



Australian Government



Community Living Area Land Reform in the Northern Territory

Discussion Paper

Introduction

The Australian Government has made a 10-year commitment to work with Aboriginal people in the Northern Territory (NT) to build strong, independent lives where communities, families and children are safe and healthy. Stronger Futures in the NT is a new \$3.4 billion investment and responds directly to what Aboriginal people told us is most important.

One of the things Aboriginal people told us is important is to reduce barriers to economic development. One of the ways the Australian Government is helping with this is by continuing land reform for Community Living Areas (CLAs). The Australian Government is committed to reforming land tenure arrangements for community-titled Indigenous held land across Australia, including providing land owners with the opportunity to voluntarily develop and consider options for home ownership and economic development.

Rules on how CLA land can be used mean that currently, CLA land owners have less opportunity to use their land than other Aboriginal communities in the NT. For example, they cannot use the land for economic development and some types of government investment. The Australian Government wants to work in partnership with CLA land owners, community members, the NT Government, the NT Land Councils, the NT Cattlemen's Association and other relevant and interested stakeholders to achieve comprehensive and sustainable reforms for CLA land.

Under Stronger Futures in the NT, key policy objectives include ensuring that:

- CLA land owners have the same opportunities to manage their land as other remote Indigenous communities in the NT, and
- that CLA land owners can access similar support and assistance to that which Aboriginal land owners have under the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA).

The CLA land reforms will aim to provide a better environment for service delivery and government investment in infrastructure. For example, enabling commercial leasing on CLA land so that it is possible to upgrade stores in CLA communities already marked for investment through the Aboriginals Benefit Account Community Stores Infrastructure Project.¹

¹ Ctrl + Click here for further information on the Aboriginals Benefit Account Community Stores Infrastructure Project at the Department of Families, Housing, Community Services and Indigenous Affairs web site.

The Australian Government demonstrated its commitment to implementing CLA reform in the Stronger Futures legislation. The Government envisages a possible staged reform process. This could include immediate reforms to address short term priorities for CLA communities, and longer term reforms that are likely to require more extensive consultation, consideration and development before they can be implemented.

The scope of these reforms is designed to drive increased options for land owners and greater certainty in land dealings for the existing CLA estate. The focus of the reforms is not on the current claim and grant processes for CLA land. Previous Australian and NT Government agreements have included improvements to the claim and grant process.

Background

There are more than 100 Aboriginal communities on CLA land in the NT. A CLA is a small portion of land granted out of a pastoral lease as conditional freehold to an Aboriginal community or family for residential purposes, where Aboriginal people did not benefit from land granted under the ALRA. CLAs have been created, granted and/or converted in several ways through NT legislation (see **Appendix A**).² The legislative and administrative framework which currently applies to CLA land has contributed to uncertainty for CLA land owners in dealing with their land, particularly for commercial development and the provision of key government services. This situation is unsustainable, particularly for larger CLA communities.

Due to the long standing and landmark ALRA and the Stronger Futures legislation³, the Australian Government is uniquely placed in the NT to assist land owners and stakeholders to advance CLA land reform. NT Land Councils are Commonwealth statutory authorities under the ALRA.

The Stronger Futures legislation allows the Australian Government to remove restrictions and impediments in NT legislation that currently affect the ability of CLA land owners to use their land. The Australian Government recognises the key role of the NT Government in CLA reform. The Stronger Futures legislation does not prevent NT legislative amendments, and can complement any NT improvements to CLA title.

² For further background information on CLAs see **submission no 361** from the Northern Land Council and **submission no 347** from the Central Land Council to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills. [Ctrl + Click here for a complete list of submissions at the Parliament of Australia web site.](#)

³ Legislation relevant to CLA reform within the Stronger Futures legislation package includes the *Stronger Futures in the Northern Territory Act 2012* and the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

[Ctrl + Click here for the Stronger Futures in the Northern Territory Bill 2012 web page at the Parliament of Australia web site.](#)

[Ctrl + Click here for the Stronger Futures in the Northern Territory \(Consequential and Transitional Provisions\) Bill 2011 web page at the Parliament of Australia web site.](#)

In addition, the Stronger Futures legislation included provisions that amended the ALRA, to allow CLA land owners to request assistance from the relevant Land Council in relation to dealings in their land. This is in recognition of the considerable support Land Councils have provided to CLAs in the past. This means that CLA associations and corporations have the necessary administrative and legal support to deal effectively with their land. Relevant excerpts from the Stronger Futures legislation can be found at **Appendix B**.

If legislative reforms are undertaken through the Stronger Futures legislation, it is a requirement that before making regulations for CLAs, the Federal Minister for Indigenous Affairs must consult with the NT Government, CLA land owners (on request from the relevant land owners), the relevant land councils, and anyone else the Federal Minister for Indigenous Affairs considers appropriate to consult. As CLA land is within pastoral leases and the reforms need to be compatible with the surrounding pastoral operations, the Australian Government will also consult with the NT Cattlemen's Association.

The consultation process

In line with the Government's commitment to meaningful engagement in association with Stronger Futures in the NT, all reforms will be subject to consultation to ensure strong local involvement.

The release of this discussion paper marks the start of consultation around CLA land reform by the Australian Government. The purpose of the paper is to encourage discussions, through written feedback and in-community meetings in the NT. The Australian Government would like to hear the views of CLA land owners, community members and stakeholders on issues in dealing with CLA land and how it should be used in the future to benefit CLA communities.

Australian Government officials will be visiting selected CLA communities to talk about these reforms. Advance notice of the date and time of these meetings will be provided to each community and, where possible, any nearby CLA communities.

Points of views and recommendations from discussions and written feedback will inform the Australian Government's work on any immediate reforms as well as proposed models for longer term reform. A summary will be presented in an outcomes paper that the Australian Government will release publically. Any draft regulations developed as a result of initial consultations on CLA land reform will be included for comment in the outcomes paper and will be subject to further consultations with CLA land owners and stakeholders before finalisation. In finalising the regulations the Australian Government will demonstrate that it has taken into account the views of the stakeholders, particularly the CLA land owners.

Issues relevant to CLA land reform

This discussion paper is deliberately broad and brief. The Australian Government's intention is to encourage discussion not to pre-empt models for reform. Below is an outline of some of the issues and ideas that the Australian Government sees as relevant to CLA reform.

The Australian Government would like land owners and stakeholders to consider the following issues as part of discussions on CLA land reform and provide feedback.

Allowing for voluntary lease negotiations

- At a minimum, restrictions in NT legislation that prevent commercial leasing and leasing for certain public infrastructure and services (see **Appendix A**) should be addressed as soon as possible to enable CLA land owners to have the opportunity to enter into voluntary negotiations for long term leases and licences.
 - This could include ensuring that CLA land title can allow for individual leases for economic development or for private home ownership for interested community members.
- The Australian Government notes the option under the ALRA for CLA land owners to voluntarily lease CLA land to the Executive Director of Township Leasing, which is a Commonwealth statutory office with a measure of independence.

Where needed, give more support to CLA land owning associations and corporations

- Where possible, assistance could be provided to resurrect CLA land owning associations and corporations that are non-operational or make suitable alternative arrangements.
- Look at lessening the burden of administrative requirements for entities that do not engage in any other activities beyond holding a CLA land title.
- When requested by land owners, the provision of legal and administrative support by Land Councils to CLA land owning associations and corporations in land dealings should be formalised, in line with the Stronger Futures legislation.

Ensure the right processes are in place for land dealings

- Look at what are the appropriate "checks and balances" in land dealings, for example:
 - What lease period threshold, if any, would trigger the need for NT Ministerial approval?
 - What development consent permissions are appropriate under the NT Planning Scheme?

Allow for sustainable models for CLA land

- Models for longer term reform should strive to provide CLA land owners with similar opportunities to deal with their land as other Aboriginal land holding entities in the NT, such as Aboriginal Land Trusts under the ALRA.
- Models for longer term reform should be flexible to take into account variations between smaller and larger CLA communities.
- Look at the sustainability of the current form of CLA land title being held by associations or corporations.

Models for longer term reform will be informed by the views of CLA land owners and community members in the first instance.

Questions for general discussion

- How do you think community living area land could be better used?
- What problems have you encountered because of community living area land title?
- What are the most important changes to make?
- Are there other issues about CLA land that we have not listed in this paper that people need to think about?

The Australian Government also encourages discussion of issues raised within submissions to the Senate Community Affairs Inquiry into Stronger Futures legislation package, in particular the submissions from the Northern Land Council and Central Land Council.⁴

Submissions

The Australian Government invites **written feedback** to this discussion paper by **12 April 2013**. It is intended that written feedback will also inform discussions at in-community meetings.

⁴ See **submission no 361** from the Northern Land Council and **submission no 347** from the Central Land Council to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills. [Ctrl + Click here for a complete list of submissions at the Parliament of Australia web site.](#)

Feedback can be submitted by post:

Land and Economic Development Branch

Department of Families, Housing, Community Services and Indigenous Affairs

PO Box 7576

Canberra Business Centre

ACT 2610

By email:

CLAlandreform@fahcsia.gov.au

Or in person:

To your local Government Engagement Coordinator or Indigenous Engagement Officer.

This discussion paper is available on the FaHCSIA website at

www.fahcsia.gov.au/strongerfutures

All written feedback will be made public at this web address.

What happens next?

The Australian Government will summarise the views provided in the submissions on this discussion paper and the in-community meeting discussions in an outcomes paper for public release. The outcomes paper will contain proposed reforms, including proposed specific immediate reforms and options for longer term reforms.

The Australian Government will then hold a second stage of consultations on the proposed longer term reforms.

Summary of NT CLA related legislation⁵

The summary provided below covers the more substantive provisions relating to CLAs and is not a comprehensive analysis of all NT legislation relevant to CLAs.

Associations Act (NT)

Subsection 110(1) of the Act provides, among other things, that an association incorporated under the Act cannot enter into a lease for a term of more than 12 months over prescribed property, including CLA land, without the consent of the relevant NT Minister.

Subsection 110(6) provides that the NT Minister can only give consent under section 110(1) for limited purposes in relation to CLA land. In relation to leases, subsection 110(6)(d) provides that the Minister can only give consent if the lease's permitted use relates to the provision of health, education or housing services or is to enable an ADI (authorised deposit taking institution) or the Territory Insurance Office to offer financial services. Services provided under the permitted use must be to a class of persons that includes members of the incorporated association seeking to grant the lease.

Similarly, subsection 110(8) provides the same leasing restrictions in relation to CLA landowners that are Aboriginal Corporations with the additional restriction that leases less than 12 months also require Ministerial consent.

Miscellaneous Acts Amendment (Aboriginal Community Living Area) Act (NT)

This Act is largely legislation that provides amendments in relation to CLAs to primary legislation that is otherwise covered in this section. The exception is section 16 of the Act which provides a process by which owners of certain freehold and leasehold interests may apply to the Minister to have these interests converted to CLA freehold.

Lands Acquisition Act (NT)

Section 46(1A) of the *Lands Acquisition Act* (NT) provides for a CLA to be created by notice of acquisition following the process outlined in Part 8 of the *Pastoral Land Act* (NT) as an Aboriginal CLA. Section 20 of the *Crown Lands Act* (NT) refers to this as a grant of an estate in fee simple to an association for the purposes of an Aboriginal CLA.

⁵ For further information on the NT legislative framework as it applies to CLAs see **submission no 361** from the Northern Land Council and **submission no 347** from the Central Land Council to the Senate Community Affairs Committee Inquiry into the Stronger Futures in the Northern Territory Bill 2011 and two related bills. [Ctrl + Click here for a complete list of submissions at the Parliament of Australia web site.](#)

Pastoral Land Act (NT)

Part 8 of the *Pastoral Land Act* provides for the process regarding the application, formation of association and acquisition of land for a CLA and the resumption of abandoned Aboriginal CLAs.

Section 114 provides for the resumption of CLA land deemed to be abandoned. Subsection 114(1) defines “abandoned” in relation to a CLA to mean where neither the applicant nor any of the Aboriginal people for whose benefit the grant of land was made, or any of the members from time to time of the association to which the land was granted, have occupied the land as their principal place of residence during the previous 5 years. Where land is deemed to be abandoned, the lessee of an adjacent pastoral lease may apply to the Minister to have the land comprising the abandoned CLA incorporated in his or her lease.

Planning Act (NT) and NT Planning Scheme

Part 6, Section 12.1 of the NT Planning Scheme, provided for under Part 2 of the *Planning Act*, specifies that CLA land may be used or developed without consent for purposes necessary for, or ancillary to, “community life”. Purposes related to community life are specified under Section 12.1 to include community centres, dwellings, plant nurseries, child care centres, places of worship, shops, hospitals, medical clinics, offices, veterinary clinics, education establishments, the keeping of poultry and the growing of crops, fruits, vegetables, pasture and the like.

However, the scheme specifies that the land is not to be used or developed for any other purpose without consent. Expressly included in this category is the keeping of livestock. As such, the undertaking of any commercial or economic activity or development not related to those activities listed as necessary for community life would also be prohibited without consent.

This is an extract from the *Stronger Futures in the Northern Territory Act 2012*.

An electronic version of this Act is available in ComLaw

<http://www.comlaw.gov.au/Details/C2012A00100/Download>



Stronger Futures in the Northern Territory Act 2012

No. 100, 2012

**An Act to build stronger futures for Aboriginal people in the
Northern Territory, and for related purposes**

Part 3—Land reform

Division 1—Introduction

32 Guide to this Part

This Part contains measures relating to town camps and community living areas in the Northern Territory. Those measures are aimed at facilitating the granting of rights and interests, and promoting economic development, in those camps and areas.

Division 2 deals with town camps. It allows regulations to be made to modify particular laws of the Northern Territory to the extent that those laws apply to a town camp. It also allows regulations to be made to modify the NT Crown Lands Act and the NT Special Purposes Leases Act, and leases granted under that Act, in particular ways.

Division 3 deals with community living areas. It allows regulations to be made to modify particular laws of the Northern Territory to the extent that those laws apply to a community living area.

33 Object of this Part

The object of this Part is to enable special measures to be taken:

- (a) to facilitate the granting of individual rights or interests in relation to land in town camps and community living areas; and
- (b) to promote economic development in town camps and community living areas.

Division 3—Community living areas

35 Modifying NT laws in relation to community living areas

- (1) The regulations may modify any law of the Northern Territory relating to:
 - (a) the use of land; or
 - (b) dealings in land; or
 - (c) planning; or
 - (d) infrastructure; or
 - (e) any matter prescribed by the regulations;to the extent that the law applies to a community living area.
- (2) A **community living area** is an area granted or created as an Aboriginal community living area by or under a law of the Northern Territory.

Example: Land granted under subsection 46(1A) of the *Lands Acquisition Act* of the Northern Territory is a community living area.
- (3) If regulations made for the purposes of subsection (1) modify a law of the Northern Territory (the **relevant law**), then:
 - (a) immediately on the commencement of those regulations, the relevant law is taken to be modified accordingly; and
 - (b) after the commencement of those regulations, the relevant law, as modified, applies in the same way as it would apply if, instead of those regulations, a law of the Northern Territory had made those modifications; and
 - (c) after the commencement of those regulations, the relevant law may be further modified by a law of the Northern Territory or by regulations under subsection (1), in the same way as it could be further modified if, instead of those regulations, a law of the Northern Territory had made those modifications.
- (4) Before making regulations for the purposes of subsection (1) in relation to a community living area, the Minister must consult with:
 - (a) the Government of the Northern Territory; and
 - (b) if the owner of the land that is the community living area requests to be consulted about the making of regulations for the purposes of subsection (1)—the owner; and
 - (c) the Land Council (within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976*) in whose area the community living area is located; and
 - (d) any other person the Minister considers appropriate to consult.
- (5) A failure to comply with subsection (4) does not affect the validity of the regulations.

This is an extract from the *Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012*.

An electronic version of this Act is available in ComLaw
<http://www.comlaw.gov.au/Details/C2012A00101/Download>



Stronger Futures in the Northern Territory (Consequential and Transitional Provisions) Act 2012

No. 101, 2012

An Act to amend laws, and deal with transitional matters, in connection with the *Stronger Futures in the Northern Territory Act 2012*, and for related purposes

Schedule 2—Amendment of the Aboriginal Land Rights (Northern Territory) Act 1976

Aboriginal Land Rights (Northern Territory) Act 1976

1 Subsection 3(1)

Insert:

community living area has the same meaning as in the *Stronger Futures in the Northern Territory Act 2012*.

2 Subsection 20CA(5) (definition of *community living area*)

Repeal the definition (including the note).

3 Part IIB

Repeal the Part.

4 After paragraph 23(1)(ea)

Insert:

(eb) for land that is a community living area and in the area of the Land Council—to assist the owner of the land, if requested to do so, in relation to any dealings in the land (including assistance in negotiating leases of, or other grants of interests in, the land); and

5 Paragraphs 23(1)(fb), (fc) and (fd)

Repeal the paragraphs.

6 Subsection 33B(1)

Repeal the subsection.

7 Subsection 33B(3)

Omit “subsection (1) or (2)”, substitute “subsection (2)”.

8 Subsection 35(4)