

Terms of Reference

Review of Part V (Aboriginal Land Commissioners) of the *Aboriginal Land Rights (Northern Territory) Act 1976*

Background

Part V of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Land Rights Act) provides for the appointment of Aboriginal Land Commissioners (Commissioners) and sets out their functions and powers. The principal functions of the Commissioner under subsection 50(1)(a) of the Land Rights Act are to conduct inquiries into traditional land claims, report the findings to the Minister and the Administrator of the Northern Territory (NT) and, where the Commissioner finds there are traditional Aboriginal owners, make recommendations to the Minister for the grant of Aboriginal land.

The Commissioner also has broad functions under subsections 50(1)(d) and (e), to advise the Minister in connection with any other matter relevant to the operation of the Land Rights Act, on referral by the Minister, and to advise the Minister and the Administrator of the NT in connection with any other matter relating to land in the NT, on referral by the Minister and with the agreement of the Administrator of the NT. The Commissioner also has functions and responsibilities under the *Archives Act 1983* and the *Aboriginal Land Act 1978* (NT), including in relation to the closure of seas.

Since the passage of the Land Rights Act in 1976, a total of 249 land claim applications have been formally submitted with the Commissioner. No new claims have been submitted since June 1977 [sic, 1997] when a ‘sunset’ clause came into operation, preventing the Commissioner from conducting inquiries into any land claim applications submitted after that date. Presently, of the 40 unresolved land claims, only 14 remain in the Commissioner’s jurisdiction. Each of these land claims now has a clear pathway for resolution within coming years either by an inquiry and report to the Minister, settlement by agreement and scheduling in the Land Rights Act, or disposal by other means including withdrawal of an application or a determination by the Commissioner under subsection 67A(7) of the Act.

It is timely to consider the future role of the Commissioner as the primary functions in respect of land claims draw to a natural conclusion. These terms of reference have been prepared in response to a referral by the Minister for Indigenous Australians, the Hon Ken Wyatt AM MP, pursuant to subsection 50(1)(d) of the Land Rights Act, on 13 July 2021.

Despite numerous reviews of the Land Rights Act, Part V has received limited attention and there have been few substantive amendments to the relevant provisions of the Act since 1976. In 1998, Reeves briefly contemplated the future role of the Commissioner beyond the finalisation of land claim hearings, suggesting the limited remaining functions would not justify retaining a full-time appointment¹.

¹ Commonwealth of Australia, *Building on land Rights for the Next Generation: Report on the Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, John Reeves QC, August 1998, p 269.

His recommendation to transfer the key residual functions of the Commissioner to a Supreme Court judge did not receive broad support and was considered by Land Councils to be premature². More than 20 years on, there is clearly an opportunity to seek broad stakeholder views and examine in detail how the role of the Commissioner might evolve once there are no more land claims to be heard.

The review will provide an opportunity for the Minister to consider the future application of the functions and powers of the Commissioner, including whether Part V should be retained in its current form or amended to modify the powers or functions of the Commissioner. For each option, the review will assist the Minister's consideration of any related opportunities and impacts including, but not limited to, resourcing and administrative support for the Commissioner, procedures for the appointment of the Commissioner and consequential amendments to the Land Rights Act and other relevant legislation.

Terms of reference

- Commence an independent review into Part V (Aboriginal Land Commissioners) and other relevant provisions of the *Aboriginal Land Rights (Northern Territory) Act 1976*
- Establish direct communication with the following key stakeholders for the purpose of inviting them to participate in the review:
 - The Northern Land Council, Central Land Council, Tiwi Land Council and the Anindilyakwa Land Council.
 - Relevant Australian Government Ministers and departments including the Minister responsible for the *Aboriginal Land Rights (Northern Territory) Act 1976*, the Attorney-General, the National Indigenous Australians Agency, National Archives of Australia and the Minister for the Environment.
 - Relevant Northern Territory Government Ministers and departments, including the Chief Minister, Minister for Aboriginal Affairs and the Department of the Attorney-General and Justice.
- Establish communication with other persons and entities, as appropriate.
- Publish public notice of the review inviting submissions and engagement including from Aboriginal people and entities in the Northern Territory.
- Review relevant legislation, publications and documents held by the Office of the Aboriginal Land Commissioner, the National Indigenous Australians Agency and other sources.

² Commonwealth of Australia, *Unlocking the Future: The Report of the Inquiry into the Reeves Review of the Aboriginal Land Rights (Northern Territory) Act 1976*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, August 1999 pp144-145.

- Ascertain the views of stakeholders and seek relevant information regarding:
 - The future application of current provisions of the Land Rights Act (and related legislation) that relate to the Aboriginal Land Commissioner.
 - Potential amendments to the provisions of the Land Rights Act (and related legislation) that relate to the Aboriginal Land Commissioner including:
 - The repeal of any powers and functions of the Aboriginal Land Commissioner.
 - New powers and functions of the Aboriginal Land Commissioner, including but not limited to, a dispute resolution or arbitration role in respect of disputes and complaints relating to traditional Aboriginal ownership of land granted under the Land Rights Act.
- Examine the potential opportunities and impacts associated with each of the above options, including resourcing, procedures for the appointment of the Commissioner, consequential amendments of the Land Rights Act and other relevant legislation.
- Make recommendations with respect to any future role of the Aboriginal Land Commissioner.
- No later than 30 June 2023, provide to the Minister responsible for the *Aboriginal Land Rights (Northern Territory) Act 1976* a written report and recommendations.

Review Report – Contents

- Record the terms of reference for the review and processes by which stakeholders were engaged in the review.
- Identify the key sectoral stakeholders with an interest in the role of the Aboriginal Land Commissioner.
- List the groups, individuals and representative organisations consulted during the review, and the nature of their interest in role of the Aboriginal Land Commissioner.
- Summarise the views of key stakeholders regarding:
 - The future application of existing provisions of the Land Rights Act (and other legislation) that relate to the Aboriginal Land Commissioner.
 - Potential amendments to the Land Rights Act and other relevant legislation.
- Report on the opportunities and impacts associated with each of the above options.
- In response to the review findings, make recommendations regarding any future role of the Aboriginal Land Commissioner, including potential amendments to the Land Rights Act and other legislation.
- Attach and index any written submissions received in respect of the review.

(enclosed with letter dated 7 April 2022)