

Appendix 1



Table 1: Possession rights and subsurface rights to land and seas under Land Rights Legislations Australia, 2006

| | Possession rights | Subsurface rights to land and seas | Rights to development inc. licensing and veto powers | Royalties and compensation |
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| <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i> | Land granted is freehold title (estate in fee simple) which is held by an Aboriginal Lands Trust. As a result of recent amendments, ¹ this land is now capable of being alienated. Persons may not enter or remain on Aboriginal land or the seas adjoining Aboriginal land without a permit (s70). This also applies to sacred sites (s69(1)). | The Act preserves Crown ownership of all minerals (s12(2)). The Northern Territory Legislative Assembly has the right to make laws regarding entry and fishing in waters adjoining and within 2km of Aboriginal land (s41(20(d))). As such, it has the power to close the seas to non-Aboriginal persons, protecting Indigenous fishing rights. ² | The grant of an exploration license (s40) or mining license (s46) requires the consent of both the relevant land council and the Minister. The land council must consult with the traditional Aboriginal owners of the land and other Aboriginal communities or groups must also receive an opportunity to express their views (s46(4)(b)). Landowners have the right to negotiate the terms and conditions of the agreement, however, arbitration is also available. The terms of any agreement must be reasonable (s46(4)(a)) and (s42(2)(a)). | An amount equivalent to the royalties received for mining on Aboriginal land is paid from the Commonwealth Consolidated Revenue Fund into the Aboriginals Benefit Account (ABA). 30% of this amount is directed to Land Councils to be used for council administrative costs, for the benefit of Aboriginals living in the Northern Territory, and for the distribution of royalties to traditional owners affected by mining activity (s35(2)(a)(b)). The remaining 70 % of the ABA is administered by the Commonwealth Government, |

1 *Aboriginal Land Rights (Northern Territory) Act 2006 (Cth)*.

2 LexisNexis, *Halsbury's Laws of Australia*, (at 21 February 2007) at [5-335].



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| <i>Aboriginal Land Rights (Northern Territory) Act 1976 (Cth)</i> (continued) | | | The Governor-General can override the landowners' decision to refuse a permit if it is "in the national interest" ³ . | including for funding of the 99 year lease scheme (s19A). (s44A) provides that direct payments can be made to traditional owners for disturbance of the land but not as compensation for the value of the minerals. |
| <i>Aboriginal Land Rights Act 1983</i> (NSW) | Title granted is freehold title (estate in fee simple) (s36(9)). The land granted must be Crown land that is not being used and is not needed (or likely to be needed) for a residential or public purpose. Uniquely, claimants do not need to establish a traditional connection with the land. | A grant of land includes "the transfer of the mineral resources or other natural resources contained in those lands" (s45(2)). This gives Aboriginal Land Councils the power to exploit mineral and other natural resources (s41b). However, the "prerogative rights and powers of the Crown with respect to gold mines and silver mines or ... coal and petroleum" remain intact (s45(11)). | Any dealings with the land must be done "in connection with the use, development and improvement of land" and for a community purpose (s38(4)). Mining operations must not occur without the consent of the relevant land council (s45(4)). This consent may be subject to conditions (including the payment of royalties or fees) (s45(4)). | An Aboriginal Land Council may consent to mining operations conditional on the payment of fees and/or royalties (s45(4)). These are payable to the NSWALC into a separate "Mining Royalties Account". 40% of these funds are paid to the NSWALC, with the remainder paid to the Local Aboriginal Land Council. |

3 Northern Land Council, *The Land Rights Act* available online at http://www.nlc.org.au/html/land_act_act.html, accessed 21 February 2007.

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| <i>Aboriginal Land Rights Act 1983</i> (NSW) (continued) | Title granted is subject to "any native title rights and interests existing in relation to the lands immediately before the transfer" (s36(9)). | | The Act provides for agreements or court orders to allow specified Aborigines to access the land for hunting, fishing and gathering (s47, s48). | The Act established a statutory fund comprising 7.5% of state land tax over the period 1983-1998. The interest from this \$538 million fund ⁴ is allocated to the Aboriginal Land Council system, but the capital base remains intact. This money is intended as compensation for land dispossession and the revocation of reserves. ⁵ |
| <i>Aboriginal Land Act 1997</i> (Qld) | Land granted is either inalienable freehold title (s30, s60(1)(a)), s66(a) or a perpetual or fixed term lease s60(1)(b), s64 and s66(b)). | Any grant of land must contain a reservation to the Crown in relation to all minerals and petroleum, both on and below the surface (s42). | Grantees may lease land, create a license over it, consent to the creation of a mining interest, grant an easement, surrender land to the Crown or enter into a conservation agreement (s39). A mining lease may only be granted over land with the written consent of the Governor in Council. ⁶ | Indigenous landowners are entitled to a percentage equivalent of royalties payable under the <i>Mineral Resources Act 1989</i> or the <i>Petroleum Act 1923</i> (s88). These should be used for Aboriginal benefit, particularly for those disadvantaged by mining on their land. |

4 At the end of the 2003/2004 financial year.

5 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2005*, Human Rights and Equal Opportunity Commission (HREOC), Sydney 2005, Chapter 1: Background the origin of land rights and barriers to economic development through native title, p26.

6 LexisNexis, *Halsbury's Laws of Australia*, (at 21 February 2007) at [5-385].



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| <p><i>Aboriginal Land Act 1997</i> (Qld)</p> | <p>Interests (such as mining interests) that existed prior to transfer continue to burden the land (s33).</p> | <p>Forestry and quarry rights will generally be retained by the grantees of the land (s43). This can be overridden by a Crown decision that the interests are vital to the State.</p> | <p>Rights to development inc. licensing and veto powers</p> | <p><i>The Mineral Resources Amendment Act 1990</i> (Qld) allows for compensation of Aboriginal social, economic and cultural interests. Compensation is no longer limited to the rectification of actual damage.</p> |
| <p><i>Torres Strait Islander Land Act 1997</i> (Qld)</p> | <p>Land granted is either inalienable freehold title (s28, s57(1)(a), s63(a) or a perpetual or fixed term lease s57(1)(b), s61 and s63(b)).</p> | <p>Any grant of land must contain a reservation to the Crown in relation to all minerals and petroleum, both on and below the surface (s39).</p> | <p>Grantees may lease land, create a license over it, consent to the creation of a mining interest, grant an easement, surrender land to the Crown or enter into a conservation agreement (s36). A mining lease may only be granted over land with the written consent of the Governor in Council.</p> | <p>Indigenous landowners are entitled to a percentage equivalent of royalties payable under the <i>Mineral Resources Act 1989</i> or the <i>Petroleum Act 1923</i> (s88). These should be used for Aboriginal benefit, particularly for those disadvantaged by mining on their land.</p> |

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| <p><i>Aboriginal Lands Trust Act 1966</i> (SA)</p> | <p>Possession rights</p> <p>Freehold title (or any other lesser estate or interest that had been vested in the Crown) can be granted (s16(1)).</p> <p>Dealings by the Trust do not extinguish or affect native title rights in land unless consent is received from the Minister and the native title holders (s16AAA).</p> | <p>Subsurface rights to land and seas</p> <p>Crown reservation exists over “all gold, silver, copper, tin and other minerals, ore, minerals and other substances containing metal and all gems and precious stones, coal and mineral oil in and upon any such lands” (s16(2)).</p> | <p>Rights to development inc. licensing and veto powers</p> <p>The <i>Mining Act 1971</i> (SA) and the <i>Petroleum Act 1940</i> (SA)⁷ shall not confer mining rights in respect of land vested in the Trust (s16(8)) unless the Governor makes a proclamation granting rights of “entry, prospecting, exploration or mining” that have been conferred by the above two Acts (s16(9)).</p> <p>The Minister must give proper consideration to the protection of “any Aboriginal sites or objects” when granting mining licenses (s30(2) of the <i>Mining Act</i>).</p> | <p>Royalties and compensation</p> <p>An amount up to (but not exceeding) the amount received in royalties from licenses must be paid to the appropriate Trust.</p> <p>The owner of land is entitled to compensation as to be agreed on between the parties, or by the appropriate court (s54, s61, <i>Mining Act</i>).</p> <p>Non monetary compensation is also available (s63ZA, <i>Mining Act</i>).</p> |
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7 This Act has been replaced by the *Petroleum Act 2000* (SA).



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| <p><i>Pitjantjatjara Land Rights Act</i> 1981 (SA)</p> | <p>Possession rights</p> <p>Title granted is inalienable freehold land (s15(1)). However title remains burdened with any pastoral leases that existed at the time of grant (s15(3)). All Anangu have unrestricted access to the land (s18). Anyone who enters the land without permission is guilty of an offence and is liable to pay a fine (s19).</p> | <p>Subsurface rights to land and seas</p> <p>The combined operation of the <i>Mining Act</i> (s16), the <i>Petroleum Act 2000</i> (SA) and the <i>Abariginal Lands Trust Act</i> provides that all minerals and petroleum are vested in the Crown.</p> | <p>Rights to development inc. licensing and veto powers</p> <p>Title holders may refuse a request for access the land (s19(5)) or to undertake mining (s20(6)). However, the applicant may seek independent arbitration in the Federal Court which can uphold or disallow a refusal to grant permission (s20(15)) considerations. Title holders are entitled to attach financial conditions to a grant of permission. (s24).</p> | <p>Royalties and compensation</p> <p>Royalties from mining interests are to be paid into a separate account (s22). Payments "must be reasonably proportioned to the disturbance to the lands, Anangu, and their ways-of-life" (s24(2)). Royalties are divided equally between the claimants, the Minister (for the purpose of Indigenous health) and the General Revenue of the State.</p> |
| <p><i>Maralinga Tjarutja Land Rights Act</i> 1984 (SA)</p> | <p>Freehold title is granted (estate in fee simple) (s13).</p> | <p>The combined operation of the <i>Mining Act</i> (s16), the <i>Petroleum Act 2000</i> (SA) and the <i>Abariginal Lands Trust Act</i> provides that all minerals and petroleum are vested in the Crown.</p> | | <p>Royalties from mining interests are to be paid into a separate account (s24). Payments "must be reasonably proportioned to the disturbance to the lands, the traditional owners, and their ways-of-life" (s26(2)). Payment must not exceed what would be payable under the <i>Mining Act</i> or the <i>Petroleum Act</i> (s26(3)).</p> |

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| <i>Land Act 1994 (Old)</i> | <p>Land is held by virtue of a Deed of Grant in Trust (DOGIT). Security of tenure is relatively weak; a DOGIT can be cancelled at any time; the land could revert to the Crown, or can be resumed for public purposes.</p> <p>Land below the high watermark remains the property of the State (s9).</p> | <p>Grant recipients may take forest products or quarry material for their own purposes, but are not permitted to benefit from them economically.</p> | <p>A DOGIT lease excludes improvements being made to state owned buildings or external infrastructure without Ministerial consent (s59). Residential leases also require Ministerial consent (s57).</p> <p>Each grant area is managed by a Local Government Council who is responsible for by-laws, appointing community police, housing, infrastructure, licenses and permits for hunting and camping.</p> | <p>If a lease is resumed while a community has a remaining lawful interest in the land, they may be eligible for compensation (s219).</p> |
| <i>Pastoral Land Act 1992 (NT)</i> | <p>The <i>Land Acquisition Act 1978</i> (NT) provides that freehold title is received (s46(1A)). However, lessees must pay rent (s38(1)(c)).</p> <p>Land rights granted must not be exercised within two kilometres of an established homestead.</p> | <p>The Crown maintains a reservation on all minerals and timber in or on the leased land (s38(1)(b) and s38(1)(k)).</p> | <p>The title granted is highly conditional and recipients have minimal control over the land.</p> | <p>Native title holders are entitled to compensation if their registered native title rights and interests have been infringed by a grant under this Act (s72C).</p> |





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| <i>Aboriginal Lands Act 1991 (Vic)</i> | Freehold title (estate in fee simple) is granted (s6). | No resource rights are obtained under this Act. Grants are conditional on being used for "Aboriginal cultural and burial purposes" (s6(5)). | | "No compensation is payable by the Crown in respect of anything done under or arising out of this Act." (s9). |
| <i>National Parks and Wildlife Act 1974 (NSW)</i> | Freehold title (estate in fee simple) is granted (s71P). This is then leased to the Minister and reserved for conservation purposes. Land management activities are subject to the operation of native title rights and interests (s71BI). | It is "unlawful to prospect or mine for minerals in a national park or historic site, except as expressly authorised by an Act of Parliament" (s41(1)). | | |
| <i>Land Administration Act 1997 (WA)</i> | Freehold title is granted to an Aboriginal person or (more commonly) an Aboriginal Corporation (s83). | Minerals in Crown land "are reserved to the Crown and remain so reserved after the Crown land is transferred in fee simple under this Act" (s24). | | Compensation can be claimed by native title holders when their rights and interests have been interfered with (s156). |

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| <i>Land Administration Act 1997</i> (WA) (continued) | | | | However, compensation is not payable for any underground work that has occurred (unless the surface is somehow affected) (s162). |
| <i>Aboriginal Affairs Planning Authority Act 1972</i> (WA) | A variety of titles are managed by Aboriginal Lands Trust (ALT), including reserves, freehold properties, pastoral leases and special purpose leases. The ALT has the capacity to issue or refuse permits to enter reserves (Part 3). | | No application for the grant of any interest, licence, right, title or estate (a) shall be refused without the prior consent of the Authority; (b) shall be processed except in consultation with the Authority; (c) shall be taken to be approved unless the approval of the Authority . . . is referred to in the document evidencing the grant (s30). However, applications concerning mining and minerals are specifically excluded from these provisions. | |



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| <i>Aboriginal Lands Act 1995 (Tas)</i> | Land is held in perpetuity by the Aboriginal Land Council of Tasmania on trust for Aboriginal persons (s27). There exists a Crown reservation for the upkeep of drains, sewers and waterways (s27(4)) as well as a limited reservation concerning public access to some parcels of granted land. | The land granted "is vested to a depth of 50 metres and includes minerals other than oil, atomic substances, and geothermal substances . . . and helium" (s27). The Council is to have regard to the interests of local Aboriginal communities when managing the land (s18(3)). | The <i>Mineral Resources Development Act 1995 (Tas)</i> provides that the Minister cannot grant a lease or license on Aboriginal land without the agreement of the Aboriginal Land Council of Tasmania (s179). | |
| <i>Aboriginal Lands Act 1970 (Vic)</i> | Freehold title is granted (s9). Recipients also receive a perpetual license to occupy and use the land. | "No special provision is made for exploration or mining on <i>Aboriginal Lands Act land</i> ". ⁸ | No person may enter onto land in respect of which a licence is granted under the Act (s9). | |

8 LexisNexis, *Halsbury's Laws of Australia*, (at 21 February 2007) at [5-948].