

RESPONSES TO HORSCATSIA QUESTIONS

Question 1. ATSIIC's understanding of the number of land trusts currently in existence in the Northern Territory under the legislation.

It is ATSIIC's understanding that there are currently 112 land trusts in existence in the Northern Territory under the legislation

Question 2. ATSIIC's understanding of the activities, functions, responsibilities and programs being delivered or administered by those land trusts

Section 5 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, sets out the functions of a Land Trust as follows:

- “(1) *The functions of a Land Trust are:*
- (a) *to hold title to land vested in it in accordance with this Act;*
 - (b) *to exercise its powers as owner of land referred to in paragraph (a) for the benefit of the Aboriginals concerned; and*
 - (c) *where the Land Trust is named as the grantee of land in a deed of grant held in escrow by a Land Council—to acquire, as and when practicable, the estates and interests of other persons in the land with a view to the surrender to the Crown of those estates and interests and the delivery to the Land Trust of the deed of grant held by the Land Council.*
- (2) *A Land Trust:*
- (a) *shall not exercise its functions in relation to land held by it except in accordance with a direction given to it by the Land Council for the area in which land is situated; and where such a direction is given to it—shall take action in accordance with that direction.*
- (3) *The Lands Acquisition Act 1989 does not apply to the acquisition by a Land Trust, under this Act, of an estate or interest in land.*

Under section 6 a Land Trust is unable to accept money. Under section 26 of the Act the Land Councils are required to pay or discharge any administrative expenses, charges or obligations incurred or undertaken by a Land Trust.

The legal position is that land trusts are “bare trusts”. They do not exercise an independent role (s.5 (2) (a)). Aboriginal Land Trusts are established to “hold title to land in the Northern Territory for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the land concerned..” (s.4 (1)). It should be noted that the group for which the title is held in trust is inclusive of, but wider than, traditional owners as defined under the Act.

Question 3. ATSIc's opinion as to whether the registered names on those land trusts are people who have been accepted by traditional Aboriginal people as being the appropriate legal trustees to perform their functions under the act.

In general the consultation processes followed by the Land Councils in nominating persons as Trust members to the Minister ensure that the registered names on those trusts are people who have been accepted by traditional Aboriginal people as being the appropriate legal trustees. However, ATSIc is aware that on occasions there have been disputes over whether the correct people have been nominated. This is not considered to be a frequent occurrence. As well, because of the essentially passive role of the Trusts, it is not a substantive problem in terms of control of activities on Aboriginal land.

4. ATSIc's understanding of the activities, functions, duties and programs delivered by the land councils

The functions and responsibilities of the land councils are set out in Part III of the Act. In particular, s. 23 deals with the functions of these bodies. ATSIc understands the functions and duties of the land councils to be as set out in the legislation. As well, the annual reports produced by each of the 4 land councils provide information on their activities and programs from year to year.

ATSIc sees Land Councils as independent statutory authorities set up under Commonwealth legislation which are accountable to the Parliament and the public through the Minister.

They have a distinct role separate from that of ATSIc and other agencies. The key elements of that role are to assist with the preparation of land claims, to make decisions about the use of Aboriginal land on the basis of the informed consent of Traditional Owners and to assist Aboriginals with the management of the land.

5. A list of current functions, duties and programs administered and delivered by ATSIc in the Northern Territory in the areas covered by the land councils under the act.

It is not possible to break down ATSIc activities and programs by the areas covered by land councils. ATSIc programs are not delivered on the basis of Aboriginal land and/or land under claim. Consequently, it is difficult compare ATSIc programs on Aboriginal land with those on non-Aboriginal land as the majority of grants are made from Regional councils with a mixture of applicants from Aboriginal land and non-Aboriginal land. There are therefore no relevant comparisons to "areas covered by land councils". As well, some grants are provided from national programs eg support for Native Title Representative Bodies.

ATSIc expenditure figures for 1997/98 for the Northern Territory are provided below. Further detail can be provided if this is required.

In 1997/98 the Northern Territory Expenditure was as follows:

- Program 184,255,149

- Housing Fund 1,638,428
- Administrative (excludes Staff Housing) 4,617,753

Total \$190,511,330

The programs funded in the Northern Territory included CDEP, business development, economic support, community housing, community infrastructure, municipal services, arts and culture.