



**Northern Land Council**

## **The plan to undermine the Land Rights Act**

by IAN VINER AO QC

**WITH the Commonwealth Government's push for 99-year leases, the Forrest Report call for Aboriginal land to be privatised so as to be bought and sold, and attacks upon the Northern Land Council in particular over their defence of traditional ownership and their responsibilities under the Land Rights Act, the iconic 1976 Land Rights Act is under threat like never before.**

The whole framework and security of traditional Aboriginal land, protected by the Land Rights Act, is in danger of being subverted by Governments, bureaucracies and people who have no real understanding or sympathy for traditional communal land ownership.

99-year town leases turn traditional ownership upside down.

In reality they put the Commonwealth back into ownership and control of traditional Aboriginal land like it was before the Land Rights Act was passed as if Aboriginal land had returned to reserve status under Commonwealth control.

No one can really imagine that in 99 years time the Commonwealth will, or could, return to the people absolute ownership of traditional land which had been alienated by these 99-year leases.

A Commonwealth Head Lease is a device by the Commonwealth to take control of Aboriginal land away from traditional owners. It is thoroughly misleading for the Commonwealth to suggest giving the Office of Township Leasing a 99-year lease of Aboriginal land is the same as 99-year leases in the Australian Capital Territory (ACT). The ACT leases Crown land to people instead of granting freehold ownership. Aboriginal traditional owners already have freehold title, the best form of ownership in Australia.

There is good reason to think the Commonwealth devised 99-year leases and the Office of Township Leasing as the head lessee as a way to avoid having to compensate Aboriginal people on just terms under the Constitution for taking control of their traditional lands.

The Commonwealth objective is the permanent alienation of traditional land from Land Trusts. While no-one knows what the future of Australia will be in 99 years, we can all be sure that Northern Territory Aboriginal people will not have the power at the end of a 99-year head lease to demand the return of the land to them, like China demanding that colonial Hong Kong be returned to the Chinese.

The bureaucratic regime of the Office of Township Leasing is really a Canberra-controlled bureaucracy of public housing. Aboriginal people will have lost control of their own land once it gets into the hands of the Office of Township Leasing. Land Trusts will become token names



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only on the title deed. The real legal authority will be the Commonwealth as Head Lessee forever.

The Forrest Report recommendations make it plain that the objective of Commonwealth land tenure reform policies in the Northern Territory should be to smash traditional ownership by making Aboriginal land “tradeable and fungible” as it says in Chapter 8. History tells us that land grabbers will quickly move in and Aboriginal land will be traded away forever and Aboriginal people left on the fringe once again.

The real objective of Commonwealth policy should be to put the Aboriginal people in control of their own destiny for the next 99 years. Keeping Aboriginal land firmly under Aboriginal control is the only way for that to happen.

Northern Territory Aboriginal people should learn from Maori history in New Zealand.

Although the 1840 Treaty of Waitangi was supposed to protect Maori traditional land, New Zealand governments quickly and systematically started breaking up communal title and Maori control of their traditional lands by “individualising” land titles into private ownership until there was no traditional Maori ownership or control left over their historic lands.

Maori suffered more than 150 years of social degradation and discrimination as a result. I invite people to read the Waitangi Tribunal Report 1996 entitled, “The Taranaki Report, Kaupapa Tuatahi”. It is a sad story and a still sadder indictment of government and an indication of what could happen to traditional ownership in the Northern Territory.

There is much talk of communities being consulted about leases before a 99-year Head Lease is taken by the Commonwealth.

Experience tells us that such consultation is an empty gesture. Government and the bureaucracy go ahead doing so many things when all there has been is fly-in-fly-out so-called consultation with a minority of a community. That was rampant under the Intervention and Stronger Futures.

When it comes to giving up your ownership of traditional land it is consent which is required, not consultation. Consent can only be given when what is proposed is really understood and real consent is given. Unless there is real consent, agreeing to a 99-year lease is not voluntary. Consultation becomes coercion. So-called consent becomes deception.

Land Trusts and communities, as a group, have a right to be independently legally advised what the granting of a Head Lease to the Commonwealth really means. Land rights is complicated. Land ownership anywhere in Australia is complicated for any citizen. Land Trusts



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and communities have a right to be fully funded to receive all the independent legal and social advice they want before being called upon to consent to give up ownership of historic lands.

Land Councils have strict legal obligations under the Land Rights Act and every right to be extremely careful to ensure the Act is being thoroughly complied with before a lease is granted. The Commonwealth cannot complain if a Land Council is performing its statutory obligation to the highest degree necessary.

Indeed, there is a powerful argument that the Land Rights Act imposes a fiduciary duty upon the Commonwealth and Land Councils to act in complete good faith toward Land Trusts, traditional owners and communities living on traditional land before the Commonwealth takes any lease from them, 99 years, 40 years or any other lease period.

It is easy to foresee that with the strict requirements of the Land Rights Act and the duty upon the Commonwealth and Land Councils to act in complete good faith there will be years of litigation challenging the legality of 99-year leases like another Mabo case if the Commonwealth tries to force their policies upon reluctant Aboriginal communities.

The truth of the matter is that the grant of 99-year leases to the Commonwealth is not necessary. The Land Rights Act expressly has provision for the grant of leasehold interests in traditional lands under conditions which preserve the traditional ownership of the Land Trusts and the in-built protections of the Act. The Commonwealth and Northern Territory Governments can fund public housing, facilities and infrastructure without demanding 99-year leases.

It is wrong of the Commonwealth to promise funding for community infrastructure, including public buildings and housing only on condition of the handing over of 99-year leases. That is coercion or bribery no better than the exchange, colonial-style, of “beads and bangles” by which Indigenous people around the world were deprived of their traditional lands. Those days should have long passed out of Government thinking and policies.

The situation is worse when it is understood that the money the Commonwealth promises to spend if a community agrees to a 99-year lease will be the Aboriginal people’s own trust money taken from the Aboriginal Benefit Account (ABA). That really is a smoke and mirrors promise.

In fact, the time has come, with the 40th anniversary of the Land Rights Act only two years away, for the Land Rights Act and the ABA to be put completely in Aboriginal hands with authority and accountability under common and statute law like all other citizens and



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corporations. Get rid of the discrimination of Ministerial and bureaucratic control over Aboriginal lands and money paid for the exploitation of those lands. Only in that way will the Northern Territory Aboriginal people, the traditional owners of their historic lands, and the communities which live on them, have some hope of stopping the Commonwealth constantly altering the Land Rights Act, eating away at the protections originally designed in the Act to prevent exploitation and alienation. The Commonwealth needs to take a step back from present policy in the Northern Territory. Governments of all political colours should start treating Aboriginal people, their lives and their lands with dignity and respect for the capacity to know what they want for their own futures.

Land Councils, traditional owners and communities need to come together to protect the legacy of the Land Rights Act, stand firm under their own leadership, and decide for themselves the way forward.