

Note

This Act has been modified by section 74AA of the Aboriginal Land Rights (Northern Territory) Act 1976 (Cth).

See <https://www.legislation.gov.au/Details/C2016C00111>

NORTHERN TERRITORY OF AUSTRALIA

ABORIGINAL LAND ACT 1978

As in force at 28 August 2013

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 28 August 2013

ABORIGINAL LAND ACT 1978

An Act to provide for access to Aboriginal land, certain roads bordered by Aboriginal land and the seas adjacent to Aboriginal land

Part 1 Preliminary

1 Short title

This Act may be cited as the *Aboriginal Land Act 1978*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act:

Aboriginal means a person who is a member of the Aboriginal race of Australia.

Aboriginal land has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

Aboriginal tradition has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

Aboriginal Land Commissioner means the Aboriginal Land Commissioner established by the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

Act includes an Act of the Commonwealth.

closed seas means seas closed by notice published in the *Gazette* under section 12.

Land Council means an Aboriginal Land Council established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

Land Trust means an Aboriginal Land Trust established under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

road means that part of the land within the boundaries of Aboriginal land described in Schedule 1 of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth, the title to which has been granted under section 12 of that Act to a Land Trust, in respect of which:

- (a) in pursuance of section 12AA(1) of that Act, agreement has been reached between a Land Council and the Territory; or
- (b) in pursuance of section 12AB(1) of that Act, a declaration has been made by the Supreme Court,

that the part of the land is:

- (c) land on which there was, at the time of commencement of section 3 of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth a road over which the public had, at that time, a right of way; or
- (d) land on which there was, at the time of the execution of the deed of grant issued under section 12 of that Act, a road over which the public had, at that time, a right of way.

traditional Aboriginal owners has the same meaning as in the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

3A Status of roads

Nothing in this Act shall be construed as affecting the status of any road (including a road not falling within the definition of **road** in section 3).

Part II Entry onto Aboriginal land

4 Entry onto, &c., Aboriginal land or road

- (1) Subject to this Part and to any provision to the contrary in a law of the Territory, a person shall not enter onto or remain on Aboriginal land or use a road unless he has been issued with a permit to do so in accordance with this Part.

Maximum penalty: 8 penalty units.

- (1A) Nothing in subsection (1) shall prevent a person who is entitled or permitted under this Part to enter onto or remain on Aboriginal land from using a road that is bordered by that Aboriginal land.
- (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 Issue of permits

- (1) The Land Council for the area in which Aboriginal land or a road is situated may issue a permit to a person to enter onto and remain on that Aboriginal land or use that road subject to such conditions as the Land Council thinks fit.
- (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, or use a road that is bordered by 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 or use a road 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 or a road 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, or a road that is bordered by that Aboriginal land.
- (7) A Land Council shall, before commencing to issue permits for an area of Aboriginal land or a road, consult with and come to an agreement with the traditional Aboriginal owners of the area, or the area that borders the road, 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 or use a road bordered by that 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, or in respect of that road, for that period or those periods.

5A Administrator may issue permits to use roads in certain circumstances

Where a person has applied to a Land Council or traditional Aboriginal owners for a permit to use a road in respect of which, under this Part, that Council or those owners have the authority to issue a permit, and that Land Council or those traditional Aboriginal owners, as the case may be, have refused to issue the permit sought or have not, within a reasonable time, so issued the permit, the person may apply to the Administrator who may issue the permit to use the road subject to the conditions set out in the permit.

6 Minister may issue permits to certain government employees

- (1) Where a person who is employed under or by virtue of an Act or as a member of the personal staff of a Minister, the Leader of the Opposition or the Deputy Leader of the Opposition, has a need, in the performance of his duties, to enter upon and remain on Aboriginal land or to use a road, 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 or to use a road subject to the conditions set out in the permit.
- (2) A permit issued under subsection (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 or the road that the person to whom the permit is issued is permitted to enter and remain on or use;
 - (c) shall specify that the permit is issued to allow the person to whom it is issued to enter and remain on Aboriginal land or use the road 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 subsection (1) may be revoked by the Minister upon the request of the relevant Land Council.

6A Permit to include immediate family

A permit issued under section 6 to a person who is required, in the normal performance of his duties, to reside on Aboriginal land or use a road shall, unless expressed to the contrary, be deemed to be a permit issued in respect of the person and any of the following persons if they are living with the person:

- (a) any spouse or de facto partner of the person;
- (b) any infants.

7 Members of Parliament and others may enter Aboriginal land

The following persons may enter and remain on Aboriginal land:

- (a) the Administrator, or an Acting Administrator, acting in the course of his or her 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;
- (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his or her campaign.

8 Entry of dwellings

- (1) Nothing contained in this Part authorizes the entry of a person to a dwelling without the permission of the owner or the occupant.
- (2) For the purposes of this section **dwelling** includes the living area of a camp occupied by or belonging to an Aboriginal.

9 Defence in certain circumstances

It shall be a defence to a charge under section 4(1) if the person charged proves that:

- (a) the entry onto Aboriginal land or use of the road 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 or the road as soon as it was practicable in the circumstances.

10 Estates or interests on Aboriginal land protected

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.

11 Open areas

- (1) The Administrator may, on the recommendation of a Land Council, declare by notice in the *Gazette*, an area of Aboriginal land or a road to be an open area or open road, as the case may be.
- (2) Where a declaration is made under subsection (1), a person may enter and remain on the area of Aboriginal land, or use the road, described in the notice without obtaining a permit.

Part III Control of entry onto seas adjoining Aboriginal land

12 Administrator may close seas

- (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, or 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.
- (2) The notice in the *Gazette* referred to in subsection (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 him, 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 is 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.

13 Administrator may re-open closed seas

- (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 subsection (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 subsection (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.

14 Entry onto, &c., closed seas

- (1) Subject to this Part and to any provision to the contrary in a law of the Territory, 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.

Maximum penalty: 8 penalty units.

- (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 Issue of permits

- (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.
- (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.

16 The Minister may issue permits to government employees on certain conditions

- (1) Where a person who is employed under or by virtue of an Act or as a member of the personal staff of a Minister, the Leader of the Opposition or the Deputy Leader of the Opposition, 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 closed seas subject to the conditions set out in the permit.
- (2) A permit issued under subsection (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 subsection (1) may be revoked by the Minister upon the request of the relevant Land Council.

17 Members of Parliament and others may enter closed seas

The following persons may enter and remain on closed seas:

- (a) the Administrator, or an Acting Administrator, acting in the course of his or her 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;
- (e) a candidate for election as a member of the Legislative Assembly for the purposes of conducting his or her campaign.

18 Permit to be granted to protect existing rights

- (1) Subject to the *Fisheries Act 1988*, the holder of a licence issued under the *Fish and Fisheries Act 1979* (and kept in force under section 71 of the *Fisheries Act 1988*), or the holder of a licence granted under the *Fisheries Act 1988*, who held the licence before the publication of a notice under section 12, may, together with any persons who assist or work for the holder, enter and fish the area of closed seas referred to in that notice.
- (2) Before entering and fishing any closed seas under subsection (1) a person shall notify the Land Council for the area in which the closed seas are situated.

19 Defence in certain circumstances

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

- (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 Seas open to transit vessels

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

Part IV General

21 No prosecution except on authority of Land Council

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

22 Vehicles, &c., may be stopped and questions asked

- (1) A member of the Police Force may require a person who is on or is about to enter Aboriginal land or open road or closed seas (other than an open area or enter or use a road declared under section 11) to:

- (a) produce to him a permit issued to the person under this Act; or
- (b) state his name and address,

and for that purpose may stop a person or any motor vehicle, as defined in the *Motor Vehicles Act 1949*, power cycle, push-bike, vessel or animal in or on which a person is riding.

- (2) A person who is called upon to do so by a member of the Police Force shall stop and cause any motor vehicle, power cycle, push-bike, vessel or animal in his control to stop.

Maximum penalty: 8 penalty units.

23 Offence to refuse to produce permit, &c.

A person required under section 22(1) to produce a permit or state his name and address who:

- (a) refuses or fails to produce a permit issued to him under this Act that is in his possession; or

(b) refuses or fails to state his name and address, or states a false name or address,

is guilty of an offence.

Maximum penalty: 8 penalty units.

ENDNOTES
1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = Gazette	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION***Aboriginal Land Ordinance 1978 (Act No. 106, 1978)***

Assent date	9 November 1978
Commenced	1 February 1979 (<i>Gaz G4</i> , 26 January 1979, p 18)

Statute Law Revision Act 1979 (Act No. 98, 1979)

Assent date	10 August 1979
Commenced	26 October 1979 (<i>Gaz G43</i> , 26 October 1979, p 1)

Aboriginal Land Act 1979 (Act No. 138, 1979)

Assent date	16 November 1979
Commenced	16 November 1979

Aboriginal Land Act (No. 2) 1979 (Act No. 141, 1979)

Assent date	12 December 1979
Commenced	25 January 1980 (s 3, s 2 <i>Fish and Fisheries Act 1979 (Act No. 4, 1980)</i> and <i>Gaz G4</i> , 25 January 1980, p 4)

Aboriginal Land Act 1980 (Act No. 54, 1980)

Assent date	10 June 1980
Commenced	6 March 1981 (<i>Gaz G9</i> , 6 March 1981, p 1)

Statute Law Revision Act 1980 (Act No. 6, 1981)

Assent date	9 January 1981
Commenced	9 January 1981

Statute Law Revision Act 1984 (Act No. 28, 1984)

Assent date	20 July 1984
Commenced	20 July 1984

Aboriginal Land Amendment Act 1988 (Act No. 22, 1988)

Assent date	1 September 1988
Commenced	1 September 1988

Statute Law Revision Act 1988 (Act No. 66, 1988)

Assent date 22 December 1988
 Commenced s 7: 14 December 1988; rem: 22 December 1988 (s 7(2) and s 2 *Fisheries Act 1988* (Act No. 58, 1988))

Statute Law Revision Act 1990 (Act No. 33, 1990)

Assent date 11 June 1990
 Commenced 11 June 1990

De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)

Assent date 24 December 1991
 Commenced 1 January 1992 (s 2)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

Statute Law Revision Act 2010 (Act No. 29, 2010)

Assent date 9 September 2010
 Commenced 13 October 2010 (Gaz G41, 13 October 2010, p 2)

Penalties Amendment (Miscellaneous) Act 2013 (Act No. 23, 2013)

Assent date 12 July 2013
 Commenced 28 August 2013 (Gaz G35, 28 August 2013, p 2)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 18 and 22.

4 LIST OF AMENDMENTS

It	amd No. 54, 1980, s 4; No. 6, 1981, s 4
ss 1 – 2	amd No. 6, 1981, s 4
s 3	amd No. 98, 1979, s 3; No. 54, 1980, s 5; No. 6, 1981, s 4; No. 29, 2010, s 3
s 3A	ins No. 54, 1980, s 6
s 4	amd No. 54, 1980, s 7; No. 6, 1981, s 4; No. 22, 1988, s 3; No. 23, 2013, s 12
s 5	amd No. 54, 1980, s 8
s 5A	ins No. 54, 1980, s 9
s 6	amd No. 98, 1979, s 3; No. 138, 1979, s 3; No. 54, 1980, s 10
s 6A	ins No. 138, 1979, s 4
s 7	amd No. 54, 1980, s 11; No. 82, 1991, s 3; No. 1, 2004, s 62
s 9	amd No. 138, 1979, s 5
s 11	sub No. 29, 2010, s 3
s 12	amd No. 54, 1980, s 12
s 14	amd No. 54, 1980, s 13
s 16	amd No. 28, 1984, s 3
s 17	amd No. 6, 1981, s 4; No. 22, 1988, s 4; No. 23, 2013, s 12
s 18	amd No. 98, 1979, s 3; No. 138, 1979, s 6
pt IV hdg	amd No. 138, 1979, s 7
	sub No. 29, 2010, s 3
	amd No. 141, 1979, s 4; No. 66, 1988, s 7; No. 33, 1990, s 9
	sub No. 138, 1979, s 8

ENDNOTES

- s 22 ins No. 138, 1979, s 9
 amd No. 54, 1980, s 14; No. 23, 2013, s 12
- s 23 ins No. 138, 1979, s 9
 amd No. 23, 2013, s 12