

Remote housing in the NT and access to legal services

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Since 2009 Legal Service providers in the Northern Territory, including North Australian Aboriginal Justice Agency (NAAJA), Central Australian Aboriginal Legal Aid Service (CAALAS), Northern Territory Legal Aid Commission (NTLAC), Darwin Community Legal Service (DCLS) along with the Law Society Northern Territory have been calling for funding to establish a Remote Tenancy Legal Advice Service (RTLAS) in the Northern Territory.

The aim of the RTLAS is to meet some of the demand for legal services created by the significant remote housing reforms which have occurred under the National Partnership Agreement on Remote Indigenous Housing (NPARIH).

A brief history

Prior to 2008 houses in remote communities were managed by Indigenous Community Housing Organisations (ICHOs). June 2007 saw the Northern Territory National Emergency Response (NTER) and with that compulsory five year leases which saw the Commonwealth effectively become the landlord of houses in remote communities.

April 2008 saw the commencement of the Strategic Indigenous Housing and Infrastructure Project (SIHIP).

In December 2008 the National Partnership Agreement on Remote Indigenous Housing (NPARIH) subsumed SIHIP.

To date the expenditure under NPARIAH has been \$1.7 billion

which saw 934 new houses built in 20 communities, 415 rebuilds, and 2,500 refurbishments across 73 communities and town camps in the Northern Territory.

NPARIAH also saw the introduction of public housing model for remote communities. In December 2008 Territory Housing was contracted by FaHCSIA to provide property and tenancy management services for approximately 5,000 houses in remote communities.

Overlaying these housing reforms was the dissolution of approximately 60 Community Government Councils which were replaced with 8 "Super" Shire Councils in July 2008.

The compulsory NTER leases expired on 17 August 2012 and a number of communities are declining to enter into further lease arrangements.

What are the challenges?

There are many problems in remote communities arising from these unprecedented reforms. The reforms have not largely addressed existing issues and have added a new layer of complexity and disconnection. This has been compounded by the contracting of Shire Councils to deliver repairs and maintenance services for Territory Housing; a job that the Shires have to manage with access to Territory Housing's IT systems.

Territory Housing has established a hierarchy of tenancy rights in remote

communities, with only those people living in new, refurbished or rebuilt houses gaining the protections of the *Residential Tenancies Act* (NT). Those people living in legacy dwellings, despite paying rent to live in the house, are denied those same rights and protections. The legal basis for this hierarchy is questionable.

Overcrowding remains a significant issue in the Territory. In 2007, it was estimated that the Northern Territory needed a further 4000 dwellings to adequately house then present population, with more than 400 houses needed each year for 20 years to keep pace with demand.¹

The Northern Territory has the highest rate of homelessness in Australia, with a figure of 792 per 10 000. This figure tripled based on new ABS methodology which includes severe overcrowding in homelessness data.²

There is a critical shortage of functional houses in remote communities. There are also long waiting lists for public housing in the cities and regional centres of the Northern Territory.

The housing needs for remote communities are an expensive yet important investment, and not going to diminish with time. In line with construction of new homes, repairs to old homes the obligation for ongoing maintenance and repairs will also increase.

Some of these issues were highlighted by the Commonwealth Ombudsman's in its June 2012



report titled *Remote Housing Reforms in the NT*. The most significant issue identified was the lack of accountability between the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and Northern Territory Government agency, Territory Housing. Further problems outlined in the report were poor communication, inadequate IT systems and issues with the housing complaints model.

In practical terms legal services that visit remote communities have identified that people need assistance to:

- Ensure essential repairs and maintenance work are completed;
- Find out how much rent is being paid by the household and how rent is calculated;
- Understand their rights and obligations and Territory Housing's rights and obligations as a landlord;
- Make applications for public and remote housing
- Recover rent monies paid to Territory Housing in error
- Obtain compensation for Territory Housing's breaches of their obligation as landlord under the *Residential Tenancies Act*.
- Communicate with Territory Housing

Territory Housing has legal obligations under the *Housing Act NT* and the *Residential Tenancies Act NT* which tenants require assistance to pursue due to a combination of remoteness, language and literacy issues, low understanding of concepts of tenant's rights and obligations. In summary tenancy is a legal issue.

What help is available?

Importantly this growing area of legal need has not been met with increased funding. Darwin Community Legal Service (DCLS)

has funding for two tenancy lawyers – these roles are ostensibly at capacity dealing mainly with tenancy issues in the Darwin area. NTLAC is able to provide basic assistance on housing issues as part of their outreach project to a limited number of remote communities.

NAAJA and CAALAS received funding to assist people with welfare rights issues, that is, Centrelink matters, following the NTER. NAAJA and CAALAS obtained approval for their welfare rights solicitors to also assist clients with tenancy issues in response to the increasing numbers of clients seeking assistance with housing issues in remote communities – but the need is overwhelming.

There are also a significant number of systemic issues that have been identified by the legal services and the Commonwealth Ombudsman which require redress, for example the tenancy agreement used by Territory Housing in remote communities is inconsistent with the *Residential Tenancies Act* in many respects.

Proposal for a Remote Tenancy Legal Advice Service

The emergence of this legal need was identified as early as 2009 and has been acknowledged by all stakeholders.

The Law Society and legal service providers prepared a detailed submission about how this need could be met. The proposal envisages a community-based collaborative service hosted by legal service organisations across the Northern Territory.

The Remote Tenancy Legal Advice Service proposes to employ solicitors, field officers and advocates with expertise in tenancy matters and will benefit from in-kind support and associated services provided by the host legal services. Funding for that

proposal has not been forthcoming despite increasing demand for legal services around housing issues.

What about administrative review?

It is important to acknowledge that the Territory does not have an independent administrative review tribunal to scrutinise the decisions of Northern Territory Government agencies.

People affected by decisions of Territory Housing can appeal to the Territory Housing Appeals Board, but the findings of the Appeals Board are not binding on Territory Housing. The remaining avenue of appeal is the inherent jurisdiction of the Supreme Court.

Growing dissatisfaction

The recent report, *Fixing the hole in Australia's heartland: How Government needs to work in remote Australia* which was facilitated by Desert Knowledge Australia and launched in September 2012, highlights that residents of remote Australia are dissatisfied with the way both Commonwealth and Northern Territory Government deal with them and their issues.

In light of the increased legal need identified by the legal services, the Law Society Northern Territory along with other legal service providers will continue the call for a free, independent, confidential service and accessible for people living in remote housing in the Northern Territory. ●

Endnotes

1. *Ampe Akelyerenemane Meke Mekarle – Little Children are Sacred Report of the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, 2007.*
2. <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/2049.0Media%20Release12006?opendocument&tabname=Summary&prodno=2049.0&issue=2006&num=&view=>

