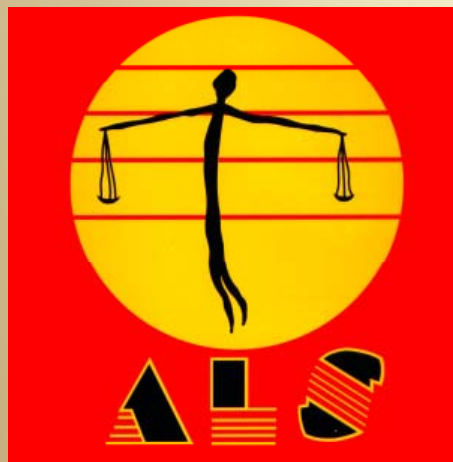


Remote Aboriginal Housing in WA



The State of Play in Western Australia

2010 National Community Legal Centre Conference
Melbourne, 27 October 2010

By Ms. Tammy Solonec (LLB)
Descendant of the Nyikina
Managing Solicitor, Law and Advocacy Unit
Aboriginal Legal Service of Western Australia (ALSWA)

Photograph from China Daily BBS, retrieved 7 September 2009 from:
http://bbs.chinadaily.com.cn/attachments/month_0907/remote%20housing_9999W5LoZG7y.jpg

Acknowledgement of Traditional Owners

I respectfully acknowledge the past and present
traditional owners of the Perth region,
the **Wurundjeri people**,
and in general the
Koori peoples of Victoria.

I thank all owners past and present for allowing us to
meet on their land.



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Outline

1. **Paint the picture:** Breakdown of Aboriginal housing statistics from WA and explanation of the former Aboriginal Community Housing sector and state of housing
2. **Explain how we got here:** History including the Community Housing and Infrastructure Program
3. **Changes underway:** Explanation of the National Partnership Agreement on Remote Indigenous Housing and the recently passed Aboriginal Housing Legislation Amendment Bill
4. **Concerns and Lobbying:** ALSWA concerns including lack of consultation and choice, disempowerment and blanket application of RTA
5. **Where to from here?**



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Painting the Picture...



"Living here is not good": Wadeye resident Alfred Thardim and an unidentified child at home. People sleep at least eight to a room. Photo: Glenn Campbell. The Age Newspaper, retrieved on 7 September 2009 from http://images.theage.com.au/2008/10/09/230186/N_WADEYE-420x0.jpg

Housing Options in WA

- Home ownership
- Purchasing a home
- Renting privately
- Renting publically
- Renting from Community Housing providers
- Renting a room (e.g. hostels, private houses etc)
- Staying with family or friends (tertiary homelessness)
- Homelessness (primary, sleeping rough)



Graphic from “Getting a Place in WA: A guide for Indigenous people looking for housing”
retrieved on 25 May 2010 from http://www.commerce.wa.gov.au/ConsumerProtection/PDF/Publications/Getting_A_Place.pdf



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2006 Census Statistics

- Any house with one or more Indigenous resident is classified as an 'Indigenous household'.
- Those sleeping rough, renting rooms only or staying with family or friends are not considered in the analysis of housing statistics, only based on 'households'.
- Keep in mind Aboriginal distrust of government, literacy problems and remoteness, which all impact on the Census.
- Still, most reliable statistics we have...

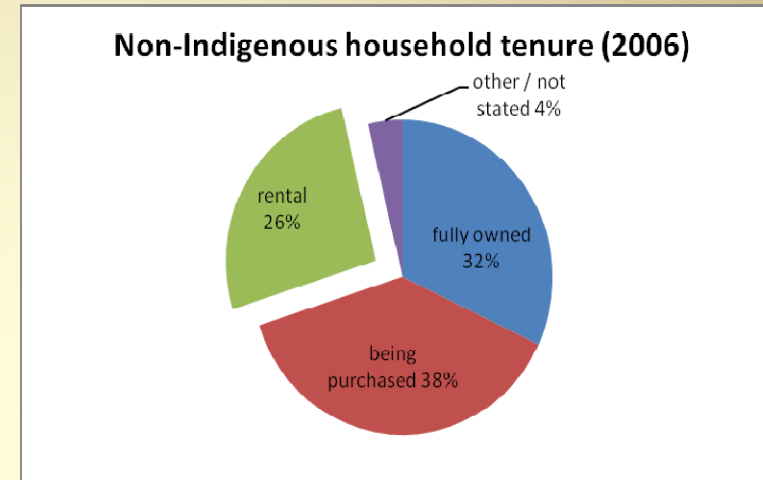
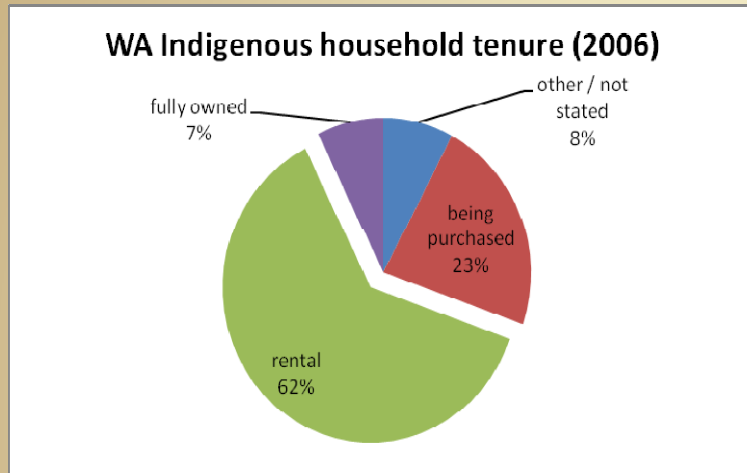


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Aboriginal Housing Tenure in WA



In WA, Aboriginal peoples suffer from low home ownership and heavy reliance on 'social housing' (i.e. community housing + public housing). This is in stark contrast to non-Aboriginal households in WA.



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Aboriginal Community Housing

- ‘Aboriginal Community Housing’ refers mainly to dwellings that are rented from Aboriginal Community Housing Organisations, generally referred to as Indigenous Community Housing Organisations (ICHOs).
- At the time of the 2006 Census in WA, Aboriginal households were 22.5 times more likely to be community housing rentals (18.5%) than non-Aboriginal households (0.5%).
- Mostly prevalent in remote WA, where it is often the only housing choice.



Wangkatjunga community, Kimberley, ABC online, “Rules change for remote community housing” Downloaded 19 May 2010, http://www.abc.net.au/reslib/201004/r545553_3196722.jpg.



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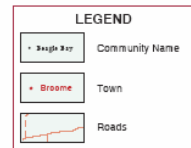
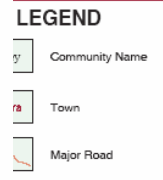
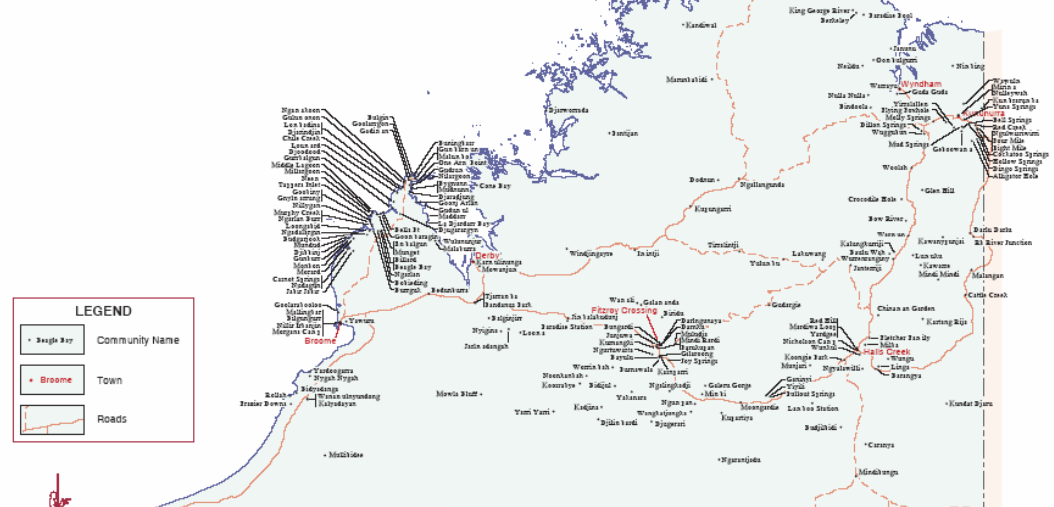
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KIMBERLEY REGION ABORIGINAL COMMUNITIES Map 2 of 2

Map Area

WESTERN AUSTRALIA ABORIGINAL COMMUNITIES Map 1 of 2



Until recently, WA had the largest number of remote and very remote ICHOs in Australia (34 providers servicing 121 communities with 2,261 houses - 2006).



For communities in this area,
please refer to Map 2 in this set of 2,
Kimberley Region - Aboriginal Communities

Remote Housing in WA in crisis



Above “Anger at remote communities” West Australian, 19 May 2010,
<http://au.news.yahoo.com/thewest/a/-/newshome/7256601/anger-at-remote-housing-law/>



Left, “More Aboriginal homes unfit”, West Australian, May 6, 2010, Re Coonana,
<http://au.news.yahoo.com/thewest/a/-/wa/7179438/more-aboriginal-homes-unfit/>



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Lack of Aboriginal Housing Advocacy Bodies

- Clear absence of Aboriginal housing advocacy bodies on a national and state level.
- Existing organisations such as the Aboriginal Legal Service, Tenants Advice Service of WA, Shelter WA and CLCs have limited capacity to advocate especially for Aboriginal housing in WA.
- The WA Aboriginal Housing and Infrastructure Council was abolished in mid 2008 and has not been replaced.
- UN Special Rapporteur on adequate housing (Milloon Koothari), 2006 Report:

“Most disturbing is the absence of adequate and comprehensive participation processes for Indigenous communities in decision-making forums, resulting in some cases in culturally inadequate solutions ... There is an urgent need to establish decision-making processes and institutions, that are representative of all communities, and allow for proper self-determination of Indigenous Peoples.”



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How we got here...



Photo from Sunday Times Newspaper, Perth, "Aboriginal Housing Crisis"
retrieved on 7 September 2009 from
<http://www.news.com.au/common/imagedata/o,,6832686,00.jpg>.

Brief History

- We come from a bleak history in our treatment of Indigenous peoples in Australia.
- For example, see the policy eras of:
- **invasion and settlement** (1770s – 1890s)
- **protection and segregation** (1890s - 1950s, reserves)
- **assimilation** (1950s – 1960s, missions)
- **integration** (1960s – 1970s, Indigenous controlled housing)
- **1960s:** Community Housing and Infrastructure Program (CHIP), Commonwealth funding for remote communities to manage their own housing.



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CHIP: 1960s - 2008

- Throughout the years, CHIP allowed to erode.
- The ICHOs were not well funded nor were they given governance or business training and they had difficult remoteness factors to deal with.
- Funding was not increased to reflect growing populations or community standards.
- Nepotism and corruption were able to seep in.
- Houses were damaged and not repaired.



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Sunburnt Country Report

- Pricewaterhousecoopers were engaged to review CHIP and released their final report, “Living in the Sunburnt Country” in Feb 2007. Overall conclusion:

“The housing needs of Indigenous Australians in remote areas have not been well served and the interests and expectations of tax payers have not been met. CHIP in its current form contributes to the policy confusion, complex administration and poor outcomes and accountability of government funded housing, infrastructure and municipal services. The Community Housing and Infrastructure Program should be abolished.”

* NB this Report only consulted two WA ICHOs, both from Kununurra (i.e. regional and not remote) and does not necessarily represent the views of ICHOs in WA.



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Changes underway...



Graphic from “Keeping a Place in WA: A guide for Indigenous people in both private and Department of Housing and Works rental housing” retrieved from <http://www.taswa.org/downloads/publications/2007-08-keeping-a-place.pdf> on 7 September 2009.

National Partnership Agreement on Remote Indigenous Housing

- COAG initiative, framing remote housing by providing \$5.5 billion nationally over 10 years (\$496 million for WA over next 4 years) (remote only)
- Main goals are to:
 1. reduce over crowding;
 2. build new houses and fix existing houses; and
 3. implement better housing management.

To download the agreement, go to:

<http://www.fahcsia.gov.au/sa/indigenous/progserv/housing/Pages/RemoteIndigenousHousing.aspx>



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Cth obligations under NPARIH

- funding for additional Indigenous housing and housing-related infrastructure in remote Australia, conditional on secure land tenure being settled, to significantly reduce overcrowding and homelessness with the aim that a significant level of unmet housing need is met by the end of this period;
- funding for the provision of some municipal and essential services under existing arrangements to Indigenous communities pending the development and take up of agreed funding responsibilities with the States and the Northern Territory; and
- agreeing a process with each jurisdiction on the scope and timing for comprehensive audits of the state of municipal and essential services within relevant Indigenous communities to be undertaken from 2009. The audits will assess the level and need for municipal and essential services as well as an assessment of required housing related infrastructure.



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State Govt obligations under NPARIH

- provision of housing in Indigenous communities for State housing authorities be the major deliverer of housing for Indigenous people in remote areas of WA;
- ensuring provision of standardised tenancy management and support for all Indigenous housing in remote areas consistent with public housing standards of tenancy management including through, where appropriate existing service providers; and
- developing and implementing land tenure arrangements to facilitate effective asset management, essential services and economic development opportunities.



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Implementation in WA

- In order to effect this agreement in WA, amendments to:
 - *Aboriginal Affairs Planning Authority Act 1972 (WA)* (passed 18 May)
 - *Housing Act 1980 (WA)* (passed 18 May)
 - *Native Title Act 1993(Cth)* (passed)
 - Indirect consequences to *Residential Tenancies Act 1986 (WA)* (effective now)
- This is wide spread sweeping change which is upon us now.
- The Act was implemented on 1 July 2010.



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Aboriginal Affairs Planning Authority Act 1972 (WA)

- This Act sets up the Aboriginal Lands Trust estate (ALT), the largest land holder in WA (14% of State).
- ALT land is land held on reserve for Aboriginal people (e.g. former reserves and missions).
- The ALT is “empowered to hand back land held on trust, to the Aboriginal community”.
- In order to effect the agreement, consent had to be obtained from the ALT.



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Changes to the AAPA

- Insertion of new s.33A:
- Power to Grant leases over Party III land:
 - (1) To avoid doubt, it is declared that the Authority has, and has always had power to grant a lease over land whenever vested in the Authority under section 27.
 - (2) To avoid doubt, it is declared that the powers delegated by the Trust by proclamation whenever made under section 24 in respect of land to which this Part applies include, and have always included, power to grant a lease over that land unless the proclamation expressly excludes that power.



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Housing Act 1980 (WA)

- The bulk of the amendments are to the Housing Act, to give the WA Department of Housing greater powers and less scrutiny.
- 12A: Changes to Joint Ventures
- New Section: Part VIIA – Housing on Aboriginal Land
 - 62A: Interpretation
 - 62B: Housing Management Agreements
 - 62C: Wishes of Aboriginal inhabitants to be ascertained
 - 62D: Lots and houses to which housing management agreements apply



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Housing Act Amendments (cont.)

- 62E & F: Rent and other terms for nominated lots and nominated houses
- 62G: Application of the *Residential Tenancies Act* 1987 (WA)
- 62H: No interest in land created, property acquired or compensation payable
- 62I: No fees or charges in respect to housing management agreements
- 62J: Authority may act through agent
- 62L: Removal of requirement for Minister of Indigenous Affairs' approval (re AAPA and ALT)



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Native Title Amendment Bill (No. 2) 2009

- Designed to create new native title processes for the delivery of public housing and infrastructure on 'Indigenous held land' to provide certainty for the National Partnership Agreement.
- Discussion paper released Aug 2009, and written submissions sought and received for Senate Inquiry, closed 23 Feb 2010.
- Final report was released on 24 February 2010 with the recommendation that the Bill be passed with one slight amendment.

Note the **dissenting comments of Senator Rachel Siewert:**

- http://www.aph.gov.au/senate/committee/legcon_ctte/nativetitle_two/report/d02.htm



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What does \$496 million buy?

- The first instalment of \$496 million to WA over 4 years is estimated to:
 - Build 295 new houses and refurbish 1025 houses (\$318 million)
 - Pay for accommodation of DOH staff members (\$18 million)
 - Put in place new tenancy management, including ongoing repairs and maintenance (\$66 million)
 - Upgrade and reform urban Indigenous Community Housing organisations (\$93 million)

For further information see:

http://www.housing.wa.gov.au/402_2257.asp

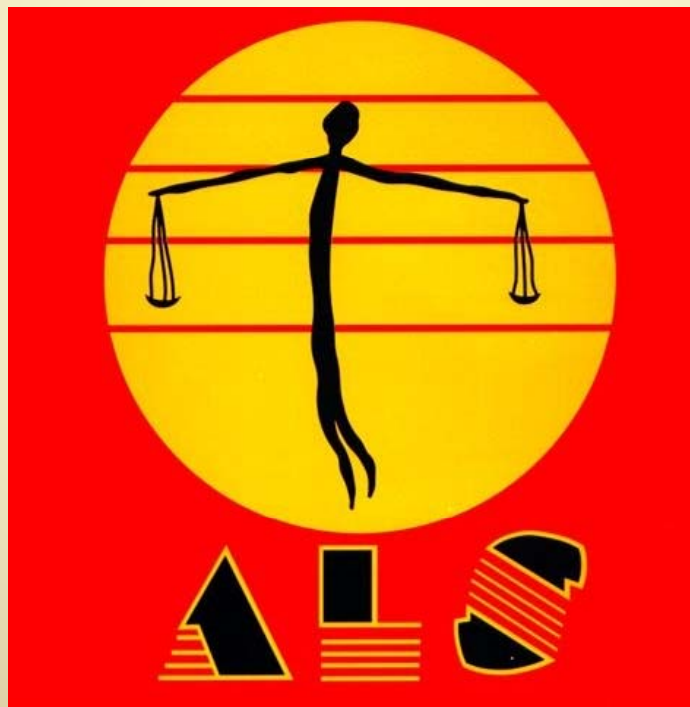


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ALSWA Concerns and Lobbying...



Lobbying

- Not traditional work for ALSWA (lack of advocacy bodies for Aboriginal housing in WA)
- Personal Involvement of Managing Solicitor
- Dept Commerce
- Aboriginal Housing and Infrastructure Council
- 2009 Residential Tenancies Conference
- Submission to WA Parliament
- 2010 WA State CLC Conference
- Meetings and Submission to WA Dept Housing re Consultation Protocol and Housing Management Agreements
- Meeting with the ALT



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Concern: Lack of Consultation

- These amendments have far reaching consequences and are the most radical overhaul in remote community housing in 40 years.
- ALSWA is concerned that the WA amendments were not thought through and were rushed through Parliament without appropriate consultation.
- ALSWA sought for the Bill to go to Committee for proper consideration, including asking for written submissions from affected peoples: denied.



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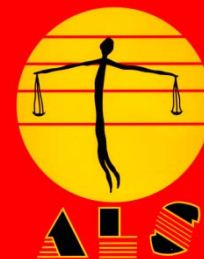


Concern: Lack of Choice

- Aboriginal communities who do not sign up to the Housing Management Agreements will not receive their share of the monies promised.
- ALSWA argues that this leaves Aboriginal entities with little to no choice.
- They either sign the agreements and agree to confer all authority about who to rent the houses to, what rent to pay etc to the Housing Authority or their housing remains at third world standards. This is hardly a 'choice'.



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Concern: Disempowerment

- Amendments significantly disempower Aboriginal peoples.
- This is of international concern.
- Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, James Anaya said:

“Almost everywhere, the Special Rapporteur heard concerns about the Government’s approach. Numerous indigenous people, especially community leaders, expressed feeling pressured or even ‘bribed’ into handing ownership and control of their lands to the Government in exchange for much needed housing services.”



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Concern: Application of Residential Tenancies Act

- Amendments result in the immediate blanket application of the RTA to all nominated lots and nominated houses, contrary to Dept of Commerce recommendations.
- ALSWA is concerned that:
 - Dept of Commerce and support agencies such as TASWA are not ready
 - RTA that is not necessarily suitable for remote cultures (e.g. practice of someone dying, lore business etc)
 - The application of s.64 and other provisions will give housing the ability to evict people, which will in turn threaten other tenancies.
 - There is a lack of crisis accommodation services to cope with the evictions.



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Final Concern: Not enough!

- ALSWA is pleased that monies are finally being spent on remote community housing and infrastructure.
- However, the new scheme is patronising and places considerable expenses on the WA Government (and tax payers) long after the 10 year partnership agreement is over.
- ALSWA's final concern is that the \$496 million negotiated by the WA Government for the next 4 years is not enough.
- Our remote communities in WA need BILLIONS not millions spent on them.



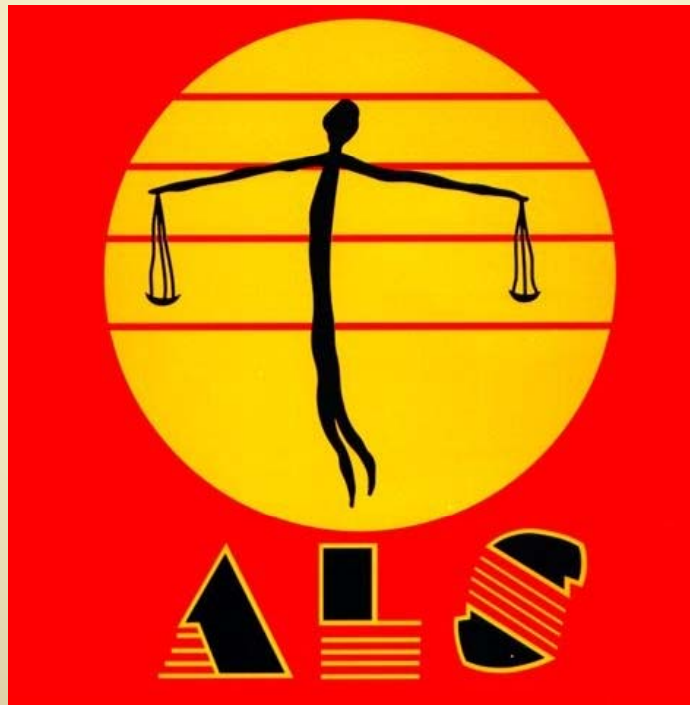
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Lobbying Result ...

The Consultation Process



Housing Consultation Protocol

- The Protocol was created by the WA Department of Housing following ALSWA's lobbying of the WA Parliament.
- The Protocol sets out what steps need to be taken by the Housing Authority of WA in consulting with and informing communities prior to:
 - a Housing Management Agreement being entered into;
 - a house or lot being added to the Agreement; and
 - deciding who a house or lot should be leased to.
- ALSWA worked with Dept of Housing to review the first draft of the protocol, which resulted in amendments.
- The latest protocol includes a process of ongoing consultation.



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The Consultation Process

1. The Authority advises relevant Native Title bodies about negotiations occurring.
2. The Authority advises the ALT of its intention to negotiate Agreements with communities.
3. Community Meetings:
 - i. Meeting with TOs and community's Aboriginal Council members
 - ii. Meeting with community Elders
 - iii. Possible Meeting with TO Working Group
 - iv. Community Forum – attended by community members, Authority and Dept of Commerce invited. Purpose : to inform community about effect and consequences of entering into an Agreement and impact of the RTA.



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The Community Forum

At the Community Forum, the Authority will inform the Community that, to enter an Agreement the Community must:

- a) Agree to a 40 year lease;
- b) Identify hoses and lots covered by Agreement;
- c) Identify a process identifying who properties can be leased to;
- d) Identify cultural circumstances that may result in the house being vacant;
- e) Agree on a transition process to implement the Remote Communities Rental Policy;
- f) Agree on steps to take when a tenancy agreement is breached; and
- g) Note methods Authority will use to provide employment and contracting opportunities for the community.



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Consultation Process (Cont)

- vi. Community meeting – to restate the information provided at the Community Forum and requirements of the Agreement.
 - vii. Final Community Meeting – to seek a ‘Motion and Resolution’ by the community agreeing to an Agreement and listing of specified houses and lots
 - viii. Final Meeting with Community Corporation – where it signs the Agreement or a letter to the ALT asking ALT to sign Agreement on the Community’s behalf.
4. Where ALT primary interest holder in the land, documents to be provided to ALT by Authority for consideration and signature. ALT provided of information of Community Corporations who have signed Agreements.
5. Authority to inform Native Title body in writing, enclosing signed Agreement .



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Concerns about Consultation

- Use of interpreters
- Quorum of meetings
- Complicated and specific items need to be decided by the Community to enter an Agreement
- Insufficient funds for community meetings without the Authority and with legal advice.



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Concerns about Housing Management Agreement

- Clause 4.3 – Property damage: the decision of whether or not to charge for property damage is at the ‘absolute discretion’ of the Authority.
- Clause 7 - Obligations of the Organisation: ALSWA is concerned that at Clause 7.1(a), the Agreement is attempting to delegate to the Organisation a duty that is in fact owed by the Authority under the Act. ALSWA is also concerned about the obligation in Clause 7.1(b) in that it creates an onerous and difficult obligation on the Organisation without providing funding and support. ALSWA recommends that obligations 7.1(a) and (b) be removed from the Agreement.
- Clause 8.1(i) – Representation and warranty to be given by the Organisation to say that they have received legal advice about the Agreement. Organisations should be funded to receive independent legal advice before signing the Agreement and to provide assistance in facilitating the community consultation.



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Concerns about Housing Management Agreement (cont)

- Clause 13.6 – Dispute and mediation: Both parties to cover the cost of forced mediation, when the Authority has much greater access to funds than the Organisation. ALSWA recommends that the Authority be required to cover the costs of mediation.
- Clause 14 – Employment and contracting of Aboriginal persons: ALSWA recommends that at first instance, all reasonable efforts should be made to engage local Aboriginal persons and / entities and where that is not possible, other Aboriginal persons / entities.
- Clause 15 – Termination: ALSWA is concerned that termination of the Agreement is only allowed for in situations of mutual agreement.
- Clause 17 – Extension of Contract: ALSWA recommends that a new consultation be required to be undertaken anytime there is an extension of the Agreement.



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Yandeyarra Signs Up

- **Oct 2010: The remote community of Yandeyarra has become the first Aboriginal community to sign a Housing Management Agreement with the Department of Housing.**
- Signing of agreement through the community's governing body Mugarinya Community Association and the Aboriginal Lands Trust
- Dept of Housing Press Release, Minister for Housing: "Yandeyarra is a large, stable community with strong potential to grow as a key hub in the region. This proactive move by the Mugarinya Community Association will ensure that the community will benefit through an increase in available housing stock. The introduction of Housing Management Agreements require extensive community consultation and I anticipate this process will continue in coming months, with other communities progressively signing agreements as consultation and negotiations are completed."
- Yandeyarra embarked on a self-sustainability program two years ago, with the view of becoming fully self reliant and free of government funding over the next 15 years. Yandeyarra is situated on an Aboriginal Lands Trust Reserve, occupying 230,000ha of land, located 142km south-west of Port Hedland. Established in 1964, Yandeyarra is overseen by Mugarinya Community Association and has a steady population of approximately 300 people with up to 1,000 during special cultural events.
- Its 48 houses are managed by Regional Service Provider, Pilbara Meta Maya.



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Where to from here?

- NPARIH was phase 1 of Cth Govt plan to reform housing in remote communities.
- Phase 2 involves home ownership.
- Requires careful balancing between communal native title rights, individual rights and an untested property market.
- Aboriginal Home ownership paper was recently open for submissions.
- ALSWA worked with Shelter WA to submit a paper.
- Available online.



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National Association of Community Legal Centres (NACLC) Conference
Melbourne, Victoria, 27 October 2010



Summary

- Remote Aboriginal community housing in WA is in crisis and has been for some time.
- CHIP (and to some extent ICHOs) were labeled a failure.
- The “National Partnership Agreement on Remote Indigenous Housing” is phase 1 of Commonwealth Government reform. Phase 2 is underway.
- The WA Government fast tracked the Aboriginal Housing Legislation Amendment Bill to receive the funds, passed on 18 May 2010 and implemented into law 1 July 2010.
- As a result, WA will receive \$496 million over the next 4 years.
- Under the new laws, the WA Housing Authority will become the main provider of housing in some remote communities.
- RTA will for the first time begin to apply in remote communities.
- ALSWA is concerned about:
 - disempowerment and the creation of Govt ghettos;
 - that support agencies are not ready; and
 - that this will involve the blanket application of the RTA, which is not necessarily suitable for remote cultures.
- ALSWA has embarked on a process of lobbying and engagement with the WA Parliament, Dept of Housing and ALT. Lessons have been learnt. ALSWA will remain involved throughout phase 2.

Disclaimer

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The situation of remote Aboriginal housing in WA is complex including considerations of native title. ALSWA does not profess to have expert knowledge in regards to native title in Western Australia.

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Further Resources

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- Not fast enough – Tom Stephens: <http://www.abc.net.au/news/stories/2010/03/15/2845945.htm>
- 13 Aug 2009, The West Australian, "Aboriginal Housing crisis spreads to the West" The Barnett government has admitted that a \$496 million federal injection will not fix the state's Aboriginal housing crisis: <http://www.perthnow.com.au/news/western-australia/aboriginal-housing-crisis-spreads-to-west/story-e6frg13u-1225760852886>
- 19 May 2010, The West Australian, "Anger at remote housing law": <http://au.news.yahoo.com/thewest/a/-/newshome/7256601/anger-at-remote-housing-law/>
- For further information from the Department of Housing see: http://www.housing.wa.gov.au/402_2257.asp
- Dissenting comments of Senator Rachel Siewert re Native Title Amendment Bill (No 2) (2009): http://www.aph.gov.au/senate/committee/legcon_ctte/nativetitle_two/report/do2.htm



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