THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT (LAND SCHEDULING) BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Indigenous Affairs, Senator the Hon Nigel Scullion)
OUTLINE

The Bill adds an area of land that is detailed in the Ammaroo Indigenous Land Use Agreement, National Native Title Tribunal Number DI2014/003 (Ammaroo Land) to Schedule 1 of the Land Rights Act so that the Ammaroo Land can be granted as Aboriginal land.

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 (Northern Territory) Amendment (Land Scheduling) Act 2018*.

Clause 2 – Commencement

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

Clause 3 – Schedules

Clause 3 provides that each Act that is specified in a Schedule is amended or repealed as set out in that Schedule.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

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

Explanation of the changes

Item 1 – Part 4 of Schedule 1 (after the item relating to Bauhinia Downs)

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 7364 delineated on Survey Plan S2014/016 lodged with the Surveyor-General, Darwin, and containing an area of approximately 3,105 hectares) known as Ammaroo and enables the 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 (Northern Territory) Amendment (Land Scheduling) Bill 2018

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

The Bill adds an area of land that is detailed in the Ammaroo Indigenous Land Use Agreement, National Native Title Tribunal Number DI2014/003 (Ammaroo Land) to Schedule 1 of the Land Rights Act so that the Ammaroo Land can be granted as Aboriginal land.

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’.

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.

Minister for Indigenous Affairs, Senator the Hon Nigel Scullion