Aboriginal Land Rights (Northern Territory)
Amendment Bill (No.3) 1987

Date Introduced: 7 May 1987
House: Senate
Presented by: Senator the Hon. Gareth Evans, Minister for Resources and Energy

Digest of Bill

Purpose
To remove the power of veto over mining operations where permission for exploration has been granted, and to make other amendments to the rules dealing with exploration and mining on Aboriginal land.

Background
Under the current provisions of the Aboriginal Land Rights (Northern Territory) Act 1976 (the Principal Act), Aboriginal Land Councils may veto mining on the land under their control or determine the terms and conditions under which mining may proceed.

A considerable backlog has developed in the processing of applications to carry out mining operations on Aboriginal land in the Northern Territory. Representatives of mining interests have argued that progress in negotiations for exploration agreements has been inhibited by the availability of the veto power which, they maintain, allows Aboriginal Land Councils to 'adopt an unrealistic stand in negotiations'. Council representatives, claiming that many mining companies are slow to put forward proposals for exploration and development when this doesn’t suit their long-term strategies, have argued in favour of a 'more competitive' system for processing exploration applications. In his Report on the provisions and operation of the Principal Act, Seven Years On, former Aboriginal Land Commissioner, Mr Justice John Toohey, was inclined to the view that delays in mining development are at least partly attributable to the costs and delays which arise in the course of fulfilling legislative requirements, as well as to administrative action taken by the Northern Territory Government. In 1972, the Northern Territory Government imposed a 'freeze' on the processing of applications. The 'freeze' continued to apply to applications for mining development on land which was subject to traditional land claims following self-government in 1978 and remained in operation until 1983.

Negotiations for amendments to the mining provisions continued throughout 1986 and early 1987, culminating in a meeting between the elected leaders of the Northern and Central Land Councils and the Minister for Resources and Energy on 6 May 1987. The results of their deliberations are contained in the provisions of this Bill.

Outline
The Bill will allow the veto to operate only at the exploration stage. Once consent...
has been given for exploration, Aborigines will have no power of veto over production. The proposed time limits for negotiations and arbitration process are designed to ensure that the terms and conditions on which exploration and mining are to be carried out can be agreed to without undue delay.

Main Provisions

Clause 5 will substitute a new Part IV (proposed sections 40 to 48J) into the Principal Act to deal with exploration and mining on Aboriginal land.

An exploration licence is not to be granted without the written consent of the Minister and the relevant Land Council or a Proclamation by the Governor-General declaring that it is required in the national interest. In addition, the Land Council and the applicant must have agreed on the terms and conditions to which the licence will be subject (proposed section 40).

A person approved by the Northern Territory Mining Minister (NTMM) will be able to negotiate with a Land Council for its consent to the grant of an exploration licence. The person must submit a written application to the Land Council within a specified period unless the NTMM has granted an extension. As well as proposals for infrastructure and exploration activities, and their likely effect on the land, the application is to include proposals for payment, rehabilitation, and minimisation of social impact (proposed section 41).

Unless the Minister grants an extension, the Land Council must give or refuse its consent within the negotiating period, i.e. generally 12 months from the date of receiving the application ('the negotiating period') and must notify the applicant, the Commonwealth Minister for Aboriginal Affairs and the NTMM of its decision. Before doing so, it must consult with the traditional Aboriginal owners of the land about the exploration proposals and possible terms and conditions of the licence, and ensure that any affected Aboriginal group has had adequate opportunity to express its views. Provision is be made for representatives of the applicant and the Minister to attend certain meetings between the Land Council and traditional Aboriginal owners. Before giving its consent, the Land Council must agree with the applicant on the terms and conditions of the licence. It must be satisfied that they are reasonable and that the traditional Aboriginal owners understand and consent to them. During the negotiating period, the Land Council and the applicant may appoint, or request the Minister to appoint, a Mining Commissioner to try to determine the terms and conditions by conciliation. If, during this period, the parties agree to have the terms and conditions determined by arbitration and notify the Minister accordingly, the Land Council will be deemed to have consented to exploration. Consent will also be deemed if the Land Council has neither given nor refused consent by the end of the negotiating period. Where the Land Council has given its consent, the Minister must decide whether to consent to the grant and notify the applicant and the Land Council of its decision within a specified time, otherwise consent will be deemed to have been given (proposed section 42).

Following a Proclamation by the Governor-General that a licence is to be granted in the national interest, the Land Council and the applicant will have a specified period in which to try to agree on terms and conditions. The Land Council is not to agree unless it has carried out consultations similar to those described in proposed section 42 (proposed section 43).

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Proposed section 44 sets out the circumstances in which the terms and conditions may be referred to a Mining Commissioner for conciliation and arbitration and lists the matters to be taken into account by the Mining Commissioner when determining the terms and conditions by arbitration. If, following arbitration, the Minister is satisfied that the Land Council has refused, or is unwilling, to enter into an agreement with the applicant, the Minister will enter the agreement on behalf of the Land Council. If the applicant does not enter into an agreement within a specified period, the NTMM’s consent to negotiate will be deemed to have been withdrawn.

A mining interest will not be granted unless the Land Council and the intending miner have agreed to the terms and conditions and the Minister has consented (proposed section 45). The intending miner must hold or have held an exploration licence or exploration retention lease over the land concerned and apply in writing to the Land Council, setting out a comprehensive mining proposal, including particulars which would be required for an environmental impact statement under Northern Territory law. The parties will have 12 months, or longer if they agree, in which to try to agree to terms and conditions. Provisions similar to those applying to the grant of an exploration licence will require consultation with the traditional Aboriginal owners and their consent to terms and conditions, and meetings which may be attended by representatives of the Minister and the applicant. A mechanism will be provided for the appointment of a Mining Commissioner for conciliation and arbitration. If matters in dispute go to arbitration, the Mining Commissioner is to determine fair and reasonable terms and conditions that should have been negotiated by the parties in commercial arm’s length negotiations conducted in good faith. Subsequent procedures will be similar to those following arbitration of the terms and conditions of an exploration licence (proposed section 46).

Proposed section 47 will enable the Minister to cancel an exploration licence or a mining interest if satisfied that:

1. the proposed operations do not accord with the description of how minerals are to be recovered, as set out in the application for the exploration licence;
2. the Land Council consented to the grant of the exploration licence;
3. given the actual or likely effect of operations, the Land Council would not have consented to the grant of the licence (even if it did); and
4. it is not required in the national interest that operations proceed.

Generally, once a Land Council has refused to consent to exploration, or the Minister has cancelled an exploration licence or a mining interest, there will be a 5 year moratorium on any further applications except in specified circumstances (proposed section 48).

Where land is the subject of a traditional land claim, proposed section 48A will empower a Land Council to enter an agreement with an applicant on the terms and conditions of an exploration licence or mining interest to be granted if the land claim is successful.

No mining will be permitted on Aboriginal land under the Atomic Energy Act 1953 or any other Act unless the Governor-General has declared either that the Minister and the Land Council have consented or it is required in the national interest (proposed section 48C). In such cases, the Commonwealth will be required to agree with the Land Council on the terms and conditions for mining, including payment to the Land Council (proposed section 48D). Proposed section 48E provides for arbitration
in the event that the Land Council refuses to negotiate the terms and conditions.

A Mining Commissioner will be a Federal Court Judge, a legal practitioner of at least five years' standing, or a Fellow of the Institute of Arbitrators Australia (proposed section 48F).

References


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

5 June 1987

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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