

Aboriginal Land Rights (Northern Territory) Amendment Bill 2006

Report on Parliamentary Process

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Introduction

The *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) was introduced by the Whitlam ALP Government and it was the Fraser Coalition Government that ensured its passage through the Parliament. It is the high water mark in Australian land rights legislation and for much of its history it has enjoyed bipartisan political support.

The Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 introduced some of the most dramatic changes yet proposed to the Act but for the most part they slipped under the radar of media and public scrutiny. Belatedly, the media paid the Bill some attention and activist organisations GetUp and ANTaR ensured a last-minute flurry of lobbying was directed at Coalition Senators by thousands of concerned members of the community. For more information about the Bill, see the Senate Community Affairs Committee site: www.aph.gov.au/senate/committee/clac_ctte/aborig_land_rights.

This summary document is designed to provide a factual report on what happened to the Bill in Parliament.

Key components of Bill

The main purposes of the Bill were to:

- enable 99 year headleases to government entities over townships on Aboriginal land, and sub-leases subsequently to be made by that entity
- allow the costs of headlease arrangements to be met from the Aboriginals Benefit Account
- change the rules for creation of new Land Councils
- change the rules for delegation of Land Council powers to allow voluntary, and also *government-enforced*, devolution to corporate bodies
- remove the statutory guarantee of minimum funding for Land Councils
- terminate land claims to foreshore land not contiguous with Aboriginal land, including where the Land Commissioner (whose job it is to investigate land claims) has already recommended the land be granted
- improve the workability of provisions for mining and exploration on Aboriginal land
- lift some government controls on dealings by traditional owners with Aboriginal land.

The Government succeeded in getting all these elements of the Bill through Parliament.

Summary of consideration in both Houses

House of Reps: The Bill was introduced on 31 May. The ‘guillotine’ procedure was applied by the Government on 19 June, to limit debate to less than 3 hours. Forty-six Government amendments were agreed to. An ALP motion that some aspects of the Bill be withdrawn and redrafted on the basis of specified principles, including the informed consent of traditional owners, was defeated along party lines with Independents Tony Windsor and Bob Katter voting with the Government and Peter Andren against.

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Senate Community Affairs Committee: The Bill was referred for inquiry and report by 1 August. The committee expressed unanimous concern about the 'totally inadequate' time for the inquiry regarding 'fundamentally important' legislation. Government Senators recommended that the Bill proceed on the basis that the Government conduct further negotiations with affected Aboriginal people and the NT Government after its passage. ALP and Green Senators recommended the Bill be split, with those provisions already negotiated with stakeholders to proceed and other contentious provisions to be referred back for thorough consultation and negotiation. Senator Bartlett (Democrats) recommended the Bill not proceed until informed consent from Aboriginal people in the NT had been obtained.

Senate: The Bill was debated across 8-9 August and 14-17 August 2006. Ten amendments moved by the Opposition together with the Democrats and Greens were rejected by the Senate. A further 17 Government amendments were introduced in the Senate and agreed to by the House of Representatives. The Bill, as altered by 63 Government amendments, was given Royal Assent and became an Act on 5 September 2006.

Senate second reading debate

On 8 August 2006 the Senate commenced its second reading debate on the Bill, as altered by the 46 Government amendments made in the House of Representatives. The main objections to the Bill from non-Government Senators and the Government's responses are set out below.

Process: The central criticism levelled at the Government was the unsatisfactory length of the committee inquiry and the inadequate level of community consultation and negotiation undertaken particularly with Aboriginal traditional owners.

General: ALP, Democrat and Green Senators expressed approval for those provisions of the Bill (mainly dealing with mining and exploration) that were settled through stakeholder negotiation, and were originally put forward with the support of Land Councils and the Northern Territory Government. Senators from these three parties moved to divide the Bill in two, to allow those agreed provisions a quick passage and provide more time for consultation and consideration of the contentious aspects of the legislation. However, this motion was rejected by Government majority (Senator Fielding voting with the non-Government Senators).

Specific: Criticisms that emerged in relation to the proposed Bill included:

99-year township leases

- Concern that the leasing scheme will not be entirely voluntary, given evidence provided at the committee inquiry of two occasions where funding for education and housing improvements were offered by the Government in exchange for the community's agreement to enter into a headlease.
- Lack of detail in the Bill regarding the formulation and operation of 99-year headleases and the identity and powers of the government entity that will control the subleases.

- Concern the leases may lead to diminished control for up to four generations and the inability of traditional owners to prevent inappropriate commercial development on the land.
- Lack of evidence to support the Government's claim that the Bill will necessarily lead to greater home ownership and economic development; particularly given that many members of Aboriginal communities do not have the income to maintain a mortgage.
- Inappropriate use of the Aboriginals Benefit Account (ABA) to fund the new leasing arrangements.

Creation of new Land Councils

- The 55 per cent majority vote required to establish a new Land Council does not represent a substantial majority and could lead to internal dispute. Traditional owners may also be sidelined by other Aboriginal people, given the Bill refers to 55 per cent of people living in the area.

Devolution of Land Council power

- Delegation of power from Land Councils to regional incorporated bodies may compromise the representative function of Land Councils and result in conflict and inefficiency.
- The Minister's power to override a Land Council's decision not to delegate its functions to a regional body has the potential to diminish the ownership and control rights of traditional owners.
- It is contrary to the normal administrative rules relating to delegation of power (eg permitting the Minister to force delegation, over the objection of the Land Council).

Removal of guaranteed funding for Land Councils

- The increase in ministerial control over the budgets of Land Councils means Land Councils will no longer receive a guaranteed amount of funding (currently fixed by statute at 40% of annual royalties earned from mining on Aboriginal land in the NT).

There was very limited discussion of the termination of certain land claims in the intertidal zone, a topic which emerged later at the Committee stage as another point of contention (see below).

The Government defended its Bill arguing that it will promote economic development in Aboriginal communities. They reasoned that the legislation will encourage Aboriginal home and business ownership on traditional lands in a manner consistent with land tenure arrangements in other parts of Australia. The Government emphasised that the scheme is entirely voluntary and allows traditional owners to stipulate lease conditions while retaining freehold title to the land.

The Government denied the need to split the Bill in two and responded to the criticisms expressed by the Opposition and minor parties outlined above:

Lack of consultation

- Consultations on changes to the Act had been going on for 9 years (since 1997 when the Reeves Review of the Aboriginal Land Rights Act was announced) with a number of reports recommending change. (Senator Scullion)
- It is impossible to talk to every single stakeholder, so the government relies on Land Councils to consult Aboriginal people on their behalf. (Senator Scullion)
- Changes to the Bill as a result of stakeholder input have already occurred. For example, the removal of the five per cent cap on rental returns from township leases, originally included in the Bill. (Senator Kemp)
- There will be continuing consultation with stakeholders regarding the township leasing scheme and other provisions after the Bill is passed. (Senator Kemp)

99-year township leases

- While many Aboriginal people will not be able to take advantage of the home ownership provisions immediately, this does not mean the framework should not be in place to allow those who can. (Senator Humphries)
- The headleasing arrangement is voluntary. The claim that the Government will threaten to stop basic services such as education and housing if leases are not signed is false. (Senator Scullion)
- Lease conditions are set by traditional owners and the scheme is consistent with commercial leasing practices in other parts of Australia. (Senator Humphries)
- The use of the ABA to fund the leasing scheme is legitimate. The ABA was established to benefit Aboriginal people in the NT and the leasing scheme satisfies this requirement. Also, the ABA will only be used for the interim until the scheme generates its own funding. (Senator Adams)

Delegation of Land Council power and creation of new Land Councils

- While there may be potential for misuse of power, ‘in order to create opportunities some risks might have to be taken that such misuse or abuse of power might occur’. It is also unlikely the Northern Territory or Federal Government would exploit the provisions. (Senator Humphries)
- The 55 per cent majority requirement was introduced to resolve ambiguity about the meaning of the term ‘substantial majority’ in the legislation - it provides certainty. (Senator Scullion).
- The provision conferring power on the Minister to override a Land Council decision not to delegate functions is a natural justice mechanism for aggrieved parties. It allows the Minister to review the decision and will not be used against Land Councils where their decision is reasonable. (Senator Scullion)

Removal of guaranteed funding for Land Councils

- Land Councils ‘want to be held accountable for what they do’. (Senator Scullion)
- The Bill will improve current grants to Land Councils by relating them more closely to workloads. (Senator Adams)

In committee

The committee stage of a Bill is where the Senate as a whole moves to consider amendments, either one-by-one or grouped together. Proposed amendments are listed on a ‘running sheet’ and these can be found via www.aph.gov.au/bills/index.htm. Some of the more significant Government amendments to the Bill, as agreed upon by the committee of the whole, are listed below (preceded by their original running sheet number):

- (4): Amendment to remove the 5 per cent cap on rental payments to traditional owners for township leases and to allow any type of payment to be made in relation to township leases (removing two restrictions on the terms of a township lease that traditional owners could seek to negotiate with the government entity).
- (6): Amendment to allow Land Councils to delegate the power to grant township leases to an incorporated regional body.
- (9), (10), (11), (12) and (17): Amendments redrafting the provisions of the Bill dealing with disposal of land claims to the intertidal zones not contiguous with Aboriginal land, but not changing the proposal in substance.

A number of proposed Opposition amendments to the Bill were rejected. These included:

- (2): Amendment to allow new Land Councils to be created with the support of 60 per cent of local Aboriginal residents (rather than the 55 per cent majority stipulated in the Bill).
- (3): Amendment to require ‘free and informed consent from traditional Aboriginal owners’ in addition to the 55 per cent majority required to establish a new Land Council.
- (4): Amendment to require the Minister, when exercising the power to override a Land Council’s refusal to delegate functions to a corporate body, to consider whether the body has a ‘sound governance framework and prudent management’, and that ‘a majority of traditional Aboriginal owners of the region represented by the body consent to the delegation’.
- (5): Amendment to repeal section 44A of the Act, to permit negotiation of a royalty payment that would be paid directly to traditional owners under mining agreements.
- (9) and (10): Amendments to omit from the Bill sections terminating claims to intertidal zones that are non-contiguous with Aboriginal land.

Concluding Stages

Following the consideration of amendments, the Senate divided on 16 August on the question whether the Bill was agreed to. Government Senators and Senator Fielding voted in favour; the ALP, Democrats and Greens voted against (36-32). A division on certain amendments in the House of Representatives on the same day was decided (79-56) in favour of the Government, which had the support of one Independent, Tony Windsor, but not another, Peter Andren. In all, the Government made 63 changes to its original Bill but accepted no non-Government amendments. There were only two concessions to publicly expressed concerns with the Bill. Both related to the terms of a township headlease: the removal of the 5% cap on rent that could be negotiated by traditional owners under a township lease and the qualified removal of the restriction on negotiating other non-pecuniary benefits (such as employment and training commitments) with the headlessee (a government entity).

The Governor-General gave the Bill Royal Assent on 5 September 2006.

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