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# ABORIGINAL LAND ORDINANCE 1978

No. 106 of 1978

An Ordinance to provide for access to Aboriginal land  
and the seas adjacent thereto

[Assented to 9 November 1978]

**B**E it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

## PART I—PRELIMINARY

- |              |   |
|--------------|---|
| Short title  | 1. This Ordinance may be cited as the <i>Aboriginal Land Ordinance 1978</i> .   |
| Commencement | 2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the <i>Gazette</i> .*   |
| Definitions  | <p>3. In this Ordinance, unless the contrary intention appears—</p> <p>“Aboriginal” means a person who is a member of the Aboriginal race of Australia;</p> <p>“Aboriginal land” has the same meaning as in the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>;</p> <p>“Aboriginal tradition” has the same meaning as in the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>;</p> <p>“Aboriginal Land Commissioner” means the Aboriginal Land Commissioner established by the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>;</p> <p>“closed seas” means seas closed by notice published in the <i>Gazette</i> under section 12;</p> <p>“Land Council” means an Aboriginal Land Council established by or under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>;</p> <p>“Land Trust” means an Aboriginal Land Trust established under the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>;</p> <p>“traditional Aboriginal owners” has the same meaning as in the <i>Aboriginal Land Rights (Northern Territory) Act 1976</i>.</p> |

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\*The date fixed was 1 February 1979 (see *Northern Territory Government Gazette* No. G4 of 26 January 1979, page 18).

PART II—ENTRY ONTO ABORIGINAL LAND

4.(1) Subject to this Part, a person shall not enter onto or remain on Aboriginal land unless he has been issued with a permit to do so in accordance with this Part. Entry onto, &c., Aboriginal land

Penalty: 1,000 dollars.

(2) An Aboriginal who is entitled by Aboriginal tradition to enter onto an area of Aboriginal land may enter onto that area of Aboriginal land.

(3) An Aboriginal who is entitled by Aboriginal tradition to remain on an area of Aboriginal land may remain on that area of Aboriginal land.

5.(1) The Land Council for the area in which Aboriginal land is situated may issue a permit to a person to enter onto and remain on that Aboriginal land subject to such conditions as the Land Council thinks fit. Issue of permits

(2) The traditional Aboriginal owners of an area of Aboriginal land may issue a permit to a person to enter onto and remain on that Aboriginal land subject to such conditions as the traditional Aboriginal owners think fit.

(3) A permit to enter onto and remain on Aboriginal land shall be in writing.

(4) A Land Council, or the traditional Aboriginal owners, may delegate all or part of its or their authority to issue permits under this section and such delegation may be made upon such conditions as the Land Council, or the traditional Aboriginal owners, as the case may be, think fit.

(5) A Land Council may revoke a permit issued by it, under its authority, by the traditional Aboriginal owners or under the authority of the traditional Aboriginal owners over Aboriginal land which is within the area for which it is established.

(6) The traditional Aboriginal owners of an area of Aboriginal land may revoke a permit issued by them, under their authority, by a Land Council or under the authority of a Land Council, where the permit relates to the area of Aboriginal land of which those Aboriginals are traditional Aboriginal owners.

(7) A Land Council shall, before commencing to issue permits for an area of Aboriginal land, consult with and come to an agreement with the traditional Aboriginal owners of the area as to the terms and conditions upon which the Land Council may issue permits or delegate its authority to issue permits.

(8) Notwithstanding the provisions of section 4, the Aboriginal Land Council for the area in which an area of Aboriginal land is situated or the traditional Aboriginal owners of an area of Aboriginal land may, by notice published in a newspaper or broadcast over a radio station, waive the requirement for a permit to enter the Aboriginal land specified by the Land Council or the traditional Aboriginal owners in the notice for the period or periods specified in that notice and the requirements of section 4 shall not apply over that area for that period or those periods.

The Minister  
may issue permits  
to government  
employees on  
certain conditions

6.(1) Where a person who is employed under or by virtue of an Act or Ordinance has a need, in the performance of his duties, to enter upon and remain on Aboriginal land, the Minister may issue a permit which will, subject to any law in force in the Territory, authorize the person to whom it is issued to enter and remain on Aboriginal land subject to the conditions set out in the permit.

(2) A permit issued under sub-section (1)—

- (a) shall be in writing and shall contain the name, the signature and an identification photograph of the person to whom the permit is issued;
- (b) shall specify the area of Aboriginal land that the person to whom the permit is issued is permitted to enter and remain on;
- (c) shall specify that the permit is issued to allow the person to whom it is issued to enter and remain on Aboriginal land in the course of his duty only; and
- (d) may contain conditions and restrictions subject to which the permit is issued.

(3) A permit issued under sub-section (1) may be revoked by the Minister upon the request of the relevant Land Council.

Members of  
Parliament,  
&c., may enter,  
&c., Aboriginal  
land

7. Subject to this Part—

- (a) the Administrator, or an Acting Administrator, acting in the course of his duty;
  - (b) a member of the Legislative Assembly engaged on the business of the Assembly;
  - (c) a member of either House of the Commonwealth Parliament engaged on the business of the Parliament;
  - (d) a candidate for election as a Senator for the Northern Territory or as a member of the House of Representatives for a Northern Territory electorate; and
  - (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his campaign,
- may enter and remain on Aboriginal land.

**8.(1)** Nothing contained in this Part authorizes the entry of a person to a dwelling without the permission of the owner or the occupant. Entry of dwellings

(2) For the purposes of this section “dwelling” includes the living area of a camp occupied by or belonging to an Aboriginal.

**9.** It shall be a defence to a charge under section 4(1) if the person charged proves that— Defence in certain circumstances

- (a) the entry onto Aboriginal land was due to necessity, or beyond his control;
- (b) it was impractical, in the circumstances, to apply for a permit; and
- (c) he removed himself from the Aboriginal land as soon as it was practicable in the circumstances.

**10.** Where a person other than a Land Trust has an estate or interest in an area of Aboriginal land, this Part shall not authorize an entry or remaining on that area of Aboriginal land of a person if his presence on that area of land would interfere with the use or enjoyment of that estate or interest by the owner of the estate or interest. Estates or interests on Aboriginal land protected

**11.(1)** The Administrator may, on the recommendation of a Land Council, declare by notice in the *Gazette*, an area of Aboriginal land to be an open area. Open areas

(2) Where a declaration is made under sub-section (1), a person may enter and remain on the area of Aboriginal land described in the notice without obtaining a permit.

### PART III—CONTROL OF ENTRY ONTO SEAS ADJOINING ABORIGINAL LAND

**12.(1)** The Administrator may, by notice in the *Gazette*, close the seas adjoining and within 2 kilometres of Aboriginal land to any persons or classes of person, of for any purpose other than to Aboriginals who are entitled by Aboriginal tradition to enter and use those seas and who enter and use those seas in accordance with Aboriginal tradition. Administrator may close seas

(2) The notice in the *Gazette* referred to in sub-section (1) shall specify—

- (a) the area closed by the notice by description of the boundaries and by a diagram showing the approximate position of the boundaries;
- (b) the persons or classes of persons to whom the area is closed; and
- (c) the purpose for which the area of the sea is closed.

(3) The Administrator may, before deciding to close a part of the seas in accordance with this section, and in the event of the Administrator not being prepared to close an area of seas within 56 days of the matter being referred to it, the Administrator shall refer the matter of the closure to the Aboriginal Land Commissioner and request that the Aboriginal Land Commissioner inquire into and report on—

- (a) whether in accordance with Aboriginal tradition, strangers were restricted in their right to enter those seas;
- (b) whether the use of those seas by strangers, interfering with or may interfere with the use of those seas in accordance with Aboriginal tradition by the Aboriginals who have traditionally used those seas;
- (c) whether the use of those seas by strangers is interfering with or may interfere with the use of the adjoining Aboriginal lands by the traditional Aboriginal owners;
- (d) whether any person would be disadvantaged if the seas were closed to him;
- (e) the commercial, environmental and recreational interests of the public; and
- (f) such other matters as the Aboriginal Land Commissioner considers relevant to the closure of those seas.

(4) The Aboriginal Land Commissioner shall report to the Administrator.

Administrator  
may re-open  
closed seas

13.(1) The Administrator may, by notice in the *Gazette*, revoke or vary a notice made under section 12 so as to open the whole or part of an area of closed seas.

(2) Before a notice under sub-section (1) is published the Administrator shall refer the matter of the revocation or variation of the previous notice to the Aboriginal Land Commissioner.

(3) The Aboriginal Land Commissioner may, if he considers that the circumstances require, inquire into and report on the change in circumstances which would justify the revocation or variation of the previous notice.

(4) The Aboriginal Land Commissioner shall, in deciding whether to conduct an inquiry under sub-section (3), have regard to the consent or otherwise of the Land Council and the traditional Aboriginal owners of the land adjoining the seas affected by the intended notice.

Entry onto,  
&c., closed  
seas

14.(1) Subject to this Part, a person shall not enter onto or remain on closed seas unless he has been issued with a permit to do so, in accordance with this Part.

Penalty: 1,000 dollars.

(2) An Aboriginal who is entitled by Aboriginal tradition to enter and use the seas adjoining an area of Aboriginal land may enter and use the resources of the seas adjoining and within 2 kilometres of that area of Aboriginal land notwithstanding that a notice published under section 12 affects those seas.

15.(1) The Land Council for the area in which closed seas are situated may issue a permit to a person to enter onto and remain on those seas subject to such conditions as the Land Council thinks fit.

Issue of permits

(2) The traditional Aboriginal owners of an area of Aboriginal land adjoining closed seas may issue a permit to a person to enter onto and remain on that area of closed seas subject to such conditions as the traditional Aboriginal owners think fit.

(3) A permit to enter onto and remain on closed seas shall be in writing.

(4) A Land Council or the traditional Aboriginal owners may delegate all or part of its or their authority to issue permits under this section and such delegations may be made upon such conditions as the Land Council or the traditional Aboriginal owners, as the case may be, think fit.

(5) A Land Council may revoke a permit issued by it, under its authority, by the traditional Aboriginal owners or under the authority of the traditional Aboriginal owners over seas closed by notice under section 12 which is within the area for which it is established.

(6) The traditional Aboriginal owners of an area of Aboriginal land may revoke a permit issued by them under this section, under their authority, by a Land Council or under the authority of a Land Council, where the permit relates to an area of closed seas which is adjacent to Aboriginal land of which those Aboriginals are the traditional Aboriginal owners.

(7) A Land Council shall, before commencing to issue permits for an area of Aboriginal land, consult with and come to an agreement with the traditional Aboriginal owners of the area as to the terms and conditions upon which the Land Council may issue permits or delegate its authority to issue permits.

(8) Notwithstanding the provisions of section 14, the Aboriginal Land Council for the area in which an area of seas closed under section 12 is situated or the traditional Aboriginal owners of an area of adjacent Aboriginal land may, by notice published in a newspaper or broadcast over a radio station, waive the requirement for a permit to enter the closed seas specified by the Land Council or the traditional Aboriginal owners in the notice for the period or periods specified in that notice and the requirements of section 14 shall not apply over that area for that period or those periods.

The Minister may issue permits to government employees on certain conditions

**16.(1)** Where a person who is employed under or by virtue of an Act or Ordinance has a need in the performance of his duties to enter upon and remain on closed seas, the Minister may issue a permit which will, subject to any law in force in the Territory, authorize the person to whom it is issued to enter and remain on Aboriginal land subject to the conditions set out in the permit.

(2) A permit issued under sub-section (1)—

- (a) shall be in writing and shall contain the name, the signature and an identification photograph of the person to whom the permit is issued;
- (b) shall specify the area of closed seas that the person to whom the permit is issued is permitted to enter and remain on;
- (c) shall specify that the permit is issued to allow the person to whom it is issued to enter and remain on closed seas in the course of his duty only; and
- (d) may contain conditions and restrictions subject to which the permit is issued.

(3) A permit issued under sub-section (1) may be revoked by the Minister upon the request of the relevant Land Council.

Members of Parliament, &c., may enter, &c., closed seas

**17.** Subject to this Part—

- (a) the Administrator or an Acting Administrator acting in the course of his duty;
- (b) a member of the Legislative Assembly engaged on the business of the Assembly;
- (c) a member of either House of the Commonwealth Parliament engaged on the business of the Parliament;
- (d) a candidate for election as a Senator for the Northern Territory or as a member of the House of Representatives for a Northern Territory electorate; or
- (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his campaign, may enter and remain on closed seas.

Permit to be granted to protect existing rights

**18.(1)** Where a holder of a licence issued under section 15 of the *Fisheries Ordinance* held that licence prior to the publication of a notice under section 12, he or an employee of his who holds a licence under section 17 of the *Fisheries Ordinance* may enter and fish the area of closed seas referred to in the notice under section 12.

(2) Before entering and fishing any closed seas under sub-section (1) a person shall notify the Land Council for the area in which the closed seas are situated.

19. It shall be a defence to a charge under section 14(1) if the person charged proves that—

Defence in certain circumstances

- (a) the entry onto closed seas was due to necessity, or beyond his control;
- (b) it was impractical, in the circumstances, to apply for a permit; and
- (c) he removed himself from the closed seas as soon as it was practicable in the circumstances.

20. Nothing in this Part shall prevent the *bona fide* transit of a vessel through seas which are otherwise open to that vessel.

Seas open to transit vessels

#### PART IV—OFFENCES

21.(1) No complaint for an offence against section 4 or section 14 shall be heard unless the hearing of the complaint is supported by a notice in writing given by the Land Council established for the area in which the alleged offence took place.

No prosecution except on authority of Land Council

(2) A land Council may authorize a person to sign a notice under sub-section (1) and a statement by the person signing a notice under sub-section (1) that he is so authorized shall be *prima facie* evidence of his authorization.

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