



Aboriginal Land Rights Legislation Amendment Act 1982

No. 16 of 1982

An Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* and the *Aboriginal Land Rights (Northern Territory) Amendment Act 1979*, and for related purposes

[Assented to 15 April 1982]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Aboriginal Land Rights Legislation Amendment Act 1982*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**PART II—AMENDMENTS OF THE ABORIGINAL LAND RIGHTS
(NORTHERN TERRITORY) ACT 1976**

Principal Act

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

Land Trusts

4. Section 4 of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-section:

“(1A) Nothing in this Act shall be taken to imply that the Minister cannot establish, under this section, Land Trusts to hold different areas of land each of which is included within a single area of Crown Land that is described in Schedule 1.”;

(b) by omitting from sub-section (5) “The common seal” and substituting “Subject to sub-section (5A), the common seal”; and

(c) by inserting after sub-section (5) the following sub-section:

“(5A) The common seal of a Land Trust in relation to which the Minister has made a determination under sub-section 7 (1A) shall be affixed to a document—

(a) if the determination was a determination of the kind referred to in paragraph 7 (1A) (a)—only with a written authority signed by a majority of the members of the Land Trust; or

(b) if the determination was a determination of the kind referred to in paragraph 7 (1A) (b)—only with a written authority signed by the Chairman and at least one other member of the Land Trust.”.

Membership of Land Trust

5. Section 7 of the Principal Act is amended—

(a) by inserting in sub-section (1) “, unless the Minister, in accordance with sub-section (1A), determines that the Land Trust shall be differently constituted,” after “A Land Trust shall”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) Where, on the application, in writing, of the Land Council for the area in which the land to be held by a Land Trust established, or about to be established, under section 4, is situated, being an application made after the commencement of this sub-section and before any person is appointed to be a member of that Land Trust, the Minister is satisfied that it is appropriate so to do, the Minister may, by writing under his hand, make, in respect of the Land Trust—

(a) a determination that the Land Trust shall not have a Chairman but shall consist of such number of members, not being less than 3, as the Minister specifies in the determination; or

(b) a determination that the Land Trust shall consist of a Chairman and 2 other members,

and, where a determination is so made in relation to a Land Trust, the Land Trust shall be constituted in accordance with the determination.”.

Recommendations for grants of Crown land described in Schedule 1

6. Section 10 of the Principal Act is amended—

(a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) a Land Trust has been established in respect of land constituting, or included within, an area of land described in Schedule 1; and”;

(b) by omitting paragraph (2) (a) and substituting the following paragraph:

“(a) a Land Trust has been established in respect of land constituting, or included within, an area of land described in Schedule 1; and”.

Recommendations for grants of Crown land, other than that described in Schedule 1

7. (1) Section 11 of the Principal Act is amended—

(a) by omitting from sub-section (1) (a) “recommends” and substituting “has, before the commencement of the *Aboriginal Land Rights Legislation Amendment Act 1982*, recommended, or, after the commencement of that Act, recommends,”;

(b) by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) the Minister is satisfied—

(i) that the land, or a part of the land, should be granted to a single Land Trust to be held for the benefit of Aboriginals who are the relevant Aboriginals in relation to that land or that part of that land; or

(ii) that different parts of the land should be granted to different Land Trusts so that each Land Trust holds the land granted to it for the benefit of Aboriginals who are the relevant Aboriginals in relation to that last-mentioned land,”;

(c) by omitting paragraphs (1) (c), (d) and (e) and substituting the following paragraphs:

“(c) establish—

(i) in a case where he is satisfied that the land, or a part of the land, should be granted to a single Land Trust—a single Land Trust under section 4 to hold that land, or that part of that land, for the benefit of Aboriginals who are the relevant Aboriginals in relation to the land, or the part of the land, proposed to be held by that Land Trust; or

(ii) in a case where he is satisfied that different parts of the land should be granted to different Land Trusts—2 or more Land Trusts under section 4 respectively to hold those different parts of that land for the benefit of Aboriginals who are the relevant Aboriginals in relation to the parts of the land respectively proposed to be held by each of those Land Trusts;

“(d) where land in respect of which a Land Trust has been or is proposed to be established in accordance with paragraph (c) is, or includes, alienated Crown land, ensure that the estates and interests in that land of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and

“(e) after any acquisition referred to in paragraph (d) has been effected in relation to land and a Land Trust has been established in accordance with paragraph (c) in respect of that land, recommend to the Governor-General that a grant of an estate in fee simple in that land be made to that Land Trust.”;

(d) by adding after sub-section (1) the following sub-sections:

“(1AA) Where the Minister has, before the commencement of this sub-section, taken action, or, after that commencement, takes action, in pursuance of sub-section (1) in relation to a part or parts of the area of land to which a recommendation that is contained in a report made to him by the Commissioner under paragraph 50 (1) (a) relates, the taking of that action does not preclude the Minister from taking further action in pursuance of sub-section (1) in relation to any other part or parts of the land to which the recommendation relates, being further action involving the establishment of a Land Trust that is, or Land Trusts each of which is, different from the Land Trust or from any of the Land Trusts established by the first-mentioned action.

“(1AB) Where the Minister—

(a) after taking action in pursuance of sub-section (1), whether before or after the commencement of this sub-section, to establish a Land Trust to hold part only of an area of land to which a recommendation that is contained in a report made by the Commissioner to the Minister under paragraph 50 (1) (a) relates; or

(b) after taking action in relation to a Land Trust in accordance with paragraph (c) of this sub-section by virtue of a previous application of this sub-section,

is satisfied that that Land Trust (in this sub-section referred to as the ‘previously established Land Trust’) should hold another part of the area of land to which the recommendation relates for the benefit of

Aboriginals who are the relevant Aboriginals in relation to that other part of that area of land, the Minister shall—

- (c) by notice published in the *Gazette*, declare that that previously established Land Trust is to be treated, for all purposes of this Act or any other law of the Commonwealth, of a State or of a Territory, as if it had also been established under section 4 to hold title to that other part of the area of land to which the recommendation relates for the benefit of Aboriginals who are relevant Aboriginals in relation to that other part of that area of land;
- (d) where the land to be held by the previously established Land Trust is, or includes, alienated Crown land, ensure that the estates and interests in that alienated Crown land of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
- (e) after any acquisition referred to in paragraph (d) has been effected in relation to the land to be held by the previously established Land Trust, recommend to the Governor-General that a grant of an estate in fee simple in that land be made to that previously established Land Trust.

“(1AC) Upon the publication in the *Gazette* of a notice under paragraph (1AB) (c) the declaration contained in that notice has effect according to its tenor.

“(1AD) Where—

- (a) the Commissioner has, whether before or after the commencement of this sub-section, in a report made to the Minister under paragraph 50 (1) (a), made 2 or more recommendations to the Minister that areas of Crown land should be granted to Land Trusts for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of those respective areas of land, whether or not that traditional entitlement is qualified as to place, time, circumstance, purpose or permission;
- (b) in respect of each of at least 2 of those recommendations the Minister has not taken action under sub-section (1) or (1AB) in respect of the land, or any part of the land, to which the recommendation relates; and
- (c) the Land Council for the area in which all the land to which the recommendations in respect of which the Minister has taken no action (in this sub-section referred to as ‘relevant recommendations’) relate is situated applies in writing to the Minister for the Minister to take action under this sub-section in relation to that land,

the Minister shall, if he is satisfied that it is appropriate to do so—

- (d) establish—
 - (i) a single Land Trust under section 4 to hold—
 - (A) an area comprising all the respective parcels of land to which the relevant recommendations relate; or
 - (B) a part of that area, being a part that includes the whole or a portion of each of the parcels of land to which the relevant recommendations respectively relate,
for the benefit of all the Aboriginals who are the relevant Aboriginals in relation to the area of land proposed to be held by that Land Trust; or
 - (ii) 2 or more Land Trusts under section 4 to hold different areas of land, each area comprising the whole or a portion of each of the parcels of land to which 2 or more of the relevant recommendations respectively relate, for the benefit, in the case of each Land Trust so established, of all the Aboriginals who are the relevant Aboriginals in relation to the area of land proposed to be held by that Land Trust;
- (e) where land in respect of which a Land Trust has been or is proposed to be established in accordance with paragraph (d) is, or includes, alienated Crown land, ensure that the estates and interests in that alienated Crown land of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
- (f) after any acquisition referred to in paragraph (e) has been effected in relation to land and a Land Trust has been established in accordance with paragraph (d) in respect of that land, recommend to the Governor-General that a grant of an estate in fee simple in that land be made to that Land Trust.”;
- (e) by omitting from sub-section (1A) “sub-section (1), where land the subject of a recommendation referred to in paragraph (a) of that sub-section” and substituting “anything to the contrary in this section, where land the subject of a recommendation contained in a report made to the Minister under paragraph 50 (1) (a)”;
- (f) by inserting in sub-section (3) “, (1AB) or (1AD)”;
- (g) by inserting at the end thereof the following sub-section:

“(4) In this section, ‘relevant Aboriginals’, in relation to an area of land, means Aboriginals entitled by Aboriginal tradition to the use or occupation of that area of land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.”.

(2) Where, before the commencement of this Act, the Minister became satisfied with respect to a matter referred to in paragraph 11 (1) (b) of the Principal Act but had not, before that commencement, taken under sub-section 11 (1) of the Principal Act the action that he was required to take as a result of his having become so satisfied, that sub-section continues in force for the purpose of enabling the Minister to take that action as if the amendments made by this section had not been made.

8. After section 12 of the Principal Act the following section is inserted:

Additional grant to Tiwi Land Trust

“12AAA. (1) The Governor-General may execute a deed of grant to the Tiwi Land Trust of an estate in fee simple in so much of the land as was included in the description of Bathurst Island appearing in Schedule 1 as was not included in the description of Bathurst Island that appeared in Schedule 1 as in force immediately before the commencement of this section and may deliver that deed of grant to the Tiwi Land Trust.

“(2) The provisions of this Act apply to a grant made in pursuance of sub-section (1) as if it were a grant made under sub-section 12 (1).

“(3) The Tiwi Land Trust shall be taken for all purposes of this Act or of any other law of the Commonwealth, of a State or of a Territory to hold title both to land granted to it under sub-section (1) and to land previously granted to it under this Act, for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the area of land comprising all the lands so granted whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.

“(4) On the application of the Tiwi Land Trust, the Registrar-General of the Northern Territory shall take such measures as are necessary under the law of the Northern Territory relating to the transfer of land to issue to the Tiwi Land Trust one certificate for the whole of the land granted under this Act to the Tiwi Land Trust and held under separate certificates and, upon the issue of the certificate, to cancel those separate certificates.

“(5) Except to the extent that sub-section (4) expressly provides, nothing in that sub-section shall be taken to affect the application to land granted under this Act to a Land Trust of any provision of the law of the Northern Territory relating to the transfer of land.

“(6) In this section, a reference to the Tiwi Land Trust is a reference to the Land Trust of that name established by the Minister by notice published in the *Gazette* in pursuance of sub-section 4 (1).

“(7) In this section, a reference to the law of the Northern Territory relating to the transfer of land shall read as a reference to that law as applied in accordance with the requirements of this Act.”

9. After section 64 of the Principal Act the following section is inserted:

Transfer of amounts from Trust Account to Consolidated Revenue Fund in certain circumstances

“64A. (1) The Minister may, in his discretion, from time to time after 30 June 1982, by instrument under his hand, direct the transfer of such amount as he specifies in the direction from the Trust Account to the Consolidated Revenue Fund.

“(2) Where the Minister directs, under sub-section (1), the transfer of a specified amount from the Trust Account to the Consolidated Revenue Fund, sub-section 221ZB (1) of the *Income Tax Assessment Act 1936* does not apply in relation to the transfer of that amount but there shall also be transferred from the Trust Account to the Consolidated Revenue Fund such additional amount as would be necessary to discharge any liability for mining withholding tax in accordance with Division 11C of Part III of that Act in respect of the first-mentioned amount and the transfer of that additional amount shall discharge that liability.

“(3) The Minister shall, in a direction under sub-section (1), specify, in relation to each amount that he directs to be transferred to the Consolidated Revenue Fund—

- (a) that the amount is to be taken, for the purposes of this section, to have been paid to the Consolidated Revenue Fund in relation to a specified Land Council; or
- (b) that specified amounts that are, in the aggregate, equal to that amount are to be respectively taken, for the purposes of this section, to have been paid to the Consolidated Revenue Fund in relation to specified Land Councils.

“(4) Where, in consequence of a direction by the Minister, under sub-section (1), that an amount be transferred from the Trust Account to the Consolidated Revenue Fund, an additional amount is also transferred from the Trust Account to the Consolidated Revenue Fund in accordance with sub-section (2), the Minister shall, by instrument under his hand, direct, in relation to that additional amount—

- (a) that the additional amount is to be taken, for the purposes of this section, to have been paid to the Consolidated Revenue Fund in relation to a specified Land Council; or
- (b) that specified amounts that are, in the aggregate, equal to the additional amount are to be respectively taken for the purposes of this section, to have been paid to the Consolidated Revenue Fund in relation to specified Land Councils.

“(5) The Minister shall, in specifying under sub-section (3) that an amount is to be taken, for the purposes of this section, to have been paid to the Consolidated Revenue Fund in relation to a specified Land Council, ensure that the aggregate of that amount and the amount or amounts (if any) specified in a previous direction or previous directions under sub-section (1) in relation to that Land Council does not exceed the total of the amounts paid by the Commonwealth, after 30 June 1978, out of the Consolidated Revenue Fund to

that Land Council for the purpose of meeting the administrative costs of that Land Council.

“(6) An amount that is to be taken for the purposes of this section to have been paid to the Consolidated Revenue Fund in relation to a particular Land Council shall, notwithstanding that it is so paid to the Consolidated Revenue Fund, be taken into account for the purposes of sub-section 64 (1) as if it had been paid in accordance with the requirements of that sub-section out of the Trust Account to that Land Council.

“(7) The reference in sub-section (5) to amounts paid by the Commonwealth out of the Consolidated Revenue Fund to a Land Council for the purpose of meeting the administrative costs of that Land Council shall be read as not including a reference to—

- (a) any amount that is paid to that Land Council under an agreement under sub-section 44 (1) or (2);
- (b) any amount that is paid to that Land Council out of the appropriation made by item 07 of sub-division 3 of Division 640 of the *Appropriation Act (No. 1) 1978-79*;
- (c) any amount that is paid to that Land Council out of the appropriation made by sub-division 1 of Division 815 of the *Appropriation Act (No. 4) 1980-81*;
- (d) any amount that is paid to that Land Council out of the appropriation made by item 09 of sub-division 3 of Division 120 of the *Appropriation Act (No. 1) 1981-82*; or
- (e) any other amount that is paid to that Land Council for that purpose by the Commonwealth out of the Consolidated Revenue Fund and that the Minister determines, by instrument under his hand, should not be taken into account for the purposes of this section.”

10. After section 74 of the Principal Act the following section is inserted:

Financial assistance in respect of legal representation in closure of seas applications

“74A. (1) Where, in accordance with a law of the Northern Territory of a kind referred to in paragraph 73 (1) (d)—

- (a) an application is made to the Administrator of the Northern Territory with respect to the regulation or prohibition of the entry of persons into, or the control of fishing or other activities in, waters of the sea, including waters of the territorial sea of Australia, adjoining, and within 2 kilometres of, Aboriginal land;
- (b) a matter to which that application relates is referred by the Administrator of the Northern Territory to the Commissioner for inquiry and report; and
- (c) a person (not being a person by whom, or on whose behalf, the application referred to in paragraph (a) has been made) or an unincorporated association of persons wishes to be, or is, legally

represented at the inquiry held by the Commissioner into the matter so referred to him,

that person or association may apply to the Attorney-General for the provision of assistance under this section in respect of the costs of such representation at that inquiry.

“(2) Where a person or association makes application to the Attorney-General in accordance with sub-section (1), the provisions of sub-sections 54C (2) and (3) apply to and in relation to the application so made as if it were an application made by that person or association under and in accordance with the provisions of sub-section 54C (1).”.

Schedule 1

11. Schedule 1 to the Principal Act is amended by omitting the description of Bathurst Island appearing in that Schedule and substituting the following description:

“All those pieces of land at Bathurst Island in the Northern Territory of Australia containing an area of 2071 square kilometres more or less being the whole of Bathurst Island above a line along the low water mark and all other islands above a line along the low water mark lying within 5.56 kilometres of the low water mark of Bathurst Island; but excluding from the said line those parts along the low water marks of all intersecting rivers, streams and estuaries inland from a straight line joining the seaward extremity of each of the opposite banks of each of the said rivers, streams and estuaries so that the aforesaid boundary line shall follow that part below low water mark of each of the aforesaid straight lines across each of the aforesaid rivers, streams and estuaries and excluding all that land described in Deed of Grant Volume 22 Folio 196.”.

PART III—AMENDMENT OF THE ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT ACT 1979

Principal Act

12. The *Aboriginal Land Rights (Northern Territory) Amendment Act 1979*² is in this Part referred to as the Principal Act.

Repeal of section 13 of the *Aboriginal Land Rights (Northern Territory) Amendment Act 1979*

13. Section 13 of the Principal Act is repealed.

NOTES

1. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 70 and 83, 1978; No. 189, 1979; No. 72, 1980; and No. 98, 1981.
2. No. 189, 1979.