

3. Introduction

3.1 The Land Rights Act

Struggle for land rights

The Aboriginal struggle for land rights which led to the introduction of the *Aboriginal Land Rights (Northern Territory) Act 1976* began to gain momentum in the Northern Territory in the 1960s.

In 1963 Yolngu people at Yirrkala sent a bark petition to the House of Representatives demanding that a government decision to excise part of their land for a bauxite mine be reversed and that their land rights be respected.

In August 1966 Gurindji people at Wave Hill cattle station went on strike demanding wages and the return of some of their traditional lands. The demand was rejected but the Gurindji continued to camp on their traditional land at Daguragu.

Continuing pressure and public education campaigns led to a national referendum in 1967 where 91 per cent of Australians voted “yes” to amend the Constitution. This gave the Federal Government the constitutional power to make special laws in relation to Aboriginal people.

The Birth of the Act

In February 1973 Labor Prime Minister Gough Whitlam appointed Mr Justice Woodward to inquire into appropriate ways to recognise Aboriginal land rights. In April 1974 Justice Woodward presented his second and final report.

Justice Woodward insisted that mining and other development on Aboriginal land should proceed only with the consent of the Aboriginal landowners and that their decision should only be overridden if the government of the day decided it was necessary in the national interest.

Justice Woodward proposed procedures for claiming land and conditions of tenure. Aboriginal land should be granted as freehold title subject to special controls and procedures in the event of it being leased, mortgaged or disposed of in any way. He envisaged the transfer to Aboriginal ownership of the existing government reserve lands and the hearing by an Aboriginal Land Commissioner of claims to unalienated Crown land and Aboriginal-owned pastoral leases on the basis of traditional affiliation. Smaller areas on pastoral leases and town areas could also be claimed on the basis of need.

The Whitlam Government introduced legislation based substantially on Justice Woodward’s recommendations. The bill was before the Parliament when the Government was dismissed in November 1975.

The new Government led by Liberal Prime Minister Malcolm Fraser drafted a new bill which removed needs-based claims and gave responsibility to the Northern Territory Legislative Assembly for ‘complementary’ legislation covering sacred site protection and access to Aboriginal land.

The Land Rights Act came into force on 26 January 1977. Most of the existing Aboriginal reserves became Aboriginal land, with freehold title held by local Aboriginal Land Trusts on behalf of all Aborigines with traditional interests in the land. A procedure was also established for the claiming of unalienated Crown land and Aboriginal-owned pastoral leases.

However, other pastoral leases, which occupy more than half of the Northern Territory, could not be claimed under the Act. With towns also unclaimable, the removal of needs-based claims has caused great hardship for many thousands of Aboriginal people who no longer have access to their traditional country.

In 1987, the Hawke Labor Government responded to mining industry pressure by amending the Act so that any agreement to an exploration proposal on Aboriginal land also means agreement to mining, even though little may be known about the type, extent and impacts of the potential mining project.

Reviews of the Aboriginal Land Rights Act

The Land Rights Act has been reviewed several times since 1976. Justice Rowland carried out the first review in 1980, followed by Justice Toohey in 1983.

The Reeves Review of the Act commenced in July 1997. The NLC initially welcomed the review as an opportunity to improve the workability of the Act while protecting existing Aboriginal rights. The Reeves report, however, proved to be a poorly argued and unhelpful document which did not reflect the views or interests of Aboriginal people in the NT.

The report was widely criticised by Land Councils, academics and politicians from all major parties. Despite acknowledging that the Land Rights Act is “one of the most far reaching systems for granting Aboriginal traditional lands and one of the strongest systems for protecting the traditional rights of Aboriginal people in their land”, the report’s recommendations would have had the effect of undermining the basis of the Land Rights Act by transferring the rights of traditional owners to other institutions which would not be obliged to consult with traditional owners on land-use matters.

Senator John Herron, the previous Minister for Aboriginal Affairs, referred the Reeves Report to the House of Representatives Select Committee on Aboriginal and Torres Strait Islander Affairs in February 1999. The Committee, chaired by Lou Leiberan MP, presented its report to Federal Parliament in August 1999. The committee’s report largely rejected the Reeves Report’s recommendations to amend the Land Rights Act following overwhelming criticism from Aboriginal people, academic experts, lawyers and anthropologists. Significantly the Committee unanimously recommended that no changes be made to the Act without the informed consent of traditional owners and other affected Aboriginal people.

The current Minister for Aboriginal Affairs, the Hon. Philip Ruddock MP (appointed in late 2000), did not respond formally to the Committee’s report. However, in May 2002 the NLC received Minister Ruddock’s ‘Options Paper’ canvassing a series of possible amendments to the Land Rights Act. In its introduction to the Options Paper the Federal Government said it was “seeking an agreed approach on the principal reforms to the Act that will maximise the potential benefits for Aboriginal People in the Northern Territory”. Many of the “options” appear similar to suggested amendments contained in the Reeves Report, for instance breaking up the NLC and Central Land Council into smaller councils and giving the Northern Territory Government the power to administer the Land Rights Act.

So far Minister Ruddock has not given any indication in writing of the options he prefers, although he indicated he would like to have a package of amendments introduced in the September 2002 sitting of Federal Parliament. The NLC has written to the Minister advising him that the NLC cannot participate in negotiations over amendments based on the Options Paper until he has provided information on his position.

The Northern Territory’s Labor Government and ATSIC have both provided assurances to the NLC that they will not back changes to the Act that would have the effect of diminishing Aboriginal rights and which do not have the informed consent of traditional owners. The NLC has also embarked on a co-operative process with the NT Government which is aimed at reaching agreement on “workability” issues. This will be jointly presented to the Federal Minister.

3.2 The Native Title Act

In June 1992 the High Court of Australia recognised the existence of native title in *Mabo No. 2*. As part of a unified national Aboriginal negotiating process, the Land Council put substantial effort into the *Native Title Act 1993*, which passed through the Federal Parliament on 23 December 1993.

In December 1996 the High Court *Wik* decision confirmed that the interests of traditional owners and pastoral leaseholders can co-exist, but where there was conflict between those interests, the rights of the pastoralists prevail. Some industry and other interests commenced a concerted campaign of misinformation regarding the *Wik* decision and native title generally. The Government proposed amendments in response to the decision. After negotiations in the Senate, the Government's amendments were passed in July 1998.

Amendments to introduce land use agreements were widely supported by all interest groups. However, amendments to validate illegal grants in land made between 1994 and 1996, to allow the upgrade of pastoral leases to other uses (eg farming, horticulture, aquaculture), to reduce negotiating rights regarding Government services, the intertidal zone and offshore areas, and to enable State and Territory Governments to replace the right to negotiate with schemes which do not promote fair and equitable agreements, were opposed by the Land Council.

In the NLC's view, the 1998 amendments are discriminatory, and are probably inconsistent with both the *Racial Discrimination Act 1975* and Australia's international treaty obligations. However traditional owners cannot argue in Court that the Racial Discrimination Act has been breached. This is because the protection of the Racial Discrimination Act has been largely repealed by the native title amendments.

This fundamental repeal of the Racial Discrimination Act, which occurred without the consent of Indigenous negotiating groups, is a substantial diminution of Australia's commitment to international conventions which prohibit racial discrimination.

During 1999/2000, the Senate rejected the NT's native title legislative regime. The then NT Government (NTG), refusing to recognise the Native Title Act, had made a decision not to process exploration licence applications for over four years in the hope that its regime, introduced pursuant to the 1998 amendments to the Act, would be approved by the Senate and thus avoid the need to negotiate with native title holders.

The Senate's rejection of the NT regime led to the release of the accumulated backlog of exploration licence applications (ELAs) at an estimated rate of 20 per fortnight. The intention of this unprecedented number of applications was to hinder the NLC in the fulfilment of its statutory functions of providing for the protection of the interests of traditional owners.

However, the unexpected election of a new Labor NTG in August 2001 has paved the way for a more constructive relationship between the NLC and the Government. The NTG has already negotiated a settlement of the Larrakia people's long-running Rosebery/Bellamack claim in the Palmerston area, allowing the Larrakia to participate in a multi-million dollar urban development project, and it is hoped a similar positive approach will be adopted in relation to other matters.

At the same time, the NLC has managed to keep up with the release of ELAs in its area. It has also drawn up template native title exploration agreements that have already been taken up by some of Australia's biggest mineral explorers, including Rio Tinto and De Beers Australia. The agreements promise to speed up the ELA process on more than 100,000 square kilometres of non-Aboriginal land in the NLC's area.

In other native title developments, negotiated outcomes over native title claims continued and a number of legal cases clarifying the meaning and extent of native title are progressing through the courts (see section 9).