Aboriginal Land Rights (Northern Territory) Amendment Bill 1989

Date Introduced: 31 October 1989
House: House of Representatives
Portfolio: Aboriginal Affairs

Digest of Bill

Purpose
To grant certain areas of stock routes and reserves to Aboriginal Land Trusts; make Aboriginal land in a conservation zone subject to the exploration licensing provisions of the Aboriginal Land Rights (Northern Territory) Act 1976; and provide that the consent of the Land Council will not, in certain circumstances, be required for an exploration licence in the Eastern Areas of Groote Eylandt and the Coronation Hill Project Area. The Bill will also allow access to certain Aboriginal land across alienated Crown land.

Background
The Aboriginal Land Rights (Northern Territory) Act 1976 (the Principal Act) provides a scheme for granting land in the Northern Territory (NT) to its traditional owners. In September 1983 the Aboriginal Land Commissioner, Mr Justice Toohey, began a review of the Principal Act and on 2 December 1984 presented his report to the Minister. Justice Toohey's recommendations included that there be a statute of the NT relating to excisions (community living areas) for Aborigines on pastoral leases and that Aborigines be given rights of access through pastoral leases in order to reach their land.¹

An amendment contained in the Aboriginal Land Rights (Northern Territory) Amendment Act 1987 (the 1987 amendment) provides for the removal of the right of Aborigines to claim title to stock routes and reserves. The proclamation of the 1987 amendment was conditional on the NT making satisfactory progress in the granting of excisions on pastoral leases. In 1984, the NT Cattlemen's Association agreed to support the granting of excisions on pastoral leases after the Minister gave an undertaking to exempt stock routes and reserves from Aboriginal land claims. In April 1985 the NT Government issued Living Area Guidelines to regulate excisions on pastoral leases. The Land Councils have been critical of the Guidelines which they consider favour the cattlemen. They maintain that the only Aborigines to benefit from the Guidelines are those currently living on leases.²

In September 1987, talks were held in Darwin between the Federal Government, NT Government, pastoralists and Land Councils for the provision of excisions on pastoral leases for those Aborigines not covered by the NT Government's Living...
Area Guidelines. These talks broke down because the Cattlemen's Association refused to negotiate on excisions on pastoral leases until the Government exempted stock routes and reserves from Aboriginal land claims.

To break the stalemate, on 22 August 1989, the Minister announced that the Government would amend the Principal Act to provide Aborigines with title to certain parts of stock routes and reserves. The Minister also announced that the Commonwealth would proclaim the 1987 amendment, and had urged the NT Government to legislate for excisions on pastoral leases. In September 1989, the Federal and NT Governments signed a Memorandum of Agreement under which the Commonwealth undertook to amend the Principal Act to grant Aborigines title to certain stock routes and reserves and proclaim the 1987 amendment. The Bill will fulfill this aspect of the agreement. For its part, the NT has passed legislation which will provide a mechanism for certain Aborigines to apply for excisions on pastoral leases.

Coronation Hill is a proposed gold–platinum–palladium mine site in Kakadu National Park. The proposed mine is located in the Northern Territory about 230km southeast of Darwin and adjacent to the South Alligator River. The proposed site is within the Conservation Zone declared by the Commonwealth Government in 1987 as an area with extraordinary mineral wealth requiring evaluation prior to deciding which parts should be reserved for mining and which added to Kakadu National Park. The area estimated to be disturbed by the proposed mine site is approximately 1km square.

On 6 October, the Government decided to place the majority of the Kakadu Conservation Zone within Kakadu National Park and to postpone any decision on the proposed Coronation Hill mine for at least 12 months. Conservationists, the mining industry and Aborigines, prior to the Government's decision, had been strongly pressing their competing claims over the issue of mining at Coronation Hill. For example, conservationists and Arnhem Land Aborigines announced that they would occupy Coronation Hill and several other sites threatened by exploration or mining. The Mining industry, for its part, has maintained that the proposed mine project has the support of Aborigines, pointing to the fact that 100 Aborigines, including 40 of the local Jawoyn people, had applied to work at the proposed mine.

Main Provisions
Clause 4 provides that a Land Trust is to be established within two years of the commencement of the Bill for land described in Parts 2 or 3 of Schedule 1 of the Bill.

Clause 5 provides that it will be the function of a Land Council to negotiate and enter into agreements for access to and across the Aboriginal land described in Parts 2 or 3 of Schedule 1 of the Bill.

Clause 7 provides that Aboriginal land in a conservation zone will be subject to the exploration licensing provisions of the Principal Act.
Clause 8 provides that the terms and conditions of an exploration licence will continue to operate after the completion of exploration for as long as is specified in the licence.

Clause 9 provides that a mining interest is not to be granted to a person holding a mineral claim in respect of Aboriginal land under Northern Territory law, unless they have entered into an agreement with the relevant Land Council as to the terms and conditions to which the interest will be subject and the Minister has approved those terms and conditions.

An exploration licence is not to be granted in respect of the Aboriginal land known as the Eastern Areas on Groote Eylandt and the Coronation Hill Project Area, if it becomes Aboriginal land, unless the licence applicant has entered into an agreement with the relevant Land Council as to the terms and conditions of the grant of the licence. However, where the applicant and the Land Council fail to agree, within 12 months, on the terms and conditions of the licence, either of them may request the Minister to refer the issue to a person, appointed by the Minister, for determination by conciliation or arbitration (clause 11).

Clause 14 will allow the Minister to decided what percentage of the rate of increase of royalties in respect of Aboriginal Land described in proposed Schedule 5, after the commencement of this provision, should be payable into the Aboriginal Benefit Trust Account. The proposed Schedule describes the Narbalek Project Area and will be inserted into the Principal Act by clause 19.

Clause 15 will allow Aborigines to cross alienated Crown land (i.e. Crown land in which a person, other than the Crown, has an interest) to reach Aboriginal land described in Parts 2 or 3 of Schedule 1 of the Bill where there is no other way to reach that land. The route to be taken across alienated Crown land is that which has been agreed between the holder of the interest in the land and the relevant Land Council, or if no route can be agreed to, a route determined by an arbitrator appointed by the Minister. The Minister is not to appoint a person as an arbitrator unless satisfied they can deal impartially with the matter. In making a determination, an arbitrator is, as far as possible, to try to ensure that a route does not unduly interfere with any interest holders legitimate use or enjoyment of the land over which it passes.

Parts 2 and 3 of Schedule 1 of the Bill, which provide for certain stock routes and reserves to be granted to Aboriginal Land Trusts, will be inserted into the Principal Act by clause 17. The Parts contain a detailed description of the land involved.

Clause 16 will allow any description of land in Parts 2 or 3 of Schedule 1 of the Bill to be modified by regulation. The regulations will not be able to modify the description of an area of land after title has been vested in a Land Trust.
References


For further information, if required, contact the Law and Government Group.

2 November 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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