

Aboriginal Land Rights (Northern Territory) Amendment Act 1980

No. 72 of 1980

An Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976*

[Assented to 28 May 1980]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Aboriginal Land Rights (Northern Territory) Amendment Act 1980*.

(2) The *Aboriginal Land Rights (Northern Territory) Act 1976*¹ is in this Act referred to as the Principal Act.

Commencement

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 3, 6, 7, 8 and 9 shall be deemed to have come into operation on 26 January 1977.

Grants of land to Land Trusts

3. Section 12 of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A deed of grant under this section shall be expressed to be subject to the reservation that—

(a) the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the land, being minerals all interests in which are vested in the Commonwealth, remains with the Commonwealth; and

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- (b) the right to any minerals existing in their natural condition, or in a deposit of waste material obtained from any underground or surface working, on or below the surface of the land, being minerals all interests in which are vested in the Northern Territory, remains with the Northern Territory;

“(2AA) For the purposes of the operation of sub-section (2), any interest in minerals vested in a person, other than the Commonwealth or the Northern Territory, shall be disregarded, and any reservation inserted in a deed of grant in accordance with that sub-section is subject to such an interest.”;

- (b) by omitting sub-section (3) and substituting the following sub-sections:

“(3) A deed of grant under this section in respect of land that is not Schedule 1 land—

- (a) shall identify any land on which there is, at the time of the execution of the deed of grant, a road over which the public has a right of way; and
- (b) shall be expressed to exclude such land from the grant.

“(3A) A deed of grant under this section in respect of Schedule 1 land shall be expressed to exclude from the grant—

- (a) any land on which there was, at the time of the commencement of section 3, a road over which public had, at that time, a right of way; and
- (b) any land on which there is, at the time of the execution of the deed of grant, a road over which the public has a right of way.”;

and

- (c) by adding at the end thereof the following sub-section:

“(7) In this section, ‘Schedule 1 land’ means land that is, or forms part of, an area of land described in Schedule 1.”.

4. After section 12 of the Principal Act the following sections are inserted:

Agreements with respect to roads on land described in Schedule 1

“12AA. (1) Where a deed of grant of land sets out an exclusion in accordance with sub-section 12 (3A), the Land Council in the area of which the land is situated and the Northern Territory may, at any time, agree with each other that a part of that land, being a part identified in the agreement, is—

- (a) land on which there was, at the time of the commencement of section 3, a road over which the public had, at that time, a right of way; or
- (b) land on which there was, at the time of the execution of the deed of grant, a road over which the public had, at that time, a right of way.

“(2) An agreement under sub-section (1) shall be reduced to writing and a copy of it certified by both parties shall be forwarded to the Minister.

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“(3) On the receipt of a copy of an agreement under sub-section (2), the Minister shall publish in the *Gazette* a notification of the agreement, including a copy of the terms of the agreement.

Declaratory orders with respect to roads on land described in Schedule 1

“12AB. (1) Where a deed of grant of land sets out an exclusion in accordance with sub-section 12 (3A), the Supreme Court of the Northern Territory has jurisdiction, at the suit of the Northern Territory or of the Land Council in the area of which the land is situated, to make an order declaring that a part of the land, being a part identified in the order, is—

- (a) land on which there was, at the time of the commencement of section 3, a road over which the public had, at that time, a right of way; or
- (b) land on which there was, at the time of the execution of the deed of grant, a road over which the public had, at that time, a right of way.

“(2) The jurisdiction conferred by sub-section (1) shall be exercised in accordance with the *Supreme Court Act 1979* of the Northern Territory.

Effect of agreement or order

“12AC. (1) On the publication in the *Gazette* of an agreement in accordance with section 12AA or the coming into effect of an order under section 12AB, not being an agreement or order relating to a deed of grant that has been registered in accordance with sub-section 12 (5), the land the subject of the agreement or order shall, for all purposes, be deemed to be, and always to have been, land coming within the terms of the exclusion set out, in accordance with sub-section 12 (3A), in the deed of grant to which the agreement or order relates.

“(2) Where an agreement under section 12AA that has been published in the *Gazette* or an order under section 12AB that has come into effect relates to a deed of grant that has been registered in accordance with sub-section 12 (5), a party to the agreement or the person who obtained the order may lodge the agreement or order, as the case may be, with the Registrar-General or other appropriate officer under the law of the Northern Territory relating to the transfer of land, and, on that lodgement, the Registrar-General or other appropriate officer shall—

- (a) call in the deed of grant; and
- (b) enter on the deed of grant and in the register book a memorandum setting out the terms of the agreement or order, as the case may be.

“(3) On the entering of a memorandum under sub-section (2), the land the subject of the agreement or order to which the memorandum relates shall, for all purposes, be deemed to be, and always to have been, land coming within the terms of the exclusion set out, in accordance with sub-section 12 (3A), in the deed of grant to which the agreement or order, as the case may be, relates.”

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Powers of Land Council

5. Section 27 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) The Minister shall not give an approval under sub-section (3) with respect to entering into a contract relating to Aboriginal land unless he is satisfied that the Land Council concerned has, in taking the action that has resulted in the proposed contract, complied with any duty imposed on it by sub-section 23 (3).”.

Payments in respect of granting of mining interests

6. Section 43 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) Where a Land Council, in entering into an agreement under sub-section (1) or (2), fails to comply with sub-section 23 (3), with respect to the Aboriginal land to which the agreement relates, that failure does not invalidate the entering into the agreement by the Land Council.”.

Payments in respect of mining under Acts

7. Section 44 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) Where a Land Council, in entering into an agreement under sub-section (1) or (2), fails to comply with sub-section 23 (3), with respect to the Aboriginal land to which the agreement relates, that failure does not invalidate the entering into the agreement by the Land Council.”.

8. After section 46 of the Principal Act the following section is inserted:

Agreements for entry on Aboriginal land

“46A. (1) An agreement under section 43, 44, 45 or 46 may include provisions regulating or authorizing the entry of persons on Aboriginal land for purposes relating to the subject matter of the agreement.

“(2) Without affecting the generality of sub-section (1), an agreement referred to in that sub-section may provide for the issue of permits by the Land Council concerned to persons wishing to enter on Aboriginal land for purposes relating to the subject matter of the agreement.

“(3) The issuing and revocation of permits referred to in sub-section (2) shall be in accordance with the terms of the relevant agreement and not otherwise.”.

Consent of Land Council to reflect views of traditional Aboriginal owners

9. Section 48 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) Where a Land Council, in giving a consent referred to in sub-section (1), fails to comply with that sub-section, that failure does not invalidate the giving of that consent.”.

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Deed of grant delivered before the commencement of this section

10. (1) Where, before the commencement of this section, a deed of grant of land that was, or formed part of, an area of land described in Schedule 1 to the *Aboriginal Land Rights (Northern Territory) Act 1976* (in this section referred to as “the first deed of grant” in relation to the land) has been delivered by the Governor-General to the grantee or to the Land Council concerned, the Minister shall, as soon as practicable after the commencement of this section, recommend to the Governor-General that a grant of an estate in fee simple in the land to which the first deed of grant relates be made to the Land Trust named in the first deed of grant as if the first deed of grant had not been executed.

(2) Where the Minister, in considering the making of a recommendation under sub-section (1) in relation to land, is satisfied that the first deed of grant in relation to the land—

- (a) does not include land that was required to be included in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976*; or
- (b) includes land that was not authorized to be included in accordance with the *Aboriginal Land Rights (Northern Territory) Act 1976*,

the Minister shall, in making the recommendation under sub-section (1)—

- (c) include in that recommendation the land referred to in paragraph (a); or
- (d) exclude from that recommendation the land referred to in paragraph (b),

as the case may be.

(3) Section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976* applies in relation to a recommendation under sub-section (1) of this section in relation to land—

(a) as if—

- (i) where the first deed of grant in relation to the land was delivered by the Governor-General to the grantee—the recommendation were a recommendation under sub-section 10 (1) of that Act; or
- (ii) in any other case—the recommendation were a recommendation under sub-section 10 (2) of that Act and included a recommendation for the delivery of the deed of grant of the land in accordance with the requirements of that sub-section in relation to recommendations under that sub-section; and

(b) as if the first deed of grant in relation to the land had not been executed.

(4) A deed of grant of land under section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976* that is executed in accordance with a recommendation under sub-section (1) of this section (in this section referred to

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as “the second deed of grant” in relation to the land) shall, in addition to setting out the exclusion required by sub-section 12 (3A) of that Act, identify, and exclude from the grant, any land that was identified in, and expressed to be excluded from, the first deed of grant in relation to the land.

(5) Where the second deed of grant in relation to land is delivered by the Governor-General to the grantee in accordance with section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, then, subject to sub-section (6)—

- (a) on that delivery, notwithstanding sub-section 12 (4) of that Act, the second deed of grant shall be deemed to have taken effect on the date on which the first deed of grant in relation to that land was delivered by the Governor-General to the grantee;
- (b) on that delivery, the first deed of grant in relation to that land shall, for all purposes (other than the purposes of this section), be deemed never to have been executed; and
- (c) on and after that delivery, the grant of any lease or other interest in that land, or the taking of any other action by any person in relation to that land, before the delivery of the second deed of grant, under or by virtue of, or in reliance on, directly or indirectly, the first deed of grant shall, for all purposes, be deemed to be, and to have been, as validly made or taken as if it had been made or taken under or by virtue of, or in reliance on, directly or indirectly, the second deed of grant.

(6) Where, before the delivery by the Governor-General to the grantee of the second deed of grant in relation to land, the first deed of grant in relation to the land has been registered under the law of the Northern Territory relating to the transfer of land, then—

- (a) the second deed of grant does not take effect except in accordance with sub-section (5) as applied by sub-paragraph (b) (ii); and
- (b) on the delivery of the second deed of grant for registration to the Registrar-General or other appropriate officer under the law of the Northern Territory relating to the transfer of land—
 - (i) the Registrar-General or other officer shall register and otherwise deal with the second deed of grant under that law according to its tenor as if the first deed of grant in relation to the land had not been executed;
 - (ii) sub-section (5) applies in relation to the second deed of grant as if a reference in a paragraph of that sub-section to the delivery by the Governor-General to the grantee of the second deed of grant were a reference to the registration of the second deed of grant in accordance with sub-paragraph (i); and
 - (iii) the Registrar-General or other officer shall, with respect to the first deed of grant in relation to the land, take all necessary action to rectify the register kept under the law of the Northern Territory relating to the transfer of land having regard to the

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operation of sub-section (5) in relation to the first deed of grant.

(7) Where the second deed of grant in relation to land is delivered by the Governor-General to the Land Council concerned in accordance with section 12 of the *Aboriginal Land Rights (Northern Territory) Act 1976*, then, on that delivery, the first deed of grant in relation to the land shall, for all purposes (other than the purposes of this section), be deemed never to have been executed.

(8) For the purposes of the application of sub-section 12 (3A) and sections 12AA and 12AB of the *Aboriginal Land Rights (Northern Territory) Act 1976* in relation to the second deed of grant in relation to land, a reference in those provisions to the time of execution of a deed of grant shall be read as a reference to the time of execution of the first deed of grant in relation to the land.

(9) Subject to this section, the first deed of grant in relation to land continues in force after the commencement of this section notwithstanding the amendment made by section 3.

(10) In this section, a reference to a delivery of a deed by a person shall be read as including a reference to a delivery of the deed by the duly authorized agent of the person.

Validation of certain agreements

11. Where, immediately before the commencement of this section, there is in force an agreement under section 43 or 44 of the Principal Act that includes provisions regulating or authorizing, or purporting to regulate or authorize, the entry of persons on Aboriginal land—

- (a) those provisions shall be deemed to be, and always to have been, as validly entered into as if they had been entered into by virtue of section 46A of the Principal Act, as amended by this Act; and
- (b) that section applies, and shall be deemed always to have applied, to those provisions as if they had been entered into by virtue of that section.

NOTE

1. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 70 and 83, 1978; and No. 189, 1979.