

Discussion Paper

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**Development of
Northern Territory Aboriginal
Land and Sea Action Plan**





Aboriginal Rock Art, Injalak Hill. Artist Unknown

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“For Aboriginal peoples, country is much more than a place. Rock, tree, river, hill, animal, human – all were formed of the same substance by the Ancestors who continue to live in land, water, sky. Country is filled with relations speaking language and following Law, no matter whether the shape of that relation is human, rock, crow, wattle. Country is loved, needed, and cared for, and country loves, needs, and cares for her peoples in turn. Country is family, culture, identity. Country is self.”¹

1 Introduction

Land is crucial to the lives of Aboriginal people spiritually, physically, socially and culturally.

The NT Government is committed to working with the land councils and key stakeholders to develop an Aboriginal Land and Sea Action Plan for the Northern Territory. The suggested vision of the Action Plan is ‘to ensure land and sea ownership delivers on the economic and social aspirations of Aboriginal Territorians’.

The NT Government proposes to achieve this by:

- recognising and respecting Aboriginal people, their culture and language, and their organisations;
- taking a partnership approach with land councils, Traditional Owners and the Commonwealth;
- better coordinating land and sea matters across NT Government agencies; and

- removing administrative and legislative barriers that may be preventing Aboriginal Territorians from realising their land and sea aspirations.

Most NT Government agencies have direct or indirect interaction with the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) or the *Native Title Act 1993* (the Native Title Act). Both Acts, while markedly different, are of critical importance to the future of Aboriginal Territorians and the Northern Territory more generally, given that they apply to the majority of the Northern Territory’s land mass and coastline.

This discussion paper includes the outline of the draft of the Action Plan (the draft Action Plan) which currently contains 10 proposed actions.

¹‘Seeing the Light: Aboriginal Law, Learning and Sustainable Living in Country’, Ambelin Kwaymullina, Indigenous Law Bulletin May/June 2005, Volume 6, Issue 11



2 General Background

- Land and Sea Ownership in the Northern Territory

The Land Rights Act and the Native Title Act provide the legislative foundations of Aboriginal land and sea ownership in the Northern Territory. Approximately 48% of the Northern Territory's land mass and 80% of its coastline is Aboriginal land subject to the Land Rights Act². The majority of the remaining land and waters is, or is likely to be, subject to native title.

The Land Rights Act and Native Title Act are Commonwealth statutes and so any changes to the Acts must be passed by the Commonwealth Parliament. The Land Rights Act only applies in the Northern Territory, whereas the Native Title Act applies across Australia. While the histories of the Acts are intertwined, they are very different and were created for different reasons:

- The Land Rights Act was the Commonwealth's legislative response to the 1970s Gove land rights case³, which ruled that native title rights are not

recognised by the common law⁴, and the findings of the subsequent Woodward Commission (noting that other significant events, such as the 1963 Yirrkala bark petitions, the 1966 Wave Hill walk off, the 1967 Constitutional referendum, and the 1972 Aboriginal tent embassy protests, also influenced the Commonwealth's decision)

- The Native Title Act was the Commonwealth's legislative response to the 1990s Mabo High Court decision⁵, which overturned the precedent set by the Gove land rights case, and ruled that native rights are recognised by the common law.

It is important to understand the history of both Acts as they establish different types of Aboriginal land and sea ownership in the Northern Territory.

² These are approximate figures sourced from the Northern Territory Surveyor-General

³ *Milirrpum v Nabalco Pty Ltd* (1971) 17 FLR 141

⁴ Common law is a collection of court decisions developed over hundreds of years by Australian superior courts, English courts and the courts of other countries that have similar legal systems to those of Australia and England

⁵ *Mabo v Queensland (No 2)* (1992) 172 CLR 1

2.1 Aboriginal Land Rights (Northern Territory) Act 1976

In 1964, the Church Missionary Society (representing the Traditional Owners of Groote Eylandt) and BHP agreed on royalty payments to allow mining on their island. This agreement was one of the earliest royalty agreements for mining with Traditional Owners in Australia. Mineral exploration began shortly after and in 1965 the Groote Eylandt Mining Company (GEMCO) began mining manganese.

In 1968, the Commonwealth granted leases to Nabalco Pty Ltd to mine bauxite and establish a mining township on the Gove Peninsula in North East Arnhem Land⁶. Later that year, a writ was issued in the Northern Territory Supreme Court by Aboriginals from the Gove Peninsula who claimed that they, and no others, had occupied the land leased to Nabalco from time immemorial as of right; that those rights were proprietary rights; that those rights still existed; and that Nabalco's activities in the leased area were unlawful in that they were an invasion of such proprietary rights. This was Australia's first significant Aboriginal land rights case.

In April 1971, Justice Blackburn handed down his decision on the matter, now referred to as the Gove land rights case. Justice Blackburn found that the Aboriginals from the Gove Peninsula 'had established a subtle and elaborate system of social rules and customs' which were highly adapted to the country in which they lived, and 'which provided a stable order of society remarkably free from the vagaries of personal whim or influence'. However, despite this, he found that the relationship of the Aboriginals to the land under that system 'was not recognisable as a right of property' under Australian common law and, as a result, the Nabalco leases were lawful.

The case, while not appealed, led to prolonged public and political debate regarding Aboriginal land rights, not just in the Northern Territory, but across Australia. The Whitlam Government went to the 1972 Commonwealth election

promising land rights in the Northern Territory and, upon being elected, established a Commission of Inquiry to inquire into the matter.

Justice Woodward, who had represented the Aboriginal plaintiffs in the Gove land rights case, was appointed to lead the Commission in February 1973. He delivered two reports to the government, one in July 1973⁷ and the other in May 1974⁸. The reports and their recommendations laid the foundations for the Land Rights Act we know today and established the Northern and Central Land Councils.

In 1975, the Whitlam Government was dismissed by the Governor-General, and so it was left to the Fraser Government to finalise and pass the land rights legislation. On Australia Day 1977, most of the provisions of the Land Rights Act commenced and with it most of the former Aboriginal reserves, such as Arnhem Land, automatically became Aboriginal land. The Act also allowed Aboriginals to make claims to land within either of two categories:

- unalienated Crown land outside a town; and
- land outside a town held by or on behalf of Aboriginals.

It was originally envisioned that legislation broadly based on the principles of the Land Rights Act and the Woodward Commission's recommendations would be implemented in other States⁹. This did not occur.

Today, approximately 48% of the Northern Territory's land mass and 80% of its coastline has been granted as Aboriginal land under the Land Rights Act.

No new land claims could be lodged after 1997. However, 41 claims are still yet to be resolved.

The Land Rights Act has been reviewed many times since 1977, including by Mr Barry Rowland QC (1980), Justice Toohey (1983), Dr Jon Altman (1984), Mr John Reeves QC (1998), Dr Ian Manning (1999), and Justice Mansfield (2013).



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of the Northern Territory's land mass

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of its coastline has been granted as Aboriginal land under the *Land Rights Act*

2.2 Native Title Act 1993

In the absence of common law recognition of native title rights in Australia before 1992, efforts by governments to legislate Aboriginal land rights (as in the case of the Land Rights Act) were considered acts of benevolent policy rather than recognition that Aboriginals were legally entitled to any land¹⁰. This all changed with the landmark Mabo High Court decision¹¹.

In 1982, Mr Eddie Mabo initiated a High Court challenge to establish that his people had legally recognised rights and interests in their traditional land in the Torres Strait. It would take 10 years for the matter to be resolved, by which time Mr Mabo had died. On 3 June 1992, the High Court found, by a majority of six to one, that:

'The common law of this country recognises a form of native title which, in the cases where it has not been extinguished, reflects the entitlement of the indigenous inhabitants, in accordance with their laws or customs, to their traditional land.'¹²

The result was that the Australian common law now recognised that Aboriginal and Torres Strait Islanders could still hold legally recognisable and enforceable rights of a type which their ancestors held in land and water when the Crown asserted sovereignty. Unlike the Land Rights Act, the Crown could not grant those rights: rather, people that had rights and interests at sovereignty, if they still retained all or some of those rights and interests, could have them recognised, protected and enforced.¹³

The Keating Government's response was to enact the Native Title Act to 'do justice to the Mabo decision in protecting native title' and to 'ensure a workable, certain, land management'¹⁴. The Act commenced on 1 January 1994, and was extensively amended in 1998 by the Howard Government's 10 Point Plan.

As of August 2017, there were 98 determinations of native title in the Northern Territory and 68 active claims.

2.3 Aboriginal Land vs Native Title – Key Differences

The Land Rights Act and Native Title Act establish two very different forms of Aboriginal land and sea ownership. The Land Rights Act provides Traditional Owners with grants of Aboriginal freehold land (held by a Land Trust) and a high level of control over who accesses Aboriginal land. Aboriginal land is registered in the NT Government's Torrens land titles system.

Despite its name, the Native Title Act does not grant native title holders a title to land under the Territory's Torrens land titles system. Rather, native title rights are recognised by a Federal Court determination.

Native title rights and interests are broadly categorised as being for exclusive or non-exclusive possession.

Exclusive possession native title is the right to assert sole possession, occupation, use and enjoyment in relation to the land or waters as against the whole world. Non-exclusive possession native title rights co-exist with other interests in land (for example, a pastoral lease). An example of non-exclusive native title rights are the right to hunt and fish and to use an area of land or water for ceremony, if the exercise of these rights does not conflict with the rights of the non-native title holder (such as essential pastoral operations). The rights of a non-native title holder prevail over non-exclusive native title rights and interests.

Some of the key differences between the two Acts are listed in the tables on the next page:

⁶ The leases came into effect following the passing of the Mining (Gove Peninsula Nabalco Agreement) Ordinance 1968

⁷ A E Woodward, Aboriginal Land Rights Commission, First Report, AGPS, Canberra (1973)

⁸ A E Woodward, Aboriginal Land Rights Commission, Second Report, AGPS, Canberra (1974)

⁹ For example, in 1975, the then Minister for Aboriginal Affairs, the Hon Les Johnson MP, noted in his second reading speech for the Land Rights Bill: 'That the Australian Parliament may only legislate in this direction in the Northern Territory is a matter of regret, but we have made it clear to the various State governments that we support similar recognition of Aboriginal land title in the States'. G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 70

¹⁰ G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 70

¹¹ Mabo v Queensland (No 2) (1992) 172 CLR 1

¹² Mabo v Queensland (No 2) (1992) 172 CLR 1, 15

¹³ G Neate, Land rights, native title and the 'limits' of recognition: getting the balance right?, Flinders Law Journal, Flinders University (2009), pg 115

¹⁴ Australia, Debates, House of Representatives, 1993, vol HR 190, 2877-8 (P Keating)

Determining Ownership

Land Rights Act – Determining Traditional Owners	Native Title Act – Determining Who Holds Native Title
<p>A contemporary test which requires a successful applicant group to establish that it has common spiritual affiliations to a site on the land, being affiliations that place the group under a primary spiritual responsibility for that site and for the land and which is entitled by Aboriginal tradition to forage as of right over that land. It is the statutory function of the NT Land Councils under the Land Rights Act to determine who the relevant Traditional Owners are for Aboriginal land and waters in their region.</p>	<p>A historic test which requires a successful applicant (usually a group) to establish that its current native title laws and customs are traditional and derive from native title rights and interests which have continued substantially uninterrupted from pre sovereignty (pre 1825 in the Northern Territory).</p> <p>It is much harder to prove connection to land under the Native Title Act than the Land Rights Act.</p>

Aboriginal Land vs Native Title ‘Ownership’ – Key Differences

Feature	Aboriginal Land (<i>Land Rights Act</i>)	Native Title (<i>Native Title Act</i>)
Transferability	Aboriginal freehold land granted under the Land Rights Act cannot be sold. It can only be transferred to another Land Trust or surrendered to the Crown.	Recognition of native title at common law in accordance with the framework under the Native Title Act – native title cannot be sold or transferred but it can be surrendered to the Territory.
Acquisition	Aboriginal land cannot be compulsorily acquired by the Northern Territory. It can be compulsorily acquired by the Commonwealth.	Native title can be acquired by the Northern Territory in accordance with the <i>Lands Acquisition Act</i> and the Native Title Act.
Application of Northern Territory laws	Northern Territory laws will only apply on Aboriginal land to the extent that they are capable of operating concurrently with the Land Rights Act.	Native title is subject to all valid Northern Territory and Commonwealth laws.
Access	Access is regulated by a permit system.	Only exclusive native title holders may regulate access.
Leasing/licensing	Aboriginal land can be leased or licensed with the involvement of the relevant Land Council.	The holders of exclusive possession native title land can grant rights of access and use.
Mining and petroleum approvals	Mining and petroleum approvals are subject to a special procedure – a power of veto is available to Traditional Owners.	Good faith negotiations may be required to obtain mining approvals for mining and petroleum projects, but no power of veto.
Dealings with land under claim	Once land is subject to a land claim there are restrictions on dealing with the land.	Native title holders and registered native title claimants are entitled to the procedural rights set out in the Native Title Act prior to the grants of new rights and interests by the Northern Territory (e.g. right to negotiate).



3 Draft NT Aboriginal Land and Sea Action Plan

3.1 Overview

Aboriginal land and sea rights and interests are a key factor in the future economic, cultural and social growth of Aboriginal Territorians, and the Northern Territory generally.

With this in mind, the NT Government has developed this draft Northern Territory Land and Sea Action Plan for consultation across NT Government agencies, with land councils, the Commonwealth and other key stakeholders. Once finalised, the Action Plan will form a key part of the renewed Aboriginal Affairs Strategy, which is expected to be publically released in 2018 following community consultations.

The draft Action Plan was developed using the following guiding principles:

- to support Aboriginal Territorians to maximise the economic and social benefits of their land and sea rights and interests
- that Aboriginal Territorians should be able to engage in economic development and growth in the manner and at the pace they wish to proceed
- that respectful and productive relationships between governments, land councils, Traditional Owners, native title holders and other Aboriginal Territorians are necessary for the Land Rights Act and Native Title

Act to operate as effectively and efficiently as possible.

The draft Action Plan's proposed vision is to ensure 'land and sea ownership delivers on the economic and social aspirations of Aboriginal Territorians'. The NT Government believes that a jointly co-designed Action Plan can be achieved by:

- recognising and respecting Aboriginal people, their culture and language, and their organisations
- taking a partnership approach with land councils, Traditional Owners and the Commonwealth
- better coordinating land and sea matters across NT Government agencies
- removing administrative and legislative barriers that may be preventing Aboriginal Territorians from realising their land and sea aspirations.

The draft Action Plan contains 10 proposed actions. Three actions (8, 9 and 10) contain a number of proposed sub-actions.

The intent of each of the proposed actions is discussed in detail as part of the discussion paper.



Land is crucial to the lives of Aboriginal people spiritually, physically, socially and culturally

3.2 Proposed Actions



Proposed Action 1

Resolve all outstanding land claims by end of 2019

In June 1997, a provision of the Land Rights Act came into operation which prevents the Aboriginal Land Commissioner from conducting inquiries into any new land claims. No new claims have been submitted since that time and of the 249 land claim applications submitted under the Land Rights Act, 41 remain to be resolved.

The Commonwealth has indicated that the resolution of all outstanding land claims within the current term of government is a high priority, and the NT Government has developed a detailed work plan towards resolving all outstanding land claims by 2019 with the assistance of the land councils.

What we will do

The NT Government will work with the land councils, the Commonwealth and the Aboriginal Land Commissioner to resolve all outstanding land claims under the Land Rights Act by 2019.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice
Department of Infrastructure, Planning and Logistics
Department of Primary Industry and Resources
Department of Tourism and Culture.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
Office of the Aboriginal Land Commissioner
Central Land Council
Northern Land Council.



Proposed Action 2

Resolve Blue Mud Bay fishing access arrangements

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In July 2008, the High Court of Australia found that Aboriginal Land Trusts have the right to control access to waters overlying Aboriginal land in the intertidal zone. This is commonly referred to as the Blue Mud Bay decision.

The consequence of the High Court decision is that entry to waters overlying Aboriginal land for any purpose (not only fishing) requires permission from the relevant Land Trust except in a few special situations.

The NT Government, land councils and Traditional Owners need to work together to negotiate long-term access arrangements for fishers and other water users to these areas.

Since the High Court decision, the NT Government has negotiated six access agreements in the Northern Land Council region and one access agreement in the Tiwi Land Council region. The agreements are typically for 20 years and cover the following areas:

- Wadeye region
- Nhulunbuy
- Daly River
- McArthur River/Sir Edward Pellew Group of Islands
- Daly River Mouth to the area of land south of Cape Ford
- Minimini/Murgenella (Cobourg and Kakadu National Parks – initial three year trial period with the intention of a 20 year extension)
- Tiwi and Vernon Islands.

What we will do

The NT Government will work with the Northern Land Council and key industry groups to resolve the Blue Mud Bay access arrangements.

Responsible NT agencies

Department of Primary Industry and Resources
Department of Tourism and Culture
Department of Infrastructure, Planning and Logistics.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
Northern Land Council
Anindilyakwa Land Council
NT Seafood Council
AFANT.

Proposed Action 3

Progress the Aboriginal Land Commissioner's recommended changes to Part IV of the Land Rights Act, which relates to exploration and mining on Aboriginal land

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In 2013, the Report on the Review of Part IV of the ALRA (the Report) was completed by the Aboriginal Land Commissioner, Justice Mansfield, pursuant to a statutory requirement. The Report was tabled in the Commonwealth Parliament; however, there was no formal government response.

As a result of recommendations from the October 2016 Biannual Strategic Forum¹⁵, a Part IV Working Group consisting of the Commonwealth, the NT Government and land councils was established to develop an agreed package of Part IV ALRA amendments to be made in this term of the Commonwealth Government.

What we will do

The NT Government will continue to participate in the Part IV Working Group to develop an agreed position with the land councils and the Commonwealth on which of the Commissioner's Part IV recommendations should be implemented.

A Senior Officers Working Group comprising staff from the Department of Primary Industry and Resources and the land councils will also be re-established to support the development of productive working relationships and to explore further opportunities for administrative improvements.

Responsible NT agencies

Department of Primary Industry and Resources;
Department of the Chief Minister.

Other responsible organisations and agencies

Department of the Prime Minister and Cabinet
All land councils.

Proposed Action 4

Develop an NT Government Native Title Policy Framework

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What we will do

In order to create efficiencies and streamline native title processes, the NT Government will develop a strategic whole-of-government policy framework in the areas of:

- recognising and recording native title determinations in the Northern Territory's Torrens system of registration of interests in land
- future acts, and future acts compensation liability
- the approach to compensation the NT Government will use in light of the Timber Creek decision
- the identification of issues and the development of policy positions that might assist in the resolution of outstanding claimant applications
- assisting Registered Native Title Bodies Corporate to build the capacity, governance and capability to deal with government, including working with the Commonwealth to build the long term capacity and capability to be self-sufficient land managers
- native title rights and interests over sea country.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice
Department of Infrastructure, Planning and Logistics
Department of Primary Industry and Resources; with involvement from other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Registered Native Title Bodies Corporate
Commonwealth Attorney-General's Department
and Australian Government Solicitor.

¹⁵ The Biannual Strategic Forum brings together the NT Government, Commonwealth Government and the four Land Councils twice a year to build relationships and discuss each other's strategic priorities.

Proposed Action 5

Develop a strategic approach to tenure and other issues in mining towns that will eventually become Aboriginal land

Jabiru, Nhulunbuy and Alyangula currently rely on mining operations for their continued existence.

There are a range of complex policy and tenure issues the NT Government must work through in order to provide certainty for these towns when they transition to a post-mining future and ultimately, revert to or become Aboriginal land.

What we will do

The NT Government will establish a Senior Officers Working Group to:

- ensure a co-ordinated whole-of-government approach is taken to engagement and negotiations with Traditional Owners, the relevant land councils, and all relevant stakeholders
- inform the development of strategic whole-of-government positions in relation to the future tenure arrangements and delivery of services for Jabiru, Alyangula, Angurugu and Nhulunbuy, including prioritising the needs of the respective towns
- support the future of Jabiru and the development of attractions and infrastructure to increase the number of visitors to Kakadu
- enhance partnerships between land councils, Traditional Owners and governments to better align aspirations and investment opportunities

- provide regionally based support for the affected towns and nearby communities.

Responsible NT agencies

Department of the Chief Minister
Department of Infrastructure, Planning and Logistics
Department of Tourism and Culture with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Anindilyakwa Land Council
Department of the Prime Minister and Cabinet
Local Governments
Director National Parks
Relevant Aboriginal organisations
Mining companies.

Proposed Action 6

Reinvigorate jointly managed parks administered by the NT Government

The NT Government's Parks and Wildlife Commission manage 87 areas as parks and reserves. Of these, 33 are subject to formal joint management with Traditional Owners. These arrangements have mostly resulted from the negotiated settlement of land and/or native title claims. These settlements have secured the continued use of these areas as parks and allowed ongoing visitor access and development.

The NT Government acknowledges that improvements can be made to further empower Traditional Owners in the joint management process, attract more private investment in parks and reserves, develop new tourism products and create local jobs. The NT Government and land councils agreed to reinvigorate the joint management of NT Parks at the October 2016 Bi-Annual Strategic Forum.

What we will do

The NT Government will:

- work with land councils to assess and reinvigorate the joint management of NT Parks
- work with local stakeholders and the Australian Government to improve economic development opportunities in all of the Territory's parks
- work with Traditional Owners to maximise new technologies to develop innovative tourism experiences for locals and visitors.

Responsible NT agency

Department of Tourism and Culture.

Other responsible organisations and agencies

Land councils
Traditional Owners
Registered Native Title Bodies Corporate.

Proposed Action 7

Work to enhance the opportunities for long-term leasing on Aboriginal land

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Freehold or long term leasehold tenure is generally considered the most desirable form of tenure in terms of facilitating economic development. This is because a bank will typically be comfortable using freehold or long term leasehold tenure as collateral for a loan.

Aboriginal land cannot be sold by, or on behalf of, Traditional Owners, and effectively cannot be mortgaged because in the event of a loan default, a bank cannot sell the land to recoup its debt.

However, leases on Aboriginal land can be used as security for a loan, and the grant of long term leases on Aboriginal land does not contravene the Land Rights Act.

The value of a lease will depend in large part on how long it still has to run. How long a lease term should run is determined by the particular lease purpose, size of the investment, expected rates of return, life of the proposed activity, and the like. One size does not fit all. Generally, desirable characteristics of a lease include longevity, free assignability and a broad permitted use.

The first community entity held township lease over the Central Australian community of Mutitjulu was finalised on 17 March 2017. The Commonwealth’s Executive Director of Township Leasing will hold the lease for an initial period while the Commonwealth and Central Land Council work with the community and Traditional Owners to establish a community entity to hold the township lease and administer the sub-leases. A 99-year township lease was granted over the Gunyangara community (Ski Beach) to the Gumatj Traditional Owners’ community entity on 17 November 2017. Other communities are looking at developing community held township leasing arrangements.

What we will do

The NT Government will:

- work with land councils to develop long term leases for use on Aboriginal land
- work with the land councils and the Commonwealth to explore township leasing options, including community entity held township leases
- give consideration to possible exceptions to the requirement for development consent under the *Planning Act* (NT) for all leases over 12 years under the Land Rights Act (refer to Proposed Sub-Action 9.3)
- work with the Commonwealth to streamline processes relating to long-term leases on Aboriginal land.

The NT Government, with funding from the Commonwealth Government, will:

- complete whole-of-community survey plans for communities located on Aboriginal land through the ‘Remote Aboriginal Communities Cadastral Survey Project’
- work with the land councils and the Commonwealth to identify areas for prospective community development and develop a strategy to ensure that those areas are surveyed.

Completion of community surveys means that the time and cost associated with obtaining development consent for long-term leases on Aboriginal land for the areas that have been surveyed will be significantly reduced.

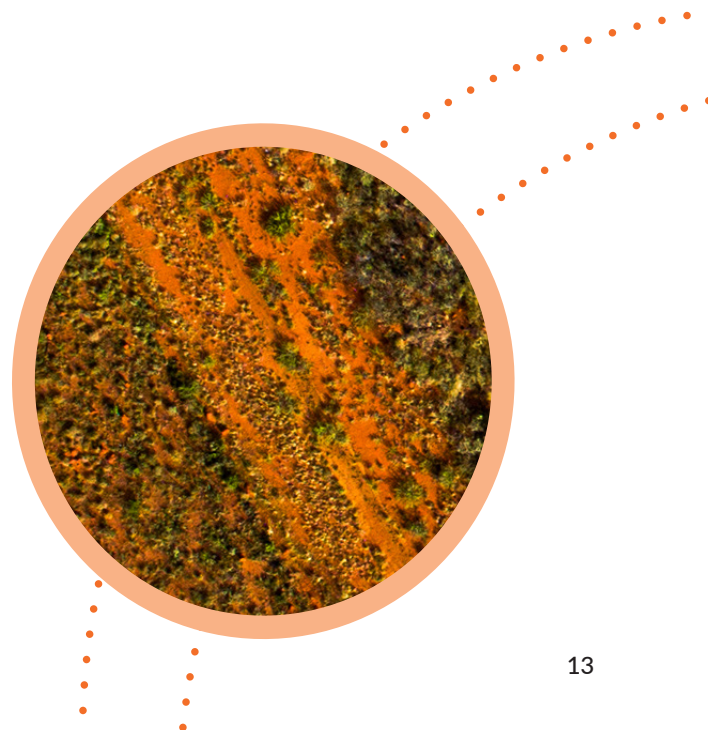
The NT Government will also continue to work with land councils to secure appropriate tenure for government infrastructure on Aboriginal land.

Responsible NT agencies

Department of Housing and Community Development
Department of Infrastructure, Planning and Logistics
Department of the Chief Minister.

Other responsible organisations and agencies

Land councils
Department of the Prime Minister and Cabinet.



Proposed Action 8

Support economic development and investment on Aboriginal land

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The NT Government wants to ensure that Aboriginal land and sea ownership delivers on the economic aspirations of Aboriginal Territorians, and initiatives of the NT Government and stakeholders are informed by, and broadly consistent with, the Ministerial Forum on Northern Development's *Development Statement for Northern Australia* and the recommendations of the Forum's Northern Australia Advisory Council and Indigenous Reference Group.

A number of initiatives have been identified, or are underway, to support the economic development initiatives of land councils and Traditional Owners and assist to activate the economic value of land, water, sea and cultural resource rights.

Proposed Sub-Action 8.1

Supporting industry co-investment and partnerships

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What we will do

- explore remote Aboriginal finance options to support Aboriginal businesses in remote areas, including
 - finalising the finance options on Aboriginal land paper
 - seeking final Aboriginal Land and Sea Economic Development Agency (ALSEDA) funding tranche (ALSEDA is an initiative of the Northern Land Council and the Central Land Council)
 - continuing advocacy of the ALSEDA project with the Department of the Prime Minister and Cabinet
 - identifying corporate support for the ALSEDA pilot capital program
 - supporting land councils to develop an investment charter for Aboriginal land
 - continue the Mapping the Future Program
 - establish Strategic Aboriginal Water Reserves.

Responsible NT agencies

Department of Trade, Business and Innovation
Department of Treasury and Finance

Department of Environment and Natural Resources
Department of the Chief Minister.

Other responsible organisations and agencies

Registered Native Title Bodies Corporate
Other relevant Aboriginal organisations,
partner organisations and stakeholders

Land councils
Traditional Owners.

Proposed Sub-Action 8.2

Enhancing economic opportunities from land and water management

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What we will do

- establish a Land Management Conservation Fund
- establish an Aboriginal Carbon Unit
- develop a coastal and marine management strategy

Responsible NT agencies

Department of Environment and Natural Resources.

Other responsible organisations and agencies

Registered Native Title Bodies Corporate
Other relevant Aboriginal organisations, partner
organisations and stakeholders

Land councils
Traditional Owners.



Proposed Sub-Action 8.3

Building organisational and community capacity

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What we will do

- support key Aboriginal organisations and business enterprises to build capacity, governance and capability in order to bring land, capital, labour and effective processes together to drive investment
- restart the Aboriginal Economic Development Field Officers Network
- develop community profiles across the 73 remote communities that publish five year infrastructure plans
- support and contribute to the delivery of the Groote Eylandt Economic Development Plan in partnership with the Anindilyakwa Land Council and South 32
- finalise the Mutitjulu Economic Development Plan.

Responsible NT agencies

Department of Trade, Business and Innovation
Department of the Chief Minister.

Other responsible organisations and agencies

Land councils
Traditional Owners
Department of the Prime Minister and Cabinet

Registered Native Title Bodies Corporate
Other relevant Aboriginal organisations,
partner organisations and stakeholders.

Proposed Sub-Action 8.4

Working with land councils

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What we will do

- continue to participate in the Bi-Annual Strategic Forum with the land councils and the Commonwealth Government
- support the capacity of land councils through staff secondment for economic development activities.

Responsible NT agencies

Department of the Chief Minister.

Other responsible organisations and agencies

Land councils
Traditional Owners

Department of the Prime Minister and Cabinet.



Proposed Action 9

Make improvements to NT legislation and administrative processes



The NT Government has identified a number of legislative and administrative improvements it can make. These improvements have been captured in the proposed sub-actions below.

Proposed Sub-Action 9.1

Continue to work with land councils to collect, collate and publish (on the NTLIS) non-confidential information about rights and interests granted in Aboriginal land in order to protect those interests and to provide certainty and transparency for all stakeholders



Access to non-confidential information held by land councils about the rights and interests that have been granted on Aboriginal land is necessary to:

- record or register the right or interest with the Land Titles Office and/or the Northern Territory Land Information System
- identify weaknesses and strengths in the Aboriginal land administration system
- provide readily available information that supports investment, development and planning.

What we will do

The NT Government will work with land councils to:

- enhance the collection and collation of information on the non-confidential rights and interests that exist on Aboriginal land
- upload all non-confidential information about current rights and interests onto the Northern Territory Land Information System

The above work will be consistent with the goals of 'Cadastral 2034: Powering Land and Real Property', which is a national strategy for cadastral reform and innovation in Australia. The vision for Cadastral 2034 is for a cadastral system that enables people to readily and confidently identify the location

and extent of all rights and interests related to land and real property.

Responsible NT agencies

Department of Housing and Community Development
Department of Infrastructure, Planning and Logistics

Other responsible organisations and agencies

Land councils



Proposed Sub-Action 9.2

Engage with the land councils, through the Aboriginal Areas Protection Authority, to explore ways to improve the efficiency and effectiveness of administrative processes under the *Northern Territory Aboriginal Sacred Sites Act (NT)*

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Anyone proposing to use or work on land in the Northern Territory may apply to the Aboriginal Areas Protection Authority (AAPA) for an Authority Certificate to cover their proposed activities. An Authority Certificate provides a statutory indemnity against prosecution in relation to the works or uses covered by the Certificate, provided the applicant complies with any conditions imposed to protect sacred sites. Certificates are voluntary and provide an effective risk management tool for developers.

What we will do

AAPA will work with the land councils to improve the efficiency and effectiveness of the administrative processes under the *Northern Territory Aboriginal Sacred Sites Act (NT)*.

Responsible NT agency

Aboriginal Areas Protection Authority.

Other responsible organisations and agencies

Land councils.

Proposed Sub-Action 9.3

Explore possible amendments to the *Planning Act (NT)* to remove the need for development consent for leases over 12 years on Aboriginal land

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The *Planning Act (NT)* requires that development consent be obtained for a lease that is longer than 12 years. An application for development consent needs to provide a survey plan with the application, which can be costly and time consuming if a survey is not already in place. For many proponents this is a major barrier to securing long-term leases on Aboriginal land.

What we will do

The NT Government will explore the possibility of amending the *Planning Act (NT)* to remove the need for development consent for certain leases on Aboriginal land.

Responsible NT agencies

Department of Planning, Infrastructure and Logistics
Department of Housing and Community Development
Department of the Chief Minister.

Other responsible organisations and agencies

Land councils

Proposed Sub-Action 9.4

Amend the Northern Territory Aboriginal Sacred Sites Act (NT) in line with supported recommendations from the Sacred Sites Processes and Outcomes Review in consultation with the four NT land councils

.....

A 2016 review of the Northern Territory Aboriginal Sacred Sites Act (NT) made 39 recommendations to improve the way the Act operates. The review was conducted by independent consultants and examined the scope and operation of the Act and AAPA. The review provided advice on:

- how the Act might be strengthened to improve protections for sacred sites
- how the Act might be changed in order to simplify processes around economic development
- how AAPA could better balance economic needs and the protection of sacred sites

In early 2017, AAPA obtained endorsement from the Minister for Environment and Natural Resources to progress the implementation of 20 of the 39 recommendations. Most of the recommendations being progressed require legislative amendments.

What we will do

AAPA will consult with the land councils to seek support for the implementation of the 20 endorsed recommendations from the Sacred Sites Processes and Outcomes Review and progress legislative amendments to the Northern Territory Aboriginal Sacred Sites Act (NT).

Responsible NT agencies

Aboriginal Areas Protection Authority; with support from the Department of the Chief Minister as required.

Other responsible organisations and agencies

Land councils
Registered Native Title Bodies Corporate
Other relevant stakeholders.

Proposed Sub-Action 9.5

Legislative reform to recognise the role of Aboriginal ranger groups and provide them with enforcement powers

.....

The NT Government has initiated reforms to enable Aboriginal sea rangers to be provided with enforcement powers to assist with the management of Northern Territory fisheries.

The NT Government has committed to legislative reforms that recognise the important role Aboriginal Rangers play in on-shore areas of the Northern Territory and to provide Aboriginal rangers with enforcement powers. Land councils and Aboriginal ranger groups will be consulted on the proposed amendments, with the amendments expected to be made in 2018-19.

What we will do

The NT Government will introduce legislation that recognises the role of Aboriginal ranger groups and which enables rangers to be granted enforcement powers over Aboriginal owned, managed or cared for country.

Responsible NT agencies

Department of Tourism and Culture

Other responsible organisations and agencies

Land councils
Registered Native Title Bodies Corporate
Aboriginal ranger organisations
Commonwealth Department of Environment and Energy
Department of the Prime Minister and Cabinet

Proposed Action 10

Support improvements to Commonwealth legislative processes

.....

The draft Action Plan contains four additional suggestions to enhance the effectiveness of the Land Rights Act and the Native Title Act. No suggestion will be progressed by the NT Government without the consent and support of the land councils and the Commonwealth. These suggestions are captured in the sub-actions below.

Proposed Sub-Action 10.1

Explore options with the Northern Land Council, the Central Land Council and the Commonwealth to improve the operation of the Native Title Act

.....

Since 2014, there have been reports, recommendations and key legal events which have shaped the discussions on possible amendments to the Native Title Act. The decision of the Full Federal Court in *McGlade v Native Title Registrar* [2017] FCAFC 10 (2 February 2017) (“McGlade”) prevented the registration of certain Indigenous Land Use Agreements (ILUAs) and prompted urgent reform, resulting in the Native Title Amendment (Indigenous Land Use Agreement) Act 2017 commencing on 22 June 2017.

The Commonwealth Government now also wishes to progress discussion on other possible amendments to the Act.

The Native Title Senior Officers Working Group, comprised of representative from states and territories, has considered a broad range of amendments to the Act from a number of sources such as the Australian Law Reform Commission, (COAG) reports, previous discussion papers and matters raised by the states and territories.

The NT Government is supportive ‘in-principle’ of technical amendments to the Act, noting that they are subject to public consultation, Cabinet ratification and then the passage of the Bill through the Commonwealth Parliament.

What we will do

The NT Government will work with the land councils, other states and territories, and the Commonwealth to investigate if the Native Title Act should be amended.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice;
with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Department of the Prime Minister and Cabinet
Department of the Commonwealth Attorney-General.

Proposed Sub-Action 10.2

Explore ways to ensure the Land Rights Act works seamlessly with the Control of Roads Act and other NT roads legislation

.....

A number of road corridors that existed in Aboriginal reserves prior to the enactment of the Land Rights Act were not formally excluded from the survey plans of land granted on the commencement of the Act. Issues relating to uncertainty of ownership and control have led to ad hoc development, upgrades and maintenance.

What we will do

The NT Government will work with the land councils and Commonwealth to ensure that the Land Rights Act works seamlessly with the *Control of Roads Act* (NT), other NT legislation, the Territory’s roads maintenance program requirements and 10 Year Infrastructure Plan.

Responsible NT agencies

Department of Infrastructure, Planning and Logistics
Department of the Chief Minister
Department of the Attorney-General and Justice; with involvement of other agencies as required.

Other responsible organisations and agencies

Northern Land Council
Central Land Council
Department of the Prime Minister and Cabinet.

Proposed Sub-Action 10.3

Explore options with the land councils and the Commonwealth to ensure the costs that Land Trusts incur as a Territory landholder are able to be met

.....

The issue of whether a Land Trust could pay the costs incurred by it in its role as a landholder was considered in Mr Justice Toohey’s 1983 review of the Land Rights Act, where he recommended:

‘To ensure that Land Trusts can always discharge their obligations promptly, I recommend that the Act be amended so that where a Land Trust is liable under a law of the Northern Territory to pay costs incurred by it as a land holder and it is unable to meet part or all of those commitments, it may apply to the Aboriginals Benefit Trust Account for an amount under sub-s. 64(4) and the Minister shall direct that such a sum be paid out of the Trust Account to the Land Trust.’

Justice Toohey’s recommendation was never implemented.

What we will do

The NT Government will work with the land councils and the Commonwealth to explore options that would ensure that the costs incurred by Land Trusts as a result of being a landholder under Territory legislation are able to be met.

Responsible NT agencies

Department of the Chief Minister
Department of the Attorney-General and Justice.

Other responsible organisations and agencies

Land council
Department of the Prime Minister and Cabinet.

Proposed Sub-Action 10.4

Explore options to enable Land Trusts to provide the NT Government with an appropriate interest in Aboriginal land (short of an estate in fee simple) to meet demands for serviced residential land and to deliver essential public services to residents in Aboriginal communities

.....

There have been some instances where the NT Government has been unable to deliver, or upgrade, housing or essential public services in an Aboriginal community in a timely way because, for various reasons, permission has not been granted for the proposed land use even after an extensive consultation period. As it stands, if the Traditional Owners do not consent, the Aboriginal residents will either not receive, or will experience very long delays in receiving, the housing or services regardless of how much the community wants and needs those services.

In instances where:

- the Traditional Owners have not rejected a proposal after an extensive consultation period
- the relevant land council consents
- there is a demonstrated need to deliver or upgrade housing or essential public services to the Aboriginal community.

The NT Government believes an alternative mechanism should exist to enable a Land Trust to grant the NT Government sufficient interests in Aboriginal land to deliver the housing or essential public service.

What we will do

The NT Government will work with the land councils and the Commonwealth to explore options that would enable Land Trusts to provide the NT Government sufficient interests in Aboriginal land (short of an estate in fee simple) to meet demands for serviced residential land, and to deliver essential public services to residents in Aboriginal communities, when Traditional Owners have not rejected the proposal during an extensive period of consultation.

Responsible agency

Department of the Chief Minister.

Other responsible organisations and agencies

Land councils
Department of the Prime Minister and Cabinet.

4 Feedback

Any feedback you have on the draft Action Plan is welcome, noting that it is for discussion purposes only and is not approved government policy. A final Action Plan will be developed following a consultation process and is expected to be released in 2018.

After reading this discussion paper and the draft Action Plan (Section 3), you can provide feedback to the Department of the Chief Minister's Aboriginal Land Strategic Policy Unit from the details below:

Department of the Chief Minister, GPO Box 4396, Darwin, NT, 0801

e: dcm.AboriginalLand@nt.gov.au

p: (08) 8999 6730

