'NORMALISING' WHAT? A QUALITATIVE ANALYSIS OF ABORIGINAL LAND TENURE REFORM IN THE NORTHERN TERRITORY

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I Introduction

Few Indigenous policy initiatives have garnered more attention in the last decade than the reform of tenure arrangements on land owned under the *Aboriginal Land Rights (Northern Territory) Act* 1976 (Cth) ('*Land Rights Act*') in the Northern Territory ('Aboriginal land'). Three principal reforms were introduced between 2006 and 2008 and have been implemented to varying degrees in the years since: long term (generally 99-year) leases to a federal government entity over whole communities located on Aboriginal land ('Township Leases'); the compulsory acquisition by the federal government of 5-year leases of Aboriginal land as part of the controversial intervention into Aboriginal communities in the Northern Territory ('5-year Intervention Leases'); and 40-year leases of Aboriginal land to a Northern Territory government entity for housing and associated purposes ('40-year Housing Leases').

These reforms have assumed a new prominence since the election of the Coalition to power in September 2013, with the Federal Government actively pursuing the negotiation of Township Leases in the communities of Gunbalanya and Yirrkala.[1] It is now timely to look back at the introduction of the reforms, and to the rhetoric surrounding them during this period. Accordingly, in this article I explore the laws used to implement the reforms as part of wider discourse in relation to Aboriginal land tenure reform in the Northern Territory. In particular, my analysis focuses on the use of the term 'normalise' between 2006 and 2010 in the context of Aboriginal land tenure reform in the Northern Territory, and on the way that this concept found expression in the legal landscape of the reforms. By way of example, when the amending legislation for the Township Leases was first introduced in May 2006, the then Minister for Indigenous Affairs, Mal Brough, summarised the tenure reforms as facilitating the 'normalisation' of Aboriginal communities or townships.[2] A year later, when the Coalition Government's intervention into Northern Territory Aboriginal communities was announced, Brough stated '[t]here are three phases to what we are doing: (1) stabilisation, (2) normalisation and (3) exit.'[3] 'Normalisation' was also cited as an integral part of 40-year Housing Leases.[4]

But if 'normalisation' was a fundamental objective of Aboriginal land tenure reform in the Northern Territory, its meaning remained obscure. While many commentators criticised the policy objective of 'normalisation',[5] most scholarship did not explore ambiguities and shifts in the meaning of the term as Aboriginal land tenure reform in the Northern Territory developed. To the extent that the objective of 'normalisation' is or was to transform Aboriginal society itself, there may be additional implications. Postcolonial theorists have written about the legitimating function of dominant, generally Western, societies constructing the colonised or 'the Other' in specific terms.[6] Similar to colonial discourse, the 'normalisation' rhetoric that was used in relation to Aboriginal land tenure reform may also have been informed by the construction of Aboriginal people as different compared with the rest of Australian society, with property law tasked with effecting some sort of transformation from this inferior state.

Prompted by these questions, in this article I explore the key characteristics of the 'normalisation discourse' in the context of recent Aboriginal land tenure reform in the Northern Territory, and consider how these were reflected in the legal structure of the reforms. I have approached this task primarily by undertaking a qualitative analysis of the word 'normalise' as it appears in number of texts between 2006 and 2010,

comprising of parliamentary *Hansard* and other government-sourced documents. In particular, I investigate whether, as a matter of textual interpretation, policy-makers were evincing an intention to 'normalise' Aboriginal communities premised upon a construction of Aboriginal people which is suggestive of the Northern Territory's colonial history and whether the characteristics of normalisation discourse shifted over time, and if so, how it shifted.

My research reveals that, during the introduction and implementation of the Township Leases and 5-year Intervention Leases by the Commonwealth Government, normalisation discourse, as manifested in the Commonwealth Parliament, possessed some distinctly 'colonial' attributes, including the consistent construction of Aboriginal communities in the Northern Territory as spatially-segregated, economically stagnant and socially dysfunctional. Often such constructions were accompanied by an individual property rights regime proposed to transform these elements of Aboriginal society. During the introduction of the 40-year Housing Leases, and the transfer of responsibility for their implementation to the Northern Territory, these characteristics became less prominent in debate about Aboriginal land tenure reform in the Northern Territory's Legislative Assembly. Indeed, the explicit focus of 'normalisation' was not so much on changing the alleged socially aberrant elements of Aboriginal communities through private property, but on correcting the government's decades-old failure to secure appropriate tenure on Aboriginal land and standardising basic services and infrastructure in communities.

II Aboriginal Land Tenure Reform in the Northern Territory: Existing Leasing Mechanisms Under the Land Rights Act

Before commencing my 'normalisation' analysis, it is necessary to understand the nature of land-holding under the *Land Rights Act*, and the legal structure of recent tenure reforms. In 1976, the Commonwealth Parliament enacted the *Land Rights Act*,[7] establishing the first statutory scheme in Australia whereby Aboriginal people could make land claims based on their traditional connections to the land. As at 2014, approximately 49 per cent of land in the Northern Territory has been granted or claimed as inalienable Aboriginal freehold.[8]

Under the *Land Rights Act*, there is a 'tripartite relationship between traditional Aboriginal owners, land trusts and land councils...[which] has the effect of balancing a number of customary imperatives about use of and responsibility for land with western legal accountabilities for dealings in land'.[9] This tripartite relationship governs the leasing provisions of the *Land Rights Act*. Section 19 enables a land trust (in which Aboriginal land granted under the *Land Rights Act* is vested) to grant leases, licences, easements, and other interests for any purpose upon the direction in writing from the relevant land council. A land council cannot give such a direction unless satisfied that 'the traditional Aboriginal owners (if any) of that land understand the nature and purpose of the proposed grant, transfer or surrender and, as a group, consent to it'.[10] Accordingly, traditional Aboriginal owners have a veto over the alienation of their land.

Access to Aboriginal land, and hence to many Aboriginal communities, is restricted. Aboriginal people are entitled to enter upon Aboriginal land and use or occupy that land 'to the extent that that entry, occupation or use is in accordance with Aboriginal tradition.' The traditional Aboriginal owners and the relevant land councils operate a permit system for entry onto Aboriginal land in the Northern Territory.[11]

Despite the location of most Aboriginal communities on Aboriginal land, and the existence of a statutory regime for dealing with that land through the mechanism of section 19 of the *Land Rights Act*, most property dealings within Aboriginal communities on Aboriginal land prior to the reforms occurred informally.[12] Dr Leon Terrill suggests that one of the main reasons for the informal nature of tenure in communities is that government agencies have historically failed to obtain leases for infrastructure and buildings which they fund or occupy.[13] The vast majority of infrastructure and buildings in Aboriginal communities are funded and/or built by the Northern Territory or Commonwealth governments, rather than through private enterprise. While leases have been granted with respect to some premises in Aboriginal communities, the Northern Territory Government did not historically obtain secure tenure for buildings and infrastructure, such as for police stations, health clinics and schools.[14] This denied traditional Aboriginal owners a significant revenue stream for use of their land and perhaps prevented the emergence of a market in the land.[15]

Further, the vast majority of Aboriginal people resident in communities live in publicly funded housing. Historically, there has been minimal private home ownership on Aboriginal land in the Northern Territory. However, tenure

has never been sought or granted for publicly funded housing in Aboriginal communities. The lack of formal tenure arrangements has meant that the government has not been formally required as a lessor to maintain and manage community housing on Aboriginal land, and nor have Aboriginal residents of public housing been required to comply with normal tenants' responsibilities. In addition, traditional Aboriginal owners have had little to no formal say over the terms and conditions of their occupancy, and the Aboriginal residents of communities have not held any enforceable property rights.

A Township Leases

It is against this background that land tenure reforms affecting Aboriginal land must be considered. Mal Brough, the former Minister for Indigenous Affairs, seized upon the lack of enforceable property rights held by Aboriginal residents within Aboriginal communities in 2006 when he introduced the first significant reforms to the *Land Rights Act*. However, Brough saw the reason for the lack of formal tenure in communities (and more particularly, lack of home ownership) on Aboriginal land not as a failure of government and other parties to obtain leases or other interests to secure their assets, but rather to the character of land-holding under the *Land Rights Act* itself. Brough's view drew on a body of scholarship and opinion in Australia that was based on the influential ideas of Peruvian economist Hernando de Soto. De Soto argued that informal and communal land-owning arrangements lock up capital and preclude access to credit, and that the way to free this capital is through formal, enforceable and individual property rights.[16]

In early 2006, the Howard Government introduced legislative amendments designed to transform land-holding in Aboriginal communities located on Aboriginal land in the Northern Territory. Notwithstanding the fact that section 19 of the *Land Rights Act* already provided a mechanism by which individual property rights such as leases could be granted, Brough introduced the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Cth). The legislation was aimed at facilitating private home ownership on Aboriginal land, and encouraging private enterprise.

The legislation created an additional mechanism by which a specific type of lease could be granted under the *Land Rights Act*. Section 19A of the *Land Rights Act* permits land trusts to grant a lease over an entire community (or 'township') on Aboriginal land for periods of between 40 and 99 years ('Township Leases'),[17] and section 20 created the office of Executive Director of Township Leasing to enter into Township Leases.[18] While the grant of a Township Lease requires consent of traditional owners, the Executive Director has absolute discretion to issue sub-leases to any person[19] with 'no requirement to go back to traditional owners for further approvals once the "head-lease" is agreed.'[20] Existing rights and interests, including leases and traditional rights of access pursuant to section 71 of the *Land Rights Act*, are preserved.[21] However, if those rights and interests were granted by a land trust (such as leases and licences) then they take effect as though they were granted by the Executive Director.[22] Thus, with the exception of traditional rights of access, a government entity (the Executive Director of Township Leasing) has exclusive control over land that is subject to a Township Lease. As Terrill points out, a Township Lease 'effectively takes as a model the position of vacant crown land as the natural starting point for the development of individual tenure', but 'instead of actual vacant crown land, a 99 year lease to a government entity becomes the substructure on which normalised tenure arrangements could be established.'[23]

To date, Township Leases have proved to hold little appeal for most traditional Aboriginal owners of Aboriginal land upon which communities are located in the Northern Territory. Three Township Leases have been granted over communities in the Northern Territory.[24] However, in August 2007 the Commonwealth Government introduced a second even more radical reform to Aboriginal land tenure in the Northern Territory.

B The 5-year Intervention Leases

The 5-year Intervention Leases came about as part of the Federal Government's 'emergency response' in the Northern Territory to widespread allegations of child sexual abuse in Aboriginal communities ('the Intervention'). It introduced an unprecedented package of measures which applied to people according to geographic criteria centred on whether they were living on certain communities located on either Aboriginal land or on leasehold land granted to Aboriginal-controlled corporations.[25] In August 2007, the Coalition Government introduced five bills to Parliament, which contained measures including the compulsory acquisition by the Commonwealth of leases in communities.

Under the 5-year Intervention Leases, the Commonwealth compulsorily acquired leasehold title over land upon which 64 Aboriginal communities are located for a period of five years until approximately 2012.[26] Of these communities, 47 were located on Aboriginal land owned by land trusts pursuant to the *Land Rights Act*. The remainder of the leases were acquired in respect of 'community living area' land (Aboriginal communities located on crown leases excised from pastoral leases in the Northern Territory). The terms and conditions of the leases were not negotiated with traditional Aboriginal owners and nor were they contained in a lease document executed by the parties, but were mandated by legislation.

The Commonwealth had the right to 'exclusive possession and quiet enjoyment of the land', a normal condition in most common law leases.[27] However, existing registered leases were expressly excluded from the 5-year Intervention Leases (including Township Leases).[28] In addition, any other pre-existing rights, titles or interests were included in the leased area but preserved by the legislation.[29] This preserved traditional rights of access to the leasehold area under section 71 of the *Land Rights Act* as well as the rights of the holders of any existing unregistered leases or licences, and means that the 5-year Intervention Leases (like the Township Leases) are not 'exclusive' in the way that most common law leases are. In addition, despite the existence of a 5-year Intervention Lease the relevant land trust retains the power to grant Township Leases[30] and other leases pursuant to section 19 of the *Land Rights Act*, albeit only with the consent of the Commonwealth Minister.[31] These provisions suggest that the 5-year Intervention Leases confer fewer rights than would ordinarily be granted to a lessee at common law.

In some key respects however, the 5-year Intervention Leases gave the Commonwealth power beyond what would normally be the subject of a grant of leasehold title. The Commonwealth Minister had the right to terminate unilaterally both existing registered leases excluded from the 5-year Intervention Leases and any pre-existing rights, titles and interests within the leased area.[32] In addition, the Commonwealth was not liable to pay any rent for 5-year Intervention Leases,[33] although it may 'from time to time' ask the Valuer-General to determine a reasonable amount of rent for the leases, which is an amount the Commonwealth must pay.[34] The legislation provides however that the Commonwealth is 'liable to pay a reasonable amount of compensation' if the acquisition of the leases would result in an acquisition of property under section 51(xxxi) of the *Australian Constitution*.[35] Finally, the Commonwealth had the power to unilaterally vary the terms and conditions of 5-year Intervention Leases.[36]

In addition, the Intervention created certain statutory rights in the Commonwealth and Northern Territory with respect to buildings and infrastructure built or repaired on Aboriginal land using government funds, which effectively enables governments to circumvent the leasing provisions of the *Land Rights Act* and secure exclusive rights in buildings and infrastructure.[37] As the final measure relevant to land tenure, the amendments removed the permit system applying on Aboriginal land insofar as it applied to land upon which communities were located, roads leading to those communities, and airstrips.[38] Areas which were already leased pursuant to section 19 were expressly excluded,[39] as were sacred sites and buildings.[40] The permit system remained intact for other areas of Aboriginal land, including where outstations are located.

C 40-year Housing Leases

In April 2008, the newly elected Labor Government at the time, announced a third and final policy aimed at reforming tenure arrangements on Aboriginal land. Under the 'Strategic Indigenous Housing and Infrastructure Project' ('SIHIP'), the Commonwealth and Northern Territory governments announced the intention to build 750 new houses in 16 major Aboriginal communities located on Aboriginal land in the Northern Territory, and upgrade housing and infrastructure in 57 other communities, by 2013. Most significantly for land tenure reform, housing delivered through the project had to be secured by appropriate tenure.[41] In contrast with previous Aboriginal land tenure reforms, the Commonwealth transferred responsibility for the SIHIP's administration and implementation to the Northern Territory. The focus of SIHIP on 16 larger communities complemented a policy subsequently introduced by the Northern Territory, entitled 'A Working Future', whereby larger Aboriginal communities in the Northern Territory were relabelled 'growth towns', which will have 'proper town plans, private investment, targeted Government infrastructure and commercial centres' and would be like towns 'anywhere else in Australia'.[42]

The form of tenure for securing the SIHIP housing was leases of Aboriginal land in communities for a term of 40 years (40-year Housing Leases). The legal mechanism for

securing 40-year Housing Leases is through section 19 of the *Land Rights Act*, which enables land trusts to grant leases, licences and other forms of tenure on Aboriginal land (and has been part of the *Land Rights Act* since its inception). In contrast to the Township Leases and 5-year Intervention Leases which are granted to Commonwealth entities, 40-year Housing Leases are granted to Territory Housing (a Northern Territory government entity responsible for the provision of public housing in the Northern Territory).

While the 40-year Housing Leases that have been negotiated to date have not yet been registered with the Land Titles Office, some information about the leases is publicly available. The leases are granted for a specified purpose, being housing and related services. As head-lessee, Territory Housing would then have the ability to negotiate sub-leases with residents, as it would in public housing elsewhere in the Northern Territory, without the need to go back to traditional Aboriginal owners for consent. The *Residential Tenancies Act 1999* (NT) would apply to the tenancies, giving tenants enforceable property rights and requiring both the tenants and Territory Housing to comply with their respective obligations of maintenance and repair under the legislation. The leased area for 40-year Housing Leases is far smaller than in previous land tenure reforms. Instead of covering an entire community and its surrounding area, the 40-year Housing Leases cover a 'block' of land within a community which could be used for housing purposes only. In contrast with Township Leases and the 5-year Intervention Leases, which provide for consideration of some kind to be paid to the land trust, only peppercorn rental has been negotiated for the 40-year Housing Leases.[43]

Despite some major controversy about the slow delivery of outcomes under SIHIP, the Northern Territory had much greater success in negotiating 40-year Housing Leases than the Commonwealth did negotiating Township Leases. So far, 40-year Housing Leases have been granted or negotiated in principle in 15 of the 16 major communities on Aboriginal land.[44]

III 'Normalisation' Discourse: A Qualitative Consideration of the Reforms

In this section, I analyse the use of the term 'normalise' in state-sourced documents in the context of recent Aboriginal land tenure reform, and consider the way that this has found expression in the legal landscape of the reforms. I have restricted my analysis to documents produced during a four-year period, from May 2006 (when the Commonwealth introduced the Township Lease reforms) until May 2010. The threshold question for reviewing my sources was whether the text included the word 'normalise' or its variants.[45]

Parliamentary *Hansard* contained the most occurrences of the term 'normalise'. The term was used 72 times by Commonwealth and Territory politicians in parliament in the context of Aboriginal land tenure reforms in the Northern Territory. By contrast, parliamentary committee reports and submissions contained 19 uses of the term, and key policy documents produced by both the Northern Territory and Commonwealth governments guiding the implementation of the reforms used the term only four times. The term does not appear at all in the legislation designed to give effect to the reforms. As a result, the focus of my textual analysis of normalisation discourse is on the parliamentary record.

Within each text containing the word 'normalise', I focused on particular features of the term's use in order to determine its meaning. These features included the frequency of use, the author or speaker, the 'object' of normalisation (eg, land tenure, Aboriginal communities, Aboriginal people themselves), the stated objective of normalisation and how Aboriginal people and communities were portrayed, viewed and constructed within the text. My analysis reveals changing patterns in the use, context and meaning of the word 'normalise' during the period studied. Specifically, there are significant differences between normalisation discourse as evidenced in the Commonwealth Parliament and the Northern Territory's Legislative Assembly.

A 'Normalisation' in the Commonwealth Parliament

Of the 72 times in total that the term 'normalise' was used in both parliaments, it appeared far more frequently in the Commonwealth Parliament (53 times). Use of the term spiked in both Commonwealth parliamentary houses in mid-2006 (with the introduction of the Township Lease reforms) and more significantly in mid-2007 (when the Intervention commenced). However, the term was abandoned by Commonwealth parliamentarians from 2008 until the end of the period studied.[46]

B 'Normalising' what?

Understanding the object or scope of normalisation is crucial for interpreting the meaning of the term 'normalise' in the context of Aboriginal land tenure reform. There is no uniformity in the Commonwealth parliamentary record about the target of normalisation. Politicians have variously claimed the reforms are about normalising tenure arrangements on Aboriginal land, normalising housing, normalising services and infrastructure, normalising access to communities, normalising communities themselves, or even more vaguely, normalising 'arrangements' and 'life' in Aboriginal communities. Nevertheless, it is possible to discern trends and patterns in the way that the target of normalisation was described by Commonwealth politicians over the four year period studied.

Commonwealth *Hansard* reveals two principal, and very different, targets of normalisation. In the first, the reforms are described as 'normalising' Aboriginal communities, including life and behaviour in those communities. This suggests an objective more akin to societal transformation by denoting that Aboriginal people and communities are behaviourally and socially 'unusual' in some respect. In the second, politicians describe the reforms as facilitating the more moderate objective of the normalisation of services and infrastructure in Aboriginal communities to bring them up to the standard provided elsewhere in Australia.

In debate about the Township Lease reforms and in early debate about the Intervention, three Coalition politicians in Commonwealth Parliament used the word 'normalise' in the former sense, suggesting in fairly inflammatory terms that Aboriginal land tenure reforms would normalise Aboriginal communities themselves.

In his second reading speech for the legislation introducing the Township Lease reforms in the House of Representatives,[47] Brough referred to the 'appalling levels of violence and abuse' in communities, claiming that 'much more needs to be done to normalise life for these Australian citizens'.[48] The Township Lease reforms, by creating individual property rights, would allegedly go some way to normalising Aboriginal people's lives from this aberrant state by stimulating economic development. When the Coalition Government introduced the 5-year Intervention Leases a year later, Brough's rhetoric of transforming the lives of people living in Aboriginal communities assumed a renewed force in the emotional and heated debate over the reforms. Justifying the 5-year Intervention Leases, Brough referred to the alleged absence of social norms in Aboriginal communities, calling for a three staged approach to the Intervention, '(1) stabilisation, (2) normalisation and (3) exit',[49] with Aboriginal communities being a firm target of normalisation.[50]

David Tollner, Country Liberal Party member for Solomon in the Northern Territory, also referenced the normalisation of communities during debate in the House of Representatives about the Township Lease reforms, but his focus was on economic development rather than the alleged absence of social norms in the sense described by Brough. Tollner bemoaned the lack of economic activity in Aboriginal communities, stating that, '[t]he normalisation of townships and the creation of long-term leases on towns will enable Aboriginal people and others to buy land and build houses in Aboriginal communities. It will allow businesses to set up.'[51] Thus, Aboriginal 'townships' were to be normalised through the Township Lease reforms, which would facilitate the development of private home ownership and business enterprise.

In the Senate, Country Liberal Party Senator Nigel Scullion, who used the term almost three times more than any other politician, also spoke about the normalisation of communities in the context of the Township Lease reforms.[52] When the Intervention was announced a year later, Scullion used 'normalise' in a similar way, using emotive language to describe 'normalisation' as akin to dealing with devastation from a cyclone, stating that the Coalition would first move 'to stabilise communities, and then we will move to normalise them.'[53] Like Brough and Tollner, Scullion appeared at the early stages of the Intervention to identify the target of normalisation as Aboriginal communities themselves.

There was a discernible shift however in the description of the objective of normalisation during debate about the Intervention towards characterising the reforms as facilitating the normalisation of services and infrastructure in Aboriginal communities, rather than communities themselves.

Tollner, who had earlier stated that the aim of the Township Lease reforms was to normalise communities, later described the objective of the Intervention as aiming to 'normalise services and infrastructure' in those communities.[54] Other Coalition politicians in the House of Representatives adopted this more modest definition of its target during debate

about the Intervention. In August 2007, Wakelin spoke about the Coalition Government's three-pronged strategy – 'stabilisation, normalisation of services and infrastructure and, in the longer term, support.'[55] And after the Coalition lost power, Brendan Nelson (the then leader of the Coalition Opposition) spoke in February 2008 about the Intervention's tripartite aims:

> The first was to stabilise the situation. The second was to try to normalise the services that are provided to Indigenous people in the Northern Territory, including in infrastructure. The third was to provide longer term support.[56]

The Senate saw a similar shift among Coalition politicians. By August 2007, Scullion saw the 5-year Intervention Leases as facilitating the normalisation of infrastructure and services rather than communities themselves, saying it was the Coalition's 'clear intention to assist these communities, to provide normalisation and to provide infrastructure that will clearly help people's wellbeing, whether it relates to crowded houses or completely failed and retarded infrastructure'.[57] Senator Eggleston similarly characterised one of the objectives of the Intervention as 'the normalisation of services and infrastructure.'[58]

It is clear that there was a shift in the enunciation of federal government policy around Aboriginal land tenure reform sometime between the announcement of the Intervention in June 2007 and the introduction of the legislation itself in August 2007. Coalition politicians moved from overtly talking about 'normalising' Aboriginal communities, to standardising the government's provision of services, infrastructure and housing to those communities. However, despite the change in the description of the policy objectives of the Intervention, there was no parallel shift in the substance of the legislation or policies giving effect to the Intervention. The Coalition had a majority in both houses of parliament, so they could pass the legislation notwithstanding opposition by Labor, and in any case, the Labor Party explicitly supported the Intervention on the basis that the 'crisis of child abuse in Indigenous communities' needed to be urgently addressed.[59] Thus it seems that the change in the stated policy scope of 'normalisation' was principally rhetorical.

It seems likely that the Coalition members modified their use of 'normalise' in response to criticisms of Aboriginal land tenure reform, and particularly the Intervention. Opponents of Aboriginal land tenure reform outside parliament argued that 'normalisation' was pejorative and synonymous with assimilation.[60] Some Labor and Greens senators attacked the term on this basis in parliament (although the Labor party did not oppose the substance of the reforms). Labor Senators Wortley[61] and Crossin[62] ridiculed the Coalition's suggestion of what should be considered 'normal' for Aboriginal communities in the context of the Township Lease reforms, viewing them as assimilationist in the sense that non-Indigenous economic and property concepts, including the importance of private home ownership, were being imposed upon Aboriginal people. Greens Senators Siewert and Milne, who openly opposed Township Lease reforms and the Intervention, took the same view as Crossin and Wortley about the real target of normalisation.[63] In response to these types of attacks about the meaning of the term 'normalise', and bearing in mind a looming Federal Election in November 2007 where the Coalition's defeat appeared imminent, it seems likely that Coalition politicians refined the scope of 'normalisation' to the standardisation of services and infrastructure.

Nonetheless, it was clear that some in the Labor party did not have a problem with using the word 'normalise'. In August 2007, Jenny Macklin, who was the Shadow Minister for Indigenous Affairs at that time, gave a speech in the House of Representatives indicating the Labor Opposition's broad support for the Intervention legislation and using the term 'normalise' favourably.[64] Labor Senator Chris Evans also reiterated Labor's support for 'normalised tenancy requirements'.[65] Accordingly, Labor politicians seemed divided about the meaning of the word 'normalise', and indeed about whether it should be used at all. The tensions about the use of the term may have been responsible for its abandonment by Labor politicians in Parliament after it took government in November 2007. The word 'normalise' was not used in Parliament when the Labor Government introduced the third Aboriginal land tenure reform, 40-year Housing Leases, in April 2008, and in ongoing discussion in Commonwealth Parliament about Aboriginal land tenure reform in the Northern Territory.

Within Commonwealth parliamentary debate, the scope of normalisation shifted in the two years from mid-2006 until early 2008, when it appears to have been completely abandoned. When it first appeared as a policy objective of Aboriginal land tenure reform in 2006, Federal Coalition politicians such as Brough, Tollner and Scullion defined its target squarely as Aboriginal communities themselves.

However, shortly after the introduction of the second Aboriginal land tenure reform (the 5-year Intervention Leases), the scope of normalisation was pared back to standardising services and infrastructure supplied to Aboriginal communities, and indeed the term was abandoned altogether shortly after the Labor party took government at the end of 2007. However, despite this shift, another aspect of the Coalition and Labor party's rhetoric remained strikingly consistent – the description of Aboriginal communities in the Northern Territory which were the target of Aboriginal land tenure reform.

C The Construction of Aboriginal Space – From 'Communist Enclaves' to 'Existential Despair'

In the analysis following, I argue that the way that Aboriginal communities were described in the textual record by those calling for 'normalisation' reveals more than a literal reading of what its purported target is. In particular, despite the paring back of the scope of normalisation to services and infrastructure in Commonwealth Parliament, the way that Aboriginal people, communities and behaviours within those communities were described remained consistent while the term was used between 2006 and early 2008. Throughout this period, politicians regularly depicted Aboriginal communities and town camps as having particular negative traits.[66] They were devoid of economic activity, rife with sexual and physical violence, and absent of any social norms. These characteristics were generally tied together as part of evocative rhetoric suggesting that Aboriginal communities were 'locked' away from the rest of Australian society. This was the case even with politicians who spoke about an ostensibly narrower policy objective of normalising services and infrastructure. Before turning to this analysis, I note that I have only considered depictions of Aboriginal communities by those politicians who used the word 'normalise' in parliament, confining myself to analysing the same text in which the term 'normalise' appears.

When the Township Lease reforms were introduced, Coalition politicians in the Commonwealth Parliament focused on the alleged lack of economic activity in Aboriginal communities, by reference to what they considered 'normal' in wider Australian society. Brough described Aboriginal communities as 'devoid of economic opportunity',[67] and Tollner decried that businesses such as market gardens, butchers, abattoirs, bakeries, hairdressers, clothing stores, McDonald's restaurants and Irish theme pubs did not exist in any community in the Northern Territory.[68] If Brough and his colleagues conceded the existence of any economic movement within Aboriginal communities, this was designated as 'communist' and retrograde. Because they were 'locked out' of owning their own homes and businesses by the communal land-owning arrangements in the *Land Rights Act*, Brough claimed that Aboriginal people were 'living in what many people would now recognise as little communist enclaves', a description which was endorsed by some other politicians.[69]

The description of Aboriginal communities as economically stagnant was often linked to a particular conception of 'traditional' Aboriginal culture. According to this rhetoric, the *Land Rights Act* (and those who had designed it) perpetuated anachronistic Aboriginal customs and traditions, including communal land-holding arrangements. Aboriginal people were, through the design of white law-makers, locked into their traditional past and needed to break free from the yoke of Aboriginal culture, and to embrace individual property rights, capitalism and economic liberalism. Tollner in particular pressed this view, quoting author Shiva Naipaul, who during a visit to the Northern Territory was reportedly:

> …appalled by what he described as the 'confining of the Aborigine in his [A]boriginality – the escape into an adventure playground of timelessness, of goannas and kangaroos and red earth. The running off into a world of unalterable Aboriginal essences is a condescending and profoundly flawed prescription for regeneration.'[70]

Tollner saw the *Land Rights Act* as responsible for perpetuating the 'confinement of the Aborigine in his [A]boriginality', claiming that the original legislation was about the 'preservation of culture, the locking of the gates and defending Aboriginal people and their land from the intrusions of outsiders'[71] and that it established 'a sanctuary, a preserve of living prehistory within modern Australia.'[72] Moreover, the preservation of Aboriginal culture through the *Land Rights Act* was viewed as avowedly anti-economic by Tollner – 'It was thought that Aborigines would be able to return to hunting and foraging on their newly acquired land. Why would they need to make a dollar?'[73]

Not only were Aboriginal communities described as anti-economic cultural sanctuaries during debate about the Township Lease reforms, they also allegedly harboured the very worst type of social dysfunction. Indeed, although

the reforms were ostensibly about stimulating economic development, Brough and Tollner often seemed to focus more on the alleged abuse, violence and lack of 'social norms' in Aboriginal communities. In the second reading speech for the legislation introducing the Township Lease reforms, Brough described communities as unsafe, violent and without hope, saying that Aboriginal people were 'marooned in unsafe settlements devoid of economic opportunity and hope for the future…The appalling levels of violence and abuse in many of these communities are a stark reminder of the failed policies of the past.'[74] In debate about amendments to the Township Lease scheme a year later, Tollner claimed that it was 'difficult to find a functional Aboriginal community anywhere.'[75] Although not related to the Township Lease reforms, Tollner also spoke about town camps, which he singled out as especially dysfunctional 'ghettoes of despair', 'associated with Third World living conditions, poor hygiene, extreme violence and alcohol and child sex abuse.'[76]

In the Senate, politicians (including Coalition politicians) who used the word 'normalise' did not tend to employ the same extravagant prose when describing Aboriginal communities in the context of the Township Lease reforms.[77] In discussing the objective of 'normalisation' in Aboriginal communities, Scullion was more inclined to focus on the dire need for services and resources such as health and education in communities, rather than portraying them as violent, anti-economic cultural sanctuaries, like his colleagues had done.[78] Senator Chris Evans of the Labor party used similar language when he called for 'normalisation' in the context of the Township Lease reforms, focusing on the need for economic development, jobs, and services in communities.[79] However, Evans' and Scullion's portrayal of Aboriginal communities would perceptibly transform with the introduction of the Intervention, as would the rhetoric of many other politicians in Commonwealth Parliament.

On the day that the Intervention was announced, Brough spoke about Aboriginal communities in terms similar to those he used during debate about the Township Lease reforms. Aboriginal communities were wild, uncontrollable places, rife with the abuse of children, pornography, alcohol and marijuana and where 'there are no norms'.[80] When he introduced the Intervention legislation six weeks later, Brough's language was similarly extreme. He again asserted that Aboriginal communities lacked social norms[81] and were 'dangerous and unhealthy places' where access to alcohol and pornography was unfettered.[82] Brough also returned to the alleged economic void in Aboriginal communities, claiming that '[i]n a place where there is no natural social order of production and distribution, grog, pornography and gambling often fill the void.'[83] To Brough, it was the permit system, as well as communal land tenure arrangements under the *Land Rights Act*, which were responsible for the effective closure of Aboriginal communities from economic opportunities and from scrutiny.[84] The prevailing image left by Brough's description of Aboriginal communities in the Northern Territory is one of societal devastation. These were places which were not just dysfunctional, but apparently devoid of any social norms at all. Despite this, Brough did not explicitly claim that all Aboriginal communities were so afflicted, nor did he acknowledge the existence of any 'functional' communities, and his language was for the most part unqualified.

Like Brough, Tollner continued the rhetoric describing Aboriginal communities which he used during the Township Lease reforms. In particular, he returned to the economic failures of Aboriginal communities in debate about the Intervention legislation, but also spoke about the sinister criminal elements allegedly pervading them, saying that the 'permit system has not stopped the carpet baggers, the rug pushers, the grog runners, the abusers and the corrupt.'[85] Tollner saw the permit system in particular as creating racial segregation, and allowing the very worst type of people and behaviours to flourish in Aboriginal communities – a recurring theme in debate about the Intervention.

Other Coalition politicians adopted similarly vivid terminology to describe Aboriginal communities during debate about the Intervention measures. Scullion's rhetoric changed markedly from that employed by him during the Township Lease reforms, describing Aboriginal communities as being battered by a 'cyclone of child abuse',[86] and adopting Brough's metaphor of the 'rivers of alcohol that run into Indigenous communities'[87] in the Northern Territory. Scullion singled out town camps as being particularly degraded, describing them as 'dark places completely different from the surrounding suburbs'.[88] Senator Adams blamed the permit system as 'one of the culprits in hiding an ever-worsening situation of child abuse from the public gaze'.[89] Senator Eggleston also adhered to the view that Aboriginal communities were segregated by the permit system from wider Australia,

and viewed Aboriginal people as trapped in the past, and Aboriginal culture as being a root cause of dysfunction:

> I believe that Indigenous culture has been used to throw a cloak over these problems and that, in this day and age, it is time for the cloak to be removed and for the Indigenous people of Australia as a whole to be brought into the world of contemporary Australia.[90]

The Coalition's rhetoric about Aboriginal communities continued after it lost government. When the new Labor Government proposed to reintroduce the permit system in Aboriginal communities in the Northern Territory, Brendan Nelson (the then Leader of the Opposition) referred to the lives of 'existential despair' in communities, blaming the permit system for this state of affairs and calling for 'calibration' with a 'caring, developed and sophisticated society.'[91]

On the whole, the language used by politicians from other parties during debate about the Intervention was not so extreme. These politicians, particularly those who were explicitly critical of 'normalisation' as a policy objective, were less likely to make broad generalisations about the alleged depraved state of Aboriginal communities, often focusing on the need for services, infrastructure and the protection of children in Aboriginal communities. However, bipartisan support for the Intervention indicated broad acceptance of the Coalition's portrayal of communities as rampant with alcoholism, child abuse and violence. And there was an increasing tendency to use vivid and negative terminology to describe Aboriginal communities as debate wore on. Macklin adopted Brough's metaphor of the 'rivers of grog' in communities,[92] Greens Senator Siewert spoke of the 'artificial' and 'alienating' nature of Aboriginal communities,[93] and Labor Senator Stephens referred to some of them as being 'profoundly broken'. Labor Senator Chris Evans also compared 'normalised' Indigenous communities, with those where social norms had broken down and which were subject to violence and child abuse.[94] This language reinforced the Coalition's negative depiction of Aboriginal communities as places rife with addiction, child abuse and violence and devoid of 'normal' behaviours.

But this was not the only aspect of the Coalition's rhetoric about communities which was reinforced. Since the other parties opposed the removal of the permit system in Aboriginal communities, they did not tend to engage in the same vivid rhetoric as the Coalition about the permit system 'closing' communities and harbouring dysfunction. However, Labor seemed to share the Coalition's view that Aboriginal communities were segregated from wider Australian society, although this imagery was used to support different political ends. The permit system was viewed in this sense as a form of protection for Aboriginal people, a policing tool which could be used to stop criminals from penetrating Aboriginal communities. For example, Macklin spoke of Labor's opposition to the removal of the permit system in communities:

> We believe that the safety of children in these communities will be reduced if the government's measures proceed, as they will allow for greater access by sly-grog and drug runners and by paedophiles.[95]

Bound up in this was the idea that Aboriginal people needed additional protection than the wider community from these threats, with the permit system a benevolent, if paternalistic, device to lock out the evils of the outside world. Thus, both major parties were to some extent drawing on the same imagery of Aboriginal communities as separate and in need of protection, with the permit system forming a kind of physical barrier from the outside world.

There are a number of recurring themes in the vivid descriptions of Aboriginal communities by Commonwealth politicians who used the term 'normalise' in the context of Aboriginal land tenure reform in the Northern Territory from 2006 to 2008. They were consistently described as economically stagnant places which hid horrific violence, abuse and depraved behaviours, and where social norms were either different from those in wider Australian society or absent completely. Often, it was Aboriginal culture itself (or its preservation through the communal land holding arrangements and permit system in the *Land Rights Act*) which was seen as at least partly responsible for the situation in Aboriginal communities. Indeed, certainly during the Intervention, very few politicians qualified their accounts of Aboriginal communities in the Northern Territory, describing in absolute terms their allegedly depraved character.

Perhaps the most striking part of parliamentary rhetoric about Aboriginal communities was the repeated assertion that they were physically, culturally and socially isolated from the rest of Australian society, with the *Land Rights Act* (and particularly the permit system) seen as causing

or perpetuating this segregation. Thus, the depiction of Aboriginal communities had a distinct spatial element, where 'the organization, and meaning of space is a product of social translation, transformation and experience'.[96] Aboriginal people and communities were 'closed',[97] 'marooned',[98] 'hidden',[99] 'locked out'[100] from the rest of Australia by a 'veil of silence',[101] or 'cloak'.[102] In these 'preserves of living prehistory'[103] dysfunction, violence, abuse and addiction remained hidden and were able to flourish, economic activity was stymied and the norms of Australian society were not able to penetrate.

The language used by Commonwealth parliamentarians between 2006 and 2008 powerfully objectified Aboriginal 'space' as extraordinarily dysfunctional and entirely separate in every sense from 'normal' Australian society. Moreover, it was the inherent 'Aboriginality' of the tenure underlying Aboriginal communities which was often seen as a causal factor – the communal form of land-holding in the *Land Rights Act*, coupled with the permit system, enshrined traditional Aboriginal culture and perpetuated the segregation of Aboriginal 'space' from wider Australian society. The construction of Aboriginal space as socially depraved and segregated from wider society gathered increasing force. By the time the term 'normalise' had been abandoned in mid-2008, this was how Aboriginal communities in the Northern Territory were predominantly spoken about, by those talking about 'normalisation'.

There are some evident parallels between the 'normalisation discourse' in Commonwealth Parliament and elements of the colonial property regime in Australia. Postcolonial theorists have written about the legitimating function of dominant, generally Western, societies constructing the colonised, subaltern or 'the Other' in specific terms.[104] Drawing on Said's *Orientalism*,[105]Australian scholars have also argued that the colonial construction of Aboriginal people as uncivilised, 'savage' and different was a discourse which served to buttress the hegemonic position of the colonisers and to justify oppressive laws and policies, including the annexation of land and its transformation into clearly-defined units of privately-owned property.[106] According to Banner, British observers singled out Aboriginal people in Australia as being at the bottom of the hierarchy of civilization when compared with Indigenous peoples in other parts of the world – according to primary sources 'they were "far behind other savages", "the lowest link in the connection of the human races", "the lowest of the nations in the order of civilization".'[107] This representation or construction of Aboriginal culture and people became a type of knowledge which informed and legitimated the appropriation of land in Australia through the legal assertion of sovereignty, and subsequent grant of private property interests. As Mawani suggests, 'the links between land, law and identity were (and are) critical to colonial appropriations...The identities of Aboriginal peoples and their relationships to land figured prominently in colonial reterritorialization'.[108]

Normalisation discourse also represented Aboriginal communities and culture in the Northern Territory in consistently negative terms. As I have demonstrated above, the Commonwealth parliamentary record reveals that normalisation discourse was predicated on a dichotomised view of Aboriginal 'space' in the Northern Territory as almost universally dysfunctional, abnormal, wild, and locked away with wider Australian society. The separation of Aboriginal space from that of wider 'normal' (or normalised) Australian society was a crucial characteristic of this view, and objectified Aboriginal communities in the Northern Territory as places to be 'fixed' or infiltrated in some way by the proposed land tenure reforms.

As in colonial times in the Northern Territory, it was the inherent 'Aboriginality' of communities which was considered partly responsible for their inferior and 'abnormal' state. While in the nineteenth century, Aboriginal society was characterised as 'uncivilised', 'savage' and inferior, normalisation discourse viewed the property regime enshrined in the *Land Rights Act*, including communal land holding and the permit system, as harmful expressions of anachronistic Aboriginal tradition, serving to lock away Aboriginal society from wider society.

By representing Aboriginal communities as isolated places of economic despair, child abuse, and neglect, normalisation discourse produced what appeared to be objective 'knowledge' about Aboriginal people in the Northern Territory. This knowledge about Aboriginal space in the Northern Territory became more powerful during the heated debate about the Intervention, as Commonwealth politicians appeared to increasingly accept the characterisation of Aboriginal communities as harbouring the worst type of dysfunction, and served to legitimate and justify the first two Aboriginal land tenure reforms in the

Northern Territory, the Township Lease reforms and the 5-year Intervention Leases.

IV 'Normalisation' in the Northern Territory Legislative Assembly

Hansard from the Northern Territory Legislative Assembly tells an entirely different story. Members of the Northern Territory Legislative Assembly ('MLAs') used 'normalise' sporadically between early 2007 and early 2008, and then stopped for approximately a year. However, and in contrast with the Commonwealth Parliament (where it was abandoned from early 2008), it reappeared in June 2009 and was used with increasing frequency for the next year. Its resurgence roughly coincided with the Northern Territory's *Working Future Policy*, which involved the transformation of 20 larger Aboriginal communities in the Northern Territory into 'growth towns'. This would be accomplished in part by negotiating 40-year Housing Leases in most of those centres.[109] Nevertheless, and despite its increased use by Northern Territory politicians, 'normalise' appeared only 18 times in the Northern Territory parliamentary record, compared with 53 times in the Commonwealth *Hansard*.

Apart from the patterns and frequency in the use of the term, there are a number of other notable points of departure from its use in Commonwealth Parliament *Hansard*. First, Northern Territory politicians became progressively more comfortable talking about a policy objective of normalising Aboriginal communities and town camps, compared with Commonwealth politicians' trend towards reducing its scope to the mere standardisation of services and infrastructure. Second, although the term 'normalise' was consistently used in the context of discussion about Aboriginal communities and town camps in the Northern Territory, Northern Territory MLAs broadened its application to policies other than Aboriginal land tenure reform (including town camps policy and the *Working Future Policy*). Further, and despite Northern Territory politicians' relative comfort in describing the target of normalisation as Aboriginal communities, their depictions of Aboriginal communities were far less inflammatory and negative than in the Commonwealth Parliament, with the emphasis usually upon poor infrastructure, housing and services in those communities.

In 2007 when the word 'normalise' was first used in the Northern Territory Legislative Assembly, some politicians seemed uncomfortable with 'normalisation' as a policy platform for the Commonwealth Government's recently introduced Township Lease reforms and Intervention policies. Indigenous MLA, Alison Anderson (then with the Labor Party) described Brough's obsession with 'populism and rhetoric', and spoke of the unique dynamics of the Northern Territory, including the landscape, Aboriginal people and their culture, before saying:

> Understanding these dynamics is important, but it can never be fully appreciated. We can only begin to grasp the true impact this dynamic creates, but it is an important aspect to consider in formulating and shaping policy. To borrow a word from a federal counterpart, considering this point gives some context to the five second media grab: normalisation.[110]

Although she did not expressly mention the Township Lease reforms, Anderson was clearly critical of the rhetoric surrounding this Commonwealth initiative, and the term 'normalisation' itself, describing the Federal Government's motivations as 'punitive'.

A few months later, after the Intervention had been announced, Independent MLA Lorraine Braham also criticised the Coalition's normalisation agenda as 'mainstreaming', asking 'what is "normal"?'[111]

Despite these early hesitations about the Commonwealth's use of the term and its real agenda in the context of Aboriginal land tenure reform, 'normalisation' was a term which the Northern Territory Labor Government seemed reasonably content to apply in relation to its own policies regarding town camps. In February 2007, Indigenous Labor MLA, Karl Hampton, spoke about the Northern Territory's objective of the 'normalisation of town camps… [to] deliver equitable and appropriate levels of municipal services in Alice Springs.'[112] The 'normalisation' of town camps remained a consistent theme in the Northern Territory Legislative Assembly – indeed, 11 of the 18 uses of the term over the four year period examined in this article were in relation to the normalisation of town camps.[113] It is significant that the 'normalisation' of town camps was not directly related to the Aboriginal land tenure reforms introduced by the Commonwealth. Town camps were located on leasehold tenure in urban areas and thus unaffected by the Township Lease reforms, the 5-year Intervention Leases and the 40-year Housing Leases. Unlike in the Commonwealth Parliament, Northern

Territory politicians used 'normalisation' to describe policy objectives other than Aboriginal land tenure reform relating to Aboriginal communities in the Northern Territory.

Despite her earlier misgivings about the term 'normalisation' in the context of the Township Lease reforms, in May 2008 Indigenous MLA, Alison Anderson adopted the term in relation to town camps in the context of discussion about the recently announced SIHIP, which involved the negotiation of 40-year Housing Leases (and the construction of new houses) in 16 major communities on Aboriginal land. As discussed earlier, unlike the first two land tenure reforms in the Northern Territory (Township Leases and the 5-year Intervention Leases), the Commonwealth Labor Government transferred responsibility for negotiating, implementing and administering the 40-year Housing Leases to the Northern Territory. The SIHIP did not only involve providing housing on Aboriginal land – housing and infrastructure was also to be constructed in town camps in major urban centres of the Northern Territory, and it was in this context that Anderson spoke of her government's own 'normalisation' agenda:

> This package embraces the town camps; it seeks to solve the crises of town camps and to normalise and mainstream them into our towns so that, as the member for Nelson said, we no longer refer to them as 'town camps', but as just another part of the society of Darwin or Alice Springs. That is the way it should be.[114]

Thus, according to Anderson, it was town camps specifically which were to be 'mainstreamed' until they were not objectively different from other suburbs in Northern Territory towns.

Anderson came to be increasingly disenchanted with the Northern Territory Labor government of which she was a member, including the slow delivery of and other problems besetting the SIHIP. In August 2008, Anderson resigned from the Australian Labor Party and became an Independent.[115] As an Independent, Anderson was critical of many policies of the Northern Territory Government, but she continued her support for reform of town camps and for a policy objective of normalising 'the behaviour and conditions these people are living in.'[116]

From 2009, Northern Territory politicians widened the scope of 'normalisation' beyond town camps to Aboriginal communities generally, and the frequency with which the term appeared in *Hansard* also increased. Between June 2008 and June 2009, it was not used at all in the Northern Territory Legislative Assembly, but it appeared once in June 2009, three times in October 2009, once in February 2010, and in May 2010 it appeared four times. Its increasing use followed the announcement in May 2009 of the Northern Territory's *Working Future Policy*. Pursuant to this policy, 20 larger Aboriginal communities in the Northern Territory were to be relabelled 'growth towns', which would have 'proper town plans, private investment, targeted Government infrastructure and commercial centres' and would thus become 'towns like anywhere else in Australia'.[117] While the measures adopted under the *Working Future Policy* included more than Aboriginal land tenure reform, there was considerable coincidence between the 20 growth towns and the 16 communities targeted for 40-year Housing Leases under the SIHIP; all of the communities targeted for 40-year Housing Leases, bar one (Milyakburra), were now identified as 'growth towns'.[118] After the introduction of the *Working Future Policy*, Northern Territory politicians of all political persuasions began to speak about 'normalising' communities (or growth towns) with some comfort.

Indigenous Labor MLA, Marion Scrymgour, saw 'normalisation' as synonymous with increased leasing in communities generally. Speaking about the progress of leasing in Maningrida, one of the 'growth towns' for which a 40-year Housing Lease had been negotiated in principle, Scrymgour said:

> The involvement of traditional owners in terms of leasing has been really pleasing. Now that traditional owners have that control, they are looking at working with the land council to develop other industries to come to the community such as a bakery. With the growth of Maningrida, a normalisation process is happening.[119]

Other Northern Territory politicians did not confine the scope of 'normalisation' to increased leasing in Aboriginal communities like Scrymgour (although they considered increased leasing in those communities to be an integral part of the process). They viewed the transformation of communities into growth towns under the *Working Future Policy* as synonymous with the 'normalisation' of those towns. Labor politician, Rob Knight, spoke in May 2010 about the transformation of communities into growth towns as part of the *Working Future Policy*, saying 'this is vitally needed other infrastructure required to normalise these towns.'[120]

Independent Member, Gerry Wood (who held the balance of power at that time in the Northern Territory Legislative Assembly) also saw the Northern Territory Government's *Working Future Policy* as being about normalising Aboriginal communities, claiming that there was a range of issues which needed to be considered 'if the government's concept of growth towns is the normalisation of towns'.[121] Similarly, Country Liberal Party MLA, Willem Westra Van Holthe also characterised the *Working Future Policy* in this way, arguing that the continued existence of the permit system defeated the purpose of 'normalising' communities under that policy. He states, 'you cannot normalise any place if you make it different from what is considered the norm, or the mainstream, in the Northern Territory.'[122]

Thus, by early to mid-2010, there seemed to be bipartisan agreement that the *Working Future Policy* entailed the 'normalisation' of Aboriginal communities, and that that was a good thing. In addition, and separately from the *Working Future Policy*, the Northern Territory Government was actively pursuing an objective of normalising town camps in urban centres. In stark contrast with the Commonwealth Parliament, where the term was narrowed to a focus on the normalisation of services and infrastructure and then eventually abandoned, Northern Territory politicians were quite happy to define as its target, larger Aboriginal communities, town camps and the behaviours occurring within them.

However, despite the broad target of normalisation, Northern Territory politicians described Aboriginal communities and town camps very differently than Commonwealth politicians. Indeed, the parliamentary record of the Northern Territory Assembly makes dull reading in comparison with the florid prose used by Commonwealth politicians. In general, politicians who used the term 'normalise' did not speak in absolute terms about social and economic dysfunction in Aboriginal communities, nor did they rely on vivid imagery of those communities being locked away from wider Australian society. Instead, their emphasis was on the lack of leasing, housing, services and other infrastructure in Aboriginal communities.

For example, Indigenous MLA Marion Scrymgour spoke of the lower standards for public housing in remote communities, arguing that normalisation should involve landlords being subject to the same responsibilities as in urban areas.[123] Rob Knight emphasised the improved provision of housing, land servicing, essential services and other infrastructure through the *Working Future Policy*, which would 'normalise' Aboriginal communities.[124] Gerry Wood saw leases, the gazetting of roads and other services, as critical for the normalisation of growth towns.[125]

That said, for some politicians the improvement of 'behaviours' in Aboriginal communities was an explicit objective. Indigenous MLA, Alison Anderson, saw improved housing and infrastructure as inextricably linked with improving behaviours in town camps and communities, stating: 'because the town camps are so low in repairs and maintenance and behaviour, people who come in expect to behave and live in that standard of accommodation.'[126] On the same day, Labor MLA, Rob Knight said that once infrastructure had been improved and communities thus normalised, 'you can expect normal behaviour and treatment of women, and normal opportunities for women to participate in the labour market.'[127] However, acknowledging that there were social problems in some Aboriginal communities was a far cry from the terminology used by Commonwealth politicians. Further, the clear emphasis of these politicians was to improve sub-standard infrastructure, housing, and other services on Aboriginal land. This was the reverse of the trend in the Commonwealth Parliament – where politicians would explicitly state that their aim was to normalise services and infrastructure, but through repeatedly focusing on the alleged horrific social dysfunction in Aboriginal communities – it was made clear that their real objective was to socially transform these communities.

The differences in the way that 'normalisation' was used between the Commonwealth and Northern Territory Parliaments suggests that normalisation discourse perceptibly changed over the four year period between 2006 and 2010. While it is beyond the scope of this article to definitively ascertain the reasons for this shift, it seems reasonable to infer that the presence of Indigenous parliamentarians in the Northern Territory Legislative Assembly may have had some impact on the way that the term 'normalise' was used there, including the way that Aboriginal people and communities were described. The Northern Territory Parliament has much higher Indigenous representation than any other state or territory. During the four year period examined, there were between four and five Indigenous MLAs in the Northern Territory Legislative Assembly, out of a total of twenty five. Between June 2005 and August 2008 (the tenth assembly of the Northern Territory Legislative Assembly), there were

five Indigenous members, all from the Australian Labor Party: Alison Anderson, Matthew Bonson, Elliot McAdam, Malarndirri McCarthy and Marion Scrymgour. After the November 2008 election, there remained five Indigenous members – Alison Anderson, Karl Hampton, Malarndirri McCarthy, Marion Scrymgour and the Country Liberal Party's Adam Giles. By comparison, in February 2009 there were no Indigenous politicians in the Commonwealth Parliament, and only four in total in other Australian states and territories.[128]

Of these Northern Territory Indigenous politicians, Anderson, Scrymgour and Hampton all spoke favourably of a policy objective to 'normalise' Aboriginal communities and/or town camps. Malarndirri McCarthy later expressed support for normalisation of 'leasing' in Aboriginal communities, although her comments in Parliament fell outside the four year period studied.[129] While these MLAs were happy to adopt the word 'normalise', they did not engage in the same extreme rhetoric as Commonwealth parliamentarians about the alleged depraved state of Aboriginal communities. Instead, they focused on the historic failures of government to provide essential services, housing and infrastructure in those communities and town camps, and the need to rectify these failures. It seems likely that the strong contingent of Indigenous politicians may have affected discourse around Aboriginal land tenure reform in the Northern Territory Legislative Assembly, including the way that 'normalise' was used there.

Whatever the explanation, the absence of this consistently inflammatory and negative rhetoric about Aboriginal communities in the Northern Territory Legislative Assembly record meant that normalisation discourse, as manifested there, appeared to lack a key component evident in the Commonwealth Parliament. In particular, during the introduction and implementation of the 40-year Housing Leases, and the transfer of responsibility for their implementation to the Northern Territory, the 'colonial' characteristics of Commonwealth parliamentary rhetoric became far less prominent in debate about Aboriginal land tenure reform in the Northern Territory Legislative Assembly. Indeed, between 2008 and 2010, the explicit focus of 'normalisation' was not so much on changing the alleged socially aberrant elements of Aboriginal communities through private property, but on correcting the government's decades-old failure to secure appropriate tenure on Aboriginal land and standardising basic services and infrastructure in communities. One of the reasons for this shift may have been the presence of a significant number of Indigenous politicians in the Northern Territory Legislative Assembly, some of whom adopted the term with vigour but used it in a different way than their Commonwealth counterparts did previously.

V Conclusion - The Reforms as a Reflection of Normalisation Discourse

In concluding, I contend that changes in the key features of normalisation discourse identified above were reflected by a parallel shift in the legal structure of the reforms. While there are structural similarities between Township Leases, 5-year Intervention Leases and the 40-year Housing Leases,[130] there are significant differences in the structure and effect of the reforms pursued by the Commonwealth (the Township Lease and 5-year Intervention Lease reforms) and the 40-year Housing Lease reforms pursued by the Northern Territory.

Township Leases and 5-year Intervention Leases grant exclusive rights over entire communities to the Commonwealth Government or a Commonwealth government entity. It is the Commonwealth, rather than traditional Aboriginal owners, which can then deal with the land in communities as it sees fit, including granting sub-leases to businesses and individuals for a wide range of purposes. Traditional Aboriginal owners are given little opportunity to negotiate meaningfully about the terms and conditions of these leases. In relation to Township Leases, lease terms are constrained by section 19A of the *Land Rights Act* and the 'standard' terms dictated by Commonwealth policy. In relation to the 5-year Intervention Leases, the leases were compulsorily acquired and the terms and conditions unilaterally imposed by legislation. Thus, the legal effect of Township Leases and the 5-year Intervention Leases is to supplant traditional Aboriginal owner control of communities, with government control.

The structure of the 40-year Housing Leases is quite different. Rather than leasing all the land in a community to a government entity with unfettered discretion over granting sub-leases and other dependent interests, 40-year Housing Leases are granted pursuant to section 19 of the *Land Rights Act* to a Northern Territory government entity over smaller 'blocks' within communities for public housing purposes. In other words, 40-year Housing Leases are granted to secure government assets and implement

a public housing tenancy model over limited land within communities, rather than to substitute a government landlord for traditional Aboriginal owners in entire communities. Thus, 40-year Housing Leases go some way to correcting the decades-old failure of governments to negotiate tenure for their assets on Aboriginal land. Further, the decision-making and governance structures established by the *Land Rights Act* remain intact in respect of the remainder of Aboriginal land in a community. Accordingly, traditional Aboriginal owners retain the ability to negotiate directly with proponents seeking to obtain tenure on Aboriginal land within communities, including both government and private interests. Given the recent historic Northern Territory and Commonwealth policy to secure leases and pay rent (at unimproved capital value rates), for all government infrastructure on Aboriginal land,[131] this represents an unprecedented commercial opportunity for traditional Aboriginal owners. Published reports suggest that this opportunity has been seized, with the Northern Land Council reporting that a record number of 270 section 19 leases were approved in its region to secure government buildings and infrastructure in Aboriginal communities in June 2012.[132]

This shift in the legal structure of Aboriginal land tenure reform reflected the shift in normalisation discourse described above. In particular, Commonwealth parliamentary rhetoric about the Township Lease reforms and the 5-year Intervention Leases possessed distinctly 'colonial' characteristics, predicated on the construction of Aboriginal communities in the Northern Territory as morally depraved, socially dysfunctional and anti-economic, which needed to be transformed or 'normalised' by the land tenure reforms. The legal structure of the first two reforms, which effectively involved the supplanting of traditional Aboriginal control of communities with Commonwealth Government control, reflected the socially transformative objectives of these reforms in Commonwealth parliamentary discourse. By contrast, debate in the Northern Territory Legislative Assembly about the 40-year Housing Leases did not objectify Aboriginal space in the same way, instead focusing on the need for secure tenure for government assets such as housing, services and essential infrastructure. The legal structure of the 40-year Housing Lease reforms reflected the narrower focus of normalisation discourse at this time on securing tenure for government assets in communities and standardising services and infrastructure.

The election of the Coalition to power has propelled the reforms to the forefront of Indigenous policy again, with new Minister for Indigenous Affairs, Nigel Scullion currently pursuing Township Leases in Gunbalanya and Yirrkala. It is critical to understand the context within which the Township Lease reforms were originally introduced in order to understand their significance today. As revealed above, there were some troubling 'colonial'aspects to parliamentary discourse around Township Leases, which focused on an extremely negative depiction of Aboriginal communities as requiring salvation, both economically and socially, through the implementation of Township Leases. As Aboriginal land tenure reform in the Northern Territory developed between 2007 and 2010, a more moderate approach to 'normalisation' seemed to prevail through 40-year Housing Leases and associated government leasing. This approach primarily involved securing tenure for government assets, whilst traditional owners retained the economic and legal control of their communities, resulting in an increase in economic activity in communities. A return to pursuing Township Leases, in this context, may be viewed as an unfortunate step backwards to the old colonial rhetoric underpinning normalisation discourse.

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1 Nigel Scullion, 'Historic Arnhem Land Lease Agreement' (Media Release, 16 October 2013) 1 <http://www.nigelscullion.com/media-hub/Indigenous-affairs/historic-arnhem-land-lease-agreement>.

2 Mal Brough, 'Historic Reforms to NT Land Rights' (Media Release, 31 May 2006) 1<http://www.formerministers.dss.gov.au/3461/nt_land_rights_31may06/>.

3 Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2007, 77 (Mal Brough, Minister for Indigenous Affairs).

4 Owen Donald and Julia Canty-Waldron, *Strategic Indigenous Housing Infrastructure Program* ('SIHIP') – *Post Review Assessment* ('PRA') 1 November 2013 (Department of Families, Housing, Community Services and Indigenous Affairs) 6 <http://

www.healthinfonet.ecu.edu.au/key-resources/programs-projects?pid=554>.

5 Kalervo N Gulson and Robert J Parkes, 'From the Barrel of the Gun: Policy Incursions, Land and Aboriginal Peoples in Australia' (2010) 42(2) *Environment and Planning A* 300; Odette Mazel, 'Development in the "First World": Alleviating Indigenous Disadvantage in Australia – the Dilemma of Difference' (2009) 18(2) *Griffith Law Review* 475.

6 For a small but instructive sample of this scholarship, see Bill Ashcroft, Gareth Griffiths and Helen Tiffin, *Post-Colonial Studies: The Key Concepts* (Routledge, 2000); HK Bhabha, 'Signs Taken for Wonders' in Bill Ashcroft, Gareth Griffiths and Helen Tiffin (eds), *The Postcolonial Studies Reader* (Routledge,1995); John Charles Hawley, *Encyclopaedia of Postcolonial Studies* (Greenwood Publishing Group, 2001); Ania Loomba, *Colonialism/Postcolonialism* (Routledge, 2005); Edward Said, *Culture and Imperialism* (Alfred A Knopf, 1993); Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in N Cary and G Lawrence (eds), *Marxism and the Interpretation of Culture* (Macmillan, 1988).

7 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

8 Jon Altman, 'The Political Ecology and Political Economy of the Indigenous Land Titling "Revolution" in Australia' (2014) *Maori Law Review* 14. This statistic excludes other forms of Indigenous land interests and ownership in the Northern Territory, which may include native title interests, special purposes leases, pastoral leases, crown leases, and community living areas excised from pastoral leases.

9 Jon C Altman, Craig Linkhorn and Jennifer Clarke, 'Land Rights and Development Reform in Remote Australia' (Discussion Paper No 276, Australian National University Centre for Aboriginal Economic Policy Research, 2005) 5.

10 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 19(5).

11 *Aboriginal Land Act* (NT).

12 The focus here is on Aboriginal land upon which communities are located, as distinguished from Aboriginal land outside communities. On land outside Aboriginal communities, agreements have historically been negotiated pursuant to s 19 of the *Land Rights Act*.

13 Leon Terrill, 'The Days of the Failed Collective: Communal Ownership, Individual Ownership and Township Leasing in Aboriginal Communities in the Northern Territory' (2009) 32(3) *UNSW Law Journal* 814, 821. This view is also held by Jon Altman, who in a jointly-authored paper argues that '[e]xisting state occupation of Aboriginal land should be regularised and put on a proper legal and commercial footing through the negotiation of leases'. See Jon Altman, Craig Linkhorn and Jennifer Clarke, above n 9, 9.

14 Dillon and Westbury suggest that the Commonwealth has historically tended to be more likely to secure tenure for its buildings and other infrastructure. See Michael Dillon and Neil Westbury, *Beyond Humbug: Transforming Government Engagement with Indigenous Australia* (Seaview Press, 2007) 131.

15 Dillon and Westbury, above n 14, 131-132.

16 Hernando De Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (Basic Books, 2000). See also Noel Pearson and Lara Kostakisi-Liano, 'Building Indigenous Capital: Removing Obstacles to Participation in the Real Economy' (2004) 2(3) *Australian Prospect*; Helen Hughes and Jenness Warin, 'A New Deal for Aborigines and Torres Strait Islanders in Remote Communities' (Issue Analysis No. 54, Centre for Independent Studies, 1 March 2005) 1.

17 The legislation originally provided that Township Leases could only be granted for a period of 99 years. However, this was later changed under the new Federal Labor Government to allow the grant of leases for between 40 and 99 years: *Indigenous Affairs Legislation Amendment Act 2008* (Cth).

18 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 20C(a).

19 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 19A(14) provides that a Township Lease cannot contain any provision requiring the consent of any person to the grant of a sub-lease.

20 Mark Dillon and Neil Westbury, above n 14, 122.

21 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 19A(10).

22 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 19A(11).

23 Terrill, above n 13, 825.

24 A Township Lease was granted over Nguiu community on the Tiwi Islands on 30 August 2007 by the Tiwi Aboriginal Land Trust for a period of 99 years. A second 99 year Township Lease was granted in the Tiwi Islands over Milikapiti and Ranku in November 2011. Under the Labor Government, in December 2008, a Township Lease was granted over the communities of Angurugu, Umbakumba and Milyakburra by the Anindilyakwa Land Trust for a period of 40 years, with a 40 year option to renew.

25 These include community living areas, which are generally situated remotely on leasehold tenure which has been excised from pastoral leases, and town camps, which are situated on leasehold tenure on the fringes of major urban centres in the Northern Territory (Darwin, Katherine, Tennant Creek and Alice Springs).

26 *Northern Territory Emergency Response Act 2007* (Cth) s 31.

27 *Northern Territory Emergency Response Act 2007* (Cth) s 35(1).

28 *Northern Territory Emergency Response Act 2007* (Cth) s 31(3).

29 *Northern Territory Emergency Response Act 2007* (Cth) s 34.

30 *Northern Territory Emergency Response Act 2007* (Cth) s 36(6).

31 *Northern Territory Emergency Response Act2007* (Cth) s 52.

32 *Northern Territory Emergency Response Act 2007* (Cth) s 37.

33 *Northern Territory Emergency Response Act2007* (Cth) s 35(2)

34 *Northern Territory Emergency Response Act 2007* (Cth) s 62. The Valuer-General has finalised rental valuations, and payments have been made in respect of all communities on Aboriginal land.

35 *Northern Territory Emergency Response Act 2007* (Cth) s 60(2). This section, with its unusual wording, was the subject of an unsuccessful High Court challenge in *Wurridjal v Commonwealth* (2009) 237 CLR 309. For analysis of this case, see Sarah Keenan, 'Property as Governance: Time, Space and Belonging in Australia's Northern Territory Intervention' (2013) 76(3) *Modern Law Review* 464.

36 *Northern Territory Emergency Response Act 2007* (Cth) ss 35(6) and 36.

37 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), Part II B as amended by the *Families, Community Services and Indigenous Affairs and Other Legislation Amendment (Northern Territory National Emergency Response and Other Measures) Act 2007* (Cth).

38 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) ss 70B and 70F.

39 *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) s 70F(2).

40 *Aboriginal Land Rights* (Northern Territory) Act 1976 (Cth) s 70F(20).

41 Jenny Macklin, Paul Henderson and Warren Snowdon, 'Landmark Housing Projects for NT Indigenous Communities' (Media Release, 12 April 2008) 1 <http://www.formerministers.dss.gov.au/15117/landmark-housing-project-for-nt-Indigenous-communities/>.

42 Paul Henderson, 'A Working Future: Real Towns, Real Jobs, Real Opportunities' (Media Release, 20 May 2009) 1 <http://www.territorystories.nt.gov.au/handle/10070/218121>.

43 'The land councils and local traditional owners have accepted the public good nature of this work and agreed on peppercorn rent under these lease arrangements.' Northern Territory, *Parliamentary Debates*, Legislative Assembly, 23 February 2011 (Malarndirri McCarthy). The term 'peppercorn' refers to a nominal value (for example one dollar $1), which can constitute payment for a promise under a contract (including a lease). It is not indicative of the value of the land, and is negotiated purely for the purposes of satisfying the legal requirement that both parties to a contract must provide consideration (payment of some kind) for the promise they have received.

44 See Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, 'Closing the Gap in the Northern Territory Monitoring Report: Part One' (January – June 2012). Note that 40-year leases over public housing have also been negotiated in 24 of the 51 smaller communities in the Northern Territory as at June 2012.

45 Since nearly all sources were available online, this was generally conducted using a simple electronic search.

46 Since March 2008 in the House of Representatives and since November 2008 in the Senate.

47 Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Cth).

48 Commonwealth, *Parliamentary Debates*, House of Representatives, 31 May 2006, 5 (Mal Brough).

49 Ibid.

50 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 7 (Mal Brough).

51 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 93 (David Tollner).

52 Commonwealth, *Parliamentary Debates*, Senate, 19 June 2006, 63 (Nigel Scullion).

53 Commonwealth, *Parliamentary Debates*, Senate, 21 June 2007, 74 (Nigel Scullion).

54 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 September 2007, 19 (David Tollner).

55 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 74 (Barry Wakelin).

56 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 245 (Brendan Nelson).

57 Commonwealth, *Parliamentary Debates*, Senate, 15 August 2007, 29 (Nigel Scullion).

58 Commonwealth, *Parliamentary Debates*,Senate, 13 August 2007, 106 (Alan Eggleston).

59 Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2007, 73 (Kevin Rudd, Prime Minister).

60 See, eg, the compilation of essays criticising the 'Intervention' in Jon Altman and Melinda Hinkson (eds) *Coercive Reconciliation: Stabilise, Normalise, Exit Aboriginal Australia* (Arena Publications, 2007).

61 Commonwealth, *Parliamentary Debates,* Senate, 9 August 2006, 20 (Dana Wortley).

62 Commonwealth, *Parliamentary Debates,* Senate, 15 June 2007, 14 (Trish Crossin).

63 Commonwealth, *Parliamentary Debates,* Senate, 15 June 2007, 19 (Rachel Siewert); Commonwealth, *Parliamentary Debates,* Senate, 15 June 2007, 21 (Rachel Siewert); Commonwealth, *Parliamentary Debates,* Senate, 13 August 2007, 114 (Christine Milne).

64 'The government's intervention plan to reform housing arrangements by establishing market based rents for public housing with normalised tenancy requirements are welcome provided they are accompanied by improved housing stock': Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 69 (Jenny Macklin, Shadow Minister for Indigenous Affairs).

65 Commonwealth, *Parliamentary Debates,* Senate, 8 August 2007, 39-40 (Chris Evans).

66 Town camps are communities of Aboriginal residents located on perpetual leasehold titles within major urban centres in the Northern Territory, such as Alice Springs, Katherine and Darwin.

67 Commonwealth, *Parliamentary Debates*, House of Representatives, 31 May 2006, 5 (Mal Brough).

68 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 93 (David Tollner).

69 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 31 (Mal Brough). See also David Tollner at 94, Bob Katter at 107 of this same debate, agreeing with the characterisation of Aboriginal communities as 'communist enclaves'.

70 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 93 (David Tollner).

71 Ibid 91.

72 Ibid 92.

73 Ibid 91.

74 Commonwealth, *Parliamentary Debates*, House of Representatives, 31 May 2006, 5 (Mal Brough, Minister for Indigenous Affairs).

75 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 June 2007, 6 (David Tollner).

76 Ibid 4.

77 With the exception of Senator Helen Coonan, tasked with reading the Second Reading Speech of the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Cth) and accordingly using the same language as Brough in the House of Representatives. See Commonwealth, *Parliamentary* Debates, Senate, 20 June 2006, 64 (Helen Coonan).

78 'They simply want to be able to buy their own home and have a good education. They want some safety in their communities. They want some employment.': Commonwealth, *Parliamentary Debates*, Senate, 19 June 2006, 63 (Nigel Scullion).

79 Commonwealth, *Parliamentary Debates*, Senate, 9 August 2006, 38 (Chris Evans).

80 Commonwealth, *Parliamentary Debates*, House of Representatives, 21 June 2006 (Mal Brough).

81 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 6 (Mal Brough).

82 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 11 (Mal Brough).

83 Ibid.

84 Ibid.

85 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 95 (David Tollner).

86 Commonwealth, *Parliamentary Debates*, Senate, 21 June 2007, 74 (Nigel Scullion).

87 Ibid.

88 Commonwealth, *Parliamentary Debates*, Senate, 15 August 2007, 37 (Nigel Scullion).

89 Commonwealth, *Parliamentary Debates*, Senate, 14 August 2007, 56 (JudithAdams).

90 Commonwealth, *Parliamentary Debates*, Senate, 13 August 2007, 106 (Alan Eggleston).

91 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 February 2008, 246 (Brendan Nelson, Leader of the Opposition).

92 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 68 (Jenny Macklin).

93 Commonwealth, *Parliamentary Debates*, Senate, 15 June 2007, 19 (Rachel Siewert).

94 Commonwealth, *Parliamentary Debates*, Senate, 15 August 2007, 23 (Chris Evans).

95 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 70 (Jenny Macklin).

96 E W Soja, *Postmodern Geographies: The Reassertion of Space in Critical Social Theory* (Verso, 1989) 79-80.

97 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 11 (Mal Brough).

98 Commonwealth, *Parliamentary Debates*, House of Representatives,31 May 2006, 5 (Mal Brough).

99 Commonwealth, *Parliamentary Debates*, House of Representatives, 7 August 2007, 11 (Mal Brough).

100 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 31 (Mal Brough).

101 Commonwealth, *Parliamentary Debates*, House of Representatives, 20 March 2008, 2411 (Sharman Stone).

102 Commonwealth, *Parliamentary Debates*, House of Representatives, 13 August 2007, 106 (Alan Eggleston).

103 Commonwealth, *Parliamentary Debates*, House of Representatives, 19 June 2006, 92 (David Tollner).

104 See above n 11.

105 Edward Said, *Orientalism* (Vintage Books, 1978).

106 See, eg, Bain Attwood, 'Introduction: Power, Knowledge and Aborigines' (1992) 35 *Journal of Australian Studies* 1; Lee C Godden, 'The Invention of Tradition: Property Law as a Knowledge Space for the Appropriation of the South' (2007) 16(2)

Griffith Law Review 375; Alpana Roy, 'Postcolonial Theory and Law: A Critical Introduction' (2008) 29 *Adelaide Law Review* 315.

107 Stuart Banner, 'Why Terra Nullius? Anthropology and Property Law in Early Australia' (2005) 23 *Law and History Review* 95, 108.

108 Renisa Mawani, 'Genealogies of the Land: Aboriginality, Law, and Territory in Vancouver's Stanley Park' (2005) 14(3) *Social and Legal Studies* 315, 323.

109 Alison Anderson and Paul Henderson, 'A Working Future: Real Towns, Real Jobs, Real Opportunities' (Media Release, 20 May 2009) 1 <http://www.territorystories.nt.gov.au/handle/10070/218120>.

110 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 19 April 2007 (Alison Anderson).

111 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 29 August 2007 (Lorraine Braham).

112 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 20 February 2007 (Karl Hampton).

113 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 10 June 2009 and 12 October 2009 (Adam Giles); Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 15 October 2009 (Paul Henderson, Chief Minister of the Northern Territory).

114 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 6 May 2008 (Alison Anderson).

115 Tara Ravens, 'Government in Crisis as Pollie Quits Labor', *News.com.au* (online), 4 August 2009 <http://www.news.com.au/breaking-news/government-in-crisis-as-pollie-quits-labor/story-e6frfku0-1225757847699>. Alison Anderson later joined the Country Liberal Party in 2011. In 2014, she defected from the Country Liberal Party and joined the Palmer United Party.

116 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 5 May 2010 (Alison Anderson).

117 Anderson and Henderson, above n 109, 1

118 The remaining 'growth towns' were generally not located on Aboriginal land, and accordingly not targeted for 40-year Housing Leases under SIHIP.

119 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 15 October 2009 (Marion Scrymgour). See also Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 24 February 2010 (Marion Scrymgour).

120 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 5 May 2010 (Rob Knight).

121 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 10 June 2010 (Gerry Wood).

122 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 28 April 2010 (Willem Westra van Holthe).

123 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 24 February 2010 (Marion Scrymgour).

124 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 5 May 2010 (Rob Knight).

125 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 10 June 2010 (Gerry Wood).

126 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 5 May 2010 (Alison Anderson).

127 Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 5 May 2010 (Rob Knight).

128 Brian Lloyd, 'Dedicated Indigenous Representation in the Australian Parliament' (Research Paper No 23, Parliamentary Library, Commonwealth, 2009).

129 'Normalising arrangements involves accepting and recognising a fair payment may be required for the use of land for government assets.' Northern Territory, *Parliamentary Debates*, Northern Territory Legislative Assembly, 23 February 2011 (Malarndirri McCarthy).

130 For example, they each involve the grant of a 'head-lease' to a government entity, which then has the power to grant dependent interests to other persons, without further reference to traditional Aboriginal owners.

131 This policy has been articulated in a number of policy documents since 2007. See, eg, Council of Australian Governments, *National Partnership Agreement on Remote Service Delivery* (2008) <http://www.federalfinancialrelations.gov.au/content/npa/other/remote_service_delivery/national_partnership.pdf>; Federal Financial Relations, *Remote Service Delivery Bilateral Plan: Implementation Plan for National Partnership Agreement on Remote Service Delivery* (2009) <http://www.federalfinancialrelations.gov.au/content/npa/other/remote_service_delivery/QLD_IP.pdf>. The Northern Territory announced its intention to pay rent for leases on Aboriginal land in November 2011. See Malarndirri McCarthy, 'Historic Decision to Pay the Rent to Lease Aboriginal Land' (Media Release, 23 November 2011) 1 <http://www.territorystories.nt.gov.au/handle/10070/236919>.

132 Roanna Edwards, 'Record Number of Lease Agreements Approved by NLC Full Council', *Northern Land Council* (online) 1 June 2012 <http://www.nlc.org.au/media-releases/article/record-number-of-lease-agreements-approved-by-nlc-full-council>.