

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 1986**

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1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 22 October 1986

(Minister for Aboriginal Affairs)

A BILL

FOR

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

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

Short title, &c.

5 **1.** (1) This Act may be cited as the *Aboriginal Land Rights (Northern Territory) Amendment Act 1986*.

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

Commencement

10 **2.** (1) Subject to ^{this section} ~~subsection (2)~~^{is}, this Act shall come into operation on the day on which it receives the Royal Assent.

"(1A) Paragraph 23(1)(ea) and sub-sections 50(2D) and (2E) of the Principal Act inserted by this Act, and section 34, shall come into operation on a day, or on respective days, to be fixed by Proclamation."

Interpretation

3. Section 3 of the Principal Act is amended—

- (a) by adding at the end of the definition of “exploration licence” in sub-section (1) “or a permit granted under the *Petroleum Act 1984* of the Northern Territory as amended from time to time”; 5
- (b) by inserting after the definition of “exploration licence”, in sub-section (1) the following definitions:
 - “‘extractive mineral’ means—
 - (a) soil; or
 - (b) sand, gravel, clay or stone, being sand, gravel, clay or stone that is suitable for use in construction or building works; 10
 - ‘extractive mineral deposit’ means a deposit of extractive minerals;”;
- (c) by adding at the end of the definition of “minerals” in sub-section (1) “but does not include extractive minerals”; 15
- (d) by adding at the end of the definition of “mining interest” in sub-section (1) “other than a lease or other interest in land, or a right, granted under a law of the Northern Territory relating, in whole or in part, to the mining or development of extractive mineral deposits”; and 20
- (e) by inserting after paragraph (2) (b) the following paragraph:
 - “(ba) a lease or other interest in land, or a right granted in respect of land, under a law of the Northern Territory relating, in whole or in part, to the mining or development of extractive mineral deposits.”. 25

4. After section 3A of the Principal Act the following section is inserted in Part I:

Act binds the Crown

“3B. This Act binds the Crown in right of the Commonwealth and of the Northern Territory.”. 30

Land Trusts

5. Section 4 of the Principal Act is amended by inserting after sub-section (1A) the following sub-sections:

- “(1B) Where— 35
- (a) the traditional Aboriginal owners of an area of land constituting the whole or a part of the land that is held by a Land Trust are also the traditional Aboriginal owners of an area of land constituting the whole or a part of land that is held by another Land Trust or in which an estate in fee simple would be likely, but for the operation of this sub-section, to be granted to another Land Trust; and 40

- (b) those traditional Aboriginal owners are in favour of the amalgamation, within a single Land Trust, of the areas of which they are the traditional owners,

the Land Council or Land Councils in the area or areas of which the areas of land proposed for amalgamation are situated may request the Minister, in writing, to take action under sub-section (1C) to effect that amalgamation.

“(1C) Where the Minister, upon receiving a request to take action under this sub-section to effect the amalgamation of the whole or parts of 2 or more areas of affected land, is of the opinion that, in all the circumstances of the case, it is appropriate to do so, the Minister may—

- (a) by notice published in the *Gazette* vary the specifications of the boundaries of a Land Trust established to hold affected land, with effect from the day upon which a new deed of grant, or new deeds of grant, relating to the land that that Land Trust was established to hold is or are delivered by the Governor-General in accordance with the recommendations of the Minister under sub-section 10 (2A) or 11 (1B), so that the boundaries as so varied of the land to be held by that Land Trust relate—

(i) to all the land that is proposed to be amalgamated; or

(ii) to any affected land that was held by that Land Trust but that is not proposed to be amalgamated with other land; or

- (b) by notice published in the *Gazette* pursuant to sub-section (1), establish a new Land Trust—

(i) to hold all the land that is proposed to be amalgamated; or

(ii) to hold any affected land that is not proposed to be amalgamated with other land.

“(1D) In sub-section (1C), ‘affected land’ means any area of land to which a deed of grant in fee simple under section 12, or an application referred to in paragraph 50 (1) (a), relates, being land the whole or a part of which is proposed to be amalgamated with other land.”.

Recommendations for grants of Crown land described in Schedule 1

6. Section 10 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) Where an amalgamation in respect of which the Minister has taken action under sub-section 4 (1C) involves an area of land that was the subject of a deed of grant (in this sub-section referred to as the ‘former deed’) to an existing Land Trust, not being a deed of grant that is held in escrow by a Land Council, the Minister shall recommend to the Governor-General that the Governor-General execute, in lieu of the former deed—

- (a) if that area of land is wholly to be held by another Land Trust—a new deed of grant of an estate in fee simple in that area to that other Land Trust; or

- (b) if that area of land is to be held, as to part of that area, by that existing Land Trust and as to part of that area, by another Land Trust—new deeds of grant of estates in fee simple in the respective parts of that area to the respective Land Trusts that are to hold those respective parts of that area.

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“(2B) Where an amalgamation in respect of which the Minister has taken action under sub-section 4 (1C) involves an area of land that was the subject of a deed of grant (in this sub-section referred to as the ‘former deed’) to an existing Land Trust, being a deed of grant that is held in escrow by a Land Council, the Minister shall recommend to the Governor-General—

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- (a) that the Governor-General execute, in lieu of the former deed—

(i) if that area of land is wholly to be held by another Land Trust—a new deed of grant of an estate in fee simple in that area to that other Land Trust; or

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(ii) if that area of land is to be held, as to part of that area, by that existing Land Trust and as to part of that area, by another Land Trust—new deeds of grant of estates in fee simple in the respective parts of that area to the respective Land Trusts that are to hold those respective parts of that area; and

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- (b) that the Governor-General deliver the new deed or the new deeds to that Land Council upon the same terms as the former deed was delivered.”.

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

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7. Section 11 of the Principal Act is amended—

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

“(1AE) Where—

(a) a Commissioner recommends to the Minister in two or more reports made under paragraph 50 (1) (a) that areas of Crown land should be granted to two or more 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 the traditional entitlement is qualified as to place, time, circumstance, purpose or permission; and

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(b) the Minister is satisfied that the areas of land or parts of the areas of land to which each of at least two of those reports respectively relate should be granted to a single Land Trust to be held for the benefit of Aboriginals who are the relevant Aboriginals in relation to each of those areas or each of those parts,

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the Minister shall—

- 5 (c) establish a single Land Trust under section 4 to hold those areas or those parts of those areas for the benefit of
Aboriginals who are the relevant Aboriginals in relation to
the land proposed to be held by that Land Trust;
- 10 (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 alienated Crown land of persons (other than the Crown) are acquired by the Crown by surrender or otherwise; and
- 15 (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.

20 “(1AF) Where land that is contiguous to Aboriginal land would have been the subject of a recommendation by the Minister under sub-section (1), (1AB), (1AD) or (1AE) but for the existence on that land of—

- (a) a road over which the public has a right of way; or
- 25 (b) a stock route (other than a stock route ~~referred to in sub-section 50 (2E))~~, to which sub-section 50(2E) applies.

then—

- (c) in a case where paragraph (a) applies—if there no longer exists on that land a road over which the public has a right of way; or
- 30 (d) in a case where paragraph (b) applies—if the land ceases to be a stock route,

the Minister may, on the application of the Land Council for the area in which the land is situated, recommend to the Governor-General that a grant of an estate in fee simple in that land or part of that land be made to the Land Trust that holds, or to one of the Land Trusts that hold, contiguous Aboriginal land.”;

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

40 “(1B) Where an amalgamation in respect of which the Minister has taken action under sub-section 4 (1C) involves an area of land that was the subject of a deed of grant (in this sub-section referred to as the ‘former deed’) to an existing Land Trust, the Minister shall recommend to the Governor-General that the Governor-General execute, in lieu of the former deed—

- 45 (a) if that area of land is wholly to be held by another Land Trust—a new deed of grant of an estate in fee simple in that area to that other Land Trust; or

- (b) if that area of land is to be held, as to part of that area, by that existing Land Trust and as to part of that area, by another Land Trust—new deeds of grant of estates in fee simple in the respective parts of that area to the respective Land Trusts that are to hold those respective parts of that area;”;
- (c) by omitting from sub-section (3) “or (1AD)” and substituting “, (1AD) or (1AE)”;
- (d) by adding at the end the following sub-section:
- “(5) A recommendation under paragraph (1) (e), (1AB) (e), (1AD) (f) or (1AE) (e) that a grant of an estate in fee simple in land be made to a Land Trust may include a recommendation that the deed of grant not be delivered to the grantee until a condition specified in the recommendation has been complied with.”.
8. After section 11 of the Principal Act the following section is inserted:
- Land Councils may enter into agreements concerning land under claim**
- “11A. (1) A person who desires to obtain an estate or interest in land the subject of an application of the kind referred to in paragraph 50 (1) (a) may, before the land (in this section referred to as ‘the relevant land’) is granted to a Land Trust, make representations to the Land Council in the area of which the relevant land is situated concerning the person’s plans in respect of the relevant land.
- “(2) Subject to sub-section (3), a Land Council to which representations are made pursuant to sub-section (1) may, at any time before the relevant land is granted to a Land Trust, agree with the person who made the representations that it will, if the relevant land is granted to a Land Trust, direct the Land Trust to grant an estate or interest in that land to that person and that agreement shall specify the terms and conditions on which the proposed grant is to be made.
- “(3) A Land Council shall not enter into an agreement under sub-section (2) unless it is satisfied that—
- (a) the traditional Aboriginal owners of the relevant land understand the nature and purpose of the proposed grant and, as a group, consent to it;
- (b) any Aboriginal community or group that may be affected by the proposed grant has been consulted and has had adequate opportunity to express its view to the Land Council; and
- (c) the terms and conditions on which the proposed grant is to be made are reasonable.
- “(4) An agreement referred to in sub-section (2) is binding on any successors to the Land Council that entered into the agreement.

“(5) Where a Land Council has entered into an agreement under sub-section (2), it shall, immediately after the relevant land is granted to a Land Trust, give a direction in writing to the Land Trust to grant an estate or interest in the land on the terms and conditions set out in that agreement.

5 “(6) Where a Land Council, in entering into an agreement under sub-section (2), fails to comply with sub-section (3), that failure does not invalidate the entry by the Land Council into that agreement.

 “(7) In this section, a reference to an estate or interest in land includes a reference to a licence granted in respect of that land.”.

10 **Grants of land to Land Trusts**

 9. Section 12 of the Principal Act is amended—

 (a) by omitting from paragraph (1) (a) “or section 11” and substituting “or (2A) or section 11, not being a recommendation that includes a recommendation under sub-section 11 (5)”;

15 (b) by omitting from paragraph (1) (a) “or” (last occurring);

 (c) by inserting after paragraph (1) (a) the following paragraph:

 “(aa) in the case of a recommendation under section 11 that includes a recommendation under sub-section 11 (5)—execute a deed of grant of an estate in the land in accordance with the recommendation and, if the Governor-General is satisfied that the condition specified in the recommendation has been complied with, deliver it to the grantee; or”;

20 (d) by inserting in paragraph (1) (b) “or (2B)” after “10 (2)”; and

25 (e) by inserting after sub-section (1) the following sub-sections:

 “(1A) Where the Governor-General, pursuant to a recommendation made under sub-section 10 (2A) or (2B) or 11 (1B), executes a new deed of grant or new deeds of grant under this section in lieu of an existing deed of grant and delivers that new deed of grant or each of those new deeds of grant to a Land Trust or to a Land Council in accordance with this section then, with effect from the date of delivery of that new deed or of each of those new deeds to that Land Trust or to that Land Council—

30 (a) that existing deed of grant shall be taken, by force of this sub-section, to have been revoked;

 (b) any Land Trust that had been established to hold land to which that existing deed of grant related, being a Land Trust established to hold only areas of land to which the new deed of grant relates or the new deeds of grant relate and not being a Land Trust the boundaries of which have been varied, shall be taken to be dissolved;

40 (c) any right, title or other interest in an area of land to which the existing deed of grant related is preserved as a right, title

or interest in that area in the new deed of grant or in such of the deeds of grant as relate to that area; and

- (d) any reference in any document to the existing deed shall be read as a reference to the new deed or to the new deeds, as the case requires.

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“(1B) Any agreement in respect to an area of land that is entered into by a Land Trust that has been dissolved shall have the same force and effect, with effect from the date of dissolution of the Land Trust, as the agreement would have had if it had been entered into by the Land Trust that, after the dissolution of the first-mentioned Land Trust held the land or by each of the Land Trusts that, after the dissolution of the first-mentioned Land Trust, held part of the land, to which the agreement related.”.

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

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Compensation for loss of licences, &c.

“12AD. (1) Where a person has, by virtue of a grazing licence, an occupation licence or a miscellaneous licence under the *Crown Lands Ordinance 1931* of the Northern Territory, as amended and in force from time to time, a right to use land to which a recommendation under sub-section 11 (1) or (1AD) relates, then, upon the execution under this Act of a deed of grant in respect of the land, that right is converted into a right to compensation from the Commonwealth.

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“(2) Where a person has a right to compensation under sub-section (1) in relation to the loss of a licence, the right extends to compensation for decrease in value of an estate or interest or other licence of the person in land that is adjacent to the land granted, to the extent that the decrease arose out of the loss of that licence.

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“(3) Compensation under this section is not payable in respect of improvements that are not authorised under the *Crown Lands Ordinance 1931* of the Northern Territory, as amended and in force from time to time.

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“(4) The amount of compensation payable to a person under this section shall be such reasonable amount of compensation as is, subject to the operation of sub-sections (2) and (3), agreed between the Commonwealth and that person or, failing agreement, as is determined by the Federal Court of Australia.”.

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Payments to Land Council by the Crown in respect of interests in Aboriginal land

11. Section 16 of the Principal Act is amended by adding at the end “or payments made to the Northern Territory by way of fees for services provided under provisions of a law of the Northern Territory relating to mining for minerals”.

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Dealings, &c., with interests in land by Land Trusts

12. Section 19 of the Principal Act is amended—

- (a) by omitting from sub-section (2) "At the direction, in writing, of the relevant Land Council, a Land Trust may, subject to sub-section (7), grant a lease or licence in respect of land" and substitute "With the consent, in writing, of the Minister, and at the direction, in writing, of the relevant Land Council, a Land Trust may, subject to sub-section (7), grant an estate or interest in land";
- (b) by omitting from sub-section (3) "At the direction, in writing, of the relevant Land Council, a Land Trust may, subject to sub-section (7), grant a lease or licence in respect of land" and substitute "With the consent, in writing, of the Minister, and at the direction, in writing, of the relevant Land Council, a Land Trust may, subject to sub-section (7), grant an estate or interest in land";
- (c) by omitting paragraph (4) (a);
- (d) by inserting after sub-section (4) the following sub-section:
- “(4A) With the consent, in writing, of the Minister, and at the direction, in writing, of the relevant Land Council, a Land Trust may, subject to sub-section (7), grant an estate or interest in the whole, or any part, of the land vested in it to any person for any purpose.”;
- (e) by omitting paragraph (5) (c) and substituting the following paragraph:
- “(c) in the case of a grant of an estate or interest—the terms and conditions on which the grant is to be made are reasonable.”;
- (f) by omitting sub-section (7) and substituting the following sub-section:
- “(7) The consent of the Minister is not required—
- (a) for the grant under sub-section (2) of an estate or interest for a purpose referred to in paragraph (2) (b) or (c), the term of which estate or interest does not exceed 21 years; and
- (b) for the grant under sub-section (3) or (4A) of an estate or interest the term of which does not exceed 10 years.”;
- (g) by omitting from sub-section (8) “of a lease or licence” and “of that lease or licence” and substituting “of an estate or interest” and “of that estate or interest”, respectively;
- (h) by omitting from sub-section (9) “a grant of a lease or licence” and “that lease or licence” (twice occurring) and substituting “a grant of an estate or interest” and “that estate or interest”, respectively;
- (j) by inserting after sub-section (9) the following sub-sections:
- “(9A) When the Minister is satisfied that a Land Council has refused, or is unwilling, to give a direction under sub-section 11A (5)

to a Land Trust to grant an estate or interest in land in accordance with an agreement entered into by the Land Council under sub-section 11A (2), the Minister shall, in the name of, and on behalf of, that Land Council, give the Land Trust that direction.

“(9B) Where the Minister is satisfied that a Land Trust has refused, or is unwilling, to comply with a direction given under sub-section 11A (5), or sub-section (9A) of this section, to grant an estate or interest in particular land on particular terms and conditions, the Minister shall, in the name of, and on behalf of, that Land Trust, grant that estate or interest in relation to that land on those terms and conditions.”; and 5 10

(k) by adding at the end the following sub-sections:

“(11) A reference in this section to an estate or interest in land includes—

- (a) a reference to a licence granted in respect of that land including, but without limiting the generality of the foregoing, a licence granted under a law of the Northern Territory relating to the mining or development of extractive mineral deposits; or 15
- (b) a reference to a lease or other interest in that land, or a right granted in respect of that land, under such a law. 20

“(12) The preceding provisions of this section do not authorise the grant by a Land Trust of the fee simple in land vested in it except in the circumstances referred to in paragraph (4) (b).”.

Functions of Land Council 25

13. Section 23 of the Principal Act is amended—

(a) by inserting after paragraph (1) (b) the following paragraph:

“(ba) to assist Aboriginals in the taking of measures likely to assist in the protection of sacred sites on land (whether or not Aboriginal land) in the area of the Land Council;”;

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

“(e) to negotiate with persons desiring to obtain an estate or interest in land in the area of the Land Council—

- (i) where the land is held by a Land Trust—on behalf of traditional Aboriginal owners (if any) of that land and of any other Aboriginals interested in the land; and 35

- (ii) where the land is the subject of an application referred to in paragraph 50 (1) (a)—on behalf of the traditional Aboriginal owners of that land or on behalf of any other Aboriginals interested in the land; 40

- (ea) to assist Aboriginals in the area of the Land Council to carry out commercial activities (including resource development, the provision of tourist facilities and agricultural activities), in any manner that will not cause the Land Council to incur financial liability or enable it to receive financial benefit;”;
- (c) by inserting in paragraph (1) (h) “or other” after “administrative”; and
- (d) by adding at the end the following sub-section:
“(4) The reference in paragraph (1) (e) to an estate or interest in land includes a reference to a licence in respect of that land.”.

A person authorized by Land Council to have access to buildings and places in Region

14. Section 23C is amended by omitting the penalty at the foot of sub-section (3) and substituting:

“Penalty: \$1,000 or imprisonment for 6 months, or both.”.

Secrecy

15. Section 23E of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) Subject to sub-section (3), a person to whom this section applies who, either directly or indirectly, otherwise than in the performance of the person’s functions or duties as an authorized person, a member of a Land Council or a member of the staff of the Land Council, makes a record of, or divulges or communicates to any person any information concerning the affairs of any other person that has been acquired by the person in the course of performing functions or duties under section 23A, 23B, 23C or 23D is guilty of an offence punishable, on summary conviction, by a fine of \$2,000 or imprisonment for 12 months, or both.”.

Register of traditional Aboriginal owners

16. Section 24 of the Principal Act is amended by omitting “shall” and substituting “may”.

Land Council to meet expenses, &c., of Land Trust

17. Section 26 of the Principal Act is amended by inserting “administrative” after “any”.

Powers of Land Council

18. Section 27 of the Principal Act is amended by omitting from sub-section (3) “\$50,000” and substituting “\$100,000, or, if a higher amount is prescribed, that higher amount”.

Delegation

19. Section 28 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “Council or to a member of the staff of the Council” and substituting “Council, to a member of the staff of the Council or to a committee appointed under section 29A”;

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

“(a) its power to give or withhold consent in relation to the acquisition or the grant of— 5

(i) an estate or interest in Aboriginal land under an agreement or agreements—

(A) that will have effect for a period that exceeds, or for periods that together exceed, 2 years; or 10

(B) in respect of which the approval of the Minister is required by sub-section 27 (3); or

(ii) a mining interest in Aboriginal land;” and

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

“(4) Where the provisions of this Act require that a Land Council, before exercising a power conferred upon it to do, or to consent to the doing of, an act or thing, satisfy itself that— 15

(a) the traditional Aboriginal owners (if any) of the land affected by the exercise of the power understand the nature and purpose of the act or thing and consent to it; and 20

(b) any Aboriginal community or group that may be affected by the doing of the act or thing has been consulted and has had adequate opportunity to express its views to the Land Council,

then, if that power is delegated to another person, the person to whom it is delegated may exercise the power if the delegate is satisfied— 25

(c) of the matter referred to in paragraph (a); and

(d) that any Aboriginal community or group that may be affected by the doing of the act or thing has been consulted and has had adequate opportunity to express its views to the delegate.”. 30

20. After section 29 of the Principal Act the following section is inserted:

Committees

“29A. (1) A Land Council may appoint a committee or committees of its members to assist the Council in relation to the performance of any of its functions. 35

“(2) The Land Council may give such directions as it thinks fit with respect to the procedure to be followed at, and in relation to, meetings of a committee appointed under this section.”. 40

Application of money of Land Council

21. (1) Section 35 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “of their receipt” and substituting “after the end of the financial year in which they are received”;
- (b) by inserting in paragraph (2) (b) “, or are the traditional Aboriginal owners of,” after “live in”;
- (c) by omitting from sub-section (3) “Moneys paid to a Land Council under an agreement made under section 43 or 44” and substituting “Within 6 months after moneys are paid to a Land Council under an agreement made under section 43 or 44, they”;
- (d) by inserting in sub-section (4) “, within 6 months after that payment is received,” after “the Land Council shall”; and
- (e) by adding at the end the following sub-sections:

“(5) Where a Land Council has not, before the expiration of the period specified in sub-section (1), (2) or (3), disbursed any amount that it is, under that sub-section, required to disburse because it has not been able to make a determination under that sub-section, the Land Council shall, as soon as practicable after the expiration of that period, but not later than one month after the expiration of that period, give to the Minister a report, in writing, setting out its reasons for not having made that determination.

“(6) Where the Minister receives a report from a Land Council under sub-section (5), the Minister may, after having regard to the matters set out in that report and to any other matters that the Minister considers relevant, make a determination in relation to the amount to which the report relates, being a determination that could have been made by the Land Council, and, upon the Minister’s so doing—

- (a) the determination shall have effect, for all purposes of this Act, as if it were a determination that had been duly made by the Land Council; and
- (b) the Land Council shall cause the amount to which the determination relates to be disbursed forthwith in accordance with the determination.

“(7) Where a Land Council determines that an amount of money is an amount that is required to be distributed under sub-section (1), the Land Council shall, as soon as practicable after it has so determined, hold that amount in trust for the bodies to which that amount is eventually to be paid in accordance with this section until that amount is so paid.

“(8) Each amount of money that is paid to a Land Council under sub-section (2), (3) or (4) shall be held in trust for the

bodies to which or persons to whom that amount is eventually to be paid in accordance with this section until that amount is so paid.

“(9) Where an Aboriginal Council, an incorporated Aboriginal community or group or the traditional Aboriginal owners of an area of Aboriginal land to which or to whom an amount of money would, but for this sub-section, be required to be paid by a Land Council in accordance with sub-section (1), (2), (3), (4) or (6) requests or request the Land Council, in writing, before that amount is so paid, to hold, or to continue to hold, that amount in trust for it or for them, the Land Council shall, notwithstanding that sub-section, hold, or continue to hold, that amount in trust accordingly until that request is revoked. 5 10

“(10) While an amount of money referred to in sub-section (7), (8) or (9) is held in trust in accordance with that sub-section, the Land Council shall cause that amount to be invested in accordance with section 62B of the *Audit Act 1901*. 15

“(11) Where a Land Council pays out an amount of money that it has held in trust and invested in accordance with this section, the Land Council shall, so far as is practicable, pay to the body or person to whom that amount is paid the interest received by the Land Council in respect of the investment of that amount. 20

“(12) Unless, before the date of commencement of this sub-section, an Aboriginal community or group has been paid an amount under this section, that Aboriginal community or group is not entitled to be paid an amount under this section unless it is incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*.”. 25

(2) The reference in sub-section 35 (3) to an agreement made under section 43 or 44 shall be taken, on and after the day on which this Act receives the Royal Assent, to include a reference to an agreement made under section 43 or 44 of the Principal Act as in force before that day. 30

22. After section 35 of the Principal Act the following section is inserted:

Incorporated communities or groups to lodge financial records with Land Councils

“35A. (1) An incorporated Aboriginal community or group that has, before the day of commencement of this section, been paid an amount under section 35, or that is, on or after that day, paid an amount under that section— 35

(a) in a case where the community or group first received such an amount before the end of the financial year preceding the financial year in which this section commences—shall, as soon as practicable after the day of commencement of this section, and as soon as practicable after the end of each subsequent financial year, give to 40

the Land Council in the area of which the members of the community or group live a copy of the relevant financial statements in respect of that financial year;

5 (b) in a case where the community or group first received or first receives such an amount before the end of the financial year in which this section commences—shall, as soon as practicable after the end of the financial year in which this section commences, and as soon as practicable after the end of each subsequent financial year, give to the Land Council in the area of which the members of the community or group live a copy of the relevant financial statements in respect of that financial year; and

10 (c) in a case where the community or group first receives such an amount during a financial year after the financial year in which this section commences—shall, as soon as practicable after the end of the financial year in which that amount is received, and as soon as practicable after the end of each subsequent financial year, give to the Land Council in the area in which the members of that community or group live a copy of the relevant financial statements in respect of that financial year.

15 “(2) In sub-section (1), ‘relevant financial statements’, in relation to an incorporated Aboriginal community or group and to a particular financial year, means the financial statements that that community or group is required, under the law under which it is incorporated, to lodge in respect of that financial year.”.

20 **23.** After section 37 of the Principal Act the following section is inserted:

Interim financial reports

25 “37AA. (1) Where the Minister is satisfied that it is reasonable to do so, the Minister may, by notice in writing given to a Land Council, require the Land Council to submit to the Minister such financial statements, or such statements of expenditure, relating to the Land Council, prepared in accordance with normal accounting practices, as are specified in the notice.

30 “(2) A Land Council shall comply with a requirement made under sub-section (1).”.

Annual reports by Land Councils

35 **24.** Section 37A of the Principal Act is amended—

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

40 “(1A) Each report prepared under sub-section (1) shall include particulars of the determinations (if any) made by the Land Council under sub-section 35 (1), (2), (3) or (3A), or by the Minister under sub-section 35 (6), during the financial year to which the report relates.”; and

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

“(3) The Minister shall cause a copy of a report and financial statements furnished under sub-section (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives that report and those financial statements.”.

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Functions of Commissioner

25. Section 50 of the Principal Act is amended by inserting after sub-section (2) the following sub-sections:

“(2A) A Commissioner shall not perform a function under paragraph (1) (a) in respect of an application made after the expiration of 10 years after the commencement of this sub-section.

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“(2B) Where—

(a) an application referred to in paragraph (1) (a) has been made to a Commissioner;

(b) it appears to the Commissioner that the land to which the application relates is, in whole or part, the same as the whole or part of land to which an earlier application related; and

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(c) the report made under sub-paragraph (1) (a) (ii) in relation to the earlier application made no recommendation as mentioned in that sub-paragraph in relation to that land,

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the Commissioner shall not perform, or continue to perform, a function under paragraph (1) (a) in relation to the land (in this sub-section referred to as the ‘common land’) to which both the first-mentioned application and the earlier application relate unless the Commissioner finds—

(d) that the basis on which the applicants contend that the applicants, or specified Aboriginals, are the traditional Aboriginal owners of the common land is substantially different from the basis on which the like contention was made in relation to the previous claim;

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(e) that information, documents or records that are likely to be relevant to the performance by the Commissioner of that function, being information, records or documents that were not available to the Commissioner to whom the previous application was made, will be available to the Commissioner in connection with the performance of that function; or

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(f) any other ground upon which it appears to the Commissioner appropriate to perform, or continue to perform, that function,

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and that it is likely that the Commissioner will find that the applicants or specified Aboriginals are the traditional Aboriginal owners of the common land.

“(2C) Where—

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(a) an application referred to in paragraph (1) (a) has been made to a Commissioner; and

- (b) it appears to the Commissioner that an estate or interest in the land is held by or on behalf of Aboriginals,

the Commissioner shall not perform, or continue to perform, a function under that paragraph in relation to the application as it relates to that land unless the Aboriginals who hold that estate or interest have, or the body which holds that estate or interest on their behalf has, consented, in writing, to the making of the application.

“(2D) Where—

- (a) an application referred to in paragraph (1) (a) has been made to a Commissioner (whether before or after the commencement of this section);

- (b) the whole or part of the land to which the application relates was reserved, dedicated or otherwise set aside under a law of the Northern Territory, with effect from a time before the making of the application, as a stock route or stock reserve; and

- (c) if the application was made before the commencement of this sub-section—the Commissioner had not, before that commencement, commenced an inquiry under paragraph (1) (a) in relation to the application in respect of that land or that part,

the Commissioner shall not perform, or continue to perform, a function under paragraph (1) (a) in relation to the application in respect of that land or that part.

“(2E) Paragraph (2D) (b) does not apply in relation to—

- (a) a stock route that is, along each of its two longer boundaries, contiguous to land to which the application relates; or

- (b) a stock reserve declared by the regulations to be a stock reserve to which that paragraph does not apply.”.

Appointment of Commissioner

26. Section 52 of the Principal Act is amended by adding at the end the following sub-section:

“(4) Where the period of office of a Commissioner has expired, the Commissioner shall, unless the Governor-General otherwise directs, be deemed to continue to hold the office of Commissioner for the purpose only of completing the performance of a function under this Act commenced but not completed before the period of office expired.”.

Judge to be appointed as Commissioner

27. Section 53 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “of the Supreme Court of the Northern Territory”; and

- (b) by omitting sub-section (4) and substituting the following sub-section:

“(4) In this section, ‘Judge’ means—

- (a) a Judge of the Federal Court of Australia; or
- (b) a Judge, additional Judge, or acting Judge of the Supreme Court of the Northern Territory.”.

Protection for Commissioner, &c.

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28. Section 53A of the Principal Act is amended by adding at the end the following sub-section:

“(2) A barrister or solicitor appearing before a Commissioner who is conducting an inquiry in pursuance of his or her functions under this Act has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.”.

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29. After section 54A of the Principal Act the following section is inserted:

Commissioner may restrict publication, &c.

“54AA. (1) A Commissioner may give directions prohibiting or limiting the publication of, or access to, information given, or a book, document or other record produced, to the Commissioner under this Act.

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“(2) Where information is to be publicly given, or a book, document or other record is to be publicly produced, to a Commissioner under this Act, the Commissioner may give directions requiring that persons specified in the direction, or persons included in a class of persons specified in the direction, are not to be in the vicinity of the place where the information is to be given, or the book, document or other record produced, as the case may be.

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“(3) A person who knowingly contravenes or fails to comply with a direction given under this section is guilty of an offence punishable, on summary conviction, by—

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- (a) in the case of a natural person—a fine of \$2,000 or imprisonment for 12 months, or both; or
- (b) in the case of a body corporate—a fine of \$10,000.”.

30. After section 54C of the Principal Act the following section is inserted:

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Reference of question of law to Federal Court

“54D. (1) A Commissioner may refer a question of law arising in connection with an application referred to in paragraph 50 (1) (a) made to the Commissioner to the Federal Court of Australia for determination.

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“(2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under sub-section (1) and that jurisdiction shall be exercised by that Court constituted as a Full Court.

“(3) Where a question of law arising in connection with such an application has been referred to the Federal Court of Australia under this section, a Commissioner shall not—

- (a) make a finding to which the question is relevant while the reference is pending; or
- (b) exercise the functions of a Commissioner under paragraph (1) (a) in a manner that is inconsistent with the determination of the Federal Court on the question.”.

Payments out of Trust Account

31. Section 64 of the Principal Act is amended by adding at the end the following sub-section:

“(8) Where, at any time, the Minister is satisfied that a Land Trust is, under a law of the Northern Territory, liable, as owner of land, to make a payment to some other person, the Minister may give a direction, under sub-section (4), that an amount equal to the amount of that payment be paid to the Land Trust out of the Trust Account for the purpose of making that payment.”.

Interpretation

32. Section 66 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

- “(ba) a lease or other interest in land or a right granted under a law of the Northern Territory relating to the mining or development of extractive mineral deposits;”.

33. After section 67 of the Principal Act the following section is inserted:

Estates or interests not to be granted while land subject to traditional land claim

“67A. (1) Where an application referred to in paragraph 50 (1) (a) in respect of an area of land was made before the day of commencement of this section—

- (a) any grant of an estate or interest in that area of land, or in a part of that area of land, that was purportedly effected on a day before that traditional land claim, in so far as it related to the area of land to which the grant relates, was finally disposed of, being a day after 28 May 1986 and before the day of commencement of this section, shall be taken to be, and at all times to have been, of no effect; and
- (b) any grant of an estate or interest in that area of land, or in a part of that area of land, that was purportedly effected on a day before that traditional land claim, in so far as it relates to the area of land to which the grant relates, is finally disposed of, being the day of commencement of this section or a later day, shall be of no effect.

“(2) Where an application referred to in paragraph 50 (1) (a) in respect of an area of land is made on or after the day of commencement of this section, any grant of an estate or interest in that area of land, or in a part of that area of land, that is purportedly effected on a day before that traditional land claim, in so far as it relates to the area of land to which the grant relates, is finally disposed of, being the day on which the application is made or a later day, shall be of no effect.

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“(3) Where an application referred to in paragraph 50 (1) (a) in respect of an area of land was made before the day of commencement of this section—

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(a) any reservation, dedication or setting aside of that area of land, or a part of that area of land, that was purportedly effected on a day before that traditional land claim, in so far as it related to the area of land so reserved, dedicated or set aside, was finally disposed of, being a day after 28 May 1986 and before the day of commencement of this section, shall be taken to be, and at all times to have been, of no effect; and

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(b) any reservation, dedication or setting aside of that area of land, or a part of that area of land, that was purportedly effected on a day before that traditional land claim, in so far as it relates to the area of land so reserved, dedicated or set aside, is finally disposed of, being the day of commencement of this section or a later day, shall be of no effect.

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“(4) Where an application referred to in paragraph 50 (1) (a) in respect of an area of land is made on or after the day of commencement of this section, any reservation, dedication or setting aside of that area of land, or a part of that area of land, that is purportedly effected on a day before that traditional land claim, in so far as it relates to the area of land so reserved, dedicated or set aside, is finally disposed of, being the day on which the application is made or a later day, shall be of no effect.

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“(5) A traditional land claim shall be taken not to have been finally disposed of in so far as it relates to a particular area of land until—

(a) the claim, or the claim, in so far as it relates to the area of land, is withdrawn;

(b) the Governor-General executes a deed of grant of an estate in fee simple in the area of land, or in an area of land that includes the area of land, under section 12;

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(c) the Commissioner informs the Minister, in the Commissioner's report to the Minister in respect of the claim, that the Commissioner finds that there are no Aboriginals who are the traditional Aboriginal owners of the area of land; or

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(d) where the Commissioner finds that there are Aboriginals who are the traditional Aboriginal owners of the area of land, or of an area of land that includes the area of land—the Minister determines, in

writing, that the Minister does not propose to recommend to the Governor-General that a grant of estate in fee simple in the area of land, or in an area of land that includes the area of land, be made to a Land Trust.”.

5 **Entry, &c., on Aboriginal land**

34. Section 70 of the Principal Act is amended by adding at the end the following sub-sections:

“(4) Where—

- 10 (a) a person has an estate or interest in land, being land that the person is entitled, under sub-section (2), to enter and remain upon or being land in the vicinity of Aboriginal land; and
- 15 (b) there is no practicable way of gaining access to the land in which the person has that estate or interest otherwise than by crossing Aboriginal land (not being land that is, or forms part of, land described in Schedule 1),

a person is entitled, for the purpose of gaining that access so as to enable the use or enjoyment of that estate or interest by the owner of that estate or interest, to enter that Aboriginal land and to cross it by a route—

- 20 (c) that is agreed upon between the owner of that estate or interest and the Land Council in the area of which that Aboriginal land is situated; or
- (d) if that owner and that Land Council have failed to agree—that is determined by an Arbitrator appointed by the Minister.

25 “(5) The Minister shall not appoint a person to be an Arbitrator for the purposes of paragraph (4) (d) unless the Minister is satisfied that the person is in a position to deal impartially with the matter to be arbitrated.

“(6) In making a determination under paragraph (4) (d), the matters that the Arbitrator shall take into account include—

- 30 (a) the location of any sacred site; and
- (b) the location of any residential area.

“(7) It is the intention of the Parliament that a route that is agreed upon under sub-section (4), or determined under that sub-section by an Arbitrator, is not to be taken to be, and, subject to section 68, shall not become, a road over which the public has a right of way.”.

35 **Application of laws of Northern Territory to Aboriginal land**

35. Section 74 of the Principal Act is amended by adding at the end the following sub-section:

40 “(2) Without limiting the generality of sub-section (1), the *Control of Waters Ordinance 1938* of the Northern Territory, as amended and in force on 28 May 1986, is a law of the Northern Territory that is capable of operating concurrently with this Act.”.

36. After section 77 of the Principal Act the following sections are inserted:

Consents of traditional Aboriginal owners

“77A. Where, for the purposes of sub-section 11A (3), 19 (5), 23 (3), 48 (1) or 68 (2), the traditional Aboriginal owners of an area of land are required to have consented, as a group, to a particular act or thing, the consent shall be taken to have been given if—

- (a) in a case where there is a particular process of decision making that, under the Aboriginal tradition of those traditional Aboriginal owners or of the group to which they belong, must be complied with in relation to decisions of that kind—the decision was made in accordance with that process; or
- (b) in a case where there is no such process of decision making—the decision was made in accordance with a process of decision making agreed to and adopted by those traditional Aboriginal owners in relation to the decision or in relation to decisions of that kind.

Conduct by director, servants or agents

“77B. (1) Where, in a proceeding under this Act in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of the person’s actual or apparent authority, had that state of mind.

“(2) Any conduct engaged in on behalf of a body corporate—

- (a) by a director, servant or agent of the body corporate within the scope of the person’s actual or apparent authority; or
- (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent,

shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.

“(3) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the person’s intention, opinion, belief or purpose.”.

NOTE

1. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 70 and 83, 1978; No. 189, 1979; No. 12, 1980; No. 92, 1981; Nos. 16 and 80, 1982; Nos. 63 and 72, 1984; and Nos. 63 and 93, 1985.

