QUEENSLAND LAND RIGHTS?

MS 1867/20
Item 196

• June 1981: The Queensland Government announced its intention to abolish the Aboriginal and Torres Strait Islander Acts and the Reserves and offer Aborigines living on reserves 50 year leases of the land.
• August 1981: Labor Senator Sue Ryan introduced a Private Member's Bill requiring the Federal Government to take over Queensland reserves and grant freehold title to Aborigines for lands which were Aboriginal reserves as at March 31st 1978.*
• November 1981: The Queensland Government is now saying that Aborigines can have 'perpetual title' to reserve land. What this means is still (in December 1981) not clear.
This pamphlet describes the present situation in Queensland and the background to these moves.

Queensland Government policy appears to be to help Aborigines and Torres Strait Islanders become **assimilated.** This means they will gradually blend into the general community and lose their separate identity.

Commonwealth Government policy is for **self-determination.** This means people must be free to decide for themselves if they want to live on reserves, at 'outstations' or in towns, and whether they want to keep or lose their racial and cultural identity.

> The Queensland Government does not believe there are any special ties between Aborigines living now and the land of their ancestors. **The Aboriginal Relics Preservation Act** 1967-76 deals with land where there are sacred sites (see below).

*This would allow Aurukun and Mornington Island Shires, whose case is described in this pamphlet, to be included.

THE RESERVES

Years ago the Queensland Government set land aside as **temporary** reserves where Aborigines could live. The only white people allowed on them were Government and Church officials who provided welfare and some training. In 1980 about 60,000 people identified themselves as Aborigines and Torres Strait Islanders. Half of these lived on reserves and half lived in towns. Families who have lived on reserves for years and even generations think of this land as home. Some reserves have been closed. Aurukun and Mornington Island have been made into **shires.**

In 1980 there were still 118 reserves in Queensland. There are 12 large communities on the Torres Strait Islands and 13 on the mainland. There are 33 smaller reserves at Cairns, Townsville, Mt Isa, Thursday and other islands. There are also 56 'country reserves' on the fringe of country towns. Most are less than 2 hectares in size.

The Queensland Government has special laws to control reserves. These are the **Aboriginal and Torres Strait Islander Acts** which are administered by the **Minister for Aboriginal and Islander Advancement** and the Director of the **Department of Aboriginal Advancement (D.A.I.A.)**. It is these acts which the Queensland Government now says it will abolish.

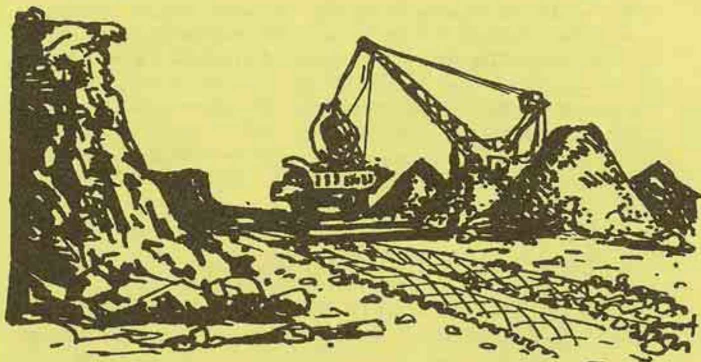
Each reserve is run by a manager. A **Reserve Council** whose members are chosen by residents and by the D.A.I.A. advises and helps the manager. But the manager is responsible to the D.A.I.A., not to the Council or to the Aboriginal community and he can over-ride Council wishes. People who propose to live on a reserve for more than 1 month must get a permit from the Reserve Council or from the D.A.I.A. if there is no Council. A permit is given if the Council and the D.A.I.A. think it will be for that person's good and will not upset the administration or other people living on the reserve. When a person leaves a reserve (except for a short time) his permit ends. A person can be turned off a reserve by its Council or by the D.A.I.A.

PROSPECTING AND MINING RIGHTS ON RESERVES

The D.A.I.A. and the **Minister for Aboriginal and Islander Advancement** regulate mining on reserves. Permission to prospect is not needed and the people living on a reserve do not have to be asked. If a Reserve Council tries to stop miners entering their reserve the miners can go direct to the Minister. The D.A.I.A. negotiates agreements with mining companies without talking with the people living in the area.

It should be noted that reserves are only **temporarily** set aside for Aboriginal use. Under the **Lands Act** 1962-78 they can at any time be withdrawn or made smaller. Since the discovery of minerals in the north this has often happened.

At Weipa, on the north-west coast of Cape York, Comalco was given the mining rights to 587,802 hectares of Aboriginal reserve land. Later, Comalco set aside 125 hectares of this for Aboriginal use. This reduced the size of the reserve by 347,831 hectares.
The people of Mapoon Mission Settlement north of Weipa were forcibly evicted and moved to Bamaga (on the tip of Cape York) so that $536k^2$ of land could be leased to Alcan.



In 1978 Aurukun and Mornington Island were made into shires. But their Councils do not have full control over their land because the **Local Government (Aboriginal Lands) Act** 1978 says that Aboriginal Shire Councils may not deal in any way with land within their shires without approval from the **Minister for Local Government** and the **Governor-in-Council.** This restriction does not apply to any other local government in Queensland. It means that the State Government still has control of the land and the minerals under it.
There are plans to develop bauxite mining and an alumina refinery and township at Aurukun. It will cost about $500,000,000 and be completed in 1988. The people of Aurukun have not been consulted about it.

RECOMMENDATIONS FOR CHANGE

The Queensland Government has set up **Aboriginal Advisory Councils** to tell it what Aborigines living on reserves want. They are made up of the chairmen of each **Reserve Council.** There is also an **Islander Advisory Council** made up of members selected from each group of Torres Strait Islands (East, Central and West). But as the D.A.I.A. also puts members on Reserve Councils some communities feel that their wishes are not adequately represented. Aborigines living outside reserves are not represented on Advisory Councils because the Queensland Government expects them to give up their connections with the reserves and become assimilated.

To make their wishes known Aborigines and Torres Strait Islanders have formed their own organisations. Queensland Aboriginal organisations working for Land Rights are:

- **The North Queensland Land Council** (N.Q.L.C.).
- **The Stradbroke Island Aboriginal Heritage Commission.**
- **The South Queensland Land Council** (S.Q.L.C.).
- **The Foundation for Aboriginal and Islander Research Action (Ltd)** (FAIRA).

The aims of the North Queensland Land Council are:

- Tribal lands to be owned by the tribal groups whose land it is according to Aboriginal traditions.
- Land Rights to include all rights to natural resources (timber, fishing and mining).

- Present mining and prospecting to stop to allow negotiations with Aboriginal groups living in the area.
- Compensation for loss of tribal land.
- Abolition of the Aboriginal and Torres Strait Islanders Acts.
- Aboriginal control of State and Federal funding for Aboriginal affairs.
- Self-determination in all aspects of life.

In 1977 the Queensland Government set up the **Aboriginal and Islander Commission** to review the Acts under which the D.A.I.A. operates and report on the needs and wishes of Aborigines and Torres Strait Islanders. **The Foundation for Aboriginal and Islanders Research Action** (FAIRA) made many suggestions to the Commission. About Land Rights it said:

- Aborigines have a legal interest in **unalienated Crown land** to which they can show a traditional relationship.
- Lands which on April 1st 1978 were **Aboriginal Reserves** should be handed over with freehold title to the Aboriginal Community Councils as trustees.
- There should be a **Lands Commissioner** who is a **Supreme Court Judge.** He should have the power to:
  - declare land alongside Aboriginal community lands to be Aboriginal land if it is traditionally, culturally and geographically part of it,
  - grant land to a group or a person who can show they have a right to it.
- **Entry to Aboriginal land** should be controlled by permits given only by the Aboriginal community.
- **An Environmental Protection Court** made up of elders of tribes and kindship groups should look after sacred places.
- **Mining** on Aboriginal land should not be allowed unless the Community Council, most of the people living there and the State Government agree. If mining is said to be 'in the national interest' and the Minister overrides the wishes of the people then there must be legal safeguards for the people. It must not just be left to the Minister to decide.
- All houses and land owned by the D.A.I.A. should be handed over to a **Queensland Aboriginal Administrative Council** made up of the chairmen of Community Councils and representatives of the Aborigines and Islanders living in towns. They may make grants to people who can show they need it.

> A survey by FAIRA showed 85.6% of Aborigines and Islanders on reserves want reserve land to be owned by the people on the reserves. 79.5% want the Community Councils to control the reserves and mining on them.

BUT the Aboriginal and Islanders Commission decided that the Queensland Government policy on Land Rights and mining rights would continue. The reserves remained under the control of the D.A.I.A.

SACRED SITES

The Aboriginal Relics Preservation Act 1967-76 says an Aboriginal 'site' means an area resumed by the Crown to preserve or protect a relic. 'Relic' means traces of handiwork, artifacts or material remains.

The **Governor-in-Council** decides which sites will be preserved and when they no longer need protection. All relics belong to the Crown. No person, black or white, may enter a protected site without permission even if they are the traditional owners (as at the Laura rock paintings). Anyone knowing of sacred sites must report them even if they are Aboriginal secrets. Aborigines may use relics for 'tribal' purposes but they must get permission to use sites as these occupy many thousands of hectares and to allow Aborigines rights to them would be to acknowledge Land Rights.

THE ROLE OF THE COMMONWEALTH GOVERNMENT

Section 51 of the Constitution gives the Commonwealth power to make special laws for 'the people of any race for whom it is deemed necessary to make special laws'.

When the people of Aurukun and Mornington Island were asked (as part of an independent survey) who should make the laws on reserves they said:

	Aurukun	Mornington Island
Queensland Government	3%	12%
Commonwealth Government	85%	86%
Don't know	12%	2%

As there are Land Rights in the Northern Territory many people think the Commonwealth Government has a duty to take over Queensland reserve lands for Aborigines and so remove the difference in laws across the State border.

The Woodward Report and the granting of Land Rights in the Northern Territory has become a model for Land Rights action in all States. One of its recommendations was that land for Aboriginal groups could be bought by an **Aboriginal Land Fund.** To do this the Aboriginal Land Fund Commission (A.L.F.C.) was set up and given money by the Commonwealth Government. This work is now done by the **Aboriginal Development Commission.** It can buy land for economic and social use as well as traditional land.

The Queensland Government tried to stop the A.L.F.C. buying land because giving Aboriginal groups permanent ownership of land conflicts with their policy of assimilation. When leasehold properties were bought the State Government refused to transfer the leases to Aboriginal owners. This happened when the Glenore Station, south of Normanton, was bought.

After the A.L.F.C. bought Archer River Bend Station for the people of Aurukun the Queensland Government refused to transfer the lease although Mr Al Grassby, the **Commissioner for Community Relations,** told them this was racial discrimination. Finally the Government made it into a National Park so the people of Aurukun could not own it.

It is also possible that the whole of the Cape York Peninsular will be made into a National Park. This will block land claims by all Aboriginal communities living there.

Only 18% of all the land in Queensland is freehold. Up to 1980 the A.L.F.C. had bought 5 freehold properties. These were:

Murry Upper Land 1783k² | Karunda 36 hectares
Daintree River Land 1.76k² | Redlynch Land 0.732 hectares

Another difficulty is that the Commonwealth **Attorney-General** ruled that 'land' does not include stock and moveable items on a property. These must be bought with separate money given by the **Commonwealth Department of Aboriginal Affairs.** Paper work causes delays and often good properties are lost. Attempts are being made to get the wording of the Act changed.

THE OUTSTATION MOVEMENT

In the last few years some Aborigines who were living on reserves have moved back to live on or near their traditional lands. The Commonwealth Department of Aboriginal Affairs has given money to help set up these 'outstations' and also for training so that the people can become self-supporting. The Queensland Government is against the movement because it will not lead to assimilation. But many of the people living on them now have better health and more pride in themselves and their culture.

LATE NEWS

On March 1, 1982 the Queensland Premier, Mr Bjelke-Petersen, announced that Aboriginal councils on reserves would be given "deeds of grant in trust" under the Land Act. Such deeds may be revoked by the Government. The deeds are much less secure than the freehold, inalienable title given to Aboriginal people in the Northern Territory and in South Australia.

Councils may be able to lease areas of their land, but only with the approval of the Lands Minister. They have no mineral rights, and they will not own the buildings now on the reserves. Councils may not sell any land. They may refuse permission for people to come on the land, except for mineral exploration and mining.

The proposals are not firm because the necessary Bill has not yet been presented to the Queensland Parliament and because the Federal Government has not yet endorsed the proposals. Many Aboriginal leaders, including Senator Bonner, Mick Miller, chairman of the North Queensland Land Council, and Steve Mam, chairman of the Queensland branch of the National Aboriginal Conference, have condemned them.

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Canberra Times Print
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'DEEDS OF GRANT IN TRUST'

What do they mean under the present Land Act?

Since this pamphlet was printed, the Queensland Government has passed the Bill, referred to in 'LATE NEWS', to give Aborigines 'deeds of grant in trust' under the Land Act. The following is a summary of a legal analysis of what the Act means. The summary was made for Queensland Churches.

The Governor-in-Council (effectively State Parliament) can make Deeds of Grant in Trust for any public purpose including Aboriginal Reserves.

- A Deed of Grant can be cancelled or changed at any time.
- Land granted under a Deed of Grant can be declared to revert to the Crown for any reason, or can be resumed for public purposes such as airstrips, recreation, experimental farms, quarries etc.
- Aboriginal Councils (who will be the Trustees) can return land to the Crown.
- Land at present held for public purposes (including D.A.I.A. houses) might not form part of a Deed of Grant.
- The Governor-in-Council (State Parliament) can **remove** a trustee if it is 'in the public interest', and can **appoint** new trustees.

The Minister for Lands can apply to the **Land Court** to have excess land removed from the Deed of Grant if he considers a reserve is larger than is reasonably necessary for homes.

- He can inspect Aboriginal Councils' (Trustees') books at any time.
- His written permission is needed before a Council can lease blocks of land to families, and he can refuse permission if he wishes.
- His written permission is needed before a Council can allow anyone to live on Reserve land for more than 1 month.
- A lessee (a family living in a house) must get written approval from the Minister to enter into a mortgage.
- The Minister can cancel a person's lease if he is satisfied that its conditions are not being met, and that person would get no compensation for improvements made to the land. Police can remove a person whose lease has been cancelled.

Aboriginal Councils (Trustees) **must** charge the highest rent practicable for houses and land leased to families.

- If a Council fails to pay any mortgages relating to Reserve land, the land can be sold by the mortgagee (the person or company that advanced money on the land).
- People wishing to enter Trustee land for mining or prospecting do not need the consent of the Council or of the Mining Warden.
- Councils and residents do not have timber or quarry rights.

Legal opinion concludes: "The security of tenure and integrity of reserve boundaries are no more assured as deeds of grant in trust under the Land Act with the proposed amendments* than are Aboriginal reserve lands at present. There is no legal, workable check on the unfettered discretion of the Governor-in-Council proposed".

*which transferred responsibility for the Act from the Queensland Cabinet to the Queensland Parliament.

Aboriginal Treaty Committee Papers
AIATSIS Library, MS 1867 Box 22, Items 193-199
“Queensland Land Rights”, pamphlet prepared for the Aboriginal Treaty Committee by Mildred Kirk.
(m0027781_2_a.pdf)

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