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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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Aboriginal Land Rights (Northern Territory) Amendment Bill
2002

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15 October 2002

Contents

Purpose	1
Background	1
Land claims under the Act.	1
Settlement of Land Claims	1
Alternative paths to the grant of land to Aboriginal Land Trusts	2
The land	2
Urgency for the scheduling.	3
Broader issues	4
‘Unlocking the Future’: Committee’s response to the Reeves Report	4
Options paper	4
Land Councils	5
Mining	5
Repatriation to Northern Territory Government.	5
Main Provisions	5
Endnotes.	5

Aboriginal Land Rights (Northern Territory) Amendment Bill 2002

Date Introduced: 19 September 2002

House: House of Representatives

Portfolio: Immigration and Multicultural and Indigenous Affairs

Commencement: Royal Assent

Purpose

To add 5 new parcels of land to those granted to Aboriginal Land Trusts in the Northern Territory for the benefit of the traditional Aboriginal owners.

Background

Land claims under the Act

Settlement of Land Claims ¹

Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) lists areas of land that become Aboriginal land under the Land Rights Act.²

When a land claim has been made under the Land Rights Act, a settlement is sometimes reached by agreement between the Northern Territory Government and the relevant Land Council.³ In such cases, the Aboriginal Land Commissioner's office is asked to adjourn the land claim until the land can be scheduled under the Land Rights Act and an approach is made to the Commonwealth Minister for Indigenous Affairs asking for the land to be scheduled. The Land Commissioner is a statutory office holder whose functions include inquiring into and making recommendations about land claims made under the Land Rights Act.⁴ Under the Land Rights Act, land claims are lodged with the Aboriginal Land Commissioner. Once scheduling has occurred, then no further inquiry by the Aboriginal Land Commissioner is needed.

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Alternative paths to the grant of land to Aboriginal Land Trusts

The Land Rights Act provides two main paths by which land can be granted in fee simple (unfettered title to land) to traditional Aboriginal owners. The 'land claim path' involves an application to the Aboriginal Land Commissioner, seeking recognition of a group's traditional attachment to land which is available for claim under the Land Rights Act. The Land Commissioner conducts a hearing and produces a report based on the evidence presented. In almost every case, the Land Commissioner has recommended to the Commonwealth Minister that a grant of fee simple be made over part or all of the area claimed. The Minister then considers the report of the Land Commissioner, and where a recommendation to grant is accepted, the Minister recommends to the Governor-General that a grant of fee simple be made to the relevant Aboriginal Land Trust, ie. communal fee simple. The grant does not involve parliamentary action, but does entail the usually lengthy process associated with a land claim inquiry.

Alternatively, as in these cases, when a description of land is added by Parliament to Schedule 1 of the Land Rights Act, the Commonwealth Minister must establish an Aboriginal Land Trust to hold it for the benefit of Aboriginal people with a traditional entitlement. The Minister must then recommend that the Governor-General grant the land in fee simple to the Aboriginal Land Trust. A number of areas (mostly ex-reserves) were transferred to Aboriginal ownership by this method soon after the passage of the Land Rights Act. Subsequently, it has provided a means by which agreements designed to settle outstanding land claims can be given legal effect. The addition of these 5 parcels will bring the total number of land parcels scheduled since 1977 to 69. This mechanism tends to facilitate negotiated outcomes but does require the involvement of Parliament, which must amend the Schedule to add the land in question.

The land

The Minister describes the region and background to the land to be scheduled in his Second Reading Speech:

The effect of this Bill would first of all be to bring within Schedule 1 of the Land Rights Act four areas of land that were the subject of the Upper Daly (Repeat) Land Claim. The land, situated about 250 kilometres to the south-west of Darwin, not far from the township of Pine Creek, was the subject of an agreement between the Northern Territory Government, the Northern Land Council and the claimants. The agreement was entered into on 15 November 1999 and finalised in February 2002 after discussions relating to native title, the granting of other titles to the Northern Territory government, and the making of a lease-back agreement in respect of the Umbrawarra Gorge Nature Park Reserve. The area to be scheduled comprises nearly 110,000 hectares.

The Bill will also bring within Schedule 1 of the Land Rights Act a single block of land, situated some 40 kilometres north of Alice Springs, near the Stuart Highway. This scheduling proposal arises from the Government's decision to provide funding to

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enable the construction of one of the greatest infrastructure projects in Australian history to proceed: the Darwin to Alice Springs railway.

Title to this block of land will be granted to the Harry Creek East community. The community's current land is situated on the old North-South Stock Route and has been rendered unfit for community purposes by its proximity to the Darwin-Alice Springs Railway corridor. Hence, the former Government of the Northern Territory agreed to grant the community another parcel of land, located only a few kilometres to the south-east of their current land.

Urgency for the scheduling

As the Minister has noted, the Central Land Council has agreed with the Northern Territory Government that a parcel of land be allocated to the Arnapipe Aboriginal Land Trust on behalf of the members of the Harry Creek East community.

This allocation is to allow the permanent relocation of the community to allow for the construction of the Darwin-Alice Springs railway.⁵ The developers have commenced operations in the area concerned earlier than expected.⁶ The operations cannot coexist with the present location of Harry Creek East community. The Harry Creek East community consists of 7 families representing up to 35 people. It consists of 6 houses, 6 shower blocks, 1 generator shed and 2 other sheds, 2 large and 3 small stockyards, 2 large water storage tanks and associated equipment, and 1 functioning pump shared with Harry Creek West and South.⁷ The closest community buildings at Harry Creek East are located within 100 metres of the railway centre line. The scheduling will allow for the long-term relocation of the Harry Creek East community to a site south east of their present location.

The families of the Harry Creek East community were reluctant to relocate into a less certain situation than they currently enjoy on the Land Trust.⁸ One issue affecting the timing of the relocation were the negotiations regarding the location of the new site, to ensure there was minimal interference with the many sacred sites in that region.⁹ The Social Impact Analysis of the Railway states that 'identification of an acceptable relocation site... has been far from easy'.¹⁰

On 20 August 2002, the Northern Territory Minister for Central Australia, Dr Peter Toyne announced \$1 million as part of the NT Government budget to relocate the Harry Creek East community, affected by the alignment of the new railway corridor. On 21 August 2002, it was reported that the NT Chief Minister Clare Martin says the community has agreed to move:

That is part of the railway contract, but I can give you a very strong assurance that that will happen appropriately and that community will be appropriately relocated.¹¹

The funding for the permanent relocation has been agreed. The finalising of the freehold title of the land will enable the relocation to occur.

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Broader issues

'Unlocking the Future': Committee's response to the Reeves Report

In August 1999, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, reported on its inquiry into a review of the Land Rights Act by Mr John Reeves QC (the Reeves Report). The Recommendations of the Reeves Report were controversial.¹² However, the Committee's response to the Reeves Report, entitled 'Unlocking the Future' appears to have general bipartisan support ([the Committee Report](#)).

In particular, it is worth repeating the first recommendation of the Committee Report which states that the Land Rights Act should not be amended without:

- traditional owners in the Northern Territory first understanding the nature and purpose of any amendments and as a group giving their consent; and
- any Aboriginal communities or groups that may be affected having been consulted and given adequate opportunity to express their views.¹³

The ALP has emphasised the need to demonstrate this informed consent very transparently on any possible reforms to the Land Rights Act.¹⁴

Options paper

In his Second Reading Speech, the Minister also states:

whilst supporting the return of Aboriginal land to its Aboriginal owners, the Government considers that the Land Rights Act in its current form is in urgent need of repair because it has not assisted, as it should have, in improving the social and economic position of Aboriginal land owners.

The Government has circulated a paper canvassing options for reform to the Land Rights Act. At the time of the Second Reading Speech, the Minister noted that the Government was awaiting a response to these options from the Northern Territory Government and the Central and Northern Land Councils.¹⁵

In general, the options paper outlines the Government's priorities as announced in the 2001 election campaign including:

- reducing barriers to economic development of Aboriginal land
- facilitating devolution of control away from Land Councils to more localised regional bodies, and
- improving management and distribution of the Aboriginals Benefit Account.

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Land Councils

A significant proposal in the Reeves report was the preference for smaller, and more representative land councils.¹⁶ The Minister supports the regionalisation of the large Land Councils.¹⁷ However, the Committee rejected the Reeves Report proposal to replace the 4 existing Land Councils with 18 Regional Land Councils, but agreed with proposals to streamline procedures for new land councils to be formed.¹⁸

Mining

The Committee Report notes that a significant feature of the Land Rights Act is that it gives the traditional owners the right to veto possible mining activities on Aboriginal land in all cases except those where it is in the national interest.¹⁹ Part IV of the Act establishes a financial regime for the distribution of mining royalties among the affected communities, and the broader Northern Territory Aboriginal community.

In his Second Reading Speech, the Minister states that in the past 25 years since the Land Rights Act has been operating, there has only been one new mine. This is despite the fact that there have been over 1000 applications, more than half of which remain outstanding. However, the Chairs of the two major Land Councils note that there have been 13 mineral leases and also that hundreds of exploration licenses have been consented to since the Land Rights Act commenced.²⁰ The options paper contains a number of recommendations to streamline the regulation of exploration and mining.

Repatriation to Northern Territory Government

Meetings in May 2002 between the Minister, the Land Council and the Chief Minister were, among other things, to discuss the repatriation (giving control) of the Land Rights Act to the Northern Territory Government. The Northern Territory Government stated that such a move was not on its agenda.²¹

Main Provisions

Item 1 adds the Harry Creek East parcel of land to Schedule 1 of the Land Rights Act and

Item 2 adds the four parcels of land in the Upper Daly region.

Endnotes

- 1 Material in the first two parts of the background section draws heavily from previous Bills Digests. See in particular Sean Brennan, Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 2000, [Bills Digest No. 197, 1999-2000](#) and Jennifer Norberry,

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Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 1) 1998,
[Bills Digest No. 59, 1998-1999.](#)

- 2 For more detailed background to the origins and operation of the Land Rights Act, see ‘Unlocking the Future: the report of the inquiry into the Reeves review of the Aboriginal Land Rights (Northern Territory) Act 1976’, Standing Committee on Aboriginal and Torres Strait Islander Affairs, August 1999, (hereinafter the Committee Report), pp. 11–16.
- 3 In the absence of such an agreement, the Aboriginal Land Commissioner hears the land claim and submits a report with a recommendation to the Commonwealth Minister for Indigenous Affairs. In such a case, the ultimate decision about whether to accept the recommendation rests with the Minister. It is also worth noting that as a result of amendments made to the Land Rights Act in 1987, land claims cannot be lodged after 5 June 1997. However, most available land is already subject to claim. See McRae, H. cited in Brennan and Norberry, [Bills Digest No. 181, 1998-99.](#)
- 4 Land Rights Act, ss. 50(1),
- 5 See [further information](#) about the history of the railway at the Northern Land Council website: www.nlc.org.au.
- 6 Information made available from the Department of Immigration, Multicultural and Indigenous Affairs notes that it was not anticipated that clearing and associated structural work would commence at the time the Bill was introduced. Also see ABC, [Interview with Prime Minister](#), PM, 7 May 2002, who noted that the project was 3 months ahead of schedule.
- 7 Richard Howitt, Sue Jackson, and Ian Bryson *A railway through our Country: social and cultural impacts of the Alice Springs to Darwin Railway Project on Aboriginal people*. Report prepared for the Northern and Central Land Councils and the Northern Territory Government, November 1998, Macquarie Research Ltd, Sydney, p. 95.
- 8 *ibid.*, p. 95.
- 9 Information provided by the Central Land Council, 14 October 2002.
- 10 Howitt, *op. cit.*, p. 96.
- 11 [ABC Central Australia Online](#), 21 August 2002.
- 12 Although the Committee generally restricted itself to comment on the recommendations of the Reeves Report, the Committee Report acknowledged this in its conclusion at p. 155.
- 13 Committee Report, p. 8.
- 14 See for example, Senator Trish Crossin, Speech on the Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 1999, Senate Hansard, 16 March 2000.
- 15 See section below on Options Paper.
- 16 Chapter 6 of the Reeves Report, pp. 93–118. For further general background to the Reeves Report, see Paul Toohey, ‘We don’t want your land rights’ *The Australian*, 10 February 2001.
- 17 The Hon. Philip Ruddock MP, ‘Land rights reform will be a start’, *Sunday Territorian*, 8 September 2002.

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- 18 See Recommendation 4, Committee Report, pp. 40 and 43.
- 19 Land Rights Act, ss. 40(a).
- 20 See Galarrwuy Yunipingu and David Ross, 'Camouflaging of land rights facts' *Sunday Territorian*, 22 September 2002, in response to the Minister's article cited above. Further information about the Land Rights Act and successful exploration agreements is also available at www.nlc.org.au, see especially Northern Land Council [media releases](#) of 29 May 2002, and 19 October 2001).
- 21 Rod McGuirk, 'Martin rejects land control' *Northern Territory News*, 21 September 2002.

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