



## Indigenous Affairs Legislation Amendment Bill 2008

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## Indigenous Affairs Legislation Amendment Bill 2008

**Date introduced:** 29 May 2008

**House:** House of Representatives

**Portfolio:** Families, Housing, Community Services and Indigenous Affairs

**Commencement:** The day after it receives the Royal Assent

**Links:** The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

### Purpose

To amend the *Northern Territory National Emergency Response Act 2007* ('the NT NER Act') and also, the *Aboriginal Land Rights (Northern Territory) Act 1976* ('the Land Rights Act') to provide with respect to Northern Territory land which is owned by Aboriginal people:

- township leases to be for a period of between 40 and 99 years
- township leases to provide for rights of renewal
- to empower the Executive Director of Township Leasing to be able to enter into and administer certain leases granted under the Land Rights Act and, with respect to certain other Indigenous land, that this can be administered by an independent statutory office-holder, rather than directly by the Commonwealth, and
- to allow for the grant of thirteen further areas of Aboriginal land which will be operated as National Parks.

### Background

The Aboriginal Land Rights (Northern Territory) Act 1976 ('the Land Rights Act') was substantively and controversially amended in 2006 to, amongst other things, move from earlier ownership arrangements to facilitate 99 year leases of Aboriginal townships in the Northern Territory. According to some commentators, the essence of that key change represented a tacit reconfiguration of customary ownership into individual title, and in

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retrospect may end up yielding problematic outcomes for indigenous peoples.<sup>1</sup> For a detailed background on these amendments, see the Bills Digest by Jennifer Norberry and John Gardiner-Garden (June 2006).<sup>2</sup> The Senate's Community Affairs Committee also conducted an inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006.<sup>3</sup>

### A brief overview of the township leasing scheme

Title to land granted under the Land Rights Act is held by a Land Trust on behalf of the customary owners. Title is inalienable and equivalent to freehold title, but is held communally, reflecting the traditional nature of Aboriginal land ownership.<sup>4</sup>

Since its introduction in 1976 the Land Rights Act has been reviewed a number of times, with the most significant review tabled in Parliament in 1998. This was the Reeves Report, which recommended significant change to the Land Rights Act, including changes to the Land Council system, the (NT) Government power to compulsorily acquire Aboriginal land for public purposes, and the development of leasing arrangements to enable Aboriginal people to own their homes on communal land.<sup>5</sup>

The Reeves report prompted several further reviews, including one by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) and a joint response to the [Reeves Report](#) by the NT Government and Land Councils.<sup>6</sup>

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1. See for example, Samantha Hepburn, 'Transforming customary title to individual title: revisiting the cathedral', *Deakin Law Review*, Vol 11, No.1, 2006, p. 65.
  2. Jennifer Norberry and John Gardiner-Garden, *Bills Digest No. 158, 2005-06: Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, Parliamentary Library, Department of Parliamentary Services, June 2006.
  3. Senate Community Affairs Committee, *Provisions of Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, 1 August 2006.
  4. Jennifer Norberry and John Gardiner-Garden, *op. cit.*
  5. John Reeves, *Building on Land Rights for the Next Generation. The Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, Report, 1998.
  6. See House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs: *Unlocking the Future: the report of the inquiry into the Reeves Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, August 1999, at: <http://www.aph.gov.au/house/committee/atsia/reeves/tblcontrecom.pdf>; and NT Government and NT Land Councils: *Detailed Joint Submission to the Commonwealth: Workability Reforms of the Aboriginal Land Rights (Northern Territory) Act 1976*, at: [http://www.nt.gov.au/dcm/people/pdf/200306\\_ALRA\\_JointSubmission.pdf](http://www.nt.gov.au/dcm/people/pdf/200306_ALRA_JointSubmission.pdf).

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The NT Government was also developing its own model for township leasing, and in July 2004 sent an options paper to the four NT Land Councils for consideration. However, the Commonwealth's amendments to the Land Rights Act overtook this plan and in 2005 the NT Government wrote to the Australian Government suggesting a voluntary leasing plan which would recognise the right of traditional owners to make decisions over their land.<sup>7</sup> In June 2005 the National Indigenous Council (the advisory body to the government on indigenous matters) presented its Indigenous Land Tenure Principles to Government.

A scheme to facilitate township leasing was included in the 2006 Land Rights Act amendments. Under **section 19A of the Land Rights Act**, a Land Trust may grant a 99 year 'head lease' of a township to an 'approved entity', which means either a Commonwealth or NT government entity, on the condition that both the Minister and the Land Council agreed to the granting of the lease. Those government entities would then be permitted to sub-lease those townships back to the customary owners, though for a shorter period than the head lease. There is a notable absence of obligation on the government to engage in consultation with communities that hold native title in the area, so long as it is evident that the customary owners or their representatives have agreed to the sub-lease.

After 69 years, the Land Trust may grant another lease to the same entity, to ensure certainty for home owners and other lessees (subsection 19A(5) of the Land Rights Act).

Prior to the 2006 amendments, the Land Rights Act already contained provisions enabling the Land Council to grant interests in land for residential, business and other purposes to Aboriginal people and others, however the practice of granting such interests was limited. The primary imperative driving what was basically an extension of this practice was an economic one, anchored in a belief that customary ownership was unable to yield the requisite level of economic development benefits needed by the community that private ownership could offer.

The principle concern raised by some commentators however, was in relation to the impact over time on the integrity of customary ownership and consequently, the robustness of the culture of indigenous communities. Both Professor Dodson and Noel Pearson have raised the possibility that the 2006 amendments may eventually erode communal customary ownership.<sup>8</sup>

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7. NT Government, evidence to the Senate Community Affairs Committee: *Inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, 21 July 2006 at: <http://www.aph.gov.au/hansard/senate/commtee/S9506.pdf>.

8. *Land Rights Under Threat, Australians for Native Title and Reconciliation*: [http://www.antar.org.au/index.php?option=com\\_content&task=view&id=94&Itemid=104](http://www.antar.org.au/index.php?option=com_content&task=view&id=94&Itemid=104); *The Australian*, 14 April, 2005.

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The need for a Commonwealth entity

As outlined above, in the lead-up to the Land Rights Act amendments the NT Government had expressed its in-principle support for a township leasing scheme. In an October 2005 press release the then Chief Minister Clare Martin stated that an NT Government entity established to issue sub-leases would do so on terms agreed by traditional owners and land councils:

An independent statutory authority with a board including an independent Chair and representation from Land Councils and both the Northern Territory and Australian Governments is the favoured structure at this stage.<sup>9</sup>

At the public hearing for the Senate inquiry into the Land Rights Act Amendment Bill, the NT Government again stated its intention to establish an entity to issue and manage leases:

The Northern Territory government has agreed to play a role by establishing an entity to hold headleases and issue subleases provided the Australian government covers all costs involved. Northern Territory government involvement through the NT entity will ensure that the scheme allows for streamlined development of Aboriginal townships consistent with NT laws.<sup>10</sup>

However, to date the NT Government has not established such an entity as required by the Land Rights Act. In his second reading speech for the Land Rights Act Amendment Bill the then Minister stated:

It was the Government's understanding that the Northern Territory Government would establish an entity to hold township leases, issue sub-leases, collect rent and administer township leases.<sup>11</sup>

According to a press report, the NT Government's delay may be caused by internal caucus deliberations within the NT ALP.<sup>12</sup>

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9. NT Chief Minister, press release: *Federal land rights changes – step in right direction*, 5 October 2005, at: [http://www.nt.gov.au/dcm/ocm/media/2005/10%20October/20051005\\_MartinLandRights%20.pdf](http://www.nt.gov.au/dcm/ocm/media/2005/10%20October/20051005_MartinLandRights%20.pdf), accessed 29 May 2007.
  10. NT Government evidence to Senate Committee, op. cit.
  11. Hon Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, 'Second reading speech: Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill 2007', *House of Representatives Debates*, 24 May 2007. at: <http://www.aph.gov.au/hansard/reps/dailys/dr240507.pdf>.

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To account for the possibility that the NT Government would not establish a township leasing entity, a last-minute addition to the 2006 Land Rights Act amendments included a provision for the Commonwealth to establish such an entity. This Bill implements that provision.

### Public comment on the township leasing scheme

There was significant community comment regarding the 2006 amendments to the Land Rights Act, particularly surrounding the townships leasing scheme (see the Bills Digest and submissions to the Senate inquiry, referenced above). Comments regarding the specific issue of the entity which is to manage a lease scheme are outlined below.

#### Interest groups and academia

A number of groups, including Land Councils, Aboriginal interest groups and academia, expressed concern regarding the township leasing entity. For example, Sean Brennan of the Gilbert + Tobin Centre of Public Law at the UNSW Law School stated:

The headlessee under the [Land Rights Act] stands to become a very important player in the Northern Territory. It will hold a lease, or more likely, multiple leases over some of the potentially most valuable Aboriginal land in the Northern Territory (remembering that almost half of the NT landmass is Aboriginal land). It will enjoy the dominant property rights in an Aboriginal township for the lifespan of an Aboriginal person and, statistically, through the lifespan of their grandchild as well.

The Government speaks of the headlessee as a driver of economic development in a new era of prosperity for Indigenous people. It will certainly have complex legal and financial responsibilities because, to a significant extent, the Bill puts the economic fate of many Aboriginal people in the Northern Territory in its hands.

Parliament is accustomed to passing laws that establish public bodies with long-term objectives and weighty responsibilities. Typically, it does so on the strength of detailed legislative provisions spelling out basic features of the body, such as:

- its composition and structure
- its powers, duties and functions
- its method of doing business, and
- its lines of accountability.

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12. 'NT Blackfellas labour for a better life' at <http://www.onlineopinion.com.au/view.asp?article=4007>, accessed 28 May 2007.

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The 2006 Amendment Act said almost nothing about head-lessees. A last-minute amendment means that the head-lessee might be a Commonwealth rather than a Territory entity. This suggests policy-making on the run about one of the Act's most critical features. Aboriginal people might find the head-lease later transferred to another body whose identity is exclusively determined by a Commonwealth government minister, with no parliamentary oversight through tabling and disallowance and, it appears, no reference back to traditional owners.<sup>13</sup>

In their submission to the Senate inquiry into the 2006 Land Rights Act Amendment Bill, Associate Professors Maureen Tehan and Lee Godden from University of Melbourne Law School said:

In the absence of any institutional arrangements for the involvement of traditional owners in decision-making about the land, at least in the short to medium term disruption and disharmony is likely to continue to be feature of townships with non-traditional owners occupying traditional lands without apparent consent (in customary law terms). This is exacerbated by the removal of the operation of the permit provisions of the Act from the townships.

If the new scheme is to proceed then at the very least there should be incorporated into the head lease provisions that permit or even mandate the involvement of traditional owners in land management, planning and environmental and cultural heritage management (even though the last of these will still presumably be covered by the Northern Territory aboriginal heritage protection scheme).<sup>14</sup>

The Northern Land Council submitted:

The provisions of the s 19A scheme are in broad and unconstrained terms, and do not identify or specify its purpose or provide guidance as to the character or exercise of powers by the head lessee. The provisions allow for a lease of a township area (as distinct from an area for township purposes), and there is no requirement that the area

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13. Sean Brennan, 'Economic development and Land Council power: modernising the Land Rights Act, or same old same old?' in *Australian Indigenous Law Reporter*, 2006, vol. 10, no. 4, at:  
[http://www.gtcentre.unsw.edu.au/resources/docs/IRLG/Sean\\_CommentaryExtract.pdf](http://www.gtcentre.unsw.edu.au/resources/docs/IRLG/Sean_CommentaryExtract.pdf), accessed 28 May 2007.
  14. Senate Community Affairs Committee: *Inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, at:  
[http://www.aph.gov.au/Senate/committee/clac\\_ctte/aborig\\_land\\_rights/report/c01.htm](http://www.aph.gov.au/Senate/committee/clac_ctte/aborig_land_rights/report/c01.htm)

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be used for any particular purpose and no regulation of the granting of subleases to ensure that power is directed at that aim.<sup>15</sup>

A number of other submissions made similar arguments.<sup>16</sup>

Political parties

The ALP, Australian Democrats and the Greens were all critical of the new leasing scheme contained in the 2006 amendments to the Land Rights Act (see the Digest for that Bill). See also the Debates in the House of Representatives and the Senate.<sup>17</sup>

As previously noted, the Senate's Community Affairs Committee conducted an inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006. Regarding 99 year leases on communal land, the majority Committee found:

The fundamentals of the [Land Rights Act] such as inalienable Aboriginal land title and the role of traditional owners will be preserved. Ninety-nine year head leases over townships with individual subleases under the head lease will make it significantly easier for individuals to own their own homes and establish businesses. The bill enables the Northern Territory government to establish its own legislation to administer the scheme.<sup>18</sup>

However dissenting reports from the ALP, Australian Democrats and Greens members of the Committee criticised the lack of consultation over the township leasing scheme, and its possible ramifications for traditional owners' rights over their land.<sup>19</sup>

The first lease agreement - the Nguiu township lease

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15. Northern Land Council, submission to the Senate Community Affairs Committee, at: [http://www.aph.gov.au/Senate/committee/clac\\_ctte/aborig\\_land\\_rights/submissions/sub13.pdf](http://www.aph.gov.au/Senate/committee/clac_ctte/aborig_land_rights/submissions/sub13.pdf) accessed 29 May 2007.
  16. For example, see submissions to the Senate Committee Affairs Committee from Australians for Native Title and Reconciliation, Central Land Council, Sean Brennan, and Raymattja Marika.
  17. House of Representatives, *Debates*, 19 June 2006, pp. 83 – 127. Senate *Debates*, 8 – 9 August 2006, 14 – 17 August 2006.
  18. Senate Community Affairs Committee: *Inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*, at: [http://www.aph.gov.au/Senate/committee/clac\\_ctte/aborig\\_land\\_rights/report/c01.htm](http://www.aph.gov.au/Senate/committee/clac_ctte/aborig_land_rights/report/c01.htm), accessed 28 May 2007.
  19. *ibid.*

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On 30 August 2007, the first 99 year lease was signed of the township of Nguiu on the Tiwi Islands. The history of this agreement was not without controversy. Concern had been expressed about the nature and terms of the proposal.

In the months leading up to the signing of the lease, the ALP's Senator Trish Crossin (a Senator for the Northern Territory) stated that the Nguiu traditional owners were taking a 'great leap of faith' in signing the agreement. Senator Crossin also criticised the linking of funding for 25 new houses and health initiatives to the lease agreement. She went on to state:

There are still many unanswered questions about the lease and how it will be administered by the Commonwealth and traditional owners once rights are signed over. It is unclear how basic local government services and rates will be levied under the scheme.<sup>20</sup>

In 2007, following the Commonwealth's passage of the Aboriginal Land Rights (Northern Territory) Amendment (Township Leasing) Bill, the office of the Executive Director of Township Leasing was established and empowered to enter into and administer leases on Aboriginal land in the Northern Territory, under the Land Rights Act. The 2007 amendments also, in part, addressed concerns about how township leasing entities were to be established by clarifying the functions and administrative duties of the Executive Director of Township Leasing. Significantly though, no legislative requirement was imposed on the Executive Director to undertake ongoing consultation or negotiation with traditional landowners or Land Councils regarding the management of their land, once the head-lease is agreed. It was left up to the Land Councils and traditional owners to negotiate such terms before the lease is granted.

On 4 March 2008 during a visit to Groote Eylandt in the Gulf of Carpentaria, the Indigenous Affairs Minister Jenny Macklin announced that the government was considering reducing the controversial tenure of 99 year leases on offer, and replacing them with a more flexible scheme that offered tenure of anywhere between 40 and 99 years. The Land Council on Groote had resisted the former federal government's efforts to get it to sign a 99-year lease. On 8 June 2008, the *Australian* newspaper reported that the Groote Eylandt townships of Angurugu and Umbakumba, and the township of Milyakburra at nearby Bickerton Island agreed to sign a 40-year lease with the Commonwealth government, with an option to renew for an additional 40 years.<sup>21</sup>

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20. Senator Trish Crossin, *Media Release: 'Tiwi's leap into the unknown'*, 10 May 2007, at: [http://www.trishcrossin.com.au/html/media\\_2007\\_05\\_10.html](http://www.trishcrossin.com.au/html/media_2007_05_10.html); accessed 28 May 2007.
  21. Natasha Robinson, 'Groote Eylandt town first to sign long-term lease' *The Australian*, 8 June, 2008.

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## Parklands

In 2002 the High Court of Australia handed down a decision in *Western Australia v Ward*.

The *Ward* decision highlighted the probability that the declarations of 49 Territory parks between 1978 and 1998 were invalid, leaving claims under the *Aboriginal Land Rights (Northern Territory) Act 1976* over 11 of those parks open to proceed to hearing by the Aboriginal Land Commissioner.

With the aim of avoiding litigation, the government sought to find a comprehensive solution, identifying core principles to become central to a framework proposal to be accepted by the Land Councils.

The core principles include:

- development of a Parks Masterplan to expand and more effectively manage the parks estate;
- current mining and exploration leases and applications and tourism operator concessions guaranteed;
- all Territory Parks and Reserves will remain accessible to all Territorians and visitors on a no entry fee, no entry permit basis;
- business as usual in parks until negotiations are completed; and
- where title changes occur they will be conditional on the land being leased back to the Northern Territory subject to joint management under NT legislation.<sup>22</sup>

A case note for *Ward* can be found [here](#).<sup>23</sup>

Following the High Court decision in *Ward*, the Northern Territory Government sought to address uncertainties over the title of the Territories parks and reserves. Lengthy negotiations were conducted between Aboriginal Land Councils, the Northern Territory Government and the Commonwealth Government.

The Northern Territory Government enacted the [Parks and Reserves \(Framework for the Future\) Act](#) in 2003 (the 'NT Parks Act'). The NT Act was to provide a framework for negotiations between the Territory and the traditional Aboriginal owners of certain parks and reserves for their establishment, maintenance and management.

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22. Indigenous Studies Program, *Parks and Reserves (Framework for the Future) Bill 2003*, 1 January 2003, accessed at <http://www.atns.net.au/agreement.asp?EntityID=1857>.
  23. Kate Stoeckel, 'Case Note: Western Australia v Ward & Ors', *Sydney Law Review* vol. 25, 2003.

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An agreement was reached in relation to thirteen Northern Territory parks and reserves. It was agreed that title to the land would be transferred back to traditional owners, held on trust by Government-established Land Trusts. This is to be followed with an immediate leaseback to the Northern Territory Government on 99 year leases, to enable the Government to continue managing the parks and reserves.

## Financial implications

The financial impact is expected to be negligible.<sup>24</sup>

## Main provisions

### Schedule 1—Amendments to the Land Rights Act

#### Township leasing between 40 and 99 years

**Item 3** proposes a **new subsection 19A(4A)** permitting the term of a township lease to be between 40 and 99 years, with the term varied only in accordance with either proposed subsections **19A(4A)**<sup>25</sup> or **19A(5)** (see item 6). (This will not operate to preclude other types of variations to leases (**proposed 19A(4B)**)).

**Proposed subsection 19A(4C)** in conjunction with section 3C<sup>26</sup> ensures that the *Lands Acquisition Act 1989* does not apply to the extension of the term of a lease.<sup>27</sup>

**Item 5** proposes an amendment to existing subsection **19A(5)** providing that replacement leases must be entered into at least 20 years before the end of a lease.

**Item 6** proposes a **new subsection 19A(5A)** forbidding the Minister from consenting to the grant of a replacement lease unless the Minister is satisfied that the grant would not adversely affect a sublease or other interest derived from the original lease.

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24. Explanatory Memorandum, p. 1.

25. **Proposed subsection 19A(4A)** permits one or more extensions to a township lease.

26. Section 3C of the Land Rights Act states that the Act has effect despite anything contained in the *Lands Acquisition Act 1989*.

27. The *Lands Acquisition Act 1989* (the LAA) provides that the acquisition and disposal of any interest in property by the Commonwealth needs to be authorised under the Act, however other authorities may be excluded from some or all parts of the LAA by virtue of their enabling legislation or by regulation under the LAA.

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**Item 9** proposes amendments to **subsections 19C(2) and (3)** so that stamp duty or like taxes are not payable as a result of an extension of a lease, and that registration of an extension can occur as if the instrument of extension were duly executed under Northern Territory law.

#### Expansion of the functions of Executive Director of Township Leasing

**Item 11** proposes an amendment to **paragraph 20C(aa) and (ab)** which has the effect of adding to the list of the Executive Director's functions. The amendment would add an ability to enter into and administer section 19 leases and other leases, such as leases of community living areas, where the Minister had agreed to the Executive Director's involvement.

**Proposed paragraphs 20C(ac) and (ad)** provide that the Executive Director is able to enter into and administer subleases, such as subleases of town camps, where the Minister has agreed to the Executive Director's involvement (see **item 13**).

**Item 12** proposes an amendment to **paragraph 20C(c)** providing that the functions of the Executive Director can be prescribed to include functions relating to the new matters described in item 11.

**Item 13** proposes the insertion of **clause 20CA** which describes the land relevant to the Executive Director's new functions and a process for the Minister to consent to the Executive Director's involvement in proposed leases or subleases.

There are three categories of relevant land:

- community living areas
- town camps
- other land that is prescribed and has been granted or leased for the benefit of the Aboriginal people in the Northern Territory.

**Proposed subsection 20CA(2)** provides that if the Commonwealth and the proprietor intend to enter into a lease or sublease, then the proprietor may make a written request that the Executive Director enter the lease or sublease on behalf of the Commonwealth and administer the lease or sublease. The Minister must agree or refuse the request in writing pursuant to **proposed subsection 20CA(3)**.

#### Executive Director of Township Leasing

**Item 14** proposed a **new section 20E** allowing the Executive Director to be appointed on a full or part-time basis. Currently, the Executive Director is appointed only on a full-time basis.

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**Item 15** proposes a **new section 20H** which precludes a full-time Executive Director from engaging in outside employment without the Minister's approval, and a part-time Executive Director must not engage in outside employment that conflicts or may conflict, with the proper performance of their duties.

**Item 16** proposes a **new section 20K** which sets out the leave entitlements of the Executive Director, with a full-time Executive Director's leave entitlements to be determined by the Remuneration Tribunal and other leave to be granted by the Minister.

**Item 17** proposes a **new section 20M** providing that the Governor-General may terminate the appointment of the Executive Director for misbehaviour or physical or mental incapacity. The section also provides that the Governor-General must terminate the appointment of the Executive Director if he or she:

- becomes bankrupt, or
- applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, or
- compounds with his or her creditors, or
- makes an assignment of his or her remuneration for the benefit of his or her creditors, or
- is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months, or
- acts contrary to the provisions in **proposed section 20H, item 15**, or
- fails without reasonable excuse to comply with section 20N.

#### Operation of Lands Acquisition Act 1989 and application of certain Northern Territory Laws

**Item 18** – given the expansion of the Executive Director's functions, the current Division 6 is no longer relevant. Current Division 6 provides for the repeal of Part IIA (relating to the Executive Director) in certain circumstances where the Executive Director is no longer required to hold township leases.

The **proposed Division 6** deals with matters relevant to the expanded functions of the Executive Director, being for the operation of the *Lands Acquisition Act 1989* and the modification of certain Northern Territory Laws. Specifically:

- **Proposed subsection 20S(1)** clarifies that section 20S is intended to disapply the *Lands Acquisition Act 1989*, but not to otherwise impinge on any requirements, for example, in relation to acquiring leases of community living areas or subleases of town camps.
- **Proposed section 20SB** applies to leases or subleases to the Executive Director as a result of the expanded functions. **Proposed section 20SB(2)** provides that regulations

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may modify Northern Territory laws relating to planning, infrastructure, subdivision, transfer of land, or other prescribed matters to the extent that the law applies to land that is the subject of a lease or sublease.

### Statutory Rights over buildings and infrastructure

**Items 19 and 22** repeal and substitute subsections **20Y(1)** and **20ZJ(1)** thus proposing to allow the person who holds statutory rights to permit others to exercise those rights. Where the person is the Commonwealth, the Minister may, on behalf of the Commonwealth, to permit others to exercise the statutory rights. The Minister may also delegate this power pursuant to section 76.

**Items 20 and 23** repeal and substitute subsections **20ZA** and **20ZL** thus proposing to allow the area over which statutory rights may apply, to be varied by agreement. Where the Commonwealth has statutory rights, the Minister may, on behalf of the Commonwealth, agree with a Land Council to vary the area over which the statutory rights apply. The Minister may also delegate this power pursuant to section 76.

**Items 21 and 24** repeal and substitute **subsections 20ZE(1) and 20ZP(1)** thus providing that a person who holds statutory rights may determine that they no longer require certain buildings or infrastructure. Where the Commonwealth has statutory rights, the Minister may, on behalf of the Commonwealth, determine that the buildings or infrastructure to which statutory rights apply are no longer required by the Commonwealth. The Minister may also delegate this power pursuant to section 76.

### Functions of Land Councils

**Proposed paragraph 23(1)(fb)** provides Land Councils with the power to represent the Land Trust in negotiating the amount to be paid to the Land Trust under subsection 62(1G) of the NT NER Act in relation to the grant of a lease under section 31 of that Act.

**Proposed paragraph 23(1)(fc)** provides Land Councils with the power to represent the *relevant owner* of the land in negotiating the amount to be paid to that relevant owner under subsection 62(1G) of the NT NER Act in relation to the grant of a lease under section 31 of that Act.

**Proposed paragraph 23(1)(fd)** provides Land Councils with the power to represent the holder of the lease in negotiating the amount to be paid under subsection 62(1G) of the NT NER Act in relation to the suspension of a lease under section 40 of that Act.

**Item 27 - proposed paragraph 23(1)(i)** allows regulations to prescribe additional functions for Land Councils.

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## Fees

**Item 28 – proposed section 33B** allows a Land Council to charge Commonwealth certain fees. These fees are reasonable expenses incurred in

- performing functions referred to in **proposed paragraphs 23(1)(fb), (fc) or (fd)** relating to negotiation of agreed payments under subsection 62(1G) of the NT NER Act.
- providing services proscribed by the regulations.

However, the fee must not amount to taxation (**proposed subsection 33B(3)**).

**Item 32 – proposed subsection 35(4)** clarifies that a Land Council does not have to disburse payments received under the current 33A (fees for prescribed services) or under **proposed section 33B**. Rather, payments received under these sections are to be spent on meeting the Land Council's administrative costs (**subsection 35(1)**).

**Item 33 – proposed paragraph 37(2)(c)** provides that the annual report of a Land Council must specify the total fees which the Land Council received under section 33B for that financial year.

## Aboriginals Benefit Account

**Item 34** proposes an amendment to **subsection 64(4A)** in order to allow the Aboriginals Benefit Account to be used for payments in relation to acquiring and administering leases/subleases in the exercise of the Executive Director's expanded functions; such as the negotiation of costs for the leases/subleases and the ongoing costs involved in administering the leases/subleases.

## Delegation

**Item 35 – proposed subsection 76(1A)** allows the Minister to delegate any of his or her functions or powers under Part IIB (statutory rights over infrastructure) to specified senior public servants, or the General Manager of [Indigenous Business Australia](#).

## Amendments to the NT NER Act

**Item 37 – proposed paragraph 63(1)(f)** provides that an amount payable by the Commonwealth under **proposed section 33B** of the Land Rights Act (**item 28**) is payable from consolidated revenue. According to the Explanatory Memorandum, this is done for practical reasons: the amounts payable under **proposed section 33B** cannot be meaningfully predicted in a way that would make annual appropriation suitable.

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## Schedule 2—Acquisition of rights, titles and interests in land

The Schedule contains amendments designed to provide a degree of enhancement to the workings of sections 38 (Canteen Creek) and 52 (grants by Land Trusts) of the NT NER Act. It also makes amendments to section 62<sup>28</sup> so as to permit the Commonwealth and certain persons to make agreements on amounts to be paid in relation to five-year leases and certain other payments.

### Five-year leases

**Item 2** – proposes a repeal and substitute of **subsections 38(1) and (2)** to ensure that if, following the grant of a five-year lease of Canteen Creek, the Commonwealth grants interests over that land, then such interests will be valid notwithstanding section 67A<sup>29</sup> of the Land Rights Act. Significantly this will not affect the traditional claim to Canteen Creek.

### Grants of interests by Land Trusts under the Land Rights Act

**Item 6 – proposed subsection 52(4A)** permits Land Trusts to continue granting interests (not being leases) of a kind prescribed in regulations, over land leases under section 31. This is designed to provide flexibility in cases where it is appropriate to allow Land Trusts to grant particular interests despite five-year leases.

### Agreed payments

**Item 10** – Relevant amendments (see below) have been made to allow the Commonwealth and certain person to agree on amounts to be paid in respect of five-year leases and certain other payments.

**Proposed subsection 62(1A)** The Commonwealth Minister and the relevant owner (not being the Northern Territory) of land that is covered by a lease granted under section 31 may agree in writing on an amount to be paid by the Commonwealth to the other party.

**Proposed subsection 62(1B)** - the payment of the amount agreed under subsection (1A) may be made as a one-off payment, or a periodic payment while the lease is in force, as agreed by the Commonwealth Minister and the other party.

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28. Section 62 of the NT NER Act deals with the payment of rent by the Commonwealth to the relevant owner (not being the Northern Territory) of land that is covered by a lease granted under section 31.
29. Section 67A of the Land Rights Act provides that estates or interests not to be granted while land subject to traditional land claim.

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**Proposed subsection 62(1C)** - the Commonwealth Minister may request the Valuer-General to determine an indicative amount for the purposes of subsection (1A).

**Proposed subsection 62(1D)** - the Commonwealth Minister and the person who held a lease of land that is terminated under paragraph 37(1)(b)<sup>30</sup> may agree in writing on an amount to be paid as a one-off payment by the Commonwealth to the other party.

**Proposed subsection 62(1E)** - the Commonwealth Minister and the person who holds a lease of land that is suspended under section 40<sup>31</sup> may agree in writing on an amount to be paid by the Commonwealth to the other party.

**Proposed subsection 62(1H)** - If the other party is not represented by a Land Council in relation to negotiations to agree on an amount under subsection (1A), (1D) or (1E), the Commonwealth must pay the reasonable expenses incurred in representing the other party in relation to the negotiations.

### Schedule 3—Parklands

The NT Parks Act divides the majority of Northern Territory parks and reserves into three lists, the first intended for inclusion in Schedule 1 of the Land Rights Act. Thirteen parks and reserves are listed for inclusion:

- Arltunga Historical Reserve
- Chambers Pillar Historical Reserve
- Corroboree Rock Conservation Reserve
- Davenport Range National Park
- Devils Marbles Conservation Reserve
- Emily and Jessie Gaps Nature Park and Hevitree Range Extension
- Ewaninga Rock Carvings Conservation Reserve
- Finke Gorge National Park
- Gregory National Park
- Gregory's Tree Historical Reserve

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30. Paragraph 37(1)(b) of the NT NER Act provides that the Commonwealth may, at any time, terminate a lease (the *earlier lease*) of land that (under subsection 31(3)) is excluded from the land covered by a lease (the *later lease*) granted under section 31.
  31. Section 40 of the NT NER Act deals with leases of Finke and Kalkarindji held by Aputula Social Club Incorporated, Aputula Housing Association Incorporated or Daguragu Community Government Council.

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- N'Dhala Gorge Nature Park
- Trepkina Gorge Nature Park
- West MacDonnell National Park

Land listed in Schedule 1 of Land Rights Act is land for which the Commonwealth Government has established an Aboriginal Land Trust to hold title of the land for the benefit of the indigenous owners. Therefore, inclusion in this Schedule will bring these parks and reserves within the Commonwealth scheme of land trusts.

Following transfer of title, it is the intention that the Northern Territory Government leases the land back from the title owners for 99 year leases, so that the government retains responsibility for the management and maintenance of the parks and reserves.<sup>32</sup> This intention was part of the original negotiations with parties in 2003. However, it should be noted that the NT Parks Act does not require that this happen. Section 9(f) of the NT Parks Act allows that the land *may* be leased back.

Neither Act sets out any specific clauses to be included in the lease agreements with the NT Government. However, the NT Parks Act sets out certain principles which the leases must follow, including an express statement that the lease(s) must not extinguish native title rights or interest, and that they must be for 99 years.

**Schedule 3, proposed sections 1 and 2** of the Bill will insert a **new Part 5** into Schedule 1 of the Land Rights Act. The new Part 5 lists the thirteen Northern Territory parks and reserves which are to be included in the Commonwealth scheme of Land Trusts. This inclusion will enable the Commonwealth Government-established Aboriginal Land Trust (established under section 4 of the Act) to hold title of those parks and reserves for the benefit of the indigenous owners of the land.

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32. Explanatory Memorandum, p. 13.

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