

# Chapter 13

## The permit system and Indigenous art

13.1 This chapter briefly explains the permit system that applies to some Aboriginal land, the legislative framework that underpins it, and examines how its operation can impact on Indigenous art and artists. The Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough MP, has issued a Discussion Paper calling for a review of the permit system, and possibly its abolition.<sup>1</sup> A brief review of the paper, its rationale for reform, and some initial public response is included.

### Background and legislative framework

13.2 Several submissions raised issues about the permit regime governing access to Aboriginal artists on recognised Aboriginal land, particularly in the context of the debate on so-called 'carpetbaggers' and their activities. It has been argued by some witnesses that a strengthening of permit conditions and enforcement may be a solution to carpetbaggers taking advantage of poorly educated artists in isolated communities.

The permit system is really important for us. I think we should keep permits because when people come then there is guidance for those people. They should come with a permit. The permit system stops people coming in from all over the place.<sup>2</sup>

13.3 There appeared to be general support for the permit system within Aboriginal communities, as they see it as a mechanism to manage their land. For example, the Yirrkala Dhanbul Community Association described the benefits it believes it receives from the system:

The permit system helps to make Aboriginal land accessible to tourists, visitors and workers. It also protects the privacy of Aboriginal people, takes care of the environment and promotes safety. There are many areas, which are considered sacred or significant, and the system helps visitors to avoid causing offence or disrupting cultural activities.<sup>3</sup>

---

1 Department of Families, Community Services And Indigenous Affairs, Discussion Paper, 'Access to Aboriginal Land under the Northern Territory Aboriginal Land Rights Act – Time for Change?', October 2006 (Hereafter 'Permit Discussion Paper'), [http://www.oipc.gov.au/permit\\_system/docs/permits\\_Discussion\\_Paper.pdf](http://www.oipc.gov.au/permit_system/docs/permits_Discussion_Paper.pdf), accessed on 8 March 2007.

2 Mr Djambawa Marawilli, Chairperson/Executive Committee Member, Association of Northern Kimberly and Arnhem Aboriginal Artists, *Committee Hansard*, 20 February 2007, p. 19. See also Ms Apolline Kohen, Arts Director, Maningrida Arts and Culture, *Committee Hansard*, 20 February 2007, p. 44. See also Maningrida Arts and Culture, *Submission 51*, p. 4.

3 Yirrkala Dhanbul Community Association Incorporated website, [http://www.yirrkaladhanbul.nt.gov.au/home/about\\_us/permit\\_system](http://www.yirrkaladhanbul.nt.gov.au/home/about_us/permit_system), accessed 12 March 2007.

13.4 Currently, permits are required for entry to almost half of the Northern Territory and some Aboriginal lands in South Australia, Western Australia and Queensland. The legislation covering Aboriginal land and its access comes under state jurisdiction, however as the Government of the Northern Territory is accountable to the Commonwealth Government, its legislation is derivative from Commonwealth legislation.

### *Northern Territory*

13.5 Permit laws empower Indigenous communities to control their land and who has access to it. This is achieved through a system whereby people wanting to enter Aboriginal land need permission to do so (with some important exceptions, including members of parliaments and government employees authorised by the relevant minister). Land Councils can also decide to make areas or roads open, thus not requiring a permit.<sup>4</sup>

13.6 The *Commonwealth Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) enables the permit system on Aboriginal land in the Northern Territory. The following summarises the key aspects of the relevant legislation in the Northern Territory.

#### *Aboriginal Land Rights (Northern Territory) Act 1976*

- Section 70 makes it an offence for a person to enter or remain on Aboriginal land except (among other things) in accordance with the ALRA or with a law of the Northern Territory (penalty: \$1000).
- Section 73 gives the Northern Territory Legislative Assembly power to make laws regulating or authorising entry onto Aboriginal land, but any such laws must provide for the right of Aboriginals to enter such land in accordance with Aboriginal tradition. Such laws have effect to the extent that they are capable of operating concurrently with Commonwealth laws.

#### *Aboriginal Land Act (NT) 1992*

- Authorised by section 73 of the ALRA.
- Section 4 makes it an offence for people to enter or remain on Aboriginal land (and certain roads) without a permit (penalty: \$1000).
- Section 8 says the legislation does not authorise the entry of a person to a dwelling without the permission of the owner or the occupant. 'Dwelling' includes the living area of a camp occupied by or belonging to an Aboriginal person.

---

4 *Aboriginal Land Act (NT) 1992*, section 11.

- 
- Section 11 empowers the Administrator on the recommendation of a Land Council to declare an area of Aboriginal land, or a road, to be an 'open area' or an 'open road' which can be entered without a permit.
  - permits can be issued by:
    - the traditional owners of the area concerned
    - the relevant Land Council
    - the Administrator of the Northern Territory – where a person has applied for a permit to use a road and has been refused or the permit has not been issued in a reasonable time
    - the relevant Northern Territory Minister – in respect of certain Commonwealth or Northern Territory Government employees
    - the Land Council and the traditional owners can revoke their own or each other's permits and delegate their authority to issue permits. With some exceptions permits are issued without charge.

#### *Aboriginal Land Rights (Northern Territory) Amendment Act 2006*

- New subsection 19(13) provides for a Land Trust to authorise persons to enter or remain on land for a purpose related to an estate or interest granted by the Land Trust under section 19. There is a related new defence for entering Aboriginal land in accordance with such an authorisation in new subsection 70(2B).
- New subsection 70(2C) inserts a broad defence in relation to a leased township under section 19A. It provides that it is a defence if a person enters or remains on a part of a leased township for any purpose related to the use or enjoyment of an estate or interest, including subleases, in the leased township by the owner of the estate or interest. This significantly relaxes the permit system in leased townships. People who have a valid reason to enter a leased township, including for example customers of businesses or visitors of residents, will not need a permit.
- Commencement of these new provisions was on 1 October 2006.

#### *Trespass Act (NT) 2004*

- Section 5 creates an offence for trespass on premises.
- Section 4 defines 'premises' as a building or structure, whether permanent or temporary and whether fixed or capable of being moved, a dwelling place, any part of a yard, garden or area (whether enclosed or not) or a vehicle.<sup>5</sup>

## *The states*

13.7 The permit systems of the other states, such as Western Australia, Queensland and South Australia vary both between and within the states. In Western Australia, the permit system is governed by the *Aboriginal Affairs Planning Authority Act 1972* (AAPA), in conjunction with the *Aboriginal Communities Act 1979* (ACA).<sup>6</sup> Section 7(1)(b) of the ACA allows a council of a community to make by-laws relating to community lands with respects to 'the prohibition or regulation of the admission of persons, vehicles and animals to community lands or a part of he community lands.'<sup>7</sup>

13.8 The process and procedures of state legislation do not appear to have fundamental differences to the Northern Territory legislation apart from its ultimate authority. Common features include request for access to the community, a fee which is paid to that community, and variation on the type of fee given the length of stay and intended purpose. As the states' legislation is not derivative of Commonwealth law, they have the provision to preserve their permit systems unless an agreement is reached with the Commonwealth through negotiation.

## **Debate about the permit system**

13.9 Notwithstanding the control that the permit system gives to Indigenous communities, there has been criticism of the system over the past few years. Reform was recommended in 1998 by the so-called 'Reeves Report' conducted by Barrister John Reeves, which reviewed the ALRA. In summary Reeves found the following:

- In many respects the permit system is a carry over from the native welfare system that applied to Aboriginal reserves in the Northern Territory prior to the introduction of the Act. Under that system, Aboriginal people were not allowed to travel off those reserves without permission and other Australians were not allowed to enter those reserves without permission. Whilst the former aspect has not been retained in the permit system, the latter has.
- It is patently clear that the permit system is in need of reform.
- If the permit system were removed and Aboriginal people were provided with similar rights in relation to their land to those held by other Territorians, Aboriginal people would not be disadvantaged in the process. Indeed, in my [Reeves'] view, they would be considerably advantaged by being unburdened of a system they do not support and from the improvement in race relations that would

---

6 See also Ngaanyatjarra Council Submission, December 2006, pp 8–10. The Ngaanyatjarra submission provides detail of both the legislative framework and practical procedures by which their permit system operates.

7 *Aboriginal Communities Act 1979*.

---

probably follow as a result of the removal of a racially discriminatory measure.<sup>8</sup>

13.10 Reeves recommended that:

- Section 70 of ALRA should be repealed;
- that Part II of the Aboriginal Land Act (NT) should be repealed; and
- amendments should be made to the Trespass Act (NT) (as set out in this paper above) to make it applicable to Aboriginal land and to allow Aboriginal landowners to make better use of it.<sup>9</sup>

13.11 In 2002, in response to a journalist's refused request to have access to Port Keats to report on the funeral of a young man shot by police, a Northern Territory Magistrate, David Loadman, challenged the right of Aboriginal communities to ban outsiders from entering their lands arguing the public right to know.<sup>10</sup>

### ***Minister Brough's discussion paper***

13.12 In October 2006 the Department of Families, Community Services and Indigenous Affairs (FASCIA) released a discussion paper<sup>11</sup> which examined the permit system on Aboriginal land in the Northern Territory and the relevant enabling Act, the Commonwealth's Aboriginal Land Rights (Northern Territory) Act. The Commonwealth does not legislate for jurisdictions other than the Territory in relation to access to Indigenous communities, and the states are responsible for their own legislation in this regard.

13.13 The Minister for Families, Community Services and Indigenous Affairs, the Hon Mal Brough MP, announced on 12 September 2006, the Commonwealth's reconsideration of the Northern Territory legislation. The Minister's view was that the increased external scrutiny on remote Indigenous communities would, on balance, better support the interests of victims of crime, and better protect the disadvantaged and vulnerable, in what are otherwise relatively closed communities. The FASCIA discussion paper was prepared in light of this announcement.

---

8 *Building on Land Rights for the Next Generation*. Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976, August 1998. <http://www.austlii.edu.au/au/journals/AILR/1999/6.html#Heading36>, accessed 12 March 2007, In particular see chapter 14 on 'permits and access'.

9 *Building on Land Rights for the Next Generation*. Report of the Review of the Aboriginal Land Rights (Northern Territory) Act 1976, August 1998.

10 ABC News Online, <http://www.abc.net.au/worldtoday/stories/s731220.htm>, accessed 12 March 2007.

11 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006.

13.14 FASCIA argued in its review that, while the permit system was originally designed to protect Aboriginal people from negative aspects of modern society, it might have also contributed to restricting Aboriginal peoples' access to the advantages of modern society and from mainstream social and economic benefits. The department also pointed out that the current permit system might impede on checks and balances of criminal and unhealthy behaviour by restricting access to remote communities, and that it may also have reduced the level of engagement between Aboriginal people and the mainstream economy, thus preventing Aboriginal people from benefiting fully from their land rights. It was also argued that the current permit system has not prevented instances of drug trafficking, violence or abuse from occurring in many remote communities.<sup>12</sup>

13.15 A new access system could provide a number of benefits, including the ability of Aboriginal people to engage in the mainstream economy unhindered, ensure open access to public space while protecting the privacy of private land areas and residences, improve external scrutiny to protect vulnerable community members, and be simpler for governments to administer.<sup>13</sup>

13.16 FASCIA outlined a number of options for the implementation of a new access system for Aboriginal lands. In summary, these are:

- (a) amend the existing legislative framework for the permit system, noting the new provisions for authorising access associated with estates or interests granted under section 19 of the Act;
- (b) provide open access to communal or public space and maintain the current permit-based system of restricted areas to non-public spaces;
- (c) widen the current permit-based system by expanding the categories of people eligible to enter Aboriginal land without being subject to permission;
- (d) reverse the current restrictive permission-based access system to a liberal system with specific area exclusions;
- (e) remove the permit system altogether and replace with the laws of trespass, with any necessary modification for Aboriginal land.<sup>14</sup>

---

12 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, p. 4.

13 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, pp 5–6.

14 Department of Families, Community Services and Indigenous Affairs, *Access to Aboriginal Land Under the Northern Territory Aboriginal Land Rights Act – Time for Change?*, October 2006, pp 6–7.

13.17 While the submissions received in response to Minister Brough's discussion paper have not been published, there has been some public response by interested parties.

13.18 Preliminary debate about what became of Minister Brough's proposal elicited response prior to the publication of the Discussion Paper. On 1 June 2006 the Central Land Council (CLC) issued a press release that argued:

Calls for the permit system to be abolished on Aboriginal land are motivated purely by self interest the Central Land Council said today. "It's amazing that 30 years on people still see Aboriginal freehold land as some public space which they can exploit for commercial and recreational purposes without regard for the traditional land owners," CLC Director David Ross said. "Claims the permit system slows down economic development for remote Indigenous people are a bizarre twist of logic"<sup>15</sup>

13.19 The Ngaanyatjarra Council provided this committee with their submission on the Minister's paper. The Council concluded that if the permit system were abolished then:

[this will] inevitabl[y] open up Aboriginal communities to exploitation and eventual takeover by business interests and powerful individuals from outside the local area.<sup>16</sup>

### **The permit system and Indigenous art**

13.20 Evidence presented at the Alice Springs' hearing for the inquiry claimed that police find the permit system of assistance in locating 'people of interest' on Indigenous land.<sup>17</sup> Mr John Oster of Desart said:

One of the things that police get involved in from time to time is permit regulation. They from time to time ask people to show their permits. They have said to us that occasionally there are people of interest on lands. The police are interested in the permit system. We support the retention of the permit system. We think that it is very important. At a meeting on 12 October our executive discussed this and unanimously these Aboriginal people called for the retention of the permit system.<sup>18</sup>

13.21 Mr Marawilli stated that ANKAAA favoured the permit system:

The permit system is really important for us. I think we should keep permits because when people come then there is guidance for those people. They

---

15 Press Release, Central Land Council, 1 June 2006, <http://www.clc.org.au/media/releases/2006/permits.asp>, accessed 12 March 2007.

16 Ngaanyatjarra Council submission on the Brough Discussion Paper, December 2006, p. 12.

17 Mr John Oster, Executive Officer, Desart, *Committee Hansard*, 21 February 2007, p. 28.

18 Mr John Oster, Executive Officer, Desart, *Committee Hansard*, 21 February 2007, p. 28.

should come with a permit. The permit system stops people coming in from all over the place.<sup>19</sup>

13.22 The Northern Territory government expressed a similar view:

I know that the Northern Territory government's submission to the minister for Indigenous affairs, Mal Brough, argued against any lifting of the permit system from Aboriginal communities. In the context of arts and crafts centres or arts centres, and we have done a paper on this called 'Cultural monopolies', there is a big threat of opening up particularly our major communities.... If the threat of lifting the permit system and having other investors or developers going in and being in competition with those well-established arts centres were to happen, that would create a number of crises.... With the permit system and the need for it to be removed, that is misguided and needs more thinking through. The Aboriginal land rights act is the enabling act, but the permit system is actually under the Aboriginal Land Act of the Northern Territory. We as a government have given a commitment too that we would not agree to any process of lifting the permit system.<sup>20</sup>

13.23 At the same time, lack of enforcement means in some cases individuals without permits may be accessing Aboriginal land and taking advantage of artists. Although Ms Annette Cock of the Warlayirti Artists Aboriginal Corporation supports the permit system, she gave an example demonstrating its limitations:

We had a notorious carpetbagger from Perth show up and walk into the arts centre with a canvas that he had provided on of our artists with. He was putting pressure on our artists...I rung the police and said: 'This is the situation. This person is here. They haven't got a permit. He is actually encroaching on our artist.' The police could not attend to that at the moment...so I had to personally make sure that that person was escorted out of the community.<sup>21</sup>

13.24 There can be some confusion as to who has been issued a permit and who has not, particularly where several different organisations or individuals can issue permits, or where direct personal relationships with key members of the local Indigenous community have a bearing on the ability to access permits. The following exchange between the committee and witness Mr John Ioannou, at the Sydney inquiry hearing on 23 February, stands as an example.

**Mr Ioannou**—Yes. The head office knows as well. They wrote to [journalist] Nicholas [Rothwell] after that article and said, 'Look, you said

---

19 Mr Djambawa Marawilli, Chairperson, Executive Committee Member, Association of Northern, Kimberley and Arnhem Aboriginal Artists, *Committee Hansard*, 20 February 2007, p.19.

20 Ms Marion Scrymgour, Minister for Arts and Museums, NT Government, *Committee Hansard*, 20 February 2007, pp 7–8.

21 Ms Annette Cock, Warlayirti Artists Aboriginal Corporation, *Committee Hansard*, 19 February 2007, p. 55.



that he had a permit to go into our lands and pay charges or whatever and the reality is that he doesn't have a permit and that he shouldn't even be there.' So Nicholas rang me up and told me, and I said: 'Look, I'm sitting next to the chairman. If you want to talk to him, he can explain to you whether I have a permit or not.' So he said no and he left it at that. Then the chairman wrote another letter to the head office and they did not reply to him...

**Senator MOORE**—When did the permit discussion happen? I do apologise, but we have nothing here except the article from the newspaper.

**Mr Ioannou**—It was probably in November.

**Senator MOORE**—And, as of today, which is the end of February, you still do not have a formal permit to enter the lands?

**Mr Ioannou**—From the head office, no, but I do from the local community.

**Senator MOORE**—Are you going to do anything about that?

**Mr Ioannou**—I spoke to the chairman of the council, and they said: 'Just leave it; it's fine. It has all been taken care of.' So my understanding is that it has been taken care of.

**Senator WEBBER**—Where do you regard as home? Where do you live? I live in Perth.

**Mr Ioannou**—That is a hard question. I probably live most of my time in Irrunytju.

**Senator WEBBER**—Does everyone else who accesses that community need a permit?

**Mr Ioannou**—Yes.

**Senator WEBBER**—So, if other art dealers want to come in, they would need a permit?

**Mr Ioannou**—Definitely. It is a closed community. The only reason I was asked to do what I did was because of my closeness to Tommy Watson and a few of the other people who lived in that community.<sup>22</sup>

13.25 Evidence presented at the inquiry indicates support for the retention of the current permit system.<sup>23</sup> Nonetheless, concerns remain and it is not assured that the current arrangements protect Indigenous artists, or cannot be subverted. The example given by Ms Cock demonstrates that the permit system requires enforcement, and if the police or other agents are unavailable, the unscrupulous can still take advantage of artists.

22 Mr John Ioannou, *Committee Hansard*, 23 February 2007, pp 116–17.

23 Ms Belinda Scott, *Submission 1*, p. 3; Professor Jon Altman, *Submission 11*, p. 8; Australia Council, *Submission 38*, p. 3; ANKAAA, *Submission 63*, p. 6.

13.26 As Mr Ioannou confirmed, all art dealers wanting to enter a community on Aboriginal land would need permits. In small communities, where one visiting (or residing) dealer has a close relationship with a community chairperson or governing body, that relationship could be used to seek to restrict access by potential competitors. Mr Ullin, who was generally supportive of the permit system, spoke about an experience of this nature, where someone had refused him access, despite conversations with artists which had suggested they wanted him to visit. He observed:

That is the downside sometimes of the permit system if you have someone who is quite discriminatory about whether you should come in or should not come in. But basically I think it does give them some control. I think they have a right to their land and they also have a right to say, 'We don't want a million visitors coming in here all the time.' But again, it needs a judgement from the community itself as to whether or not they want you to come in. I do not have a problem with it.<sup>24</sup>

## **Conclusion**

13.27 The committee recognises and deeply respects the importance of traditional land to Indigenous communities, and notes the review of the permit system currently underway. In the context of this inquiry, the key issue remains whether the current permit system helps or hinders unscrupulous operators from accessing and taking advantage of Aboriginal artists on their traditional lands. The majority of the committee considers that the evidence appears to be inconclusive as to whether the permit system actually prohibits carpetbaggers from exploiting artists. The committee received only one specific example in submissions and during testimony of the permit system being successfully used for this purpose, and similarly heard of one instance where the permit system may have been abused to protect unscrupulous operators through their relationships with people within the community.

13.28 Non-government senators on the committee believe that the evidence presented to the inquiry was overwhelmingly in favour of retaining the permit system. Several witnesses wrote and spoke in favour of the permits, and none spoke against it. No dealers or collectors argued for the relaxation of the permit system.

---

24 Mr Claude Ullin, *Committee Hansard*, 11 April 2007, p. 49.