



Aboriginal Land Rights and Other Legislation Amendment Act 2013

No. 93, 2013

**An Act to amend legislation relating to Aboriginal
land rights and other legislation, and for related
purposes**

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An Act to amend legislation relating to Aboriginal land rights and other legislation, and for related purposes

[Assented to 28 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aboriginal Land Rights and Other
Legislation Amendment Act 2013*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to Jabiru

Part 1—Amendments

Aboriginal Land Rights (Northern Territory) Act 1976

1 Subsection 3(1)

Insert:

category A Jabiru land means land specified in an instrument under subsection 3AD(1).

2 Subsection 3(1)

Insert:

category B Jabiru land means land specified in an instrument under subsection 3AD(2).

3 Subsection 3(1)

Insert:

category C Jabiru land means land specified in an instrument under subsection 3AD(3).

4 Subsection 3(1)

Insert:

Jabiru Town Development Authority means the Jabiru Town Development Authority established by the *Jabiru Town Development Act* (NT).

5 Subsection 3(1)

Insert:

Jabiru town land has the meaning given by section 3AC.

6 Subsection 3(1)

Insert:

Kakadu Aboriginal Land Trust means the Land Trust of that name established by the Minister by notice published in the *Gazette* under subsection 4(1).

7 Subsection 3AB(1)

After “Act,”, insert “a”.

8 Subsection 3AB(1)

Omit “means”, substitute “is”.

9 At the end of section 3AB

Add:

Kakadu Aboriginal Land Trust

- (4) For the purposes of this Act, a *township*, in relation to the Kakadu Aboriginal Land Trust, is the area of Jabiru town land.
- (5) Subsection (4) does not limit the application of subsections (1) to (3) in relation to the Kakadu Aboriginal Land Trust.

10 After section 3AB

Insert:

3AC Jabiru town land

- (1) For the purposes of this Act, *Jabiru town land* means the land specified in an instrument under subsection (2).
- (2) The Minister must, by legislative instrument, specify land for the purposes of subsection (1).
- (3) Before making a legislative instrument under subsection (2), the Minister must have regard to the boundaries of the land comprising the whole of former Northern Territory Portion 2272 delineated on Survey Plan S79/31 lodged with the Surveyor-General, Darwin (other than land on which there is a road over which the public has a right of way).
- (4) Before making a legislative instrument under subsection (2), the Minister must consult the Government of the Northern Territory and the Land Council for the area in which the land is situated. The

Minister may also consult such other persons or bodies as the Minister thinks appropriate.

3AD Category A, B and C Jabiru land

Category A Jabiru land

- (1) For the purposes of the definition of *category A Jabiru land* in subsection 3(1), the Minister must, by legislative instrument, specify an area of the Jabiru town land.

Category B Jabiru land

- (2) For the purposes of the definition of *category B Jabiru land* in subsection 3(1), the Minister must, by legislative instrument, specify an area of the Jabiru town land.

Category C Jabiru land

- (3) For the purposes of the definition of *category C Jabiru land* in subsection 3(1), the Minister must, by legislative instrument, specify an area of the Jabiru town land.

Entire land to be specified

- (4) The whole of the Jabiru town land must be specified under this section.

11 Subsection 4(1)

Omit “Crown”.

12 Subsection 4(1A)

Omit “Crown Land”, substitute “land”.

13 After paragraph 4(2B)(a)

Insert:

- (aa) because of a proposed grant of an estate in fee simple, in the land described under the heading “JABIRU” in Part 4 of Schedule 1, to the Kakadu Aboriginal Land Trust in accordance with this Act; or

14 Section 10 (heading)

Repeal the heading, substitute:

10 Recommendations for grants of land described in Schedule 1

15 Subparagraphs 10(1)(a)(i) and (2)(a)(i)

After “Schedule 1”, insert “(other than an area of land described under the heading ‘JABIRU’ in Part 4 of Schedule 1)”.

16 After subsection 10(2AA)

Insert:

- (2AB) The Minister must recommend to the Governor-General that a grant of an estate in fee simple in the land described in paragraphs (a) and (c) under the heading “JABIRU” in Part 4 of Schedule 1 be made to the Kakadu Aboriginal Land Trust.
- (2AC) The Minister must recommend to the Governor-General that a grant of an estate in fee simple in the Jabiru town land be made to the Kakadu Aboriginal Land Trust.

17 After subsection 12(1)

Insert:

- (1AA) Subject to this section, on the receipt of a recommendation under subsection 10(2AB) with respect to land, the Governor-General may execute a deed of grant of an estate in fee simple in that land to the Kakadu Aboriginal Land Trust.
- (1AB) If:
- (a) a deed of grant of an estate in fee simple in land is executed under subsection (1AA); and
 - (b) the Minister is satisfied that:
 - (i) a lease under section 19 granted by the Kakadu Aboriginal Land Trust to the Director has been varied to cover the whole of that land; and
 - (ii) the variation is expressed to take effect on the date that a deed of grant of an estate in fee simple in that land to that Land Trust is delivered to that Land Trust;
- then the Governor-General may deliver that deed of grant to the Kakadu Aboriginal Land Trust.

(1AC) Subject to this section, on the receipt of a recommendation under subsection 10(2AC) with respect to land, the Governor-General may execute a deed of grant of an estate in fee simple in that land to the Kakadu Aboriginal Land Trust.

(1AD) If:

- (a) a deed of grant of an estate in fee simple in land is executed under subsection (1AC); and
- (b) the Minister is satisfied that:
 - (i) subsections (1AE), (1AF) and (1AG) apply; or
 - (ii) subsection (1AH) applies;

then the Governor-General may deliver that deed of grant to the Kakadu Aboriginal Land Trust.

(1AE) This subsection applies if:

- (a) a lease under section 19 granted by the Kakadu Aboriginal Land Trust to the Director has been varied to cover the whole of the category A Jabiru land; and
- (b) the variation is expressed to take effect on the date that a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust is delivered to that Land Trust.

(1AF) This subsection applies if:

- (a) the Kakadu Aboriginal Land Trust has entered into a lease, under section 19, with the Aboriginal and Torres Strait Islander corporation referred to in subsection 19(3F), covering the whole of the category B Jabiru land; and
- (b) the lease is expressed to take effect on the date that a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust is delivered to that Land Trust.

(1AG) This subsection applies if:

- (a) the Kakadu Aboriginal Land Trust has entered into a lease, under section 19, with the Northern Territory covering the whole of the category C Jabiru land; and
- (b) the lease is expressed to take effect on the date that a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust is delivered to that Land Trust.

(1AH) This subsection applies if:

- (a) the Kakadu Aboriginal Land Trust has entered into a lease, under section 19A, with the Commonwealth covering the whole of the Jabiru town land; and
- (b) the lease is expressed to take effect on the date that a deed of grant of an estate in fee simple in that land to that Land Trust is delivered to that Land Trust.

(1AI) If a deed of grant is delivered to the Kakadu Aboriginal Land Trust under subsection (1AB) or (1AD), subsection (2A) applies to the estate in fee simple in the land held by the Director, but does not apply to any other estate or interest in the land held by the Director.

Note: Subsection (2A) has the effect that the estate in fee simple in the land held by the Director ceases to exist at the time the deed of grant takes effect.

18 After subsection 12(2A)

Insert:

(2AB) If a deed of grant is delivered to the Kakadu Aboriginal Land Trust under subsection (1AD), then, at the time the deed of grant takes effect, the lease of the Jabiru town land by the Director to the Jabiru Town Development Authority ceases to exist.

19 After subsection 12A(1)

Insert:

(1A) Subsection (1) does not apply to an estate or interest of the Director in land described under the heading “JABIRU” in Part 4 of Schedule 1.

20 Subsection 19(1)

Repeal the subsection, substitute:

- (1) Except as provided by this section or section 19A or 20, a Land Trust must not deal with or dispose of, or agree to deal with or dispose of:
 - (a) any estate or interest in land vested in it; or
 - (b) the land described under the heading “JABIRU” in Part 4 of Schedule 1.

21 After subsection 19(3C)

Insert:

- (3D) A lease under this section granted by the Kakadu Aboriginal Land Trust to the Director may be varied to cover the land described in paragraphs (a) and (c) under the heading “JABIRU” in Part 4 of Schedule 1, despite a deed of grant of an estate in fee simple in that land to that Land Trust not having been delivered to that Land Trust. The variation must be expressed to take effect on the date that such a deed of grant is delivered to that Land Trust.
- (3E) A lease under this section granted by the Kakadu Aboriginal Land Trust to the Director may be varied to cover the category A Jabiru land, despite a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust not having been delivered to that Land Trust. The variation must be expressed to take effect on the date that such a deed of grant is delivered to that Land Trust.
- (3F) With the consent, in writing, of the Minister, and at the direction, in writing, of the relevant Land Council, the Kakadu Aboriginal Land Trust may grant to the Aboriginal and Torres Strait Islander corporation, nominated in writing by the relevant Land Council, a lease of the category B Jabiru land.
- (3G) The Kakadu Aboriginal Land Trust may grant a lease mentioned in subsection (3F) despite a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust not having been delivered to that Land Trust. The lease must be expressed to take effect on the date that such a deed of grant is delivered to that Land Trust.
- (3H) With the consent, in writing, of the Minister, and at the direction, in writing, of the relevant Land Council, the Kakadu Aboriginal Land Trust may grant to the Northern Territory a lease of the category C Jabiru land.
- (3J) The Kakadu Aboriginal Land Trust may grant a lease mentioned in subsection (3H) despite a deed of grant of an estate in fee simple in the Jabiru town land to that Land Trust not having been delivered to that Land Trust. The lease must be expressed to take effect on the date that such a deed of grant is delivered to that Land Trust.
- (3K) The Minister must not give a consent under subsection (3F) or (3H) in relation to the grant of a lease mentioned in that subsection unless:
- (a) the term of the lease is 99 years; and

- (b) the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is satisfied that the terms and conditions of the lease are consistent with the protection of the world heritage values, and other natural and cultural values, of Kakadu National Park (within the meaning of that Act).
- (3L) If a lease under this section is varied as mentioned in subsection (3E) or a lease (the *new lease*) mentioned in subsection (3F) or (3H) is granted under this section:
- (a) any right, title or interest, or any thing, that was registered under the *Land Title Act* (NT) in relation to the applicable land immediately before the time the variation or new lease, as the case may be, takes effect, other than:
- (i) the estate in fee simple in the applicable land held by the Director; and
 - (ii) any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the applicable land;
- has full force and effect in accordance with its terms at and after that time; and
- (b) any right, title or interest in relation to the applicable land that was granted:
- (i) under any right, title or interest, or any thing, covered by paragraph (a); or
 - (ii) under any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the applicable land;
- and that existed immediately before the time the variation or new lease, as the case may be, takes effect, has full force and effect in accordance with its terms at and after that time; and
- (c) any right, title or interest:
- (i) in relation to a facility (within the meaning of the *Telecommunications Act 1997*) that is on, over or under the applicable land and is owned or operated by a carrier (within the meaning of that Act); and
 - (ii) that existed immediately before the time the variation or new lease, as the case may be, takes effect;
- has full force and effect in accordance with its terms at and after that time; and
-

- (d) any right, title or interest in relation to the trust assets (see subsection (3N)) that existed immediately before the time the variation or new lease, as the case may be, takes effect, has full force and effect in accordance with its terms at and after that time; and
 - (e) any right, title or interest, or any thing, in relation to the applicable land, specified in a legislative instrument made by the Minister under this paragraph, has full force and effect in accordance with its terms at and after the time the variation or new lease, as the case may be, takes effect.
- (3M) For the purposes of subsection (3L), the **applicable land** is:
- (a) for a lease under this section varied as mentioned in subsection (3E)—the category A Jabiru land; and
 - (b) for a lease mentioned in subsection (3F)—the category B Jabiru land; and
 - (c) for a lease mentioned in subsection (3H)—the category C Jabiru land.
- (3N) For the purposes of paragraph (3L)(d), **trust assets** means Trust Assets within the meaning of subclause 1(1) of the Agreement between the Jabiru Town Development Authority and Energy Resources of Australia Ltd made on 23 August 1985.
- (3P) Paragraphs (3L)(a) to (d) do not limit paragraph (3L)(e).
- (3Q) Any right, title or interest, or any thing, to which subsection (3L) applies has full force and effect in accordance with its terms, at and after the time the variation or new lease, as the case may be, takes effect, even if the right, title, interest or thing did not have full force and effect according to its terms immediately before that time.
- (3R) If subsection (3L) applies in relation to a right, title, interest or thing granted by the Jabiru Town Development Authority, then, at and after the time the variation or new lease, as the case may be, takes effect, the right, title, interest or thing has full force and effect in accordance with its terms as if it were granted by:
- (a) for a lease under this section varied as mentioned in subsection (3E)—the Director; or

- (b) for a lease mentioned in subsection (3F)—the Aboriginal and Torres Strait Islander corporation referred to in that subsection; or
- (c) for a lease mentioned in subsection (3H)—the Northern Territory.

(3S) If:

- (a) subsection (3L) applies in relation to a right, title, interest or thing; and
- (b) immediately before the time the variation or new lease, as the case may be, takes effect, that right, title, interest or thing is, in accordance with its terms, contingent on the existence of the lease of the Jabiru town land by the Director to the Jabiru Town Development Authority;

then, for the purposes of subsections (3L) to (3R), at the time the variation or new lease, as the case may be, takes effect, those terms are taken to have been modified so that the right, title, interest or thing is contingent on the existence of the varied lease, or of the new lease, as the case may be.

- (3T) Before making a legislative instrument under paragraph (3L)(e), the Minister must consult the relevant Land Council. The Minister may also consult such other persons or bodies as the Minister thinks appropriate.
- (3U) If the Minister makes a legislative instrument under paragraph (3L)(e), the Minister must give a copy of the instrument to the relevant Land Council.

22 Subsections 19(8A) and (8B)

After “(3)”, insert “, (3F), (3H)”.

23 After subsection 19A(1A)

Insert:

Lease of Jabiru town land

- (1B) The Kakadu Aboriginal Land Trust may grant a lease of the Jabiru town land to the Commonwealth under this section despite a deed of grant of an estate in fee simple in that land to that Land Trust not having been delivered to that Land Trust. The lease must be

expressed to take effect on the date that such a deed of grant is delivered to that Land Trust.

- (1C) The Minister must not give a consent under subsection (1) in relation to the grant of a lease mentioned in subsection (1B) unless:
- (a) the term of the lease is 99 years; and
 - (b) the Minister administering the *Environment Protection and Biodiversity Conservation Act 1999* is satisfied that the terms and conditions of the lease are consistent with the protection of the world heritage values, and other natural and cultural values, of Kakadu National Park (within the meaning of that Act).

24 After subsection 19A(11)

Insert:

- (11A) Subsections (10) and (11) do not apply in relation to the grant of a lease mentioned in subsection (1B).
- (11B) If a lease mentioned in subsection (1B) is granted under this section:
- (a) any right, title or interest, or any thing, that was registered under the *Land Title Act* (NT) in relation to the land (the **relevant land**) the subject of the lease immediately before the time the lease takes effect, other than:
 - (i) the estate in fee simple in the relevant land held by the Director; and
 - (ii) any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the relevant land;has full force and effect in accordance with its terms at and after that time; and
 - (b) any right, title or interest in relation to the relevant land that was granted:
 - (i) under any right, title or interest, or any thing, covered by paragraph (a); or
 - (ii) under any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the relevant land;

and that existed immediately before the time the lease takes effect, has full force and effect in accordance with its terms at and after that time; and

- (c) any right, title or interest:
 - (i) in relation to a facility (within the meaning of the *Telecommunications Act 1997*) that is on, over or under the relevant land and is owned or operated by a carrier (within the meaning of that Act); and
 - (ii) that existed immediately before the time the lease takes effect;has full force and effect in accordance with its terms at and after that time; and
- (d) any right, title or interest in relation to the trust assets (see subsection (11C)) that existed immediately before the time the lease takes effect, has full force and effect in accordance with its terms at and after that time; and
- (e) any right, title or interest, or any thing, in relation to the relevant land, specified in a legislative instrument made by the Minister under this paragraph, has full force and effect in accordance with its terms at and after the time the lease takes effect.

(11C) For the purposes of paragraph (11B)(d), *trust assets* means Trust Assets within the meaning of subclause 1(1) of the Agreement between the Jabiru Town Development Authority and Energy Resources of Australia Ltd made on 23 August 1985.

(11D) Paragraphs (11B)(a) to (d) do not limit paragraph (11B)(e).

(11E) Any right, title, interest or thing to which subsection (11B) applies has full force and effect in accordance with its terms, at and after the time the lease takes effect, even if the right, title, interest or thing did not have full force and effect according to its terms immediately before that time.

(11F) If subsection (11B) applies in relation to a right, title, interest or thing granted by the Jabiru Town Development Authority, then, at and after the time the lease takes effect, the right, title, interest or thing has full force and effect in accordance with its terms as if it were granted by the Commonwealth.

(11G) If:

- (a) subsection (11B) applies in relation to a right, title, interest or thing; and
 - (b) immediately before the time the lease (the *new lease*) mentioned in subsection (1B) takes effect, that right, title, interest or thing is, in accordance with its terms, contingent on the existence of the lease of the Jabiru town land by the Director to the Jabiru Town Development Authority;
- then, for the purposes of subsections (11B) to (11F), at the time the new lease takes effect, those terms are taken to have been modified so that the right, title, interest or thing is contingent on the existence of the new lease.
- (11H) Before making a legislative instrument under paragraph (11B)(e), the Minister must consult the Land Council for the area in which the relevant land is situated. The Minister may also consult such other persons or bodies as the Minister thinks appropriate.
- (11J) If the Minister makes a legislative instrument under paragraph (11B)(e), the Minister must give a copy of the instrument to the Land Council for the area in which the relevant land is situated.

25 Paragraph 19A(12)(a)

After “subsection (11)”, insert “or (11F)”.

26 Subsection 19A(12)

Omit “or other interest” (wherever occurring), substitute “, interest or thing”.

27 Part 4 of Schedule 1 (after the item relating to INNESVALE)

Insert:

JABIRU

All that land in the Northern Territory comprising:

- (a) the whole of Northern Territory Portion 7126 delineated on Survey Plan S2011/202 lodged with the Surveyor-General, Darwin, and containing an area of approximately 3.96 hectares; and
- (b) the whole of the Jabiru town land (see section 3AC of this Act); and

- (c) the whole of Northern Territory Portion 7127 delineated on Survey Plans S2011/203A and S2011/203B lodged with the Surveyor-General, Darwin, and containing an area of approximately 5,469 hectares.

Environment Protection and Biodiversity Conservation Act 1999

28 After subsection 345A(2)

Insert:

- (2A) However, subsection (2) does not apply to:
 - (a) a usage right acquired by the Commonwealth in relation to the Jabiru town land (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (b) a usage right acquired by the Commonwealth that is prescribed by the regulations for the purposes of this paragraph.

29 Subsection 388(1)

After “may”, insert “use or”.

30 Subparagraph 388(1)(b)(i)

Omit “or (3)”.

31 Subsections 388(2), (3) and (4)

Repeal the subsections, substitute:

- (2) A person (other than the Director) may use or develop a township only on land that the person holds under lease or sub-lease from:
 - (a) the Commonwealth; or
 - (b) the Director; or
 - (c) the Kakadu Aboriginal Land Trust (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*); or
 - (d) the Northern Territory; or
 - (e) the Aboriginal and Torres Strait Islander corporation referred to in subsection 19(3F) of the *Aboriginal Land Rights (Northern Territory) Act 1976*.

32 Subsections 389(1) and (2)

Repeal the subsections, substitute:

Management plan provisions

- (1) The provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township.

Town plan provisions

- (2) A town plan must make detailed provision in relation to the use and development of the township, including, in particular, the provision (if any) to be made for any matters that are specified for the purposes of this subsection by:
 - (a) the management plan for the Commonwealth reserve containing the township; or
 - (b) the regulations.

33 Paragraph 389(3)(a)

Omit “that would not otherwise apply in relation to the township”.

34 Subsection 389(4)

Repeal the subsection.

35 Saving—management plans and town plans

The amendment made by item 32 does not affect the validity of a management plan, or a town plan, in force immediately before the commencement of that item.

Part 2—Compensation for acquisition of property

36 Compensation for acquisition of property

- (1) If:
- (a) the operation of this Schedule; or
 - (b) an act done under a provision of the *Aboriginal Land Rights (Northern Territory) Act 1976* inserted by this Schedule;
- would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this item:
- acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

Schedule 2—Other amendments

Aboriginal Land Rights (Northern Territory) Act 1976

1 Part 4 of Schedule 1 (at the end of the item relating to PATTA)

Add:

- ; and (f) the whole of Northern Territory Portion 7021 delineated on Survey Plan S2009/1A lodged with the Surveyor-General, Darwin, and containing an area of approximately 11.37 hectares.

*[Minister's second reading speech made in—
House of Representatives on 21 March 2013
Senate on 17 June 2013]*

(63/13)
