

- 25AR. Lease of park or reserve not a subdivision
5. Amendment of *Parks and Reserves (Framework for the Future) Act*



NORTHERN TERRITORY OF AUSTRALIA

Act No. 4 of 2005

AN ACT

to amend the *Territory Parks and Wildlife Conservation Act* consequent on the enactment of the *Parks and Reserves (Framework for the Future) Act* and to amend section 9 of the *Parks and Reserves (Framework for the Future) Act*

[Assented to 4 March 2005]

[Second reading 2 December 2004]

The Legislative Assembly of the Northern Territory enacts as follows:

1. Short title

This Act may be cited as the *Territory Parks and Wildlife Conservation Amendment Act 2005*.

2. Commencement

This Act comes into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

3. Principal Act amended

This Act (except section 5) amends the *Territory Parks and Wildlife Conservation Act*.

4. New Part III

After section 21 –

insert

PART III – JOINT MANAGEMENT OF CERTAIN PARKS AND RESERVES

Division 1 – Preliminary

22. Interpretation

(1) In this Part, unless the contrary intention appears –

"ALRA" means the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth;

"community living area" means an area of land identified for use as an Aboriginal community living area;

"Framework Act" means the *Parks and Reserves (Framework for the Future) Act*;

"joint management", of a park or reserve, means management of the park or reserve by the joint management partners;

"joint management partners", for a park or reserve, has the meaning in section 25AA(1);

"joint management plan", for a park or reserve, means the joint management plan for the park or reserve as amended and in force from time to time under Division 4;

"Land Council", for a park or reserve, means the Land Council (within the meaning of ALRA) for the part of the Territory in which the park or reserve is located;

"mining interest" has the same meaning as in the *Mining Act*;

"park or reserve" –

(a) means a park or reserve specified in Schedule 1, 2 or 3 to the Framework Act; and

(b) if an area of land specified in Schedule 5 to that Act is declared under section 12 to be included in a park or reserve specified in Schedule 1 to that Act – includes that area of land;

"petroleum interest" has the same meaning as in the *Petroleum Act*;

"traditional Aboriginal owners", of a park or reserve, means –

(a) the traditional Aboriginal owners, within the meaning of ALRA, of the park or reserve; or

- (b) if there is no person to whom paragraph (a) applies – the person or persons who, by Aboriginal tradition, are responsible for making decisions about the park or reserve.

(2) A reference in this Part to the decision making processes of the traditional Aboriginal owners of a park or reserve is a reference to the decision making processes of those owners as described in section 77A(a) and (b) of ALRA.

23. Relationship with other provisions of Act

If there is an inconsistency between a provision of this Part and another provision of this Act, to the extent of the inconsistency, the provision of this Part applies and the other provision does not apply.

Division 2 – Redeclaration of parks and reserves

24. Minister may redeclare parks and reserves

- (1) The Minister may, by notice published in the *Gazette* –
 - (a) revoke the declaration, or purported declaration, of a park or reserve in force, or purportedly in force, under section 12 immediately before the commencement of this Part; and
 - (b) redeclare the same area of land to be a park or reserve.

(2) The powers under subsection (1) may be exercised only once in relation to each park or reserve.

(3) A revocation under subsection (1)(a) has effect as if it were a revocation under section 13.

(4) A redeclaration under subsection (1)(b) has effect as if it were the declaration of a park or reserve under section 12.

25. Section 12 continues to apply to land in Schedule 5

To remove doubt, section 12 continues to apply in relation to a declaration that an area of land specified in Schedule 5 to the Framework Act is included in a park or reserve specified in Schedule 1 to that Act.

Division 3 – Joint management partners, objective and principles

25AA. Joint management partners

- (1) The joint management partners for a park or reserve are –
 - (a) the Territory or a body nominated by the Territory as the representative of the Territory; and

(b) the traditional Aboriginal owners of the park or reserve.

(2) The joint management partners are together responsible for the management of the park or reserve.

(3) The joint management partners must perform their functions under this Part in respect of a park or reserve in a manner that –

(a) is consistent with any lease referred to in section 8(c) or 10(1)(f) of the Framework Act entered into in respect of the park or reserve;

(b) is consistent with the joint management agreement referred to in section 8(d) of the Framework Act entered into in respect of the park or reserve;

(c) is consistent with any indigenous land use agreement referred to in section 8(e) of the Framework Act entered into in respect of the park or reserve;

(d) achieves the objective stated in section 25AB;

(e) is in accordance with the principles stated in section 25AC; and

(f) is in accordance with the joint management plan for the park or reserve.

25AB. Objective of joint management

The objective of joint management of a park or reserve is to jointly establish an equitable partnership to manage and maintain the park or reserve as part of a comprehensive and representative system of parks and reserves in the Territory and for the following purposes:

(a) benefiting both the traditional Aboriginal owners of the park or reserve and the wider community;

(b) protecting biological diversity;

(c) serving visitor and community needs for education and enjoyment.

25AC. Principles of joint management

The objective is to be achieved by managing the park or reserve in accordance with the following principles:

(a) recognising, valuing and incorporating Aboriginal culture, knowledge and decision making processes;

(b) utilising the combined land management skills and expertise of both joint management partners;

- (c) recognising and addressing the need for institutional support and capacity building of the joint management partners;
- (d) recognising that community living areas in or in close proximity to parks and reserves are an integral part of the natural and cultural resource management of parks and reserves;
- (e) involving continuing statutory responsibilities and functions of the Minister with respect to parks and reserves;
- (f) managing parks and reserves may include cooperative management agreements for areas of land outside parks and reserves;
- (g) establishing a process for the consideration of applications for mining and petroleum.

Division 4 – Joint management plans

25AD. Preparation of draft plan

(1) As soon as practicable after a park or reserve has been declared under section 12 or redeclared under section 24, the joint management partners must agree on and together prepare a draft joint management plan for the park or reserve.

(2) After preparing the draft plan, the joint management partners must publish a notice in the *Gazette* –

- (a) stating that the draft plan has been prepared;
- (b) inviting interested persons to make submissions about the draft plan on or before the specified date, which must be at least one month after the date on which the notice is published;
- (c) stating where a copy of the draft plan may be inspected or purchased; and
- (d) stating where submissions about the plan may be forwarded.

(3) The joint management partners must consider all submissions received in accordance with the invitation and, as a result, may modify the draft plan as they consider appropriate.

(4) After complying with subsection (3), the joint management partners must forward the draft plan to the Minister.

25AE. Contents of draft plan

- (1) The draft plan must be consistent with the following:

Territory Parks and Wildlife Conservation Amendment Act 2005

- (a) any lease referred to in section 8(c) or 10(1)(f) of the Framework Act entered into in respect of the park or reserve;
 - (b) the joint management agreement referred to in section 8(d) of the Framework Act entered into in respect of the park or reserve;
 - (c) any indigenous land use agreement referred to in section 8(e) of the Framework Act entered into in respect of the park or reserve;
 - (d) the objective stated in section 25AB;
 - (e) the principles stated in section 25AC.
- (2) The draft plan must contain the following:
- (a) a description of the traditional Aboriginal owners of the park or reserve;
 - (b) practicable ways for those owners to work with local conservation officers, including the establishment of executive and other committees where appropriate to ensure the processes referred to paragraph (c) are adhered to;
 - (c) processes for the matters listed in subsection (3).
- (3) The draft plan must contain processes for the following:
- (a) identifying the natural and cultural values of the park or reserve;
 - (b) managing sites of Aboriginal spiritual or cultural significance in the park or reserve;
 - (c) identifying visitor management issues and developing agreed procedures for dealing with those issues that reflect the interests of the traditional Aboriginal owners and of the other stakeholders in the park or reserve;
 - (d) approving the siting of works and facilities in the park or reserve;
 - (e) identifying management zones in, and management regimes for, the park or reserve;
 - (f) developing relevant training and employment strategies in relation to the park or reserve;
 - (g) establishing community living areas in or in close proximity to the park or reserve as an integral part of the natural and cultural resource management of the park or reserve;

- (h) dealing with commercial and infrastructure development in the park or reserve, giving preference to the traditional Aboriginal owners of the park or reserve;
- (i) resolving disputes about the management of the park or reserve at the local level and by means that are appropriate to the park or reserve;
- (j) subject to section 25AJ, providing for hunting and the use of other resources in the park or reserve by the traditional Aboriginal owners in a manner consistent with the effective management of the park or reserve;
- (k) considering proposals for the conduct of research in or about the park or reserve;
- (l) considering proposals for the expansion of the park or reserve;
- (m) dealing with proposals not otherwise dealt with in the draft plan.

25AF. Minister to table draft plan in Legislative Assembly

(1) As soon as practicable after receiving the draft plan forwarded under section 25AD, the Minister must table the draft plan in the Legislative Assembly.

(2) Section 19(2) to (5) (inclusive) applies in relation to the draft plan as if –

- (a) a reference to a plan of management were a reference to the draft plan;
- (b) a reference to the Administrator were a reference to the Minister;
- (c) a reference to the Commission were a reference to the joint management partners; and
- (d) a reference to section 18 were a reference to sections 25AD and 25AE.

25AG. Notice of plan coming into operation

As soon as practicable after a joint management plan comes into operation, the Minister must publish, in the *Gazette* and in the newspapers the Minister considers appropriate, a notice stating –

- (a) that the plan has come into operation; and
- (b) where copies of the plan may be inspected or purchased.

25AH. Amendment or revocation of plan

(1) The joint management partners for a park or reserve may amend the joint management plan for the park or reserve.

(2) Sections 25AD(2) to (4) (inclusive), 25AE, 25AF and 25AG apply in relation to the amendment.

(3) A joint management plan for a park or reserve may be revoked by another joint management plan for the park or reserve, but the revocation does not take effect until that other plan comes into operation.

25AI. Compliance with plan

The joint management partners for a park or reserve must manage the park or reserve in accordance with the joint management plan for the park or reserve.

25AJ. Limitation of rights under section 122

The joint management plan for a park or reserve may limit the right of Aboriginals to use the park or reserve (whether for hunting, food gathering or ceremonial or religious purposes) as properly recognised by section 122, but only to the extent necessary and reasonable for environmental or safety reasons.

25AK. Management of park or reserve before plan comes into operation

(1) This section applies in relation to the management of a park or reserve before the first joint management plan for the park or reserve comes into operation.

(2) The joint management partners must manage the park or reserve –

(a) on the "business as usual" basis articulated in the core principles agreed between the Northern Land Council, the Central Land Council and the Territory in October 2002 so that the park or reserve can continue to operate normally until the first joint management plan for the park or reserve comes into operation; and

(b) subject to paragraph (a), in the same manner as the Commission (acting with the approval of the Administrator under section 17(5)) would manage another park or reserve under this Act if no plan of management were in force in relation to that other park or reserve.

(3) Despite subsection (2), the joint management partners and the Land Council for the park or reserve may agree on a process to deal with a particular issue, or a particular set of issues, concerning the management of the park or reserve.

Division 5 – Mining in parks and reserves

25AL. Certain provisions of *Mining Act* and *Petroleum Act* do not apply

Sections 176 and 176A of the *Mining Act* and section 15 of the *Petroleum Act* do not apply in relation to the grant of a mining or petroleum interest in a park or reserve.

25AM. Mines Minister to consider opinion of joint management partners

(1) Before granting a mining or petroleum interest in a park or reserve, the Mines Minister must request the Parks Minister to obtain the opinion of the joint management partners for the park or reserve about the proposed grant and forward the opinion to the Mines Minister for consideration.

(2) The opinion may include recommendations about conditions for the protection of the environment to which the grant of the interest should be subject.

(3) If –

(a) the Mines Minister decides to grant the interest; and

(b) the opinion considered under subsection (1) includes recommendations about the conditions of the grant as described in subsection (2),

the Mines Minister must grant the interest subject to those conditions –

(c) if it is otherwise within his or her power to do so; and

(d) if satisfied that the conditions are appropriate measures for the protection of the environment.

(4) If the joint management partners do not provide the Parks Minister their opinion within 4 months after being requested to do so, the Mines Minister is not required to consider it.

(5) In this section –

"Mines Minister" means the Minister for the time being administering the *Mining Act* or *Petroleum Act* (as the case requires);

"Parks Minister" means the Minister for the time being administering this Act.

Division 6 – Role of Land Councils

25AN. Application of Division

This Division applies in relation to the parks and reserves specified in Schedules 2 and 3 to the Framework Act.

25AO. Functions of Land Councils in relation to parks and reserves

(1) Pursuant to section 23(2) of ALRA, the following functions are conferred on a Land Council:

- (a) to ascertain and express the wishes and the opinion of Aboriginals living in its area as to the management of the parks and reserves in that area and as to appropriate legislation concerning those parks and reserves;
- (b) to protect the interests of the traditional Aboriginal owners of, and other Aboriginals interested in, those parks and reserves;
- (c) to consult with the traditional Aboriginal owners of, and other Aboriginals interested in, those parks and reserves about the use of those parks and reserves;
- (d) to negotiate with persons desiring to obtain an estate or interest (including a licence) in any of those parks or reserves on behalf of the traditional Aboriginal owners of that park or reserve and any other Aboriginals interested in that park or reserve;
- (e) to supervise, and provide administrative and other assistance to, the Park Land Trusts holding, or established to hold, park freehold title in parks and reserves in its area.

(2) In carrying out its functions under subsection (1) in relation to a park or reserve in its area, a Land Council must have regard to the interests of, and must consult with, the traditional Aboriginal owners of the park or reserve and any other Aboriginals interested in the park or reserve and, in particular, must not take any action (including, but not limited to, the giving or withholding of consent in any matter in connection with the park freehold title held by a Park Land Trust) unless the Land Council is satisfied that –

- (a) the traditional Aboriginal owners of the park or reserve understand the nature and purpose of the proposed action and, as a group, consent to it; and
- (b) any Aboriginal community or group that may be affected by the proposed action has been consulted and has had adequate opportunity to express its view to the Land Council.

(3) In this section –

"area", in relation to a Land Council, has the same meaning as in ALRA;

"park freehold title" has the same meaning as in the Framework Act;

"Park Land Trust" has the same meaning as in the Framework Act.

25AP. Application of money paid to Land Councils

(1) If a Land Council receives a payment in respect of a park or reserve (including under a lease or licence granted in accordance with the Framework Act), within 6 months after receiving the payment, the Land Council must pay an amount equal to the payment to or for the benefit of the traditional Aboriginal owners of the park or reserve.

(2) Section 35(8) to (11) (inclusive) of ALRA applies (with the necessary changes) to a payment referred to in subsection (1) as if it were a payment referred to in section 35(4) of ALRA.

Division 7 – Miscellaneous

25AQ. By-laws

(1) Subject to this section, the joint management partners for a park or reserve may make by-laws for the park or reserve prescribing matters –

- (a) required or permitted by this Part or the joint management plan for the park or reserve to be prescribed by by-law; or
- (b) necessary or convenient for carrying out or giving effect to the functions and powers of the joint management partners under this Part.

(2) The By-laws must not be inconsistent with any of the following:

- (a) this Part;
- (b) any lease referred to in section 8(c) or 10(1)(f) of the Framework Act entered into in respect of the park or reserve;
- (c) the joint management agreement referred to in section 8(d) of the Framework Act entered into in respect of the park or reserve;
- (d) any indigenous land use agreement referred to in section 8(e) of the Framework Act entered into in respect of the park or reserve;
- (e) the joint management plan for the park or reserve.

(3) Section 25(2) to (9) (inclusive) of the Nitmiluk Act applies in relation to the By-laws as if –

- (a) a reference to the Nitmiluk Park were a reference to the park or reserve;
- (b) a reference to by-laws made under the Nitmiluk Act were a reference to by-laws made under this section;
- (c) a reference to the plan of management for the Nitmiluk Park were a reference to the joint management plan;
- (d) a reference to the Nitmiluk Act were a reference to this Act; and
- (e) a reference to the Nitmiluk Park Board were a reference to the joint management partners.

(4) A prosecution for an offence against the By-laws cannot be commenced except with the written authority of the joint management partners.

(5) For section 63(2)(a) of the *Interpretation Act*, it is sufficient if the By-laws are signed by a person authorised by the joint management partners to sign them.

(6) In subsection (3) –

"Nitmiluk Act" means the *Nitmiluk (Katherine Gorge) National Park Act*;

"Nitmiluk Park" means the Park within the meaning of the Nitmiluk Act.

25AR. Lease of park or reserve not a subdivision

A lease referred to in section 8(c) or 10(1)(f) of the Framework Act entered into in respect of a park or reserve does not create, or have the effect of creating, a subdivision within the meaning of the *Planning Act*.

5. Amendment of *Parks and Reserves (Framework for the Future) Act*

(1) This section amends the *Parks and Reserves (Framework for the Future) Act*.

(2) After section 9(8) –

insert

(8A) Despite subsections (4), (6) and (7), the Regulations may limit the powers of a Park Land Trust.