

1987

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL (NO. 3) 1987

EXPLANATORY MEMORANDUM

(incorporating amendments made by the Senate)

(Circulated by authority of the
Minister for Aboriginal Affairs,
the Hon A C Holding, MP)

OUTLINE

The Aboriginal Land Rights (Northern Territory) Amendment Bill (No. 3) 1987 will amend the Aboriginal Land Rights (Northern Territory) Act 1976 to:

- . repeal the present Part IV of that Act which relates to mining on Aboriginal land (clause 5);
- . establish a new mining regime (clause 5) which will:
 - provide that exploration licences on Aboriginal land will not be granted without the consent of the relevant Land Council and the Minister for Aboriginal Affairs and require that the parties enter into a terms and conditions agreement (proposed new Section 40)
 - set out the information intending explorers must provide to the Land Council and set time limits on when application for consent should be made (Section 41)
 - set time limits upon Land Councils responding to such applications (Section 42)
 - provide for national interest cases (Sections 40 & 43)
 - provide for an arbitration process where agreement on terms and conditions cannot be reached (Section 44 & 46)
 - set limits on the amount of compensation to be paid at the exploration stage (Section 44A)

- provide that agreements on terms and conditions must be entered into before mining interests can be granted and set out details an intending miner must provide (Section 45 & 46)
- provide for vitiation of consent where inaccurate descriptions of proposals have been provided (Section 47)
- provide that where a Land Council refuses its consent to the grant of an exploration licence, no further application may be made for 5 years subject to certain exceptions (Section 48);

. transitional and savings clauses (clauses 6 & 7) are included.

FINANCIAL IMPLICATIONS

There would be no additional financial implications for the Commonwealth save for those which may arise as a result of the arbitration procedures introduced by this Bill. These are not expected to be extensive.

NOTES ON CLAUSES

Clauses 1 and 2: Short title etc, and Commencement

1. The first two clauses 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 3: Interpretation

2. The terms "exploration retention lease", "intending miner" and "Northern Territory Mining Minister" are defined in this clause. These terms are used in the new Part IV (clause 7). A mining interest for the purposes of Part IV does not include an exploration licence or exploration retention lease.

Clause 4: Application of Money of Land Councils

3. 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 make consequential amendments required because of the repeal of Part IV.

Clause 5: Part IV - Mining

4. Part IV of the Act "Mining Interests and Mining Operations" will be repealed and a new "Part IV - Mining" will be substituted to create a new legislative scheme for exploration and mining on Aboriginal land.

Section 40: Grants of exploration licences

5. This clause provides that an exploration licence shall not be granted by the Northern Territory Mining Minister without either the written consent of both the relevant Land Council and the Minister, or a Proclamation by the Governor-General

that a grant of a licence is required in the national interest (in which case consent of the relevant Land Council will not be required). In either case the Land Council and the applicant for the grant of the licence must also enter into an agreement about the terms and conditions to which the grant of the licence will be subject before the licence can be granted.

Section 41: Application for consent to exploration licences

6. A person who has the consent of the Northern Territory Mining Minister will be able to enter into negotiations with a Land Council for its consent to the grant of an exploration licence. The person must submit to the Land Council within certain specified periods an application giving details of the applicant and the proposed exploration activity and other specified matters. Such an application must be lodged after the date of commencement of this section and the person must send a copy of the application to the Minister. In effect an applicant who, prior to the commencement of this section, has been negotiating with a Land Council will have to submit a new application to the Land Council unless he elects to continue to negotiate under the present provisions in accordance with Clause 7.
7. Such application will have to be made, in the case of a person who has already received the Northern Territory Mining Minister's consent, within 6 months of the date of commencement of this Section; in the case of a person who has already received the consent of the Northern Territory Mining Minister and has already applied to the Land Council under the Principal Act, within 3 months of the date of commencement; or in the case of a person who receives the consent of the Northern Territory Mining Minister after the date of commencement, within 3 months of the receipt of that consent.
8. There will be provision for the person to be able to apply to the Minister for an extension of the period referred in

paragraph 7. The Minister may grant such an extension if he is satisfied that the applicant was not reasonably able to put in the application in time and in all the circumstances it is reasonable to extend.

9. If that application is not lodged with the Land Council within the specified time period then the consent of the Northern Territory Mining Minister to that applicant lodging an application with the Land Council is deemed to have been withdrawn. Under the provisions of the Northern Territory Mining Act, the Northern Territory Minister must then make a further decision as to which applicant has his consent to a lodge such an application. (Consent can be given to the same applicant).
10. Within 30 days of receipt of an application, the Land Council must give notice to any Aboriginal group or community which may be affected.

Section 42: Response of Land Council to application

11. Where a Land Council receives such an application it shall either consent or refuse to consent to the grant of that exploration licence and agree to the terms and conditions subject to which the exploration licence will be granted. It shall inform the applicant, the Minister for Aboriginal Affairs and the Northern Territory Mining Minister of its decision, within the negotiating period (12 months, or such further time as the Land Council and the applicant shall in writing agree, or such other time as may be determined by the Minister if he is satisfied that the Land Council is unable to fulfil its functions within the time limit and in all the circumstances it is reasonable). There is specific provision that the consent is to a specified exploration program to make clear that the consent is to the exploration proposal described in the application.
12. Before making its decision the Land Council must, to the extent practicable within the negotiating period, consult

with the traditional Aboriginal owners of the land concerning consent and terms and conditions, and with any Aboriginal community or group that may be affected by the grant of the exploration licence (in relation to terms and conditions only). If the traditional Aboriginal owners do not consent to any exploration activity, there is no requirement on the Land Council to further consult affected communities or groups.

13. A Land Council which receives such an application will be obliged to convene such meetings with the traditional Aboriginal owners as are necessary to consider exploration proposals and shall give reasonable notice to notify the applicant and the Minister of meetings that the Minister and the applicant are entitled to attend.
14. The applicant's representative may present and explain the exploration proposals to the traditional Aboriginal owners at the first meeting called to discuss the substantive issues contained in the exploration proposals and will be able to present the applicant's initial views in relation to terms and conditions. The applicant's representative will also be able to be present at so much of any other such meetings called by the Land Council in order to explain the exploration proposals and the terms and conditions, unless the traditional Aboriginal owners as a group decide to the contrary and, through the Land Council, notify the applicant. A representative of the Minister may also be present at the initial meeting and at any other such meetings, unless the traditional Aboriginal owners as a group decide to the contrary and, through the Land Council, notify the Minister.
15. There will be a provision to allow the applicant and the Land Council to agree to go straight to arbitration before the expiration of the negotiating period. If the Land Council agrees to this, then it is deemed to have consented to exploration. Further if the Land Council has neither consented nor refused to consent by the end of the

consultative period, consent shall be deemed to have been given by the Land Council.

16. Other than in the case of deemed consent, a Land Council shall not consent to the grant of the exploration licence unless it is satisfied that the traditional Aboriginal owners understand and consent, the terms and conditions are reasonable, and it has agreed those terms and conditions with the applicant.

17. Where the Land Council either consents to the grant or is deemed to have consented the Minister shall notify the applicant and the Land Council within 30 days of the notification of consent or the end of the negotiating period respectively whether he or she also consents. If he does not consent within 30 days (or such longer period as is prescribed) then his consent will be deemed.

18. During the negotiating period the applicant and the Land Council may either agree on a person, or request the Minister to appoint a Mining Commissioner, to try to determine terms and conditions by conciliation.

19. 'Negotiating period' is defined as 12 months, such longer period as is agreed by the parties, or such longer period as the Minister determines. The Minister may extend the period where the Land Council so applies, and the Minister determines it is not reasonably practicable for the Land Council to perform its function and in all the circumstances it is appropriate to extend. He must notify the parties in writing specifying the period of extension and must also notify the Northern Territory Mining Minister in writing.

20. If a Land Council makes a request to the Minister for an extension of the negotiating period, the Minister must make a decision whether or not to grant that extension within 30 days of receiving the application. If he does not make a decision within 30 days he will be deemed to have refused consent. The negotiating period is extended to include the

period during which the Minister is making his decision if the negotiating period would otherwise have expired.

21. Where the Minister refuses to grant an extension, or his refusal is deemed, the negotiating period is extended for up to 7 days after the 30 days. The Land Council will not be deemed to have consented and will have an extra 7 days, after the Minister's decision to refuse an extension, in which to decide whether to give or not give its consent to the grant of an exploration licence.

Section 43: National Interest Cases

22. Where a proclamation has been made by the Governor-General relating to the grant of an exploration licence to a person in the national interest, the person and the Land Council shall try to agree within 180 days, or such longer period as is agreed by the parties, on terms and conditions to which the exploration licence will be subject.
23. The Land Council must not agree on those terms and conditions unless it has consulted with the traditional Aboriginal owners of the land and they understand and as a group consent to them, it has given Aboriginal communities or groups affected an adequate opportunity to express their views, and it considers the terms and conditions are reasonable.
24. The Land Council will be able to apply to the Minister for an extension of the negotiating period on the same grounds as are provided for in the proposed new sub-section 42(14).

Section 44: Determination of Conditions to which Grant of Exploration Licence Subject

25. Where the Minister has given his consent to the grant of an exploration licence under section 42(8), and the Land Councils' consent has been deemed under sub-section 42(7) or a proclamation in the national interest has been made, but the parties have failed to agree on terms and conditions, the

parties may refer the terms and conditions to an arbitrator for determination. Such reference to an arbitrator must take place within 30 days.

26. If the parties agree on an arbitrator within the negotiating period but do not refer the terms and conditions to an arbitrator, or a proclamation has been made and there is failure to agree on terms and conditions, either party may apply to the Minister to refer the terms and conditions to a Mining Commissioner to conciliate and, if necessary and either party does not object, arbitrate matters in dispute.
27. If either party objects the Minister shall appoint a Mining Commissioner in accordance with Section 48E.
28. Where the Mining Commissioner has to determine terms and conditions there are a number of specified matters he must take into account. These will include the best practicable industry practices for minimising the impact of the exploration activity upon the land and the Aborigines living on it. "Practicability" for this purpose includes economic practicability.
29. Where the applicant is willing to enter into an agreement on the terms and conditions determined by the Mining Commissioner then the Land Council shall enter into an agreement on those terms and conditions. If it has refused or is unwilling to do so, the Minister shall do so on its behalf. The applicant will not be bound to enter an agreement on the terms and conditions determined by the Mining Commissioner.
30. If the applicant chooses not to enter into the agreement within 90 days of the determination or such longer period as the Minister, upon application by the applicant, determines then the consent of the Northern Territory Mining Minister is deemed withdrawn and a new applicant may come forward.

Section 44A: Terms and Conditions of explorations licences

31. The terms and conditions either agreed between the parties or determined by the Mining Commissioner shall include the payment of compensation for damage or disturbance caused to Aboriginal land, but shall not include compensation for the value of minerals removed or proposed to be removed from the ground nor any other payment. Payments for the giving of consent of the Land Council will not be able to be negotiated.
32. The terms and conditions set out in an agreement entered into by an applicant and a Land Council will apply for the duration of the exploration licence, an exploration retention lease granted in respect of that land, or any renewal of such an exploration retention lease which is held by that person (or his heirs, successors or assigns).
33. Compensation for damage or disturbance caused to land includes references to compensation for deprivation of the use of the land and improvements and severance from other land having the same traditional attachment.

Section 45: Mining interest not to be granted in certain circumstances

34. A mining interest shall not be granted to an intending miner unless the relevant Land Council and the intending miner have entered into an agreement about the terms and conditions to which the grant of the mining interest will be subject. The Minister must give his consent before the mining interest can be granted.

Section 46: Terms and conditions to which grant of mining interest subject

35. An intending miner shall submit to the Land Council a written statement setting out specified particulars of the proposed mining activity, including information of a kind that would

be required for an Environmental Impact Statement under Northern Territory law. The intending miner must also send a copy of the statement to the Minister.

36. The intending miner and the Land Council shall endeavour to reach an agreement on the terms and conditions to which the grant of a mining interest will be subject within 12 months of receipt by the Land Council of the statement, or such longer time as the parties in writing agree. A Land Council shall not agree to terms and conditions unless it has, to the extent practicable, consulted the traditional Aboriginal owners and is satisfied that as a group they consent, it has consulted with other affected Aboriginal communities or groups, and it is satisfied that the terms and conditions are reasonable.
37. A Land Council which receives a statement from an intending miner will be obliged to convene such meetings with the traditional Aboriginal owners as it considers necessary to consider the intending miner's proposals and to discuss the terms and conditions to which the grant of the mining interest should be subject. The Land Council shall give the intending miner and the Minister reasonable notice, before each meeting they are entitled to attend, of the time and place of the meeting.
38. The intending miner's representative may be present to explain the mining proposals, and outline and discuss its initial views concerning terms and conditions at the first meeting. The intending miner will also be able to be present at so much of any other meetings called by the Land Council as is appropriate to discuss the proposal, unless the traditional owners decide and notify the intending miner through the Land Council to the contrary. A representative of the Minister may also be present at the initial meeting and at any other meetings unless the traditional owners decide and notify the Minister through the Land Council to the contrary.

39. If the intending miner and the Land Council fail to agree within 12 months, either the intending miner or the Land Council or both may request the Minister to refer the matters in dispute between them to a person appointed as a Mining Commissioner. The Mining Commissioner shall attempt to conciliate between the parties on the matters in dispute. Where such conciliation is not successful, the Mining Commissioner shall proceed, by arbitration of the matters in dispute, to determine the terms and conditions which in the opinion of the Mining Commissioner should be acceptable to both parties. The Mining Commissioner will not be limited by the Act as to what matters to take into account, and will be able to take into account such factors as the value of minerals likely to be mined.
40. If the Mining Commissioner decides that there is no possibility of conciliation he may proceed to arbitrate the terms and conditions that should be acceptable to both parties. Those terms and conditions are to be determined so as to be fair and reasonable, and such as should have been negotiated by the parties in commercial arms' length negotiations conducted in good faith.
41. Where the intending miner is willing to enter into an agreement on the terms and conditions determined by the Mining Commissioner, the Land Council shall enter that agreement. If it has refused or is unwilling to do so, the Minister shall enter into the agreement in the name of and on behalf of the Land Council. Nothing in this Part will oblige an intending miner to enter into an agreement with a Land Council on the terms and conditions determined by a Mining Commissioner.
42. An agreement entered into under this section will be binding upon the parties and all their heirs, successors or assigns.
43. If the intending miner does not enter into the agreement within 90 days or such greater period as the Minister determines upon application of either party then the licence or lease held by the intending miner is cancelled.

44. Where a Mining Commissioner determines terms and conditions and the intending miner withdraws the application for a mining interest because he is unwilling to accept those terms and conditions, that intending miner will be entitled to reimbursement for his exploration expenditure from a subsequent intending miner. Before the Minister consents to the grant of a mining interest to a subsequent intending miner, that intending miner shall reach an agreement with the original intending miner to reimburse him (or his heirs, successors or assigns) for the amount of exploration expenditure reported by the original intending miner under Northern Territory mining law.
45. An agreement may include provision about the distribution of any money paid to the Land Council under this agreement. This accords with the present section 43 of the Principal Act.

Section 47: Vitiating of Consent

46. The Minister may, upon request by a Land Council and after consultation with the Northern Territory Mining Minister, determine that an existing or a proposed exploration program should not proceed where he is satisfied that the program is not in accordance with exploration proposals consented to by the relevant Land Council, that the works would cause significantly more disruption than those consented to so that consent would have been likely to have been withheld, and that it was not contrary to the national interest that they not proceed.
47. Also under this section the Minister may determine that a mining proposal should not proceed, unless for it not to proceed would be contrary to the national interest, where he is satisfied that the method of recovery of minerals was not foreshadowed in information submitted at the exploration stage and that the newly proposed method would cause such significantly greater social impact and disruption to the

land as would have been likely to have resulted in the withholding of consent.

Section 48: No further applications within certain periods

48. Where a Land Council refuses to consent to the grant of an exploration licence, no such further applications shall be made in relation to that land for 5 years, subject to the qualifications mentioned below, after notice of that decision is received by the Northern Territory Mining Minister. At the expiration of that 5 years the applicant (or his heirs, successors or assigns) shall have an option for a period of 30 days to present a further application for consent to the grant of an exploration license in relation to that same land or part thereof. If the applicant does not exercise that option (or had died or has been wound up) another applicant who has the consent of the Northern Territory Mining Minister may present an application containing the information specified in this Act.
49. Where a Land Council refuses to consent to an exploration licence and is able to satisfy the Minister, after he has consulted the Minister for Resources and Energy and the Northern Territory Mining Minister, that the refusal was not for maximising financial compensation, that the relevant circumstances have changed and that the public interest requires it, the Land Council may apply to the Minister for the re-opening of licence applications.
50. Where the Minister receives such an application and is so satisfied then he shall authorise another application to be made by the original applicant or, if he fails to do so in 90 days, by any other person.
51. Where there is a cancellation of a person's interest due to variation from either the exploration program or proposed mining activity, there shall not be any application to the Land Council concerning that area of land within 5 years without the Minister's consent.

52. Where the Minister consents to someone other than the original applicant making an application within the 5 year period he may not give that consent until that other person has entered into an agreement with the original applicant to refund the original applicant's exploration expenditure.

Section 48A: Land Council may enter agreement concerning exploration or mining of land subject to claim

53. A Land Council will be empowered to enter into an agreement with a person who has applied for an exploration licence on land that is subject to an application for a traditional land claim, setting out the terms and conditions subject to which the exploration licence will be granted if the land becomes Aboriginal land.
54. A Land Council will also be able to enter into an agreement with a person who has an exploration licence in relation to such land, setting out the terms and conditions subject to which the exploration activity will be carried out if the land becomes Aboriginal land.
55. A Land Council will be able to enter into an agreement with a person who holds an exploration licence in relation to such land and who seeks the grant of a mining interest, setting out the terms and conditions to which the grant of the mining interest will be subject if the land first becomes Aboriginal land.
56. A Land Council will not be able to enter into such an agreement unless it is satisfied that the traditional Aboriginal owners understand the nature and purpose of the agreement and as a group consent to it, and that any Aboriginal groups or communities which may be affected by the agreement have been consulted.
57. Where the land becomes Aboriginal land and such an agreement has been entered into with an applicant for an exploration

licence, the consent of the Land Council to the grant of the exploration licence will not be required. The agreement will be taken to be an agreement as to the terms and conditions subject to which the exploration licence will be granted.

58. Where such an agreement has been entered into with an applicant for a mining interest and the land becomes Aboriginal land, the person will be treated as an intending miner and the agreement will be deemed to be an agreement as to the terms and conditions to which the grant of the mining interest will be subject.

Section 48B: Variation of terms and conditions

59. Where -

- . terms and conditions to which the grant of an exploration licence or a mining interest will be subject have been either agreed between the parties or determined by the Mining Commissioner;
- . that exploration licence or mining interest has been granted;
- . circumstances, other than financial circumstances, change for reasons outside the control of the explorer or miner so that it is not practicable for the explorer or miner to carry out the work in accordance with those terms and conditions;
- . the explorer or miner and the Land Council cannot agree to a variation of the terms and conditions; and
- . the agreement does not contain a provision for variation,

either the Land Council or the miner or both may request the Minister to appoint a Mining Commissioner to determine whether, and in what respect, the terms and conditions should

be varied. The Mining Commissioner may determine only matters relating to the carrying out of the mining work. The Minister will be obliged to appoint a Mining Commissioner whose determination will be binding on the Land Council where the miner is willing to enter into an agreement with the Land Council to vary the terms and conditions accordingly.

Section 48C: Application of Acts authorising mining on Aboriginal land

60. Any Commonwealth Act (including the Atomic Energy Act 1953) which authorises mining for minerals will not apply to Aboriginal land so as to authorise the entry or remaining of persons on that land unless the Governor-General has, by Proclamation, declared that the Act so applies.
61. The Governor-General shall not make such a proclamation unless the Minister and the Land Council have consented to the application of that Act or the Governor-General declares the national interest requires that that Act apply in relation to entry on that land.
62. The legal position relating to the Ranger Project Area will remain unchanged by this provision.

Section 48D: Payments in respect of mining under Acts

63. Where the Governor-General has made a proclamation, the Commonwealth Act referred to in that proclamation shall not be taken to authorise entry or remaining on Aboriginal land by any person unless the Commonwealth and the Land Council have entered into an agreement about the terms and conditions to which the entry and remaining on Aboriginal land of any person will be subject. Such terms and conditions may include payment by the Commonwealth to the Land Council. The agreement may also make provision as to how any money paid by the Commonwealth is to be distributed.

64. If a Land Council, in entering into such an agreement, fails to comply with sub-section 23(3) (including being satisfied that the traditional Aboriginal owners consent), that failure will not invalidate the agreement.

Section 48E: Arbitration on required agreement

65. Where the Minister is satisfied that the Land Council has refused or is unwilling to negotiate with respect to an agreement for mining activity under a Commonwealth Act, or the terms and conditions of such an agreement cannot be agreed between the Commonwealth and the Land Council, the Minister, after consulting with the Land Council, will be able to appoint a person as a Mining Commissioner to determine terms and conditions that, in the Mining Commissioner's opinion, should be acceptable to both parties.
66. Where a Mining Commissioner determines terms and conditions of an agreement, and the Commonwealth is prepared to enter into that agreement, the Land Council will be obliged to enter into that agreement. If the Land Council has refused or is unwilling to do so the Minister will be empowered to enter into such an agreement on behalf of the Land Council.

Section 48F: Appointment as Mining Commissioner

67. Where the Minister is required to appoint a Mining Commissioner at the exploration stage he shall appoint either a Judge or former Judge of the Federal Court, a legal practitioner of 5 years standing or a Fellow of the Institute of Arbitrators.
68. Before he makes such an appointment he must submit the names of not less than 3 qualified persons to the Land Council and the applicant. If they cannot agree upon a Mining Commissioner then the Minister shall appoint a qualified person of his own choice. That Mining Commissioner will be assisted by two assessors, one nominated by the Land Council and one by the Northern Territory Chamber of Mines (Incorporated).

69. In relation to a Mining Commissioner required for determination of matters in dispute at the mining stage the Attorney-General will, after consultation with Commonwealth Ministers responsible for Resources and Energy and Aboriginal Affairs, appoint a Federal Court Judge to determine the matters in dispute. There will be no assessors at this stage.

Section 48G: Proclamations to be laid before Houses of Parliament

70. As soon as practicable after the Governor-General has made a Proclamation that an exploration licence is required in the national interest or that a Commonwealth mining Act applied to Aboriginal land, the Minister will be obliged to cause a copy of that Proclamation to be laid before each House of Parliament. Either House may, within 15 sitting days of that House after the Proclamation is laid before it, pass a resolution disapproving of the declaration in the Proclamation.
71. Where a notice of disapproval is given and the notice is not withdrawn and the motion has not been called on, or the motion has been called on, moved and seconded and has not been withdrawn, the declaration in the Proclamation shall be deemed to have been disapproved of. If no notice of disapproval is given and neither House passes a resolution disapproving of the declaration, the Proclamation takes effect on the day after the last day upon which a resolution disapproving of the declaration in the Proclamation could have been passed.
72. If the House of Representatives is dissolved or expires or the Parliament is prorogued, and a resolution of disapproval has not been passed by the House before which a copy of the Proclamation has been laid, the copy of the Proclamation shall be deemed to have been laid before that House on the first sitting day of that House after the dissolution, expiry or prorogation.

Section 48H: Agreements for entry on Aboriginal land

73. An agreement made or deemed to have been made in respect of exploration or mining on Aboriginal land may have provision regulating entry of persons on to Aboriginal land for purposes related to that agreement. That agreement may also provide for the issue of permits by the Land Council to persons to enter onto Aboriginal land for purpose related to the agreement.
74. The issuing and revocation of such permits will be in accordance with that agreement and not otherwise.
75. This provision will not restrict the kinds of estates or interests for a route of access that can be agreed to or determined under sub-section 70(4).

Section 48J: Offence in connection with mining interest

76. Except as expressly provided by law, it will be an offence to make or agree to make a payment, or offer or agree to offer a gift to another person in connection with the granting of an exploration licence or mining interest on Aboriginal land.
77. The penalty for breach of this provision will be -
 - . a fine of \$5,000 or imprisonment for 2 years or both - in the case of a natural person; or
 - . a fine of \$25,000 - in the case of a body corporate.
78. Although it is an indictable offence, proceedings may be heard and determined by a court of summary jurisdiction, if the court is satisfied it is proper to do so and the defendant and prosecutor consent. Where such a court convicts a person the maximum penalty which it can impose will be -

- . a fine of \$2,000 or 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 5A: Consents of Traditional Aboriginal Owners

79. This clause extends the operation of the definition of "traditional Aboriginal owners as a group consent" at Section 77A of the Principal Act to the whole Act.

Clause 6: Transitional Provisions

80. Where, prior to the commencement of this provision, a Land Council has been negotiating with an applicant for a mining interest (including an exploration licence) on Aboriginal land, the applicant may elect to continue to negotiate as if the relevant provisions of the Principal Act continued to apply. The applicant must notify the Minister in writing that he has elected to negotiate on that basis, and those provisions of the Act will be taken to have continued to apply as if they had not been repealed. If either the applicant or the Land Council notifies the Minister in writing that there is no reasonable prospect that the negotiations will be successful then those provisions will cease to operate. The new scheme for exploration and mining on Aboriginal land will then operate in respect of that application.

Clause 7: Savings

81. This clause will ensure that, even though Part IV of the Act is repealed, the provisions of that Part will continue to apply in relation to the Ranger Project Area and the Conservation Zone of Stage III of Kakadu National Park as if it had not been repealed.

