



Indigenous land reform: when is freehold better than a lease?

Never Stand Still

Faculty of Law



INDIGENOUS LAW CENTRE

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- Over last ten years, governments introducing land reform
- E.g. township leases, five-year leases

All involve leasing and subleasing, with no change to underlying ownership

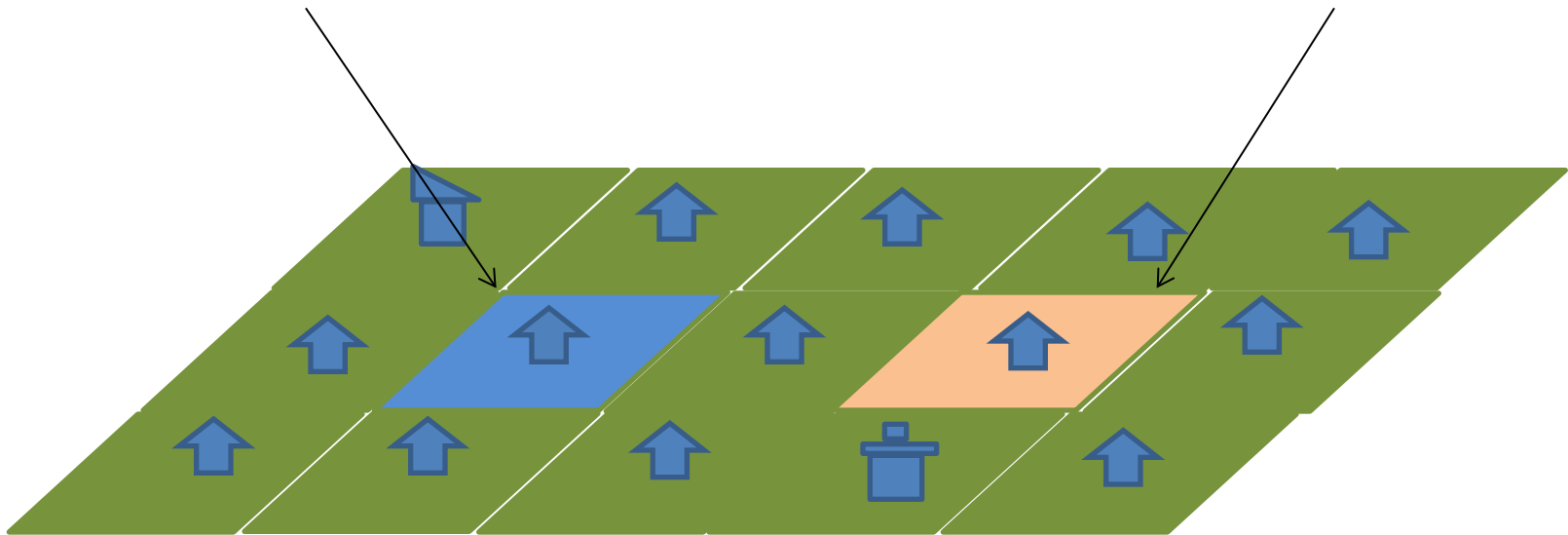
... until now.

Aboriginal and Torres Strait Islander Land (Providing Freehold) and Other Legislation Amendment Act 2014

- voluntary
- only applies to land inside communities
- 34 communities, all (?) on DOGIT land
- becomes *ordinary* freehold
- can only be made to an ATSI person, or their spouse or former spouse
(can be on-sold to anyone).

LEASE

FREEHOLD



What is the difference (under property law)?

- X freehold is 'normal' and therefore better
- X freehold failed in the US and NZ so should never be tried
- ✓ what is best for the needs of the community and native title holders?

Threshold issue

Impact on native title



Four main differences between a lease and freehold:

- rent
- duration
- transferability
- restrictions on use



Leasehold spectrum

Leasehold-like lease

Freehold-like lease



Spectrum

Leasehold-like lease

Freehold-like lease

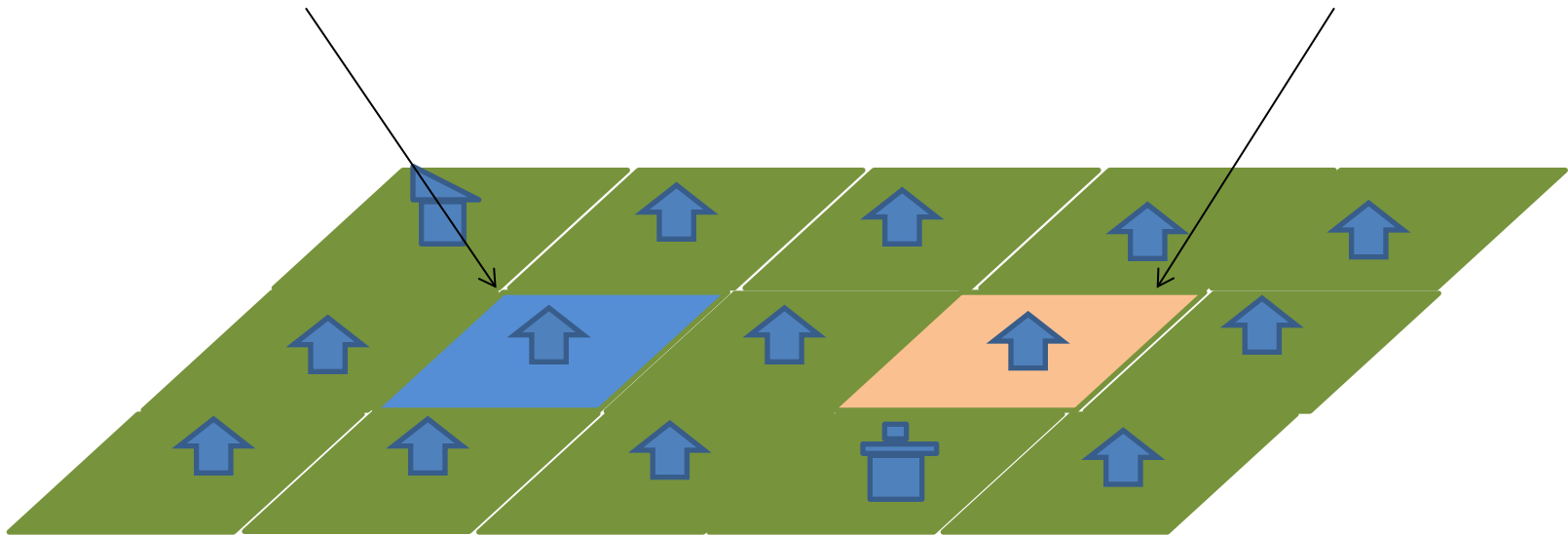
Ordinary
Freehold



Spectrum

LEASE

FREEHOLD



What is the difference (under property law)?

1. Rent

Leasehold-like lease

Freehold-like lease

Freehold



Rent

Ongoing rent

Nominal rent

No rent



1. Rent

Leasehold-like lease

Freehold-like lease

Freehold

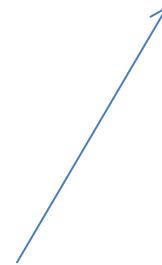


Rent

Ongoing rent

Nominal rent

No rent



Up-front purchase price.

2. Duration

Leasehold-like lease Freehold-like lease Freehold



Duration

Short-term
e.g. 1 year

Long-term
e.g. 99-year

Perpetual

3. Transfer

Leasehold-like lease

Freehold-like lease

Freehold



Transfer Not allowed

To anyone To anyone

3. Transfer

Leasehold-like lease

Freehold-like lease

Freehold



Transfer Not allowed

To anyone To anyone



No market

3. Transfer

Leasehold-like lease

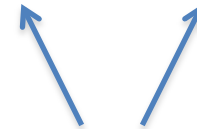
Freehold-like lease

Freehold



Transfer Not allowed

To anyone To anyone



No market

Open market

3. Transfer

Leasehold-like lease

Freehold-like lease

Freehold



Transfer

Not allowed

To anyone

To anyone



No market

Closed or regulated market

Open market



4. Use restrictions



Use
restrictions

Many

None

None*

Summary

Leasehold-like lease Freehold-like lease Freehold



Rent	Ongoing rent	No rent	No rent
Duration	Short	Long	Perpetual
Transfer	Can't	To anyone	To anyone
Use restrictions	Many	None	None

Example: township lease – sublease for home ownership

Leasehold-like lease Freehold-like lease Freehold



Rent X


Duration X

Transfer X

Use restrictions X

Example: township lease – sublease for a business

Leasehold-like lease Freehold-like lease Freehold



Rent X

Duration X

Transfer X

Use restrictions X

Example: Queensland home ownership lease

Leasehold-like lease

Freehold-like lease

Freehold



Rent X

Duration X

Transfer X

Use restrictions ?

Leasehold-like lease

Freehold-like lease

Freehold



Rent

No rent

Duration

Perpetual

Transfer

To
anyone

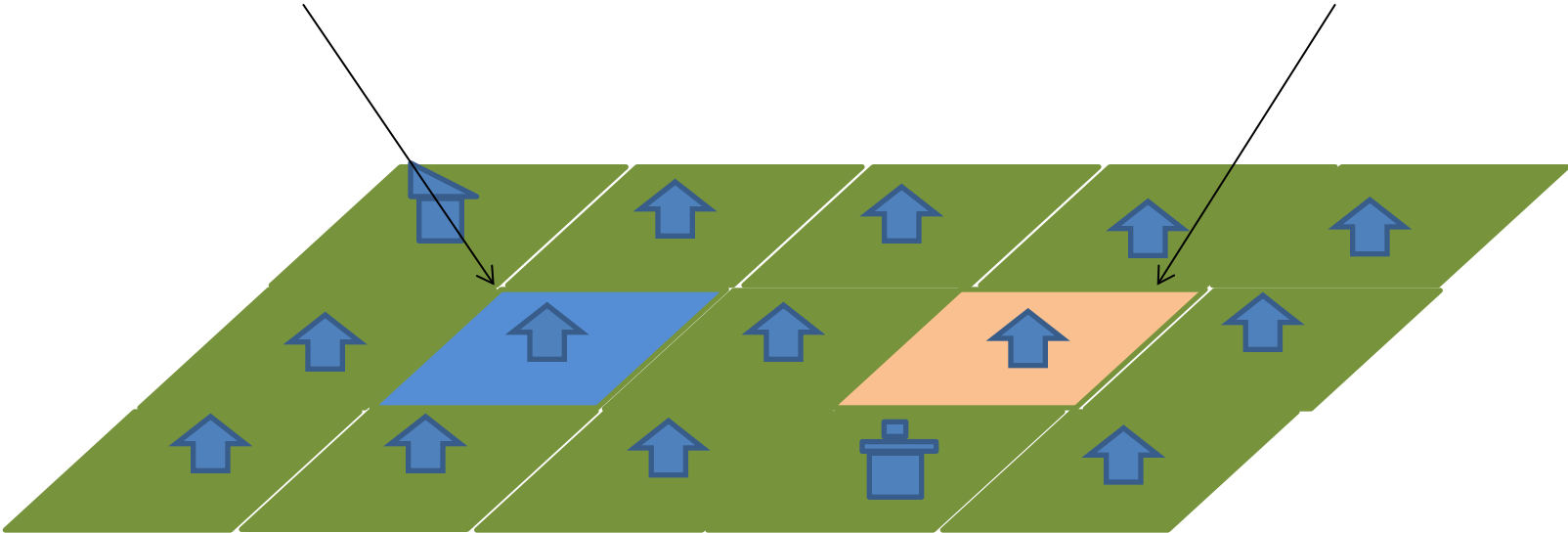
Use
restrictions

None



LEASE

FREEHOLD



Which combination is best for the Indigenous residents of these 34 communities?

Impact on native title.



Answer might be different for:

- Housing
 - Home ownership
 - Government housing
- Enterprises
- Services



Thank you

