



Legislative barriers to divestment and proposed solutions

Barrier	Legislative challenge	Legislative solution
Under Part 3 of the <i>Aboriginal Affairs Planning Authority Act 1972</i>, Part 3 reserves cannot be under the control or management of anyone other than the Authority or the ALT. This prevents divestment of Part 3 reserves.	Ninety-three per cent of the ALT estate is reserves proclaimed under Part 3 of the <i>Aboriginal Affairs Planning Authority Act 1972</i> (Part 3 reserves). The divestment of Part 3 reserves necessitates its 'de-proclamation' thus removing its special protections. There is currently no form of tenure available under the <i>Land Administration Act 1997</i> that provides the protections afforded to those provided by Part 3 reserves. In some areas there is little incentive for native title holders or Aboriginal communities to give up the protections afforded by Part 3. Therefore 93 per cent of the ALT estate cannot be divested if Part 3 reserves cannot be controlled and managed by an Aboriginal corporation.	Allow for the divestment of Part 3 reserves to an Aboriginal corporation. Retain the special protections afforded to Part 3 reserves. Where a Part 3 reserve is divested to an Aboriginal corporation, also provide for the Minister to give that Aboriginal corporation the power to grant permits over divested Part 3 reserves. Provide that, in certain situations, that Aboriginal corporation will have the ability to grant leases and licences without the consent of the Authority. Ensure that divested Part 3 reserves cannot be lost from the Part 3 estate.

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Lengthy parliamentary procedures take 12 to 24 months to allow divestment of Part 3 reserves in another tenure and to remove services (roads, gas, power and water) from Part 3 reserves, where agreed, so they can be managed by the responsible agency.	Where there is a willingness of native title holders or Aboriginal communities to remove Part 3 reserves from the operation of Part 3 to enable a divestment in an alternative form of tenure (e.g. freehold or leasehold), the lengthy parliamentary procedures create an impediment to divestment. Current parliamentary procedures do not allow for the divestment of portions of Part 3 reserves without going back to Parliament each time a portion is proposed to be divested. The alteration of the boundaries of Part 3 reserves to excise public utility services and roads, so they can be placed under the responsibility of an appropriate agency or service provider to guarantee continued service, requires the same parliamentary procedures.	Provide for a more streamlined process to enable divestment of Part 3 reserves to Aboriginal corporations. Provide for a more streamlined process for altering the boundaries of Part 3 reserves to facilitate divestment in tenure other than Part 3 reserves. Provide for a more streamlined process for altering the boundaries of Part 3 reserves to excise existing or future public utility services and roads. Existing protections under the <i>Aboriginal Affairs Planning Authority Act 1972</i>, requiring: • ALT approval • Ministerial approval • ALT to consult with Aboriginal stakeholders and use and manage the land in accordance with the wishes of those Aboriginal stakeholders will continue to apply to these actions. The existing parliamentary procedures will continue to apply to actions outside of divestment or excisions for public utilities and roads.

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Uncertain consultation requirements under Section 23 and numerous and sometimes conflicting interests across the ALT estate.	The functions of the ALT under the Act include ensuring the use and management of the ALT estate accords with the “wish of the Aboriginal inhabitants of the area so far as that can be ascertained and is practicable.” The Act does not define the Aboriginal inhabitants of the area, creating a lack of clarity in how the ALT should exercise its function. The language used in the Act referencing Aboriginal people is outdated. Any divestment proposal there is a need for the ALT to understand, balance and attempt to reconcile the various Aboriginal interests in a complex, culturally and historically sensitive environment. Depending on the land in question, Aboriginal stakeholders may include those with traditional rights and interests (e.g. native title claimants and holders), those with historical connections to the land (e.g. former residents), those who have existing legal interests (e.g. lessees and sub lessees), and those who are current residents.	Clearly define the ALT’s function to consult under Section 23(c) by including a definition of ‘Aboriginal stakeholder’. Preserve all existing leasehold interests on divestment. Continue the ALT’s current operational practice of consulting with all relevant Aboriginal stakeholders and pursue agreement on divestment outcomes wherever possible. Offer flexible tenure outcomes where large reserves can be subdivided to allow portions to be divested to different Aboriginal people or entities.