

1989

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 1989

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Justice and the
Minister representing the Minister for Aboriginal Affairs
Senator the Honourable Michael Tate)

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 1989 - OUTLINE AND FINANCIAL IMPACT STATEMENT**

The purpose of this Bill is to:

- . provide for the grant of certain areas of stock routes and reserves to Aboriginal Land Trusts by amendment of Schedule 1 to the Act;
- . expand the range of Aboriginal organisations to which Land Councils may distribute moneys under the Act.
- . restore an exemption from consent provisions in relation to the Eastern Areas of Groote Eylandt; provide that the new mining regime will apply to the Conservation Zone within Kakadu National Park Stage III; expand the definition of 'intending miner' to include a right granted under the Lands Acquisition Act 1989; and ensure that exploration agreements continue to operate after the completion of exploration for such periods as are contained in the agreement;
- . provide a means of access to land contained in Parts 2&3 of Schedule 1 to certain Aboriginals across alienated crown land where that is the only practical means of access; and amend sub-section 63(3) to deal with a problem concerning the payment of mining royalty equivalents into the Aboriginals Benefit Trust Account;
- . make minor consequential amendments to the definition of 'exploration retention lease' following amendments of the Mining Act of the Northern Territory.

FINANCIAL IMPACT

No financial implications flow directly from this legislation.

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 1989
NOTES ON CLAUSES

Clauses 1 and 2: Short title etc, and Commencement

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 the Royal Assent.

Clause 3: Interpretation

The definition of "exploration retention lease" in sub-section 3(1) will be amended to include an "exploration retention licence".

The definitions of "exploration licence", "intending miner" and "mining interest" in sub-section 3(1) will be omitted and replaced by newly formulated definitions. As well as each continuing to encompass the previous concepts

- . the new definition of "exploration licence" will include exploration rights issued under the Lands Acquisition Act 1989;
- . the new definition of "intending miner" will include an applicant for a mining interest under the Lands Acquisition Act 1989 who holds an exploration right under that Act; and

- . the new definition of "mining interest" will include interests granted under the Lands Acquisition Act 19

A definition of "Incorporated Aboriginal Association" will be inserted in sub-section 3(1) providing for the words to have the same meaning as in the Aboriginal Councils and Associations Act 1976.

Clause 4: Land Trusts

There will be an amendment to Section 4 of the Principal Act to require the Minister to establish Land Trusts to hold land described in parts 2 & 3 of Schedule 1 within 2 years after this amendment comes into force.

Clause 5: Functions of Land Councils

The Land Councils are given a function in subsection 23(1) to negotiate agreements relating to the new sub-section 68A(1) and sub-section 70(4). Sub-section 68A(1) provides access to Aboriginal land described in the new Parts 2 & 3 of Schedule 1.

Sub-section 70(4) provides for access across Aboriginal land for certain specified persons.

Clause 6: Application of money of Land Councils

Section 35 will be amended by replacing the words "Aboriginal community or group" wherever occurring and substituting "Incorporated Aboriginal Association". Sub-section (12) will be amended to preserve the rights of Aboriginal communities or groups who had entitlements under section 35 before the commencement of the amended sub-section (12).

There will be an amendment to sub-section (1). This will allow the Minister to declare that a body the members or shareholders of which are all Aboriginal and live in the area

of the Land Council and which is incorporated under a law of the Northern Territory is eligible to receive monies under s.35(1).

Clause 7: Grants of Exploration Licences

Section 40 will be amended to include Aboriginal land in a conservation zone, and will operate to bring the Kakadu Conservation Zone within the general mining provisions in the new part IV of the Act.

Clause 8: Terms and Conditions of Exploration Licences

Section 44A will be amended to ensure that exploration agreements will be able to continue to operate after completion of exploration for such periods as maybe set out in the agreement.

Clause 9: Terms and conditions to which grant of mining interest to be subject

This clause was intended to apply to a proposed amendment to the definition of intending miner in Section 3 of the Principal Act. The clause would have had the effect of making it clear that the holder of a mineral claim issued under the Mining Act of the Northern Territory would have been regarded as an intending miner and the provisions of s.46 would have applied to that person.

Clause 10: Special provisions relating to specified areas

Section 48AA will be inserted to provide that no consent of the Land Council will be required for the issue of exploration and mining interests in the Eastern areas of Groote Eylandt and in certain land within the Kakadu Conservation Zone known as the Coronation Hill Project area. The section also provides that before such interests are granted a terms and conditions agreement must be entered into by the parties.

The section will only apply if the land or any part of the land referred to in this section is or becomes Aboriginal land.

The section will permit, for example in relation to the Eastern areas on Groote Eylandt, an applicant to apply directly for a mining interest notwithstanding that that applicant did not hold an exploration licence in relation to that land.

Clause 11: Offence in connection with mining interest

Section 48J is amended to correct a typographical error by omitting the words 'or sub-section (2)'.

Clauses 12 : Functions of Commissioner

Section 50 will be amended by omitting paragraph (2E)(b) to remove the power to render a stock reserve available for claim by a regulation declaring that it is a stock reserve to which paragraph (2D)(b) does not apply.

Clause 13: Payments into Trust Account

Section 63 is amended by omitting sub-section (3) to remove the obligation on the Minister to make a determination, where there is an increase in the royalty rate since the commencement of the section, as to the amount of the

increase which should be taken into account in ascertaining the amount payable into the Aboriginals Benefit Trust Account. A new sub-section (3) is inserted which will retain the Minister's determining function in respect of certain Commonwealth mining operations administered by the Northern Territory pursuant to an inter-governmental agreement. In particular this will relate to the land set out in the new schedule 5 of the Act.

Clause 14: Access to certain areas of Aboriginal land

S68A will be inserted to provide a lawful means of crossing alienated Crown land to gain access to an area of land set out in the new Parts 2&3 of Schedule 1 and held by an Aboriginal Land Trust where there is no other practical means of gaining access to that land.

Clause 15 and 16: Amendment of Schedule 1

Section 77C will be inserted to permit any description of an area of land in the new Parts of Schedule 1 to be modified by regulation. The power to amend will cease when the land is granted to a Land Trust.

Schedule 1 will be amended by the addition of two further parts: part 2, a list of areas of land in stock routes and reserves to be granted to Aboriginal Land Trusts described in metes and bounds, and part 3, a number of similar areas described by means both of maps and metes and bounds.

Clause 17: Schedule 3

Schedule 3 is amended by omitting "Section 40" and substituting "section 48AA" to correspond with the new provision relating to the Eastern Areas of Groote Eylandt.

Clause 18: New Schedule

Schedule 5 is added to the Act. That schedule describes the

Narbalek Project Area and is referred to in the new subsection 63(3) of the Act (see clause 13 above).

Clause 19: Amendment of the Aboriginal Land Rights (Northern Territory) Amendment Act 1987

Section 34 of the Aboriginal Land Rights (Northern Territory) Amendment Act 1987 is repealed. This section provided that the Control Of Waters Act of the Northern Territory was an Act capable of operating concurrently with the Aboriginal Land Rights (Northern Territory) Act 1976. The amendment may have unintended consequences and is therefore repealed.

Clause 20: Amendment of the Aboriginal Land Rights (Northern Territory) Amendment Act No.3 1987

Section 8 of that Amendment Act is amended by omitting paragraph (b). That paragraph saved the provisions of the Aboriginal Land Rights (Northern Territory) Amendment Act (No.2) 1987 which made provision for a mining regime for the Conservation Zone in Kakadu National Park Stage III. This Bill now makes provision for a mining regime to apply to that area of land should it become Aboriginal land.