ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 1980

Date Introduced: 2 April 1980
House: Senate
Presented by: Senator the Hon. F.M. Chaney, Minister for Aboriginal Affairs

Short Digest of Bill

Purpose

a) To clarify the position with respect to the Crown ownership of minerals on Aboriginal land in the Northern Territory.

b) To give effect to a solution to the dispute over the registration of titles and the identification of public roads which has been agreed between the Aboriginal Land Councils, the Northern Territory Government and the Commonwealth Government.

c) To provide that once an agreement has been concluded between a Land Council and a miner, both parties will be bound by it.

Background

Early in 1979 it was announced that the Registrar General of the Northern Territory had decided not to register titles to Aboriginal land which had been granted under the Aboriginal Land Rights (Northern Territory) Act 1976. The Solicitor-General of the Northern Territory had given it as his opinion that public roads on Aboriginal land were excluded from grants of land because links of communication need to be preserved.

The Northern Territory Government further believed that, as the interest of the Commonwealth in minerals other than uranium and certain prescribed substances was vested in the Northern Territory under the Northern Territory (Self-Government) Act 1978, this also applied to minerals on Aboriginal land.

There had been some dispute about the validity of the Ranger Agreement based on an interpretation of the provisions of the Act which require that traditional owners be adequately consulted and their views reflected in the agreements reached. There had also been problems concerning
the issue of permits of entry onto Aboriginal land. This amending Bill seeks to resolve these issues.

Provisions

Clause 2 provides that sections 3, 6, 7, 8 and 9 shall be deemed to have come into operation retrospectively on 26 January 1977 when the Principal Act came into operation. The other provisions shall come into operation when the Act receives Royal Assent.

Clause 3 substitutes a new sub-section 12(2) to specify that where the minerals on land which is being granted to an Aboriginal Land Trust are minerals in which all interests are vested in the Commonwealth the right to the minerals remains with the Commonwealth. Where the interests are vested in the Northern Territory the right remains with the Northern Territory.

A new sub-section 2AA provides that when a deed of grant is prepared any interest in minerals granted to a person (other than the Commonwealth or the Northern Territory) need not be described but that interest will continue to operate when the deed of grant is completed.

A new sub-section 12(3) is substituted which provides that in respect of land which is the subject of a claim before the Aboriginal Land Commissioner (that is, land not listed in Schedule I of the Principal Act), roads over which the public has a right of way shall be identified and excluded from the deed of grant.

In respect of Schedule I land, roads over which the public had a right of way on 26 January 1977 or at the time of the execution of the deed of grant shall be excluded from the grant.

New s.12AA provides for the Northern Territory Government and the Land Council of the relevant area to decide and agree which roads were those over which the public had a right of way at the commencement of the Principal Act or at the time of execution of the deed of grant. Details of such agreements shall be forwarded to the Minister and published in the Gazette.

New s.12AB provides for the Supreme Court of the Northern Territory at the suit of either the Northern Territory Government or the Land Council to make an order that on Schedule I land there is a public right of way.

New s.12AC provides that after the publication of
an agreement in the Gazette or the coming into effect of a declaratory order, the land shall be deemed to be, and always to have been, excluded in the deed of grant. If the land has already been registered this will not come into effect until the Registrar-General has called in the deed of grant and registered the details of the agreement or order.

Clause 10 provides for the replacement of deeds of grant already delivered by new deeds which will exclude in general terms roads over which the public has a right of way as well as excluding any road specifically excluded in the first deed of grant.

Amendments to ss.43, 44 and 48 of the Principal Act provide that failure of the Land Council to fulfil adequately the requirement under s.23(3) and s.48 to have regard to and consult with the traditional owners and any other Aboriginals interested in the land and reflect their views does not invalidate agreements in respect of the granting of mining interests or mining under the Acts.

A new sub-section 27(4) provides that the Minister shall not give approval to contracts entered into by the Land Council unless he is satisfied that the Land Council has complied with the requirements of s.23(3).

New s.46A provides that where agreements between Land Councils and miners include agreements for entry onto Aboriginal land, the Land Council may issue permits for those wishing to enter for purposes relating to the subject matter of the agreement. Such permits and their revocation may only be in accordance with the terms of the agreement.

Clause 11 provides retrospective authorisation for such agreements about entry as were entered into before the new sections come into force.