

NORTHERN TERRITORY OF AUSTRALIA

KENBI LAND TRUST ACT 2011

Act No. 42 of 2011

Table of provisions

Part 1	Preliminary matters	
1	Short title	1
2	Commencement	1
3	Definitions.....	1
4	Act binds Crown	2
5	Relationship with other laws	2
Part 2	Kenbi Land Trust	
6	Establishment	3
7	Common seal of Trust	3
8	Functions	3
9	Membership.....	4
Part 3	Grant of prescribed land	
10	Grant of Kenbi freehold title	4
11	Conditions for granting Kenbi freehold title	5
12	Exercise of power not impeachable for informality or irregularity	5
Part 4	Dealings by Trust in relation to prescribed land	
13	Dealings with, or disposal of, land by the Trust	5
14	Traditional rights to use or occupation of prescribed land	6
Part 5	Other matters	
15	Non-extinguishment principle under NTA	7
16	Involvement of NLC	7
17	Regulations.....	7



NORTHERN TERRITORY OF AUSTRALIA

Act No. 42 of 2011

An Act to establish the Kenbi Land Trust, and for related purposes

[Assented to 21 December 2011]

[Second reading 18 August 2011]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Kenbi Land Trust Act 2011*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

Aboriginal, see section 3(1) of ALRA.

Aboriginal tradition, see section 3(1) of ALRA.

ALRA means the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

Kenbi freehold title means an estate in fee simple vested in the Trust, that is subject to this Act.

NLC means the Land Council established under section 21 of ALRA by the name of the Northern Land Council.

NLC area means the area for which the NLC is established under ALRA.

NLC direction means a written direction by the NLC that is given to the Trust.

NTA means the *Native Title Act 1993* (Cth).

Part 3 Minister means the Minister responsible for administering Part 3 of the *Crown Lands Act*.

prescribed land means land that is:

- (a) within the area of land the subject of the recommendation for grant to a land trust in paragraph 14.3 of the Report and recommendation of the former Aboriginal Land Commissioner, Justice Gray, to the Minister of Aboriginal and Torres Strait Islander Affairs and to the Administrator of the Northern Territory, in relation to the Kenbi (Cox Peninsula) land claim, dated 12 December 2000; and
- (b) prescribed by regulation for this definition.

Note

See section 13(8) for what happens if Kenbi freehold title to prescribed land is surrendered to the Territory.

traditional Aboriginal owners, in relation to land, has the same meaning as in section 3(1) of ALRA, and includes the traditional Aboriginal owners of part of the land.

Trust means the Kenbi Land Trust established under section 6.

Trust member means a person holding office as the chairperson or a member of the Trust under an appointment under section 9(1).

4 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

5 Relationship with other laws

- (1) This Act applies despite any other law of the Territory.
- (2) This Act must be read and construed in a manner consistent with the NTA and ALRA.

Part 2 Kenbi Land Trust

6 Establishment

- (1) The Kenbi Land Trust is established to hold title to the prescribed land vested in it under this Act for the benefit of Aboriginals entitled by Aboriginal tradition to the use or occupation of the prescribed land, whether or not the traditional entitlement is qualified as to place, time, circumstance, purpose or permission.
- (2) The Trust:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) is capable, in its corporate name, of suing and being sued.

7 Common seal of Trust

- (1) The Trust must make arrangements with the NLC for the common seal to be kept by a staff member of the NLC authorised, in writing, by the NLC for that purpose.
- (2) The common seal may only be affixed to a document with the written authority of at least 3 Trust members.
- (3) All courts, judges and persons acting judicially must take judicial notice of the common seal and must presume it was duly affixed.

8 Functions

- (1) The following are the functions of the Trust:
 - (a) to hold title to the prescribed land vested in it under this Act;
 - (b) to exercise its powers as owner of that prescribed land for the benefit of Aboriginals as mentioned in section 6(1).
- (2) The Trust:
 - (a) must not perform its functions in relation to the prescribed land except in accordance with an NLC direction; and
 - (b) if such an NLC direction is given – must perform its functions in accordance with the direction.

- (3) It is not a function of the Trust to accept moneys owing to it or to give a valid discharge for such moneys, but such moneys may be paid to the NLC and the NLC must, within 6 months after its receipt, pay an amount equal to the moneys to or for the benefit of the traditional Aboriginal owners of the prescribed land.

9 Membership

- (1) The Trust consists of a chairperson and at least 3 other members appointed in writing by the NLC from Aboriginals as mentioned in section 6(1).
- (2) A Trust member is to be appointed for 5 years but is eligible for reappointment.
- (3) The performance of the Trust's functions is not affected merely because of one or more vacancies in the Trust membership.

Part 3 Grant of prescribed land

10 Grant of Kenbi freehold title

- (1) The Part 3 Minister is authorised:
 - (a) to grant to the Trust, under sections 9(1) and 10(1) and (2) of the *Crown Lands Act* as applied by subsection (2), Kenbi freehold title to the prescribed land; and
 - (b) to do any other thing necessary or convenient to enable that grant.
- (2) Sections 9(1) and 10(1) and (2) of the *Crown Lands Act* apply in relation to the grant of Kenbi freehold title for the prescribed land as if:
 - (a) a reference to an estate in fee simple were a reference to Kenbi freehold title; and
 - (b) a reference to a person who has a right to be granted an estate in fee simple were a reference to the Trust.
- (3) However, this section does not require compliance with any other provision of the *Crown Lands Act* before Kenbi freehold title to the prescribed land is granted to the Trust.

11 Conditions for granting Kenbi freehold title

- (1) The Part 3 Minister is authorised to grant Kenbi freehold title as mentioned in section 10(1)(a) only if both of the following conditions are complied with:
 - (a) for any application of the type mentioned in section 50(1)(a) of ALRA relating to the prescribed land – the applicants have withdrawn the application;
 - (b) an indigenous land use agreement has been executed in relation to all of the prescribed land.
- (2) In this section:

indigenous land use agreement has the same meaning as in the NTA.

Note

Section 253 of the NTA states that indigenous land use agreement has the meaning given by sections 24BA, 24CA and 24DA of that Act.

12 Exercise of power not impeachable for informality or irregularity

The exercise of power under section 10 by the Part 3 Minister is not to be impeached because of an informality or irregularity in the compliance with either conditions mentioned in section 11 except on the ground the exercise of the power was not in good faith.

Part 4 Dealings by Trust in relation to prescribed land**13 Dealings with, or disposal of, land by the Trust**

- (1) The Trust must not deal with or dispose of, or agree to deal with or dispose of, all or a part of any estate or interest in the prescribed land except as provided by this section and in accordance with an NLC direction.
- (2) In relation to any such estate or interest, the Trust may:
 - (a) grant an estate, interest or licence to any person for any purpose; or
 - (b) surrender an estate to the Territory.

- (3) The principles underlying the giving of an NLC direction as mentioned in subsection (1) are as follows:
 - (a) the traditional Aboriginal owners of the prescribed land must understand the nature and purpose of the proposed dealing or disposal and, as a group, consent to it;
 - (b) any Aboriginal community or group that may be affected by the proposed dealing or disposal must be consulted and have had adequate opportunity to express its view to the NLC;
 - (c) for a grant of an estate or interest – the terms and conditions on which the grant is to be made must be reasonable.
- (4) A failure relating to the underlying principles mentioned in subsection (3) does not invalidate the grant or surrender under the NLC direction unless the person to whom the grant or surrender was made procured the direction by fraud.
- (5) If a grant of an estate or interest is invalidated under subsection (4), that invalidity does not affect the rights of a person who has, for value and without notice of the fraud, been granted an estate or interest dependent upon that estate or interest.
- (6) The Trust may not grant fee simple or mortgage fee simple for all or part of the prescribed land.
- (7) If the Trust has granted a lease of any part of the fee simple, this section does not limit the lessee's right to deal with his or her interest under that lease, including by mortgaging the lease.
- (8) If Kenbi freehold title to prescribed land is surrendered to the Territory, the land so surrendered is no longer prescribed land for this Act and no longer vested in the Trust.

14 Traditional rights to use or occupation of prescribed land

- (1) An Aboriginal or group of Aboriginals is entitled to enter prescribed land and use or occupy it to the extent the entry, occupation or use is in accordance with Aboriginal tradition governing the rights of the Aboriginal or group with respect to the prescribed land, whether or not those rights are qualified as to place, time, circumstances, purpose, permission or any other factor.
- (2) However, subsection (1) does not authorise an entry, use or occupation that would interfere with the use or enjoyment of an estate or interest in the land held by a person other than the Trust.

Part 5 Other matters

15 Non-extinguishment principle under NTA

- (1) The non-extinguishment principle applies to any act involved in the grant, under section 10, of Kenbi freehold title to the prescribed land.
- (2) In this section:

non-extinguishment principle, see section 238 of the NTA.

16 Involvement of NLC

The NLC may do all things necessary or convenient for performing its functions under this Act.

17 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The Regulations may provide for the following:
 - (a) a matter relating to the Trust's membership, including, for example, termination of appointment or resignation of a Trust member;
 - (b) a matter relating to the Trust's administration and procedures.