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Clever sleight of land keeps claims at bay

By Paul Toohey*

THEY are netherworld public servants. They work for no stated purpose and provide no annual public annual reports. Yet, they are the biggest freehold land owners in the Northern Territory, conceivably the biggest in Australia.

The Northern Territory Land Corporation was set up in 1979, under vague legislation, to "acquire, hold and dispose" of property. Its sibling, the Conservation Land Corporation, was set up in 1980 to control the Territory's national parks.

The chairmen and board members of both corporations have been, over the years, very senior, very trusted public servants. Trusted because the Northern Territory Government simply gives them vast amounts of land.

For what purpose?

"It's got no stated purpose," says John Pinney, Lands Department head. "Whenever we give them land, we try and state a purpose. Like planning future developments or something like that, but it has no stated purpose."

Mr Pinney's use of "them" is interesting. He is also a board member of the Northern Territory Land Corporation.

Creating the pretence of distance between the Government and the Land corporations is critical. Unalienated Crown land is - or, until the recent sunset clause, was - available for claim under the Land Rights Act.

But, if the Government gives unalienated Crown land to non-government creatures such as the Land Corporation and Conservation Land Corporation, the land becomes alienated freehold. It is no longer government land and cannot be claimed.

Many view the legislated separation between the Government and the corporations as farce, although the law does not. The Northern Territory Land Corporation Act states the corporation is "not an authority or an instrument of the Crown" and "is not subject to the control of a minister of the Crown".

No Territory minister has any say in Land Corporation decisions to acquire or dispose of land. So how does the board always know to acquire land that will interfere with land claims?

Osmosis?

The NT Land Corporation owns big land - St Vidgeon, Nathan River and Billengarra stations in the Gulf country, cattle stations that failed to be viable. It has Spirit Hills, Mataranka and numerous smaller holdings throughout the Territory. It owns a great arc of land north, south and east of Darwin.

The Conservation Land Corporation, operating under almost identical legislation, owns title to every Territory national park.

There is only one possible reason this has happened: Territory national parks were once unalienated Crown land. By giving them to the Conservation Land Corporation, they could no longer be claimed.

Most Territorians would be surprised to learn their Government no longer owns its own national parks.

Which is why the people appointed to the boards of the corporations must be trustworthy indeed. They have absolute power to acquire and dispose of the land as they see fit. In theory, they could gamble away the lot at a poker table. Or sell or give it all away, to whoever - no auction or tender process required.

Under the Land Corporation Act, money may be advanced to the Corporation to buy land "on such terms and conditions as the Treasurer thinks fit". The Lands Minister's only role in legislation is to appoint or remove board members.

The Corporation is not mentioned in NT budgets, even though profits from the sale of property may return to revenue. Annual reports are only sent to Government "out of courtesy", says Mr Pinney.

Proving a conduit exists between the corporations and government - which would mean the land was government-owned and claimable - is difficult when the two corporations have no public records and the Territory has no freedom of information laws.

The Northern Land Council (NLC) found this out when it went to the High Court in 1984 after the Land Commissioner found he could not hear a claim on Conservation Land Corporation-held land.

The NLC argued the land corporations were ghost instruments of the Crown but the late Justice Lionel Murphy said even though "a legislative scheme such as this may foster a sense of helplessness in claimants under the Land Rights Act", his court could not pretend the NT legislation did not exist.

The corporations seem always to follow the aspirations of the Government but, given there is no communication with any Minister, how?

There would be no reason why a minister could go to Mr Pinney, head of the Lands Department, or to Peter Blake, head of the Mines and Energy Department, and talk freely about the Government's desire to acquire a tract of land for development.

If these department heads were also Land Corporation board members, which they are, they might be inclined to act on what they had "overheard" from the minister while wearing their departmental hats?

In 1997, the NT Auditor-General noted this as a conflict of interest. Two years on, his report has proved easy to ignore. He has no audit power over non-government corporations.

When the then conservative chief minister Paul Everingham devised the legislation, the Acts seemed a typical exhibition of mean-spiritedness to land rights. But, in 1980, two years after the arrival of self-government for the Northern Territory, vast areas of the Territory were available to be claimed.

When the Government bought a pastoral lease east of Katherine, the land at that instant became Crown land - and was hit with a claim hours after purchase. The Government could not touch the land until the claim was resolved.

"Whereas if the Land Corporation bought land," said the then Lands Minister Marshall Perron, "it could sell portions of it to adjoining owners where the geography made it the logical thing to do. It could excise National Parks, offer back land to the Government for easements - roads and electricity and so on.

"So the Land Corporation was a very useful tool. But I wouldn't go so far as to say that it was formed to thwart the Land Rights Act - which is what the land councils always claimed it was."

In its submission to the Review of the Land Rights Act of John Reeves QC last year, the NLC complained land held by the Land Corporation was held as vacant Crown land.

"It is hard to escape the proposition," the NLC argued, "that the Northern Territory made grants to the Land Corporation in order to prevent land claims being made over those areas".

Mr Reeves recommended formal acknowledgement that corporation land should not be claimable, but events may overtake the Reeves Report.

With no more land claims allowed to be lodged in the Northern Territory, the Native Title Act will be brought to bear - and,

under Native Title, land held by the Land Corporations may be claimed.

In future, the corporations might have to share their land (as the Federal Court has already determined in stage one of the Miriuwung Gajerrong case, on the Conservation Land Corporation-owned Keep River National Park), but they will never lose it. Unless at the poker table.

Meanwhile, some would like to see some accountability on the part of the land corporations, to learn why the Northern Territory Government is so secretive about land that does not - but perhaps should - belong to the people of the Northern Territory.

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