

NORTHERN TERRITORY OF AUSTRALIA  
MISCELLANEOUS ACTS AMENDMENT  
(ABORIGINAL COMMUNITY LIVING AREAS) ACT 1989

No. 78 of 1989

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SCHEDULE





# NORTHERN TERRITORY OF AUSTRALIA

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No. 78 of 1989

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## 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

[Assented to 22 December 1989]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

#### 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 II - AMENDMENTS TO CROWN LANDS ACT

#### 4. PRINCIPAL ACT

The *Crown Lands Act* is in this Part referred to as the Principal Act.

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5. NEW SECTION

The Principal Act is amended by inserting after section 19 the following:

"19A. RESERVATIONS RELATING TO ABORIGINAL COMMUNITY LIVING AREAS

"(1) There is reserved to the Territory in every grant effected by section 46(1A) of the *Lands Acquisition Act* of an estate in fee simple to an association for the purposes of an Aboriginal community living area such interests (including the reservation of easements and easements in gross) as may be reasonably necessary to provide essential services and facilities, being power (including gas), water, sewerage, road, or communication services and facilities to or across the land comprising the grant or access to any of them.

"(2) There is reserved to the Territory in every grant referred to in subsection (1) such interests (including the reservation of easements and easements in gross) as may be necessary to provide such services (including the provision of health, education, and police services) as may be agreed upon between the association to which the grant is made, at any time after it is made, and the Minister."

6. NEW PART

The Principal Act is amended by inserting after section 93 the following:

"PART IV - ABORIGINAL COMMUNITY LIVING AREAS

*"Division 1 - Interpretation*

"94. INTERPRETATION

"In this Part, unless the contrary intention appears -

'Aboriginal' means a person who is a member of the Aboriginal race of Australia;

'applicant', in relation to an application, means -

(a) an Aboriginal -

(i) who at any time since 1 January 1968 was ordinarily resident on land which, at any time since that date, was comprised in the pastoral lease to which the application relates or which, together with land that comprises that pastoral lease, was comprised in another pastoral lease

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and who can demonstrate a present need for a community living area for himself or herself; or

(ii) who otherwise has an historical residential association with the pastoral lease the subject of the application and who can demonstrate a present need for a community living area for himself or herself; or

(b) where the lessee of the relevant pastoral lease has consented in writing to the application being made, any other Aboriginal;

'application' means an application under section 102A;

'Chairman' means the Chairman of the Tribunal;

'party', in relation to an application, means the applicant or the lessee of the pastoral lease to which the application relates;

'pastoral lease' means a pastoral lease under this Act;

'relevant Land Council' means the Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth for the area of the Territory in which the land the subject of an application or grant is situated;

'relevant pastoral organization', in relation to an application, means the organization referred to in section 95(3) and approved by the Minister or, where more than one organization is approved, the organization so approved as representing the interests of pastoralists in that part of the Territory in which the land the subject of the application or grant is situated;

'Tribunal' means the Community Living Areas Tribunal established by section 95.

*"Division 2 - Community Living Areas Tribunal*

"95. ESTABLISHMENT OF TRIBUNAL

"(1) There is hereby established a Tribunal, to be known as the Community Living Areas Tribunal, for the purposes of this Act.

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"(2) The Tribunal shall consist of -

- (a) a person who has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth for not less than 10 years who is practising as a legal practitioner in the Territory, nominated by the Chief Justice and appointed by the Minister, who shall be the Chairman of the Tribunal; and
- (b) subject to subsection (5), 2 other members appointed by the Minister -
  - (i) one of whom shall be appointed from a panel of 3 persons nominated by the relevant Land Council; and
  - (ii) one of whom shall be appointed from a panel of 3 persons nominated by the relevant pastoral organization.

"(3) The Minister shall, by notice in the *Gazette*, approve an organization which, in the Minister's opinion, represents the interests of pastoralists in the Territory or a particular part of the Territory, for the purpose of nominating the panel under subsection (2)(b)(ii).

"(4) A nomination of a panel under subsection (2)(b) shall be in writing addressed to the Minister and shall be signed by or on behalf of the relevant Land Council or relevant pastoral organization, as the case may be.

"(5) If a relevant Land Council or relevant pastoral organization does not, within 30 days after being requested by the Minister to do so, nominate a panel of 3 persons of whom one is to be appointed to the Tribunal the Minister shall, as soon as practicable after that period, either -

- (a) appoint such person as he or she thinks fit as a member in place of the member who would otherwise have been appointed from the panel nominated by the Land Council or organization in default; or
- (b) decide not to make such an appointment, in which case the Tribunal shall be lawfully constituted without the appointment of that member.

"(6) A person who has a direct personal interest in the land the subject of an application or reference for consideration by the Tribunal, or in the outcome of the Tribunal's consideration of the application or reference, shall not be nominated or be qualified to hold office as a member of the Tribunal in relation to that application or reference.

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"(7) The Tribunal is a statutory body within the meaning of and for the purposes of the *Remuneration (Statutory Bodies) Act*.

"96. TERM OF OFFICE

"A member of the Tribunal appointed under sections 95(2)(b), 95(5)(a), or for the purpose of a reference under section 105A(3) or section 28A(3) of the *Lands Acquisition Act* holds office as a member until the Tribunal makes its recommendation on the relevant application or reference to the Minister in accordance with section 102H or 105A(5) or until the member sooner resigns his or her office as a member, his or her appointment is terminated or he or she acquires an interest of a kind referred to in section 95(6) but, subject to this Part, he or she is eligible to be reappointed as a member of the Tribunal.

"97. RESIGNATION OF MEMBERS

"A member of the Tribunal appointed under sections 95(2)(b), 95(5)(a), or for the purpose of a reference under section 105A(3) or section 28A(3) of the *Lands Acquisition Act* may, in writing delivered to the Minister, resign his or her office as a member.

"98. TERMINATION OF APPOINTMENT

"The Minister may, on the recommendation of the Chairman, terminate the appointment of a member of the Tribunal appointed under sections 95(2)(b), 95(5)(a), or for the purpose of a reference under section 105A(3) or section 28A(3) of the *Lands Acquisition Act* for inefficiency, misbehaviour or physical or mental incapacity or when, because of illness, absence from the Territory or any other reason the member is unable conveniently to perform the duties of his or her office.

"99. CONSIDERATION OF APPLICATION WHERE MEMBER CEASES TO HOLD OFFICE

"Where a member of the Tribunal other than the Chairman ceases to hold office by reason of his or her death, resignation, termination of appointment or, by virtue of section 95(6), ceasing to be qualified to hold office as a member, the vacancy shall be filled in the same manner as the appointment of the vacating member unless the Chairman has advised the Minister, in writing, that, in the opinion of the Chairman, an injustice to a party is likely to arise by reason of the consideration of an application or reference being continued by the Tribunal constituted with a new member.



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"100. FUNCTIONS AND POWERS OF TRIBUNAL

- "(1) The functions of the Tribunal are -
- (a) on an application being referred to it -
    - (i) to determine whether the applicant is entitled to make the application; and
    - (ii) where it is satisfied that the applicant is so entitled, -
      - (A) to consider the application; and
      - (B) to make recommendations as soon as practicable to the Minister as to whether the land the subject of the application, or any other land that is part of the pastoral lease to which the application relates in substitution for that land or part of that land, should be acquired by the Territory and granted or transferred in fee simple for the benefit of the applicant; and
  - (b) such other functions as are imposed on it by or under this Act.

"(2) Subject to this Part, the Tribunal has such powers as are reasonably necessary to enable it to carry out its functions.

"101. ABSENCE OF SUBMISSION OF PARTY

"(1) Subject to subsection (2), the Tribunal may proceed to consider an application referred to it notwithstanding that it has not received written submissions from a party.

"(2) The Tribunal shall not consider an application in circumstances described in subsection (1) unless it has given reasonable notice to the party of its intention to do so.

*"Division 3 - Community Living Areas*

"102. LAND COUNCIL MAY ACT FOR ABORIGINAL

"(1) At the request in writing of a party to an application or an Aboriginal who wishes to make an application, a person (including the relevant Land Council in the case of a request by an Aboriginal) may represent the party or Aboriginal in relation to the application or a reference to the Tribunal.

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"(2) A person representing a party or Aboriginal in pursuance of a request under subsection (1) shall attach a copy of the writing referred to in that subsection upon first making an application or lodging a written submission with the Minister or, as the case may be, Tribunal.

"102A. APPLICATION FOR GRANT OF LIVING AREA

"(1) Subject to subsection (2), an applicant, on his or her own behalf or on behalf of the applicant and other Aboriginals who, if they themselves had applied, would also be qualified as applicants, may apply to the Minister for the excision from the pastoral lease to which the application relates of an area of land specified in the application and the grant of an estate in fee simple in that land for the benefit of the applicant, or the applicant and those Aboriginals, as a community living area.

"(2) Subject to subsection (3), except as may be agreed between the parties, an application shall not be considered before the expiration of 6 months after the date the application was made to the Minister or before the expiration of such further period as may be agreed between the parties.

"(3) Where, after making an application under subsection (1), an applicant has requested the lessee of a pastoral lease to negotiate for the surrender of an area of land comprised in the pastoral lease as a living area for the applicant or the applicant and other similarly qualified Aboriginals and, within 3 months after that request, the lessee has failed to agree to such negotiations taking place, an application under subsection (1) shall be considered by the Minister at any time after the expiration of that period.

"102B. FORM OF APPLICATION

"(1) An application shall -

- (a) be in writing;
- (b) identify the Aboriginal or Aboriginals who are making the application or on whose behalf the application is made;
- (c) state the basis upon which the application is made having regard to the criteria set out in the definition of 'applicant' in section 94, and have attached supporting documentary evidence for the statement;
- (d) identify the pastoral lease to which it relates and the lessee of the pastoral lease;

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- (e) contain a reasonably accurate description of the land the subject of the application sufficient to identify its proposed boundaries together with a detailed map to sufficiently identify the land in relation to surrounding areas;
- (f) if discussions have been held between the parties to the proposed application before the application was made, contain a summary of and an assessment of the outcome of those discussions; and
- (g) if made with the agreement of the lessee of the pastoral lease to which the application relates, be accompanied by a copy of that agreement.

"(2) A copy of an application shall, as soon as practicable after it is made, be served by the applicant on -

- (a) the other parties to the application or their agents; and
- (b) such other persons, if any, on whom the Minister requires it to be served,

and any person served pursuant to this subsection may, within the period referred to in section 102A(2), make written submissions to the Minister in relation to the application.

"102C. SERVICE ON LESSEE

"Service under section 102B(2)(a) of a copy of an application on the lessee of a pastoral lease may be effected by post or by personal service on the lessee or by personal service on the manager or other person apparently in charge of, and resident on, the pastoral lease.

"102D. MINISTER TO CONSIDER APPLICATION

"(1) Subject to this section the Minister shall, within 90 days after the expiration of the relevant period referred to in section 102A(2) or (3), approve the application or refer it to the Tribunal together with any submissions received and such information (if any) as he or she thinks fit.

"(2) The Minister may, by notice in writing, at any time within the period of 90 days referred to in subsection (1) require a party to an application to furnish to the Minister, in writing, such information or material (including a summary of and an assessment of the outcome of any discussions held between the parties to an application since the application was made) as may be specified in the notice, within the time so specified.

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"(3) Where a notice is given under subsection (2), the period of 90 days referred to in subsection (1) shall be extended by such period -

- (a) as may be specified in the notice as being the period within which a party is to comply with the Minister's requirements or within such extended period as may be agreed by the applicant with the Minister; or
- (b) as may actually be taken by a party to comply with the Minister's requirements under the notice,

whichever is shorter; but if a party fails to comply with the Minister's requirements within the time specified or extended under paragraph (a), the Minister shall consider the application without the information or material requested.

"(4) The Minister shall, as soon as practicable after approving an application or referring it to the Tribunal, by notice in writing, advise the parties to the application and any person served with a copy of the application under section 102B(2)(b) of the decision or action taken.

"102E. TRIBUNAL TO CONSIDER APPLICATION REFERRED BY MINISTER

"The Minister shall, as soon as practicable, but not later than 30 days, after referring to the Tribunal an application and as soon as practicable after the occasion for the appointment of a member of the Tribunal arises, by notice in writing to the relevant Land Council and relevant pastoral organization, require each to nominate a panel of 3 persons for the purpose of constituting, under section 95, the Tribunal for the purpose of considering and making recommendations to the Minister in relation to the application, and forward a copy of the notice to the Chairman.

"102F. MEETINGS OF TRIBUNAL AND PROCEDURE

"(1) In its consideration of an application or reference under this or any other Act, the Tribunal (except as provided in subsection (7) or section 102G, or in such exceptional circumstances as the Chairman may allow) shall not consider any matter other than that contained in written submissions or material before it.

"(2) The convening of meetings of the Tribunal and the procedures at those meetings are, subject to this Act, in the discretion of the Chairman.

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"(3) A person who has been advised pursuant to section 102D(4) that an application has been referred to the Tribunal may make written submissions to the Tribunal in relation to the application.

"(4) The Tribunal may, by notice in writing, require a party to an application referred to it to furnish to the Tribunal such information (including the answers, in writing, to questions put by the Tribunal) or material as may be specified in the notice, within the time so specified.

"(5) The Tribunal may request a person having relevant knowledge, experience or expertise to supply, on such terms as may be agreed, such information or material as the Tribunal thinks will assist it in considering the application or reference before it.

"(6) If the Tribunal receives submissions, information, or material pursuant to the provisions of subsection (3) or, as the case may be, subsections (4) or (5), it shall supply a copy to -

- (a) where the submissions, information or material was received from a party to the application - the other party to the application; and
- (b) where the submissions, information or material was received from other than a party - the parties to the application,

and that party or those parties may, within 30 days after receipt of the copy, make submissions in writing to the Minister in relation to the submissions, information, or material.

"(7) For the purposes only of assisting the Tribunal in its consideration of an application, the Chairman may order a view of the land comprising the pastoral lease to which the application relates.

"(8) Notwithstanding any law in force in the Territory, after reasonable notice in writing has been given to the lessee of the pastoral lease of which a view has been ordered under subsection (7), the Tribunal and such other persons as are specified in the notice may enter on and remain on the pastoral lease, together with such vehicles and equipment as may be necessary, and view the land.

**"102G. TRIBUNAL MAY REQUIRE COMPULSORY CONFERENCE**

"(1) The Tribunal may, by notice in writing to them, require the parties to an application to attend a compulsory conference before the Tribunal or a person nominated by the Tribunal and at a time and place specified in the notice, to discuss the application with

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a view to resolving the differences of the parties in relation to it.

"(2) If a party refuses or fails to attend a conference in accordance with a notice under subsection (1), the Tribunal may -

- (a) if the party is the applicant - refuse to consider the application further until the party attends such a conference; or
- (b) if the party is not the applicant - proceed to consider the application and make such recommendations as it thinks fit.

"102H. RECOMMENDATION, &c., TO MINISTER AFTER AGREEMENT

"(1) If, after considering an application referred to it, the Tribunal is satisfied that the parties have reached agreement on all matters relevant to the application, it shall recommend to the Minister the excision from the pastoral lease of the land agreed between the parties to be excised and the granting of an estate in fee simple in that land as a community living area for the Aboriginal or Aborigines for whose benefit the application was made, or any of them.

"(2) When making a recommendation under subsection (1), the Tribunal shall comment on the matters referred to in section 102J(1)(b)(viii), and to such other matters in subparagraphs (i) to (ix) of section 102J(1)(b) on which the Minister requires it to comment.

"102J. RECOMMENDATION, &c., TO MINISTER IN OTHER CASES

"(1) If, after considering an application referred to it (other than an application considered under section 102H), the Tribunal -

- (a) is satisfied that -
  - (i) an applicant is an eligible applicant; and
  - (ii) the excision of the area of land the subject of the application, or another area in substitution for that land or part of that land, will not unreasonably reduce the economic viability of the relevant pastoral lease; and
- (b) has had regard to -
  - (i) the length of time during which the applicant has or had, or those Aborigines for whose benefit the application was made have, or a particular Aboriginal has or had, resided on the area or another part of

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the pastoral lease, and the likely benefit to the applicant or those Aboriginals, or any of them, of the granting of an estate in fee simple in the area as a community living area, and the acceptability to the applicant of another area in substitution for the area applied for;

- (ii) the reasonableness of the size of the area applied for, taking into account the number of people who reside or intend to reside on the community living area, and any estimates of population growth or decrease;
- (iii) the provisions, if any, that should be made for reasonable access to the area, or across the area to parts of the pastoral lease from which, if it is recommended, the area should be excised;
- (iv) the need for and probable cost of providing services, including the provision of water and electricity, and reasonable access to the area, and the availability of or the potential to locate potable ground water;
- (v) the number and size of areas already granted or sought under this Act or any other law in force in the Territory for the applicant or those Aboriginals for whose benefit the application was made or any of them or on which they reside, or which are available for occupation by them;
- (vi) the number and size of areas of land claimed under a law in force in the Territory or of a State as Aboriginal land (by whatever name called) on which the applicant or those Aboriginals for whose benefit the application was made, or any of them, would be entitled to reside if the claim were successful, and the stage of proceedings reached in relation to such claims; but where the grant of land under that law is to be made on the recommendation of a person or body, the Tribunal shall only have regard to the land actually granted or in respect of which such a recommendation for grant has been made;
- (vii) the degree to which the economic viability of the pastoral lease would be affected by the excision of the area;

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- (viii) whether the applicant or those Aboriginals for whose benefit the application was made have adequate housing circumstances or have available to them land upon which housing might be provided; and
- (ix) any agreement reached between the parties to the application in relation to the issues between them,

it shall recommend to the Minister either -

(c) that -

- (i) there be excised from the pastoral lease the land to which the application relates or any other land that is part of the pastoral lease in substitution for that land or part of that land as an Aboriginal community living area; or
- (ii) that no such excision be made.

"(2) In making its recommendation under subsection (1) the Tribunal shall comment on the matters to which it has had regard.

"(3) At the time of making its recommendation under subsection (1), the Tribunal shall send a copy of the recommendation and its comments under subsection (2) to the parties to the application.

"102K. DISCRETION OF MINISTER IN RELATION TO RECOMMENDATIONS

"(1) The Minister shall, within 30 days after receiving it, (and having regard to such matters as the Minister thinks fit but in any event having regard to the Tribunal's comment on the matters referred to in section 102J(1)(b)(viii)) accept in whole or in part the recommendation made under section 102H(1) or section 102J(1) or reject it.

"(2) As soon as practicable, but not later than 30 days, after making a decision under subsection (1), the Minister shall, by notice in writing to the parties to the application as a result of which the recommendation of the Tribunal was made and such other persons as the Minister thinks fit, advise them of the decision and his or her reasons for the decision.

*"Division 4 - Formation of Association and  
Acquisition of Land*

"102M. FORMATION OF ASSOCIATION AND ACQUISITION OF LAND

"(1) Where the Minister -



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- (a) approves under section 102D(1) an application;
- (b) accepts a recommendation under section 102H(1);  
or
- (c) accepts in whole or in part a recommendation  
under section 102J(1)(c)(i),

the successful applicant or applicants shall for the purposes of a grant of an estate in fee simple in the relevant land by section 46(1A) of the *Lands Acquisition Act*, form -

- (a) an association of Aboriginals incorporated under the *Associations Incorporations Act*; or
- (b) an association of Aboriginals incorporated under the *Aboriginal Councils and Associations Act 1976* of the Commonwealth,

having the power to hold the land.

"(2) The Minister shall, upon the formation of an association referred to in subsection (1), advise the minister responsible for the administration of the *Lands Acquisition Act* of that fact and of the name of the association and a description of the relevant land, and that minister shall, within 30 days after receiving the advice, commence action under that Act to acquire the relevant land (including, where necessary, an easement for reasonable access to the land), except that the pre-acquisition procedures otherwise required under Part IV of that Act to be followed shall not apply to or in relation to the acquisition.

*"Division 5 - Miscellaneous*

"102N. APPEAL TO SUPREME COURT

"(1) An appeal lies to the Supreme Court in accordance with the rules of that Court against a decision of the Minister under this Part but only on the grounds of that decision being -

- (a) made on an error of law; or
- (b) so manifestly wrong that no reasonable person could have come to that decision,

and the Minister shall be bound by the decision of the Court.

"(2) In its determination of an appeal under this section the Court may confirm, modify, or reverse the decision appealed against, or any part of that decision, and may, instead of determining the appeal, direct the

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Minister to reconsider, either generally or in respect of specified matters, the decision to which the appeal relates.

"(3) In giving a direction under subsection (3) the Court shall -

- (a) advise the Minister of its reasons for doing so; and
- (b) give the Minister such directions as it thinks fit as to his or her reconsideration of the matter,

and the Minister shall have regard to those reasons and those directions."

7. NEW SECTION

The Principal Act is amended by inserting after section 105 the following:

"105A. RESUMPTION OF ABANDONED ABORIGINAL COMMUNITY LIVING AREAS

"(1) In this section, 'abandoned', in relation to an Aboriginal community living area granted by section 46(1A) of the *Lands Acquisition Act*, means the case where neither the applicant nor any of those Aboriginals for whose benefit the grant of land was made, or any of the members from time to time of the association to which the land was granted, have occupied the land as their principal place of residence during the 5 year period before an application is made under subsection (2).

"(2) The lessee of a pastoral lease adjacent to an abandoned Aboriginal community living area may apply to the Minister to have the land comprising the abandoned community living area incorporated in the pastoral lease of the lessee applying under this section.

"(3) On receipt of an application under subsection (2), the Minister shall refer it to the Tribunal within the meaning of Part IV for the purpose of considering the application, and the Tribunal may call for submissions in writing to be made to it -

- (a) by any person interested in the matter before it; and
- (b) by the relevant Land Council.

"(4) In considering a reference under subsection (3), the Tribunal shall take into account -

- (a) the length of time the community living area has been abandoned;

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- (b) the apparent reason for abandonment;
- (c) the number and age grouping of Aboriginals (if any) eligible to live on the community living area;
- (d) the history of occupation of the community living area since it was granted to the association;
- (e) the cost and method of calculating the cost to the Territory of acquiring the community living area on just terms; and
- (f) such other matters as the Tribunal thinks relevant, including the submissions made to it under subsection (3).

"(5) After considering a reference under this section, the Tribunal shall recommend a course of action to be taken by the Minister in relation to the abandoned community living area, and shall give notice of its recommendations to the association to which the land was granted and to any person who made submissions to it pursuant to subsection (3)."

PART III - AMENDMENTS TO ASSOCIATIONS INCORPORATION ACT

8. PRESCRIBED PROPERTY

Section 26A of the *Associations Incorporation Act* is amended -

- (a) by omitting from subsection (3) "Except" and substituting "Subject to subsection (3A), except"; and
- (b) by inserting after subsection (3) the following:

"(3A) Where prescribed property is land granted for the purposes of an Aboriginal community living area in pursuance of Part IV of the *Crown Lands Act*, nothing in subsection (1) empowers the Minister to consent to the disposal of the fee simple of any part of the land other than for the purpose of -

- (a) registering under the *Real Property Act* interests (including easements and easements in gross) which, except for this subsection, would otherwise be able to be registered; or
- (b) giving effect to a recommendation of the Community Living Areas Tribunal established under the *Crown Lands Act* made pursuant to section 105A of that Act in relation to an abandoned Aboriginal community living area."

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PART IV - AMENDMENTS TO *LANDS ACQUISITION ACT*

9. NEW SECTION

The *Lands Acquisition Act* is amended by inserting in Part X, before section 29, the following:

"28A. CERTAIN LAND NOT TO BE ACQUIRED

"(1) The Minister may not compulsorily acquire any prescribed land or an interest in prescribed land except -

- (a) for the purpose of the provision of essential services and facilities being power (including gas), water, sewerage, road or communication services or facilities to or across the prescribed land, or access to any of them; or
- (b) where the prescribed land is held subject to the reservation that the Territory can acquire the part or interest for the purpose for which it is proposed to be acquired.

"(2) In subsection (1) 'prescribed land' means land granted to, and held by, an incorporated association within the meaning of the *Associations Incorporation Act* or an Aboriginal association within the meaning of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth as a community living area for Aboriginals, having been excised (by agreement or otherwise) for that purpose from a pastoral lease within the meaning of the *Crown Lands Act*.

"(3) In any dispute under this section, the Minister shall refer the matter in dispute to the Community Living Areas Tribunal established by section 95 of the *Crown Lands Act* and the provisions of Part IV of that Act, with the necessary changes, shall apply as if the matter in dispute were an application under that Part and the Minister and the association were parties to the application.

"(4) Nothing in subsection (1) empowers the Minister to compulsorily acquire the fee simple of any part of the prescribed land other than the interests referred to in that subsection."

10. EFFECT OF NOTICE OF ACQUISITION

Section 46 of the *Lands Acquisition Act* is amended by inserting after subsection (1) the following:

"(1A) Where a notice of acquisition describes land that is to be excised from a pastoral lease (within the meaning of the *Crown Lands Act*) as an Aboriginal community living area, either by agreement or by reason of the acceptance by the Minister of a recommendation to that

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effect made pursuant to Part IV of that Act, an estate in fee simple in the land described in the notice of acquisition is, upon publication in the *Gazette* of the notice and by virtue of this subsection, granted to the association formed pursuant to Part IV of the *Crown Lands Act* to take the land.

"(1B) Land granted by subsection (1A) -

(a) is granted subject to -

(i) the provisions of sections 19A, 20 and 20A of the *Crown Lands Act*; and

(ii) any mining tenement, exploration licence, exploration retention licence, reserve, occupation or other right under the *Mining Act*; and

(b) is granted as prescribed property within the meaning of the *Associations Incorporation Act*,

but is otherwise granted freed and discharged from all other interests, trusts, restrictions, dedications, reservations, obligations, encumbrances, contracts, licences, charges or rates of any kind, and for this purpose any interest that a person had in the granted land is divested or modified to the extent necessary to give effect to this subsection."

PART V - AMENDMENTS TO *MINING ACT*

11. NEW SECTION

The *Mining Act* is amended by inserting after section 174A the following:

"174AA. ABORIGINAL COMMUNITY LIVING AREAS

"(1) Where private land is land granted in pursuance of Part IV of the *Crown Lands Act* to an association for an Aboriginal community living area, then, subject to existing mining tenements, exploration licences, and exploration retention licences, a mining tenement, exploration licence, or exploration retention licence shall not, except with the consent of the owner, be granted on that private land within a distance of 1 km from a point on the land designated by the association and advised to the Minister within 30 days after the grant being effected or within such extended period as the Minister, in special circumstances, may allow.

"(2) An association referred to in subsection (3) may from time to time apply to the Minister to designate another point on the land from which the 1 km distance is measured and, subject to existing mining tenements,

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exploration licences, or exploration retention licences, the Minister may approve the designated point.

"(3) Nothing in this section empowers the limitation distance to extend beyond the boundaries of the private land."

12. RESERVATION OF LAND FROM OCCUPATION

Section 178 of the *Mining Act* is amended -

(a) by omitting from subsection (2) the words "subsection (4)" and substituting "subsections (4) and (5)"; and

(b) by adding at the end the following:

"(5) The Minister shall not -

(a) cancel a reservation under subsection (1) of any land which has been granted to an association in pursuance of Part IV of the *Crown Lands Act* for an Aboriginal community living area except with the consent of the owner and the approval of the Administrator; or

(b) authorize under subsection (2) the occupation of such land except after consultation with the owner."

PART VI - AMENDMENTS TO *FENCES ACT*

13. NEW SECTION

The *Fences Act* is amended by inserting after section 23 the following:

"23A. DIVIDING FENCES BETWEEN PASTORAL LEASE AND ABORIGINAL COMMUNITY LIVING AREA

"(1) In this section, 'pastoral lease' means a pastoral lease within the meaning of the *Crown Lands Act*.

"(2) The lessee of a pastoral lease from which has been excised an area of land in pursuance of Part IV of the *Crown Lands Act* for an Aboriginal community living area shall not be liable to join in or contribute to the construction or, subject to subsection (3) and sections 14(2) and 15(2) and (5), the repair of a dividing fence between the pastoral lease and the excised land but otherwise has the same rights and duties under this Act as an owner of the pastoral lease, and this Act shall be construed, where the context so requires, as if a reference to contribution were a reference to provision or repair, as the case may be, of the dividing fence or the full cost involved.

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"(3) Where a boundary of an excised area of land referred to in subsection (2) was, immediately before that excision, a boundary of the pastoral lease from which it was excised, the lessee of the pastoral lease is liable under this Act to contribute equally to the cost of the repair of so much of the dividing fence between the excised land and the pastoral lease as is equal to the length of the boundary of the excised land that, immediately before the excision, formed the boundary of the pastoral lease."

PART VII - AMENDMENTS TO *REAL PROPERTY ACT*

14. REPEAL AND SUBSTITUTION

Sections 113, 114 and 115 of the *Real Property Act* are repealed and the following substituted:

"113. REGISTRATION AFTER STATUTORY VESTING OR GRANT

"(1) Where the Registrar-General is satisfied, either on an application in the prescribed form or of his own motion, that land or any interest in land has become vested in or granted to a person by or under an Act (including an Act of the Commonwealth), the Registrar-General -

- (a) shall make in the Register Book such entries in relation to the land as he considers necessary in connection with the vesting or grant; and
- (b) may issue such certificates of title as he thinks fit in consequence thereof and, where that is necessary or appropriate, cancel any existing certificate of title.

"(2) The Registrar-General may exercise the power conferred by subsection (1)(a) whether or not the duplicate certificate of title to the land in question is produced to him.

"(3) Where an interest in land is transferred to the Territory pursuant to section 69(5) of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the interest shall be treated for the purposes of subsection (1) as having vested in the Territory under that Act on the execution of the transfer."

15. NOTICES OF STATUTORY RESTRICTIONS

Section 191B of the *Real Property Act* is amended -

- (a) by inserting in subsection (1) after "may" the words "or, where the land is prescribed property within the meaning of the *Associations Incorporation Act* and was granted to an

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association by section 46(1A) of the *Lands Acquisition Act*, shall"; and

- (b) by inserting in subsection (3) after "subsection (1)" the words "instead of the Territory Minister".

PART VIII - MISCELLANEOUS

16. ABORIGINAL ASSOCIATION MAY CONVERT CERTAIN INTERESTS  
IN LAND TO COMMUNITY LIVING AREA

(1) This section applies to an association of Aborigines incorporated under the *Associations Incorporation Act* or the *Aboriginal Councils and Associations Act 1976* of the Commonwealth which -

- (a) is the registered proprietor under the *Real Property 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*; or
- (c) is the lessee under the *Crown Lands Act* of a Crown lease for a term of years for a purpose other than pastoral purposes.

(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 IV of the *Crown Lands Act*.

(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*) of land to be excised from a pastoral lease published in pursuance of section 46(1A) of that Act.



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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 interests, for example, by dividing a property, or encroaching on the homestead.

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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.

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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

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ATTACHMENT A

PROPOSED NORTHERN TERRITORY STATUTE 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,

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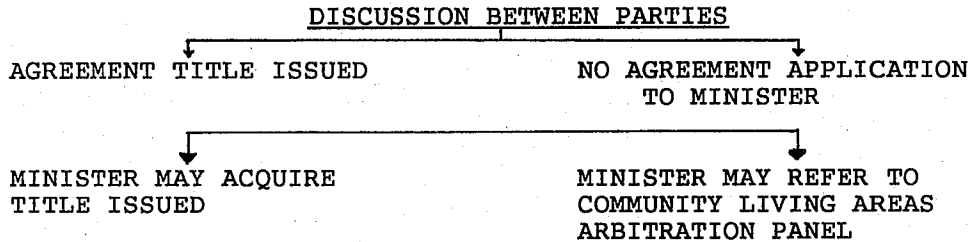
- (N.B. the provisions of the *Mining Act* section 73 and *Petroleum Act* section 81 provide for compensation to be payable to owners or occupiers);
  - 4. General
    - provide that the grounds for acquisition for essential public purposes could be identified at the time of a grant and be registered as a memorial on the title under the *Real Property Act*;
    - 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.
-

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ATTACHMENT B

FLOW CHART

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

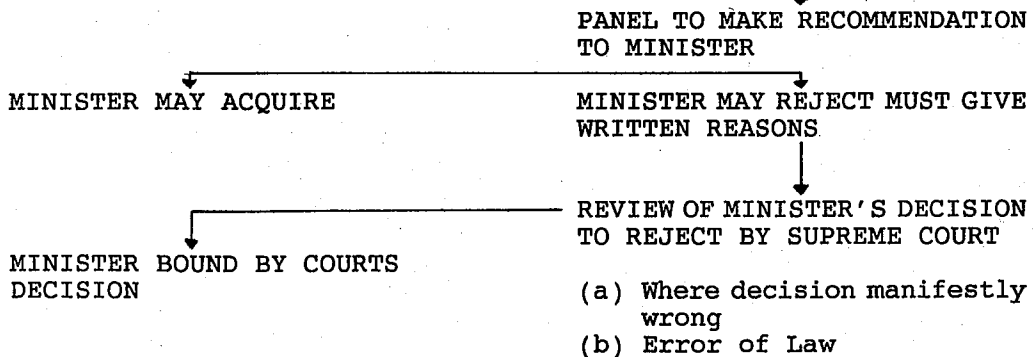


PANEL

- (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



\* 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.