

1986

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ABORIGINAL LAND RIGHTS (NORTHERN
TERRITORY) AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
representing the Minister for Aboriginal Affairs,
Senator the Hon. Susan Ryan)

GENERAL OUTLINE

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 1986

After giving further consideration to the amendments made to this Bill in the House of Representatives, it is apparent that the present explanatory memorandum does not adequately reflect those amendments. Therefore, a further revised memorandum has been produced.

The Aboriginal Land Rights (Northern Territory) Amendment Bill 1986 will amend the Aboriginal Land Rights (Northern Territory) Act 1976 to:

- . add to the functions, powers and duties of Land Councils (clauses 7, 8, 13, 16, 19, 20, 23, 24);
- . provide a scheme for the amalgamation of Land Trust areas (clauses 5,6,7,9);
- . revise the scheme for the grant of estates or interests in Aboriginal land (clauses 3, 12,);
- . revise the scheme for the use and dispersal of money received by the Aboriginals Benefit Trust Account (clauses 21, 22);
- . add to and vary some aspects of the functions of an Aboriginal Land Commissioner (clauses 25,26,28,29,30);
- . further limit the categories of land which can be the subject of a traditional land claim (clause 25); and
- . prevent the alienation of land which is subject to a traditional land claim (clause 32)

Certain amendments previously proposed will now be held over for further consideration. These are the proposals to:

- . provide for grants of interests in Aboriginal land to the Northern Territory for an essential service
- . provide a new scheme for the exploration for, and the mining of, minerals on Aboriginal land
- . set out more precisely the way in which the Commonwealth determines the amounts of mining royalty equivalent to be paid from consolidated revenue to the Aboriginals Benefit Trust Account
- . further limit the categories of land which can be the subject of a traditional land claim (i.e. claims to Aboriginal owned pastoral properties and public purpose land)
- . expand provisions for the protection of sacred sites

FINANCIAL IMPACT

- Provision will be made to compensate persons who have lost the use of a grazing licence or other licence upon land becoming Aboriginal land. It is not expected that such situations will occur often or that substantial payments will be involved. (Clause 10)

NOTES ON CLAUSES

Clauses 1 and 2 : Short title, &c. and Commencement

1. The first two clauses of the Bill provide for the short title and commencement of the legislation. The provisions of the Bill will come into operation on the day on which it receives Royal Assent. Clause 26 will be deemed to have come into operation on 30 June 1986.

Clause 3: Interpretation

2. The definition of "exploration licence" in sub-section 3(1) will be amended to include a permit granted under the Petroleum Act 1984 of the Northern Territory.
3. Definitions of "extractive mineral" and "extractive mineral deposit" will be added to sub-section 3(1), and the definitions of "minerals" and "mining interest" will be amended, as part of a scheme whereby extractive minerals (such as gravel used in road construction and repair) are treated separately from the scheme governing the mining of minerals. (See also clause 12)
4. Sub-section 3(2) will be amended to ensure that, for certain purposes under the Act, a lease or other interest in land, or a right granted in respect of land, relating to the mining or development of extractive mineral deposits will

not be considered an 'estate or interest in land'. (See also clause 33)

Clause 4: Act binds the Crown

- 5 This clause will ensure that the Act binds the Crown in right of the Commonwealth and the Crown in right of the Northern Territory.

Clause 5: Land Trusts

6. This clause will allow for the amalgamation of areas held by existing Land Trusts, or the amalgamation of land which will become Aboriginal land following a traditional land claim with land held by an existing Land Trust. Where the traditional Aboriginal owners of land falling within the area of land held by more than one existing or proposed Land Trust are in favour of such amalgamation, the relevant Land Council (or Land Councils) will be able to request the Minister to effect such an amalgamation. Where the Minister is of the opinion that it is appropriate to do so, he may vary the boundaries of a Land Trust or establish a new Land Trust to hold the land to be amalgamated. (See also clauses 6, 7, 9)

Clause 6: Recommendations for grants of Crown land described in Schedule 1

7. This clause provides that, where the Minister has taken action to amalgamate areas of land which involves an area of land described in Schedule 1 which was granted to an existing Land Trust, the Minister shall recommend to the Governor-General that a new deed (or deeds) of grant be executed.
8. Where an amalgamation involves an area of land the title to which is held in escrow by a Land Council, the Minister shall recommend to the Governor-General that a new deed (or deeds) of grant be executed and that the Governor-General deliver the new deed (or deeds) to the Land Council to be held in escrow upon the same terms as the former deed was delivered. (See also clauses 5, 7, 9)

Clause 7: Recommendations for grants of Crown land, other than that described in Schedule 1

9. Provision will be made empowering the Minister to recommend the grant to a single Land Trust of areas of land which have been claimed in two or more separate traditional land claims. So, where claims are successfully made to separate areas of land which are within the traditional country of a group of Aborigines, there may be one Land Trust (rather than two or more Land Trusts) to hold title to that land.

10. Grants of land to Land Trusts exclude public roads (see sub-sections 12(3) and (3A) of the Act) and may exclude stock routes where part of a road or stock route crosses Aboriginal land. This clause provides that where such land is no longer a public road or a stock route the Minister may recommend to the Governor-General that the land be granted to the appropriate Aboriginal Land Trust. This will avoid the need for a separate traditional land claim to be conducted in respect of each such strip of land.
11. Where areas of land held (or to be held) by Land Trusts are to be amalgamated, the Minister shall recommend to the Governor-General that a new deed or deeds of grant be executed in respect of the amalgamated areas. (See also clauses 5, 6, 9)
12. Provision will be made for the delivery of title to Aboriginal land to be delayed subject to specified conditions being met, where the Minister is satisfied that such conditions are appropriate. For example, where a person has an interest in the land and could suffer detriment if the land becomes Aboriginal land, the Minister may recommend to the Governor-General that the deed of grant not be delivered to the Land Trust until a formal agreement is entered into with that person protecting his or her interest. (See also clauses 8 and 9)

Clause 8: Land Councils may enter into agreements concerning land under claim

13. This clause will allow a person who desires to obtain an estate or interest in land which is the subject of a traditional land claim to negotiate with a Land Council for an agreement in respect of that land before the claim is determined (see also clause 13). The Land Council will be able to agree that, if the land becomes Aboriginal land, it will direct the relevant Land Trust to grant an estate or interest (including a mining interest and a licence) in the land to that person. Before it can enter into such an agreement the Land Council will have to be satisfied that the traditional Aboriginal owners of the land understand and, as a group, consent to the proposed grant (see clause 35); any other Aboriginal community or group that may be affected by the proposed grant has been consulted; and the terms and conditions on which the proposed grant is to be made are reasonable.
14. Where the land becomes Aboriginal land, the Land Council will be obliged immediately to direct the Land Trust to grant the estate or interest to the person on the terms and conditions set out in the agreement. Where such agreements are reached prior to the determination of a traditional land claim they may assist an Aboriginal Land Commissioner in making comment about the detriment to persons or communities that might result if the land claim were acceded to (see paragraph 50(3)(b) of the Act) and may assist the Minister

in deciding whether to recommend the grant of such land to a Land Trust. (See also clause 12).

Clause 9: Grants of land to Land Trusts

15. This clause will amend section 12 to provide that, where the Minister recommends that the delivery of a deed of grant to a Land Trust be delayed pending compliance with a specified condition, the Governor-General may execute such a deed and deliver it to the grantee once he is satisfied that the specified condition has been complied with. (See also clause 7).
16. This clause will also add to section 12 a provision for the delivery of new deeds of grant where areas of Aboriginal land have been amalgamated. It will provide for the consequential revocation of existing deeds of grant for that land and the dissolution of the previous Land Trust. Existing legal rights in the amalgamated areas of land will be preserved, as will any existing agreements in respect of that land. (See also clauses 5, 6, 7).

Clause 10: Compensation for loss of licences, &c.

17. Because grazing licences, occupation licences and miscellaneous licences are not estates or interests in land, land in respect of which such licences are granted is unalienated Crown land and can be the subject of a traditional land claim under paragraph 50(1)(a) of the

Act. This clause will ensure that, where a person holds such a licence, the right to use the land will convert into a right to compensation from the Commonwealth if the land becomes Aboriginal land. The right to compensation extends to compensation for any decrease in value of an estate or interest or other licence which the licensee has in land adjacent to the land granted, to the extent that the decrease arose out of the loss of that licence.

Compensation will not be payable in respect of unauthorised improvements on licence land. For example, the holder of a grazing licence adjacent to his pastoral lease may receive compensation where he loses the right to graze cattle and to any authorised improvements on the land, and where there is a consequential decrease in the value of his pastoral lease. Where the Commonwealth and the person fail to agree on what is a reasonable amount of compensation, the amount will be determined by the Federal Court of Australia.

Clause 11: Payments to Land Council by the Crown in respect of interests in Aboriginal land

18. Section 16 obliges the Crown to pay to a Land Council amounts equal to the amounts of rents and other prescribed payments (other than royalties) paid to the Crown in respect of interests such as mining interests granted on Aboriginal land. The Northern Territory Government has administrative responsibility for the issue of mining titles and the charging of rent thereon. It receives no compensation for this work since all rents must be paid to the Land

Councils. This clause will ensure that the Northern Territory will not be obliged to pay to a Land Council amounts equal to amounts paid to the Northern Territory by way of fees for services provided under Northern Territory mining legislation.

Clause 12: Dealings, &c., with interests in land by Land Trusts

19. Section 19 sets out the limitations on the grant of estates and interests in Aboriginal land. The consent of the Minister for Aboriginal Affairs is required before some estates and interests can be granted. This clause will amend section 19 to extend the period before Ministerial consent is required, in some cases from 10 years to 21 years and in others from 5 years to 10 years.

20. References to the grant of "a lease or licence" in sub-sections (2), (3), (4), (5), (7), (8) and (9) will be replaced by the expression "estate or interest", thus including a wider range of interests in land known at law. It will extend to licences but in most cases will not include an estate in fee simple. The grant of a licence relating to the mining or development of extractive mineral deposits will also come under section 19. (See also clause 3).

21. This clause will add new sub-sections (9A) and (9B) to oblige the Minister to direct a Land Trust to grant an estate or interest in land where a Land Council has entered

into an agreement to do so but later has refused or is unwilling to give such a direction. Where a Land Trust has been directed by the relevant Land Council or by the Minister to grant an estate or interest in particular land on particular terms and conditions, and the Minister is satisfied that the Land Trust has refused or is unwilling to do so, the Minister shall grant the estate or interest in the name of and on behalf of the Land Trust. (See also clause 8).

Clause 13: Functions of Land Council

22. This clause will confer on Land Councils additional functions:

- . to assist Aboriginals in taking measures likely to assist in the protection of sacred sites on land in the areas of the Land Councils (whether or not it is Aboriginal land);
- . to negotiate with persons desiring to obtain an estate or interest in land which is the subject of a traditional land claim, on behalf of the traditional Aboriginal owners of the land and any other Aboriginals interested in the land (see clause 8);
- . to assist Aboriginals in the areas of the Land Councils (whether or not it is Aboriginal land) to carry out commercial activities; and

to provide assistance to Land Trusts other than, or additional to, administrative assistance.

Clause 14: A person authorised by Land Council to have access to buildings and places in Region

23. The penalty for breach of section 23C will be increased from \$1,000 or imprisonment for 6 months to \$1,000 or imprisonment for 6 months, or both. (See clause 16).

Clause 15: Secrecy

24. Section 23E was inserted in 1978 as one of a number of provisions (including sections 23A-23D) to deal with uranium mining in the Alligator Rivers Region. Section 23E provides that a person who falls within one of the specified categories shall not, except in the performance of certain functions or duties, record or divulge any information concerning the affairs of any other person acquired by the person by reason of his employment or authorized activities. The secrecy provision is expressed in general terms. This clause will ensure that the secrecy provision is confined to information acquired by such a person in the course of performing functions or duties under section 23A, 23B, 23C or 23D.

25. The penalty for breach of this provision is increased from \$1,000 or imprisonment for 6 months, to \$2,000 or imprisonment for 12 months, or both. (See clause 14).

Clause 16: Register of traditional Aboriginal owners

26. This clause will amend section 24 to remove the obligation on Land Councils to compile and maintain registers of the traditional Aboriginal owners of Aboriginal land and a map of their sites. Land Councils will retain the ability to compile and maintain such registers.

Clause 17: Land Council to meet expenses, &c., of Land Trust

27. Section 26 provides that a Land Council shall pay or discharge any expenses, charges or obligations incurred or undertaken by a Land Trust that holds, or is established to hold, land in its area. This clause will limit the liability of Land Councils to pay any 'administrative' expenses, charges or obligations incurred or undertaken by a Land Trust.

Clause 18: Powers of Land Council

28. Sub-section 27(3) provides that a Land Council shall not enter into, or permit a Land Trust holding land in its area to enter into, a contract involving the payment or receipt of an amount exceeding \$50,000 without first obtaining the approval of the Minister. The figure of \$50,000 was fixed in 1976. This clause will increase the figure to \$100,000 and will allow for a higher figure to be prescribed from time to time.

Clause 19: Delegation

29. Under section 28 a Land Council may delegate its powers (other than specified powers) to the Land Council Chairman, another member of the Council or to a member of staff of the Council. This clause will enable a Land Council to also delegate those powers to a committee or committees of the Land Council (e.g. a regional committee). The clause will add to the powers which a Council can delegate the power to give or withhold consent to the acquisition or the grant of an estate or interest (other than a mining interest) in Aboriginal land under an agreement or agreements for less than two years or for a contract involving payment or receipt of an amount less than \$100,000. Where necessary, the delegate can be satisfied of those things of which the Land Council would have to be satisfied, that is, that any traditional Aboriginal owners of the affected land understand the nature and purpose of what is proposed and as a group consent to it, and that any Aboriginal community or group that may be affected by the doing of the act or thing has been consulted and has had adequate opportunity to express its views to the delegate. (See clauses 20, 35).

Clause 20: Committees

30. This clause will enable a Land Council to appoint a committee or committees of Council members to assist the Council in relation to the performance of any of its

functions. The Land Council could, for example, establish a regional committee and delegate to it certain powers of the Land Council. The Land Council will also be empowered to give directions with respect to the procedure to be followed at and in relation to meetings of such a committee. (See clause 19).

Clause 21: Application of money of Land Council

31. Sub-section 35(1) provides that where a Land Council does not require all the moneys it receives from the Aboriginals Benefit Trust Account for its administrative costs, those moneys shall be paid, within 6 months of their receipt, to one or more of the specified types of Aboriginal bodies. This clause will require such payment to be made within 6 months after the end of the financial year in which those moneys are received by the Land Council.
32. Sub-section 35(2) provides that moneys received by a Land Council from the Aboriginals Benefit Trust Account shall be paid to Aboriginal Councils for the areas affected by mining operations, and incorporated Aboriginal communities or groups whose members live in the area affected by such mining operations, within 6 months of the money being received by the Land Council. This clause will extend the categories of possible recipients of such money to incorporated Aboriginal communities or groups the members of which are the traditional Aboriginal owners of the area affected by such mining operations.

33. Sub-section 35(3) provides that moneys paid to a Land Council under a mining agreement shall be applied by the Land Council in specified ways. This clause will require a Land Council where the agreement does not provide otherwise to apply such moneys (whether the agreement is entered into before or after the commencement of the amendments) within 6 months after they are received by the Land Council.

34. Sub-section 35(4) provides that, where a Land Council receives certain types of payments, the Land Council shall pay an equivalent amount to or for the benefit of the traditional Aboriginal owners of the land involved. This clause will require such payment to be made within 6 months after the payment is received by the Land Council.

35. The clause will add sub-sections (5) - (12) to section 35. Sub-section (5) will ensure that, where a Land Council has not disbursed money within the 6 month periods provided in sub-sections (1), (2) or (3) because the Land Council has not been able to make a determination about who should receive the money, the Land Council shall give the Minister a written report setting out its reasons for not having made that determination. Such a report must be given as soon as possible and not later than one month after the 6 months period has expired. Where the Minister receives such a report he may make a determination which shall have effect as if it were made by the Land Council. The Land Council shall cause the money to be disbursed forthwith in accordance with the Minister's determination.

36. Where a Land Council determines that it must distribute an amount of money which is not required to meet its administrative costs, the Land Council shall hold the money in trust for the bodies to which it will eventually be paid.
37. Other money which is paid to a Land Council to be paid to Aboriginal bodies or persons shall be held in trust for the bodies or persons to whom it will eventually be paid.
38. An Aboriginal body or the traditional Aboriginal owners of an area of land to which or to whom such money is to be paid may request the Land Council to hold the amount in trust and the Land Council will do so until that request is revoked. Where an amount of money is held in trust, the Land Council shall cause that amount to be invested in accordance with section 62B of the Audit Act 1901. Where an amount of money has been held in trust and invested, the Land Council shall as far as practicable pay to the body or person to whom the money is paid the interest which the Land Council received in respect of that money.
39. From the date of commencement of this clause, an Aboriginal community or group will not be entitled to be paid money under Section 35 unless it is incorporated under Part IV of the Aboriginal Councils and Associations Act 1976 or it was otherwise incorporated prior to the commencement of this provision.

Clause 22: Incorporated communities or groups to lodge financial records with Land Councils

40. This clause will add a new section 35A to impose additional financial reporting obligations on an incorporated Aboriginal community or group which has been and is paid money under section 35. A body which received such money before the commencement of the new section will be required to give to the relevant Land Council a copy of financial statements which were required under the legislation under which it is incorporated for the year preceding the commencement of the new section. Each body will also be required in future to give to the relevant Land Council a copy of such financial statements as soon as practicable after the end of each financial year.

Clause 23: Interim financial reports

41. This clause will add a new section 37AA empowering the Minister to require a Land Council to submit to him or her such financial statements or statements of expenditure relating to the Land Council as are specified in the written notice. A Land Council will be obliged to comply with such a requirement.

Clause 24: Annual reports by Land Councils

42. Section 37A provides for each Land Council to prepare an annual report of its operations, together with audited financial statements. This clause will add to that section -

- (a) a new sub-section (1A) requiring that each annual report shall include particulars of any determinations made by the Land Council under sub-section 35(1), (2), (3) or by the Minister under sub-section 35(6), for the distribution of certain money received by the Land Council from the Aboriginals Benefit Trust Account; and
- (b) a new sub-section (3) requiring the Minister to ensure that a copy of each such annual report and financial statements is tabled in each House of the Parliament within 15 sitting days of receiving the report and financial statements.

Clause 25: Functions of Commissioner

43. Section 50 sets out the functions of an Aboriginal Land Commissioner, including his functions in dealing with a traditional land claim made under paragraph 50(1)(a) of the Act. This clause will add a number of provisions to that section -

- (a) a Commissioner will not perform his functions in respect of an application concerning a traditional land claim which is made after 10 years from the commencement of this amendment. This effectively provides a 10 year time limit on the lodgement of traditional land claims, but there will be no limit on the time within which those claims will have to be dealt with;
- (b) in certain circumstances, a Commissioner will be able to hear a repeat traditional land claim to an area of land. Where, in the earlier land claim, there was no recommendation for the grant of the land, a Commissioner shall not deal with a later application in respect of that land unless he finds either that the basis of the new application for traditional Aboriginal ownership is substantially different to the basis on which the previous application was made, that additional relevant information or material will be available to the Commissioner, or for such other reasons as he deems appropriate. He must also find that, it is likely that the Commissioner will find that the applicants or specified Aboriginals are the traditional Aboriginal owners of the land if the land claim were presented to a Commissioner again.
- (c) where, prior to this amendment, a traditional land claim has been made over alienated Crown land held by or on behalf of Aboriginals, a Commissioner will not

deal with the claim unless the Aboriginals holding the estate or interest in the land, or the body which holds it on their behalf, have given written consent to the making of the claim. This provision will be particularly relevant in the few instances where the people claiming to be the traditional Aboriginal owners of the land are not the people by whom, or on whose behalf, the land is held; and

- (d) a Commissioner will be unable to deal with a traditional land claim which has been made to a stock route or stock reserve that is reserved, dedicated or otherwise set aside under a law of the Northern Territory, other than the part of a stock route or stock reserve which is between and contiguous to other land being claimed, or a stock route or stock reserve in respect of which a Commissioner has, before the commencement of the new sub-section, commenced an inquiry into the traditional land claim.
- (e) the clause also provides, however, that a claim to a particular stock reserve may still proceed if specified by regulation. The purpose is to provide for situations (identified to the Northern Territory Government) where particular Aboriginal groups may have no other prospect of obtaining title to a suitable living area.

Clause 26: Appointment of Commissioner

44. Section 52 provides for the appointment, and re-appointment, of a person as an Aboriginal Land Commissioner. This clause will provide that, where a Commissioner's term of office has expired before the Commissioner has completed performing one of the functions which he has commenced to perform, the Commissioner shall be deemed to continue to hold the office for the purpose of completing the performance of that function. This provision could apply, for example, where a Commissioner has heard evidence and addresses in respect of a traditional land claim but has not reported his findings and made recommendations before his term of office has expired. The clause will be deemed to have commenced to operate on 30 June 1986. (See clause 2).

Clause 27: Judge to be appointed as Commissioner

45. Section 53 will be amended to enable a Federal Court Judge to be appointed as a Land Commissioner in addition to Judges of the Supreme Court of the Northern Territory.

Clause 28: Protection for Commissioner, &c.

46. Section 53A gives an Aboriginal Land Commissioner the same protection and immunity as a Justice of the High Court. A person who gives evidence to a Commissioner has the same protection as a witness in proceedings in the High Court (see sub-sections 54(4), 54A(4)). This clause will add a

provision to section 53A giving a barrister or solicitor appearing before a Commissioner in connection with the hearing of a traditional land claim or some other inquiry in pursuance of a Commissioner's functions, the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Clause 29: Commissioner may restrict publication, &c.

47. This clause will empower an Aboriginal Land Commissioner to give directions prohibiting or limiting the publication of, or access to, information or material produced to the Commissioner under this Act. A Commissioner will also be empowered to require specified persons, or persons within a specified class of persons, not to be in the vicinity of the place where information is to be given or material produced. These provisions could be used where, for example, evidence is given in the course of a traditional land claim hearing concerning secret Aboriginal ceremonial activity or commercially confidential matters. A person who knowingly contravenes or fails to comply with such a direction given by a Commissioner will be liable on summary conviction to a penalty of:

- . a fine of \$2,000, imprisonment for 12 months, or both - in the case of a natural person; or
- . a fine of \$10,000 - in the case of a body corporate.

Clause 30: Reference of question of law to Federal Court

48. This clause will enable an Aboriginal Land Commissioner to refer a question of law arising in connection with a traditional land claim to the Federal Court of Australia. A Full Court will hear and determine the question. While the reference is pending, a Commissioner shall not make a finding to which the question is relevant. A Commissioner shall not exercise a Commissioner's functions in a manner inconsistent with the determination of the Federal Court.

Clause 31: Interpretation

49. Section 66 provides that a reference to an estate or interest in Aboriginal land in Part VII of the Act, 'Miscellaneous', includes a reference to a number of specified types of interest. This clause will add to that list a lease or other interest in land or a right granted under a law of the Northern Territory relating to the mining or development of extractive mineral deposits. (See also clause 3).

Clause 32: Estates or interests not to be granted while land subject to traditional land claim

50. This clause will ensure that unalienated Crown land which is the subject of a traditional land claim cannot be alienated between the date on which the land claim was made and the date when the claim is finally disposed of. It would

however remain open for such matters to be the subject of negotiation. (see clause 8).

51. Land under claim cannot be reserved, dedicated or otherwise set aside after the commencement of this section.

Clause 33: Entry, &c., on Aboriginal land

52. Section 70 provides that, as a general rule, it is an offence for a person to enter or remain on Aboriginal land. One exception to this general rule applies in the case of a person who has an estate or interest in Aboriginal land. A person is entitled to enter and remain on the land for any purpose that is necessary for the use or enjoyment of that estate or interest by the owner of the estate or interest. This clause will ensure that where, following a successful traditional land claim, the land in which a person has an estate or interest is on or is in the vicinity of Aboriginal land and there is no practicable way of gaining access to the person's estate or interest other than by crossing Aboriginal land, a person will be entitled to gain access to it by a route over Aboriginal land. The route of access may be agreed upon between the owner of the estate or interest and the relevant Land Council. Where the owner and Land Council cannot agree, the Minister may appoint an Arbitrator, who will determine the route of access by taking into account such matters as the location of any sacred site and the location of any residential Area. Such a route of access will not be taken to be a public road.

Clause 34: Application of laws of Northern Territory to
Aboriginal land

53. Section 74 provides that a law of the Northern Territory will apply to Aboriginal land to the extent that that law is capable of operating concurrently with this Act. This clause will provide that the Control of Waters Ordinance 1938 of the Northern Territory (as in force on 28 May 1986) is a law of the Northern Territory that is capable of operating concurrently with this Act.

Clause 35: Consents of traditional Aboriginal owners

54. A number of sub-sections of the Act require that a Land Council not take action in respect of Aboriginal land unless the Land Council is satisfied that the traditional Aboriginal owners of that land, as a group, consent to the proposed action. This clause will provide the means whereby a Land Council can be satisfied in a particular case whether such consent has been given, by identifying the decision-making process used by the group in relation to the decision or decisions of that kind.

55. This clause also provides that where the state of mind of a body corporate has to be established (e.g. in relation to action taken on a sacred site), it will be sufficient to establish that a director, servant or agent of the body corporate acting within his or her actual or apparent authority had that state of mind.

56. Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of the person's actual or apparent authority, or by any other person at the direction or with the consent or agreement of such a director, servant or agent, shall be deemed to have been engaged in also by the body corporate.

