

# LAND RIGHTS ACT



## THE ABORIGINAL LAND RIGHTS ACT

Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)







## THE ABORIGINAL LAND RIGHTS ACT

The *Aboriginal Land Rights (Northern Territory) Act 1976 (ALRA)* was the first attempt by an Australian government to legally recognise the Aboriginal system of land ownership.

The Aboriginal Land Rights Act (NT) can be updated or changed by the Australian Government and it has been changed many times since it was first passed.



## Granting land

The main purpose of the Land Rights Act is to allow for grants of land to Aboriginal people, both through the automatic granting of what had been designated as Aboriginal reserves and through a process to claim other land.

Key features are that Aboriginal land is inalienable freehold, meaning that it could not be traded or given away, and that traditional owners could control mineral exploration and other activities, meaning that Aboriginal people could protect their land.

**Half of the Northern Territory is now Aboriginal land.**

## Traditional owners

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.

The legal recognition of Aboriginal land rights changed the lives of Aboriginal people in the Northern Territory. Those who were rounded up and shifted to authorised settlements were able to return to their own country, to set up their own outstations and care for their land and sacred places.

In the Central Land Council region, traditional landowners have won back more than 400,000 square kilometres of land. About half of that area was handed back after successful land claims, with the rest made up of former reserves and missions.

## Permits

Like other landowners, traditional landowners have control over who enters their land and what they do there. However, contrary to the views of some, traditional landowners are keen to share their country and to develop their resources.

Each year the CLC issues more than 3,000 permits to tourists, mining companies, researchers and others seeking to enter Aboriginal land. As well, a wide range of commercial activities, including cattle operations, tourism ventures and mineral exploration and extraction, currently take place on Aboriginal land. A permit is not required for 'common areas' within communities on Aboriginal land.





## HISTORY

**In 1963 the people of Yirrkala Mission in Arnhem Land submitted a petition – a traditional bark painting – to the Commonwealth Parliament. They also challenged the Commonwealth Government’s legal power to issue a mining lease at Gove without the consent of the traditional owners.**

Eight years later, their claim was rejected and the Northern Territory Supreme Court, while recognising that Yolngu had a system of laws, ruled that the traditional landowners’ property system was not recognised under Australian law. The Supreme Court did not seek to overturn the earlier court decisions that Australia was terra nullius, an empty land, prior to 1788. It was not until the Mabo decision

in the early 1990s that the fiction of terra nullius was finally overturned. But there were many significant events in the history of land rights in the decades leading up to that decision.

On 22 August 1966 the Gurindji people working as stockmen on Wave Hill Station walked off in protest at the appalling conditions they worked and lived in, and

camped on their traditional country at Daguragu. It was the start of a political struggle that led to the Aboriginal Land Rights Act and the creation of the Central Land Council.

***We were treated just like dogs. We lived in humpies. You had to crawl in and out on your knees. There was no running water. The food was bad – just flour, tea, sugar and bits of beef – like the head or feet of a bullock.***

**BILLY BUNTER**

In March 1966 the Arbitration Commission had ruled that Aboriginal pastoral workers should be paid equal wages. The court's decision was to be phased in over three years.

But the Gurindji people were not seeking wages. They were fighting to win back their land and refused to return to work even when the station owner, Lord Vestey, offered to pay some 'money' wages.

They resisted the threats, harassment and cajoling by pastoralists, politicians and public servants and put land rights on the national political agenda, speaking at public meetings nationally and building support from Aboriginal and non-Aboriginal people and organisations throughout Australia.

In February 1972 Aboriginal protesters set up an Aboriginal Tent Embassy on the lawn outside Parliament House in Canberra. The Embassy highlighted the dispossession of Aboriginal people and

attracted national and international media attention and public support. The recognition of land rights was now Labor Party policy and the opposition leader, Gough Whitlam, visited the Tent Embassy to personally express his support for the protest.

***We will legislate to give Aborigines land rights – not just because their case is beyond argument, but because all of us Australians are diminished while the Aborigines are denied their rightful place in this nation.***

**GOUGH WHITLAM, ALP POLICY SPEECH, NOVEMBER 1972**

In the federal election of December 1972, the Labor Party won and it appointed Justice Woodward to head a Royal Commission into how land rights should be implemented in the Northern Territory.

A new Department of Aboriginal Affairs was created in 1973 and Justice Woodward delivered his interim report recommending the establishment of Central and Northern Land Councils in the Northern Territory to represent traditional landowners.

He delivered a second report in 1974, setting out procedures for Aboriginal land claims and conditions of land tenure, including control over mining. He recommended that Aboriginal people should be able to claim unalienated crown land, Aboriginal reserves and Aboriginal-owned pastoral leases where they were able to prove traditional



affiliation, and make claims over small areas on pastoral properties and in towns on the basis of need.

Justice Woodward recommended that the Land Councils would help lodge land claims, protect Aboriginal interests in land (including sacred sites) and assist Aboriginal landowners in the management and use of their land.

The Whitlam Government introduced the Aboriginal Land (Northern Territory) Bill 1975 into Parliament based on the Woodward recommendations but Whitlam

was dismissed in November 1975 and the new Fraser Government changed land rights policy substantially.

A thousand Aboriginal people marched in Alice Springs in March 1976 in support of land rights and the Land Councils and subsequently campaigned all over the country. In June 1976 the Fraser Government introduced the Aboriginal Land Rights (Northern Territory) Bill into Parliament. It was passed in December 1976 and became law on 26 January 1977.



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## ABORIGINAL LAND COUNCILS

There are four Land Councils in the Northern Territory established under the Aboriginal Land Rights Act: The Central Land Council, which covers the southern half of the Territory, the Northern Land Council, the Tiwi Land Council and the Anindilyakwa Land Councils.

No other state or territory in Australia has a law as strong as the *Aboriginal Land Rights (Northern Territory) Act 1976*, which provides the Aboriginal landowners with strong and secure control over their land.

## NORTHERN TERRITORY LAND TENURE MAP

### Key

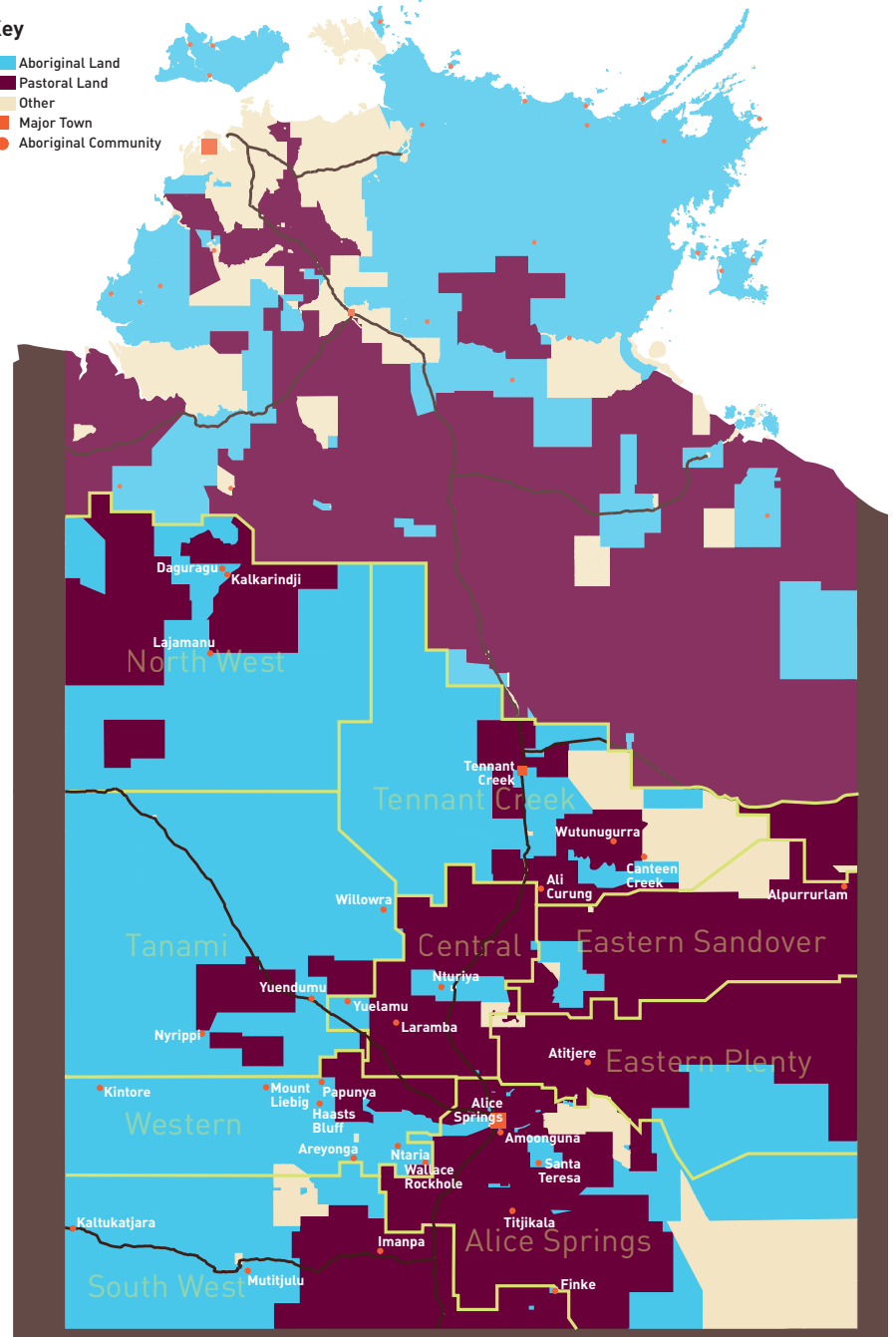
- Aboriginal Land
- Pastoral Land
- Other
- Major Town
- Aboriginal Community

## 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 lodged from 5 June 1997. This was called the sunset clause.

For any outstanding claims, the Land Commissioner can request the Land Council to provide further information within six 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.





# Land Trusts

Title to Aboriginal land is formally held by a Land Trust for the benefit of the traditional landowners. It is not held by Land Councils. All decisions about the land are made by traditional owners. It is 'inalienable', so it cannot be bought or sold, but long term leases can be granted.

An Aboriginal Land Trust's members are people from the area in which the Land Trust holds land. As the owner, the Land Trust may grant an interest over that land to any person for any purpose.

# Leases on Aboriginal land

The majority of Indigenous communities in the Northern Territory are on 'Aboriginal land' as defined in the *Aboriginal Land Rights (Northern Territory) Act 1976*. The Land Rights Act allows for long term leases to be granted by traditional landowners for any purpose

These long term leases enable economic development and can be used to secure a mortgage.

## DECISIONS ON ABORIGINAL LAND



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# 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.

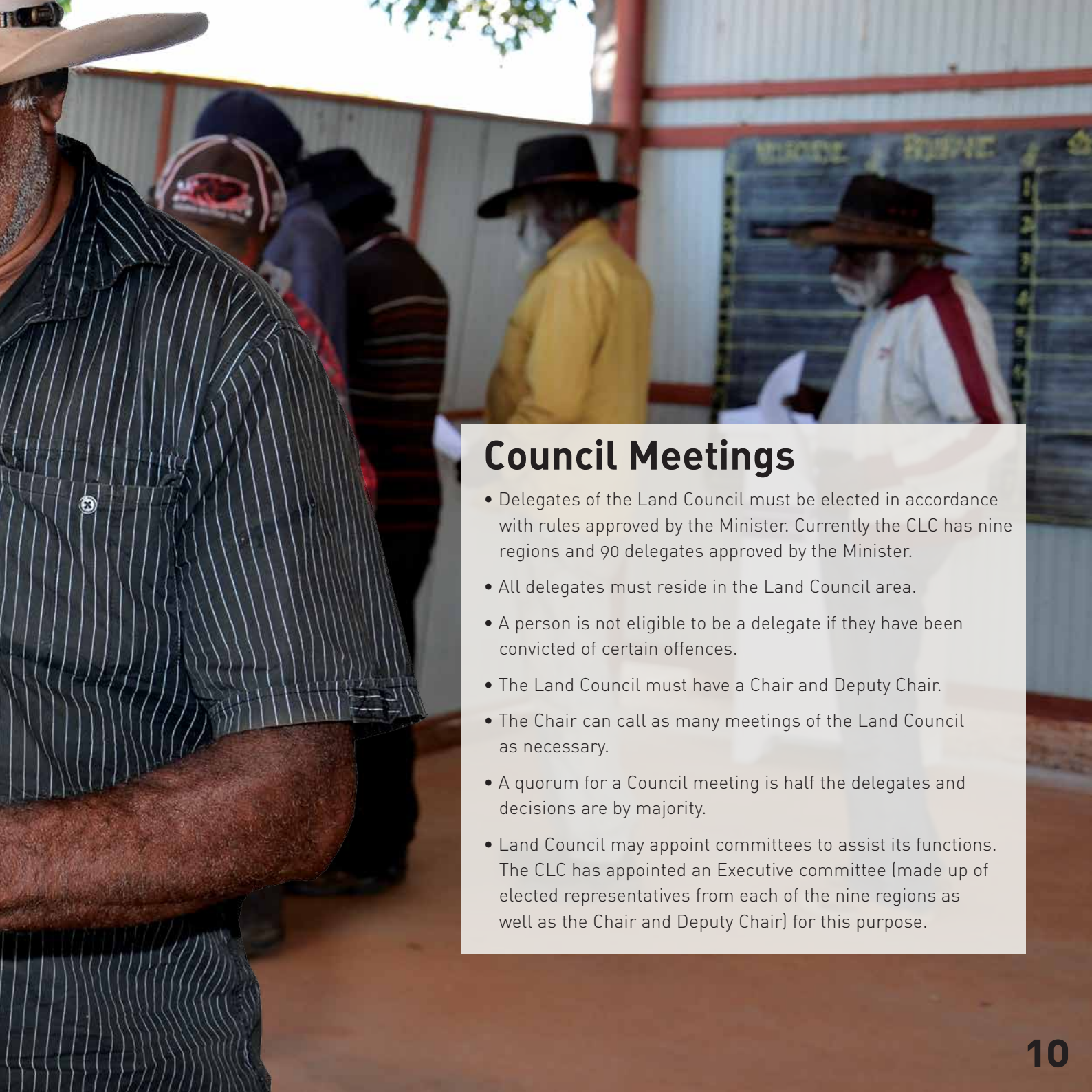
## Key functions of the Land Councils include:

- Find out and 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;
- Assist Aboriginals in the area of the Land Council to carry out commercial activities;
- 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;
- Obtain advice and assistance from experts;
- Give lawful directions to Land Trusts holding land;
- Receive and distribute royalty monies.





## Council Meetings

- Delegates of the Land Council must be elected in accordance with rules approved by the Minister. Currently the CLC has nine regions and 90 delegates approved by the Minister.
- All delegates must reside in the Land Council area.
- A person is not eligible to be a delegate if they have been convicted of certain offences.
- The 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 and decisions are by majority.
- Land Council may appoint committees to assist its functions. The CLC has appointed an Executive committee (made up of elected representatives from each of the nine regions as well as the Chair and Deputy Chair) for this purpose.

## Royalty or Land Use Money

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

The Land Council must pay these monies to or for the benefit of traditional owners within six months of receiving the money.

Monies will generally be used for community development projects or paid to royalty associations which have rules about distributions to their members.

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, the 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.



## 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 the Land Council must consult with traditional landowners 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.

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.

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 Aboriginals Benefit Account (ABA).

Payments are made to the ABA from the Commonwealth 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;
- 30% goes to the areas affected by mining;
- The balance is for the benefit of Aboriginal people living in the NT and may be used for community grants and administration of the ABA.

The Land Rights Act also establishes an ABA Advisory Committee. The job of the Advisory Committee is to 'advise the Minister' about how to use the balance of funds for the benefit of Aboriginal people living in the NT.

### **The Committee is made up of:**

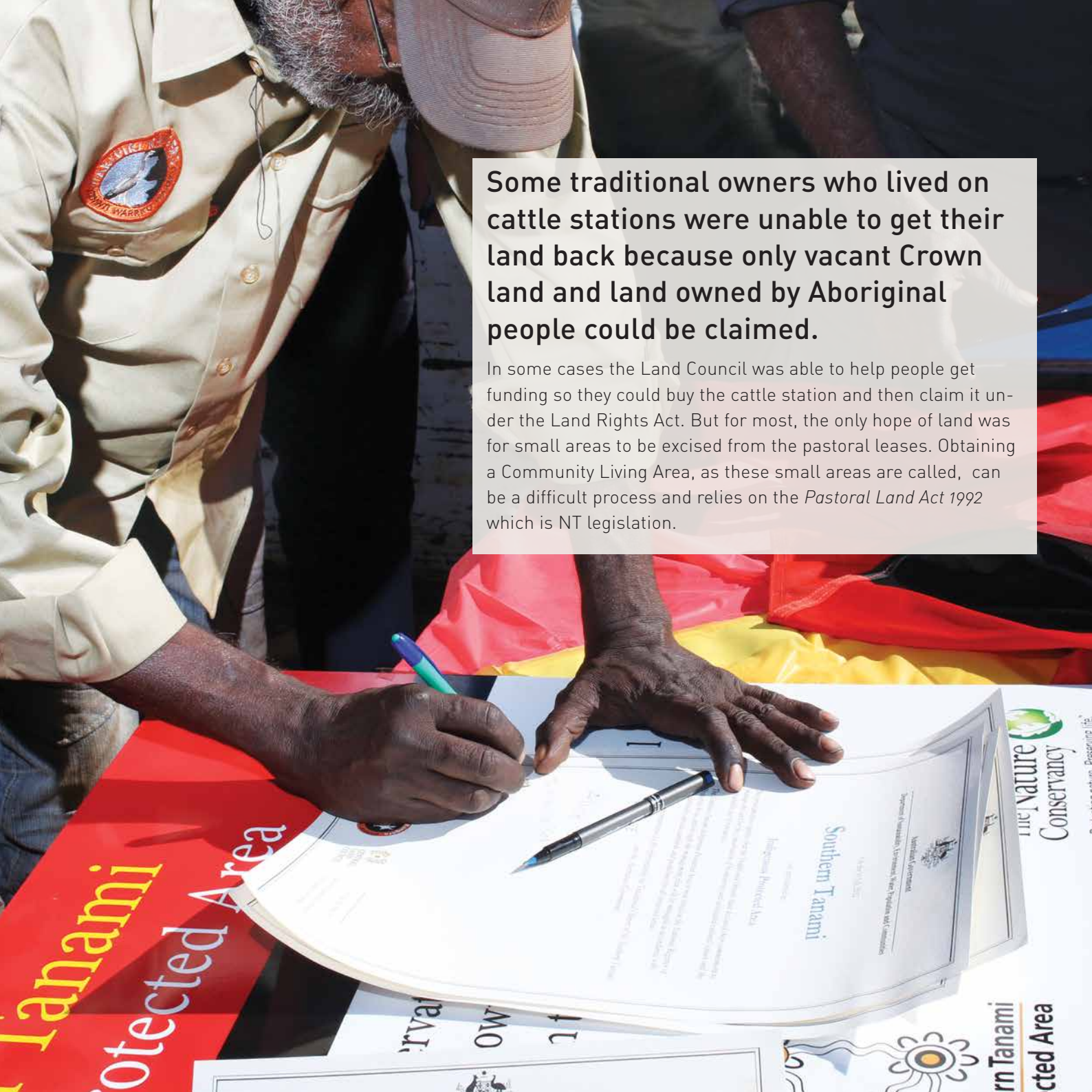
- A Chair appointed by the Minister;
- One or two members appointed by the Minister who have land management or business expertise;
- Members elected by each Land Council. The CLC currently elects five members to sit on the Advisory Committee.

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

The Advisory Committee 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.

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Some traditional owners who lived on cattle stations were unable to get their land back because only vacant Crown land and land owned by Aboriginal people could be claimed.

In some cases the Land Council was able to help people get funding so they could buy the cattle station and then claim it under the Land Rights Act. But for most, the only hope of land was for small areas to be excised from the pastoral leases. Obtaining a Community Living Area, as these small areas are called, can be a difficult process and relies on the *Pastoral Land Act 1992* which is NT legislation.

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Protected Area

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Southern Tanami

The Nature  
Conservancy

Southern Tanami  
Protected Area



## 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 landowners;
- Damaging sacred sites is an offence;
- Entering Aboriginal land outside common areas on communities without a permit is an offence;
- The Northern Territory Government is given the power to make laws for the protection of sacred sites and permits to enter Aboriginal land.

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