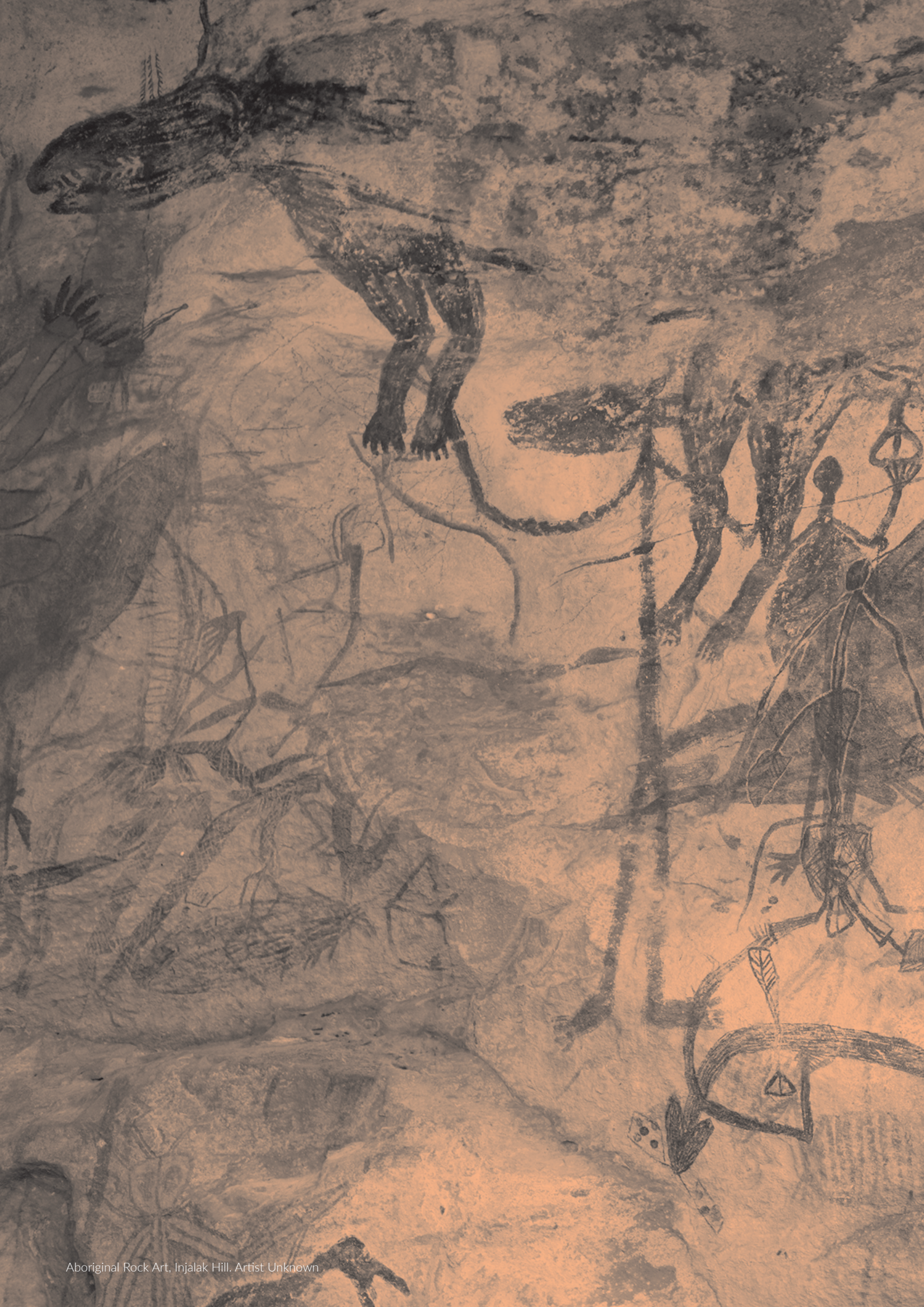


Northern Territory Aboriginal Land and Sea **Action Plan**





Aboriginal Rock Art, Injalak Hill. Artist Unknown

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“For Aboriginal peoples, country is much more than a place. Rock, tree, river, hill, animal, human – all were formed of the same substance by the Ancestors who continue to live in land, water, sky. Country is filled with relations speaking language and following Law, no matter whether the shape of that relation is human, rock, crow, wattle. Country is loved, needed, and cared for, and country loves, needs, and cares for her peoples in turn. Country is family, culture, identity. Country is self.”¹

Background

Land is crucial to the lives of Aboriginal people, spiritually, physically, socially and culturally.

The NT Government has developed this Aboriginal Land and Sea Action Plan (Action Plan) in consultation with Aboriginal land councils, the Commonwealth Government, and other key stakeholders.

The Action Plan's vision is 'to ensure land and sea ownership delivers on the economic and social aspirations of Aboriginal Territories'.

The Action Plan represents key NT Government commitments that will support the vision.

The NT Government acknowledges that a partnership approach will be required to achieve the desired outcomes.

The guiding principles of the Action Plan are:

- Aboriginal Territories' connection to land is intimately linked to their health and wellbeing and

therefore, willingness and capacity to access economic opportunities

- Aboriginal Territories should be supported to maximise the economic and social benefits of their land and sea rights and interests, which are recognised under the *Aboriginal Land Rights (Northern Territory) Act 1976 (Cth) (Land Rights Act)* and the *Native Title Act 1993 (Native Title Act)*
- Aboriginal Territories should be able to engage in economic development in the manner and at the pace they wish to proceed
- that respectful and productive relationships between government, industry groups, land councils, Traditional Owners, native title holders and other Aboriginal Territories are necessary for the *Land Rights Act* and the *Native Title Act* to operate as effectively and efficiently as possible.

¹ 'Seeing the Light: Aboriginal Law, Learning and Sustainable Living in Country', Ambelin Kwaymullina, Indigenous Law Bulletin May/June 2005, Volume 6, Issue 11

Scope



This Action Plan mainly relates to the *Land Rights Act* and the *Native Title Act*, which are the foundations of Aboriginal land and sea rights in the Northern Territory. Some other important legislation that impacts land and sea rights is also covered.

The Action Plan is a component part of the NT Government's refreshed Aboriginal Affairs Strategy. Other very important broader issues, such as housing and homelands policies, are not dealt with here but will be covered in the refreshed Aboriginal Affairs Strategy.

The Action Plan also aligns with and complements the six policy areas identified through the Commonwealth's Indigenous Reference Group and the Ministerial Forum on Northern Development:

- creating jobs, fostering labour participation, entrepreneurship and business acumen
- knowledge management systems and research and development to support Indigenous commercial end-users
- infrastructure investment to support Indigenous economic development
- access to capital and domestic and international markets
- activating the economic value of land, water, sea and cultural resource rights
- institutional arrangements that work to activate, accelerate and optimise Indigenous economic development across Northern Australia.

Key partners



The Action Plan identifies 10 actions the NT Government will implement in partnership with key agencies and other organisations. The NT Government acknowledges and respects that each stakeholder will bring their own views to the implementation of the Action Plan, and that some actions may need to proceed before others, depending on priorities and available resources.

A summary of key stakeholders is as follows:

NT Government

The NT Government is the democratic, representative and executive arm of the Northern Territory. Its functions and powers derive from the Australian Government's *Northern Territory Self Government Act 1978*, which established the Northern Territory of Australia as a body politic under the Crown.

Australian Government

The Australian Government plays a key role in the development and support of Northern Australia and is responsible for the *Land Rights Act* and the *Native Title Act*.

Aboriginal Land Councils

The *Land Rights Act* establishes four land councils: the Anindilyakwa Land Council, the Central Land Council, the Northern Land Council, and the Tiwi Land Council.

The Land Councils are statutory authorities established to express the wishes and protect the interests of Traditional Owners, and other Aboriginal people in the Northern Territory.

Other stakeholders

A number of other stakeholders have a vested interest in the Action Plan, including but not limited to:

- Prescribed Body Corporates which hold native title on trust or act as the agent of the native title holders
- the Amateur Fishermen's Association of the Northern Territory (AFANT), which represents the views of recreational fishers
- the Northern Territory Cattlemen's Association, which represents the views of pastoralists
- the Northern Territory Seafood Council, which represents the views of commercial fishers
- the Northern Territory Indigenous Business Network
- other primary industry peak bodies
- tourism peak bodies, which represent the views of the tourism industry
- various peak mining bodies, which represent the views of the mining, extractives, gas and petroleum industries.



Land and Sea Ownership in the Northern Territory

The *Land Rights Act* and the *Native Title Act* provide the legislative foundations of Aboriginal land and sea ownership in the Northern Territory. Approximately 48% of the Northern Territory's land mass and 80% of its coastline is Aboriginal land subject to the *Land Rights Act*². The majority of the remaining land and waters are, or are likely to be, subject to native title.

The *Land Rights Act* and *Native Title Act* are Commonwealth statutes and so any changes to the Acts must be passed by the Commonwealth Parliament. The *Land Rights Act* only applies in the Northern Territory, whereas the *Native Title Act* applies across Australia. While the histories of the Acts are intertwined, they are very different and were created for different reasons:

- The *Land Rights Act* was the Commonwealth's legislative response to the 1970s Gove land rights case³, which ruled that native title rights are not

recognised by the common law⁴, and the findings of the subsequent Woodward Commission (noting that other significant events, such as the 1963 Yirrkala bark petitions, the 1966 Wave Hill walk off, the 1967 Constitutional referendum, and the 1972 Aboriginal tent embassy protests, also influenced the Commonwealth's decision)

- The *Native Title Act* was the Commonwealth's legislative response to the 1990s Mabo High Court decision⁵, which overturned the precedent set by the Gove land rights case, and ruled that native title rights are recognised by the common law.

It is important to understand the history of both Acts as they establish different types of Aboriginal land and sea ownership in the Northern Territory.

² These are approximate figures sourced from the Northern Territory Surveyor-General

³ Milirrpum v Nabalco Pty Ltd (1971) 17 FLR 141

⁴ Common law is a collection of court decisions developed over hundreds of years by Australian superior courts, English courts and the courts of other countries that have similar legal systems to those of Australia and England

⁵ Mabo v Queensland (No 2) (1992) 172 CLR 1

Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)

In 1964, the Church Missionary Society (representing the Traditional Owners of Groote Eylandt) and BHP agreed on royalty payments to allow mining on their island. This agreement was one of the earliest royalty agreements for mining with Traditional Owners in Australia. Mineral exploration began shortly after and in 1965 the Groote Eylandt Mining Company (GEMCO) began mining manganese.

In 1968, the Commonwealth granted leases to Nabalco Pty Ltd to mine bauxite and establish a mining township on the Gove Peninsula in North East Arnhem Land⁶. Later that year, a writ was issued in the Northern Territory Supreme Court by Aboriginals from the Gove Peninsula who claimed that they, and no others, had occupied the land leased to Nabalco from time immemorial as of right; that those rights were proprietary rights; that those rights still existed; and that Nabalco's activities in the leased area were unlawful in that they were an invasion of such proprietary rights. This was Australia's first significant Aboriginal land rights case.

In April 1971, Justice Blackburn handed down his decision on the matter, now referred to as the Gove land rights case. Justice Blackburn found that the Aboriginals from the Gove Peninsula 'had established a subtle and elaborate system of social rules and customs' which were highly adapted to the country in which they lived, and 'which provided a stable order of society remarkably free from the vagaries of personal whim or influence'. However, despite this, he found that the relationship of the Aboriginals to the land under that system 'was not recognisable as a right of property' under Australian common law and, as a result, the Nabalco leases were lawful.

The case, while not appealed, led to prolonged public and political debate regarding Aboriginal land rights, not just in the Northern Territory, but across Australia. The Whitlam Government went to the 1972 Commonwealth election promising land rights in the Northern Territory and, upon being elected, established a Commission of Inquiry to inquire into the matter.

Justice Woodward, who had represented the Aboriginal plaintiffs in the Gove land rights case, was appointed to lead the Commission in February 1973. He delivered two reports to the government, one in July 1973⁷ and the other in May 1974⁸. The reports and their recommendations laid the foundations for the *Land Rights Act* we know today and established the Northern and Central Land Councils.

In 1975, the Whitlam Government was dismissed by the Governor-General, and so it was left to the Fraser Government to finalise and pass the land rights legislation. On Australia Day 1977, most of the provisions of the *Land Rights Act* commenced and with it most of the former Aboriginal reserves, such as Arnhem Land, automatically became Aboriginal land. The Act also allowed Aboriginals to make claims to land within either of two categories:

- unalienated Crown land outside a town; and
- land outside a town held by or on behalf of Aboriginals.

It was originally envisioned that legislation broadly based on the principles of the *Land Rights Act* and the Woodward Commission's recommendations would be implemented in other States⁹. This did not occur.

Today, approximately 48% of the Northern Territory's land mass and 80% of its coastline has been granted as Aboriginal land under the *Land Rights Act*.

No new land claims could be lodged after 1997. However, 41 claims are still yet to be resolved.

The *Land Rights Act* has been reviewed many times since 1977, including by Mr Barry Rowland QC (1980), Justice Toohey (1983), Dr Jon Altman (1984), Mr John Reeves QC (1998), Dr Ian Manning (1999), and Justice Mansfield (2013).



48% of the Northern Territory's land mass

80%
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Land Rights Act

Native Title Act 1993 (Cth)

In the absence of common law recognition of native title rights in Australia before 1992, efforts by governments to legislate Aboriginal land rights (as in the case of the *Land Rights Act*) were considered acts of benevolent policy rather than recognition that Aboriginals were legally entitled to any land¹⁰. This all changed with the landmark Mabo High Court decision¹¹.

In 1982, Mr Eddie Mabo initiated a High Court challenge to establish that his people had legally recognised rights and interests in their traditional land in the Torres Strait. It would take 10 years for the matter to be resolved, by which time Mr Mabo had died. On 3 June 1992, the High Court found, by a majority of six to one, that:

'The common law of this country recognises a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional land.'¹²

The result was that the Australian common law now recognised that Aboriginal and Torres Strait Islanders could still hold legally recognisable and enforceable rights of a type which their ancestors held in land and water when the Crown asserted sovereignty. Unlike the *Land Rights Act*, the Crown could not grant those rights: rather, people that had rights and interests at sovereignty, if they still retained all or some of those rights and interests, could have them recognised, protected and enforced.¹³

The Keating Government's response was to enact the *Native Title Act* to 'do justice to the Mabo decision in protecting native title' and to 'ensure a workable, certain, land management'¹⁴. The Act commenced on 1 January 1994, and was extensively amended in 1998 by the Howard Government's 10 Point Plan.

As of January 2019, there were 106 determinations of native title in the Northern Territory, 95 of which were entered by agreement, and 55 active claimant applications.

Aboriginal Land vs Native Title – Key Differences

The *Land Rights Act* and *Native Title Act* establish two very different forms of Aboriginal land and sea ownership. The *Land Rights Act* provides Traditional Owners with grants of Aboriginal freehold land (held by a Land Trust) and a high level of control over who accesses Aboriginal land. Aboriginal land is registered in the NT Government's Torrens land titles system.

Despite its name, the *Native Title Act* does not grant native title holders a title to land under the Territory's Torrens land titles system. Rather, native title rights are recognised by a Federal Court determination.

Native title rights and interests are broadly categorised as being for exclusive or non-exclusive possession.

Exclusive possession native title is the right to assert sole possession, occupation, use and enjoyment in relation to the land or waters as against the whole world. Non-exclusive possession native title rights co-exist with other interests in land (for example, a pastoral lease). An example of non-exclusive native title rights are the right to hunt and fish and to use an area of land or water for ceremony, if the exercise of these rights does not conflict with the rights of the non-native title holder (such as essential pastoral operations). The rights of a non-native title holder prevail over non-exclusive native title rights and interests.

Some of the key differences between the two Acts are listed in the tables on the next page.

⁶ The leases came into effect following the passing of the Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968

⁷ A E Woodward, Aboriginal Land Rights Commission, First Report, AGPS, Canberra (1973)

⁸ A E Woodward, Aboriginal Land Rights Commission, Second Report, AGPS, Canberra (1974)

⁹ For example, in 1975, the then Minister for Aboriginal Affairs, the Hon Les Johnson MP, noted in his second reading speech for the Land Rights Bill: 'That the Australian Parliament may only legislate in this direction in the Northern Territory is a matter of regret, but we have made it clear to the various State governments that we support similar recognition of Aboriginal land title in the States'. G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 70

¹⁰ G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 70

¹¹ Mabo v Queensland (No 2) (1992) 172 CLR 1

¹² Mabo v Queensland (No 2) (1992) 172 CLR 1, 15

¹³ G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 115

¹⁴ Australia, Debates, House of Representatives, 1993, vol HR 190, 2877-8 (P Keating)

Determining Ownership

Land Rights Act – Determining Traditional Owners	Native Title Act – Determining Who Holds Native Title
A contemporary test which requires a successful applicant group to establish that it has common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land and which is entitled by Aboriginal tradition to forage as of right over that land. It is the statutory function of the NT Land Councils under the <i>Land Rights Act</i> to determine who the relevant Traditional Owners are for Aboriginal land and waters in their region.	A historic test which requires a successful applicant (usually a group) to establish that its current native title laws and customs are traditional and derive from native title rights and interests which have continued substantially uninterrupted from pre sovereignty (pre 1825 in the Northern Territory). It is much harder to prove connection to land under the <i>Native Title Act</i> than the <i>Land Rights Act</i> .

Aboriginal Land vs Native Title ‘Ownership’ – Key Differences

Feature	Aboriginal Land (<i>Land Rights Act</i>)	Native Title (<i>Native Title Act</i>)
Transferability	Aboriginal freehold land granted under the <i>Land Rights Act</i> cannot be sold. It can only be transferred to another Land Trust or surrendered to the Crown.	Recognition of native title at common law in accordance with the framework under the <i>Native Title Act</i> – native title cannot be sold or transferred but it can be surrendered to the Territory.
Acquisition	Aboriginal land cannot be compulsorily acquired by the Northern Territory. It can be compulsorily acquired by the Commonwealth.	Native title can be acquired by the Northern Territory in accordance with the <i>Lands Acquisition Act 1978</i> and the <i>Native Title Act</i> .
Application of Northern Territory laws	Northern Territory laws will only apply on Aboriginal land to the extent that they are capable of operating concurrently with the <i>Land Rights Act</i> .	Native title is subject to all valid Northern Territory and Commonwealth laws.
Access	Access is regulated by a permit system.	Only exclusive native title holders may regulate access.
Leasing/licensing	Aboriginal land can be leased or licensed with the involvement of the relevant Land Council.	The holders of exclusive possession native title land can grant rights of access and use.
Mining and petroleum approvals	Mining and petroleum approvals are subject to a special procedure – a power of veto is available to Traditional Owners.	Good faith negotiations may be required to obtain mining approvals for mining and petroleum projects, but no power of veto.
Dealings with land under claim	Once land is subject to a land claim there are restrictions on dealing with the land.	Native title holders and registered native title claimants are entitled to the procedural rights set out in the <i>Native Title Act</i> prior to the grants of new rights and interests by the Northern Territory (e.g. right to negotiate).



Land is crucial to the lives of Aboriginal people spiritually, physically, socially and culturally



Action 1

Resolve all outstanding land claims



In June 1997, a provision of the *Land Rights Act* came into operation which prevents the Aboriginal Land Commissioner from conducting inquiries into any new land claims. No new claims have been submitted since that time and of the 249 land claim applications submitted under the *Land Rights Act*, 41 remain to be resolved.

Of these claims, 23 relate to the beds and banks of rivers and intertidal coastal areas.

The Commonwealth has indicated that the resolution of all outstanding land claims is a high priority, and the NT Government has developed a detailed work plan towards resolving all outstanding land claims with the assistance of the land councils.

What we will do

The NT Government will work with the land councils, the Commonwealth and the Aboriginal Land Commissioner to resolve all outstanding land claims, noting the Commissioner's 2019 deadline.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice
Department of Infrastructure, Planning and Logistics
Department of Primary Industry and Resources
Department of Tourism, Sport and Culture.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
Office of the Aboriginal Land Commissioner
Central Land Council
Northern Land Council
NT Guided Fishing Association
NT Cattlemen's Association
NT Seafood Council
Amateur Fishermen's Association
of the Northern Territory .



Action 2

Resolve Blue Mud Bay fishing access arrangements

.....

In July 2008, the High Court of Australia found that Aboriginal Land Trusts have the right to control access to waters overlying Aboriginal land in the intertidal zone. This is commonly referred to as the Blue Mud Bay decision.

The consequence of the High Court decision is that entry to waters overlying Aboriginal land for any purpose (not only fishing) requires permission from the relevant Land Trust except in a few special situations.

The NT Government, land councils and Traditional Owners need to work together to negotiate long-term access arrangements for fishers and other water users to these areas.

Since the High Court decision, the NT Government has negotiated six access agreements in the Northern Land Council region and one access agreement in the Tiwi Land Council region. The agreements are typically for 20 years and cover the following areas:

- Wadeye region
- Nhulunbuy
- Daly River
- McArthur River/Sir Edward Pellew Group of Islands
- Daly River Mouth to the area of land south of Cape Ford
- Tiwi and Vernon Islands.

What we will do

The NT Government will work with the Northern Land Council and key industry groups to resolve issues arising from the 2008 Blue Mud Bay High Court decision with a view to providing long-term certainty for Traditional Owners, key stakeholders, industry and business operators, and the general public.

Responsible NT agencies

Department of Primary Industry and Resources
Department of Tourism, Sport and Culture
Department of Infrastructure, Planning and Logistics.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
Northern Land Council
Anindilyakwa Land Council
NT Seafood Council
NT Guided Fishing Association
Amateur Fishermen's Association
of the Northern Territory.

Action 3

Progress the Aboriginal Land Commissioner’s recommended changes to Part IV of the *Land Rights Act*, which relates to exploration and mining on Aboriginal land

.....

In 2013, the Report on the Review of Part IV of the *Lands Rights Act* (the Report) was completed by the Aboriginal Land Commissioner, Justice Mansfield, pursuant to a statutory requirement. The Report was tabled in the Commonwealth Parliament; however, there was no formal government response.

As a result of recommendations from the October 2016 Biannual Strategic Forum¹⁵, a Part IV Working Group consisting of the Commonwealth, the NT Government and land councils was established to develop an agreed package of Part IV *Lands Rights Act* amendments.

What we will do

The NT Government will continue to participate in the Part IV Working Group to develop an agreed position with the land councils and the Commonwealth on which of the Commissioner’s Part IV recommendations should be implemented.

A Senior Officers Working Group comprising staff from the Department of Primary Industry and Resources and the land councils will also be re-established to support the development of productive working

relationships and to explore further opportunities for administrative improvements.

Responsible NT agencies

Department of Primary Industry and Resources
Department of the Chief Minister.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
Land councils.

Action 4

Develop an NT Government Native Title Policy Framework

.....

Native title policies within the NT Government have sometimes been developed on a case-by-case basis within responsible departments and agencies. Developing a whole-of-government Native Title Policy Framework will provide a more consistent approach to native title across the NT Government.

What we will do

In order to create greater certainty and streamline native title processes, the NT Government will develop a strategic whole-of-government policy framework in the areas of:

- recognising and recording native title determinations in the Northern Territory Land Information System
- future acts, future act processes, and future acts compensation liability
- the approach to compensation the NT Government will use in light of the Timber Creek decision
- the identification of issues and the development of policy positions that might assist in the resolution of outstanding claimant applications
- assisting Registered Native Title Bodies Corporate to build the capacity, governance and capability to

deal with government, including working with the Commonwealth to build the long term capacity and capability to be self-sufficient land managers

- native title rights and interests over sea country.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice
Department of Infrastructure, Planning and Logistics
Department of Primary Industry and Resources with involvement from other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Registered Native Title Bodies Corporate
Commonwealth Attorney-General’s Department
and Australian Government Solicitor
Industry Stakeholders.

¹⁵ The Biannual Strategic Forum brings together the NT Government, Commonwealth Government and the four Land Councils twice a year to build relationships and discuss each other’s strategic priorities.

Action 5

Develop a strategic approach to tenure and other issues in mining towns that will eventually become Aboriginal land

Jabiru, Nhulunbuy and Alyangula currently rely on mining operations for their continued existence.

There are a range of complex policy and tenure issues the NT Government must work through in order to provide certainty for these towns when they transition to a post-mining future and ultimately, revert to or become Aboriginal land.

What we will do

The NT Government will establish a Senior Officers Working Group to:

- ensure a co-ordinated whole-of-government approach is taken to engagement and negotiations with Traditional Owners, the relevant land councils, and all relevant stakeholders
- inform the development of strategic whole-of-government positions in relation to the future tenure arrangements and delivery of services for Jabiru, Alyangula, and Nhulunbuy, including prioritising the needs of the respective towns
- support the future of Jabiru and the development of attractions and infrastructure to increase the number of visitors to Kakadu
- enhance partnerships between land councils, Traditional Owners, industry, and governments to better align aspirations and investment opportunities
- provide regionally based support for the affected towns and nearby communities.

Responsible NT agencies

Department of the Chief Minister
Department of Infrastructure, Planning and Logistics
Department of Tourism, Sport and Culture with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Anindilyakwa Land Council
Department of the Prime Minister and Cabinet
Local Governments
Director National Parks
Relevant Aboriginal organisations
Mining companies.



Action 6

Work to enhance the opportunities for long-term leasing on Aboriginal land

Freehold or long term leasehold tenure is generally considered the most desirable form of tenure in terms of facilitating economic development. This is because a bank will typically be comfortable using freehold or long term leasehold tenure as collateral for a loan.

Aboriginal land cannot be sold by, or on behalf of, Traditional Owners, and effectively cannot be mortgaged because in the event of a loan default, a bank cannot sell the land to recoup its debt.

However, leases on Aboriginal land can be used as security for a loan, and the grant of long term leases on Aboriginal land does not contravene the *Land Rights Act*.

The value of a lease will depend in large part on how long it still has to run. How long a lease term should run is determined by the particular lease purpose, size of the investment, expected rates of return, life of the proposed activity, and the like. One size does not fit all. Generally, desirable characteristics of a lease include longevity, free assignability and a broad permitted use.

The first community entity held township lease over the Central Australian community of Mutitjulu was finalised on 17 March 2017. The Commonwealth's Executive Director of Township Leasing will hold the lease for an initial period while the Commonwealth and Central Land Council work with the community and Traditional Owners to establish a community entity to hold the township lease and administer the sub-leases. A 99-year township lease was granted over the Gunyangara community (Ski Beach) to the Gumatj Traditional Owners' community entity on 17 November 2017. Other communities are looking at developing community held township leasing arrangements.

What we will do

The NT Government will:

- work with land councils to develop long term leasing models that are recognised and supported by industry and financiers
- work with the land councils and the Commonwealth to explore township leasing options, including community entity held township leases
- work with land councils to resolve land tenure issues associated with operating and maintaining essential public services, such as roads, barge landings and aerodromes, on Aboriginal land
- give consideration to possible exceptions to the requirement for development consent under the *Planning Act 1999* (NT) for all leases over 12 years under the *Land Rights Act* (refer to Proposed Sub-Action 9.3)
- work with the Commonwealth to streamline processes relating to long-term leases on Aboriginal land.

The NT Government, with funding from the Commonwealth Government, will:

- complete whole-of-community survey plans for communities located on Aboriginal land through the 'Remote Aboriginal Communities Cadastral Survey Project'

- work with the land councils and the Commonwealth to identify areas for prospective community development and develop a strategy to ensure that those areas are surveyed.

Completion of community surveys means that the time and cost associated with obtaining development consent for long-term leases on Aboriginal land for the areas that have been surveyed will be significantly reduced.

The NT Government will also continue to work with land councils to secure appropriate tenure for government infrastructure on Aboriginal land.

Responsible NT agencies

Department of Housing and Community Development
Department of Infrastructure, Planning and Logistics
Department of the Chief Minister
Department of Treasury and Finance.

Other responsible organisations and agencies

Land councils
Department of the Prime Minister and Cabinet.



Action 7

Support the management of Aboriginal land



Aboriginal Territorians have rights and interests over a large proportion of the Territory's land mass and coastline, and the management of these areas can be assisted by government support.

This Action encompasses a number of initiatives that will provide this support.

What we will do

The NT Government will:

- continue to implement the Land Management and Conservation Fund, which delivers \$8 million in grant funding over four years from 2017/18 to 2020/21 for Aboriginal land and sea management projects
- work with the Northern and Central land councils to reinvigorate jointly managed parks administered by the NT Government
- support initiatives to improve opportunities for carbon abatement activities on Aboriginal land
- implement the Coastal and Marine Management Strategy
- support ranger training and development pathways and explore options for enhanced ranger enforcement powers.

Responsible NT agency

Department of Tourism, Sport and Culture
Department of Environment and Natural Resources
Department of Primary Industry and Resources

Other responsible organisations and agencies

Land councils
AFANT
NT Seafood Council
CSIRO
Non-government conservation organisations
Department of the Environment and Energy
Department of Agriculture and Water Resources.



Action 8

Support economic development and employment on Aboriginal land

The NT Government wants to ensure that Aboriginal land and sea ownership delivers on the economic aspirations of Aboriginal Territorians.

A number of initiatives have been identified, or are underway, to support the economic development initiatives of land councils and Traditional Owners and assist to activate the economic value of land, water, sea and cultural resource rights.

What we will do

The NT Government will:

- ensure that implementation of this Action Plan aligns and complements policy initiatives developed by the Commonwealth’s Indigenous Reference Group and endorsed by the Ministerial Forum on Northern Development
- address identified barriers to development on Aboriginal land, and support partnerships between Aboriginal and non-Aboriginal enterprises
- develop an Aboriginal Contracting Framework
- support Aboriginal training and employment opportunities
- support Aboriginal organisations to build governance capacity and leadership capability
- continue to deliver the Mapping the Future Program
- support the Northern and Central land councils to secure Australian Government and corporate assistance to implement Aboriginal land and sea economic development agencies or corporations including pilot projects
- support the land councils capacity through staff secondment for economic development activities
- establish Strategic Aboriginal Water Reserves.

Responsible NT agencies

Department of Trade, Business and Innovation
Department of the Chief Minister
Department of Environment and Natural Resources
Department of Treasury and Finance.

Other responsible organisations and agencies

Department of Prime Minister and Cabinet
Land councils
Native Title Representative Bodies
CSIRO
Department of Agriculture and Water Resources
Indigenous Land Corporation
Indigenous Business Australia
Industry Peak Bodies and Stakeholders.



Action 9

Make improvements to NT legislation and administrative processes

.....

The NT Government has identified a number of legislative and administrative improvements it can make. These improvements have been captured in the proposed sub-actions below.

Sub-Action 9.1

Continue to work with land councils to collect, collate and publish (on the Northern Territory Land Information System) non-confidential information about rights and interests granted in Aboriginal land in order to protect those interests and to provide certainty and transparency for all stakeholders

.....

Access to non-confidential information held by land councils about the rights and interests that have been granted in Aboriginal land is necessary to:

- record or register the right or interest with the Land Titles Office and/or the Northern Territory Land Information System
- identify weaknesses and strengths in the Aboriginal land administration system
- provide readily available information that supports investment, development and planning.

What we will do

The NT Government will work with land councils to:

- enhance the collection and collation of information on the non-confidential rights and interests that exist on Aboriginal land
- upload all non-confidential information about current rights and interests onto the Northern Territory Land Information System.

The above work will be consistent with the goals of ‘Cadastral 2034: Powering Land and Real Property’, which is a national strategy for cadastral reform and innovation in Australia. The vision for Cadastral 2034 is

for a cadastral system that enables people to readily and confidently identify the location and extent of all rights and interests related to land and real property.

Responsible NT agencies

Department of Housing and Community Development
Department of Infrastructure, Planning and Logistics.

Other responsible organisations and agencies

Land councils.



Sub-Action 9.2

Engage with the land councils, through the Aboriginal Areas Protection Authority, to explore ways to improve the efficiency and effectiveness of administrative processes under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT)

.....

Anyone proposing to use or work on land in the Northern Territory may apply to the Aboriginal Areas Protection Authority (AAPA) for an Authority Certificate to cover their proposed activities. An Authority Certificate provides a statutory indemnity against prosecution in relation to the works or uses covered by the Certificate, provided the applicant complies with any conditions imposed to protect sacred sites. Certificates are voluntary and provide an effective risk management tool for developers.

What we will do

AAPA will work with the land councils to improve the efficiency and effectiveness of the administrative processes under the *Northern Territory Aboriginal Sacred Sites Act 1989* (NT)

Responsible NT agency

Aboriginal Areas Protection Authority.

Other responsible organisations and agencies

Land councils.

Sub-Action 9.3

Explore possible amendments to the *Planning Act 1999* (NT) to remove the need for development consent for leases over 12 years on Aboriginal land

.....

The *Planning Act 1999* (NT) requires that development consent be obtained for a lease that is longer than 12 years. An application for development consent needs to provide a survey plan with the application, which can be costly and time consuming if a survey is not already in place. For many proponents this is a major barrier to securing long-term leases on Aboriginal land.

What we will do

The NT Government will explore the possibility of amending the *Planning Act 1999* (NT) to remove the need for development consent for certain leases on Aboriginal land.

Other responsible organisations and agencies

Land councils.

Responsible NT agencies

Department of Planning, Infrastructure and Logistics
Department of Housing and Community Development
Department of the Chief Minister.

Sub-Action 9.4

Amend the Northern Territory Aboriginal Sacred Sites Act 1989 (NT) in line with supported recommendations from the Sacred Sites Processes and Outcomes Review and the final report of the Scientific Inquiry into Hydraulic Fracturing in consultation with the four NT land councils

A 2016 review of the Northern Territory Aboriginal Sacred Sites Act 1989 (NT) (the Act) made recommendations to improve the way the Act operates. The March 2018 final report of the Scientific Inquiry into Hydraulic Fracturing in the Northern Territory, also made recommendations which would require amendments to the Act. The recommendations seek to address:

- how the Act might be strengthened to improve protections for sacred sites
- how the Act might be changed in order to simplify processes around economic development
- how AAPA could better balance economic needs and the protection of sacred sites.

Most of the recommendations require legislative amendments.

What we will do

AAPA will consult with the land councils to gauge support for the implementation of the legislative recommendations from the Sacred Sites Processes and Outcomes Review and the final report into the Scientific Inquiry into Hydraulic Fracturing, and progress legislative amendments to the Northern Territory Aboriginal Sacred Sites Act 1989 (NT).

Responsible NT agencies

Aboriginal Areas Protection Authority;
with support from the Department of the Chief Minister as required.

Other responsible organisations and agencies

Land councils
Registered Native Title Bodies Corporate
Other relevant stakeholders.

Sub-Action 9.5

Legislative reform to recognise the role of Aboriginal ranger groups and provide them with enforcement powers

The NT Government has initiated reforms to enable Aboriginal sea rangers to be provided with enforcement powers to assist with the management of Northern Territory fisheries.

The NT Government has committed to legislative reforms that recognise the important role Aboriginal rangers play in on-shore areas of the Northern Territory and to provide Aboriginal rangers with enforcement powers. Land councils and Aboriginal ranger groups will be consulted on the proposed amendments.

What we will do

The NT Government will introduce legislation that recognises the role of Aboriginal ranger groups and which enables rangers to be granted enforcement powers over Aboriginal owned, managed or cared for country.

Responsible NT agencies

Department of Tourism, Sport and Culture

Department of Environment and Natural Resources.

Other responsible organisations and agencies

Land councils
Registered Native Title Bodies Corporate
Aboriginal ranger organisations
Commonwealth Department of Environment and Energy
Department of the Prime Minister and Cabinet.

Action 10

Support improvements to Commonwealth legislative processes

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The Action Plan contains four additional suggestions to enhance the effectiveness of the *Land Rights Act* and the *Native Title Act*. No suggestion will be progressed by the NT Government without the consent and support of the land councils and the Commonwealth. These suggestions are captured in the sub-actions below.

Sub-Action 10.1

Explore options with the Northern Land Council, the Central Land Council and the Commonwealth to improve the operation of the *Native Title Act*

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Since 2014, there have been reports, recommendations and key legal events which have shaped the discussions on possible amendments to the *Native Title Act*. The decision of the Full Federal Court in *McGlade v Native Title Registrar* [2017] FCAFC 10 (2 February 2017) ("McGlade") prevented the registration of certain Indigenous Land Use Agreements (ILUAs) and prompted urgent reform, resulting in the *Native Title Amendment (Indigenous Land Use Agreement) Act 2017* (Cth) commencing on 22 June 2017.

The Commonwealth Government now also wishes to progress discussion on other possible amendments to the Act through its November 2017 Options Paper and 2018 Exposure Draft of the Legislative Amendments.

The Native Title Senior Officers Working Group, comprised of representatives from states and territories, has considered a broad range of amendments to the Act from a number of sources such as the Australian Law Reform Commission, (Council of Australian Governments) reports, previous discussion papers and matters raised by the states and territories.

The NT Government is supportive 'in-principle' of technical amendments to the Act, noting that they are subject to public consultation, Cabinet ratification and then the passage of the Bill through the Commonwealth Parliament.

What we will do

The NT Government will work with the land councils, other states and territories, and the Commonwealth to investigate if the *Native Title Act* should be amended.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Department of the Prime Minister and Cabinet
Department of the Commonwealth Attorney-General.

Sub-Action 10.2

Explore ways to ensure the *Land Rights Act* works seamlessly with the *Control of Roads Act 1953* (NT) and other NT roads legislation

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A number of road corridors that existed in Aboriginal reserves prior to the enactment of the *Land Rights Act* were not formally excluded from the survey plans of land granted on the commencement of the Act. Issues relating to uncertainty of ownership and control have led to ad hoc development, upgrades and maintenance.

What we will do

The NT Government will work with the land councils and Commonwealth to ensure that the *Land Rights Act* works seamlessly with the *Control of Roads Act 1953* (NT), other NT legislation, the Territory's roads maintenance program requirements and 10 Year Infrastructure Plan.

Responsible NT agencies

Department of Infrastructure, Planning and Logistics
Department of the Chief Minister
Department of the Attorney-General and Justice with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Department of the Prime Minister and Cabinet.

Sub-Action 10.3

Explore options with the land councils and the Commonwealth to ensure the costs that Land Trusts incur as a Territory landholder are able to be met

The issue of whether a Land Trust could pay the costs incurred by it in its role as a landholder was considered in Mr Justice Toohey’s 1983 review of the *Land Rights Act*, where he recommended:

‘To ensure that Land Trusts can always discharge their obligations promptly, I recommend that the Act be amended so that where a Land Trust is liable under a law of the Northern Territory to pay costs incurred by it as a land holder and it is unable to meet part or all of those commitments, it may apply to the Aboriginals Benefit Trust Account for an amount under sub-s. 64(4) and the Minister shall direct that such a sum be paid out of the Trust Account to the Land Trust.’

Justice Toohey’s recommendation was never implemented.

What we will do

The NT Government will work with the land councils and the Commonwealth to explore options that would ensure that the costs incurred by Land Trusts as a result of being a landholder under Territory legislation are able to be met.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice.

Other responsible organisations and agencies

Land councils
Department of the Prime Minister and Cabinet.

Sub-Action 10.4

Explore options to enable Land Trusts to provide the NT Government with an appropriate interest in Aboriginal land (short of an estate in fee simple) to meet demands for serviced residential land and to deliver essential public services to residents in Aboriginal communities

There have been some instances where the NT Government has been unable to deliver, or upgrade, housing or essential public services in an Aboriginal community in a timely way because, for various reasons, permission has not been granted for the proposed land use even after an extensive consultation period. As it stands, if the Traditional Owners do not consent, the Aboriginal residents will either not receive, or will experience very long delays in receiving, the housing or services regardless of how much the community wants and needs those services.

The NT Government believes an alternative mechanism should exist to enable a Land Trust to grant the NT Government sufficient interests in Aboriginal land to deliver the housing or essential public service, when:

- the Traditional Owners have not rejected a proposal after an extensive consultation period
- the relevant land council consents
- there is a demonstrated need to deliver or upgrade housing or essential public services to the Aboriginal community.

What we will do

The NT Government will work with the land councils and the Commonwealth to explore options that would enable Land Trusts to provide the NT Government sufficient interests in Aboriginal land (short of an estate in fee simple) to meet demands for serviced residential land, and to deliver essential public services to residents in Aboriginal communities, when Traditional Owners have not rejected the proposal during an extensive period of consultation.

Responsible agency

Department of the Chief Minister.

Other responsible organisations and agencies

Land councils
Department of the Prime Minister and Cabinet.



