchase costs and fees (Pinnegar et al. 2010).

### 3.3.3 NSW Aboriginal Housing Office: Life Tenure model

A unique approach to meeting Aboriginal aspirations for secure housing is the 'life tenure' model developed in NSW. Following a recommendation of the Aboriginal Housing Development Committee (1996), the 'life tenure' model was developed by the NSW Aboriginal Housing Office in the early 2000s. The attributes of this model are that Indigenous people take on the role of home owner without actually having ownership of the dwelling or land. Features of the proposal include security of tenure, no ongoing rental payments, resident responsibility for regular property outgoings and obligations on residents to ensure compliance with their conditions of tenure. To achieve life tenure the resident applies for an Occupation Unit (dwelling) agreement codified as a Trust Deed.<sup>16</sup> The Deed contained various schedules outlining the responsibilities of the person, as if they were the home owner. The resident takes on repairs, maintenance, rates, water and utility bills, liability for damage caused by others, etc., as a landlord would. The Trust retains responsibility only for certain large repair items itemised in the Deed, such as damage caused by structural failure, replacement of kitchens and replacement of roofs and downpipes, amongst other items. Cost analysis for the scheme at the time of its development showed that there would be savings for larger households and for government. The occupier would not pay any rent component, but would be responsible for all repairs, maintenance, and other landlord-responsibility items.

This model although highly developed and prepared for piloting in 2004 lapsed and was not implemented, after a change of Ministerial direction. However, it is still a valid and easy to implement model. However, it is distinguished from some CLT-type options because there is no initial price for the dwelling to be paid and thus no equity is built by the occupant. Nevertheless, given the greater degree of 'ownership' and good value compared with renting, a life tenure model would be attractive to people seeking more independence from social housing renting models and/or in areas where a resale is unlikely due to market factors.

### 3.3.4 Commercial sector initiatives

There are no specific loan products offered by commercial lenders targeted at Indigenous people, however IBA loans are often combined with a commercial lender mortgage.

The ANZ Bank released a discussion paper on Indigenous home ownership in 2007, which highlighted the structural issues inhibiting home ownership in remote areas of Australia. The report (ANZ 2007) identifies the lower than average home ownership rate amongst Indigenous people as an underdeveloped market and therefore a business opportunity for the bank, and reflects on the fact that mainstream processes may be alienating potential Indigenous customers. Managing director of mortgage at ANZ, Michael Rowland, was quoted as saying:

Currently this is an under-served market ... The majority of Indigenous Australians live and work in urban and regional areas so it makes sense for now to focus on providing home loans in these areas. (Anon 2008)

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<sup>16</sup> We are grateful to the Aboriginal Housing Office for providing information about the Trust Deed for the life tenure pilot project.

The ANZ report identifies the risks in lending on properties in rural and remote areas and indicates that any future loan products targeted at Indigenous households would be for properties in lower-risk urban areas where resale value is more assured. This stands in contrast to the aims of the Australian Government to promote home ownership in remote areas with limited markets.

Despite the ANZ report and major banks having Reconciliation Action Plans and entering into discussions about Indigenous home ownership, at the time of writing none of the major banks has any Indigenous-specific loan product on offer. Given that IBA loans are on more advantageous terms to those Indigenous persons who are eligible, it is perhaps unsurprising that mainstream banks have not captured more of the 'market share' of the Indigenous mortgage market. As mentioned previously, IBA loans are often combined with commercial loans so in many ways commercial lenders are involved (albeit with a social lender partner on board). That said, fieldwork interviews with lenders revealed there is some interest amongst the major banks in lending to buyers in a hybrid tenure model such as a CLT. As in the US, the enrolment of the commercial banking sector would require conservative financial modelling, the creation of appropriate loan products and watertight 'backstop' mechanisms to militate against banks needing to repossess land. In the context of Indigenous housing, the latter point would most likely require backstop mechanisms to absolutely eradicate the potential for repossession, as very few of the major lenders would be willing to be seen taking forcible possession of Indigenous lands.

### **First Nations Foundation**

The First Nations Foundation is primarily a training institution rather than a lender. It operates under the provisions of a traditional lending institution (the Australian National Credit Union) and provides Indigenous culturally-specific support products such as a Clan Account and the My Moola Indigenous Guide to Budgeting (FaHCSIA n.d., p.12).

The My Moola program is 10 week program that links personal development and goal setting with financial literacy and ongoing mentoring. This was trialled in Shepparton in the Goulburn Valley region of Victoria, but has not been rolled out to any other areas.

### *3.3.5 Summary*

Overall it can be seen that there are a range of initiatives operating in the Indigenous home ownership space, with varying results. Rates of Indigenous home ownership are increasing in urban and regional areas but not on communal lands or in remote areas. The HOIL scheme in particular is aimed at the latter. The range of schemes currently operating are market-based; with assistance the IBA loans can work for Indigenous households on moderate incomes in areas where housing costs are not prohibitive. However this excludes many households who cannot afford market home ownership in areas with high Indigenous unemployment and in expensive urban centres. It may also suggest a degree of fragmentation and lack of efficiency of schemes within the Indigenous sector, as the ones aimed at lower income households and remote areas are not yet operating at significant scale or embedded to provide a coherent suite of options or policy objectives.

## **3.4 Indigenous home ownership in New Zealand and Canada**

In the context of Indigenous housing policy and home ownership goals, New Zealand and Canada share some attributes with Australia including having a history of European colonisation, high dependency on rental housing among their respective Indigenous populations, and operating with both communally held and privatised land

title systems. This section provides a brief review of the type of specific initiatives that have been tried in both those countries to improve the rates of mainstream home ownership for Indigenous persons and to offer finance and a form of ownership to Indigenous persons on communally-held or reserve lands.

### 3.4.1 *New Zealand*

Between 1991 and 2006, Māori home ownership rates declined from 54 per cent to 43.3 per cent. While falls in home ownership rates occurred across all ethnic groups, they declined at a greater rate for Māori (by 13.4%) than for Europeans (by 9%) (Housing New Zealand Corporation 2010, p.2). The decline has been greater in the cities in particular, due to rising housing costs and the generally lower incomes of Māori households. Even amongst households on the same income levels, Māori home ownership rates are lower than European households (Housing New Zealand Corporation 2010, pp.50–51).

New Zealand Maori have experienced similar issues to those faced by Indigenous Australians in raising finance on multiple-owner Māori land, which, as under Queensland law, cannot be alienated. A program to address this called Kāinga Whenua (the Māori words for home/homestead and attachment to the land) has been developed to give Māori access to no-deposit loans.<sup>17</sup>

This program responds to the aspirations of Māori to develop housing on communal land and multiple-owned land and addresses the problem of banks not wanting to lend on land with multiple owners. In order to facilitate the loans, Kiwibank acts as exclusive lender, while the Housing New Zealand Corporation acts as guarantor. This allows Māori with a licence to occupy on ancestral lands and to borrow up to NZ\$200 000 towards house building costs or towards the purchase price of the house, allowing them to stay on or move back to their ancestral land (Turia 2010). Applicants must meet eligibility criteria including being first home owners, having a good credit history, having incomes of up to NZ\$85 000 p.a., and buying a home within commuting distance to work. Interest rates on the loans are set at commercial levels (Marae TV 2011).

Because the loan is offered on the house alone, there are certain requirements: that houses must be built on wooden piles; be single storey and of at least 70m<sup>2</sup>; and, have reasonable road access (Housing New Zealand Corporation n.d). This treats the house as the security and as a moveable fixture, which assumes it can be repossessed in the case of default. The ancestral land is not used as security as it is not alienable.

Chief Māori housing advisor to Housing New Zealand, Tamati Olsen, described the loan product as a way of bridging the gap between two different ways of understanding land:

What we're talking about is reconciling that very traditional aspect in a modern setting which is based on individual property rights, so these things are going to clash. (Olsen n.d.)

Such issues of differing understandings of land, land ownership and custodianship, have strong resonance in relation to traditional Indigenous understandings of land in Australia.

The approach in New Zealand is different to that being followed in Australia, where there has been more emphasis on the subdivision of communally-held Aboriginal land

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<sup>17</sup> No deposit is required for loans of NZ \$200 000 or less (Anon 2010).

allowing for alienation or leasehold of individual lots. The New Zealand model maintains communal ownership but provides a government-guaranteed loan product on the house itself, therefore not requiring subdivision or sub-leasing. The positioning of Housing NZ Corporation as guarantor and the development of a specialist loan product via Kiwibank are crucial in providing this housing option to Māori people. However, there has been a general reluctance for governments in Australia to act as guarantor on any housing loan product. This is at least partly a legacy of previous failed schemes, as discussed in Chapter 2.

There is no Māori-specific program addressing housing affordability issues for the 75 per cent of Māori who live in urban areas, and who are predominately social rental housing. However, all low income earners can apply for a Kiwibank Welcome Home Loan, which is a low-deposit mortgage product.

Schemes that educate and qualify Māori people for home purchase have operated in New Zealand for many years. Successful training schemes that were first developed for this population group have since been extended to all home buyers who wish to avail themselves of these, and are compulsory for government-assisted clients.

### 3.4.2 *Canada*

As in Australia and New Zealand, Aboriginal rates of home ownership in Canada are in general lower than average—41.5 per cent, compared to 67 per cent for the Canadian population in 2002 (ANZ 2007).

Aboriginal land (reserves) in Canada is not alienable and is held in trust by Canada for First Nation(s); on some reserves, tribal citizens can obtain Certificates of Possession, similar to Deeds of Grant in Trust Aboriginal land in Queensland. Under the Indian Act, a First Nation (or Band), or an individual who has a Certificate of Possession, for that matter, does not own reserve land but has a right to use it (Stephenson 2010). The Band cannot sell land to band members but may give them a right to occupy or live on the land or in a house on the land.<sup>18</sup> To allow transferability and some form of 'title', a Certificate of Possession is issued and registered. This can be assigned and transferred to other members of the Band. The land cannot be repossessed, and in Canada, nor can any fixture upon the land (the house).<sup>19</sup> A similar loan product to that in New Zealand is available to on-reserve First Nation people, which allows them to access a loan to buy or build housing on reserve land. The Canada Mortgage and Housing Corporation (CMHC) or other 'Approved Lender' offers loans that are underwritten by government acting as guarantor.

Federal and provincial governments have piloted home ownership assistance programs aimed at Aboriginal people living off-reserve in urban and other areas. The Tipi Mitawa Pilot Program in Manitoba is a partnership between the Assembly of Manitoba Chiefs, the Real Estate Association, the Manitoba Housing and Renewal Corporation, the Government of Canada, and the Assiniboine Credit Union, to provide a transition to home ownership. The program allows conversion of rental subsidies into mortgage subsidies and provides Homebuyer Down Payment Assistance to potential home owners. Eligibility is restricted to Manitoba First Nation people first time home buyers who have been employed full time for at least two years, on low to moderate incomes (Manitoba Tipi Mitawa Inc. 2011). The program, however, appears

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<sup>18</sup> As per section 20 of the Indian Act 1984 (Canada).

<sup>19</sup> Reserve lands may not be seized legally, nor is the personal property of a band or a band member living on a reserve subject to 'charge, pledge, mortgage, attachment, levy, seizure distress or execution in favour or at the instance of any person other than an Indian or a band' (section 89 (1) of the Indian Act.) However a leasehold can be created and subject to charge, pledge, mortgage etc (section 89 (1.1)).

to operate at a modest scale with a budget set aside for only seven homes in Winnipeg as of 2010 (Government of Canada and Province of Manitoba 2010).

Another example is the Off-Reserve Aboriginal Home Ownership Program (ORAH) in New Brunswick province. This program provides a forgivable loan of 10 per cent of the total cost of a new home from the Aboriginal Housing Trust. This is matched with an interest free loan for 40 per cent of the home's value (also provided by the Aboriginal Housing Trust) and a commercial loan for the remaining 50 per cent provided by the Province of New Brunswick. Applicants must meet eligibility requirements such as being a first home owner, earning up to CAD\$50 000, and the ability to afford repayment costs (Canada Housing and Mortgage Corporation n.d.). Other provinces such as Nova Scotia have also followed this approach.

In Ontario, CAD\$80 million from the CAD\$300 million federal Off-Reserve Aboriginal Housing Trust (which was funded for three years by the federal government and distributed on a per capita basis to the provinces) were passed along to two Off-Reserve Aboriginal Housing corporations in the province for distribution and administration of both renovations and homeownership programs.

Such programs are aimed at increasing rates of home ownership in the open market. Applicants can choose where to buy within the limits of affordability. Education is provided to potential home owners. These programs are not dissimilar to the IBA loan program in Australia, although the New Brunswick program is more generous as some of the loan is provided interest-free, which is not the case with IBA loans. However, IBA does provide discounted interest rates and lengthy terms. There is also assistance with the deposit under the Manitoban scheme, whereas under IBA loans, applicants are expected to have saved a small deposit already. These programs appear smaller in scale when compared to the IBA program in Australia. Nevertheless, home ownership rates are 5.5 per cent higher amongst Aboriginal people in Canada compared to Indigenous Australians—41.5 per cent in Canada (ANZ 2007) compared to 36 per cent in Australia in 2006 (ABS 2006a, 2010a).

In general, the Canadian experience has some shared characteristics with Australia, insofar as: mainstream home ownership in urban areas is unaffordable for many First Nations people; there is an over-representation of Indigenous peoples in rental tenures; and, some communities live in isolated or remote areas on communal title land and may not have access to employment opportunities or finance. In Canada, the barriers to gaining finance to build on First Nation lands have been addressed via loan products underwritten by guarantee. As noted before, the Australian Government has not favoured this approach to date. There appears to be little interest in pursuing the classic CLT model either on or off-reserve in Canada.

### *3.4.3 Discussion*

The general rate of home ownership for Indigenous people in Canada and New Zealand is somewhat higher than in Australia, but lower than for European-ethnicity people. All three countries have similar schemes to assist people into market home ownership, with variations in generosity of terms and scale. Increasing housing cost pressures have impacted disproportionately on Indigenous people in all three countries, but unlike in Australia, there has been an actual decline in Maori home ownership in New Zealand.

In relation to communal lands, both New Zealand and Canada have taken a different approach to that in Australia, by facilitating loans backed by government guarantee rather than focussing on reform of land administration. It may be there are advantages and disadvantages in both approaches. In the New Zealand model, communal land is maintained and finance is available for home ownership. In the Australian model,

depending on the area, a long-term lease (or freehold title) may have more value than a certificate of occupancy on a building on communal land in terms of transfer value. Ultimately it depends what the aim of the program is—land as the basis of a secure place to live, or land as a freely exchangeable commodity. In addition, land can be imbued with cultural significance and subject to protection hence the prohibition on alienation in (at least some parts of) all three countries. The clash between traditional Indigenous notions<sup>20</sup> of custodianship of land and western individualised property ownership is always at the centre of policy choices when it comes to providing the means for home ownership. The Canadian and New Zealand models are more focussed on leaving communal ownership intact whereas the Australian models so far have tended towards greater Westernisation of land titling. One valuable policy option that emerges from Canada and New Zealand is that finance products can be made available to provide valid home ownership options for Indigenous people who want to live on communal land and do not want to, or cannot, enter mainstream home ownership. These countries have managed to offer Indigenous people access to loan finance on communal lands in a way that has not yet occurred in Australia. Government acting as guarantor and specialised loan products seem to be the key to the success of this approach.

### **3.5 Indigenous organisations and governance**

The roles to be played by Indigenous organisations are central to advancing tenure pathways and home ownership options for Indigenous people in Australia. There are a large number of Indigenous controlled organisations (including Land Councils, Aboriginal corporations, Indigenous service organisations, community councils and Indigenous business enterprises) that own land and or dwellings in Australia. The 2006 survey of Indigenous organisations with a housing role counted nearly 500 Indigenous organisations with about 22 000 houses for permanent occupation under their control across urban, regional and remote areas (ABS 2007). This data does not include organisations holding land but not housing.

Some Indigenous organisations have engaged in home ownership initiatives in the past but, in many instances, they offered discounted prices and did not apply caveats of any kind, regularly resulting in rapid sale and resale on the open market. Often this led to capital gain for third parties and loss of housing in the long term. The CLT model can work against expectations of housing as a vehicle for capital gain, or at least reduce the extent of capital gain to be realised; however as discussed earlier, this may not be a major consideration for Indigenous people. Moreover, a CLT model can provide for limited capital gain upon sale, without creating an inflationary effect that may preclude the sale of the house to another lower-income Indigenous household. This is crucial in areas where the rising cost of housing and pressures caused by mining operations or migration—including retiree movement—from major cities to coastal and rural areas, are pricing out lower income people. Another threat in remote areas was population influx and escalating house prices caused by the booming mining industry.

As discussed by Milligan et al. (2010), Indigenous housing organisations are increasingly calling for their inclusion in mainstream housing policy settings and processes, and seeking investment in housing supply and sector capacity at a sufficient level to secure the viability of well-performed organisations and to attain sustainable growth. Many of these organisations have the potential to offer culturally

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<sup>20</sup> The authors are not assuming this will be the case for all Indigenous people—we recognise the diversity of attitudes to land and ownership and the spectrum of traditional, westernised or new hybridised cultures that exist.

appropriate tenure options and pathways once appropriate land tenure, financing and governance arrangements can be put in place.

Some types of Indigenous organisations are in an advantageous position to establish CLTs. For example, in NSW Local Aboriginal Land Councils (LALCs) already own their land freehold. Many so called 'DOGIT communities' in Queensland, hold land via a Deed of Grant in Trust (DOGIT), as Aboriginal freehold, or in some cases, as simple freehold. Where a NSW LALC holds its land in freehold, there are requirements to gain approval on land dealings from the LALC Board, the NSW Aboriginal Land Council and the relevant Minister, in certain circumstances. For lands vested in a Trust (such as in Queensland), a sublease can be granted by Trustees (for example on Deed of Grant in Trust communities). There is no restriction under NSW legislation on the length of a lease period on LALC lands; however, lease periods of more than 3 years require approval as per land dealings above. Under Queensland law, a lease can be granted for residential or commercial purposes but there may be a restriction to a 30-year period. Chapter 4 considers in more depth the attitudes and potential role of land councils, corporations and other Indigenous organisations in a CLT type initiative through engagement with a selection of organisations in the case study locations and consultation with relevant peak bodies and local housing providers in NSW and Queensland.

Developing new approaches to Indigenous governance models is also emerging as an area of innovation within the Indigenous field (see Milligan et al. 2010, p.56 for references to the debate) and this may assist in identifying a model that can combine the financial and legal requirements for a CLT with Indigenous cultural norms and values. By drawing on the ideas of Hinkson and Smith (2005) and Hunt and Smith (2007), Milligan et al. (2011) discuss taking an 'intercultural' approach to developing and implementing different locally driven housing solutions, involving both Indigenous and non-Indigenous organisations.

Indigenous housing is a complex, messy problem that is highly contextual: one where solutions will differ depending on local conditions and the cultural norms and lifestyles of Indigenous clients in specific local contexts. The idea of 'intercultural' approaches to delivering housing services implies that different solutions involving Indigenous and non-Indigenous organisations, adjusted to local context, may be necessary and appropriate. (Milligan et al. 2011, p.4)

Implicit in the approach is empowering Indigenous organisations to operate at the interface between mainstream agencies and the local community and utilising the combined resources of the mainstream and specialist partners to generate additional housing and service options for Indigenous clients. (Milligan et al. 2011, p.76)

### **3.6 Concluding comments**

While currently a strong policy and political objective, increasing Indigenous home ownership is a complex undertaking. Policy interventions and program developments need to be considered carefully in order to not unduly expose Indigenous populations to the risks of market-based ownership. The review in this chapter highlights that there is considerable activity in the Indigenous home ownership realm, but that this is not as successful or widespread as it could be. There is particular concern about home ownership operating in regions where demand will be so 'thin' that effective housing markets will not operate.

Indigenous aspirations for stability and autonomy in housing, coupled with marginal market contexts, suggest that hybrid tenure models may be relevant. The desire for ongoing recognition of the cultural significance of Indigenous lands suggests that

models that can allow collective or community ownership of land would be relevant. Consideration of overseas programs suggests that programs which provide additional support services and training to residents, and which balance rights and responsibilities between the resident and the provider or land holder, would be appropriate for the sector.

## 4 CASE STUDY RESEARCH

This chapter addresses research question three using a case study methodology. The question is: what is the possible application of CLTs for Indigenous households and how would this vary geographically? This chapter first explains the selection of case studies in NSW and Queensland and then presents the scenarios developed on the basis of the case studies. This is followed by a discussion of the common themes that emerged across the case studies.

The case study selection process was a bottom-up process, shaped largely by engagement with the stakeholder community and the utilisation of the IAG's expert knowledge of the sector to identify potential case studies as a process of engagement and consultation. Potential research sites were identified by Indigenous stakeholders, filtered by the criteria discussed below, prioritised, and then contacted in order of priority to ascertain interest. Not all sites suggested were selected as case studies and the final decisions rested with the research team. A small degree of 'snowballing' also occurred (Noy 2008), with further research participants becoming involved once the team was in the field.

Case studies were selected through a two level process. At the first level, consideration was given to the financial and social sustainability of land tenure. For financial sustainability of a CLT, the conditions under which households can access finance to purchase dwellings are a primary concern, as tenure arrangements which are likely to be easily disturbed will not be viewed favourably by financial institutions looking to provide loans. Thus stable land tenure forms were a condition for selection due to the potential impact on financial sustainability.

Key issues in social sustainability include that:

1. Land tenure is likely to be continuous in order to enable the CLT to develop and to sustain succession of occupancy.
2. There are appropriate governance arrangements in place that will not hinder the development of CLT governance structures deemed appropriate to the development of CLT-type models and crucially, which reflect community ambitions.

These conditions informed the development of criteria for the selection of case studies; so secondly, a suite of specific selection criteria were developed to ensure that an appropriate range and variety of study areas could be covered. Development of these criteria was undertaken in consultation with the study's Indigenous Advisory Group (IAG), although the final determination of case studies was made by the researchers. This was in order to not infer bias toward or against particular communities on the part of the advisory group members. The selection criteria for the case studies were:

1. Diversity of sites—the project aimed to cover urban and regional communities and discrete and town-based communities in NSW and Queensland to the extent possible within the funding and time constraints of the project.
2. Diversity of incorporation types—the project sought to cover Local Aboriginal Land Councils, regional umbrella bodies, Deeds of Grants in Trust (DOGITs) and Aboriginal Corporations.
3. Sustainability and scale—the proposed host organisations in the case study communities must be sustainable in terms of their assets, economic development base and governance/regulation. The case studies need to be deemed to have a degree of scale and stability; ideally, case study organisations needed to have the potential to provide 40+ houses under a CLT model. These houses need not all be in one locality.

4. Replicability—to maximise the relevance of the case studies, these needed to have a suite of social, economic and legal characteristics that were felt to be reasonably indicative of the sector or particular landholding type.
5. Housing experience/regulation—case study communities were sought with experience in housing management and/or a regulated housing organisation in operation, to ensure a solid base for feasibility work.
6. Demonstrated interest amongst community—interest in the model amongst the case study communities was preferable but not mandatory, as most communities have not heard of the model.

Approaches were made to identified organisations via a formal letter requesting participation in the research project and providing background material on CLTs and the research project. Fieldwork in the chosen locations took place in August and September 2011. This involved interviews and group discussions with Aboriginal organisations and, in some cases, tenants, as well as site visits to land holdings and housing. Interviews were also carried out with other stakeholders relevant to the sector, such as lenders and agencies working on home ownership with Indigenous communities.

After consulting with the IAG, the researchers decided to de-identify the communities in this report. Instead, the data collected from the case studies has been used to form the basis of scenarios which may have applicability across communities and locations with shared underlying characteristics. Scenario building aims to determine the key economic parameters, cultural factors, viability thresholds and other matters that would enable a CLT type model to be developed, and to allow for local variations. The scenarios sometimes reflect aggregate data from a number of communities. All scenarios have been randomly allocated Australian bird names and have been reviewed by the IAG and case study communities for thematic and practical appropriateness and relevance. Illustrative household vignettes have been developed for case study scenarios where enough qualitative data was provided by participants to describe an indicative household; not all case studies provided suitable and available opportunities to develop vignettes. While indicative and accepted by the Indigenous Advisory Group, these are fictional households.

## **4.1 Case study data and scenarios**

This section reports on individual and amalgamated case studies to provide background data on some of the social, economic, cultural and legal contexts within which any CLT-type model would need to be considered. This is intended to firstly, provide primary data on the differing organisational parameters and contexts and secondly, to give a sense of the range of environments within which CLT-type models would operate, should communities decide to develop such options. These environments are summarised as scenarios at the end of each case study overview.

### *4.1.1 Kookaburra Cooperative—a NSW regional umbrella organisation*

The research team contacted Kookaburra via a longstanding colleague of the organisation's CEO. The colleague was familiar with the CLT model and able to explain the model and the project's aims. The CEO was interested in the model and disseminated the project information amongst the member organisations. The research team was able to meet with the CEO and a core staff member at Kookaburra as well as chairpersons, CEOs, staff and tenants of several member organisations. Site visits were also undertaken to existing housing and undeveloped Aboriginal lands. Some of the member organisations' data forms the basis for Currawong and Bulbul (below).

Kookaburra is a registered co-operative operating as an umbrella housing manager over an area in regional NSW. It manages property services for member Local Aboriginal Land Councils (LALCs) and housing organisations representing several communities that make up the membership. Kookaburra has a central office, and Board comprised of the member organisations.

The organisation manages roughly 300 houses, including the properties of several partner organisations, about 20 houses in their own name—via Aboriginal Housing Office (AHO) head-leases, including properties formerly managed by Housing NSW—and agency agreements for property management with 10 other organisations. All housing is currently rental housing and members' landholdings are extensive and include freehold. Kookaburra states that since offering professional property management services, it has achieved improved rates for on-time rent payments and collection of over 10 per cent of rental arrears.

The member LALCs' land is freehold. Caveats on the title exist where a social housing dwelling is situated on the land. Most of the member organisations are Local Aboriginal Land Councils, with exceptions being Aboriginal corporations and a not for profit Proprietary Limited Company. One member corporation has about 40 dwellings, which is the largest holding. The communities are located in medium to small towns with varying income and employment levels and varying local housing markets. Many small towns in the area are experiencing increasing housing prices due to the purchase of holiday homes by higher income households whose primary housing is based in the nearest large population centre. The advent of holiday homes is also implicated in the seasonality of work, as many of the small towns are seasonal tourist destinations.

Kookaburra's members are interested in providing a mix of housing options for their current tenants and households on waiting lists. Core needs relate to housing for younger people at risk of homelessness, and Elders. There is an identified mismatch between current stock (typically three and four bedrooms) and demand for smaller dwellings for singles and couples. The organisation and some of its members are interested in home ownership options that do not alienate lands and some are undertaking work on how to develop landholdings. One member organisation has run a home ownership scheme in the past, but there were no caveats on resale. The organisation was interested in examining CLTs as an alternative to avoid the perceived adverse outcomes of that first scheme.

**Vignette**—Caroline and Mark are 28 and 32 respectively. They have three kids from previous marriages and two from their marriage to each other. Both are reliant on Centrelink for their income; Newstart, Parenting Payment and Family Tax Benefit Part A yield a gross income of \$45 000 p.a. for the household. Both are members of the local LALC but live together in public housing. The house has three bedrooms but quite often Caroline's two older nieces Imogen (14) and Ruby (16) come to stay. Imogen and Ruby would like to leave home and Caroline would be happy to have them move into her place, but the house gets too crowded. They have spoken with the LALC about more appropriate housing but the LALC homes are full, there are 30 households on the waiting list, houses come up rarely and the LALC has no houses of an appropriate size. Modest four-bedroom houses in the area sell for around \$330 000 on the open market. Caroline would very much like to move as the neighbours are unfriendly and have been making complaints to Housing NSW. She would also like more room to help out her nieces.

*The scenario.* Kookaburra presents a scenario in which a strong regional governance structure is in place and a reasonable 'mainstream' housing market is in operation, although this varies across the region. Land is held in a variety of tenures (LALC, corporation, proprietary limited company) and Indigenous residents have variable levels of access to employment across the region. Organisations under the umbrella organisation have mixed capacities to acquire or develop land and properties, and there is a desire to articulate housing options that provide stable and inheritable access to appropriate housing.

#### *4.1.2 Magpie Local Aboriginal Land Council—a NSW urban LALC*

Prior to the research project, Magpie's CEO had had contact with the research team regarding the CLT model. After determination that the case study criteria were met by Magpie, this contact formed the basis of a discussion with the CEO and two staff about Magpie's current activities and future plans, as well as a visit to a potential development site. The team was unable to meet with Magpie's members or tenants and was unable to generate a vignette based on Magpie.

Magpie LALC is an urban-based LALC in NSW with several hundred members and substantial landholdings. It is contemplating a major residential development on a large parcel of its land. Magpie is financially healthy with an operating surplus primarily flowing from its development activities. The organisation has taken on the role of property developer on its lands as a way of raising revenue. It has developed several subdivisions and bushland conservation areas which provide employment to Aboriginal workers. As Magpie acts as sole developer, the projects provide significant income for the organisation.

Some legal issues have arisen in the past due to the need to gain certain approvals for land dealings, necessitating the amendment of the Aboriginal Land Rights Act to validate the disposal of certain properties which otherwise could have been invalidated. The organisation's latest proposed development is of a significant size and currently is intended to be sold as market-rate housing with the income stream underpinning Magpie's provision of other services to its members. The organisation's aim is to provide its members with pathways out of subsidised rental housing by utilising its significant land assets and healthy revenue. To progress this aim, Magpie is developing a rent-to-buy scheme, starting with the homes that it currently manages. Under this scheme it is proposed that, after a set time occupying a house, the resident will have a proportion of their paid rent returned to them for use as a deposit to buy their home. The rental period is being approached as a transitional stage in which the resident takes on board responsibility for repairs and maintenance and has the opportunity to clear any bad debt records. The scheme thus aims to prepare individuals for full market home ownership both financially and behaviourally and is driven by a strong organisational desire to eradicate the perceived patterns and impacts of welfare dependency amongst its members.

Magpie is aware the scheme will have limited scope in urban areas due to property costs in those areas; as a result, Magpie intends for the rent-to-buy scheme to operate across NSW. It is estimated that the scheme requires one full-time and one part-time income to buy a lower-end home in an urban area. Lower income households will therefore probably be constrained in their housing choices and have to buy in regional or remote areas. Currently there are 70 households waiting to access the rent-to-buy scheme.

*The scenario.* Magpie presents a scenario in which land and/or housing is held by a LALC in an urban area with a very strong, possibly over-heated, housing market. The LALC's members have relatively good access to jobs, although there are also

members reliant on Centrelink as their primary income. The LALC has a very strong income base and the capacity to utilise this, as well as substantial landholdings that enable it to meet its primary objectives of activating pathways to home ownership independent of government support.

#### 4.1.3 Currawong Local Aboriginal Land Council—a NSW regional LALC

Currawong LALC represents aggregate data from several regional LALCs that were approached via Kookaburra, drawing on interviews with Board members, CEOs and tenants, as well as site visits to existing housing and undeveloped LALC land. These regional LALCs provided fairly consistent data and issues regarding employment, housing aspirations and organisational capacity.

**Vignette**—Tracy is a 39-year-old single woman who works seasonally as a bush regenerator for the local government. She moved into her newly-constructed LALC rental home five years ago and pays \$90 per week as rent. While pretty happy with the rental situation, Tracy would like the opportunity to buy her home, but was refused finance by IBA on the grounds that she is ‘too old’. Tracy would be happy to build a simple house on LALC land if ownership was an option, but worries that the variability and seasonality of her income might reduce her chances. She has existing access to a parcel of LALC land, but currently no capacity to build.

Currawong LALC has a membership of about 100 people and is based in a small NSW town which has variable but generally low employment levels, particularly during the tourist off-season—Currawong staff estimate employment levels of less than 1 per cent amongst their members during the off-season. Currawong has fairly substantial land holdings both in and out of town. Some of this land is reasonably flat and well located so would be relatively easy to bring to a developable stage. However, other parcels would require substantial work such as clearing and/or levelling, or would be relatively easy to develop but are a bit too far out of town for the LALC’s members to be able to easily travel to services and amenities. Currawong LALC has about 30 houses on its land and most of these are in town. Some of these houses are starting to age and are in need of repair and, in some cases, demolition.

There is interest in home ownership amongst members, mainly from the point of view of wanting stability and a sense of control over the house, rather than from a desire for capital gain. Currawong has experimented with home ownership in the past with mixed results. Under previous schemes, Currawong rental homes were made available for tenants to buy at discounted rates. Most residents who bought then sold the properties on the open market. In some instances, unscrupulous real estate agents bought the home from the first owner and then quickly re-sold, making substantial windfall gains. None of these homes are now within Aboriginal ownership, and so have been ‘lost’ to the open market—a situation Currawong is keen to avoid in any future scheme.

Currawong is potentially able to sell some of its surplus land to fund further provision of rentals. However, the LALC is currently frustrated by the designation of much of their surplus land as public open space, which prevents development. Much of this land is currently subject to illegal dumping and neglect. The LALC is further frustrated by development on adjacent parcels of very similar land owned by non-Indigenous entities, which is making them suspicious of discrimination.

*The scenario.* Currawong presents a scenario in which the LALC’s members experience low and variable employment levels and express a desire to maintain control of the land at a community level. There is a stated desire for appropriate and stable housing on that land and for greater autonomy in housing. The LALC has

capacity to develop and potentially sell land identified as surplus, but this capacity may be limited due to costs of preparing land, local market conditions, member reluctance to sell LALC land due to its significance as a cultural asset, or a limited stock of surplus land.

#### *4.1.4 Bulbul—a regional NSW Aboriginal Corporation*

Bulbul was approached via Kookaburra and interviews were carried out with the CEO, a Board member and former Chair. Site visits to existing homes were also made.

Bulbul is an Aboriginal corporation with ownership of about 20 rental properties in a regional town in NSW. Similar to Kookaburra and Currawong, their members experience low and variable employment due to the small size of the town and its nature as a tourist destination. Their members would like to have more autonomy in their housing and be able to bequeath their homes to kin. Bulbul have freehold title to their properties and as a corporation are not bound by the Aboriginal Land Rights Act, and thus do not have to seek approval from NSWALC for land dealings.

**Vignette**—Trevor is a 42 year old married man who works for the NSW National Parks and Wildlife Service. His wife, Ann, works part-time at Coles in town, which is a fairly strong regional centre. They have four kids and earn about \$60 000 p.a. combined. Currently they pay cost rent of \$110 a week to live in a home owned by the local Aboriginal housing corporation. The Corporation have spoken to them about home ownership in the open market as the family has the capacity to buy with an IBA loan, to free the home up for a low-income household. Trevor and Ann are not interested in buying as they believe that they have good security of tenure and their kids will be given the lease on the house in the future. Trevor and Ann want to spend their discretionary income on a new boat and they see no benefit to be gained from the additional housing expenses that entering into a mortgage would bring.

Bulbul has a house that has been vacated and needs demolishing. They are considering building a duplex on the site but have little access to money to carry out these building works. While they are interested in the land trust model, they are constrained by the current stock as they have little vacant land they could build on. For the existing land, only the lots with homes that require demolition are a possibility for creating new stock (via increased density).

*The scenario.* Bulbul presents a scenario in which a housing corporation has the legal capacity to readily deal in land and housing, but lacks the asset base or income stream to do so. This scenario would apply across variable market situations—that is, corporations across urban, regional and remote areas may be universally affected by their lack of surplus assets to utilise. This lack of a surplus asset or income stream may also have implications regarding the ability to undertake repairs and maintenance.

#### *4.1.5 Mynah—a regional Queensland DOGIT*

Information about Mynah was gathered through discussion with a non-profit development agency that is working with the community. Mynah is a community of about 200 people within a couple of hours' travel of a major mining operation in regional Queensland and is populated by traditional owners, Indigenous residents brought into the area from elsewhere when a mission was established in the first half of the twentieth century, and more recent arrivals who have come with the mine and its ancillary services—these latter arrivals are Indigenous and non-Indigenous. About 10 locals work for the mine and another 10 work in Mynah in various community and administrative services. The rest of Mynah's occupants are either not of working age or on Centrelink benefits. The team was unable to get a sense of a 'typical' Mynah family so has been unable to develop a vignette.

Mynah's land is currently held collectively as a Deed of Grant in Trust (DOGIT) and several households have expressed a desire to own their homes. Also, several expatriate households have expressed a desire to live back in town. Local incomes amongst Mynah residents vary between Centrelink benefits alone, through moderate incomes amongst community service workers, to high wages at the mining operation. The operation of the mine has created some very highly paid jobs and Mynah, given its high level of natural amenity and relative closeness to the mine, may soon become of interest for holiday homes and/or tourism amongst employees of the mine. This could provide economic opportunities for Mynah but could also drive housing prices up. While houses for sale in the mining town cost \$450 000, there is currently no freehold market in Mynah and no subdivision as it was a former Mission. Discussions are being held between an Aboriginal community development agency and the community over whether to subdivide, which would change arrangements for municipal services and make home ownership either via sale of freehold or via leasehold possible, once land parcels are defined.

Currently the development agency is looking at the potential for an arm's length organisation to underpin a home ownership scheme. The agency has the primary objective of increasing the community's socioeconomic status through home ownership. Key challenges identified by the agency relate to issues of subdivision, infrastructure costs and determining the level of market demand for on-sold homes.

*The scenario.* Mynah presents a scenario in which land is held collectively as a DOGIT in an area with a wide range of income levels. Some residents have strong incomes due to employment and so have good capacity to buy, but many others do not. There is currently no mechanism for residents to buy their homes. There are also households living elsewhere that would like to return to the community. The community represents a mixture of Traditional Owners and more recent Indigenous residents, which may have Native Title implications.

#### *4.1.6 Cormorant—a Queensland non-DOGIT community*

Currently various state and federal government agencies and an Indigenous community development agency are working with the local Aboriginal housing corporation based in Cormorant. As the negotiations were at a critical stage we did not speak with members of the community or tenants, but rather to the community development agency, government officers and a staff member working for the corporation. The team was unable to get a sense of a 'typical' Cormorant family so has been unable to develop a vignette.

Cormorant is a community of roughly 200 people in regional Queensland. It has a mixture of housing held by the Queensland government and the local corporation. The corporation holds land freehold on super-lots containing multiple dwellings. Currently the housing is overcrowded but the corporation reports a reasonable level of rent collection and maintenance provision. Cormorant is close to a tourist destination and development is underway to upgrade the tourist facilities, which will provide an increased employment base for Cormorant locals. While tenants currently are on Centrelink incomes, there are plans to train people to work in the tourist area once the new development is finished. There is currently a small cultural tourism facility operating providing a limited number of jobs.

Government and community development agencies working with the Cormorant community report interest in home ownership amongst community members. The housing corporation's main issue is a lack of land for future growth, whether of home ownership or more rental properties. There are also existing discrepancies in service provision between rental households served by the corporation and households

serviced by the state—the latter households experience substantial delays on repairs and maintenance.

*The scenario.* Cormorant presents a scenario in which land and/or housing is held by a non-DOGIT entity and which resonates with the scenario presented by Bulbul, in that the key issue is that while potentially more readily able to trade in property due to their legal form, the lack of surplus assets or an income stream constrains the expansion of housing activities. The scenario presented by Cormorant has the additional feature of also potentially requiring subdivision of its stock to enable home ownership options. This scenario also differs from that presented by Bulbul in that there is proximity to Indigenous employment opportunities.

## **4.2 Different communities, different contexts, common issues**

While the scenarios above show great variation in their economic, legal and socio-cultural characteristics, several core themes emerged during conversations with the participants, particularly when discussing the potential for forms of home ownership or the expansion of housing activities. Issues highlighted by the participants are discussed in this sub-section. Additional issues that arose in reflection on the conversations among the research team are discussed in the next chapter.

### *4.2.1 Finance*

The most commonly cited issue among case study participants was the need for capital funds, whether to buy or build new homes, undertake subdivisions, replace rental stock moved into home ownership, undertake repairs prior to moving households into home ownership, or undertake repairs and maintenance on an ongoing basis. The issue of replacing stock was seen as critical, as the fact that homes would not be sold at market value would mean extra funds would be required to fill the gap between the discounted price and the cost of acquiring or developing stock to replace the rental stock transferred into ownership. Funds were also seen as necessary to underpin services such as training households in preparation for home ownership and providing support services to owners. Magpie was the only organisation not to require capital to underwrite its proposed activities (the rent-to-buy scheme), but this organisation was in a unique position because of its capacity to fund this scheme from the proceeds of a large metropolitan residential development. Participants also reflected on whether their residents would be able to access HOIL and/or IBA monies. Perceptions of IBA's lending policies and practices varied greatly and it seemed understanding of IBA's processes and products was uneven—some communities reported frustration with the slowness of IBA's processes, others reported satisfaction. Organisations also had varying perceptions of the size of mortgages available through IBA and eligibility conditions.

### *4.2.2 Land*

The availability of land that is ready for development was a consistent issue across both NSW and Queensland case studies. In NSW the situation was clearly split between LALCs and other entities. The issues for LALCs were that while the organisations frequently had land that could be developed and sold to underpin housing activities, or brought to a serviceable level to underpin housing, the costs and processes associated with this were seen as prohibitive by all bar Magpie, who will rely on a very strong local housing market to recoup such expenditure. Moreover, all LALCs must meet the conditions of the NSW Aboriginal Land Rights Act (ALRA) in undertaking land dealings (see Section 5.2.1). In contrast, non-LALC bodies, while not bound by the terms of the ALRA and hence potentially more readily able to legally

transfer their landholdings, have much smaller land portfolios—most only hold the land already under existing homes and have no developable surplus.

These issues were echoed in Queensland, with DOGIT community land held collectively so requiring subdivision and infrastructure provision, as well as legal examination to determine the mechanism for enabling home ownership or other tenure forms. Similarly to corporations in NSW, the Queensland housing corporation examined faces the key issue of not having any extra capacity in its land holdings. However, it is potentially freer to develop and transfer land, if there was the capacity to bring extra holdings into its portfolio.

#### *4.2.3 Potential market and issues of scale*

The actual extent of markets for resale-restricted home ownership on Aboriginal lands was difficult to determine and many participants questioned whether there would be sufficient eligible, qualified households under their jurisdiction to sustain such a market. Most organisations were anecdotally aware of overcrowding in the public and private rental sectors and issues of bottlenecking throughout the housing system as households either could not find or would not choose exit strategies from subsidised housing. This might suggest a potential market if a mechanism for individuals to exit existing community rental stock were developed for individuals able to do so. However, data on overcrowding and bottlenecking was universally cited by participants as difficult to collect, which presents a challenge for determining the potential market and the potential program impact at this stage of the work, and which would need addressing in developing a workable program for any Indigenous housing organisation. Several organisations also questioned the feasibility of mortgage-backed ownership models in areas with low and variable income levels. This suggests that models that are based on tenure arrangements which do not rely on mortgage financing might also be worth exploration, such as the Life Tenure model discussed in Section 3.3.3 where the occupant takes on responsibility for repairs and maintenance and gains control of the premises, but does not need to purchase any equity.

There was also much discussion as to the utility of establishing regional housing providers, as there were mixed feelings as to whether this would in fact create a larger market. Generally it was felt that people may move between regions or towns where they felt little connection to a particular house or town. In contrast, it was also noted that there were communities that were seen as neither a place of origin nor destination and so are effectively tightly closed markets.

#### *4.2.4 Legalities, governance and transactions*

All organisations questioned what structures and processes would be required to enable home ownership. In NSW the treatment of land dealings under the Aboriginal Land Rights Act was a specific aspect of this concern, as any LALC land dealing has to gain approval from the LALC membership and from NSWALC. The financial treatment of land dealings was also a consistent issue within NSW, as there was a common perception that the ALRA requires that affected lands must transfer at a value within the range of 5 per cent above and below market value. Our analysis shows this is not stipulated in the Act and, therefore, may be NSWALC policy rather than a legislative requirement. This suggests that approval to transfer land to the lessee and/or an arm's length provider gratis or at a discount to enable affordability could be considered as a policy issue by the NSWALC. These issues are addressed more thoroughly in the next chapter.

Recollection of instances where previous home ownership schemes had led to stock losses were quite fresh for some participants, so there was much interest in the mechanisms for potentially preventing a recurrence. There was much discussion as to

whether such transactions and processes were best overseen in-house or by an arm's length organisation with regulatory oversight. Governance mechanisms for overseeing any home ownership programs were a general theme.

#### 4.2.5 Housing aspirations

All case studies referred to a desire for stability and autonomy in housing. The role of home ownership in wealth creation was mentioned by Magpie and by the agencies working with communities in Queensland, although previous research in that state places this lower down as a priority amongst community members (Memmott et al. 2009). That research echoed the desire for autonomy, inheritability and stability found amongst many of the NSW case study communities. Many of the NSW communities did not carry a primary focus on asset building or wealth creation in their discussions about housing. The focus was more on tenure security, a sense of ownership and greater autonomy than that currently found in public or community housing. The ability to move into employment without losing access to housing in the area or community was also frequently cited, as was a perceived lack of options between public housing options felt to be unsatisfactory and open market options felt to be out of reach.

The research also found a degree of interest in very low-cost housing such as flat pack housing or modified shipping containers, to provide shelter at minimal cost on community lands. Energy efficient and solar passive flat pack housing seemed to be of some interest, as this was seen as a way to establish procurement processes that would provide a certain and uniform level of quality without compromising affordability. It also was seen as a way to help reduce living costs for residents—particularly if residents would be responsible for a mortgage— through reduced energy bills.

**Table 2: Case study characteristics**

Case study	Land	Governance/Capacity	Scale	Location	Employment/ income sources
Kookaburra Co-operative	Yes	Strong	Regional	Regional NSW	Below average
Magpie LALC	Yes	Strong	State	Urban NSW	Good
Currawong LALC	Limited	Average	Local	Regional NSW	Below average
Bulbul Aboriginal Corporation	Limited	Average	Local	Regional NSW	Average
Mynah: DOGIT community	Yes	Average	Local	Remote QLD	Below average except for a few involved in mining industry
Cormorant: non DOGIT community	Yes but limited	Average	Local	Regional QLD	Below average but improving

### 4.3 Concluding comments

The case study communities present data from a range of circumstances and situations across NSW and Queensland that were used to create de-identified and indicative scenarios. It is hoped that as well as being illustrative of conditions, opportunities and challenges on the ground, the scenarios also allow Indigenous communities beyond the research participants to see aspects of themselves or their

communities in these, and to think about possibilities for addressing local housing aspirations in appropriate ways.

In some instances where entry-level access to housing on the open market was possible through programs such as the IBA HOP, there was limited interest in developing additional programs. In areas where entry-level options did not exist, there was an interest in providing these, but also in retaining land in community ownership. It was clear in the case studies that land held varying significance across and within communities; some individuals and organisations were willing to sell land on the open market to capitalise housing or other programs, while some were strongly opposed to relinquishing the land, due to its political significance in the struggle for land rights. Similarly, attitudes to supported housing or to perceived welfare varied immensely, from seeing this as a strategy to mitigate risk through collectivisation, through to seeing it as a deeply problematic and inappropriate system that entrenches dysfunction. Given the diversity of views within the sector, it is imperative that any new tenure forms incorporates governance structures that can channel and respond to community concerns. Further, the diversity of views and objectives in evidence suggest that there is scope for responding to these in more nuanced and innovative ways than through a simple and singular promotion of mainstream home ownership.

While the case study communities were drawn from highly diverse situations, common themes did emerge, as discussed in Section 4.2. These themes underpin and shape the issues and possibilities discussed in the remainder of this report.

## 5 COMMUNITY LAND TRUST CREATION

This chapter brings in desk-based work on the possible legal and financial issues raised by consideration of CLTs in Australia, and in light of the context set in Chapter 2 and 3 and issues raised in Chapter 4. This chapter is therefore concerned with the general operating requirements for CLTs to address research questions four and five. These are:

4. What are the legal implications of CLTs?
5. For Indigenous housing policy and housing programs, what are the implications (especially financial) of establishing CLTs?

The legal context is discussed in some depth in relation to NSW and Queensland jurisdictions. Various layers of law are examined in relation to what options are currently available for facilitating a CLT arrangement on Indigenous-owned or trust lands and proposing potential models that may require legal determination.

Financial issues such as local market conditions, replacement costs, loan finance, cross subsidies, government subsidies, and capital costs of a CLT based on the scenarios in Chapter 4 are outlined. These general financial models will require refinement in future work, but give an indication of basic costs associated with creating a CLT.

Governance structures are discussed in the context of existing Indigenous organisation governance forms and how a CLT-type model could operate alongside, within or at arm's length of existing governance structures. In addition, the merits of regionally or locally-based CLTs are discussed. Finally, the issues facing households, such as the extra costs and responsibilities associated with having ownership of a property, are examined, as well as the need for training.

### 5.1 General operating requirements

Housing based on CLT models and principles is still relatively unknown in Australia; however, research and advocacy is growing amongst government, academic, financial and community sectors. Similarly, resources are being developed for those interested in investigating and pursuing models based on the lessons and principles of CLTs. There is a strong policy impetus towards extension of mainstream home ownership to Indigenous people. However the current scheme designed to facilitate home ownership on communal Indigenous land (HOIL) is not doing this, with only 16 instances of adoption. A general requirement for CLT development is that there needs to be a desire or need for a CLT amongst a group of people. If there is no desire for alternatives to social housing and mainstream home ownership, then there is unlikely to be a strong demand for a CLT-type arrangement.

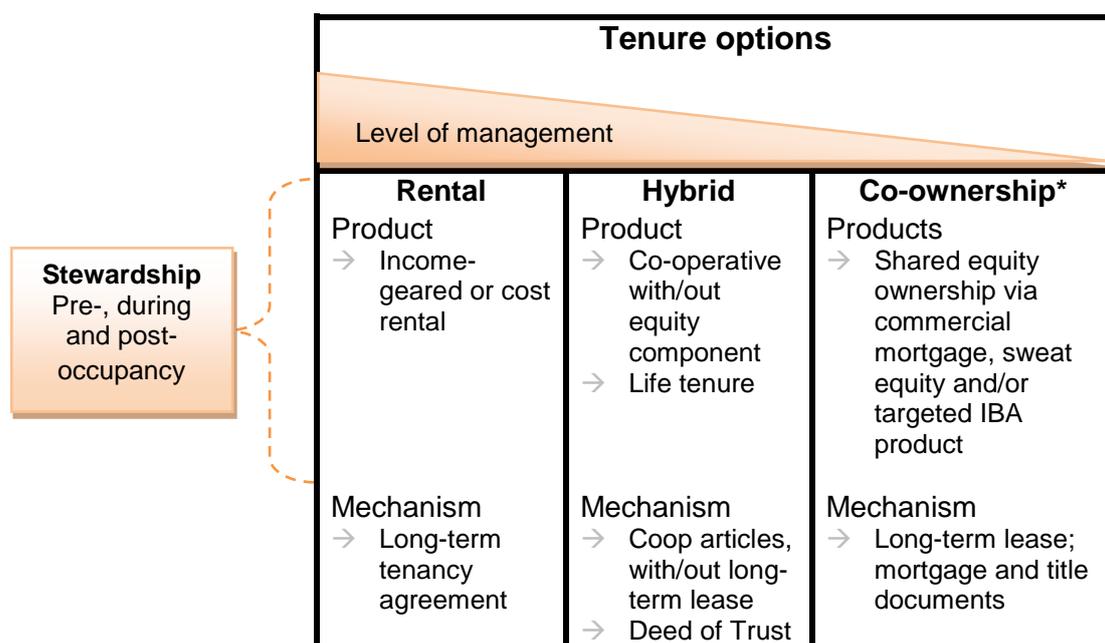
CLTs have the purpose of retaining affordability by limiting capital gain or profit on the property. If the desire is to create a sense of ownership, and a dwelling that can be passed onto descendants or other beneficiaries, and as a security—for example, on a business loan—then a CLT can fulfil these expectations. However, if the desire is to create an asset that can be sold without restriction, and to maximise wealth creation via possible capital gain in the future, then a CLT may not be the appropriate vehicle.

There also needs to be a mechanism for facilitating the principles and objectives of the housing model. In general, under Australian law there are currently difficulties in completely separating ownership of a fixed dwelling such as a house from interests in land. Greater flexibility might be achieved through the use of 99-year lease arrangements which can allow a form of secure ownership and allow the assignment

of both leases and fixtures such as dwellings. This is discussed further in Section 5.2.4 below.

A range of tenure options are possible once a CLT-type organisation is in place, as shown in Figure 2. These range from affordable rental housing through tenures such as cooperatives through to owner-occupied housing; individual organisations can steward more than one form of these, as is frequently the case in the US CLT sector. This chapter focuses on the third column: that is, on various mechanisms for delivering long-term security with an equity component to the title. For Indigenous housing, each community and organisation will need to determine which tenure options are desirable and sustainable in their local context, on the basis of housing aspirations, incomes and other factors.

**Figure 2: Indigenous housing choices**



\*This refers to the three potential models discussed in Section 5.2.4, which all involve partnership between a householder and a partner organisation, under various mechanisms. Not all confer ownership as understood, to the householder, but all provide long-term tenure and the potential for equity gain.

Source: authors.

Current and potential titling arrangements are framed by the legal legacies of various Acts. Indigenous communities primarily hold land as freehold (NSW and Queensland) and Deeds of Grant in Trust (Queensland). In general there is no restriction on alienability in NSW, subsequent to approval processes,<sup>21</sup> while there are restrictions on alienability in Queensland and some restrictions on lease terms. These legal issues are discussed in more detail in Section 6.5 below.

Another general requirement is access to parcelled land and finance. Without this, organisations cannot offer ownership or leasehold, cannot grow and may deplete existing social housing stock. Financial issues are discussed in more detail in Section 5.3 below.

The following sections provide overview information on the legal, financial and governance issues surrounding CLT creation, in relation to NSW and Queensland.

<sup>21</sup> Some NSW titles contain reference to an ATSC caveat; since ATSC is now defunct, the caveat has passed on to Indigenous Business Australia. In these cases permission may need to be sought regarding a potential dealing in that land.

## 5.2 Legal issues

This section provides an overview of possible legal issues to be addressed in the development of CLT housing or co-ownership schemes, particularly with regard to Indigenous housing in NSW and Qld. It is not intended as comprehensive legal advice or a legal treatise on the principles of the possible separation of land and property title. That work will be undertaken by the University of Western Sydney in a separate project discussed in Section 6.5.

### 5.2.1 *Land, dwellings and dealings*

In NSW, Aboriginal landholdings that are subject to the Aboriginal Land Rights Act (ALRA) are generally alienable subject to the approval process. The approval process requires that: 80 per cent of the LALC members must approve any dealing in land; the NSW Aboriginal Land Council must also approve of the dealing in land; and, in some instances, the relevant Minister must be notified. Leases are dealings and so also subject to approval process as above for NSW; in Queensland DOGITs, a lease can be granted by the Trustees if in favour of an Aboriginal person.

Aboriginal organisations of various kinds, whether LALC, Corporation, Pty. Ltd or other, already own some or all of their land as freehold. This land may or may not be currently subdivided, or may already be subdivided in part. The typical scenario is that the land is on one or several large parcels upon which multiple dwellings have been built, and that these parcels of land do not have lots delineated for each dwelling. Traditional subdivision is required to facilitate a CLT-type scheme within such a regime where there are no lots for individual dwellings, or only undeveloped land parcels. As outlined above, in NSW, freehold land subject to the ALRA is alienable subject to the specified approval process. Some freehold non-ALRA lands with housing on them may have caveats attached, for example, by the former Aboriginal and Torres Strait Islander Commission or the Aboriginal Housing Office. In such instances, land dealings must then follow appropriate approval processes. Consequently, Indigenous Business Australia—which received the caveats from ATSIC—or the AHO may have to approve a dealing as well. In Queensland there is greater restriction on sale, with lands under Deeds of Grant in Trust inalienable, although long-term leases are allowed as per above.

The model form of CLT in the US contemplates that a home affixed to the land can be dealt with separately by way of sale, mortgage, devise by will, or on intestacy. This assumes that ownership of a home can exist separately from the land upon which it is situated. Currently, under existing Australian law, a house affixed to land is considered part of the land and would normally pass with the land to a purchaser of the land and be subject to mortgage and other interests affecting the land itself (Butt 2011, p.51). Despite this, where the owner of a fixture (the house) is different to the owner of the land, the owner of the fixture may have an equitable interest in the land. This could be protected in the same way as other equitable interests.<sup>22</sup> Existing precursors such as the ACT Land Rent Scheme (see Section 2.1.4) and the Retirement Villages Acts of NSW (1999) and Queensland (1999) may offer templates for articulating a model for CLTs that can confer ownership to residential and other fixtures on leased land.

### 5.2.2 *New South Wales: leasing under the Aboriginal Land Rights Act 1983*

The NSW Aboriginal Land Rights Act 1983 may provide the basis for establishing a CLT scheme.

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<sup>22</sup> Assuming it is Torrens Title land, a caveat might be lodged to protect that interest.

- *Conditions attached to the land:* First, in relation to any land contemplated for the development of a CLT project, it must be ascertained whether there are conditions or limitations on the rights of Local Aboriginal Land Councils to deal with the land acquired subject to conditions or subject to native title or land, reserved or dedicated under the *National Parks and Wildlife Act*.<sup>23</sup>
- *Power to deal with land:* Subject to consent and other requirements under the Act<sup>24</sup> an Aboriginal Land Council has all the powers of a natural person to deal with the land.<sup>25</sup> A dealing with the land means 'sell, exchange, lease, mortgage, dispose of, or otherwise create or pass a legal or equitable interest in, land'.<sup>26</sup> This would allow a LALC to create long-term leases to form the basis of a CLT.
- *Community Benefit Scheme:* A community benefit scheme (social housing scheme) may apply to the provision of residential accommodation.<sup>27</sup> The LALC may establish a trust to administer a community benefits scheme.<sup>28</sup>
- *Leasehold as the basis of a CLT:* Although the NSW provisions do not explicitly set limits on the length of the term of a lease, there may be other considerations which influence the type of instruments used to achieve CLT objectives. If a leasehold instrument is used, the special provisions required for a CLT scheme such as the separation of fixtures from land, may make the exclusion of the NSW *Residential Tenancies Act* necessary or may render the Act irrelevant. This would require further clarification in the establishment of such a model, otherwise there may be difficulties in relation to forfeiture, termination and payments that could render lessees vulnerable to unacceptable risks of eviction. Section 8(1)(j) of the *Residential Tenancies Act 2010* excludes tenancies for a period of 99 years or greater. If the limitations of residential tenancies legislation are to be avoided, it would seem to require a 99-year lease.
- It should also be noted that the *Environmental Planning and Assessment Act 1979* (NSW)<sup>29</sup> does not require subdivision where there is a long-term lease of a building. But if the lease does not relate to a building, subdivision issues arise.

### 5.2.3 Queensland: leasing under the *Aboriginal Land Act 1991*

The Queensland legislation provides a complex structure of recent and historical tenures. There is, however, generally a power to create leasehold interests for private residential purposes for Aboriginal persons. Generally, these leases must be for 99 years for qualified persons. Whilst there is provision for payment for the grant of the lease, the annual rent payable cannot exceed \$1 per annum.

The *Aboriginal Land Act 1991* (ALA)<sup>30</sup> defines Aboriginal land to which the Act applies. Aboriginal Land is defined in s.10 to cover the following categories:

- *Transferred land:* transferable land granted without a claim being made under the Act.<sup>31</sup>

<sup>23</sup> See sections 38(3) 42,43A *Aboriginal Land Rights Act* (NSW) (hereafter ALRA).

<sup>24</sup> See s.41 of the ALRA requiring a dealing approval and registration approval certificates, ss.42-s42G, s.42K. There is also the requirement to prepare and implement a 'community, land and business plan', s.82. The NSW Aboriginal Lands Council supervises these plans, s.108.

<sup>25</sup> S.52A, ALRA.

<sup>26</sup> S.40(1)(a), ALRA.

<sup>27</sup> Ss.52A, 52B, ALRA.

<sup>28</sup> S.52C, ALRA.

<sup>29</sup> S.4B(3), EPAA.

<sup>30</sup> The following text refers to the *Aboriginal Land Act 1991* as amended by the *Aboriginal Land and Torres Strait Islander Land and Other Legislation Amendment Act 2011* (No 26 of 2011).

- *Transferable land*: includes DOGIT and Aboriginal reserve land.<sup>32</sup>
- *Restrictions on alienability under the Aboriginal Land Act 1991 (Qld)*: Under Queensland law there is a prohibition on the trustee mortgaging or selling land.<sup>33</sup>

However the trustee has the power to grant a lease<sup>34</sup> as follows:

- *Trustee power to grant lease*: The trustee of Aboriginal land has a power to grant a lease over the land<sup>35</sup> and in relation to Trustee (Aboriginal) Leases.<sup>36</sup>
- *Private residential purposes*: A leasehold interest may be created in favour of an Aborigine for not more than 99 years;<sup>37</sup> the lease can exceed 30 years only if it is to an Aboriginal for private residential purposes.<sup>38</sup> This is also the case in relation to Aboriginal trust land.<sup>39</sup>
- *Term of the lease*: If the lease is for private residential purposes to an Aboriginal, it must be for 99 years, the annual rental must not be more than \$1 per year<sup>40</sup> with a lump sum payable for the value of the lease based on a statutory formula. There is provision for renewal of leases for transferred land,<sup>41</sup> and Aboriginal trust land.<sup>42</sup>
- *Existing houses*: There is a special provision if there is a dwelling on the land: the amount payable includes a sum payable for the dwelling. Special provisions apply if it is subsidised housing for residential use.<sup>43</sup> This provision may require modification of any CLT model if the housing chief executive determined that the dwelling has been used for subsidised housing.

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<sup>31</sup> S.11 ALA.

<sup>32</sup> Transferable land is defined in s.12(1) of the *Aboriginal Land Act 1991* (Qld) to include (a) DOGIT land (defined s.13); (b) Aboriginal reserve land (defined s.14); (c) & (d) Aurukun and Mornington Shire lease land; (e) declared state land to be transferable; (f) transferable land under ss.83K,83L or 83LA; (g) transferable land under s 114A; (h) other specified lots. Under s12(2)(b) land is not transferable if subject to a commercial lease for more than 30 years under the Act. Section 11 defines transferable land as land that is to be granted under the Act without a claim being made and transferred land, land that is granted without a claim being made under the Act.

<sup>33</sup> S.82D ALA.

<sup>34</sup> Note the provision for perpetual leases (town site leases) to be granted to a local government over land that is township land, s.82W(1)(b),(3). The lease must be over the entire lot, s.82YE and requires Ministerial consent. The leasing provisions apply to subleases under townsite leases.

<sup>35</sup> S.82A ALA.

<sup>36</sup> S.83T(1) ALA. Under s.83R and Part 5F, powers to lease Aboriginal Trust land, Aboriginal trust land means: (a) land subject to a deed of grant in trust granted for the benefit of Aboriginal inhabitants or for the purpose of an Aboriginal reserve under the repealed Land Act 1962; or

(b) land reserved and set apart under the repealed Land Act 1962 for an Aboriginal reserve or for the benefit of Aboriginal inhabitants; or

(c) land subject to a deed of grant in trust granted for the benefit of Aboriginal inhabitants under the Land Act; or

(d) land dedicated under the Land Act as a reserve for Aboriginal purposes or the provision of services beneficial to Aboriginal people particularly concerned with the land.

Trustee, of Aboriginal trust land, means the trustee of the land under the Land Act. Trustee (Aboriginal) lease means a lease of Aboriginal trust land granted under Part 5AB as applied under section 83T(2) or the Land Act, s57 before commencement of the part.

<sup>37</sup> S.82W(1)(a) ALA

<sup>38</sup> S.82X(1)(2)(a) ALA

<sup>39</sup> S.83T ALA.

<sup>40</sup> S.82YU(1)(a). This may prove problematic if there are significant annual payments required for the CLT as this would restrict annual 'ground lease' payments to \$1.

<sup>41</sup> S.82ZG ALA.

<sup>42</sup> S.83T ALA.

<sup>43</sup> S.82YV(transferred land), s.83T,(Aboriginal trust land) ALA.

- *Assignment (sale, transfer)*: There are special provisions relating to assignment or subletting.<sup>44</sup> In relation to CLTs—assuming a residential lease to an Indigenous person for 99 years—the lease may provide that the trustee’s (lessor’s) consent is required.<sup>45</sup> This is the same in relation to Aboriginal trust land.<sup>46</sup>
- *Mortgage of lease*: There are special provisions applying to the mortgage of leases. It provides that the lease may only be sold to a person who would be entitled to a grant of the lease under the ALA.<sup>47</sup> These would need to be considered in any CLT scheme.
- *Inheritance*: There is now specific provision in the ALA relating to inheritance of the leasehold interest. The beneficiary of a residential lease can request the lessor to give written notice whether the person is entitled to a grant of a lease under the Act; and if written consent is required to give notice of that consent.<sup>48</sup>

In the case of CLTs there would be the added question of whether the persons entitled under the will or on intestacy qualify under the CLT scheme. On the grant of probate of a will, the executor (or administrator, if no will) will transfer the property of the deceased to beneficiaries under the will. This transfer would be subject to the requirements of assignment (sale) of the lease and other interests.

Consideration needs to be given as to how death of the leaseholder and home owner will be dealt with under the CLT rules. One approach is to provide for a surrender and re-grant of the lease and transfer of the home to eligible heirs or compensation on a statutory formula for the value of the home on death. The US model CLT lease<sup>49</sup> requires the CLT to consent to the transfer to eligible heirs. If there are no eligible heirs, the home is to be transferred to the CLT.

There are limitations on creating interests other than a mortgage of the lease under the lease for periods exceeding 10 years without Ministerial consent. There is an exception if the interest is in favour of an Aboriginal person<sup>50</sup> and for Aboriginal trust land.<sup>51</sup>

The conditions of the lease *may* include a condition that:

1. A stated standard terms document under the Land Title Act forms part of the lease; or
2. The lease must not be transferred without the trustee's (lessor's) prior written consent; or
3. An interest under the lease, other than a mortgage of the lease, must not be created without the trustee's (lessor's) prior written consent.<sup>52</sup>

The use of the term ‘may’ will usually be taken to mean that it is not obligatory to insert these terms.

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<sup>44</sup> S.82YT(2)(a)(i), s.82YX(1), ALA.

<sup>45</sup> S.82YT(3)

<sup>46</sup> S.88T ALA.

<sup>47</sup> S.83P(7).

<sup>48</sup> S.82ZT.

<sup>49</sup> See the Plain Language Summary of CLT Ground Lease.

[http://www.burlingtonassociates.com/resources/archives/ground\\_leases/000092.html](http://www.burlingtonassociates.com/resources/archives/ground_leases/000092.html)

<sup>50</sup> S.82YT(2)(a) (transferred land), ALA.

<sup>51</sup> S.82YT(3), 83T, ALA. These apply also to town site subleases.: s.82YS

<sup>52</sup> See the Plain Language Summary of CLT Ground Lease.

[http://www.burlingtonassociates.com/resources/archives/ground\\_leases/000092.html](http://www.burlingtonassociates.com/resources/archives/ground_leases/000092.html)

*Forfeiture:* The ALA<sup>53</sup> sets out the grounds for forfeiture of the lease—the terms of the lease providing for forfeiture under the CLT would need to be consistent with these provisions.

#### 5.2.4 To lease or buy the home?

This section considers the actual mechanism by which the objectives and principles of CLTs might be established in Australia. It presents three mechanisms, each of which would require further examination and clarification to determine feasibility and legality. These are based on existing models and mechanisms in the US, UK and Australia and their basic features are presented in Table 3.

**Table 3: Possible mechanisms on Indigenous lands**

	<b>Leasehold of land, ownership of house</b>	<b>Leasehold to house and land</b>	<b>Co-ownership of house and land</b>
<i>Attributes</i>	Resident has title deed to home and renewable 99-year lease to land ('CLT classic')	Resident has 99-year lease to both home and land as a package, as lessee	Resident and partner organisation both have a mortgage; two owners on title
<i>Mechanism</i>	Partner organisation has title to land and is the lessor	Partner organisation holds title to home and land, and is the lessor	
<i>Equity allocation</i>	Positive covenants attached to ground lease—eligibility, resale valuation, maintenance, etc.	Positive covenants attached to lease of home and land package—eligibility, resale valuation, maintenance, etc.	Restrictions attached to resident's mortgage—forfeiture of right to buy out partner organisation, resale restrictions, etc.
<i>Pros</i>	Via agreed equity split and valuation mechanism articulated in lease (the resale formula)	Via agreed equity split and valuation mechanism articulated in lease (the resale formula)	On basis of mortgage split between partners and determined via valuation mechanism at resale
<i>Cons</i>	Gives sense of ownership via title to home	Can be enacted under existing legislation	Gives sense of ownership via title to home
<i>Precedents or potentially relevant Acts</i>	Retains common ownership of land where this is desired	May not confer sense of ownership due to perceived inferiority of leasehold	Nature and enforceability of conditions of mortgage require legal investigation and determination
	May require exceptions to legislation to enable separation of land from fixtures—requires investigation and determination		Might not retain affordability in high value markets
	US ground lease and title documents	Pastoral leases, commercial leases	UK mechanisms and documents
	Retirement Villages Acts 1999 (NSW) and (Qld)	Dealings under ALRA, ALA	Existing Australia dual mortgage ('shared equity') schemes
	Aspects of ACT Land Rent scheme		
	ALRA, ALA		

Source: authors

<sup>53</sup> S.82ZA – s.82ZE (transferred land) ALA.

## **Lease the land, own the home**

The model US CLT lease<sup>54</sup> and accompanying deed may be capable of replication in the Australian context. The ‘classic’ CLT model in the US provides for a 99-year lease to the land and although the home and improvements are described as being owned, this is a modified form of ownership; for example, the owner of the house is not permitted to demolish the house.<sup>55</sup> It is also clear that this ownership is permitted to continue for so long as the lease continues, with the option of one renewal for a further 99 years. A sale of the house also requires transfer of the leasehold interest; typically, leases re-start at sale or inheritance. These types of arrangements accommodate the sale or assignment of the leasehold interest and the home and improvements to eligible persons. Consequently, this type of exemplar may assist in developing a model suitable for the New South Wales and Queensland statutory context; this will form the basis of further work to be undertaken and which is discussed in Section 6.5. In such this ‘traditional’ CLT model, the lease would be the legal instrument through which the objectives of the program would be articulated, such as eligibility, resale valuation, inheritance, maintenance responsibilities and so forth.

A model separating fixtures from land may be especially relevant and desirable where this aligns with community intentions and aspirations. This may have particular resonance for Indigenous communities, where there may be particular community understandings of land. The legal possibility for and treatment of such separation requires further work, and precedents such as the Retirement Villages Acts of NSW (1999) and Qld (1999) and the ACT Land Rent Scheme may be of use.

## **Long-term leasehold to home and land**

In the US it is clearly established that fixtures may be sold separately from the underlying land. As noted above, there may currently be difficulties with separating ownership of a fixture from rights to the land in Australia, but there are precursors which can be drawn on. The current default position of Australian law is that the owner of a home that it is intended to remain permanently on the land<sup>56</sup> necessarily acquires some rights to the land for support for the house, access to the house and necessary curtilage. Conversely, a sale of the land would normally carry with it title to fixtures on the land. This could raise issues for achieving a CLT model of home ownership separately from ownership of the land itself although as highlighted above, precursors do exist.

A long-term lease to the house and land would sidestep this issue, potentially enabling CLT-type operations to start up reasonably easily, as it is currently possible to develop a model based on existing forms of leasehold in NSW and Queensland. While these would not confer ownership of the home, they could confer stability, inheritability and equity gain via conditions that would be incorporated into the lease. The underlying title to both the house and land would remain with the partner organisation—that is, the LALC, Corporation or Trustee—which would ensure long-term community retention of the asset. In these, leases could contain positive

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<sup>54</sup> See the Plain Language Summary of CLT Ground Lease.

[http://www.burlingtonassociates.com/resources/archives/ground\\_leases/000092.html](http://www.burlingtonassociates.com/resources/archives/ground_leases/000092.html)

<sup>55</sup> Ibid.

<sup>56</sup> Portable homes, caravans, manufactured homes etc. are intended to be removed by the owner and not remain permanently. These are not considered to give rise to an interest in land and are usually covered by the *Residential Parks* legislation in NSW, or, in relation to movable dwellings in some states (Qld) under the *Residential Tenancies* legislation. Special statutory provision is usually made for Retirement Villages with specialised contractual arrangements; see, for example *Retirement Villages Act 1999* (Qld); *Retirement Villages Act 1999* (NSW) which may provide templates.

covenants and conditions which would not normally be possible via ‘fee simple’ ownership of the land (i.e. freehold).<sup>57</sup> The nature, extent and enforceability of the conditions that can be incorporated into the lease would require further investigation.

In such a model, once the lot has been surveyed and is part of a town plan, the buyer could purchase a lease on a vacant lot, or on a lot with an existing house on it. For example, if a Trust allowed it, a buyer could enter a lease on land with existing housing on it, or a lease on an empty plot of land and construct a new dwelling on it.

### **Co-own the land and home**

The third possible mechanism builds on the existing dual mortgage (‘shared equity’) schemes in Australia discussed in Section 2.1.3, in which the home owner and a partner organisation share ownership of the housing package. This type of mechanism is one of the models being developed by emerging CLTs in the UK. In this model, both the resident and the partner organisation appear on title documents and hold a mortgage for their respective share of the agreed property value (home and land). The resident however, forfeits their right of enfranchisement: that is, the resident cannot buy the partner out of their share, or may only buy up to a predetermined percentage of the property’s value (say, 80%).

While based on a successful dual mortgage scheme in the broader UK housing system, there is concern in the UK CLT sector that this model might not retain affordability in high value areas, as 80 per cent of market value may not be affordable for subsequent buyers. Adoption of a similar model would therefore require that firstly, the legality and enforceability of the conditions of the mortgage be determined and secondly, that the proposed mechanism does address the objectives of perpetual affordability where this is desired. This may then require the development of mechanisms such as resale formulae or deed restrictions, in addition to the forfeiture of the right of enfranchisement.

As with leasehold title to land and housing, this type of mechanism would not require the investigation of the separation of fixtures from land, but likewise would not provide for the concept of community retention of land ownership.

### **General reflections on mechanisms**

As outlined in Section 5.2.1, where a Trustee in Queensland, or owner such as a LALC in NSW holds the land under a perpetual or 99-year lease or as freehold, leases can be created subject to the requirements of the differing state Acts. The use must be legislatively compliant; that is, the use must benefit Indigenous people. It is possible to grant a 99-year lease for residential purposes in NSW and in Queensland under the relevant Aboriginal land Acts.<sup>58</sup>

Under existing arrangements leases can be granted for home ownership but in Queensland, sorting out Indigenous Land Use Agreements and town plans—involving surveys, subdivisions, zoning changes and planning applications—is taking longer than expected. A lease cannot be granted over land unless the boundaries of a land parcel are clear. The Remote Indigenous Land and Infrastructure Program Office has been established solely for the purpose of surveying community land use.

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<sup>57</sup> A positive covenant requires the expenditure of money and generally these types of covenants usually cannot be annexed to freehold land on sale or disposition. Exceptions exist in favour of the Crown. There is a further exception under the *Aboriginal Land Rights Act 1983 (NSW)* s.42 relating to dealing approval agreements.

<sup>58</sup> *Aboriginal Land Rights Act 1983 (NSW)*; *Aboriginal Land Act 1991 (Qld)*.

Aboriginal organisations with ownership of the land via freehold or leasehold could fulfil a long-term leasing function. However, currently all organisations that participated in the research have restricted themselves to managing rental housing stock, or contracting with an outside organisation such as government department or an umbrella housing manager to do so. With the exception of the HOIL program, there are no leasehold versions of home ownership for Indigenous people in Australia.

As outlined, a long-term tenure model does not necessarily require alienability of land and can exist utilising a leasehold model.<sup>59</sup> Therefore this could work in either a freehold or leasehold setting in Queensland or NSW where a 99-year lease (or sub-lease) was granted to the householder. In addition, where land is held freehold (mainly relevant to NSW), there is also the option of providing freehold sale or even gift with no restrictions on resale. This however means the parcel of land will be lost to the collective Aboriginal community ownership and transferred to individual(s) who can then deal in the land free of all restrictions and caveats via mainstream ownership. Past experiences with this amongst participant communities has made many organisations reluctant to repeat such models; however, other organisations were prepared to see their land transfer to the open market.

Separation of fixtures from land would require legal determination. Advantages of separating land from fixtures relate primarily to the objectives of the partner organisation, as it is possible to share equity between parties without separating title. In the US, the common retention of land title as embodied in CLTs emerged from an understanding of land as a collective legacy, the value of which is the result of public investment and endeavour. That philosophy holds that housing and other improvements are the result of the efforts of the occupant of the improvements—whether a household, business or other body—and that consequently, the title and value of improvements are best allocated to that body. That said, US CLTs do not actually allocate equity on the basis of the market value of land *versus* the market value of the improvements—if this were the case, CLT home owners would by and large lose equity as their assets depreciated over time. Rather, CLTs use the legal separation of land from improvements to provide a conceptual handle for sharing equity with a partner organisation—one which, in contrast to existing shared equity partners in Australia, plays an ongoing stewardship role in supporting the home owner and maintaining the asset. As such, separation is not required to enable the core concerns of CLTs, and some CLTs in the US do indeed address and enact their core stewardship concerns without separating title, and in some instances, without even having land in their portfolios.

### 5.3 Financing

All potential models warrant consideration of financial parameters and viability. This section examines three key financing issues:

1. The financing options for private mortgages.
2. The potential demand for CLT products in a variety of markets.
3. The potential cost structure of a CLT model for the organisation sponsoring the model, as well as the potential costs for government.

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<sup>59</sup> Although there is not a uniform position in all states, Residential Tenancies legislation would not apply in NSW and Queensland for 99-year leases granted under the *Aboriginal Land Rights Act* (NSW), *Residential Tenancies Act* 2010 s.8(1)(j); *Aboriginal Land Act* 1991 (Qld) definition of “lease” excludes a residential tenancy and there is special provision for termination of a residential lease granted under the ALA. . It is assumed that this amounts to a special provision which excludes the RTA, cf. s.26 *Aboriginal Land Act* 1991 (Qld).

Before commencing an examination of these issues, it is useful to outline a range of working assumptions about the operation of Indigenous CLTs that will have a bearing on the financial aspects of the operation of a CLT.

### *5.3.1 Replacement costs*

In some cases it may be appropriate for existing social housing stock to become part of a CLT and be made available for sale with caveats attached or via a 99-year lease. However, the strong view amongst stakeholders is that any social housing stock that is sold should be replaced, in order to retain a stock of affordable rental housing. CLT schemes are intended to achieve growth in affordable and appropriate housing as well as to open up pathways and offer more housing choices, rather than to be a zero sum game. Therefore, any financial model has to consider the long-term sustainability of the housing options that are provided. Indigenous demographic trends and house price inflation are two key reasons why this consideration is particularly important for the Indigenous housing sector.

Where land is already held by an Indigenous organisation, new house building can be included in or funded via developments, as Scenario 2 (Section 4.1.2) demonstrates is possible. Revenue from initial sales—for example, of existing social housing stock—can also be used to help fund new builds. This revenue may not be enough to cover construction costs, however, which would generate a need for gap funding to cover the difference between the revenue achieved from an affordable sale and the cost of a replacement property. In areas where housing need is not demonstrated, such gap funding could go towards an alternative investment in a higher needs area. Pooling funding for this purpose could be one option to be considered by a state administration.

### *5.3.2 Open or closed markets?*

Historically, some assisted home ownership programs have had no restrictions on resale, meaning that housing could be on-sold to anyone. This was the case in the small home ownership program instigated by one of Kookaburra's member LALCs and is being proposed by the organisation represented by Magpie. However, there have been some examples where large capital gains have been delivered to non-Indigenous households resulting in a net loss of affordable housing for the Indigenous community.

In NSW, the ALRA offers potential protection from this situation arising as all Land Council land dealings have to be approved by NWSALC. Current AHO properties have caveats on their title which prevent sale unless approval is given. For mainstream social housing, Housing NSW maintains a policy that the proceeds of sales are reinvested in the sector, although not necessarily on a one for one basis. There is, however, no legislative requirement for this to occur.

The current Home Ownership Program (HOP) has no restrictions on resale, but is geared towards facilitating the purchase of open market housing via mortgage, whereas the Home Ownership on Indigenous Land (HOIL) program restricts resale to other Aboriginal or Torres Strait Islander persons. A CLT could also impose restrictions on the conditions of resale—for example, that resale has to be to another Indigenous person with connections to the local area; and to maintain affordability, that capital gains are limited to CPI plus a percentage of gain, or similar formula, designed to maintain the benefit of lower cost home ownership for Indigenous people. This is also implicit in the ALRA which requires Land Councils to act in the interests of Aboriginal people and ensures that land dealings are subject to various levels of approval. In general, a preference for closed markets is assumed to pertain to

subsidised housing products, whilst other asset management such as disposal or commercial leasing is assumed to be in the open market.

### 5.3.3 Dwelling and subdivision costs and assumptions

Wensing and Taylor (2011) consider that a benchmark price for a four bedroom detached dwelling in a remote area is approximately \$300 000 based on the work of the Centre for Appropriate Technology. A similar dwelling is available in metropolitan area from private sector builders for approximately \$180 000 (excluding land). This shows a cost penalty for remote areas of about 170 per cent, which is consistent with regional cost indices published by Rawlinsons (2011). That reference also indicates the cost penalties for high demand regional areas could be up to 20 per cent compared to metropolitan locations and about 10 per cent for other regional areas. This analysis gives the following dwelling cost estimates without land costs:

**Table 4: Assumed construction costs**

<i>Remote</i>	\$300 000*
<i>Regional—low cost</i>	\$200 000
<i>Regional—high cost</i>	\$220 000**
<i>Metropolitan</i>	\$180 000

\* assuming higher costs due to higher labour and transportation costs

\*\* assuming higher labour costs than low cost regional areas due to higher demand

Dwelling costs also have to be estimated for the sale of existing social housing dwellings. Three factors are important in setting this price. The first is that the price should be set at a level to encourage uptake by local community members. The second is the condition of existing stock that is being sold. The third factor is the replacement cost: if the replacement cost is much larger than the sales revenue, a larger government subsidy (gap funding) will be required. Balancing these three variables will be a key consideration in setting prices of existing stock.

It is difficult to provide a set of values for likely prices for existing dwellings without detailed knowledge about the nature of the housing markets. The estimates below are developed by assuming that deeper discounts on new dwelling costs are provided in remote and low cost regional areas because of the poor quality of the dwellings and also because of the need to encourage households to participate. The discount would be significantly less in metropolitan areas because of the need to restrict the costs on government and the higher household incomes. The final estimates are shown in Table 5.

**Table 5: Assumed dwelling purchase prices**

<i>Remote</i>	\$150 000
<i>Regional—low cost</i>	\$100 000
<i>Regional—high cost</i>	\$120 000
<i>Metropolitan</i>	\$150 000

There are some misconceptions that subdivision is simply an administrative procedure and hence is low cost. The costs of subdivision are significant and consist of three groups of charges. The first is the fees charged by professionals who help prepare the subdivision application, including engineers, surveyors and planners. Second, there are a series of administrative charges by government agencies including local Government application fees. Last, there are some large charges which are related to local government developer charges and any road construction costs. This last group

of charges is usually the most significant. They are higher in urban areas largely because of the higher costs of land. It is very difficult to estimate these charges in advance because fee structures differ within and across jurisdictions. However, the range is in the order of \$10 000 up to \$85 000 in urban areas where the largest developer charges are levied.

#### 5.3.4 Governance

CLTs require sound governance and clear rules pertaining to eligibility and resale. Nevertheless, there is great variation in both how CLTs form and how they are governed. As opportunistic organisations in the US, CLTs have emerged according to local capacity. Consequently, CLTs have formed in isolation, or as programs within existing community housing providers or other non-profits. While CLTs have in the past formed as community-based organisations, some CLTs have recently been established by local municipalities. There are various possibilities for organisational structure and governance within the specific context of Indigenous housing in Australia, as explored below.

*An arms-length CLT:* An existing organisation—for example, a member-based organisation such as a Local Aboriginal Land Council or an Aboriginal Corporation—could decide to establish an incorporated arms-length CLT consisting of a multi-party board drawn from members, local or State government and external skills-based appointees. In NSW, there are some issues surrounding a LALC's power to delegate its land dealing functions to another organisation and these would have to be dealt with in the decision-making process and structure.

*A regionally-based CLT:* This would operate as above, except that the governing organisation could be founded by several Indigenous organisations in a region. Member organisations could manage their own waiting lists or there could be a decision made to do this centrally. This choice may depend on how much mobility there was in the region and whether organisations and communities wished to allocate properties based on smaller or larger areas. There may be more emphasis on clan-based decision-making and property allocation in some areas, whilst in other areas this may not apply. A regional CLT would have some advantages in that the pool of potential buyers could be larger. In addition, land-poor organisations such as Aboriginal Corporations could partner with land-rich organisations such as DOGIT communities or LALCs.

*An in-house CLT housing activity:* An Indigenous organisation that currently holds housing stock could theoretically start offering a CLT-type option without setting up additional layers of governance. For example, an organisation with a modest portfolio of rental properties could vote to allow current tenants to enter into CLT home ownership, based on formulating the mechanism to do so, incorporating eligibility criteria, access to suitable loan products, developed legal documents, and so forth. However, without strong governance involving external members and clear rules, there is the danger of nepotism in allocations, the under-pricing of properties for sale, and possible mismanagement of asset replacement. This is just as true for any member-based CLT and for community housing providers. Most community housing providers do have external members on their Boards. Some Aboriginal organisations which are member-based, such as Local Aboriginal Land Councils in NSW, could not bring in outside board members as their boards are only open to members of the LALC. However, they can bring in advisors or contract with an organisation to do

certain things for the LALC. Alternately scrutiny of an organisation offering a CLT option to their tenants could become the responsibility of the housing regulator.<sup>60</sup>

It is too early to determine which of these governance options might be appropriate and the best option will vary by locality. For example, it is clear that regions with small populations and small numbers of dwellings will not be able to provide sufficient revenue from ground leases to support a full-time CLT worker. In these cases, a regional model may be more appropriate. The output scale at which a regional activity could be replaced by an in-house capability requires further analysis, but for the purposes of modelling some potential cost scenarios, the last two options are used to demonstrate the potential operation of a regional and urban CLT respectively below in Section 5.3.9.

### 5.3.5 Access to loans

The history of CLTs in the USA has demonstrated that, after a slow start, the finance sector has engaged with CLTs and is now providing mortgages to CLT residents at a small discount to market, largely because of the good performance of CLT loans over an extended period (Davis J E, pers. comm., April 2008). However, the USA banking market is a broad market with a large number of banks, many of which are expected to meet the credit needs of the local communities in which they are chartered, consistent with safe and sound operation under the Community Reinvestment Act (1977, S. 802). Given the domination of the Australian market by the big four banks, it is likely that access to finance for CLT clients would be more difficult, at least for some time. The history of financing for the ACT land rent model demonstrated this issue, with only one credit union signing up to provide finance for the users of the scheme.

The difficulty for an Australian bank in providing mortgage finance to a CLT client is that the security is a dwelling without land, which is seen by the bank as a depreciating asset and not substantial security. A number of barriers arise from this issue. First, banks can be expected to set a very low loan to valuation ratio (LVR), perhaps down to 50 per cent, meaning that the mortgagor might be required to have a deposit of 50 per cent of the dwelling value. Second, under the requirements of the bank regulator (APRA), banks are required to set aside more capital to cover the potential losses when a loan is unsecured. This means that a CLT loan may generate a smaller return on capital for the bank. The third issue for Australian banks is that it would be very difficult to evict Indigenous CLT clients to gain access to the dwelling, given the likely negative publicity for the lender (banks call this 'reputational risk'). Lastly, in many areas, there might be extreme difficulty in realising any revenue from the sale of the dwelling because of the 'thinness' of the local markets (see Chapter 3). The banks may be able to counteract these risks through a process of securing some other assets of the organisation running the CLT (most likely land) or, alternatively, by having a government guarantee against losses.

Given the potential difficulties with these issues it is most likely that the Indigenous sector would need the support of a government-backed organisation, such as the IBA, to partner with financial institutions.

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<sup>60</sup> In NSW the Aboriginal Housing Office (AHO) is responsible for regulating Indigenous community housing organisations that receive funding from them. Operation of regulation via the "Provider Assessment and Registration System (PARS) is conducted by the community housing register who advises the AHO. In Queensland Indigenous housing organisations can register with the regulator of community housing based in the Department of Communities. Aboriginal Corporations are subject to regulatory scrutiny by the Office of the Register of Aboriginal Corporations (ORIC).

### *5.3.6 The potential demand for CLTs co-ownership products*

Tables 6 and 7 examine the potential demand for CLT co-ownership products within a variety of locational settings.

Table 6 examines the potential demand for a new dwelling product. The view of the study team is that the demand for a new dwelling equity product in remote areas is likely to be very low for a number of reasons. Firstly, household income levels in these communities are lower than in other locations, reducing the likelihood of obtaining finance. Taking the land out of the equation for the home purchaser will make little difference in terms of improving affordability, given the very low value of land in these areas. In addition harsh climatic conditions and poor access to skilled tradespeople in many remote areas results in larger depreciation rates of dwellings. However, the main reason that demand will be low is that effective markets are unlikely to operate and as a result both the financier and individual are much less likely to participate in a product with large risks and uncertain returns. CLTs operating in these regions are most likely to offer non-equity products such as the Life Tenure product described in Chapter 3. Even reducing the costs to the individual through strategies such as sharing the equity in the dwelling is unlikely to increase the demand given these other barriers.

**Table 6: Potential demand for co-ownership products: new dwellings**

<b>Region</b>	<b>New detached dwelling costs for Indigenous households</b>	<b>Land costs</b>	<b>Potential demand</b>	<b>Annual household income to service mortgage (a)</b>	<b>Estimate of % of Indigenous households eligible (b)</b>	<b>Comment</b>
<i>Remote areas</i>	\$300,000	Very low	Very low	\$105,000	5%	Would require deep subsidies or a combination of cost reduction mechanisms; lack of market a severe constraint.
<i>Regional low cost</i>	\$200,000	Low	Very low	\$74,000	10%	Traditional home ownership pathway will soak up demand.
<i>Regional high cost (e.g., coastal and mining areas)</i>	\$220,000	Moderate	Moderate	\$79,000	15%	Has potential to help secure affordability in areas where other pressures are increasing prices.
<i>Metropolitan</i>	\$180,000	High	Moderate-high	\$65,000	30%	Large Indigenous populations-greatest potential where Indigenous organisation own land.

a. 20-year loan at 7.8 per cent interest assuming that payments don't exceed 30 per cent of income.

b. Based on analysis of 2006 Census Indigenous Community profiles for NSW regions. Note this is an approximation only.

**Table 7: Potential demand for co-ownership products: existing dwellings**

<b>Region</b>	<b>Existing social housing dwellings (sold at discount)</b>	<b>Land costs</b>	<b>Potential demand</b>	<b>Annual household income to service mortgage (a)</b>	<b>Estimate of % of Indigenous households eligible (b)</b>	<b>Comment</b>
<i>Remote areas</i>	\$150,000	Very low	Very low	\$54,000	25%	Would require deep subsidies or a combination of cost reduction mechanisms; lack of market a severe constraint.
<i>Regional low cost</i>	\$100,000	Low	Very low	\$74,000	30%	Traditional home ownership pathway will soak up demand.
<i>Regional high cost (e.g. coastal and mining areas)</i>	\$120,000	Moderate	Moderate	\$79,000	35%	Has potential to help secure affordability in areas where other pressures are increasing prices.
<i>Metropolitan</i>	\$150,000	High	Moderate-high	\$54,000	35%	Large Indigenous populations- greatest potential where Indigenous organisation own land.

a. 20-year loan at 7.8 per cent assuming that payments don't exceed 30 per cent of income.

b. Based on analysis of 2006 Census Indigenous Community profiles for NSW regions. Note this is an approximation only.

**Table 8: The capital costs to the household, the CLT organisation and government**

Region	Cost to households		Costs to Indigenous organisation			Costs to government		
	New detached dwelling costs	Existing social housing dwellings sold at discount	Administration costs (end of year 1)	Subdivision (if applicable)	Sales foregone (if applicable)(b) for developable land	Replacement costs if social housing dwellings are sold (a)	FHOG	Savings from social housing maintenance (old replaced with new)
<i>Remote areas</i>	\$300,000	\$150,000	\$3,000	\$10,000	n/a	\$250,000	\$7,000–\$14,000	\$15,000
<i>Regional low cost</i>	\$200,000	\$100,000	\$3,000	\$25,000	n/a	\$150,000	\$7,000–\$14,000	\$10,000
<i>Regional high cost (e.g. coastal and mining areas)</i>	\$220,000	\$120,000	\$3,000	\$65,000	\$250,000	\$150,000	\$7,000–\$14,000	\$10,000
<i>Metropolitan</i>	\$180,000	\$150,000	\$3,000	\$85,000	\$350,000	\$50,000	\$7,000–\$14,000	\$10,000

a. Note higher than costs to individuals because of additional costs of government procurement.

b. The net costs of a block of land that could have been sold on the open market.

In regional areas, while there will be some increase in income eligible households (see Table 6), demand is likely to be low for a new dwelling equity product in low cost areas largely because households interested in equity products have the option of purchasing traditional freehold dwellings in many regions for about the same price (or even at a lower price).<sup>61</sup> Again, taking the land out of the equation for the home purchaser will make little difference in affordability for the potential purchaser. In high cost markets, such as coastal areas or in mining regions, the situation changes because land costs rise substantially and CLT clients can potentially gain access to equity in a dwelling at a much reduced cost. The extra demand also reduces risks for the household and the financing institution because the market will be operating effectively. The regions also have reduced building costs compared to remote areas.

In metropolitan areas demand is likely to be strongest because of the much higher land costs, higher household incomes and the lower construction costs of dwellings as a result of production economies of scale and increased competition.

In a model where households are able to access existing social housing dwellings at a price less than the replacement dwelling costs because of either an explicit subsidy policy or a discount based on the condition of the dwelling, the demand picture changes. While it is considered that demand is still likely to be small in remote or low cost regional areas for the reasons discussed above, demand could be more significant in high cost regional areas and metropolitan areas because of the increased numbers of households eligible to access mortgages.

### *5.3.7 The capital costs to the household, the CLT organisation and the government*

The capital costs for each dwelling being added to the equity product arm of a CLT are shown in Table 8. The table shows the capital costs to households, the CLT sponsoring organisation and the capital costs to government. The costs to households are taken directly from services provided to the applicant and successful CLT client households in the first year and include providing information, education, assistance with entering into the various agreements and providing on-going support. In both cases (new and existing dwellings) the organisation may have to bear substantial subdivision charges, since finance is unlikely to be available to households unless their dwelling is located on a subdivided block.

In high land cost regional areas as well as metropolitan areas, putting a block of land into the CLT will mean a sale to another household will not take place. Where the Indigenous organisation is engaged in market development activities to provide funds for its organisation, this will mean the organisation will miss out potentially on an amount equal to the net development costs of a block of urban land.

The capital costs to Government include the costs of any first home owner incentives, as well as the net replacement costs of any dwellings that are converted from social housing into an equity property. Note that since an older social dwelling with a likely maintenance liability is being replaced by a new dwelling there will usually be a net maintenance saving.

### *5.3.8 Other costs*

There is a range of start-up costs associated with the establishment of an Indigenous CLT sector. These include:

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<sup>61</sup> This is evident in the IBA Report that show the greater effectiveness of IBA loans in regional areas (e.g. Coffs Harbour Indigenous region, NSW) (IBA 2010; IBA and Urbis, unpublished).

- Development of the policy, legal and educational materials for a CLT or other partner organisation.
- Development of the policy, legal and educational materials for any of the housing options described in Section 5.2.4.
- Training program for sector workers.
- Recruitment/Selection of suitable IHOs to embed CLTs.
- Marketing campaign for potential clients.
- Development of suitable financial products in consultation with finance providers.

Some of that work can build on existing work, including this project, but there is a substantial development task for an intermediary to complete this work. Given the State-based nature of property, planning and housing policy, it is likely that an intermediary would need to be established in each State interested in supporting the CLT model.<sup>62</sup> State intermediaries could co-operate in terms of pooling skills and resources. The intermediary would need substantial funding in the first two years, but after this development phase is completed the role of the intermediary would focus on support. Assuming that the intermediary requires a senior dedicated officer with administration support and some resources to fund specialist legal advice etc., it is expected that a budget in the first two years of about \$500 000 would be required. After the development phase, the role could be funded through charging Indigenous organisations with CLTs a fee for service.

Probably the most efficient process to establish CLTs in Indigenous communities is to 'graft' them onto existing Indigenous organisations. With appropriate training and support, an existing generalist housing officer could take on the role of CLT specialist in the organisation. Over time if the CLT sector expanded specialist staff could be recruited. The role of the CLT specialist would include:

- marketing
- screening applicants
- training process
- assisting them with mortgages, building contracts
- ongoing support and enforcement of lease conditions, etc.
- reporting
- policy development.

### *5.3.9 Possible structure and costs of a CLT—two examples*

This section outlines a very tentative structure and a range of potential costs for two CLT models – a regional organisation like Kookaburra and an urban Land Council like Magpie.<sup>63</sup>

#### **A regional umbrella model—Kookaburra**

If Kookaburra decided to participate in a CLT model with the help of the intermediary it could train one of its existing housing officers as a CLT specialist. The intermediary is also likely to provide a training program for its Board members and senior staff.

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<sup>62</sup> In States with a specific Indigenous housing agency such as NSW (the Aboriginal Housing Office) it would be logical to host the intermediary function in that agency.

<sup>63</sup> Using these two examples is not meant to infer that the actual organisations have indicated an interest in starting a CLT.

Kookaburra would need to decide through its Board what co-ownership products it was interested in developing to provide as additional housing choices to its members.<sup>64</sup> The worker could help develop an information program to let tenants of member organisations know about the new housing products. It is likely that the training process could take about a day a week of the worker's time. The workload of the worker would depend on the tenants' interest in the CLT products but, given that Kookaburra operates in several high cost regional markets, it is likely that demand will be significant.

**Table 9: Gross capital costs—Kookaburra**

<i>Costs to organisation*</i>		<i>Costs to government</i>	
Admin: 50 x \$3,000	\$150,000	First home buyers grant: 14,000 x 25 lots) + (7,000 x 25 lots)	\$470,000
Subdivision: 25 lots x \$65,000	\$1,625,000	150,000 x 25 replacement costs	\$3,750,000
Total	\$1,775,000	Total	\$4,220,000

\*Assuming 50 units of housing—25 new dwellings and 25 replacement dwellings.

The CLT component of the housing worker's job would expand according to demand, so the other housing duties would need to be taken up by other workers. A single worker could service growth of about 50 households per year into CLT products. Assuming this level of growth and assuming that half were new build requiring subdivision and half were purchases of existing social dwellings, the capital costs incurred through the program would be in the order of \$1.78 million for Kookaburra and its member organisations before sales revenue. The capital costs to government are in the order \$4.22 million, less any savings they make on the reduced maintenance tasks on the 25 replaced social dwellings.

### **An urban land council—Magpie**

If Magpie decided to participate in a CLT model it could train one of its existing housing officers as a CLT specialist, with the help of the intermediary. The intermediary is also likely to provide a training program for its Board members and senior staff. Magpie would need to decide through its Board what co-ownership products it was interested in developing to provide as additional housing choices to its members, although it would appear likely that it would include the rent-to-buy product it has already developed.<sup>65</sup> The worker could help develop an information program to let tenants of member organisations know about the new housing products. It is likely that the training process could take about a day a week of the worker's time. Given the expensive nature of the urban land in the area that Magpie operates, it is likely that the demand for its co-ownership products would be substantial. Magpie could help expand the demand by offering some of its surplus land bank as security to a financier in order to help facilitate access to private finance for its members. Like Kookaburra, the CLT component of the housing worker's job would expand according to demand, so the other housing duties would need to be taken up by other workers. A single worker could service growth of about 50 households per year into CLT products. The capital costs incurred through the program, assuming that all were new build requiring subdivision and growth of 50 households per year, mean that total

<sup>64</sup> The short list will be developed by the State intermediary depending on financing and funding for a range of products deemed appropriate.

<sup>65</sup> The short list will be developed by the State intermediary depending on financing and funding for a range of products deemed appropriate.

costs for Magpie would be in the order of \$17.65 million per annum, minus any affordable sales revenue. The largest component of the costs for Magpie is the opportunity cost of not selling its development sites into the open market. The capital costs to government are in the order \$0.70 million.

**Table 10: Gross capital costs—Magpie**

<i>Costs to organisation*</i>		<i>Costs to government</i>	
Admin: 50 x \$3,000	\$150,000	First home buyers grant: \$14,000 x 50 lots)	\$700,000
Net profit foregone: 50 x \$350,000	\$17,500,000		
Total	\$17,650,000	Total	\$700,000

\*assuming 50 new dwellings.

## 5.4 Potential issues for Indigenous communities and households

CLTs are relatively unknown in Australia. Therefore any CLT would need to be well thought out and developed by communities to meet their specific needs. There will not be a 'one size fits all'; however, providing models can be useful.

### 5.4.1 *Extra costs*

The transition in to CLT ownership arrangements means moving away from the position of tenant, where the landlord is responsible for repairs, maintenance, insurance and other aspects of the home. Once the buyer invests in their home, they become their own landlord, with the CLT having some rights still as landowner, such as to carry out inspections of the premises, carry out cyclical repairs if deemed appropriate, to have copies of house insurance certificates, etc. The CLT Agreement or lease document can codify the responsibilities in detail. Home ownership responsibilities that can be written into a CLT agreement include responsibility for repairs and maintenance, payment of rates, water bills, and insurance. However, there is scope to tailor this; for example, some CLTs in the US set aside the ground rent collected (or a portion thereof) in an account for future use to pay for major works such as the replacement of a roof or a kitchen. CLTs provide flexibility so that while the owner is responsible for the everyday repairs and maintenance, the CLT as long-term owner can contribute to larger replacement items, thus maintaining the stock throughout its natural life and reducing costs to residents. Those entering into a CLT must be mentally prepared to make the transition from tenant to owner and aware of the full implications and extent of their relationship with the partner organisation.

### 5.4.2 *Training and education*

Currently there is no systemised training as such for Indigenous people who would like to enter into home ownership. IBA does advise people, but a CLT could take a more structured approach towards education about the costs and benefits of home ownership, as occurs in the US sector. This would allow people to weigh up the pros and cons and decide if it the product is desirable and workable. In addition, as CLT ownership gives limited share of any increase in valuation at the end of the period, it is important to explain the trade-off between affordability and equity gains. In the US, people on low incomes have chosen the CLT option, indicating that it is a rational choice for people whose only other options are social rental housing and unaffordable market home ownership.

### 5.4.3 Rents and incentives

Currently, Indigenous housing organisations can set cost rents, which means they can be set very low: lower than mainstream social housing rents and much lower than mortgage repayment levels. Therefore, there may not be a strong incentive for someone to move out of such rental into a form of ownership. Some tenants have great security of tenure and may already see their rental house as ‘their home’ even though they cannot leave it to children and have no equity in it. However, the incentive that a CLT can offer is that the buyer will, upon sale, receive their equity back plus some modest gain depending on the resale formula used, to take with them if they leave the CLT. This would otherwise have been spent on unrecoverable rent. Thus CLTs can be ‘stepping stones’ to market and freehold home ownership, or be a valid housing choice for the long term in and of themselves.

### 5.4.4 Retention of landholdings

In the US, most CLTs maintain title to land and have limitations on resale. The land remains in the ownership of the organisation in perpetuity. If an Indigenous organisation wishes to maintain landholdings, then a CLT arrangement has the potential to offer some of the benefits of home ownership to those entering into agreements, plus protect landholdings into the future. It is not necessarily the case that subdivision of communal land must necessarily occur, if the New Zealand model of offering loans on housing only is adopted. However, this becomes problematic for existing housing as the New Zealand model uses the fixture as security and requires it to be moveable. For the greatest flexibility in terms of finance raising, subdivision is probably optimum.

### 5.4.5 Mainstream housing ownership

For those wanting to go down a market-based path of freehold home ownership with no restriction, then rent-to-buy schemes and the Home Ownership Program offered via IBA provide avenues for entering into mainstream mortgages, albeit limited given the waiting list for the HOP. There is evidence that the IBA home ownership program and its ATSIC precursor have assisted thousands of Indigenous people into home ownership since 1978, which is one of the reasons that the rates of Indigenous home ownership have increased; however, rates are still low (34%) compared to the national average. As reported in the fieldwork section, there are varying perceptions of how available IBA loans are across different areas and the scheme is under-capitalised, which is generating waiting lists. However, in some areas where house prices are still relatively affordable (particularly regional towns) IBA loans can assist people into home ownership very effectively. Rent-to-buy schemes can also be effective. Such programs do not provide for ongoing affordability or the retention of land in community ownership.

## 5.5 Concluding comments

There are a number of mechanisms which might enable models that encapsulate the core objectives of CLTs as developed in the US and UK. It is currently possible to grant a 99-year lease for residential purposes in NSW and in Queensland under the relevant Aboriginal land Acts.<sup>66</sup> This would enable a 99-year lease to both the land and the house and might be the most readily available mechanism, but would not confer ownership of the house as broadly understood.

Models that do separate fixtures from land might be more palatable for a range of reasons, but may currently be more difficult to develop and enact, although this

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<sup>66</sup> *Aboriginal Land Rights Act 1983 (NSW); Aboriginal Land Act 1991 (Qld).*

requires further investigation. Mechanisms based on existing shared equity schemes may offer more readily available models, but these would require careful development to ensure the objectives of long-term affordability are not unduly compromised.

As Indigenous lands are currently held by Indigenous organisations, the retention of community ownership of land and transfer of long-term occupancy rights to the householder would seem to have resonance, and this was found to be the case with many organisations. That said, it may be that other articulations as explored above prove to be more desirable, relevant or feasible, and communities need to be able to determine which of these, or other variations, might best embody their core objectives.

All of these possible models require legally enforceable mechanisms that clearly articulate and enact the core objectives of the model, as well as the rights and responsibilities of the signatory parties. These proposed models all also require the ongoing presence of a partner organisation or program which is established for the purposes of providing stewardship via maintenance of the assets, supervision of the mechanism (whether lease, deed restriction and/or other) and supporting residents.

In conclusion, much of the operating requirements for CLTs already exist in NSW and Queensland. As Section 5.2.4 shows, there might be three main legal ways of creating 'hybrid' tenure forms that aim to provide long-term security and a degree of equity. These require investigation under current law, although long-term leasehold to land and housing combined appears to be immediately possible. However, there may be some utility to inserting a definition of CLTs into housing legislation. While this is not strictly legally necessary, it creates a definition that legitimises CLTs as a form of affordable tenure within housing legislation and policy. Note that all three of the mechanisms proposed in Section 5.2.4 could be enabled through a single definition.

Existing NSW law does not prevent dealings in land as long as approval from the Local Aboriginal Land Council and NSW Land Council (or resolution of an Aboriginal Corporation) and any caveats are taken into account. However, if there is no outright sale (conveyance of the property as freehold) then existing caveats will not present a barrier. It may be that the choice between shared equity arrangements or 99-year leasehold arrangements needs to be more fully evaluated in future work, as each has specific characteristics that need to be taken into account.

The financial arrangements for development already exist. However, any nascent CLT model will need land, housing stock (preferably both) and a way of replacing stock, such as social housing stock that passes into shared ownership programs. As the financial modelling shows, the cost of replacement stock is significant; however, once sales are taken into account the subsidy gap will diminish. If cross-subsidisation is also possible—for example, via commercial leasing to businesses and occasional market sales—then a CLT could move towards financial self-sufficiency over time. The authors caution against the creation of a CLT product for sale in remote areas and areas with low housing prices. Even a discount shared ownership product will not be re-saleable if there is insufficient demand, small numbers of future buyers and very low incomes. CLT models will work best where a sub-market way of buying into a dwelling can be offered and that price point is less than market value alternatives. More complex modelling needs to be undertaken in relation to specific subdivision and building costs in specific areas in future; however, approximations are given which factor in these costs.

In terms of governance, there are a variety of models and legislation may prevent CLTs from being conducted totally in-house in NSW. An arms-length structure with a mix of people including expert members on the Board may be the most successful at complex asset management. However the in-house option is possible especially for

Aboriginal Corporations or existing housing manager organisations. The desirability of regional CLT structures would need to be decided amongst existing organisations, but in general there would have to be sufficient numbers of people to form a pool of eligible buyers, so a scale where this would be the case would be optimum.

Finally, moving into a form of homeownership entails different responsibilities from being a tenant, so training will need to be developed to ensure the transition can be managed and that the risks are minimised. This is essential in prevention of defaults and the necessity of a CLT having to buy back the interest in a CLT property that has been sold either as part equity or as a 99-year lease. Despite these risks, CLTs can provide more affordable alternatives to mainstream home ownership and alternatives to renting, with greater control and the chance to build equity.

## 6 A MODEL FOR DEVELOPING INDIGENOUS CO-OWNERSHIP CHOICES

The authors have identified CLTs as potentially offering a range of housing choices for Indigenous people that are not currently available. Social rental housing in the Indigenous sector is insufficient to meet demand and frequently does not provide a pathway into other tenure forms without displacement from community. On the other hand, in the context of high and rising housing costs (see Chapter 2) but also likely persistence of low income and unemployment among this group, pressuring Indigenous people into predominant forms of home ownership may present unacceptable levels of financial risk and maintenance responsibilities to households, especially in remote areas. Hybrid tenure models such as CLTs could therefore provide a more workable and sustainable option for those whose only stable housing options currently are social rental housing or private ownership, both of which might not be appropriate or sustainable. The approach to hybrid tenure represented by CLTs can help to address the current tenure gap in Indigenous housing. That approach embraces a suite of intermediate or hybrid tenures that could transform the housing system and give greater choice, flexibility and mobility to Indigenous households. The mechanisms presented in Section 5.2.4 reflect three possible hybrid housing tenure forms that can balance individual and community rights and responsibilities, and which can deliver some of the core traits of home ownership, such as stability, inheritability and enhanced autonomy.

The scenarios developed in this research from a variety of local case studies suggest that mortgage-backed home ownership is likely to remain a niche product for lower income Indigenous households, even under a hybrid tenure model. The research has found that there are good synergies between the principles and mechanisms of hybrid tenure models such as CLTs and existing Indigenous housing aspirations. With regards to the 'classic' CLT mechanism of separating land from housing and articulating program objectives in the ground lease, five core areas of synergy have been identified in discussions with the project's IAG and research participants.

First, CLTs can provide options for people whose circumstances suggest they are interested in and can achieve a certain level of ownership of their home, which would not be provided by the open market. Second, CLTs could help to relieve existing bottlenecks in the housing system, such as overcrowding of social housing, or the occupancy of rental stock by individuals who could sustain an appropriate shared ownership model if they were available. This development would have flow-on effects through the lower income housing system, freeing up dwellings in that market. Third, models that retain affordable housing in perpetuity, such as CLTs, offer a possible means of protecting community assets and interests in markets that are heating up. That is, these mechanisms could help Indigenous organisations and communities avert adverse affordability impacts of local housing markets that are experiencing strong demand, whether from migration from major urban areas, or the impacts of economic development, such as are occurring through the resources boom and tourism. Fourth, as many communities are not primarily interested in wealth creation through housing, the restriction of equity gains to retain affordability can be seen as synergistic with community and householder aims. Last, retention of land in common ownership via CLTs is seen as desirable in instances where community ownership of land represents a significant legacy of historical struggles for land rights.

The CLT sector in the USA initially met with, and still meets, resistance due to a perception that the model can 'trap' people by limiting the extent of equity return to the individual. Clearly such a situation would not be desirable for a population that has

historically experienced marginalisation, such as Indigenous Australians. There are three responses to this concern. The first is that to date, studies of the US sector show that households can and do move out of CLT housing, for the same reasons as non-CLT home owners—a change in job, change in household size, and so forth (see Davis & Stokes 2009). A CLT owner can take the equity accrued from their CLT home and invest it in a new dwelling, so CLTs encourage ‘forced savings’. That said, US studies focus on more open markets than those presented by Indigenous communities in Australia—these latter markets will most likely be small, consisting of Indigenous households only, and may be geographically limited to traditional boundaries. The likely scale of the market and the documented interest amongst Indigenous communities in aspects of home ownership other than wealth creation highlight the second point, which is that hybrid ownership or CLT-type models are perhaps more relevant for their non-economic benefits. The promotion of home ownership as a wealth creation vehicle for Indigenous households, especially in non-urban areas, is a fraught proposition due to lack of employment opportunities, small markets, low incomes and the condition of existing housing stock. Consideration of hybrid ownership models in light of the documented housing aspirations of Indigenous communities opens up space for developing models that can encapsulate aspects such as household stability, autonomy and inheritability rather than wealth creation.

However the third response to objections to a ‘ceiling’ imposed on wealth creation via CLT arrangements is that for many low income households, there is no other ‘wealth creating alternative’ such as market-based home ownership available—CLTs are an accessible form of ownership that is affordable to those unable to access mainstream home ownership. So the real alternative to limited equity CLT ownership, which might deliver a return on equity to the occupant and will deliver many non-economic benefits such as stability and security of tenure, is rental, which delivers neither equity nor security of tenure.

Consideration of the CLT form of ownership must be underpinned by a desire to not further marginalise Indigenous Australians, whether through locking individuals into a tenure form which they cannot leave due to a lack of future buyers, or into an unsustainable financial commitment which they cannot afford. CLTs can allow the building up of equity which can be used by the household when they ‘cash out’ of the CLT scheme when they sell.

Consideration of a framework for enabling CLT-type programs therefore highlights four issues. First is the possible range of models. Second is the suite of mechanisms through which these might be delivered and the factors that can enable and frame a co-ownership sector. The third issue is the costs to organisations and potential sources of funds. Last is the possible role of government. These issues and possible responses are discussed in turn below, followed by suggestions for future work and the need for a pilot program.

## **6.1 Outline of possible models**

This project drew on participants’ expressed housing issues and expectations, as well as data regarding local housing and employment markets, to develop the series of potential models detailed in Chapter 5. The models were designed to work for target groups across a range of market circumstances so that the principles learnt from overseas CLTs could be made as widely applicable as possible and so that Indigenous households in different locations could have similar housing choices.

### 6.1.1 *Three possible models of tenure*

The three models suggested in Section 5.2.4 reflect three ways to grant title to properties, and three ways to allocated equity between households and the partner organisation. The first—the classic CLT—separates land from housing, with the partner organisation holding title to the land and the householder holding title to the home. A renewable long-term lease would grant full usage rights of the land to the householder and would contain the types of conditions seen in the US model, such as resale formulae, allocation of maintenance responsibilities, eligibility, inheritance and so forth. Equity would be allocated between the parties according to the resale formulae; while this model presents a legal split between land and fixtures, the equity split is more arbitrary and allocated according to the principles enshrined in the resale formula, which would need to be locally nuanced as in the US sector. This model requires legal determination and sits well with community objectives regarding ongoing community ownership of land.

The second model is a long-term lease to both housing and land as an integrated package. In this, the householder can buy a long-term lease, with the partner organisation holding title to the land and house. This would not require the same extent of special legal examination as the classic CLT, but would not confer 'ownership' in the sense that a classic CLT model might. Resale formulae and other criteria would need to be articulated in the lease; the research team is unaware of existing precursors to such leasehold conditions.

The third model is a modified dual mortgage scheme with additional conditions written into the title. Conceptually this represents a split of the entire house and land package 'down the middle' with a partner organisation. The objectives of the model would need to be written into title documents. As with the US dual mortgage and deed restriction models, this would require careful oversight to ensure conditions are upheld. Again, the mechanism and its enforceability would require legal determination. There are existing dual mortgage schemes in Australia that can be taken as precursors, although these do not carry the same possible extent of conditions. It would be envisaged that as with the emerging UK CLTs that are employing such a model, organisations in Australia would seek to restrict the extent to which households could 'staircase' to ownership of a greater equity stake in the home (see Section 5.2.4).

A CLT model can be implemented under current law in NSW and Queensland; the most readily available mechanism may be to grant a long-term lease to the house and land via existing leasehold mechanisms. Longer term development of a sector can be enabled through utilisation of core documents from CLTs in the US and UK to determine the potential legal mechanisms for the separation of fixtures from land. This would enable ownership of buildings on land leased from another party, but requires legal examination and determination. This work will be undertaken by the University of Western Sydney over 2011–12 as outlined in Section 6.5.

Regardless of the legal mechanism, in the longer term it is likely to be advantageous to give CLTs standing in housing legislation by developing and adding a definition, as was done in the US and the UK. This provided clarity and consistency to funding bodies, government, financiers and lawyers as to the parameters, form and activities of organisations in the sector. Early discussions suggest the name may not adequately convey the objectives and attributes of the model; appropriate nomenclature might be an issue for further discussion in the Indigenous and broader housing sectors.

### 6.1.2 Models for bringing stock into a program

Irrespective of the legal and equity mechanisms, there are four basic ways to bring housing stock into a CLT or hybrid tenure program, determined by the presence or absence of land and housing in the organisation’s portfolio. This matrix is presented in Table 11 and highlights core aspects of each pathway, as well as core funding considerations, which are discussed more in Section 6.3. Each of these will carry particular costs and reflect local market conditions.

**Table 11: Models for bringing stock into a CLT program**

		Land	
		Existing stock	Purchase
<b>Housing</b>	<b>Existing stock</b>	Tenure conversion in current home. Requires replacement of converted rental stock. May require up-front repairs.	Spot purchase of homes in open market. Similar to current dual mortgage schemes. Requires capital for purchase. May require up-front repairs.
	<b>Build</b>	Build homes on existing land. May require subdivision and/or rezoning. Requires capital for development process and construction. Can cross subsidise between market and affordable products in high-cost areas.	Buy land and build new homes. May require subdivision and/or rezoning. Requires capital. Can cross subsidise between market and affordable products in high-cost areas.

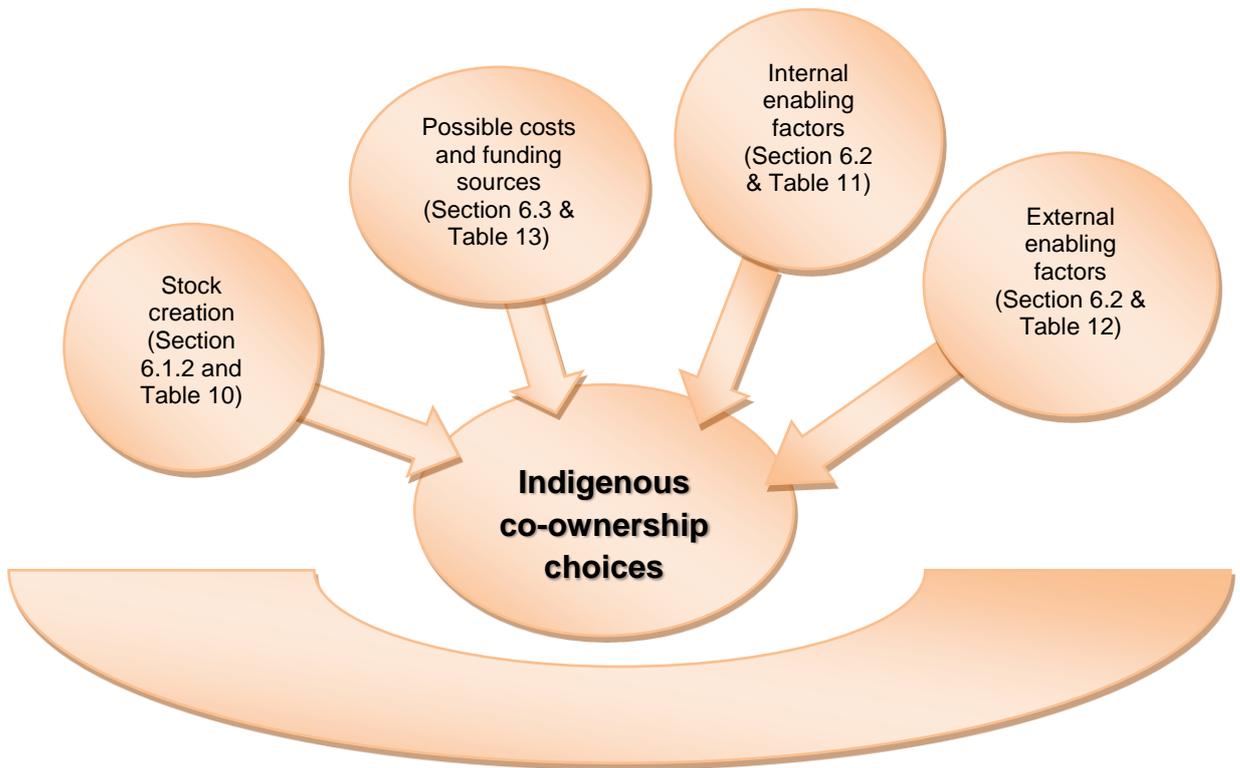
Source: authors

## 6.2 Framing and enabling Indigenous co-ownership

Enabling policy and legislation forms the broader context within which an Indigenous co-ownership scheme could emerge, and so underpins the factors and costs affecting individual organisations. Schematic representation of this relationship is provided in Figure 3.

The research identified several factors that can support the development of co-ownership programs based on the principles of CLTs. These have been collated into internal (organisational) factors that can help to support co-ownership, and external or contextual factors that can enable co-ownership. These factors are presented in Table 12 and 13 respectively. The tables indicate current legislation, policy or programs that address the factors and potential activities that could further enhance each factor.

**Figure 3: Enabling Indigenous co-ownership**



Source: authors

Internal factors as shown in Table 12 focus mainly on structures and systems that support the home owner, articulate appropriate governance and promote good asset management. Organisational governance and capacity are core issues here. An explicit strategy could be developed as part of the articulation of a CLT-type sector, to build organisational and sector capacity and asset management strategies specifically aligned with the intended objectives of such an ownership program. Some of these factors also require external support, such as potential funds for capacity building programs in the areas of asset management, governance and financial counselling. It may also be that these could be coordinated, funded and/or provided at a regional, state or national scale, whether through existing or purpose-specific agencies or programs. The US sector has been greatly enabled by the creation of a national CLT network and academy, as well as regional servers that can provide centralised services to smaller local CLTs.

**Table 12: Organisational factors to support Indigenous co-ownership**

<b>Issue</b>	<b>Current legislation/policy/programs</b>	<b>Potential legislation/policy/programs</b>
Supporting transition into ownership	Piecemeal—some Aboriginal organisations running rent-to-buy schemes	Rent to buy incentives e.g. facilitating savings through allowing component of increasing rent payment to be retrieved for deposit. Use of CRA to support initial mortgage repayments, for, say, up to five years. Interest rate subsidy targeted to those with longer term potential to sustain home ownership (e.g. younger households in employment with improving income prospects).
Effective and appropriate governance	Piecemeal—some via local efforts, some via rollout of regulation.	Governance and regulatory requirements to operate CLT type models.
Stability of tenure across household income volatility	Emergency mortgage assistance/relief scheme. Existing IBA loan terms.	IBA, other lenders—suspension/ rescheduling of payments. Mortgage/income insurance. Reverse tenure safety net. Early intervention.
Access to financial counselling	Largely absent	Mandated application of funds in co-ownership vehicle. Provision of counselling via IBA or possibly an accredited regional / local financial counselling service.
Asset management	Piecemeal	Development of sustainable asset management frameworks by governing bodies, supported by national capacity building effort.
Managing housing development and quality	Highly variable at organisational level	Development of appropriate design and tendering guidelines and professional development training esp. re durability/quality of stock and ongoing utility/occupancy costs.

Source: authors

Table 13 shows external factors that can frame co-ownership, which relate primarily to supporting home owner entry into the program through finance and training, and consistency in how land dealings are managed and treated legally. The former include the development of culturally appropriate product advice and mortgage assistance, standard training packages, and the extension of HOIL into non-remote areas. The latter includes allowing affordable home ownership considerations in Indigenous land disposal guidelines. There is a need for more coordinated policy and programs that can provide a range of stable tenure options for Indigenous households.

**Table 13: External factors to support Indigenous co-ownership**

<i>Issue</i>	<i>Current legislation/policy/programs</i>	<i>Potential legislation/policy/programs</i>
Clarity about loan products	IBA	Development and dissemination of culturally appropriate product advice through lead/ coordinating agency.
Prospective home owner training	Piecemeal, some local NFP agencies IBA	Development of standard training package (NZ model) and accreditation of trainers.
Raising deposits	Federal matched savings scheme FHOG	Review usefulness/targeting of these for Indigenous clients. Boost value of deposit assistance (where necessary to achieve affordability) in return for covenanted resale conditions.
Raising mortgage finance	IBA, HOIL First Nations credit union Commercial banks	Increase IBA capital base for specified CLT type products. Expansion of HOIL to include non-remote areas. Incentives to commercial banks such as government guarantees.
Land dealing treatment	NSW ALRA, Qld ALA, NSWALC policy	Allowance for affordable HO in land disposals and guidelines to enable streamlining/ clarity of NSWALC/Trustee (Qld) approval processes.

Source: authors

### 6.3 Costs and funding

Table 14 provides an overview of costs to a co-ownership organisation, current funding sources and potential funding sources or programs. Primary costs relate to: replacing existing rental stock where this is transferred into home ownership; costs for core business such as oversight of sales, plus repairs and maintenance; and, costs of subdivision, land development and construction.

Any program that is transferring existing social rental stock into home ownership will need to be able to replace that stock so as to continue to provide affordable rentals. This was a recurrent concern amongst research participants. Government subsidy for any shortfall in the revenue from sales that is required to obtain replacement social housing would be necessary to ensure the model is an expansionist one rather than one that generates a loss of social housing. Funding for replacement stock could be linked to providing CLT ownership. For example, a CLT may designate a dwelling as an ownership property. The participant would raise a mortgage to buy the long-term lease, the value of which could be set in a variety of ways, such as linked to the valuation of the dwelling alone. The buyer would pay the CLT for the long-term lease and this purchase would provide an amount to the organisation. However, this amount may not be enough to build a new house on an existing block of land or to spot purchase a new house/land. One solution would be to offer gap funding to the organisation based on a specified amount per dwelling transferring into CLT ownership.

**Table 14: Costs and funding sources for Indigenous co-ownership**

<b>Issue</b>	<b>Current policy/programs</b>	<b>Potential policy/programs</b>
Replacement of stock transferred to ownership	Social housing funding	Dedicated program of gap funding to supplement purchase/development of replacement rental housing by ICHOs or mainstream social housing providers.
Construction costs		Harness and stimulate sweat equity options (e.g. Habitat for Humanity). Develop procurement and tendering processes that focus on durability and energy efficient design.
Front end costs	State tax exemptions and other fee concessions	Align exemptions or concessions with Indigenous specific program objectives e.g. review eligibility, price caps for Indigenous households/ communities/ organisations.
Funds/programs for overseeing resale/lease terms		Mandated fee for service for lease/home ownership manager.
Funds for repairs and maintenance—upfront and ongoing		Dedicated funding stream for both urban and remote areas allocated through states. Mandatory set aside of proportion of lease fee for large cyclical maintenance/ upgrading. IBA home renovation loans for existing dwellings.
Land development		Capital for subdivision, site infrastructure. Project support role for state land development agencies.

Source: authors

A formula could be set whereby for every household going into CLT ownership, an amount equivalent to replacement costs less the amount received from the leasehold buyer, tied to local market costs for land and housing construction would be provided to the CLT. The level of gap funding provided would also relate to whether existing land was to be used or a spot purchase was necessary, as well as any construction costs.

The approach just outlined combines a replacement cost subsidy from government with reinvestment of sales revenue to the CLT to ensure replacement of stock. It ensures that a CLT scheme would be able to expand and the government would achieve better value for money by reducing its cost for the next house. Normal funding for social housing would need to continue alongside any formula-based gap funding model to contain to provide a range of appropriate tenure models across a range of incomes. Ideally, hybrid tenures such as CLTs would sit alongside other tenure options as part of a continuum that allows mobility between tenure forms as household and community circumstances change.

## **6.4 Other government and policy implications**

The development of Indigenous co-ownership housing models requires the support of government at all levels. An overview of some additional potential policy and legislation issues not already addressed is provided in Table 15 and reflects suggestions from research participants; articulation of responses to these would need further discussion and development with the sector and government.

**Table 15: Policy and legislation to enable Indigenous co-ownership**

<b>Issue</b>	<b>Current legislation/policy/programs</b>	<b>Potential legislation/policy/programs</b>
Coordinated approach	Policy/ programs fragmented across jurisdictions and remoteness typology of areas.	National /state leadership, coordination and resources dedicated to development and dissemination of models for all locations (i.e. no locational dichotomy). National Advisory Council with membership drawn from Indigenous housing sector and government and financial institutions.
Single funding program		Formula-based gap funding program linked to retention of social rental housing stock and programs—possible Federal funds tied to State oversight/coordination.
Local government support	Existing social housing provisions.	Strengthening and streamlining of development processes for affordable housing schemes including Indigenous co-ownership.
Separation of fixtures from land	ACT Land Rent Scheme Retirement Villages Acts 1999 (NSW) and 1999 (Qld)	Specific legislation to enable separation for CLTs if required.
Continuity and accessibility of tenures		Review policy to articulate hybrid tenures with mainstream and social housing models.

Source: authors

The present policy and program landscape was seen as cluttered and confusing and there was a call for a more consistent approach to government engagement with Indigenous home ownership. One suggestion raised by interviewees was a single funding mechanism to provide gap funding to organisations that deliver locally-nuanced models in response to a given set of objectives and conditions, rather than a prescribed model of tenure. This resonated with the strong plea for a simple approach. While this is difficult to achieve in any shared ownership model, the aim of simplicity should inform all legislative and policy approaches. Early and continuous consultation with Indigenous stakeholders during policy development and product design phases will help to ensure that communication is clear and culturally appropriate.

The issue of streamlining is core here and there is potential to not only streamline access and models within an emerging CLT sector, but also within the broader Indigenous housing system. For example, CLT housing would most likely be available to eligible individuals currently in other social housing such as community housing, so there is scope to articulate the CLT and other mainstream housing options and provide easier access and transition between tenures. This was a recurrent theme in the field work and would suggest review of existing social housing policy to enable streamlining.

Lastly, local government was frequently described as unsympathetic to subdivision and development on Indigenous lands. The potential for this to be addressed through State and/or local government, to help enable appropriate co-ownership schemes requires further work. Core issues that were raised referred to difficulties in re-zoning

Aboriginal lands for residential purposes; it might be that planning legislation consider and incorporate CLTs for affordable housing.

## **6.5 Next steps and future research**

Overall, there has been strong receptivity for CLT principles and models proposed through this research project. The field work in NSW, and to a lesser extent in Queensland, has identified some potential locations for implementation on the basis of existing stock levels, local housing market conditions and community interest. Such locations or similar would lend themselves to a pilot program. To start to actualise policy interest in Indigenous home ownership, this pilot could be funded by the federal and/or state government, and developed and monitored via the state. An independent formative evaluation of the pilot program should also be commissioned at the outset. Conditions in NSW would seem to be most appropriate for the location of an initial pilot program or project, due to the existence and support of the Aboriginal Housing Office and the NSW Aboriginal Land Council, and the presence of a range of stable organisational types in a well-established and regulated Indigenous housing sector. It is essential that any pilot program achieve buy-in by appropriate Indigenous agencies and organisations. This will require identification of the appropriate local and state agencies and networks to be involved, and a clear specification of their roles and relationships in the pilot.

Concurrent with the pilot program, development of a wider engagement strategy with the Indigenous sector nationally would be highly desirable to raise awareness and to inform the development path for Indigenous co-ownership models about additional issues and options as they are identified. The engagement strategy articulated in this project provides a basis for expanding into a pilot program in partnership with those Indigenous communities and stakeholders who have already contributed their knowledge and identified interest.

There is also need for further investigative research to develop an approach to issues of stock transfer and management, governance, financing and uptake on the ground. During the course of the project, it also became apparent from discussions in the field and with agencies not affiliated with the research project, that further work is necessary in all jurisdictions, with priority to the Northern Territory due to the scale of need, issues of land treatment and the diversification of tenure forms on community lands.

Alongside this ongoing work in the Indigenous sector, the development of core legal documents and financial models will be required to support the emerging CLT sector in Australia. The separation of fixtures from land title will be a core consideration of that work. The work has already commenced through a research project established at the University of Western Sydney, which will address the legal issues raised by consideration of CLTs in an Australian context in 2012.

## **6.6 Concluding remarks**

This report has presented findings from work so far into CLTs and Indigenous housing options. The aims of the project have been to tease out relevant aspects of CLTs as developed overseas and to investigate their resonance with and applicability to, Indigenous housing policy objectives, with a practical focus on their potential operation in NSW and Queensland.

A key finding is that consideration of CLTs within the Indigenous sector needs first to recognise and affirm the suite of principles on which CLTs are based. Core CLTs principles relate to stewardship, dignity in housing, and balance. Determination of the

most appropriate delivery mechanism then follows as a case-by-case process that draws on previous examples and suggestions of how best to enact these principles.

The principle of stewardship means that CLTs are aware of their ongoing obligations to the greater community they serve and, as such, have a responsibility to determine and act towards the most appropriate use of the assets they steward. This also means they are obliged to work with their residents to enhance household stability and engender maintenance of stock. This latter is driven largely by a sense of ownership on the part of residents, whether this is underpinned by formal legal ownership or another long-term mechanism that confers comparable stability and other rights.

The bundle of rights conferred through co-ownership models is designed to enact balance and dignity, aiming to enable core features of stability, security, autonomy and inheritability for residents, while also maintaining the stewardship and affordability of housing for the larger community. Each housing provider or community will perform this balancing act in locally articulated ways.

In presenting our Final Report, the research team has also been mindful to highlight the potential pitfalls of mainstream ownership as a tenure option for lower income Indigenous households, even when based on community lands. Discussions with research participants highlighted the potential dangers of exposing households on marginal and volatile incomes to the perils of mortgage-backed ownership and accordingly we urge caution in considering such strategies and policies. Our investigation of CLTs overseas (Crabtree et al. 2012) has highlighted the inherent conservatism of the sector, which is very much interested in developing, delivering and stewarding a spectrum of stable and dignified housing tenure options for households on a range of incomes, rather than the dogged promotion of a single tenure form. Legislators, policy makers and advocates in Australia would do well to learn from that precedent.

Similarly, we wish to highlight that the development of co-ownership or other tenure forms needs to be delivered in context: that is, consideration needs to be given to the role, uptake and outcomes of existing mechanisms such as social housing and IBA loan schemes, to see if and where other options may fit. Again, this is not a one-size-fits-all consideration; different communities will have different histories with, and demand for, existing programs, as well as different expectations from a diversified system.

That said, it seems apparent that mechanisms based on CLTs may work where other options are not viable or are not fit for purpose. This covers situations such as where there is a gap in options for households who are not eligible for social rental or able to achieve independent home ownership, and where people who are good tenants are seeking greater stability and long-term security for their family, but cannot access the open market. Furthermore, there may be considerable resonance with the principles and options discussed in this report in places where there is a strong desire to retain lands in community ownership for political, social, cultural and/or spiritual reasons.

It is clear that the establishment of diversified tenure forms requires specialised leadership and government support, and an enabling framework with legislative, policy subsidy and capacity building components. It is unrealistic to expect CLT organisations to achieve financial self-sufficiency where housing is being offered at below-market rates in areas and communities with constrained markets and, frequently, high construction and replacement costs. That said, there are benefits to diversified, affordable and stable tenure options that justify such investment. As such, the project has aimed to pinpoint the core issues that will be required to be addressed to guide and nurture development of Indigenous co-ownership models and to put in

place the enabling framework. This process cannot proceed without strong Indigenous engagement at a strategic level. Lastly, articulation of Indigenous co-ownership models will also require piloting to test the possibilities on the ground in genuine engagement with selected local communities. One option for placing the pilot would be to build on the goodwill and relationships developed in this research project at state and local levels to begin to implement workable Indigenous housing options that embody stewardship, choice and dignity.

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# APPENDICES

## Appendix 1: One page CLT information sheet

### Community Land Trusts and Aboriginal Community Lands

Community Land Trusts (CLTs) are non-profit housing organisations. Under the CLT model the title to the land, and the title to the house on that land, are separated.

The CLT always holds the title to land, and leases that land (under a “ground lease”) to households or other organisations. The house on that land is owned by the leaseholder.

Or the CLT can hold the title for both the land and the house, in which case the house can be rented out, like existing Aboriginal community housing.

The CLT could be based on a discrete community – like a former mission or reserve - but it can also own individual blocks of land in urban areas too.



We believe this model is suitable for Aboriginal community land because:

- The land always stays in community ownership – the CLT is a non-profit community organisation with membership and a Board. The decisions the CLT makes are for the benefit of the community now and into the future.
- Home ownership starts out affordable - the cost of land isn't part of the sale price
- Home ownership stays affordable – a “resale formula” in the lease limits how much the house can be sold for. Buying a CLT house isn't about making a profit, it's about access to affordable and secure housing.
- Communities stay together – people don't have to leave Aboriginal community land in order to own their own home

The CLT model is new to Australia. Setting up a CLT involves some complicated issues:

- Legal - the “ground lease”, existing caveats on housing, current title issues
- Financial - access to mortgage lending, “resale formulas”, long term viability
- Governance - would an existing organisation become a CLT, or would a new organisation be set up?

This research project is looking at whether the Community Land Trust (CLT) model is suitable for Aboriginal community land. Part of the research includes working closely with communities to think through the feasibility of setting up a CLT on community land. Just some things to think through in working out if a CLT could work in your community are:

- Do people in our community want home ownership?
- Can people afford home ownership? What support would homebuyers need?
- Who would be eligible for a lease?
- What happens if people can't afford to keep buying their house?

For more information contact Dr Louise Crabtree at the Urban Research Centre, University of Western Sydney, ph 02 8833 5931 or 0420 946 186 or email [l.crabtree@uws.edu.au](mailto:l.crabtree@uws.edu.au).

Source: developed by Nicole Moore

## **Appendix 2: Interview schedule**

**Project Title:** Community Land Trusts and Aboriginal housing options.

**Researcher:** Dr Louise Crabtree

Interviews will be semi-structured; questions will cover the following topics, with questions guided by the responses once basic information has been gathered.

### **Contextual issues**

Current local situation

- What are the key housing issues in this state / jurisdiction?
- Current housing circumstances—is existing housing safe / affordable / appropriate?
- Level of unmet need? Are all these families eligible for the existing housing?
- What community organisations own / manage housing and/or land?

Current home ownership issues

- Demand for home ownership in the community?
- Aspects of home ownership that do / not appeal and may / not be relevant or appropriate.
- Current / former approaches to home ownership (this community or others known about)—what has / hasn't worked?
- What does / would home ownership mean to people in this community? (Asset base / wealth creation? Security of tenure? Autonomy?)
- Aspirations and barriers

### **CLT / Home ownership implementation issues**

Objectives

- What objectives would a CLT model aim to achieve? E.g. Cultural, affordability, housing choice, Aboriginality, occupancy levels, safety net etc.
- What do member households look like? Type, stability, size—typical stories
- Any existing plans to develop more housing?

Legal

- Land title, property caveats / funding conditions—be aware this could be sensitive so be clear why we need to know.
- Which organisations need to be involved in discussions?

Governance

- Utilise existing vs. establish new organisation—issues around membership, governance etc.

Financial—individual

- Affordability of model.
- Access to finance.
- Safety net—eligibility thresholds, education.
- Defaults—succession / assigning ownership? Revert to rental status?

#### Financial—organisation

- Lease fees.
- Purchaser defaults?
- Viability of model (costs vs. ground lease income).
- Re-sale formula (on-selling to other eligible people, also back to organisation if default).

#### Other logistics

- 'Waiting list' management—scheme eligibility.
- Existing stock vs. construction on leased land.
- Policies to be included in ground lease? (E.g. Occupancy? Minimum standards for maintenance? Compliance with building codes etc.).
- What other considerations need to be taken into account? (Cultural, social, political).

## Appendix 3: Terms and models referred to in Figure 1

The following is taken from Jacobus and Lubell (2007, pp.5–6):

**Subsidy Forgiveness** programs provide one-time assistance to homebuyers with no expectation that these funds will be repaid to help serve future buyers. These programs include homebuyer grants as well as loans that are forgiven if families remain in the homes for a certain period of time (forgivable loans).

**Subsidy Recapture** programs allow buyers to temporarily use public funds but expect these resources to be returned so they are available to assist future buyers. The most common form of subsidy recapture is a 'silent second' mortgage that is subordinate to a family's primary mortgage, but requires no payment of principal or interest until the family sells its home (or in some cases, refinances the first mortgage). Sometimes these loans are interest free; other times sellers are required to repay the funds along with deferred interest. In some cases the loans are only deferred for a limited period of time (e.g., five years) after which homeowners are expected to begin making regular payments.

**Subsidy Retention** programs provide a one-time investment of public funds to bring the sale price of specifically designated homes (often, though not always, new construction) down to a level that is affordable to buyers at the target income level, who are then required to resell the homes at affordable prices. These programs utilize one of several different pricing formulas to keep resale prices at affordable levels. Common subsidy retention strategies include deed-restricted homeownership, CLTs, and limited equity cooperatives.

The following provides brief description of the housing models sitting under Subsidy Retention in Figure 1. See Crabtree et. al. (2012) for further explanation of deed-restricted mortgages and limited equity co-operatives.

**Deed-restricted mortgage:** This is a mortgage with resale terms and conditions attached to the deed. This model frequently requires a third party to oversee resales and ensure the terms and conditions are upheld.

**Community land trust:** The 'classic' CLT model is a non-profit organisation holding title to land in perpetuity, conveying the land to a home-owning resident via a ground lease. However, CLTs can and do provide rental housing, cooperative housing and other developments, and use varying legal instruments and forms according to local conditions.

**Limited-equity housing co-operative:** Housing cooperatives are specific forms of cooperatives which exist to provide housing to their members and where the members manage their own housing, acting in effect as their own landlord. Limited-equity cooperatives sell shares at a discounted rate and then charge carrying charges (effectively rent) to residents. If a resident leaves, the return on the share is limited to provide a degree of equity gain while keeping the share affordable to the next buyer.

**Limited-equity condominium:** Condominiums are analogous to strata in Australia. In limited equity condominiums, a legal mechanism such as a deed covenant or partnership with a CLT is used to set a maximum value that the condominium unit may be sold for.

**Mutual housing association:** Mutual housing associations (MHAs) are a form of affordable rental housing provision in the USA which conceptually sits perhaps between cooperatives and CLTs. Each MHA owns a portfolio of housing stock and hires a property manager to maintain and manage the stock. Low- to moderate-

income households then lease individual housing units with rents geared to incomes, similarly to in cooperative housing. Unlike cooperatives, there are no shares in MHAs.

**Resident saver model:** Stone (2009) proposed a hypothetical 'resident saver' model based on a modified form of MHA as a mechanism for decoupling wealth creation from housing. Intended residents are required to make an affordable deposit and pay monthly carrying charges to cover the modified MHA's expenses and maintain a capital fund for maintenance. On top of this, residents agree to make a regular payment ('forced savings') into an associated investment vehicle. If and when residents sell, they receive their deposit plus the return on their investment via that fund.

**Non-profit rental housing:** This is housing owned or leased by a private non-profit entity and rented to low- to moderate-income households, with rents set at a certain percentage of household income.

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