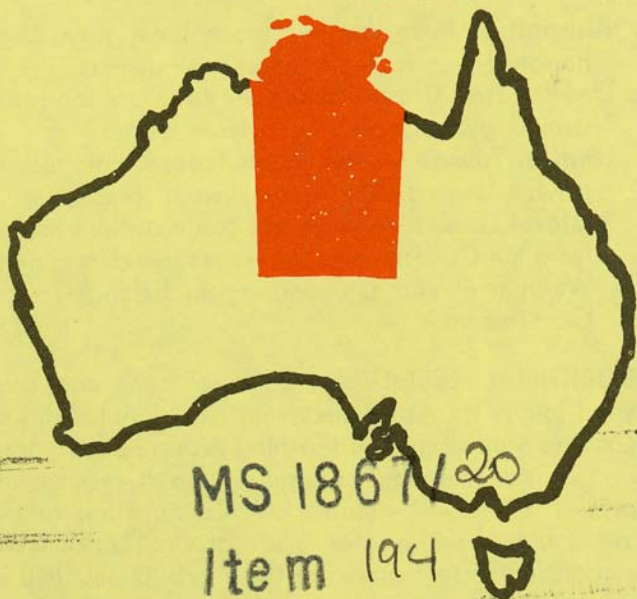


ABORIGINAL LAND RIGHTS IN THE NORTHERN TERRITORY



In 1973 the Commonwealth Government asked Mr Justice Woodward to find ways for Aborigines to get land rights in the Northern Territory.* He wrote two reports.**

As a result of the first report two **Land Councils** were set up: The **Northern Land Council** based in Darwin and the **Central Land Council** in Alice Springs. The **Tiwi Land Council** was set up later to look after the people of Bathurst and Melville Islands.

The second report made more suggestions about how Aborigines could get land rights. The Commonwealth Government made some of these into laws.***

In 1978 changes were made to these laws so it is important for all Aborigines who hope to get land in the Northern Territory to know what the position is now in 1981.

* The Woodward Aboriginal Land Rights Commission.

** The Aboriginal Land Rights Commission, First Report, July 1973.

The Aboriginal Land Rights Commission, Second Report, April 1974.

(These two reports are often called 'The Woodward Report').

*** The Aboriginal Land Rights (Northern Territory) Act, 1976.

HOW MAY LAND BE CLAIMED?

The law says Aboriginal groups may claim traditional country. This means land which is their own country where their ancestors lived. Land cannot be claimed for economic or other reasons no matter how great the need.

Land in the Northern Territory is held in four different ways:

1. **Aboriginal Reserves** — these have now been handed over to their traditional owners.
2. **Unalienated Crown Lands** — these are lands not owned by or leased to private owners.
3. **Land in Towns** — this is only leased, not sold, to private owners. The leases last a long time.
4. **Pastoral Leases** — these are cattle stations leased from the Government. The leases last a long time. When they end the land again belongs to the Government.

ABORIGINAL RESERVES — these lands are now owned jointly by Aborigines with traditional rights in them. The right of the land-owning group is recognised by a grant or title which is a paper to show who owns the land under white man's law. To hold this title a **Land Trust** is set up for each group. **Land Trust** members must be members of the group and live in the **Land Trust** area. They are chosen by the **Minister for Aboriginal Affairs**. All **Land Trusts** are protected by a **Land Council** which handles law and money matters for them and helps them decide what to do.

Land Councils employ their own staff, hire their own lawyers and other advisers. They can receive and hold money for **Land Trusts**. They must talk with **Land Trust** groups and speak for them with Governments and other bodies, such as mining companies, interested in Aboriginal land.

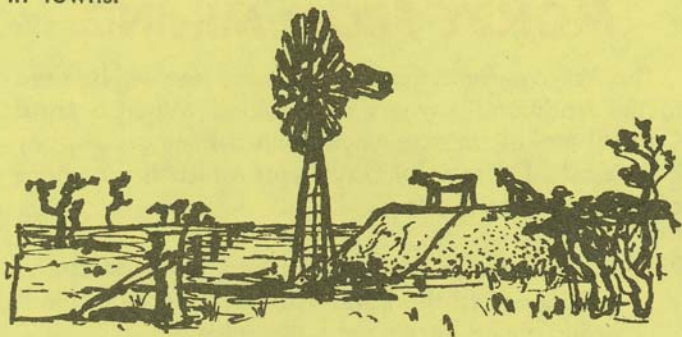
If a lease for mining or other purpose on a reserve was held by a white man or other person outside the group before the Act became law, that leased land will not pass to the **Land Trust** until the lease ends. (This allows mining to go on on Aboriginal land).

UNALIENATED CROWN LAND — this is land which is not leased to anybody. It can be claimed by Aboriginal groups if it is their traditional country. Crown land which is already leased by or for

Aborigines can also be claimed. Since the law was passed in 1976 **Land Councils** have claimed many areas.

There are two kinds of leases: pastoral leases and mining leases. When the Government gives a lease of land it makes it over for use for a stated time. The holder of the lease must do the things necessary to raise cattle (if it is a pastoral lease) or the things necessary for mining (if it is a mining lease). If the leaseholder does not do these things the lease may be taken from him.

LAND IN TOWNS — the law says land in towns cannot be claimed by Aborigines even if it is their traditional country. Where land is needed in towns the **Land Council** will try to lease land from the Town Council. The **Aboriginal Development Commission** was set up in 1980 to buy land according to need, even if it is not traditional land. It can also buy houses in towns.



PASTORAL LEASES (CATTLE STATIONS) — the **Aboriginal Development Commission** can buy land on pastoral leases for Aboriginal groups. But it can only become Aboriginal land if the group it was bought for can claim it is their traditional country.

The Utopia Cattle Station Case

There was an important case in 1980. The people on Utopia cattle station held a lease bought by the **Aboriginal Land Fund Commission** (whose work is now done by the **Development Commission**). They claimed it was traditional country which should be freehold Aboriginal land. The Commissioner recommended, and the Minister agreed, that Utopia should be freehold and not a pastoral lease. The Northern Territory Government appealed against this in court but the appeal was refused. Utopia Station is now Aboriginal land belonging to the people who live there. It cannot be sold without the agreement of the **Minister for Aboriginal Affairs**, the **Land Council** and its owners.

Freehold land is owned without any of the conditions which apply to a lease. It can be sold without Government permission and if necessary the Government can take freehold land from its owner. This applies to black and white owners alike, except that land given to Aboriginal groups under the Land Rights Act and called freehold cannot be sold by its owners without special permission from the Government.

Sometimes the **Department of Aboriginal Affairs** or the **Land Council** can arrange with a cattle station owner for a small area of land to be taken over as a camp site.

WHAT HAPPENS WHEN A LAND CLAIM IS MADE?

The claim is managed by a **Land Council**. All claims are put before the **Aboriginal Land Commissioner**, Mr Justice Toohey. The **Land Councils** prepare **Claim Books** which tell the history of the land claimed.

Claims can be opposed by whites with an interest in what happens to land being claimed. The Northern Territory Government can also put arguments to the judge.

When the judge has heard all the arguments for and against, he tells the **Minister for Aboriginal Affairs** what he should do. **BUT REMEMBER**, he cannot say a group should get land only because they need it. They must prove it is their traditional country. Even then it is the Minister who has the final say and he may knock back the judge's finding on who should get the land.

When a claim is won a **Land Trust** must be set up to hold the title of the land.

ABORIGINAL CONTROL OF ABORIGINAL LAND

Outsiders need permits to go on to Aboriginal land. Police and other officials on duty do not need permits.

In some cases people living in mining towns already built on Aboriginal land do not need permits in and around the town and at the mine.

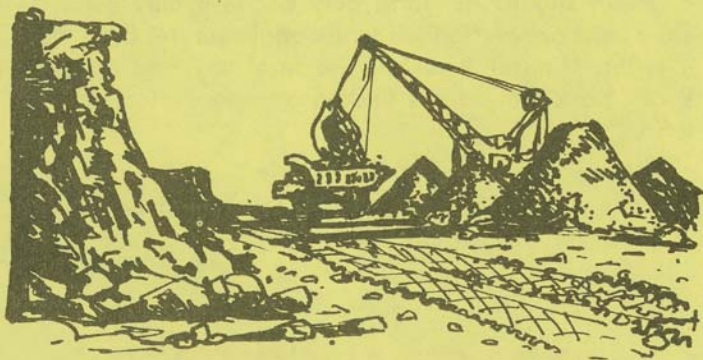
Leases to the Government for such things as schools, which benefit the Aboriginal people, are rent free and for as long as they are needed. In other cases a fair rent can be charged. The terms of leases to Church Missions can be changed at the end of any year.

Aboriginal land can only be taken for some other use if the **Land Council** agrees. (See below: **MINING ON ABORIGINAL LAND**). Aboriginal land cannot be sold **BUT:**

a change to the Act made **Land Trust** dealings a matter for Northern Territory law instead of Commonwealth law. The law is very hard to understand but it seems that while the **Land Rights Act of 1976** said a **Land Trust** could never sell any of its land, it can now do so.

MINING ON ABORIGINAL LAND

Minerals on Aboriginal land belong to the Crown. The Act says a mining company can explore on Aboriginal land only if the **Minister for Aboriginal Affairs** and the **Land Council** agree to it in writing. The **Land Council** must first talk with the **Land Trust**, whose land it is. The Aboriginal owners of the land can give or refuse permits to explore and give or refuse leases to mining companies. If the people do not want mining on their land they can only be overruled if both houses of the Commonwealth Parliament say it is "in the national interest".



BUT if a **Land Council** refuses to allow mining the Minister can appoint an **Arbitrator** who has power to say what is a fair agreement between the **Land Council** and the mining company. If the **Land Council** still will

not agree the Minister can agree for them. The **Arbitrator** does not have to be a judge like the **Aboriginal Land Commissioner**.

In 1978 a change to the Act gave the **Director of National Parks and Wildlife** control of the land where the **Ranger Project** is being developed. If a **Land Council** refuses to make an agreement with the **Director of National Parks and Wildlife**, the Minister can grant a mining lease to the Director. He is then the one who decides if mining can go on.

ALSO, in 1978 to get uranium mining started the Commonwealth Government decided to avoid the delay of putting the case to the whole Government. Instead the **Prime Minister**, the **Deputy Prime Minister** and the **Minister for Aboriginal Affairs** all went to see the **Northern Land Council**, who then withdrew their opposition.

MONEY FROM MINING

The Act says rents, licence and lease fees will be paid to the traditional owners of the land. When a **Land Council** makes an agreement with a mining company it also asks for **royalty payments** which are a share of the company's profits.

Royalty payments are divided into three parts:

30% goes to the **Land Trust** for the Aboriginal group living at or near the mine.

30% goes to the **Aboriginal Benefit Trust Account** which grants money to Aboriginal groups for special needs.

40% is divided between the **Land Councils**.

The Act does not say anything about **Land Trusts** getting **shares** in mining companies. These could be worth much more than **royalties**. **Land Councils** could ask for shares as well as **royalties**.

Prepared for the Aboriginal Treaty Committee by Mildred Kirk with advice from Dr. C. D. Rowley, Dr. N. Peterson and Dr. D. E. Barwick.
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Aboriginal Treaty Committee Papers

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