Aboriginal Land Rights (Northern Territory) Amendment Bill (No.3) 1995

Date Introduced: 26 October 1995
House: House of Representatives
Portfolio: Prime Minister
Commencement: Royal Assent

Purpose

The purpose of the Aboriginal Land Rights (Northern Territory) Amendment (No.3) Bill 1995 (the Bill) is to enable a parcel of land in the Northern Territory, Bauhinia Downs, to be granted to an Aboriginal Land Trust on behalf of Aboriginal people.

Background

The Aboriginal Land Rights (Northern Territory) Act 1976

The Aboriginal Land Rights (Northern Territory) Act 1976 (the Principal Act) provides a mechanism for the grant of traditional Aboriginal land in the Northern Territory to indigenous peoples. In general, traditional land claims can be made to either unalienated Crown land outside a town, or land outside a town in which all the estates and interests not held by the Crown are held by, or on behalf of, Aboriginals. 1

The central features of the Principal Act include:

Aboriginal Land Trusts: Title to land granted under the Principal Act is vested in the relevant Aboriginal Land Trust. These trusts hold land for the benefit of indigenous peoples entitled by indigenous tradition to the use or occupation of the land. Members of Land Trusts are appointed by the Minister.

Land Claims Process: The Principal Act provides a land claims process for unalienated Crown land in the Northern Territory. Basically, the Principal Act
requires that indigenous people making a claim must show that they are entitled by indigenous tradition to the use or occupation of the land concerned.

**Minerals Exploration and Mining Rights:** The Principal Act requires that anyone wishing to explore for minerals or acquire mining interests over land granted to indigenous owners must negotiate with the appropriate Land Council and may not directly approach the traditional indigenous owners.

### Title under the *Aboriginal Land Rights (Northern Territory) Act 1976*

As a general rule, where land is granted following a traditional land claim (or land is described in Schedule 1 of the Principal Act and granted without the need for a land claim), the title is held by an Aboriginal Land Trust in fee simple. This is the most complete and secure form of title to land and is granted by the Governor-General on the recommendation of the Minister for Aboriginal and Torres Strait Islander Affairs.

Although a 'fee simple' title usually means freehold ownership - a title clear of any condition, limitation or restrictions - the Principal Act is actually prescriptive about the ways in which a Land Trust can deal with or dispose of any estate or interest in land vested in it. By way of example, Aboriginal land cannot be sold by the Land Trust holding title to it, though it can be transferred to another Land Trust or surrendered to the Crown (the Commonwealth or the Northern Territory). Furthermore, although Aboriginal Land cannot be resumed, compulsorily acquired or forfeited under any law of the Northern Territory, the Commonwealth could acquire it under its constitutional power to acquire property for any purpose in respect of which the Commonwealth Parliament has power to make laws.

Title to Aboriginal land is also subject to a reservation that the right to any minerals remains with the Crown. In addition, the Principal Act preserves a variety of interests in, and uses of, land which became (or may become) Aboriginal land. For example, any road over which the public had a right of way is expressly excluded from the grant.

### Bauhinia Downs

The Bauhinia Downs Land Claim (No.150) was received by the Aboriginal Land Commissioner in September 1994. The claim was set down for hearing for June 1995 but in May 1995, the Commissioner's office was notified that the claim had been settled.

The Bauhinia Downs Land Claim was one of a number of land claims settled in 1994-95 between claimants and the Attorney-General for the Northern Territory. The Explanatory Memorandum states that the Northern Territory Government has requested the Commonwealth to make a fee simple grant of the land that was the subject of the Bauhinia Downs Claim. Some 1449 square kilometres of land is involved.
Main Provisions

The Schedule to the Bill adds the land referred to as Bauhinia Downs to Schedule 1 of the Principal Act.

Endnotes

1 Subject to the requirement to pay just terms (section 51(xxxi), Constitution.)
3 Ibid.

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This Digest does not have any legal status. Other sources should be consulted to determine whether the Bill has been enacted and, if so, whether the subsequent Act reflects further amendments.

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