

THE NORTHERN TERRITORY OF AUSTRALIA

ABORIGINAL LAND ORDINANCE

No. 106 of 1978

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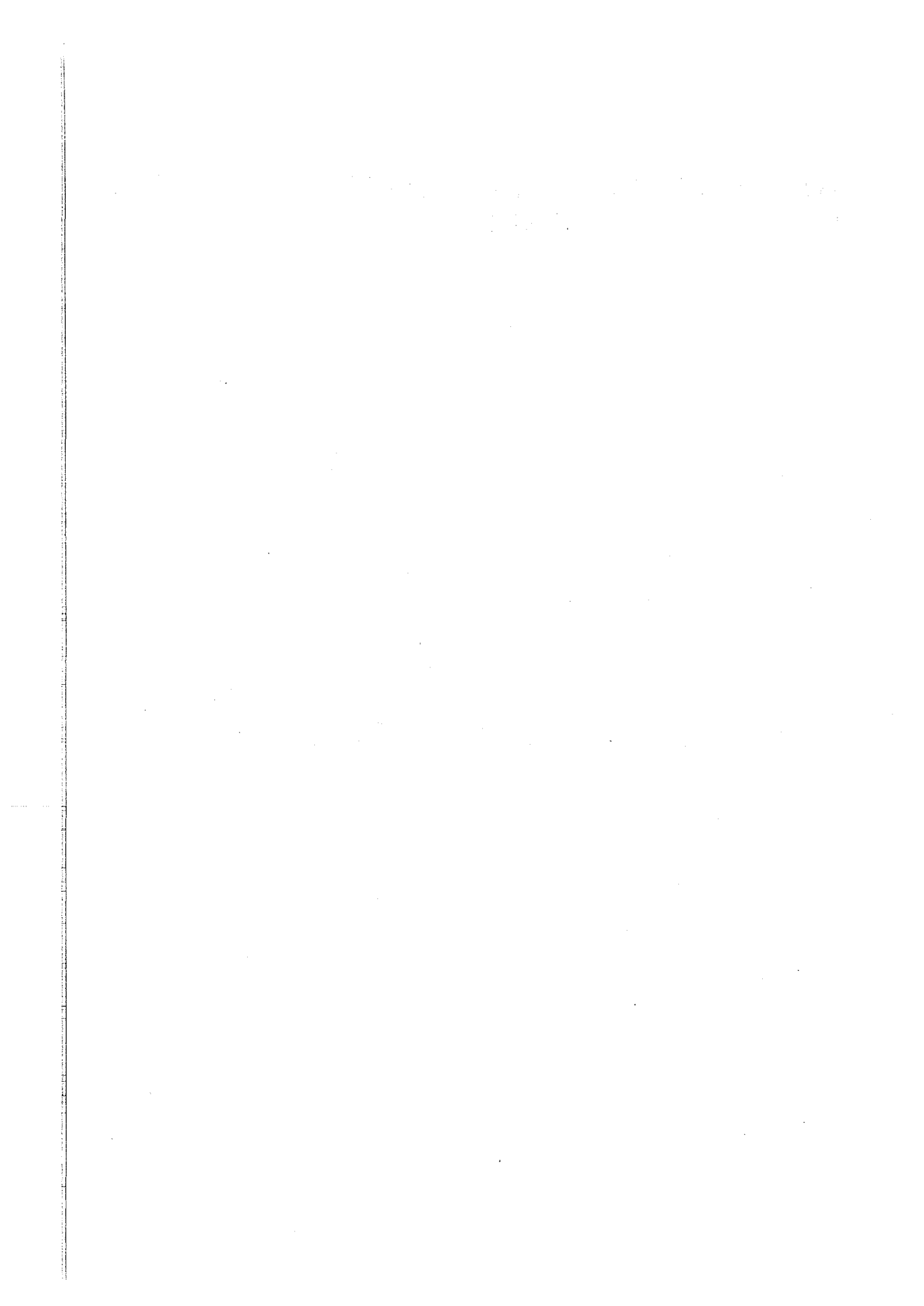
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THE NORTHERN TERRITORY OF AUSTRALIA

No. 106 of 1978

AN ORDINANCE

To provide for access to Aboriginal land and the seas
adjacent thereto

[Assented to 9 November 1978]

BE it ordained by the Legislative Assembly for the Northern Territory
of Australia as follows:

PART I - PRELIMINARY

- | | |
|--|--------------|
| 1. This Ordinance may be cited as the <u>Aboriginal Land Ordinance 1978</u> . | Short title |
| 2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> . | Commencement |
| 3. In this Ordinance, unless the contrary intention appears - | Definitions |
- "Aboriginal" means a person who is a member of the Aboriginal race of Australia;
- "Aboriginal land" has the same meaning as in the Aboriginal Land Rights (Northern Territory) Act 1976;
- "Aboriginal tradition" has the same meaning as in the Aboriginal Land Rights (Northern Territory) Act 1976;
- "Aboriginal Land Commissioner" means the Aboriginal Land Commissioner established by the Aboriginal Land Rights (Northern Territory) Act 1976;
- "closed seas" means seas closed by notice published in the Gazette under section 11;
- "Land Council" means an Aboriginal Land Council established by or under the Aboriginal Land Rights (Northern Territory) Act 1976;
- "Land Trust" means an Aboriginal Land Trust established under the Aboriginal Land Rights (Northern Territory) Act 1976;
- "traditional Aboriginal owners" has the same meaning as in the Aboriginal Land Rights (Northern Territory) Act 1976.

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Aboriginal Land

PART II - ENTRY ONTO ABORIGINAL LAND

Entry onto,
&c., Aboriginal
land

4.(1) Subject to this Part, a person shall not enter onto or remain on Aboriginal land unless he has been issued with a permit to do so in accordance with this Part.

Penalty: 1,000 dollars.

(2) An Aboriginal who is entitled by Aboriginal tradition to enter onto an area of Aboriginal land may enter onto that area of Aboriginal land.

(3) An Aboriginal who is entitled by Aboriginal tradition to remain on an area of Aboriginal land may remain on that area of Aboriginal land.

Issue of
permits

5.(1) The Land Council for the area in which Aboriginal land is situated may issue a permit to a person to enter onto and remain on that Aboriginal land subject to such conditions as the Land Council thinks fit.

(2) The traditional Aboriginal owners of an area of Aboriginal land may issue a permit to a person to enter onto and remain on that Aboriginal land subject to such conditions as the traditional Aboriginal owners think fit.

(3) A permit to enter onto and remain on Aboriginal land shall be in writing.

(4) A Land Council, or the traditional Aboriginal owners, may delegate all or part of its or their authority to issue permits under this section and such delegation may be made upon such conditions as the Land Council, or the traditional Aboriginal owners, as the case may be, think fit.

(5) A Land Council may revoke a permit issued by it, under its authority, by the traditional Aboriginal owners or under the authority of the traditional Aboriginal owners over Aboriginal land which is within the area for which it is established.

(6) The traditional Aboriginal owners of an area of Aboriginal land may revoke a permit issued by them, under their authority, by a Land Council or under the authority of a Land Council, where the permit relates to the area of Aboriginal land of which those Aboriginals are traditional Aboriginal owners.

(7) A Land Council shall, before commencing to issue permits for an area of Aboriginal land, consult with and come to an agreement with the traditional Aboriginal owners of the area as to the terms and conditions upon which the Land Council may issue permits or delegate its authority to issue permits.

(8) Notwithstanding the provisions of section 4, the Aboriginal Land Council for the area in which an area of Aboriginal land is situated or the traditional Aboriginal owners of an area of Aboriginal land may, by notice published in a newspaper or broadcast over a radio station, waive the requirement for a permit to enter the Aboriginal land specified by the Land Council or the traditional Aboriginal owners in the notice for the period or

periods specified in that notice and the requirements of section 4 shall not apply over that area for that period or those periods.

6.(1) Where a person who is employed under or by virtue of an Act or Ordinance has a need, in the performance of his duties, to enter upon and remain on Aboriginal land, the Minister may issue a permit which will, subject to any law in force in the Territory, authorize the person to whom it is issued to enter and remain on Aboriginal land subject to the conditions set out in the permit.

The Minister may issue permits to government employees on certain conditions

- (2) A permit issued under sub-section (1) -
 - (a) shall be in writing and shall contain the name, the signature and an identification photograph of the person to whom the permit is issued;
 - (b) shall specify the area of Aboriginal land that the person to whom the permit is issued is permitted to enter and remain on;
 - (c) shall specify that the permit is issued to allow the person to whom it is issued to enter and remain on Aboriginal land in the course of his duty only; and
 - (d) may contain conditions and restrictions subject to which the permit is issued.

(3) A permit issued under sub-section (1) may be revoked by the Minister upon the request of the relevant Land Council.

7. Subject to this Part -

- (a) the Administrator, or an Acting Administrator, acting in the course of his duty;
- (b) a member of the Legislative Assembly engaged on the business of the Assembly;
- (c) a member of either House of the Commonwealth Parliament engaged on the business of the Parliament;
- (d) a candidate for election as a Senator for the Northern Territory or as a member of the House of Representatives for a Northern Territory electorate; and
- (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his campaign,

Members of Parliament, &c., may enter, &c., Aboriginal land

may enter and remain on Aboriginal land.

8.(1) Nothing contained in this Part authorizes the entry of a person to a dwelling without the permission of the owner or the occupant.

Entry of dwellings

(2) For the purposes of this section "dwelling" includes the living area of a camp occupied by or belonging to an Aboriginal.

Defence in
certain cir-
cumstances

9. It shall be a defence to a charge under section 4(1) if the person charged proves that -

- (a) the entry onto Aboriginal land was due to necessity, or beyond his control;
- (b) it was impractical, in the circumstances, to apply for a permit; and
- (c) he removed himself from the Aboriginal land as soon as it was practicable in the circumstances.

Estates or
interests on
Aboriginal
land protected

10. Where a person other than a Land Trust has an estate or interest in an area of Aboriginal land, this Part shall not authorize an entry or remaining on that area of Aboriginal land of a person if his presence on that area of land would interfere with the use or enjoyment of that estate or interest by the owner of the estate or interest.

Open areas

11.(1) The Administrator may, on the recommendation of a Land Council, declare by notice in the Gazette, an area of Aboriginal land to be an open area.

(2) Where a declaration is made under sub-section (1), a person may enter and remain on the area of Aboriginal land described in the notice without obtaining a permit.

PART III - CONTROL OF ENTRY ONTO SEAS ADJOINING ABORIGINAL LAND

Administrator
may close seas

12.(1) The Administrator may, by notice in the Gazette, close the seas adjoining and within 2 kilometres of Aboriginal land to any persons or classes of person, or for any purpose other than to Aboriginals who are entitled by Aboriginal tradition to enter and use those seas and who enter and use those seas in accordance with Aboriginal tradition.

(2) The notice in the Gazette referred to in sub-section (1) shall specify -

- (a) the area closed by the notice by description of the boundaries and by a diagram showing the approximate position of the boundaries;
- (b) the persons or classes of persons to whom the area is closed; and
- (c) the purpose for which the area of the sea is closed.

(3) The Administrator may, before deciding to close a part of the seas in accordance with this section, and in the event of the Administrator not being prepared to close an area of seas within 56 days of the matter being referred to it, the Administrator shall refer the matter of the closure to the Aboriginal Land Commissioner and request that the Aboriginal Land Commissioner inquire into and report on -

- (a) whether, in accordance with Aboriginal tradition, strangers were restricted in their right to enter those seas;
- (b) whether the use of those seas by strangers is interfering with or may interfere with the use of those seas in accordance with Aboriginal tradition by the Aborigines who have traditionally used those seas;
- (c) whether the use of those seas by strangers is interfering with or may interfere with the use of the adjoining Aboriginal lands by the traditional Aboriginal owners;
- (d) whether any person would be disadvantaged if the seas were closed to him;
- (e) the commercial, environmental and recreational interests of the public; and
- (f) such other matters as the Aboriginal Land Commissioner considers relevant to the closure of those seas.

(4) The Aboriginal Land Commissioner shall report to the Administrator.

13.(1) The Administrator may, by notice in the Gazette, revoke or vary a notice made under section 12 so as to open the whole or part of an area of closed seas.

Administrator
may re-open
closed seas

(2) Before a notice under sub-section (1) is published the Administrator shall refer the matter of the revocation or variation of the previous notice to the Aboriginal Land Commissioner.

(3) The Aboriginal Land Commissioner may, if he considers that the circumstances require, inquire into and report on the change in circumstances which would justify the revocation or variation of the previous notice.

(4) The Aboriginal Land Commissioner shall, in deciding whether to conduct an inquiry under sub-section (3), have regard to the consent or otherwise of the Land Council and the traditional Aboriginal owners of the land adjoining the seas affected by the intended notice.

14.(1) Subject to this Part, a person shall not enter onto or remain on closed seas unless he has been issued with a permit to do so in accordance with this Part.

Entry onto,
&c., closed
seas

Penalty: 1,000 dollars.

(2) An Aboriginal who is entitled by Aboriginal tradition to enter and use the seas adjoining an area of Aboriginal land may enter and use the resources of the seas adjoining and within 2 kilometres of that area of Aboriginal land notwithstanding that a notice published under section 12 affects those seas.

15.(1) The Land Council for the area in which closed seas are situated may issue a permit to a person to enter onto and

Issue of
permits

Aboriginal Land

remain on those seas subject to such conditions as the Land Council thinks fit.

(2) The traditional Aboriginal owners of an area of Aboriginal land adjoining closed seas may issue a permit to a person to enter onto and remain on that area of closed seas subject to such conditions as the traditional Aboriginal owners think fit.

(3) A permit to enter onto and remain on closed seas shall be in writing.

(4) A Land Council or the traditional Aboriginal owners may delegate all or part of its or their authority to issue permits under this section and such delegations may be made upon such conditions as the Land Council or the traditional Aboriginal owners, as the case may be, think fit.

(5) A Land Council may revoke a permit issued by it, under its authority, by the traditional Aboriginal owners or under the authority of the traditional Aboriginal owners over seas closed by notice under section 12 which is within the area for which it is established.

(6) The traditional Aboriginal owners of an area of Aboriginal land may revoke a permit issued by them under this section, under their authority, by a Land Council or under the authority of a Land Council, where the permit relates to an area of closed seas which is adjacent to Aboriginal land of which those Aboriginals are the traditional Aboriginal owners.

(7) A Land Council shall, before commencing to issue permits for an area of Aboriginal land, consult with and come to an agreement with the traditional Aboriginal owners of the area as to the terms and conditions upon which the Land Council may issue permits or delegate its authority to issue permits.

(8) Notwithstanding the provisions of section 14, the Aboriginal Land Council for the area in which an area of seas closed under section 12 is situated or the traditional Aboriginal owners of an area of adjacent Aboriginal land may, by notice published in a newspaper or broadcast over a radio station, waive the requirement for a permit to enter the closed seas specified by the Land Council or the traditional Aboriginal owners in the notice for the period or periods specified in that notice and the requirements of section 14 shall not apply over that area for that period or those periods.

The Minister may issue permits to government employees on certain conditions

16.(1) Where a person who is employed under or by virtue of an Act or Ordinance has a need in the performance of his duties to enter upon and remain on closed seas, the Minister may issue a permit which will, subject to any law in force in the Territory, authorize the person to whom it is issued to enter and remain on Aboriginal land subject to the conditions set out in the permit.

(2) A permit issued under sub-section (1) -

(a) shall be in writing and shall contain the name, the signature and an identification photograph of the person to whom the permit is issued;

- (b) shall specify the area of closed seas that the person to whom the permit is issued is permitted to enter and remain on;
- (c) shall specify that the permit is issued to allow the person to whom it is issued to enter and remain on closed seas in the course of his duty only; and
- (d) may contain conditions and restrictions subject to which the permit is issued.

(3) A permit issued under sub-section (1) may be revoked by the Minister upon the request of the relevant Land Council.

17. Subject to this Part -

- (a) the Administrator or an Acting Administrator acting in the course of his duty;
- (b) a member of the Legislative Assembly engaged on the business of the Assembly;
- (c) a member of either House of the Commonwealth Parliament engaged on the business of the Parliament;
- (d) a candidate for election as a Senator for the Northern Territory or as a member of the House of Representatives for a Northern Territory electorate; or
- (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his campaign,

Members of Parliament, &c., may enter, &c., closed seas

may enter and remain on closed seas.

18.(1) Where a holder of a licence issued under section 15 of the Fisheries Ordinance held that licence prior to the publication of a notice under section 12, he or an employee of his who holds a licence under section 17 of the Fisheries Ordinance may enter and fish the area of closed seas referred to in the notice under section 12.

Permit to be granted to protect existing rights

(2) Before entering and fishing any closed seas under sub-section (1) a person shall notify the Land Council for the area in which the closed seas are situated.

19. It shall be a defence to a charge under section 14(1) if the person charged proves that -

Defence in certain circumstances

- (a) the entry onto closed seas was due to necessity, or beyond his control;
- (b) it was impractical, in the circumstances, to apply for a permit; and
- (c) he removed himself from the closed seas as soon as it was practicable in the circumstances.

Seas open to transit vessels of a vessel through seas which are otherwise open to that vessel.

20. Nothing in this Part shall prevent the bona fide transit

PART IV - OFFENCES

No prosecution
except on au-
thority of
Land Council

21.(1) No complaint for an offence against section 4 or section 14 shall be heard unless the hearing of the complaint is supported by a notice in writing given by the Land Council established for the area in which the alleged offence took place.

(2) A Land Council may authorize a person to sign a notice under sub-section (1) and a statement by the person signing a notice under sub-section (1) that he is so authorized shall be prima facie evidence of his authorization.

