



Aboriginal Land Rights (Northern Territory) Amendment Act 2015

No. 175, 2015

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 175, 2015

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

[Assented to 11 December 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Aboriginal Land Rights (Northern Territory) Amendment Act 2015*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2015
2. Schedule 1	The day after this Act receives the Royal Assent.	12 December 2015

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Aboriginal Land Rights (Northern Territory) Act 1976

1 Division 2 of Part IIA (heading)

Repeal the heading, substitute:

Division 2—Functions of the Executive Director etc.

2 After paragraph 20C(ad)

Insert:

- (ae) to administer subleases acquired by the Commonwealth under subsection 20CB(2), including administering other rights and interests derived from such subleases, in accordance with their terms and conditions; and

3 Section 20CA (heading)

Repeal the heading, substitute:

20CA Executive Director to hold leases and subleases on behalf of the Commonwealth

4 At the end of subsection 20CA(1)

Add:

- ; or (e) the proprietor of a lease of Aboriginal land is considering granting a sublease of some or all of the land.

5 After subsection 20CA(4)

Insert:

- (4A) To avoid doubt, for the purposes of paragraph (1)(e), the proprietor may be the Director of National Parks (within the meaning of the *Environment Protection and Biodiversity Conservation Act 1999*).
- (4B) To avoid doubt, for the purposes of paragraph (1)(e), the lease may be a lease granted under section 19A.

6 At the end of Division 2 of Part IIA

Add:

20CB Transfer of subleases

- (1) If the Executive Director holds a sublease of some or all of a parcel of Aboriginal land on behalf of the Commonwealth, the Executive Director may, on behalf of the Commonwealth, transfer the sublease to an Aboriginal and Torres Strait Islander corporation, so long as the transfer is in accordance with the terms and conditions of the sublease.
- (2) If:
 - (a) an Aboriginal and Torres Strait Islander corporation holds a sublease of some or all of a parcel of Aboriginal land; and
 - (b) the sublease was transferred to the Aboriginal and Torres Strait Islander corporation under subsection (1);the Executive Director may, on behalf of the Commonwealth, acquire the sublease by way of transfer from the Aboriginal and Torres Strait Islander corporation, so long as the transfer is in accordance with the terms and conditions of the sublease.

7 Division 6 of Part IIA (heading)

Repeal the heading, substitute:

Division 6—Effect on other laws in relation to certain leases or subleases held by Executive Director

8 After subsection 20S(2)

Insert:

- (2A) The Commonwealth is authorised to acquire a sublease in accordance with subsection 20CB(2).

9 After subsection 20S(3)

Insert:

- (3A) The Commonwealth is authorised to transfer a sublease in accordance with subsection 20CB(1).

10 At the end of section 20S

Add:

- (6) If a sublease was acquired by the Commonwealth under subsection 20CB(2), the Commonwealth is authorised to grant a right or interest in relation to the sublease in accordance with the terms and conditions of the sublease.

11 Section 20SA (heading)

Repeal the heading, substitute:

20SA Modification of certain NT laws in relation to leases or subleases held by Executive Director

12 At the end of subsection 20SA(1)

Add:

- ; or (c) the transfer of a sublease to the Commonwealth under subsection 20CB(2).

13 At the end of subsection 20SA(2)

Add “or transfer, as the case may be”.

14 Subsection 20SA(3)

After “grant”, insert “, or the instrument of transfer, as the case may be,”.

15 At the end of subsection 20SA(4)

Add “of the lease or sublease, or the transfer of the sublease, as the case may be”.

16 Section 20SB (heading)

Repeal the heading, substitute:

20SB Modification of certain NT laws in relation to land the subject of leases or subleases held by Executive Director

17 At the end of subsection 20SB(1)

Add:

; or (c) a sublease acquired by the Commonwealth under subsection 20CB(2).

17A After section 21D

Insert:

21E Variation of boundaries

Request

- (1) Two Land Councils may, by joint written notice given to the Minister, request the Minister to vary the boundaries of the areas of the Councils, so that a specified area:
 - (a) ceases to be part of the area of one of those Councils; and
 - (b) becomes part of the area of the other Council.
- (2) A Land Council must not make a request under subsection (1) unless the Council is satisfied that:
 - (a) the traditional Aboriginal owners (if any) of the land in the specified area understand the nature and purpose of the proposed variation and, as a group, consent to it; and
 - (b) any Aboriginal community or group that may be affected by the proposed variation has been consulted and has had adequate opportunity to express its view to the Council.

Variation

- (3) If the Minister receives a request under subsection (1), the Minister may, by writing, vary the boundaries of the areas of the Land Councils in accordance with the request.

Publication

- (4) The Minister must publish an instrument under subsection (3) in the Gazette.

Notice not a legislative instrument

- (5) An instrument under subsection (3) is not a legislative instrument.

17B After paragraph 28(1)(c)

Insert:

(ca) the making of a request under section 21E;

17C Before paragraph 28(2)(a)

Insert:

(aa) the making of a request under section 21E;

17D At the end of paragraph 28(3)(b)

Add “, except subsection (4) of that section”.

17E At the end of subsection 28(3)

Add:

; (e) section 68 (about roads over Aboriginal land);

(f) subsection 70(4) (about access agreements);

and the Council may also delegate to the corporation the Council’s other functions and powers, so far as they are associated with the performance of a function, or the exercise of a power, that is:

(g) conferred by a provision mentioned in any of the above paragraphs; and

(h) covered by the delegation.

17F Paragraph 28A(2)(b)

After “Council”, insert “(the *relevant part*)”.

17G After paragraph 28A(2)(b)

Insert:

(ba) set out the names of the corporation’s members; and

(bb) set out evidence that a majority of the members of the corporation are either:

(i) the traditional Aboriginal owners of land in the relevant part; or

(ii) Aboriginals who live in the relevant part; and

(bc) set out the reason the corporation seeks the delegation; and

(bd) set out the reason the corporation selected the relevant part; and

(be) set out a description of any consultation by the corporation with the following persons in relation to the delegation:

(i) traditional Aboriginal owners of land in the relevant part;

- (ii) any other Aboriginal community or group that may be affected by the delegation; and
- (bf) set out a description of any conflict of interest arrangements the corporation has in place; and
- (bg) set out the qualifications and experience of:
 - (i) the corporation's officers (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); and
 - (ii) the corporation's employees (within the meaning of that Act);that are relevant to the delegation; and
- (bh) set out how the corporation proposes to make decisions in relation to the delegated functions or powers, including any proposed ongoing consultation with the persons mentioned in paragraph (be); and
- (bi) set out an estimate of the resources required to perform or exercise the delegated functions or powers; and
- (bj) set out the following breakdown of the resources mentioned in paragraph (bi):
 - (i) resources the corporation has at its disposal;
 - (ii) resources the corporation proposes to obtain from the Council;
 - (iii) resources the corporation proposes to obtain from another source, and the name of that source; and

17H At the end of subsection 28A(2)

Add:

- ; and (d) be accompanied by:
 - (i) a copy of the general report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (ii) a copy of the financial report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
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- (iii) a copy of the directors' report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
- (iv) if the financial report mentioned in subparagraph (ii) has been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—a copy of the auditor's report.

Note: Examples of resources for paragraphs (bi) and (bj) are money, employees, premises and equipment.

17J After subsection 28A(2)

Insert:

- (2A) The Council must give the Minister a copy of the application.

17K Subsection 28A(4) (note)

Repeal the note.

17L Subsections 28A(5) and (6)

Repeal the subsections, substitute:

Time limit

- (5) The Council must take all reasonable steps to ensure that a decision is made on the application within:
 - (a) 6 months after the day the application was made; or
 - (b) if a longer period is agreed in writing by the corporation—that period.
- (6) If a longer period is agreed under paragraph (5)(b), the Council must notify the Minister, in writing, of the agreement.

17M Subsections 28B(1) to (3)

Repeal the subsections, substitute:

- (1) If a delegation by a Land Council is in force under subsection 28(3) in relation to an Aboriginal and Torres Strait Islander corporation, the Council may, in writing, vary or revoke the delegation:

- (a) on its own initiative; or
 - (b) in accordance with a request or application made by the corporation.
- (2) Before varying or revoking a delegation on its own initiative, the Council must consult the corporation concerned.

17N Subsection 28B(4)

Omit “The corporation may”, substitute “If a delegation by a Land Council is in force under subsection 28(3) in relation to an Aboriginal and Torres Strait Islander corporation, the corporation may”.

17P After subsection 28B(4)

Insert:

- (4A) The application must:
- (a) set out the names of the corporation’s members; and
 - (b) set out evidence that a majority of the members of the corporation are either:
 - (i) the traditional Aboriginal owners of land in the part of the area of the Council in respect of which the corporation will, if the variation is made, be able to perform the delegated functions or exercise the delegated powers; or
 - (ii) Aboriginals who live in that part; and
 - (c) set out the reason the corporation seeks the variation; and
 - (d) if the variation is to increase the part of the area of the Council in respect of which the corporation wants to perform functions or exercise powers—set out:
 - (i) the areal extent of the increase; and
 - (ii) the reason the corporation selected that areal extent; and
 - (e) set out a description of any consultation by the corporation with the following persons in relation to the variation:
 - (i) traditional Aboriginal owners of land in the part of the area of the Council affected by the variation;
 - (ii) any other Aboriginal community or group that may be affected by the variation; and
 - (f) set out a description of any conflict of interest arrangements the corporation has in place; and

- (g) set out the qualifications and experience of:
 - (i) the corporation's officers (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); and
 - (ii) the corporation's employees (within the meaning of that Act);that are relevant to the variation; and
- (h) set out how the corporation proposes to make decisions in relation to the functions or powers covered by the variation, including any proposed ongoing consultation with the persons mentioned in paragraph (e); and
- (i) set out an estimate of the resources required to perform or exercise the functions or powers covered by the variation; and
- (j) set out the following breakdown of the resources mentioned in paragraph (i):
 - (i) resources the corporation has at its disposal;
 - (ii) resources the corporation proposes to obtain from the Council;
 - (iii) resources the corporation proposes to obtain from another source, and the name of that source; and
- (k) contain any other information prescribed by the regulations; and
- (l) be accompanied by:
 - (i) a copy of the general report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (ii) a copy of the financial report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (iii) a copy of the directors' report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and

- (iv) if the financial report mentioned in subparagraph (ii) has been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—a copy of the auditor’s report.

Note: Examples of resources for paragraphs (i) and (j) are money, employees, premises and equipment.

- (4B) The Council may, by writing, exempt the corporation from compliance with any or all of the requirements set out in subsection (4A) in relation to the application.

- (4C) The Council must give the Minister a copy of the application.

17Q Subsection 28B(5) (note)

Repeal the note.

17R Subsections 28B(6) to (11)

Repeal the subsections, substitute:

- (6) The Council must take all reasonable steps to ensure that a decision is made on the application within:
- (a) 6 months after the day the application was made; or
 - (b) if a longer period is agreed in writing by the corporation— that period.
- (7) If a longer period is agreed under paragraph (6)(b), the Council must notify the Minister, in writing, of the agreement.

17S Section 28C

Repeal the section.

17T Section 28D

Repeal the section.

17U At the end of section 28F

Add:

- ; and (d) give a written statement of the corporation’s reasons for the decision, upon request, to any person or body affected by the decision; and
- (e) if the corporation gives a statement to a person or body under paragraph (d)—give a copy of the statement to the Council.
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18 After paragraph 64(4A)(ad)

Insert:

- (ae) the acquiring of a sublease by an Aboriginal and Torres Strait Islander corporation by way of transfer under subsection 20CB(1); or
- (af) the administering of a sublease covered by paragraph (ae) if an Aboriginal and Torres Strait Islander corporation holds the sublease; or
- (ag) the acquiring of a sublease by the Commonwealth by way of transfer under subsection 20CB(2); or
- (ah) the administering of a sublease covered by paragraph (ag) if the Executive Director holds the sublease on behalf of the Commonwealth; or

19 Part 4 of Schedule 1 (after the item relating to Rockhampton Downs)

Insert:

SIMPSON DESERT

All that parcel of land being Northern Territory Portion 4208 delineated on Survey Plan S.2010/156 lodged with the Surveyor-General, Darwin, and containing an area of approximately 110,000 hectares.

19A Part 4 of Schedule 1 (after the item relating to Urrpantyenye)

Insert:

VERNON ISLANDS

All those parcels of land being Northern Territory Portions 2007, 2008, 2009 and 2010 delineated on Survey Plan S.2015/208 lodged with the Surveyor-General, Darwin, and together containing an area of approximately 8,271.2 hectares.

20 At the end of Part 4 of Schedule 1

Add:

WICKHAM RIVER

All that parcel of land being Northern Territory Portion 7236 delineated on Survey Plans S.2013/177A to F inclusive lodged with the Surveyor-General, Darwin, and containing an area of approximately 50,310 hectares.

Part 2—Application and transitional provisions

21 Application of amendments etc.—delegation by Land Council

- (1) The amendments of subsection 28A(2) of the *Aboriginal Land Rights (Northern Territory) Act 1976* made by this Schedule apply to an application made after the commencement of this item.
- (2) Subsection 28A(2A) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) applies to an application made after the commencement of this item.
- (3) If:
 - (a) an Aboriginal and Torres Strait Islander corporation made an application to a Land Council under subsection 28A(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* within 12 months before the commencement of this item; and
 - (b) the Council had neither:
 - (i) made the delegation concerned; nor
 - (ii) refused to make the delegation;before the commencement of this item;then:
 - (c) subject to subitems (4) to (8), the corporation must, as soon as practicable after the commencement of this item, give the Council:
 - (i) a statement containing the information that would have been required under paragraphs 28A(2)(ba) to (bj) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) to have been included in the application if those paragraphs had been in force at the time the application was made; and
 - (ii) a copy of the general report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (iii) a copy of the financial report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the

Corporations (Aboriginal and Torres Strait Islander) Act 2006; and

- (iv) a copy of the directors' report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
- (v) if the financial report mentioned in subparagraph (iii) has been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—a copy of the auditor's report; and
- (d) subsections 28A(5) and (6) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) apply to the application as if the reference in paragraph 28A(5)(a) of that Act to the day the application was made were a reference to:
 - (i) the day this item commences; or
 - (ii) if the corporation is subject to any requirements under paragraph (c) of this subitem—the day the corporation complies with those requirements.
- (4) Subparagraph (3)(c)(i) does not apply to particular information if:
 - (a) the application contained the information; or
 - (b) after the application was made, but before the commencement of this item, the corporation gave the information to the Land Council.
- (5) Subparagraph (3)(c)(ii) does not apply if:
 - (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;

the corporation gave the Land Council a copy of the general report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.
- (6) Subparagraph (3)(c)(iii) does not apply if:
 - (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;

the corporation gave the Land Council a copy of the financial report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

- (7) Subparagraph (3)(c)(iv) does not apply if:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;

the corporation gave the Land Council a copy of the directors' report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

- (8) Subparagraph (3)(c)(v) does not apply if the financial report mentioned in subitem (6) had been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, and:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;

the corporation gave the Land Council a copy of the auditor's report.

22 Application of amendments etc.—variation of delegation by Land Council

- (1) The amendment of subsection 28B(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976* made by this Schedule applies to an application made after the commencement of this item.
- (2) Subsections 28B(4A), (4B) and (4C) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) apply to an application made after the commencement of this item.
- (3) If:
- (a) an Aboriginal and Torres Strait Islander corporation made an application to a Land Council under subsection 28B(4) of the *Aboriginal Land Rights (Northern Territory) Act 1976* within 12 months before the commencement of this item; and
 - (b) the Council had neither:
 - (i) varied the delegation concerned; nor
 - (ii) refused to vary the delegation;

before the commencement of this item;

then:

- (c) subject to subitems (4) to (9), the corporation must, as soon as practicable after the commencement of this item, give the Council:
 - (i) a statement containing the information that would have been required under paragraphs 28B(4A)(a) to (j) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) to be included in the application if subsection 28B(4A) of that Act had been in force at the time the application was made; and
 - (ii) a copy of the general report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (iii) a copy of the financial report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (iv) a copy of the directors' report that the corporation has most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and
 - (v) if the financial report mentioned in subparagraph (iii) has been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*—a copy of the auditor's report; and
- (d) subsections 28B(6) and (7) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (as amended by this Act) apply to the application as if the reference in paragraph 28B(6)(a) of that Act to the day the application was made were a reference to:
 - (i) the day this item commences; or
 - (ii) if the corporation is subject to any requirements under paragraph (c) of this subitem—the day the corporation complies with those requirements.

Schedule 1 Amendments

Part 2 Application and transitional provisions

- (4) Subparagraph (3)(c)(i) does not apply to particular information if:
- (a) the application contained the information; or
 - (b) after the application was made, but before the commencement of this item, the corporation gave the information to the Land Council.
- (5) Subparagraph (3)(c)(ii) does not apply if:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;
- the corporation gave the Land Council a copy of the general report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.
- (6) Subparagraph (3)(c)(iii) does not apply if:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;
- the corporation gave the Land Council a copy of the financial report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.
- (7) Subparagraph (3)(c)(iv) does not apply if:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;
- the corporation gave the Land Council a copy of the directors' report that the corporation had most recently lodged with the Registrar of Aboriginal and Torres Strait Islander Corporations under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.
- (8) Subparagraph (3)(c)(v) does not apply if the financial report mentioned in subitem (6) had been audited as required under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, and:
- (a) at the time when the application was made; or
 - (b) after the application was made, but before the commencement of this item;
- the corporation gave the Land Council a copy of the auditor's report.
-

- (9) The Land Council may, by writing, exempt the corporation from compliance with any or all of the requirements set out in paragraph (3)(c).

23 Transitional—delegation by Land Council

Scope

- (1) This item applies to an instrument of delegation that:
- (a) was made by a Land Council under subsection 28(3) of the *Aboriginal Land Rights (Northern Territory) Act 1976*; and
 - (b) was in force immediately before the commencement of this item; and
 - (c) relates to the Land Council's functions or powers under section 19 of that Act.

Transitional

- (2) The amendment of paragraph 28(3)(b) of that Act made by this Schedule does not affect the continuity of the delegation.
- (3) After the commencement of this item, the delegation does not apply to the Land Council's power under subsection 19(4) of that Act.

[*Minister's second reading speech made in—
House of Representatives on 24 June 2015
Senate on 25 November 2015*]

(106/15)
