THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL LAND RIGHTS AND OTHER LEGISLATION
AMENDMENT BILL 2013

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Families, Community Services and Indigenous Affairs,
Minister for Disability Reform, the Hon Jenny Macklin MP)
ABORIGINAL LAND RIGHTS AND OTHER LEGISLATION
AMENDMENT BILL 2013

OUTLINE

This Bill adds the town of Jabiru and two adjacent portions of Northern Territory land to Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976. This will enable the land to be granted as Aboriginal land to the Kakadu Aboriginal Land Trust.

The Bill provides that the land will not be granted as Aboriginal land until leaseback arrangements for the Jabiru town land and for the two adjacent non-township portions are put in place.

Certain amendments are made to the Environment Protection and Biodiversity Conservation Act 1999. These ensure that the world heritage, natural and cultural values of Kakadu National Park continue to be protected in relation to Jabiru, and amend existing management plan and town plan requirements for development of towns in Commonwealth reserves.

Lastly, the Bill adds a further parcel of land for Patta to Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976. This will enable the land to be granted as Aboriginal land to the relevant Aboriginal Land Trust.

FINANCIAL IMPACT STATEMENT

The measures in the Bill have nil or negligible financial impact.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.
NOTES ON CLAUSES

Clause 1 – Short title

Clause 1 sets out how the new Act is to be cited, that is, as the *Aboriginal Land Rights and Other Legislation Amendment Act 2013*.

Clause 2 – Commencement

Clause 2 provides that the new Act will commence on the day after Royal Assent.

Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.
Schedule 1 – Amendments relating to Jabiru

Summary

The Jabiru town land and two adjacent portions of Northern Territory land will be inserted within Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Rights Act) to enable the portions to be granted as Aboriginal land to the Kakadu Aboriginal Land Trust.

This Bill provides that the land will not be granted as Aboriginal land until leaseback arrangements for the Jabiru town land and for the two adjacent non-township portions are put in place.

Further, the Bill makes provision for the protection of the world heritage, natural and cultural values of Kakadu National Park.

Background

The land being added to Schedule 1 by these amendments is located in and around the town of Jabiru in the Northern Territory. The three portions of Jabiru land are:

- Northern Territory Portion 2271 as delineated on Survey Plan S77/144B lodged with the Surveyor-General, Darwin;

- the Jabiru town land; and

- Northern Territory Portion 2273 as delineated on Survey Plans S77/144A, S77/144B, S77/144C and S77/144D lodged with the Surveyor-General, Darwin.

Kakadu National Park is a world heritage listed reserve, recognised for its natural, cultural and universal value. The amendments to the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) are intended to ensure Kakadu National Park’s cultural, natural and world heritage value is protected. The Bill also amends certain development and town planning requirements, which will then apply to Jabiru.

The status of the Jabiru land as part of a Commonwealth reserve under the EPBC Act will not be affected by the grant of the land to the Kakadu Aboriginal Land Trust.
Explanation of the changes

Part 1 – Amendments

Aboriginal Land Rights (Northern Territory) Act 1976

Items 1 to 3 – Subsection 3(1)

Items 1 to 3 insert definitions of category A Jabiru land, category B Jabiru land and category C Jabiru land within subsection 3(1).

The category A Jabiru land means land specified in an instrument under new subsection 3AD(1) discussed below in the explanation of item 10.

The category B Jabiru land means land specified in an instrument under new subsection 3AD(2) discussed below in the explanation of item 10.

The category C Jabiru land means land specified in an instrument under new subsection 3AD(3) discussed below in the explanation of item 10.

Item 4 – Subsection 3(1)

Item 4 inserts a definition of Jabiru Town Development Authority within subsection 3(1). The definition refers to the Jabiru Town Development Authority established by the Jabiru Town Development Act (NT).

Item 5 – Subsection 3(1)

Item 5 inserts a definition of Jabiru town land within subsection 3(1). This definition is inserted for ease of reference, and has the meaning given by new section 3AC, as discussed below in the explanation of item 10.

Item 6 – Subsection 3(1)

Item 6 inserts a definition of Kakadu Aboriginal Land Trust within subsection 3(1). The definition refers to the Land Trust of that name established by the Minister by notice published in the Gazette under subsection 4(1).

The Governor-General may (subject to the relevant leaseback arrangements and other preconditions) deliver a deed of grant of an estate in fee simple for the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 to the Kakadu Aboriginal Land Trust, as provided below in the explanation of item 17. The amendments inserting the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 are discussed below in the explanation of item 27.
Items 7 and 8 – Subsection 3AB(1)

Items 7 and 8 make minor amendments to subsection 3AB(1) to clarify that a township, in relation to a Land Trust, is either of the two types of areas of Aboriginal land specified in subsections 3AB(2) and (3) and vested in the Land Trust.

Item 9 – At the end of section 3AB

Item 9 adds two new subsections to section 3AB of the Land Rights Act.

New subsection 3AB(4) provides that a ‘township’, in relation to the Kakadu Aboriginal Land Trust, is the area of Jabiru town land. This will facilitate any lease of that township pursuant to section 19A, and obviate the need for a regulation being made under subsection 3AB(3) in respect of the Jabiru town land and the Kakadu Aboriginal Land Trust.

New subsection 3AB(5) provides that new subsection 3AB(4) does not limit the application of current subsections 3AB(1) to (3) in relation to the Kakadu Aboriginal Land Trust. This is to ensure that new subsection 3AB(4) does not prevent other townships being prescribed by regulation under subsections 3AB(2) or (3) for the purposes of the Kakadu Aboriginal Land Trust.

Item 10 – After section 3AB

Item 10 inserts new sections 3AC and 3AD into the Land Rights Act.

New section 3AC provides the definition of Jabiru town land, as discussed above in the explanation of item 5.

New subsection 3AC(1) provides that, for the purposes of the Land Rights Act, Jabiru town land means the land specified in a legislative instrument under new subsection 3AC(2).

New subsection 3AC(2) provides that the Minister must specify the land for the purposes of new subsection 3AC(1) by legislative instrument.

New subsection 3AC(3) provides a consideration the Minister must take into account before making a legislative instrument under new subsection 3AC(2). The Minister must have regard to the boundaries of the land comprising the whole of former Northern Territory Portion 2272 (a former parcel reference for the town of Jabiru). It is anticipated that the specification of land under new subsection 3AC(2) will comprise an area of land with boundaries similar to former Northern Territory Portion 2272.
New subsection 3AC(4) provides that the Minister must consult the Northern Territory Government and the relevant Land Council before making a legislative instrument under new subsection 3AC(2). The Minister may also consult such other persons or bodies as the Minister thinks appropriate (for example, Energy Resources of Australia Limited and the Director of National Parks). This new subsection also does not limit the operation of the Legislative Instruments Act 2003 in relation to consultation obligations.

New section 3AD will facilitate any leaseback arrangements for the Jabiru town land made under section 19 (and explained at items 17 and 21 below) by requiring the Minister to specify the areas of land within the Jabiru town land that are to be leased – namely, the category A Jabiru land, the category B Jabiru land and the category C Jabiru land. The Minister will do this when negotiations and survey work are complete.

New subsection 3AD(1) provides that the Minister must, by legislative instrument, specify an area within the Jabiru town land for the purposes of the definition of category A Jabiru land discussed in the explanation of item 1 above. This is the area of land within the Jabiru town land which is proposed to be subject to a lease variation under section 19 granted by the Kakadu Aboriginal Land Trust to the Director of National Parks, as discussed in the explanation of item 21 below.

New subsection 3AD(2) provides that the Minister must, by legislative instrument, specify an area within the Jabiru town land for the purposes of the definition of category B Jabiru land discussed in the explanation of item 2 above. This is the area of land within the Jabiru town land which is proposed to be subject to a lease under section 19 granted by the Kakadu Aboriginal Land Trust to the Aboriginal and Torres Strait Islander corporation nominated in writing by the relevant Land Council, as discussed in the explanation of item 21 below.

New subsection 3AD(3) provides that the Minister must, by legislative instrument, specify an area within the Jabiru town land for the purposes of the definition of category C Jabiru land discussed in the explanation of item 3 above. This is the area of land within the Jabiru town land which is proposed to be subject to a lease under section 19 granted by the Kakadu Aboriginal Land Trust to the Northern Territory, as discussed in the explanation of item 21 below.

New subsection 3AD(4) requires that the various instruments made under new section 3AD must collectively specify the whole of the Jabiru town land. That is, the category A Jabiru land, the category B Jabiru land and the category C Jabiru land must cover the whole of the Jabiru town land that is to be subject to any leaseback arrangements under section 19. Those section 19 leaseback arrangements are discussed in the explanation of items 17 and 21 below. The alternative leaseback arrangement for the whole of the Jabiru town land under section 19A is also explained at items 17 and 23 below.
Item 11 – Subsection 4(1)

Item 11 amends subsection 4(1) of the Land Rights Act to omit the word ‘Crown’ from that subsection. This will enable the Minister to establish Aboriginal Land Trusts to hold land other than Crown land (subject to the requirements in subsections 10(1) and (2) of the Land Rights Act).

In the case of Jabiru, the Director of National Parks, rather than the Commonwealth or Northern Territory, will continue to hold an estate in fee simple in the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of item 27 below) until immediately before the respective deeds of grant take effect. The delivery of respective deeds of grant to the Kakadu Aboriginal Land Trust already established under subsection 4(1) of the Land Rights Act is discussed in the explanation of item 17 below.

Item 12 – Subsection 4(1A)

Item 12 amends subsection 4(1A) to omit the words ‘Crown Land’ and substitute the word ‘land’ in that subsection. This will ensure that the Minister may establish Land Trusts to hold different areas of land, each of which is included within a single area of land (rather than just within a single area of ‘Crown land’) that is described in Schedule 1 to the Land Rights Act.

In the case of Jabiru, the Director of National Parks, rather than the Commonwealth or Northern Territory, will continue to hold an estate in fee simple in the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of item 27 below) until immediately before the respective deeds of grant take effect. The delivery of respective deeds of grant to the Kakadu Aboriginal Land Trust already established under subsection 4(1) of the Land Rights Act is discussed in the explanation of item 17 below.

Item 13 – After paragraph 4(2B)(a)

Item 13 inserts a new paragraph 4(2B)(aa) into the Land Rights Act. This paragraph provides a new circumstance in which the Minister may vary the boundaries of the land to be held by a Land Trust. The Minister may vary the boundaries because of a proposed grant of an estate in fee simple in the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of item 27 below) to the Kakadu Aboriginal Land Trust.

This amendment will enable the Minister to vary the boundaries of the Kakadu Aboriginal Land Trust in advance of the proposed deeds of grant in relation to Jabiru.
Item 14 – Section 10 (heading)

**Item 14** repeals and substitutes the heading to section 10 of the Land Rights Act. The effect of this amendment is to remove the word ‘Crown’ from the heading with the new heading being ‘Recommendations for grants of land described in Schedule 1’.

This amendment is necessary because, in the case of Jabiru, the Director of National Parks, rather than the Commonwealth or Northern Territory, will continue to hold an estate in fee simple in the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of **item 27** below) until immediately before the respective deeds of grant take effect. Further details that are relevant to this amendment are provided in the explanation of amendments to subparagraphs 10(1)(a)(i) and (2)(a)(i) at **item 15** below.

Item 15 – Subparagraphs 10(1)(a)(i) and (2)(a)(i)

**Item 15** amends subparagraphs 10(1)(a)(i) and 10(2)(a)(i) to insert the words ‘(other than an area of land described under the heading ‘JABIRU’ in Part 4 of Schedule 1)’ after the words ‘Schedule 1’ in those subparagraphs. The amendments inserting the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 are discussed below in the explanation of **item 27**.

The effect of this amendment is that the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 is excluded from land for which the Minister shall recommend a deed of grant of an estate in fee simple under these provisions. Instead, the Minister must make a recommendation to the Governor-General in accordance with new subsections 10(2AB) and (2AC), as discussed below in the explanation of **item 16**.

Item 16 – After subsection 10(2AA)

**Item 16** inserts two new subsections into section 10 of the Land Rights Act. The two new subsections provide that the Minister must make recommendations to the Governor-General for the two proposed deeds of grant discussed below in the explanation of **item 17** upon commencement.

New subsection 10(2AB) provides that the Minister must recommend to the Governor-General that a deed of grant of an estate in fee simple in the land described in paragraphs (a) and (c) under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of **item 27** below) be made to the Kakadu Aboriginal Land Trust.

New subsection 10(2AC) provides that the Minister must recommend to the Governor-General that a deed of grant of an estate in fee simple in the Jabiru town land (see the explanation of **items 5 and 10** above) be made to the Kakadu Aboriginal Land Trust.
Item 17 – After subsection 12(1)

Item 17 inserts a number of new subsections within section 12 of the Land Rights Act to provide for the execution and delivery of the two proposed deeds of grant by the Governor-General in relation to Jabiru.

New subsection 12(1AA) provides that the Governor-General, on receipt of a recommendation under new subsection 10(2AB), as discussed above in the explanation of item 16, may execute a deed of grant to the Kakadu Aboriginal Land Trust.

New subsection 12(1AB) provides that the Governor-General may then deliver that deed of grant to the Kakadu Aboriginal Land Trust if the Minister is satisfied about certain matters. The Minister must be satisfied that a lease variation under section 19 has been granted by the Kakadu Aboriginal Land Trust to the Director of National Parks, as discussed in the explanation of item 21 below. The Minister must also be satisfied that the variation is expressed to take effect on the date that the deed of grant is delivered.

New subsection 12(1AC) provides that the Governor-General, on receipt of a recommendation under new subsection 10(2AC), as discussed above in the explanation of item 16, may execute a deed of grant to the Kakadu Aboriginal Land Trust.

New subsection 12(1AD) provides that the Governor-General may then deliver that deed of grant to the Kakadu Aboriginal Land Trust if the Minister is satisfied about certain matters. The Minister must be satisfied that either the section 19 lease requirements provided under new subsections 12(1AE), (1AF) and (1AG) (the section 19 leaseback arrangements set out in item 21) apply, or the section 19A lease requirement provided under new subsection 12(1AH) (the section 19A leaseback arrangement set out in item 23) applies.

New subsection 12(1AE) applies if two preconditions are satisfied. Firstly, a lease variation under section 19 must be granted by the Kakadu Aboriginal Land Trust to the Director of National Parks to cover the whole of the category A Jabiru land (see the explanation of items 1 and 10 above). Secondly, the variation must be expressed to take effect on the date that the relevant deed of grant is delivered.

New subsection 12(1AF) applies if two preconditions are satisfied. Firstly, the Kakadu Aboriginal Land Trust must enter into a lease under section 19 with the Aboriginal and Torres Strait Islander corporation nominated in writing by the relevant Land Council, as discussed in the explanation of item 21 below. This lease must cover the whole of the category B Jabiru land (see the explanation of items 2 and 10 above). Secondly, this lease must be expressed to take effect on the date that the relevant deed of grant is delivered.
New subsection 12(1AG) applies if two preconditions are satisfied. Firstly, the Kakadu Aboriginal Land Trust must enter into a lease under section 19 with the Northern Territory covering the whole of the category C Jabiru land (see the explanation of items 3 and 10 above). Secondly, this lease must be expressed to take effect on the date that the relevant deed of grant is delivered.

New subsection 12(1AH) applies if two preconditions are satisfied. Firstly, the Kakadu Aboriginal Land Trust must enter into a lease under section 19A with the Commonwealth covering the whole of the Jabiru town land (see the explanation of items 5 and 10 above). Secondly, this lease must be expressed to take effect on the date that the relevant deed of grant is delivered.

New subsection 12(1AI) provides that, if a deed of grant is delivered to the Kakadu Aboriginal Land Trust under new subsections 12(1AB) or (1AD), subsection 12(2A) applies to the estate in fee simple in the land held by the Director of National Parks, but does not otherwise apply. The effect of this provision is that the estate in fee simple, held by the Director of National Parks in the land subject to a deed of grant delivered under new subsections 12(1AB) or (1AD), will cease to exist at the time the relevant deed of grant takes effect. Any other estates or interests held by the Director of National Parks in the land (for example, subleases granted by the Jabiru Town Development Authority in relation to the Jabiru town land) are excluded from the operation of subsection 12(2A).

Item 18 – After subsection 12(2A)

Item 18 inserts a further new subsection within section 12. New subsection 12(2AB) provides that, if a deed of grant is delivered to the Kakadu Aboriginal Land Trust under subsection 12(1AD) in relation to the Jabiru town land, then, at the time the deed of grant takes effect, the lease of that land by the Director of National Parks to the Jabiru Town Development Authority ceases to exist.

Item 19 – After subsection 12A(1)

Item 19 inserts a new subsection within section 12A of the Land Rights Act. New subsection 12A(1A) provides that subsection 12A(1) does not apply to an estate or interest of the Director of National Parks in land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of item 27 below). The effect of new subsection 12A(1A) is that section 12A will not entitle the Director of National Parks to continue his or her occupation of the land for the purposes of the EPBC Act in relation to the current estate in fee simple once it ceases (see the explanation of new subsection 12(1AI) in relation to item 17 above).
However, section 12A(1) will otherwise apply (where relevant) to provide that the Director of National Parks is entitled to continue his or her occupation of the land for the purposes of the EPBC Act in relation to any other estates or interests held in relation to the land (for example, in relation to subleases granted by the Jabiru Town Development Authority in relation to the Jabiru town land).

**Item 20 – Subsection 19(1)**

**Item 20** repeals subsection 19(1) of the Land Rights Act and substitutes a new subsection 19(1). New subsection 19(1) provides that a Land Trust must not deal with or dispose of, or agree to deal with or dispose of, certain estates, interests or land except as provided by section 19, 19A or 20.

New paragraph 19(1)(a) provides that a Land Trust must not deal with or dispose of, or agree to deal with or dispose of, any estate or interest in land vested in it except as provided by section 19, 19A or 20.

To avoid any doubt, new paragraph 19(1)(b) clarifies that a Land Trust must not deal with or dispose of, or agree to deal with or dispose of, the land described under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of **item 27** below) except as provided by section 19, 19A or 20.

The effect of new paragraph 19(1)(b) is that it will be possible for a Land Trust to deal with that land before it is vested in that Land Trust. This will enable the Kakadu Aboriginal Land Trust to grant the lease variations and enter into the leases, as discussed in the explanation of **item 21** below, if the section 19 leasing model is adopted in relation to Jabiru. In the alternative, this new paragraph will also enable the Kakadu Aboriginal Land Trust to grant the lease, as discussed in the explanation of **item 23** below, if the section 19A leasing model is adopted in relation to Jabiru.

**Item 21 – After subsection 19(3C)**

**Item 21** inserts a number of new subsections within section 19 of the Land Rights Act to provide for the leaseback arrangements to be granted and entered into by the Kakadu Aboriginal Land Trust if the section 19 leasing model is adopted in relation to Jabiru.

New subsection 19(3D) provides for a lease variation under section 19 to be granted by the Kakadu Aboriginal Land Trust to the Director of National Parks to cover the land described in paragraphs (a) and (c) under the heading ‘JABIRU’ in Part 4 of Schedule 1 (see the explanation of **item 27** below). The variation may be granted despite the relevant deed of grant not having been delivered (see the explanation of **items 16 and 17** above). The variation must be expressed to take effect on the date that such a deed of grant is delivered.
New subsection 19(3E) provides for a lease variation under section 19 to be granted by the Kakadu Aboriginal Land Trust to the Director of National Parks to cover the category A Jabiru land (see the explanation of items 1 and 10 above). The variation may be granted despite the relevant deed of grant not having been delivered (see the explanation of items 16 and 17 above). The variation must be expressed to take effect on the date that such a deed of grant is delivered.

New subsection 19(3F) provides that, with the consent of the Minister and at the direction of the relevant Land Council, the Kakadu Aboriginal Land Trust may grant a lease to the Aboriginal and Torres Strait Islander corporation, nominated in writing by the relevant Land Council, of the category B Jabiru land (see the explanation of items 2 and 10 above).

New subsection 19(3G) provides that the Kakadu Aboriginal Land Trust may grant a lease mentioned in new subsection 19(3F) despite the relevant deed of grant not having been delivered (see the explanation of items 16 and 17 above). The lease must be expressed to take effect on the date that such a deed of grant is delivered.

New subsection 19(3H) provides that, with the consent of the Minister and at the direction of the relevant Land Council, the Kakadu Aboriginal Land Trust may grant a lease to the Northern Territory of the category C Jabiru land (see the explanation of items 3 and 10 above).

New subsection 19(3J) provides that the Kakadu Aboriginal Land Trust may grant a lease mentioned in new subsection 19(3H) despite the relevant deed of grant not having been delivered (see the explanation of items 16 and 17 above). The lease must be expressed to take effect on the date that such a deed of grant is delivered.

New subsection 19(3K) provides that the Minister must not give consent to a lease under new subsections 19(3F) or (3H) unless two preconditions are satisfied. Firstly, the term of the lease must be 99 years. Secondly, the Minister administering the EPBC Act must be satisfied that the terms and conditions of the lease are consistent with the protection of the world heritage values, and other natural and cultural values, of Kakadu National Park.

New subsection 19(3L) provides for the treatment of certain categories of rights, titles or interests, or any thing, if a lease is varied under new subsection 19(3E) or granted under new subsections 19(3F) or (3H). The expression ‘applicable land’ is defined for the purposes of new subsection 19(3L) in new subsection 19(3M).

The purpose of new subsection 19(3L) is not just to preserve certain existing rights, titles or interests in relation to the applicable Jabiru town land. The new subsection is also drafted to give effect to such rights, titles or interests with full force and effect, even if they are currently limited or invalid (and are therefore just purported rights, titles or interests) (see the explanation in relation to new subsection 19(3Q) below).
New paragraph 19(3L)(a) provides, subject to two exceptions, that any right, title or interest, or any thing, that was registered under the *Land Title Act* (NT) in relation to the applicable land immediately before the time the variation or new lease takes effect has full force and effect in accordance with its terms at and after that time. The two exceptions to the general rule in new paragraph 19(3L)(a) are the estate in fee simple in the applicable land held by the Director of National Parks and any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the applicable land.

Under new paragraph 19(3L)(a), for example, all registered subleases granted by the Jabiru Town Development Authority in relation to the Jabiru town land will have full force and effect at and after the time the variation or new lease takes effect. In addition, the term ‘any right, title or interest, or any thing, that was registered’ includes any purported right, title or interest, or any thing, which was registered (see the explanation in relation to new subsection 19(3Q) below).

New paragraph 19(3L)(b) provides that certain further categories of rights, titles or interests in relation to the applicable land that existed immediately before the time the variation or new lease takes effect has full force and effect in accordance with its terms at and after that time.

The first additional category to which new paragraph 19(3L)(b) applies (subparagraph 19(3L)(b)(i)) is to any right, title or interest in relation to the applicable land that was granted under any right, title or interest, or any thing, covered by new paragraph 19(3L)(a). For example, any interest granted under a registered sublease in relation to the Jabiru town land will have full force and effect at and after the time the variation or new lease takes effect under this new subparagraph.

The second additional category to which new paragraph 19(3L)(b) applies (subparagraph 19(3L)(b)(ii)) is to any right, title or interest in relation to the applicable land that was granted under any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the applicable land. For example, any unregistered interests granted by the Jabiru Town Development Authority in relation to the Jabiru town land will have full force and effect at and after the time the variation or new lease takes effect under this new subparagraph.

New paragraph 19(3L)(c) applies to any right, title or interest in relation to a facility (within the meaning of the *Telecommunications Act 1997*) that is on, over or under the applicable land and is owned or operated by a carrier (within the meaning of that Act). In this circumstance, if the right, title or interest existed immediately before the variation or new lease takes effect, it has full force and effect in accordance with its terms at and after that time. This paragraph is intended to ensure that certain interests identified by Telstra Corporation Limited, and any other relevant interests owned or operated by any other carrier in Jabiru, have full force and effect at and after the time the variation or new lease takes effect.
New paragraph 19(3L)(d) applies to any right, title or interest in relation to the trust assets (as defined under new subsection 19(3N)) that existed immediately before the time the variation or new lease takes effect. In this circumstance, the right, title or interest has full force and effect in accordance with its terms at and after that time. This paragraph is intended to ensure that the legal and beneficial interests held by the Jabiru Town Development Authority, the Commonwealth, the Northern Territory and Energy Resources of Australia Limited under the Jabiru Cost Sharing Agreement have full force and effect at and after the time the variation or new lease takes effect.

New paragraph 19(3L)(e) provides that any right, title or interest, or any thing, in relation to the applicable land, specified in a legislative instrument made by the Minister under this paragraph, has full force and effect in accordance with its terms at and after the time the variation or new lease takes effect.

The Commonwealth is not aware of any further rights, titles, interests or things that should be specifically given effect at and after the time the variation or new lease takes effect and would not be captured by new paragraphs 19(3L)(a) to (d). However, if any such right, title, interest or thing is identified, this power would enable it to have full force and effect in accordance with its terms.

New subsection 19(3M) provides a definition of the phrase ‘applicable land’ for the purposes of new subsection 19(3L). For a lease variation under new subsection 19(3E), the applicable land is the category A Jabiru land. For a lease under new subsection 19(3F), the applicable land is the category B Jabiru land. For a lease under new subsection 19(3H), the applicable land is the category C Jabiru land.


New subsection 19(3P) provides that new paragraphs 19(3L)(a) to (d) do not limit the scope of the instrument-making power provided under new paragraph 19(3L)(e).

New subsection 19(3Q) provides that any right, title or interest, or any thing, to which new subsection 19(3L) applies has full force and effect at and after the time the variation or new lease takes effect. To avoid doubt, this provision explicitly confirms that this will be the case even if the right, title, interest or thing did not have full force and effect immediately before that time.
New subsection 19(3R) provides further requirements that apply if new subsection 19(3L) applies in relation to a right, title, interest or thing granted by the Jabiru Town Development Authority. If this is the case, then, at and after the variation or new lease takes effect, the right, title, interest or thing has full force and effect as if it were granted by the Director of National Parks (for a lease varied under new subsection 19(3E)), the nominated Aboriginal and Torres Strait Islander corporation (for a lease under new subsection 19(3F)) or by the Northern Territory (for a lease under new subsection 19(3H)). This provision does not mean, for instance, that any sublease granted by the Jabiru Town Development Authority in relation to the Jabiru town land operates as if it is granted afresh by the relevant new lessor at the time the deed of grant takes effect. Rather, it is just the balance of the term that operates with the new lessor.

New subsection 19(3S) applies if new subsection 19(3L) applies and, immediately before the variation or lease takes effect, the right, title, interest or thing is contingent on the existence of the lease of the Jabiru town land by the Director of National Parks to the Jabiru Town Development Authority. This new subsection provides that, at the time the variation or lease takes effect, the terms of the right, title, interest or thing are taken to have been modified so that it is contingent on the existence of the varied lease or new lease.

New subsection 19(3T) provides that, before making a legislative instrument under paragraph 19(3L)(e), the Minister must consult the relevant Land Council. The Minister may also consult other persons or bodies (for example, the Northern Territory Government and the Director of National Parks) and this new subsection also does not limit the operation of the Legislative Instruments Act 2003 in relation to consultation obligations.

New subsection 19(3U) provides that, if the Minister makes a legislative instrument under new paragraph 19(3L)(e), he or she must give a copy to the relevant Land Council.

**Item 22 – Subsections 19(8A) and (8B)**

Item 22 amends subsections 19(8A) and (8B) of the Land Rights Act. References to new subsections 19(3F) and (3H) are inserted into subsections 19(8A) and (8B). This will ensure that certain provisions in section 19 of the Land Rights Act in relation to the transfer or grant of certain interests by the relevant grantee will apply to the leases granted by the Kakadu Aboriginal Land Trust to the nominated Aboriginal and Torres Strait Islander corporation and the Northern Territory.

**Item 23 – After subsection 19A(1A)**

Item 23 inserts new subsections 19A(1B) and (1C) into the Land Rights Act.
New subsection 19A(1B) provides that the Kakadu Aboriginal Land Trust may grant a lease of the Jabiru town land to the Commonwealth before the delivery of the relevant deed of grant to that Land Trust (if the Minister consents to the granting of the lease as provided by current subsection 19A(1)).

New subsection 19A(1C) provides that the Minister must not give a consent under current subsection 19A(1) in relation to the grant of a lease mentioned in new subsection 19A(1B) unless the term of the lease is 99 years and the Minister administering the EPBC Act is satisfied with the terms and conditions of the lease (in order to protect the world heritage, natural and cultural values of Kakadu National Park).

**Item 24 – After subsection 19A(11)**

**Item 24** amends section 19A of the Land Rights Act by inserting a number of new subsections (subsections 19A(11A) to (11J)).

New subsection 19A(11A) provides that the general rule for preserving any existing right, title or other interest in land the subject of a lease granted under section 19A (in subsections 19A(10) and (11)) does not apply to a lease mentioned in new subsection 19A(1B). This means that the general preservation rule does not apply to a lease of the Jabiru town land granted by the Kakadu Aboriginal Land Trust to the Commonwealth if the section 19A leasing model is adopted in relation to Jabiru.

New subsection 19A(11B) provides for the treatment of certain categories of rights, titles or interests, or any thing, if a lease is granted under new subsection 19A(1B).

The purpose of new subsection 19A(11B) is not just to preserve certain existing rights, titles or interests in relation to the applicable Jabiru town land. The new subsection is also drafted to give effect to such rights, titles or interests with full force and effect, even if they are currently limited or invalid (and are therefore just purported rights, titles or interests) (see the explanation in relation to new subsection 19A(11E) below).

New paragraph 19A(11B)(a) provides, subject to two exceptions, that any right, title or interest, or any thing, that was registered under the *Land Title Act* (NT) in relation to the relevant land immediately before the time the lease takes effect has full force and effect in accordance with its terms at and after that time. The two exceptions to the general rule in new paragraph 19A(11B)(a) are the estate in fee simple in the relevant land held by the Director of National Parks and any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the relevant land.
Under new paragraph 19A(11B)(a), for example, all registered subleases granted by the Jabiru Town Development Authority in relation to the Jabiru town land will have full force and effect at and after the time the lease takes effect. In addition, the term ‘any right, title or interest, or any thing, that was registered’ includes any purported right, title or interest, or any thing which was registered (see the explanation in relation to new subsection 19A(11E) below).

New paragraph 19A(11B)(b) provides that certain further categories of rights, titles or interests in relation to the relevant land that existed immediately before the time the lease takes effect have full force and effect in accordance with its terms at and after that time.

The first additional category to which new paragraph 19A(11B)(b) applies (subparagraph 19A(11B)(b)(i)) is to any right, title or interest in relation to the relevant land that was granted under any right, title or interest, or any thing, covered by new paragraph 19A(11B)(a). For example, any interest granted under a registered sublease in relation to the Jabiru town land will have full force and effect at and after the time the lease takes effect under this new subparagraph.

The second additional category to which new paragraph 19A(11B)(b) applies (subparagraph 19A(11B)(b)(ii)) is to any right, title or interest in relation to the relevant land that was granted under any right, title or interest, or any thing, held by the Jabiru Town Development Authority in relation to the relevant land. For example, any unregistered interests granted by the Jabiru Town Development Authority in relation to the Jabiru town land will have full force and effect at and after the time the lease takes effect.

New paragraph 19A(11B)(c) applies to any right, title or interest in relation to a facility (within the meaning of the *Telecommunications Act 1997*) that is on, over or under the relevant land and is owned or operated by a carrier (within the meaning of that Act). In this circumstance, if the right, title or interest existed immediately before the lease takes effect, it has full force and effect in accordance with its terms at and after that time. This paragraph is intended to ensure that certain interests identified by Telstra Corporation Limited, and any other relevant interests owned or operated by any other carrier in Jabiru, have full force and effect at and after the time the lease takes effect.

New paragraph 19A(11B)(d) applies to any right, title or interest in relation to the trust assets (as defined under new subsection 19A(11C)) that existed immediately before the time the lease takes effect. In this circumstance, the right, title or interest has full force and effect in accordance with its terms at and after that time. This paragraph is intended to ensure that the legal and beneficial interests held by the Jabiru Town Development Authority, the Commonwealth, the Northern Territory and Energy Resources of Australia Limited under the Jabiru Cost Sharing Agreement have full force and effect at and after the time the lease takes effect.
New paragraph 19A(11B)(e) provides that any right, title or interest, or any thing, in relation to the relevant land, specified in a legislative instrument made by the Minister under this paragraph, has full force and effect in accordance with its terms at and after the time the lease takes effect. The Commonwealth is not aware of any further rights, titles, interests or things that should be given effect at and after the time the lease takes effect and would not be captured by new paragraphs 19A(11B)(a) to (d). However, if any such right, title, interest or thing is identified, this power would enable it to have full force and effect in accordance with its terms.


New subsection 19A(11D) provides that new paragraphs 19A(11B)(a) to (d) do not limit the scope of the instrument-making power provided under new paragraph 19A(11B)(e).

New subsection 19A(11E) provides that any right, title or interest, or thing, to which new subsection 19A(11B) applies has full force and effect at and after the time the lease takes effect. To avoid doubt, this provision explicitly confirms that this will be the case even if the right, title, interest or thing did not have full force and effect immediately before that time.

New subsection 19A(11F) provides that, if a lease mentioned in new subsection 19A(1B) is granted and new subsection 19A(11B) applies in relation to a right, title, interest or thing granted by the Jabiru Town Development Authority, the right, title, interest or thing has full force and effect in accordance with its terms as if it were granted by the Commonwealth. This provision does not mean, for instance, that any sublease granted by the Jabiru Town Development Authority in relation to the Jabiru town land operates as if it is granted afresh by the Commonwealth at the time the deed of grant takes effect. Rather, it is just the balance of the term that operates with the Commonwealth as lessor.

New subsection 19A(11G) applies if new subsection 19A(1B) applies and, immediately before the lease takes effect, the right, title, interest or thing is contingent on the existence of the lease of the Jabiru town land by the Director of National Parks to the Jabiru Town Development Authority. New subsection 19A(11G) provides that, from the time the subsection 19A(1B) lease takes effect, the terms of the right, title, interest or thing are taken to have been modified so that it is contingent on the existence of the lease.
New subsection 19A(11H) provides that, before making a legislative instrument under paragraph 19A(11B)(e), the Minister must consult the relevant Land Council. The Minister may also consult other persons or bodies (for example, the Northern Territory Government and the Director of National Parks), and this new subsection also does not limit the operation of the Legislative Instruments Act 2003 in relation to consultation obligations.

New subsection 19A(11J) provides that, if the Minister makes a legislative instrument under new paragraph 19A(11B)(e), he or she must give a copy to the relevant Land Council.

Item 25 – Paragraph 19A(12)(a)

Item 25 amends paragraph 19A(12)(a) of the Land Rights Act by adding ‘or (11F)’ after ‘subsection (11)’. The effect of this amendment, and the amendments provided by item 26 below, is that, if new subsection 19A(11F) applies in relation to a right, title, interest or thing and paragraphs 19A(12)(b) and (c) are also satisfied, then, at that time, the right, title, interest or thing has effect as if it were granted by the transferee on the same terms and conditions as existed immediately before that time.

Item 26 – Subsection 19A(12)

Item 26 amends subsection 19A(12) to omit the words ‘or other interest’ (wherever occurring) and substitute the words ‘interest or thing’. This is a technical consequential amendment to align with new subsection 19A(11F).

Item 27 – Part 4 of Schedule 1 (after the item relating to INNESVALE)

Item 27 inserts the Jabiru town land and two adjacent non-township portions (Northern Territory Portions 2271 and 2273) into Part 4 of Schedule 1 to the Land Rights Act (after the item relating to INNESVALE).

Environment Protection and Biodiversity Conservation Act 1999

Item 28 – After subsection 345A(2)

Item 28 inserts subsection 345A(2A) to provide an exception to the operation of subsection 345A(2), which provides that, if the Commonwealth acquires a usage right relating to land or seabed in a Commonwealth reserve, the usage right automatically vests in the Director of National Parks.

The exception will apply to a usage right acquired by the Commonwealth that is a lease of the Jabiru town land to the Commonwealth under section 19A of the Land Rights Act, as discussed above in the explanation of item 23. The amendments providing for the description of the Jabiru town land are discussed above in the explanation of items 5, 10 and 27.
The exception will further apply to any usage rights prescribed by the regulations to address other possible cases where the Commonwealth could acquire a usage right in a Commonwealth reserve.

**Item 29 – Subsection 388(1)**

**Item 29** inserts further words into subsection 388(1) to provide that a person may use as well as develop a township in a part of a Commonwealth reserve in certain circumstances.

**Item 30 – Subparagraph 388(1)(b)(i)**

**Item 30** is a technical amendment to omit a subsection reference in subparagraph 388(1)(b)(i) to subsection 388(3), which is required as a consequence of **item 31**.

**Item 31 – Subsections 388(2), (3) and (4)**

**Item 31** repeals subsections 388(2), (3) and (4) and replaces them with a new subsection 388(2).

The new subsection provides that a person (other than the Director of National Parks) may use or develop a township only on land the person holds under lease or sublease from the Commonwealth, the Director of National Parks, the Kakadu Aboriginal Land Trust, the Northern Territory or the nominated Aboriginal and Torres Strait Islander corporation referred to in new subsection 19(3F) of the Land Rights Act, as discussed above in the explanation of item 21.

**Item 32 – Subsections 389(1) and (2)**

**Item 32** repeals subsections 389(1) and (2) and substitutes two new subsections because the present wording of section 389 is out of date and does not reflect current circumstances.

New subsection 389(1) provides that the provisions of a management plan for a Commonwealth reserve that relate to a township must include provisions for and in relation to the use and development of the township, as provided by the amendments to subsection 388(1), discussed above at **item 29**.

New subsection 389(2) provides that a town plan must make detailed provision in relation to the use and development of the township, as provided by the amendments to subsection 388(1), discussed above at **item 29**. In particular, the town plan must include detailed provision in relation to any matters specified by the management plan for the relevant Commonwealth reserve or the regulations.

**Item 33 – Paragraph 389(3)(a)**
Item 33 amends paragraph 389(3)(a) to omit the words ‘that would not otherwise apply in relation to the township’.

Item 34 – Subsection 389(4)

Item 34 repeals subsection 389(4), which relates to town plans not being inconsistent with other instruments, because this subsection is unnecessary.

Item 35 – Saving – management plans and town plans

Item 35 is a savings provision to ensure that the amendments discussed above at item 32 do not affect the validity of a management plan, or a town plan, in force immediately before the commencement of that item.

Part 2 – Compensation for acquisition of property

Item 36 – Compensation for acquisition of property

Item 36 provides that compensation is payable when there is an acquisition of property, due to the operation of Schedule 1 to the Bill or an act done under a provision of the Land Rights Act inserted by that Schedule, as provided in paragraph 51(xxxi) of the Australian Constitution.

Subitem 36(1) provides that, if there is an acquisition of property to which paragraph 51(xxxi) of the Constitution applies, and the acquisition was otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person whose property was acquired.

Subitem 36(2) provides that, where an amount of compensation is not agreed upon by the Commonwealth and the person whose property has been acquired, that person may institute proceedings in a court of competent jurisdiction for the recovery of a reasonable amount of compensation, as that court determines.

Subitem 36(3) provides that acquisition of property and just terms have the same meaning as provided for in paragraph 51(xxxi) of the Constitution.
Schedule 2 – Other amendments

Summary

This Schedule adds a further parcel of land to Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976 (the Land Rights Act).

Background

This Schedule adds a further parcel of Northern Territory land to Schedule 1 to the Land Rights Act. This will allow the land in question to be granted to the relevant Aboriginal Land Trust under sections 10 and 12 of the Land Rights Act.

The Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2010 inserted five portions of land, known as Patta in the Northern Territory, into Part 4 of Schedule 1 to the Land Rights Act. This Schedule adds an additional portion of land, Northern Territory Portion 7021, to the description of Patta in Schedule 1 to the Land Rights Act.

Northern Territory Portion 7021 is currently subject to Perpetual Pastoral Lease 1142. The holders of this lease have indicated their willingness to surrender Northern Territory Portion 7021 to make it available to be granted as Aboriginal land. The Northern Territory Government and the Central Land Council are supportive of the additional scheduling.

Explanation of the changes

Item 1 – Part 4 of Schedule 1 (at the end of the item relating to PATTA)

Item 1 amends Part 4 of Schedule 1 to the Land Rights Act by inserting a reference to an additional portion of land (Northern Territory Portion 7021 delineated on Survey Plan S2009/1A) near Tennant Creek in the Northern Territory known as Patta as land to be granted as Aboriginal land.
Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aboriginal Land Rights and Other Legislation Amendment Bill 2013

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

This Bill adds the Jabiru town land and certain adjacent portions of Northern Territory land to Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976 to enable the land to be granted as Aboriginal land to the Kakadu Aboriginal Land Trust.

This Bill also provides that the land will not be granted as Aboriginal land until leaseback arrangements for the Jabiru town land and for the two adjacent non-township portions are put in place.

This Bill makes related amendments to the Environment Protection and Biodiversity Conservation Act 1999 to ensure that the world heritage, natural and cultural values of Kakadu National Park are preserved, and amends certain management plan and town planning requirements in relation to Commonwealth reserves.

These amendments arise from an agreement to resolve the Jabiru native title claim. The intention of this measure is to give effect to the settlement agreement reached between the parties to the native title claim. This Bill recognises the traditional ownership of Jabiru of the Mirarr people. It ensures that the land will remain within Kakadu National Park, and that its World Heritage listing status is not disrupted.

This Bill also adds a further parcel of land for Patta to Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976 to enable the land to be granted to the relevant Aboriginal Land Trust. The Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (2009 Measures) Act 2010 previously inserted five portions of land, known as Patta in the Northern Territory, into Schedule 1 to the Aboriginal Land Rights (Northern Territory) Act 1976.

Human rights implications

The long title of the Aboriginal Land Rights (Northern Territory) Act 1976 is ‘An Act providing for the granting of Traditional Aboriginal Land in the Northern Territory for the benefit of Aboriginals, and for other purposes’.
The *Aboriginal Land Rights (Northern Territory) Act 1976* is discriminatory in nature as it confers rights and privileges upon Aboriginal Australians, which are discriminatory as against non-Aboriginal Australians. That discrimination is the essence of the Act; it is the foundation on which it is structured. However, the beneficial nature of this discrimination enables the *Aboriginal Land Rights (Northern Territory) Act 1976* and this Bill to be each classified as a ‘special measure’ within the meaning of paragraph 4 of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (the CERD) (and subsection 8(1) of the *Racial Discrimination Act 1975*).

The CERD provides that special measures are deemed not to be discrimination. Special measures are designed to ‘secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms’. ¹

This Bill advances and engages the following rights:

- the right to self-determination (recognised in article 1 of the International Covenant on Civil and Political Rights (ICCPR));
- rights to equality and non-discrimination (recognised in article 2 of the CERD, and article 26 of the ICCPR); and
- the right to enjoy and benefit from culture (recognised in article 27 of the ICCPR).

This Bill is necessary to recognise and ensure that relevant Aboriginal people have the right to own and control their traditional Aboriginal lands. The limitation on the rights of non-Aboriginal Australians is reasonable, necessary and proportionate to the policy desire to promote the equal enjoyment of the engaged rights by Aboriginal Australians.

**Conclusion**

This Bill is compatible with human rights.

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