

**NORTHERN TERRITORY OF AUSTRALIA**

**MISCELLANEOUS ACTS AMENDMENT (ABORIGINAL COMMUNITY  
LIVING AREAS) ACT 1989**

As in force at 7 November 2019

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 7 November 2019

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## MISCELLANEOUS ACTS AMENDMENT (ABORIGINAL COMMUNITY LIVING AREAS) ACT 1989

**An Act to amend certain Acts to make provision for the excision of certain areas of land from pastoral leases and the granting of an estate in fee simple in those areas as living areas for the benefit of Aboriginals who are or have been ordinarily resident on those pastoral leases or other Aboriginals, and for related purposes**

### **1 Short title**

This Act may be cited as the *Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989*.

### **2 Commencement**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

### **3 Purpose**

The purpose of this Act is to give effect to the Memorandum of Agreement between the Commonwealth and the Northern Territory on the granting of Community Living Areas in Northern Territory Pastoral Districts, signed on 7 September 1989 and a copy of which is printed in the Schedule.

## **Part VIII Miscellaneous**

### **16 Aboriginal association may convert certain interests in land to community living area**

- (1) This section applies to an association of Aboriginals incorporated under the *Associations Incorporation Act* or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) which:
- (a) is the registered proprietor under the *Land Title Act* of an estate in fee simple of land in the Territory;
  - (b) is the lessee of a parcel of land under the *Special Purposes Leases Act 1953*; or

- (c) is the lessee under the *Crown Lands Act 1992* of a Crown lease for a term of years.
- (2) An association to which this section applies may, in writing, apply to the Minister to have its interest in the relevant land converted to an estate in fee simple for the purposes of an Aboriginal community living area to be held on the same terms and conditions and subject to the same reservations and restrictions that would apply if the land were an excision from a pastoral lease granted to the association in pursuance of a successful application under Part 8 of the *Pastoral Land Act 1992*.
- (3) The Minister may, in his discretion, accept an application under subsection (2) or reject it.
- (4) If the Minister accepts an application under subsection (2) and is satisfied that any charges, rates, rent, or encumbrances of any kind relating to the land have been paid or discharged and any covenants relating to the land have been kept, he or she shall, by notice in the *Gazette*, indicate acceptance of the application, and upon publication of the notice and by virtue of this subsection the same consequences flow in relation to the land as if the notice of acceptance were a notice of acquisition (within the meaning of the *Lands Acquisition Act 1978*) of land to be excised from a pastoral lease published in pursuance of section 46(1A) of that Act.

## Schedule

section 3

### MEMORANDUM OF AGREEMENT BETWEEN THE COMMONWEALTH AND THE NORTHERN TERRITORY OF THE GRANTING OF COMMUNITY LIVING AREAS IN NORTHERN TERRITORY PASTORAL DISTRICTS

Discussions were held between the Prime Minister and the Chief Minister of the Northern Territory on 6/7 September in relation to the question of Aboriginal living areas and Aboriginal land claims to stock routes and stock reserves in the Northern Territory.

They agreed that action will be taken as a matter of urgency to give effect to the provisions of this Memorandum which constitute a package to be implemented in a cooperative and coordinated manner.

For the Commonwealth's part action will be taken to provide land on portions of stock routes and stock reserves. For the Northern Territory's part action will be taken to provide living areas through excisions from pastoral leases.

#### Stock Routes and Stock Reserves

The Commonwealth will amend the *Aboriginal Land Rights (Northern Territory) Act 1976*, as a matter of priority, to provide for the grant, by way of inclusion in a Schedule to the Act, of certain parts of existing stock routes and reserve claims.

The selection of the areas to be included within the Schedule to the Act will be determined after consultation between the two Governments.

The Commonwealth undertook that, in providing Aboriginals with living areas on stock routes and stock reserves, the following principles will apply:

- it will schedule only a small proportion of the land subject to existing claims;
- scheduling will not take place where agreement has been reached that the Aboriginals' needs can be satisfactorily met by a pastoral excision, or a combination of part of the stock route claim with an adjacent excision; and
- there will be no scheduling in relation to those parts of claims which might unreasonably interfere with a pastoralist's interest, for example, by dividing a property, or encroaching on the homestead.

Upon enactment of the scheduling legislation the Commonwealth will then proclaim the June 1987 amendments to the Land Rights Act, which will mean that the stock route claims not scheduled will lapse. The Commonwealth also agreed that the regulation-making power providing for a stock reserve to be deemed to be available for land claim will be removed.

### Pastoral Lease Excisions

Excisions will be granted under a special freehold title to be provided under Northern Territory legislation, the details of which are indicated at Attachment A. Such title will ensure that:

- there is statutory protection against alienation or encumbrance of the land;
- the Minister may not compulsorily acquire any such land except for a purpose agreed at the time of the grant, or the provision of certain essential services to, or across, the land;
- the power to compulsorily acquire shall not extend to acquisition of a fee-simple interest;
- actual living areas with a substantial buffer zone are to be reserved from mineral exploration and mining, with provision for compensation for disturbance; and
- there is a statutory right of access to the land.

The eligibility criteria for applications for pastoral lease excisions are to be:

1. Any group with the consent of the pastoral lessee.
2. Any group with a demonstrated need which was ordinarily resident on the pastoral lease at any time since 1968.
3. Any other group with an historical residential association with a lease that can demonstrate that it has a present need for a community living area.

In determining need, the Minister and the Tribunal referred to below will have regard to whether the applicants already have adequate housing circumstances or land upon which this might be provided.

The primary intention is to provide secure tenure for those Aboriginal groups in need, particularly for those Aboriginal groups presently or recently resident on pastoral leases. There is no intention to allow for a flood of claims which may be seen as providing for a land rights approach to alienated land.

The process for dealing with applications is outlined in the flowchart at Attachment B.

In essence, the parties will initially seek to reach agreement on the application. Failing agreement, application may be made to the Minister for determination. If the Minister does not accept the application, he will seek advice of a Special Tribunal, which will comprise a legal practitioner of 10 years standing appointed by the Chief Justice of the Northern Territory Supreme Court, a Land Council representative and a representative of the pastoral industry. If the Minister

rejects a recommendation of the Tribunal, he must state his reasons and there will be provision for appeal to the Northern Territory Supreme Court.

#### Role of the Land Councils

The Northern Territory's legislation will specify that, when requested to do so, a Land Council may act on behalf of an applicant. In accordance with Section 23(2) of the Land Rights Act, the Commonwealth Minister for Aboriginal Affairs will approve the Land Councils performing this function.

#### Timing

Reflecting their joint intention to give effect to their agreement as a matter of urgency, the two Governments intend that passage of legislation will be sought in the Commonwealth Parliament and the Northern Territory Legislative Assembly in October 1989. This will provide the necessary legislative base for early progress on the granting of living areas.

#### Joint Review Group

Recognising the importance of the issue and of the action to flow from this Memorandum, the Prime Minister and the Chief Minister have agreed to establish a Joint Review Group to monitor implementation. The Review Group will report to the Prime Minister, the Minister for Aboriginal Affairs and the Chief Minister on a regular basis.

(Signed)  
R. J. L. Hawke  
Prime Minister

(Signed)  
Marshall Perron  
Chief Minister of the  
Northern Territory

PROPOSED NORTHERN TERRITORY STATUE LAW REVISION BILL –  
COMMUNITY LIVING AREAS

1. Crown Lands Act
  - provide for voluntary surrender of part of a pastoral lease expressly for the purpose of a living area;
  - admit the eligibility criteria and procedural guidelines as a schedule to the Act;
  - note that recently enacted amendments to the Associations Incorporation Act and the Real Property Act address the question of alienability.
2. Lands Acquisition Act
  - provide for the compulsory acquisition of part of a pastoral lease for the purposes of a living area;
  - provide a process for handling applications for excisions as outlined in the flow chart at Attachment B;
  - provide that the Minister may not compulsorily acquire land comprising a pastoral lease excision or an interest in such land except
    - where the prescribed land was granted subject to the reservation that the Territory can acquire the part or interest for the purpose for which it is proposed to be acquired; or
    - for the purpose of the provision of essential power, water, sewerage, road or communication services to or across the prescribed land;

Any dispute will be determined in accordance with the procedures at Attachment B.

  - provide that power to compulsorily acquire shall not extend to acquisition of a fee-simple interest.
3. Mining Act
  - provide that a mineral lease cannot be granted in respect of living area within a specified (greater than the currently prescribed 50 m or 200 m) distance of the principal location of the community,
  - (N. B. the provisions of the *Mining Act 1980* section 73 and *Petroleum Act 1984* section 81 provide for compensation to be payable to owners or occupiers);



4. General

- provide that the grounds for acquisition for essential public purposes could be identified at the time of a grant and be registered as a memorial on the title under the *Real Property Act 1886*;
- those protections and restrictions would apply to the current living areas held under Crown Lease (term) when leases surrendered in exchange for a freehold title;
- where living areas are already held under freehold title, titles may be surrendered in exchange for a new freehold title in order to be subject to the same protections and restrictions.

FLOW CHART

PROCESS FOR ISSUE OF PROPOSED COMMUNITY LIVING AREAS  
UNDER NORTHERN TERRITORY LEGISLATION

DISCUSSION BETWEEN PARTIES

AGREEMENT TITLE ISSUED

NO AGREEMENT APPLICATION  
TO MINISTER

MINISTER MAY ACQUIRE  
TITLE ISSUED

MINISTER MAY REFER TO  
COMMUNITY LIVING AREAS ARBITRATION  
PANEL

PANEL

- (a) Legal Practitioner  
10 yrs standing  
appointed by C. J.
- (b) Land Council REP
- (c) Pastoral Industry REP

PROCEDURE

- (a) Panel to determine upon receipt of  
written submissions
- (b) May proceed in absence of written  
submission after failure of party to  
make a submission and after giving  
notice
- (c) Where considers in the interest of  
resolution may order compulsory  
conference before panel

PANEL TO MAKE RECOMMENDATION TO  
MINISTER

MINISTER MAY ACQUIRE

MINISTER MAY REJECT MUST GIVE  
WRITTEN REASONS

MINISTER BOUND BY COURTS  
DECISION

REVIEW OF MINISTER'S DECISION TO  
REJECT BY SUPREME COURT

- (a) Where decision manifestly wrong
- (b) Error of law

- \* The Parties will generally be permitted up to 6 months before application may be made to the Minister but the Minister will have discretion to increase or decrease that period if he considers this to be appropriate in the circumstances of a particular case or cases.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989 (Act No. 78, 1989)***

Assent date	22 December 1989
Commenced	1 March 1990 ( <i>Gaz</i> S12, 28 February 1990)

***Crown Lands Act 1992 (Act No. 18, 1992)***

Assent date	30 April 1992
Commenced	26 June 1992 (s 2, s 2 <i>Pastoral Land Act 1992</i> (Act No. 17, 1992) and <i>Gaz</i> S33, 26 June 1992)

***Pastoral Land (Consequential Amendments) Act 1992 (Act No. 39, 1992)***

Assent date	25 June 1992
Commenced	26 June 1992 (s 2, s 2 <i>Pastoral Land Act 1992</i> (Act No. 17, 1992) and <i>Gaz</i> S33, 26 June 1992)

***Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)***

Assent date	12 September 2000
Commenced	1 December 2000 (s 2, s 2 <i>Land Title Act 2000</i> (Act No. 2, 2000) and <i>Gaz</i> G38, 27 September 2000, p 2)

***Statute Law Revision and Repeals Act 2019 (Act No. 33, 2019)***

Assent date	6 November 2019
Commenced	pts 2 and 3: nc; rem: 7 November 2019 (s 2)

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1 and 16 and Sch.

**4 LIST OF AMENDMENTS**

pt II hdg	rep No. 18, 1992, s 107
ss 4 – 7	rep No. 18, 1992, s 107
pt III hdg	rep No. 33, 2019, s 45
s 8	rep No. 33, 2019, s 45
pt IV hdg	rep No. 33, 2019, s 45
ss 9 – 10	rep No. 33, 2019, s 45
pt V hdg	rep No. 33, 2019, s 45
ss 11 – 12	rep No. 33, 2019, s 45
pt VI hdg	rep No. 33, 2019, s 45
s 13	rep No. 33, 2019, s 45
pt VII hdg	rep No. 33, 2019, s 45
ss 14 – 15	rep No. 33, 2019, s 45
s 16	amd No. 39, 1992, s 3; No. 45, 2000, s 11; No. 33, 2019, s 46