

The Land Rights Act

+ Changes

made simple

History

A bark partition by the Yolngu and walk off by the Gurindji put land rights on the national agenda.

In the early 1970s, the Woodward Commission led ultimately to the passage of the Land Rights Act in 1976.

The main purpose of the Land Rights Act was to allow for grants of land to Aboriginal people.

Key features were that Aboriginal land was to be inalienable, meaning that it could not be traded or given away, and that traditional owners could control mining and other uses on Aboriginal land, meaning that Aboriginal people could protect their land.

Half of the Northern Territory is now Aboriginal land.

The Land Rights Act was amended significantly in October 2006.



Traditional Landowners

The Land Rights Act defines ‘traditional landowners’ as a group of Aboriginals who have “primary spiritual responsibility” for sacred sites on a piece of land, and who are entitled by Aboriginal tradition to hunt and gather on that land.

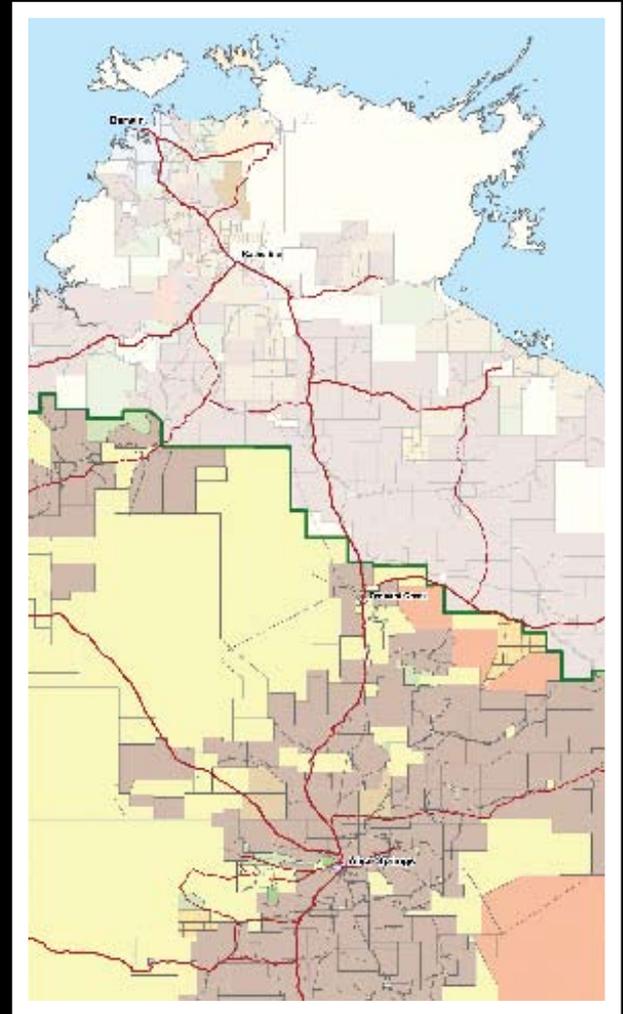
Traditional landowners are the key decision makers for their land, although Land Councils must also talk to affected communities.

Land Trusts

Title to Aboriginal land must be held by a Land Trust for the benefit of the traditional landowners. It is not held by Land Councils. It is ‘inalienable’ and can not be bought or sold.

The Northern Territory Government cannot ‘compulsorily’ acquire the land.

As the owner, the Land Trust may grant an interest over that land for homes for Aboriginal people or workers, for Aboriginal businesses, or for any community purpose.



Above: Land Tenure in the Northern Territory. The yellow areas show Aboriginal land



However, a Land Trust cannot grant any interest until directed by the Land Council. Before giving a direction, a Land Council must:

- consult with and have regard to the interests of traditional owners
- ensure that traditional owners understand any proposal

ensure any affected Aboriginal community has expressed its views

- comply with traditional decision making processes

- not give a direction without the consent of traditional owners.

So a Land Trust owns the land and the Land Council checks if traditional owners agree with proposals.

The Land Council then directs the Land Trust to carry out the proposals and the Land Trust must follow the directions.



Community Leasing (this is a new provision)

With the consent of traditional owners, a Land Trust may lease a community to a government body ('entity') for 99 years.

Any person or business would then need to apply to the government body for a sublease.

The Land Trust or traditional owners would have no control over this sublease process.

The permit system would effectively be abolished where there was a community lease.

The setup, surveying and valuation costs to establish the leasing arrangement would come out of ABA.

It is unclear what will happen to assets sitting on land which is to be leased to a government body.

Note: New provisions in the Land Rights Act which was amended in October 2006 are shown in red or yellow throughout this booklet



Establishment of Land Councils

The Land Rights Act established the Northern Land Council and Central Land Council.

Anindilyakwa and Tiwi Land Councils were formed from areas within the Northern Land Council region.

Any Aboriginal person or association may apply to the Minister to form a new Land Council.

If the Minister agrees with the application, and 55 per cent of people support it in a vote, the Minister may form the new Land Council (previously a new Land Council could be formed if the Minister was satisfied a 'substantial majority' supported it).



Above: Wave Hill veterans Billy Bunter and Jimmy Wave Hill share their stories at the site of the old Wave Hill homestead and below : Warumungu dancers at Kalkaringi



Functions of Land Councils

Land Councils must consult with traditional landowners and traditional landowners must give their consent before action can be taken affecting their land.

Specifically, Land Councils must:

- express the wishes of Aboriginal people about the management of their land
- protect the interests of traditional owners
- assist Aboriginal people to protect sacred sites
- consult traditional landowners and other Aboriginal people about proposals for the use of their land
- keep a register of Land Council members and members of Land Trusts and descriptions of Aboriginal land
- attempt to resolve disputes about land.

To do these jobs, Land Councils may:

- employ staff
- obtaining advice and assistance from experts
- give lawful directions to Land Trusts holding land, and
- receive and distribute royalty monies





Delegation of Land Council functions

The power to do Land Council jobs may be passed over to (or delegated) to an Aboriginal body incorporated under Commonwealth law.

This means that an Aboriginal body can apply to the Minister to be able to do the job of Land Council for a particular region.

The Minister can make this decision regarding delegation even if the Land Council or traditional owners disagree. The Minister must check that the body would have the right skills to be able to do the job properly.

Council Meetings

Members of the Land Council must be elected in accordance with rules approved by the Minister. Currently there are 9 regions and 90 members approved by the Minister.

All Members must reside in the Land Council area.

A person is not eligible to be a Member if they have been convicted of certain offences. Members must provide a list of financial interests which the Minister has determined must be disclosed.

Land Council must have a Chair and Deputy Chair.

The Chair can call as many meetings of the Land Council as necessary.

A quorum for a Council meeting is half the delegates.

Decisions are by majority.

Land Council may appoint committees to assist its functions. The CLC has appointed an Executive for this purpose.



Royalty or Land Use Money

All money paid to Land Councils arising from mining agreements or other land uses is held in trust by Land Council for traditional owners.

Land Council must pay these monies to traditional owners within six months of receiving the money as determined by the Land Council.

Monies will generally be paid to royalty associations which have rules about distributions to their members.

When a royalty association spends money, it must tell the person to who it pays the money what the purpose of the payment is.

All royalty associations must report the names of people receiving payments, and the dates, amounts and purposes of payments to the Land Council.

If a royalty association does not report to the Land Council, Land Council may suspend further payments to that royalty association.

The activities and operations of royalty associations receiving certain payments under determinations may be audited by the Australian Government Office of Evaluation and Audit.

These changes are designed to increase the accountability of royalty money. (previously royalty associations did not have to specify pur-

poses for expenditure and did not have to report details to Land Councils)

Land Claims

The Land Rights Act says that the Aboriginal Land Commissioner decides on land claims. The Land Commissioner must be a judge.

No new land claims could be brought from 5 June 1997.

For any outstanding claims, the Land Commissioner can request the Land Council to provide further information within 6 months or the claim is disposed of (finished).

Otherwise, the Land Commissioner must make a report to the Minister for Indigenous Affairs who decides whether to recommend to the Governor General to make the grant

Mining

The Land Rights Act sets out how exploration 'looking around' and mining must be done on Aboriginal land.

A mining company must provide details of its plan and a Land Council must consult with traditional land owners about that plan to explore on their land.

Traditional owners have around two years to make a decision, which may be extended if the company agrees. (previously one year with provision for extensions)

If traditional owners say no, the mining company and any other company will be blocked for five years, unless the Land Council applies to remove this block. (previously could not apply to remove block but could remove block after 2 years in special cases)

If traditional owners say yes, the mining company and traditional owners must make an agreement about looking around.

The company must provide further details and make a further agreement before mining, but traditional owners cannot block mining if they say yes to exploration.

Aboriginals Benefit Account

The Land Rights Act establishes the Aboriginal Benefit Account (ABA).

Payments are made to the ABA from the Com-

monwealth and the Territory based on how much mining has been done on Aboriginal land.

Of the money in the ABA:

- a proportion determined by the Minister goes to the Land Councils {previously 40% of the ABA money was guaranteed to fund the Land Councils}

- 30% goes to the areas affected by mining, and

- the balance is for the benefit of Aboriginals living in the NT and may be used for community grants and administration of the ABA. (previously the balance was set at 30% but now the balance could be higher if Land Councils receive less funding; previously this money could also be made as extra payments to the Land Councils but now cannot)

The job of the ABA Advisory Committee is to 'advise the Minister' about how to use the balance of funds for the benefit of Aboriginals living in the NT.

The Committee is made up of:

- a Chair appointed by the Minister
- one or two members appointed by the Minister who have land management or business expertise
- members elected by each Land Council.

The CLC currently elects five members to sit on the Advisory Committee.

The NLC has seven members on the Advisory Committee and the Tiwi Land Council and Anindilyakwa Land Councils have one each.

The ABA only has an advisory role, so it cannot tell the Minister what to do with money in the ABA, it can only advise the Minister about how it would like the community grant money to be spent.

Other

The Land Rights Act offers a range of further protections for Aboriginal land:

- roads cannot be built on Aboriginal land without the consent of traditional land owners
- damaging sacred sites is an offence
- entering Aboriginal land without a permit is an offence (May 2007 permit system currently under review – the Minister has made clear he believes there should be no permits for major communities)
- the Northern Territory Government is given the power to make laws for the protection of sacred sites and permits to enter Aboriginal land.





**Produced by the Central Land Council
May 2007**

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For enquiries on the Land Rights Act call 0889516202

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