

The history of Aboriginal land rights in Australia (1800s–1980s)

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Aboriginal people have led a long struggle over land rights, one which continues today. The beginnings of this struggle began almost a century ago. In the time since, Aboriginal people have led public protests, brought about positive political action, set up a tent on the front lawn of Parliament, and caused positive law reform. This document presents an overview of Aboriginal land rights in Australia in a chronological order, broken up into significant events such as the Bark petition and the Strike at Wave Hill, and separate State-specific discussions.

Aboriginal links with land

For Aboriginal people, land has a value far beyond its economic potential, as Mr Galarrwuy Yunupingu, Chairman of the Northern Land Council, based in Darwin, expresses it:

For Aboriginal people there is literally no life without the land. The land is where our ancestors came from in the Dreamtime, and it is where we shall return. The land binds our fathers, ourselves and our children together. If we lose our land, we have literally lost our lives and spirits, and no amount of social welfare or compensation can ever make it up to us.

Many Australian writers have attempted to explain what land means to an Aboriginal person. One of the most eloquent was the late Professor W. E. H. Stanner, who wrote in *White Man Got No Dreaming* (1979, p. 230):

No English words are good enough to give a sense of the links between an Aboriginal group and its homelands. Our word "home", warm and suggestive though it be, does not match the Aboriginal word that may mean "camp", "hearth", "country", "everlasting home", "token place", "life source", "spirit centre", and much else all in one. Our word "land" is too spare and meagre...the Aboriginal would speak of "earth" and use the word in a richly symbolic way to mean his shoulder or his side. I have seen an Aboriginal embrace the earth he walked on. To put our words "home" and "land" together into "homeland" is a little better but not much. A different tradition leaves us tongueless and earless towards this other world of meaning and significance.

European colonisation

It has been widely assumed that Aboriginal people accepted colonialism without putting up a fight when, in fact, Aboriginal resistance went on for years and there were many casualties on both sides. However, in the end, Aboriginal spears were no match for muskets.



Aboriginal missions and reserves

The first land which colonial Australia set aside for Aboriginal people was in the form of grants to missionaries. In 1826, 40 km² of land south of Newcastle on the shores of Lake Macquarie was assigned to the trustees of the London Missionary Society for use as an Aboriginal mission.

The creation of large-scale reserves began late in the 19th century. Some Aboriginal people chose to live on the reserves for protection and access to a regular food supply, but many had been forcibly removed from their traditional country and made to live on the reserves.

In some cases, these reserves were hundreds of kilometres away from the traditional country of the Aboriginal people who lived on them. Aboriginal people are closely tied to their traditional country emotionally and spiritually, and such relocations have destructive effects on their lives.

Government officials saw the reserves as a means of separating Aboriginal people from the wider community. This served the government's purpose of teaching Aboriginal people to act and think like Europeans. Mission and reserve authorities also actively suppressed traditional group organisation and prohibited traditional Aboriginal religious ceremonies.

Since the turn of the century, reserve land has often been revoked or alienated and, in some instances, reserves have even been moved to new locations, often to meet the land needs of the expanding European population. These actions have not only been culturally insensitive, but also disruptive and damaging to the lives of Indigenous Australians.

Aboriginal protests

In the 1930s, Aboriginal people staged the first protests to bring the harsh treatment of Aboriginal people on reserves to the public's attention. During this time, the removal of Indigenous children from their parents was made public, and there were also calls for land rights. The following sections discuss the efforts by the Aboriginal people to have their rights acknowledged.

Bark petition

Aboriginal people at Yirrkala, situated on the Gove Peninsula in Arnhem Land, were some of the first to take positive political action over land rights.

In August 1963, Yirrkala residents presented a Bark petition to the Commonwealth House of Representatives. The text, in the Aboriginal language of Gumaitj, raised their objection at the decision to excise land from the Arnhem Land Reserves for bauxite mining. This excised land had economic and spiritual significance for the Aboriginal people and they were disturbed by the lack of prior consultation.

Parliament responded by establishing a parliamentary committee to inquire into the Yirrkala people's grievances. While the report of the committee did not recommend full land rights, it did recommend part-compensation (by way of land grants) for the Aboriginal people.

No immediate action was taken on the report. However, the Bark petition and the subsequent inquiry did bring the close and unique relationship Aboriginal people have with their land to the Australian public's attention, perhaps for the first time.

Strike at Wave Hill

In 1966, about 100 Gurindji people lived on the Wave Hill cattle station in the Northern Territory. This was their traditional country and they chose to live there rather than on other large cattle stations in the district.

In August of that year, Gurindji stockmen employed on the station went on strike. The initial cause was for award wages and to improve living conditions; however, their deeper aspiration was to reclaim their traditional country.

Attempts to get the stockmen to return to work were unsuccessful. Instead, the Gurindji established their own community at Wattie Creek, 35 km from the station homestead. In April 1967, they petitioned the governor-general to lease an area of about 1290 km² in the Wattie Creek vicinity so they could establish their own cattle property.

The governor-general rejected the petition on advice from the government and warned the Aboriginal people not to break the law in any way or to interfere with the rights of the pastoral lessee.

Almost 10 years later, in August 1975, a pastoral lease was finally granted to the Gurindji for 3280 km² of land that the Commonwealth had bought from the lessee of Wave Hill station. This land, known as Daguragu, was later the subject of a land claim under the *Aboriginal Land Rights (Northern Territory) Act 1976*, to convert the title from leasehold to freehold.

The claim was heard in 1981 and succeeded, except for a small portion of land in the south-west corner. In April 1983, the Minister for Aboriginal Affairs accepted the recommendation of the Aboriginal Land Commissioner to grant freehold title to most of Daguragu and some adjacent land as part of an Aboriginal Land Trust.

Land Trusts, land claims and land rights

This section covers the time period between 1966 and 1976. It is a chronological order of events, so sometimes references will be made to future events, which will be discussed later in the document.

South Australian Aboriginal Lands Trust

The first step by any Australian government to grant Aboriginal title to land was the creation of the Aboriginal Lands Trust of South Australia in 1966. The Lands Trust, established by an Act of the South Australian Parliament, holds freehold title to many former Aboriginal reserves in South Australia and leases the lands for 99 years to the Aboriginal communities traditionally associated with them. Membership of the Lands Trust is confined to people of Aboriginal descent. As of 30 June 1983, 4855 km² had been transferred to the Lands Trust.



Under the Act, the South Australian Government is required to pay to the Lands Trust, either in part or in full, amounts it receives in royalties for mining on land held by the Trust. To date there has been no mining on Trust-held land and so no mining royalties have been received.

The Gove case

The people of Yirrkala were the first Aboriginal people to bring a claim for recognition of Aboriginal land title to court. They lodged a writ with the Northern Territory Supreme Court in December 1968.

The action was revised and a fresh statement of claim was lodged in May 1969 and came to trial. In April 1971, Mr Justice Blackburn delivered his judgment that, under the Australian law as it then stood, Aboriginal people had no legal claims to land. This ruling meant that Australian state governments would need to pass legislation if Aboriginal people were to be granted such rights.

Victorian land rights

Victoria was the first state to grant communities freehold title to their own land. In 1970, the Victorian Parliament passed the Aboriginal Land Act, which granted freehold title to the residents of the Lake Tyers (Gippsland) and Framlingham (Western District) reserves.

Lake Tyers Aboriginal Trust and Framlingham Aboriginal Trust were established under the Act to hold title to former reserves. Membership of these Trusts is only open to people of Aboriginal descent who reside in the communities.

The Trusts are responsible for the control and management of the land and can only sell the land with the consent of all members.

Western Australian Aboriginal Lands Trust

In 1972, an Aboriginal Lands Trust was created in Western Australia. The Trust was given control over reserves and other land set aside for Aboriginal people. It is a statutory corporation consisting of Aboriginal people appointed by the State Minister for Aboriginal Affairs.

Nonetheless, title to reserve lands, which make up close to 8 per cent of Western Australia, still remains with the Crown and the Trust serves mainly as an advisory body, with some management functions.

Tent Embassy

To draw more attention to the land rights issue, a Tent Embassy was set up in January 1972 on the lawns in front of Parliament House, Canberra. At the same time, the Commonwealth Government announced that it would grant leases of reserved land in the Northern Territory to Aboriginal communities and would set aside \$5 million to buy land for communities outside reserves.

The Aboriginal Land Rights (NT) Act 1976

In December 1972, after the Federal election, the new Commonwealth Labor Government appointed Mr Justice Woodward to recommend how land rights could best be granted to Aboriginal people in the Northern Territory.

In the *Aboriginal Land Rights Commission Report 1974*, Mr Justice Woodward recommended legislation to restore traditional land to the Aboriginal people of the Northern Territory. Mr Justice Woodward's report was the basis of the Aboriginal Land (NT) Bill, which was introduced into the Commonwealth Parliament in October 1975. However, with the dissolution of Parliament in November 1975, the Bill lapsed.

Following the change of Government, a further Bill was introduced into the Commonwealth Parliament in June 1976 — the Aboriginal Land Rights (NT) Bill 1976. It was passed in December 1976 and was proclaimed on Australia Day, 1977. In spite of the previous initiatives taken by state governments, the *Aboriginal Land Rights (Northern Territory) Act 1976* is the first real land rights settlement because of the rights associated with it and the amount of land transferred. In summary, the Act provides for:

- the creation of Aboriginal Land Trusts to hold title to Aboriginal Land;
- the grant to Land Trusts of inalienable freehold title to all Northern Territory Aboriginal reserves, the Hermannsburg and Santa Teresa mission areas, and several small portions of vacant Crown land near Darwin (about 19 per cent of the Northern Territory);
- Aboriginal Land Councils to act as agents for traditional Aboriginal owners in land matters (currently the Central Land Council, Northern Land Council and Tiwi Land Council);
- an Aboriginal Land Commissioner to investigate and report on Aboriginal claims to both unalienated Crown land and alienated Crown land in which all the estates and interests are held by, or on behalf of, Aboriginal people. The claims are made on the basis of traditional ownership. To date, some 13 per cent of the Northern Territory has been granted as a result of successful claims, while another 13 per cent under claim is yet to be decided. Not all claims are successful;
- traditional Aboriginal owners to control mining and other activity on their land, except where the national interest requires mining or exploration to be undertaken;
- amounts based on the royalties received from mining operations on Aboriginal land to be paid into the Aboriginals Benefit Trust Account for disbursement as follows: 30 per cent to communities within the areas affected by mining, 40 per cent to the Land Councils, and up to 30 per cent to be available for the benefit of Aboriginal people throughout the Territory.

Land purchases

Mr Justice Woodward also recommended creating an Aboriginal Land Fund to buy land within Australia. The Aboriginal Land Fund Commission was founded in May 1975 (under a Commonwealth Act), which provided for annual funding

for this purpose. In July 1980, the Commission's functions were taken over by an Aboriginal Development Commission. Both bodies have served as an important arm of the Commonwealth in achieving land rights for Aboriginal people, with the purchase of pastoral and other properties throughout Australia.

Pitjantjatjara land

In 1975, the Pitjantjatjara people formed the Pitjantjatjara Council through the South Australian Government. Their major objective was to gain from the South Australian Lands Trust a separate title to the Pitjantjatjara lands in the northwest of the state.

The South Australian Government met with the Pitjantjatjara people extensively before passing the *Pitjantjatjara Land Rights Act 1981*. The Act vested in the Anangu Pitjantjatjaraku (a corporate body of all traditional land owners) freehold title over 100 000 km of land.

Land held by the Anangu Pitjantjatjaraku cannot be sold or resumed. This title is stronger than that held by the South Australian Aboriginal Lands Trust. The Act also provides control over access to the land and the payment of part-royalties to Anangu Pitjantjatjaraku. There has been no mining to date on these lands.

State-specific Aboriginal land rights cases

New South Wales

In 1978, the NSW Government established a Select Committee to report on Aboriginal land rights and on sacred and significant sites. The Committee travelled throughout the State and invited widespread community comment. The *NSW Aboriginal Land Rights Act 1983* created a three-tiered structure of local, regional and state Aboriginal Land Councils, which now hold inalienable freehold title to former reserve land — 109 km².

The Act also provided for payment of 7.5 per cent of the state land tax into a fund for the following 15 years. Half of the funds were set aside as capital for future years, with the balance meeting the administrative costs of the Land Councils and for current market value land purchases.

The Act did not meet Aboriginal expectations; however, it did contain features in advance of existing legislation, particularly regarding compensation for lost land.

Victoria

In March 1983, the Victorian Government introduced a Land Claims Bill to establish a Victorian Statutory Aboriginal Authority. This Authority was to have a role in land matters. However, compensation for lost land remained controversial and, in response to Aboriginal community pressure, the Bill was deferred until an Aboriginal Task Force had reported to the Victorian Government.



Tasmania

The previous Tasmanian Labor Government drafted a land rights bill which was under discussion by state and Commonwealth officials and representatives of state Aboriginal organisations. This ended with the change of government in Tasmania. Current state government policy is that to grant land rights would be unacceptable as it would treat Aboriginal people differently from other Tasmanians.

Western Australia

In mid-1983, the Western Australian Government announced an Aboriginal Land inquiry, headed by Mr Paul Seaman, QC. The inquiry received many submissions, held public hearings and consulted Aboriginal communities in remote parts of the state.

Other developments

In March 1984, the South Australian Parliament passed legislation to transfer freehold title of the Maralinga lands to Aboriginal traditional owners now resident at Yatala. The Act was based on the *Pitjantjatjara Land Rights Act*.

The South Australian Government has yet to proclaim the Act because of public concern over possible dangers of radioactivity from atomic tests in the 1960s. The Queensland Parliament also passed legislation in April 1984 to allow Aboriginal community councils on reserves to gain deeds of grant in trust. No councils have yet received such title.

Review by Mr Justice Toohey

A review of the provisions and operation of the land rights legislation for the Northern Territory was undertaken by the former Aboriginal Land Commissioner, Mr Justice Toohey, late in 1983. The review was in-line with a suggestion by Mr Justice Woodward that the legislation based on his recommendations should, because of its novelty and complexity, be reviewed at seven-year intervals.

In his report, Mr Justice Toohey concluded that the *Land Rights Act* had worked surprisingly well. However, he still identified areas where the operation of the Act could be improved. Among other things, Mr Justice Toohey recommended that:

- the Northern Territory Government pass legislation providing for community living areas on cattle stations and national parks
- Aboriginal people living in town camps be given greater security of title
- adequate provisions be established in the *Land Rights Act*, by way of undertakings, agreements, conditional grants and statutory powers, to make Aboriginal land available for public purposes where necessary, without affecting title to that land.

Approach to national land rights legislation

Consistent with Labor Policy, the Australian Government had moved to develop legislation which is consistent with the following principles:

- Aboriginal land to be held under inalienable freehold title
- protection of sacred sites
- Aboriginal control in relation to mining on Aboriginal land
- access to mining royalty equivalents
- compensation for lost land to be negotiated.

In October 1983, the Minister for Aboriginal Affairs formed an Aboriginal Steering Committee to advise him on proposed legislation. The Committee is representative of Aboriginal bodies and has met with various Aboriginal people. Model legislation was developed in 1985 when full consultation with state governments and other affected parties occurred before it going to Parliament.

Responding to the need for protection over sacred sites and objects, on 9 May 1984, the Government introduced an interim Protection Bill. This gave the Minister and the Australian Government powers where no State laws existed, or where existing legislation was not being used to provide protection of sites, objects and human remains desired by the Aboriginal community. The Act was passed on 15 June 1984.

Summary

During the first part of this century, governments believed it was sufficient to put aside or reserve land for Aboriginal people. Aboriginal people had little or no rights while living on this Crown land.

Recent governments have provided long-term leases to Aboriginal communities while retaining certain power to resume such land. The demand for greater security of title led to legislation which incorporates the concept of inalienable freehold title held by local Aboriginal corporate bodies.

Aboriginal people now hold varying title over about 10 per cent of Australia. Two-thirds of that land is freehold. Much of the remaining third represents reserve land which may, with possible State legislation in Western Australia, be vested with Aboriginal people as freehold.