

The Aboriginal Land Rights Act

The Aboriginal Land Rights (Northern Territory) Act 1976 is a bench-mark law: it was the first attempt by an Australian government to legally recognise the Aboriginal system of land ownership and put into law the concept of inalienable freehold title. The Land Rights Act is a fundamental piece of social reform.

It is not perfect, and it needs improvement, but it has provided land for some of our people in the Northern Territory and so enabled them to maintain, and in some cases to re-establish, their cultural identity.

The Land Rights Act has given some security to those who have moved back to set up outstations on their ancestors' country.

The Act has contributed to the peaceful and responsible development of the Northern Territory and helped avoid the violent confrontations between local indigenous landowners and developers experienced in other parts of Australia and other countries.

By providing legal title and a measure of control over some of our traditional lands, the Act has allowed us to determine the pace and extent of our involvement in the broader Australian society and economy.

The many resource development projects and commercial enterprises now operating on Aboriginal land show that respecting our land rights can be compatible with national economic development.

What the Land Rights Act says

Land granted

When the Act was passed, the former "reserves" became Aboriginal land.

The land was granted without the need for a land claim. It is referred to as Schedule One land.

Land Claims

The only land able to be claimed is unalienated Crown land – land that no-one else is using or has an interest in – or land which is wholly owned by Aboriginal people.

A successful land claim requires the Aboriginal landowners to prove their traditional relationship to the land under claim. This involves extensive research by anthropologists, and the claimants providing evidence before the Aboriginal Land Commissioner who is a judge of the Federal Court or the Supreme Court of the Northern Territory.

The Commissioner must be satisfied that the claimants are the right traditional owners according to Aboriginal law. The Land Commissioner makes his recommendation to the Minister for Aboriginal Affairs. He must also comment on any detriment to others that may occur should the land be granted and the effect a grant may have on existing or proposed patterns of land usage in the region.

The Minister for Aboriginal Affairs decides whether to recommend to the Governor General to grant all or part of the land under claim.

Land Trusts

Land successfully claimed is granted under inalienable freehold title. It cannot be bought, acquired or mortgaged. Communal title is formally vested in Aboriginal Land Trusts comprised of Aboriginal people who hold the title for the benefit of all the traditional landowners.

Land Councils

The Land Councils are representative bodies of elected Aboriginal people. The councils determine policy and employ expert legal, anthropological and land management staff to assist Aboriginal people in the claiming and management of their land, the protection of their sacred sites and the financial management of income received under the Act.

The History of the Land Rights Act

We have always been here. The latest European scientific reports date Aboriginal occupation of northern Australia from at least 60,000 years ago.

It was a little over one hundred years ago that the first missionaries and mineral prospectors arrived in our country – what today is called the Northern Territory.

They were soon joined by government officers, and pastoralists with cattle and sheep which cropped the grass, chased away the kangaroos and other bush tucker, and fouled our waterholes.

Aboriginal people resisted the colonisation of their land.

The Government Resident of the Northern Territory reported in 1889:

After careful inquiry I am of the opinion that this is the attitude of the aborigines towards Europeans: Entrance into their country is an act of invasion. It is a declaration of war, and they will halt at no opportunity of attacking the white invaders.

In the face of continuing resistance, and justifying their actions by a belief in the superiority of their civilisation, the colonisers pushed Aboriginal people off the fertile lands into controlled settlements.

Some areas of the Northern Territory that were inaccessible and unwanted (by non-Aborigines) were set aside as 'native reserves'. Many of our people worked on cattle stations. For decades they were not properly paid, but for them it was a way to stay on their country and continue their responsibilities to it.

Aboriginal people fought hard to defend their land – but spears and boomerangs proved no match for gunfire and hundreds of Aboriginal people were brutally massacred. Even more died from introduced disease and sickness. Every Aboriginal group has its own story to tell of resistance and the fight for their land.

Two events in the Northern Territory in the 1960s captured international attention: In 1963, provoked by a unilateral government decision to excise a part of their land for a bauxite mine, Yolngu people at Yirrkala in north-east Arnhem Land sent to the House of Representatives a petition demanding that their land rights be respected.

The bark petition provoked a government inquiry and later the Yolngu launched litigation, but the mine went ahead and today the Yolngu are still fighting to be a party to the agreement between government and the multinational company extracting the bauxite.

In August 1966 Gurindji people at Wave Hill cattle station went on strike demanding wages and a return of some of their traditional lands. The demand was rejected but the Gurindji continued to camp on their traditional country at Daguragu – they broke the white man's law but obeyed their own.

The campaign was taken up by supporters in Australia's cities and eventually the Gurindji won title to part of their land.

The Gurindji and the Yolngu had put land rights on the national political agenda.

The 1967 Referendum

Campaigning by Aboriginal people and their supporters led to a historic national referendum in 1967.

By the largest majority ever recorded, 91 per cent of Australians voted "Yes" to amend the constitution. Voters overwhelmingly approved giving the Federal Government the constitutional power to make special laws on Aboriginal affairs which could over-rule any state legislation. It was a significant victory in our struggle.

The Woodward Commission

The Australian Labor Party took up Aboriginal land rights as part of its successful 1972 attempt to dislodge the conservative Liberal-Country Party Coalition Government in Canberra.

Launching his party's election campaign, Labor leader Gough Whitlam said: We will legislate to give Aboriginal Land Rights – because all of us as Australians are diminished while the Aborigines are denied their rightful place in this nation.

But rather than pursue a national land rights law, Prime Minister Gough Whitlam chose to establish a precedent in the Commonwealth controlled Northern Territory.

In February 1973 he appointed Mr Justice Woodward to inquire into appropriate ways to recognise Aboriginal land rights in the Northern Territory. In April 1974 Woodward presented his second and final report.

Justice Woodward reported that the aims of land rights were: The doing of simple justice to a people who have been deprived of their land without their consent and without compensation. The promotion of social harmony and stability within the wider Australian community by removing, as far as possible, the legitimate causes of complaint of an important minority group within that community.

The provision of land holdings as a first essential for people who are economically depressed and who have at present no real opportunity of achieving a normal Australian standard of living.

The preservation, where possible, of the spiritual link with his own land which gives each Aboriginal his sense of identity and which lies at the heart of his spiritual beliefs.

The maintenance and, perhaps, improvement of Australia's standing among the nations of the world by demonstrably fair treatment of an ethnic minority.

Justice Woodward recommended that these aims could be best achieved by: Preserving and strengthening all Aboriginal interests in land and rights over land which exist today, particularly all those having spiritual importance.

Ensuring that none of these interests or rights are further whittled away without consent, except in those cases where the national interest positively demands it – and then only on terms of just compensation.

The provision of some basic compensation in the form of land for those Aborigines who have been irrevocably deprived of the rights and interests which they would otherwise have inherited from their ancestors, and who have obtained no sufficient compensating benefits from white society.

The further provision of land, to the limit which the wider community can afford, in those places where it will do most good, particularly in economic terms, to the largest number of Aborigines.

Justice Woodward said that in reaching his conclusions he had taken full account of the arguments put forward by sectional vested interests who opposed the granting of land rights. Prominent in this group were those from the mining and resources industry.

He said: I believe that to deny Aborigines the right to prevent mining on their land is to deny the reality of their land rights.

Woodward insisted that mining and other development on Aboriginal land should proceed only with the consent of the Aboriginal landowners.

The right to withhold consent should only be over-ridden if the government of the day decided that the national interest required it.

He said such an issue, "Would not be determined on a mere balance of convenience or desirability but only a matter of necessity".

Woodward proposed procedures for claiming land and conditions of tenure.

Aboriginal land should be granted as inalienable freehold title – meaning it could not be acquired, sold, mortgaged or disposed of in any way – and title should be communal.

He envisaged the transfer to Aboriginal ownership of the government reserve lands and the hearing by an Aboriginal Land Commissioner of claims to unalienated Crown land and Aboriginal-owned pastoral leases based on traditional affiliation. Smaller areas on pastoral leases and town areas could also be claimed on the basis of need.

The Legislation

The Whitlam Government introduced legislation based substantially on Woodward's recommendations. The Bill was before the Parliament when the Government was dismissed in the constitutional crisis of November 1975.

Despite election campaign promises from the Liberal-Country Party coalition that the Bill would be passed without amendment, the new Government of Liberal Prime Minister Malcolm Fraser buckled to pressure from mining and pastoral industry groups and conservative politicians in the Northern Territory. He drafted a new bill from which many of the advances of the Whitlam Bill were absent.

A national campaign by our newly created Land Councils salvaged a number of key elements, but the final Bill removed needs-based claims and gave to the Northern Territory Legislative Assembly responsibility for 'complementary' legislation covering sacred site protection, sea closures and permits for access to Aboriginal land.

Nonetheless, it was the recommendations of Mr Justice Woodward which formed the basis of the Aboriginal Land Rights (Northern Territory) Act which passed both houses of the Federal Parliament with historic bipartisan support in December 1976.

It came into force on 26 January 1977, one-and-a-half years before the Northern Territory was granted self-government.

What Land Councils Must Do

Functions and Responsibilities

The functions and responsibilities of the Land Councils are set out in the Aboriginal Land Rights (Northern Territory) Act 1976. Section 23 of the Act says the functions of a Land Council are to:

- find out and express the wishes of Aboriginal people about the management of their land and legislation about their land.
- protect the interests of traditional Aboriginal owners of, and other Aborigines interested in, Aboriginal land; assist Aboriginal people to protect sacred sites, whether or not on Aboriginal land.
- consult traditional Aboriginal landowners and other Aborigines interested in Aboriginal land about proposals for the use of their land.
- negotiate on behalf of traditional landowners with people interested in using Aboriginal land and land under claim.
- Assist Aboriginal people claiming land and, in particular, arrange and pay for legal assistance for them.
- Keep a register of Land Council members and members of Aboriginal Land Trusts and descriptions of Aboriginal land.
- supervise and assist Aboriginal Land Trusts.

In carrying out its functions, the Land Council must consult with traditional landowners and other Aborigines with an interest in the land. Landowners must give their consent before the Land Council enters into an agreement, or takes any action affecting their land.

The Land Councils also have statutory responsibilities and duties to

- Attempt to conciliate a dispute between Aborigines regarding land matters.
- Hold in trust, and distribute to Aboriginal associations, statutory payments from the ABTA to communities affected by mining operations and income received on behalf of landowners under negotiated agreements.
- Process applications for permits to enter Aboriginal land.