



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

No. 75 of 1987

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

No. 75 of 1987

An Act to amend the *Aboriginal Land Rights (Northern Territory) Act 1976*, and for related purposes

[Assented to 5 June 1987]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

1. (1) This Act may be cited as the *Aboriginal Land Rights (Northern Territory) Amendment Act (No. 3) 1987*.

(2) The *Aboriginal Land Rights (Northern Territory) Act 1976*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

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Interpretation

3. Section 3 of the Principal Act is amended:

- (a) by inserting after the definition of “exploration licence” in subsection (1) the following definition:

“‘exploration retention lease’ means an exploration retention lease granted under a law of the Northern Territory relating to mining for minerals and includes a retention licence granted under the *Petroleum Act 1984* of the Northern Territory as amended from time to time;”;

- (b) by inserting after the definition of “Incorporated Aboriginal Association” in subsection (1) the following definition:

“‘intending miner’, in respect of Aboriginal land, means a person:

- (a) who makes application, under a law of the Northern Territory relating to mining for minerals, for the grant of a mining interest in respect of that land; and

- (b) who, on the day on which the person lodges that application:

- (i) holds an exploration licence in respect of that land; or

- (ii) being a person who has held an exploration licence in respect of that land, holds an exploration retention lease, or an application for the grant of such a lease, in respect of that land or a part of that land;

- (c) by adding at the end of the definition of “mining interest” in subsection (1) “, but in Part IV does not include an exploration licence or exploration retention lease”; and

- (d) by inserting after the definition of “National Parks Act” in subsection (1) the following definition:

“‘Northern Territory Mining Minister’ means the person holding ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978* who is responsible for the administration of the law of the Northern Territory relating to mining for minerals;”.

Application of money of Land Council

4. Section 35 of the Principal Act is amended by omitting from subsection (3) “43 or 44” and substituting “42, 43, 44, 46, 48A, 48B or 48D”.

5. Part IV of the Principal Act is repealed and the following Part is substituted:

“PART IV—MINING

Grants of exploration licences

“40. An exploration licence shall not be granted to a person in respect of Aboriginal land unless:

- (a) both the Minister and the Land Council for the area in which the land is situated have consented, in writing, to the grant of the licence; or
- (b) the Governor-General has, by Proclamation, declared that the national interest requires that the licence be granted;

and the Land Council and the person have entered into an agreement under section 44 as to the terms and conditions to which the grant of the licence will be subject.

Application for consent to exploration licences

“41. (1) Where the Northern Territory Mining Minister has given consent, whether before or after the commencement of this section, to a person's entering into negotiations with a Land Council for the consent of the Land Council to the grant to the person of an exploration licence in respect of Aboriginal land (in this section referred to as the ‘affected land’), the person shall submit to that Land Council an application, in writing, for consent to the grant of that licence.

“(2) The application shall be made:

- (a) if the applicant received the consent of the Northern Territory Mining Minister before the commencement of this section, but has not previously applied to the Land Council under this section in relation to the affected land—within 6 months after that commencement;
- (b) if the applicant received the consent of the Northern Territory Mining Minister before that commencement and has previously applied to the Land Council under this section in relation to the affected land—within 3 months after that commencement; or
- (c) if the applicant has received the consent of the Northern Territory Mining Minister after that commencement—within 3 months after the consent was given.

“(3) If the application is not made as required by subsection (2), the consent of the Northern Territory Mining Minister under subsection (1) shall be deemed to be withdrawn.

“(4) Where, upon receiving a request from the applicant and having consulted with the Northern Territory Mining Minister, the Minister is satisfied at any time that:

- (a) it is not reasonably practicable for the applicant to make an application within the relevant period prescribed by subsection (2); and

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(b) in all the circumstances of the case it is appropriate that a longer period should apply;
the Minister may, by notice in writing to the applicant, the Land Council and the Northern Territory Mining Minister, extend the period to such longer period as is specified in the notice.

“(5) The applicant shall cause a copy of the application to be sent to the Minister.

“(6) The application shall set out a comprehensive proposal which includes, but is not limited to, the following particulars:

- (a) a description of the applicant and of the business activities of the applicant;
- (b) a description of the affected land by reference to a map showing roads, topographical features, residential areas and other relevant features;
- (c) a copy of the instrument by which the consent of the Northern Territory Mining Minister was given and of any conditions relevant to the potential impact of the exploration works on the affected land and on Aboriginals, being conditions that are, under a law of the Northern Territory relating to mining for minerals, likely to be conditions to which the grant of the exploration licence will be subject;
- (d) an outline of the proposed exploration program stating, as far as practicable, the location, and likely effect, of proposed exploration works, and including details of:
 - (i) the anticipated period of activity upon such works;
 - (ii) proposed and possible exploration techniques;
 - (iii) the extent to which exploration activities will, or are likely to, affect the environment inside and outside the affected land;
 - (iv) the proposed method and amount of vehicular access to and within the affected land with reference to any proposals to construct roads, landing strips or other access facilities;
 - (v) the maximum number of people likely to be on the affected land from time to time;
 - (vi) the proposed water, timber or other requirements to be obtained from the affected land; and
 - (vii) proposals for minimising the effect of the proposed exploration works on the affected land;
 - (viii) the estimated cost of exploration;
 - (ix) the estimated geological potential of the area;
 - (x) a proposal in relation to payments for exploration activities;
 - (xi) the term of the exploration period;
 - (xii) proposals for rehabilitation; and

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- (xiii) proposals for minimising social impact;
- (e) a description, expressed as fully as practicable, of the various methods for the recovery of any minerals found as a result of the exploration;
- (f) the name, position and qualifications of the person or persons, not exceeding 3 in number, who will represent the applicant at meetings convened under subsection 42 (4) or, if any such person is unable so to represent the applicant, of any substitute authorised to represent the applicant.

“(7) The Land Council shall, within 30 days after receiving the application, cause notice of the application to be sent to any Aboriginal community or group that may be affected by the grant of the licence.

Response of Land Council and Minister to application

“42. (1) Where a Land Council receives an application under section 41 for consent to the grant of an exploration licence in respect of particular land, it shall, before the end of the negotiating period in respect of that application:

- (a) either consent, or refuse to consent, to the grant of an exploration licence authorising the proposed exploration program in respect of that land or of a part of that land; and
- (b) notify the applicant, the Minister and the Northern Territory Mining Minister, in writing, of its decision.

“(2) The Land Council shall not consent to the grant of the licence unless it has, before the end of the negotiating period, to the extent practicable:

- (a) consulted the traditional Aboriginal owners (if any) of the land to which the application relates concerning:
 - (i) the exploration proposals; and
 - (ii) the terms and conditions to which the grant of the licence may be subject; and
- (b) consulted any Aboriginal community or group that may be affected by the grant of the licence to ensure that the community or group has had an adequate opportunity to express to the Land Council its views concerning the terms and conditions.

“(3) The Land Council shall not refuse to consent to the grant of the licence unless it has, before the end of the negotiating period, to the extent practicable, consulted the traditional Aboriginal owners (if any) of the land to which the application relates concerning the matters referred to in paragraph (2) (a).

“(4) In order to facilitate consultation between the Land Council and the traditional Aboriginal owners:

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- (a) the Land Council shall convene such meetings with them as are necessary for the purpose of considering the exploration proposals and the terms and conditions;
- (b) the Land Council shall give reasonable notice to the applicant and the Minister before each meeting which the applicant and the Minister are entitled to attend;
- (c) the representatives of the applicant may attend so much of:
 - (i) the first meeting at which the substantive content of the exploration program is discussed; and
 - (ii) the first meeting at which the terms and conditions are discussed;

as is appropriate for the purposes of presenting and explaining the exploration proposals (including any information required to be given to the Northern Territory Mining Minister) and outlining the applicant's views concerning the terms and conditions; and

- (d) the representatives of the applicant may attend so much of any subsequent meeting as is appropriate for any of the purposes referred to in paragraph (c) unless the traditional Aboriginal owners, as a group, decide and, through the Land Council, notify the applicant, that the representatives may not attend.

“(5) A representative of the Minister:

- (a) may attend the meeting, or each meeting, referred to in paragraph (4) (a); and
- (b) may attend any subsequent meeting unless the traditional Aboriginal owners, as a group, decide, and, through the Land Council, notify the Minister, that the representative may not attend.

“(6) Subject to subsection (7), the Land Council shall not consent to the grant of the licence unless:

- (a) it is satisfied that the traditional Aboriginal owners (if any) of the land understand the nature and purpose of the terms and conditions and, as a group, consent to them;
- (b) it is satisfied that the terms and conditions are reasonable; and
- (c) it has agreed with the applicant upon the terms and conditions.

“(7) If:

- (a) at any time within the negotiating period, the Land Council notifies the Minister in writing that the Land Council and the applicant agree that the terms and conditions should be dealt with by arbitration; or
- (b) at the end of the negotiating period, the Land Council has neither consented, nor refused to consent, to the grant of the licence;

the Land Council shall, for the purposes of this Part, be deemed to consent to the grant of the licence.

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“(8) Where the Land Council consents to the grant of the licence, the Minister shall determine whether he or she also consents to the grant, and shall notify the applicant and the Land Council, in writing, accordingly, within 30 days, or such other period as is prescribed, after:

- (a) the receipt by the Minister of the notice under subsection (1); or
- (b) the day on which the Land Council was, under subsection (7), deemed to consent to the grant of the licence.

“(9) If the Minister fails to comply with subsection (8), the Minister shall be deemed to consent to the grant of the licence.

“(10) Where the Minister consents to the grant of the licence, he or she shall notify the applicant, the Northern Territory Mining Minister and the Land Council, in writing, accordingly.

“(11) If paragraph 42 (7) (a) does not apply, the applicant and the Land Council may at any time during the negotiating period:

- (a) appoint a person agreed upon by the parties; or
- (b) request the Minister in writing to appoint a person as a Mining Commissioner;

to try to determine the terms and conditions by conciliation.

“(12) Where a request is made to the Minister under paragraph (11) (b), the Minister shall, as soon as practicable, appoint a person under section 48F as a Mining Commissioner and that person shall try to determine the terms and conditions by conciliation.

“(13) In this section:

‘negotiating period’ means whichever of the following periods is the longest:

- (a) 12 months;
- (b) if, before the end of that period of 12 months, the applicant and the Land Council agree in writing on a longer period—that longer period;
- (c) if the Minister determines a longer period under subsection (14)—that longer period; or
- (d) if the period is extended by subsection (15)—the period as so extended;

after the application is received by the Land Council.

“(14) Where, upon receiving a request from the Land Council within what would otherwise be the negotiating period and having consulted with the Northern Territory Mining Minister, the Minister is satisfied that:

- (a) it is not reasonably practicable for the Land Council to perform its functions under this section within the period that, but for this subsection, would be the negotiating period; and
- (b) in all the circumstances of the case, it is appropriate that a longer negotiating period should apply;

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the Minister may, by notice in writing to the applicant, the Land Council and the Northern Territory Mining Minister, determine the negotiating period to be a longer period specified in the notice.

“(15) Where the Land Council makes a request under subsection (14):

- (a) if, within 30 days after receiving the request, the Minister refuses to extend the negotiating period, the negotiating period shall be deemed to include the period up to the end of 7 days after the Land Council receives notice of the refusal; or
- (b) if, at the end of that 30 days, the Minister has not consented, or refused, to extend the negotiating period, the Minister shall be deemed to have refused to extend the negotiating period, but the negotiating period shall be deemed to include the period up to the end of 7 days after that 30 days.

National interest cases

“43. (1) Where the Governor-General has, under paragraph 40 (b), issued a Proclamation relating to the grant of an exploration licence to a person in respect of Aboriginal land, the person (in this section called the ‘applicant’) and the relevant Land Council shall, within 180 days, or such longer period as is agreed upon in writing between the applicant and the Land Council, after the Proclamation takes effect, try to agree upon the terms and conditions to which the grant will be subject.

“(2) The Land Council shall not agree upon the terms and conditions unless:

- (a) it has, as far as practicable, consulted the traditional Aboriginal owners (if any) of the land concerning the terms and conditions and it is satisfied that they understand the nature and purpose of the terms and conditions and, as a group, consent to them;
- (b) it has, as far as practicable, consulted any other Aboriginal community or group that may be affected by the grant of the licence concerning the terms and conditions and it is satisfied that the community or group has had an adequate opportunity to express its views to the Land Council; and
- (c) it is satisfied that the terms and conditions are reasonable.

“(3) Subsection 42 (14) applies for the purposes of subsection (1) as if the references to the negotiating period were references to the period referred to in subsection (1).

“(4) Subsections 42 (4) and (5) apply for the purposes of subsection (2) as if the references to exploration proposals and the exploration program were omitted.

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Determination of conditions of exploration licences

“44. (1) This section applies to a person (in this section called the ‘applicant’), in relation to an area of Aboriginal land, if:

- (a) the Minister has consented under subsection 42 (8) to the grant of an exploration licence to the applicant in respect of the land and subsection 42 (7) applies; or
- (b) section 43 applies to the applicant, but the applicant and the Land Council have failed to agree upon the terms and conditions of the grant of the licence within the period referred to in subsection 43 (1).

“(2) Where paragraph 42 (7) (a) applies, the applicant and the relevant Land Council may refer the terms and conditions of the grant of the licence to be determined by an arbitrator agreed upon by the parties.

“(3) A reference to an arbitrator shall be made within 30 days, or such other period as is prescribed, after this section applies to the applicant.

“(4) If:

- (a) paragraph 42 (7) (a) applies and the applicant and the Land Council fail to refer the terms and conditions as provided by subsections (2) and (3); or
- (b) paragraph (1) (b) applies;

the applicant or the Land Council, or both, may, in writing, request the Minister to refer the terms and conditions to a person appointed by the Minister as a Mining Commissioner for determination by conciliation or, failing that, by arbitration.

“(5) Where a request is made to the Minister under subsection (4), the Minister shall, as soon as practicable, appoint a person under section 48F as a Mining Commissioner and that person shall thereupon try to determine the terms and conditions by conciliation.

“(6) If the Mining Commissioner becomes of the opinion that there is no reasonable prospect of determining the terms and conditions by conciliation, he or she shall notify both parties, in writing, of that opinion and, unless either party objects, shall proceed to determine by arbitration the terms and conditions that should, in his or her opinion, be acceptable to both parties.

“(7) If either party objects under subsection (6), the Minister shall, as soon as practicable, appoint another person under section 48F as a Mining Commissioner and that person shall thereupon determine by arbitration the terms and conditions that should, in his or her opinion, be acceptable to both parties.

“(8) In determining the terms and conditions, the Mining Commissioner shall take into account:

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- (a) the effect that the entry on to the relevant land and the carrying out of exploration operations on the land would have on:
 - (i) the preservation and protection of the lifestyle, culture and traditions of the traditional owners of the land;
 - (ii) the proposals and wishes of those owners about its management, use and control;
 - (iii) the development of the social, cultural and economic structures of those owners; and
 - (iv) the freedom of access of those owners and their freedom to carry out, in accordance with tradition, rites, ceremonies and other activities on the land;
- (b) the applicant's capacity, in carrying out the proposed exploration operations, to minimise any disturbance to those owners and the land;
- (c) the best practicable industry practices for minimising the impact of proposed exploration works upon the land and upon Aboriginals living on that land;
- (d) the nature and location of the exploration works proposed to be carried out; and
- (e) usual industry technology for carrying out exploration works of the kind proposed.

“(9) Where the applicant is willing to enter into an agreement with the Land Council setting out the terms and conditions determined under this section, the Land Council shall enter into that agreement.

“(10) Where the Minister is satisfied that the Land Council has refused, or is unwilling, to enter into an agreement in the circumstances referred to in subsection (9), the Minister shall, in the name of, and on behalf of, the Land Council, enter into such an agreement.

“(11) Nothing in this Part shall be taken to imply that the applicant must enter into an agreement with the Land Council to give effect to any terms and conditions determined by the Mining Commissioner under this section, but if the applicant does not enter into the agreement within 90 days after the determination or such longer period as the Minister may determine on application, within that period of 90 days, by either party, the consent of the Northern Territory Mining Minister under subsection 41 (1) shall be deemed to be withdrawn.

Terms and conditions of exploration licences

“44A. (1) The terms and conditions agreed upon under section 42 or 43, or determined under section 44, shall include terms and conditions requiring the payment by the applicant of compensation for damage or disturbance caused to the relevant Aboriginal land, and to the traditional Aboriginal owners of the land, by exploration activities undertaken on the land, but shall not include compensation for the value of minerals removed

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or proposed to be removed from the land or for any other purpose or consideration for giving consent to the grant of the exploration licence.

“(2) Where an agreement is entered into under this section concerning the terms and conditions, the terms and conditions shall remain in force during the period that:

- (a) the exploration licence;
- (b) if an exploration retention lease is applied for or granted in respect of the whole or a part of the land to which the exploration licence relates—that application or lease; or
- (c) if an exploration retention lease granted in respect of the whole or a part of the land to which the exploration licence relates is renewed—that exploration retention lease as so renewed;

is held by the applicant or by the heirs, successors or assigns of that person.

“(3) Without limiting the generality of references in subsection (1) to compensation for damage or disturbance caused to land, those references include references to compensation for:

- (a) deprivation of the use of the land or a part of the land;
- (b) deprivation of the use of improvements on the land as permitted by the agreement; or
- (c) severance of the land from other land having the same traditional Aboriginal owners as the land concerned.

Mining interest not to be granted in certain circumstances

“45. A mining interest shall not be granted to an intending miner in respect of Aboriginal land unless:

- (a) the relevant Land Council and the intending miner have entered into an agreement under section 46 as to the terms and conditions to which the grant of the mining interest will be subject; and
- (b) the Minister has consented, in writing, to the grant of that mining interest.

Terms and conditions to which grant of mining interest subject

“46. (1) An intending miner who seeks the grant of a mining interest in respect of Aboriginal land in respect of which that intending miner holds or held an exploration licence or an exploration retention lease (whether that licence or lease was granted before or after the land became Aboriginal land) shall submit to the relevant Land Council a statement, in writing, setting out:

- (a) a comprehensive proposal in relation to the mining works that the intending miner proposes to conduct on the land which includes, but is not limited to, the following particulars:
 - (i) the anticipated period of activity of the mining works;
 - (ii) the proposed mining techniques;

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- (iii) the extent to which the mining and related activities will, or are likely to affect the environment inside and outside the affected land;
 - (iv) the proposed method and amount of vehicular access to and within the affected land with reference to any proposals to construct roads, landing strips or other access facilities;
 - (v) the maximum number of people likely to be on the affected land from time to time;
 - (vi) the water, timber and other requirements to be obtained from the affected land;
 - (vii) proposals for minimising the effect of the proposed mining works on the affected land;
 - (viii) any other information of the kind that would, under the law of the Northern Territory relating to the protection of the environment, be required to be included in an environmental impact statement in relation to the proposed mining works;
 - (ix) proposals for rehabilitation;
 - (x) proposals for minimising social impact;
 - (xi) projected production capacity and scale of operations;
 - (xii) infrastructure requirements; and
 - (xiii) terms and conditions relating to payment;
- (b) the name, position and qualifications of the person or persons, not exceeding 3 in number, who will represent the intending miner at meetings convened pursuant to subsection (5) or, in the event that that person or any of those persons is unable so to represent the intending miner, of any other person authorised to represent the intending miner in lieu of the person who is unable so to represent the intending miner.

“(2) The intending miner shall cause a copy of the statement to be sent to the Minister.

“(3) Where the intending miner submits the statement to the Land Council, the intending miner and the Land Council shall try, within 12 months after receipt by the Land Council of the statement or, if a longer period is agreed upon, in writing, between the intending miner and the Land Council, that longer period, to agree upon the terms and conditions to which the grant of the mining interest will be subject.

“(4) Subject to subsections (7) to (11), inclusive, the Land Council shall not agree upon the terms and conditions unless:

- (a) it has, as far as practicable, consulted the traditional Aboriginal owners (if any) of the land concerning the terms and conditions and it is satisfied that they understand the nature and purpose of the terms and conditions and, as a group, consent to them;

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- (b) it has, as far as practicable, consulted any other Aboriginal community or group that may be affected by the grant of the mining interest concerning the terms and conditions and it is satisfied that the community or group has had an adequate opportunity to express its view to the Land Council; and
- (c) it is satisfied that the terms and conditions are reasonable.

“(5) In order to facilitate consultation between the Land Council and the traditional Aboriginal owners:

- (a) the Land Council shall convene such meetings with them as it considers necessary to consider the intending miner’s mining proposals and discuss the terms and conditions;
- (b) the Land Council shall give reasonable notice to the applicant and the Minister before each meeting which the applicant and the Minister are entitled to attend;
- (c) the representatives of the intending miner may attend so much of the first meeting as is appropriate in order to present and explain the intending miner’s mining proposals and to outline the intending miner’s views concerning the terms and conditions; and
- (d) except where the traditional Aboriginal owners as a group decide, and, through the Land Council, notify the intending miner that the representatives of the intending miner may not attend a subsequent meeting that is so convened—the representatives may attend so much of that subsequent meeting as is appropriate in order further to explain those mining proposals or further to discuss the terms and conditions.

“(6) A representative of the Minister:

- (a) may attend the first meeting; and
- (b) may attend any subsequent meeting unless the traditional Aboriginal owners as a group decide, and, through the Land Council, notify the Minister, that the representative may not attend.

“(7) If the intending miner and the Land Council fail, within the period referred to in subsection (3), to agree upon the terms and conditions, either or both of them may, by writing, request the Minister to refer the matters in dispute to a person appointed by the Minister as a Mining Commissioner for resolution of those matters by conciliation, or, failing that, by arbitration.

“(8) Where a request is made to the Minister under subsection (7), the Minister shall, as soon as practicable, appoint a person, in accordance with section 48F, as a Mining Commissioner and that person shall thereupon try, by conciliation, to assist the intending miner and the Land Council to resolve the matters in dispute.

“(9) If the Mining Commissioner becomes of the opinion that there is no reasonable prospect, by conciliation, of assisting the intending miner and the Land Council to resolve any matters in dispute between them, he or she

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shall notify both parties, in writing, that he or she is so satisfied and, unless either party objects, proceed, by arbitration of the matters in dispute, to determine the terms and conditions that should, in his or her opinion, be acceptable to both parties.

“(10) If either party objects under subsection (9), the Minister shall, as soon as practicable, appoint another person under section 48F as a Mining Commissioner and that person shall, by arbitration of the matters in dispute, determine the terms and conditions that should, in his or her opinion, be acceptable to both parties.

“(11) The Mining Commissioner shall determine terms and conditions that are fair and reasonable and that, in his or her opinion, should have been negotiated by the parties in commercial arms’ length negotiations conducted in good faith.

“(12) Where the intending miner is willing to enter into an agreement with the Land Council setting out the terms and conditions determined under this section, the Land Council shall enter into that agreement.

“(13) Where the Minister is satisfied that the Land Council has refused, or is unwilling, to enter into an agreement in the circumstances referred to in subsection (12), the Minister shall, in the name of, and on behalf of, the Land Council, enter into such an agreement.

“(14) Where an agreement is entered into under this section concerning the terms and conditions, the terms and conditions are binding upon the parties and their heirs, successors or assigns.

“(15) Nothing in this Part shall be taken to imply that the intending miner must enter into an agreement with the Land Council to give effect to any terms and conditions determined by the Mining Commissioner under this section, but, if the intending miner does not enter into the agreement, within 90 days after the determination or such longer period as the Minister may determine on application, within that period of 90 days, by either party, the licence or lease referred to in subsection (1) is cancelled.

“(16) Where:

- (a) the Mining Commissioner has, under this section, determined the terms and conditions; and
- (b) the intending miner has withdrawn the application for the grant of the mining interest because the intending miner is unwilling to accept the terms and conditions so determined;

the Minister shall not consent to the grant to another intending miner of a mining interest that will enable the mining of a mineral deposit on the same land, being a deposit that was delineated by a previous intending miner (whether the first-mentioned intending miner or not), unless the Minister is satisfied that the other intending miner has entered into an agreement described in subsection (17).

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“(17) For the purposes of subsection (16), the agreement shall be an agreement with the previous intending miner or with the heirs, successors or assigns of the previous intending miner to reimburse the previous intending miner, or the heirs, successors or assigns of the previous intending miner, an amount equal to the sum of the exploration expenditure reported by the previous intending miner in accordance with the conditions of the exploration licence or exploration retention lease held by the previous intending miner in respect of the land under a law of the Northern Territory relating to mining for minerals.

“(18) Without limiting the generality of the preceding subsections, the terms and conditions of an agreement under this section shall include terms and conditions relating to the payment to the Land Council of an amount or amounts specified in, or determined under, the agreement.

Vitiation of consent

“47. (1) Where:

- (a) a Land Council has consented to the grant of an exploration licence; and
- (b) the Land Council, by notice in writing to the Minister, states that:
 - (i) the licence-holder is conducting, or is likely to conduct, exploration works otherwise than in accordance with the proposed exploration program referred to in the application for that consent; and
 - (ii) the exploration works are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Land Council would not have consented to the grant of the licence (whether or not it actually did so consent);

the Minister shall, within 90 days after the receipt of the notice, consult with the Northern Territory Mining Minister and determine whether subsection (2) applies.

“(2) This subsection applies if the Minister is satisfied that:

- (a) the Land Council was entitled to make a statement under paragraph (1) (b); and
- (b) the national interest does not require that the exploration works should proceed.

“(3) Where an intending miner causes a copy of a statement of mining proposals to be sent to the Minister under subsection 46 (2), the Minister shall, within 90 days after receiving the notice, determine whether subsection (4) of this section applies.

“(4) This subsection applies if the Minister is satisfied that:

- (a) the proposed mining works or related activities are not in accordance with the description set out under paragraph 41 (6) (e) in respect of the application relating to the relevant exploration licence;

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- (b) the Land Council consented to the grant of the exploration licence;
- (c) the works or activities are causing, or are likely to cause, a significant impact on the affected land and on Aboriginals, to the extent that the Land Council would not have consented to the grant of the licence (whether or not it actually did so consent); and
- (d) the national interest does not require that the works or activities should proceed.

“(5) If the Minister determines that subsection (2) or (4) applies, the Minister shall inform the Land Council and the licence-holder or intending miner, as the case may be.

“(6) If the Minister determines that subsection (2) applies, the exploration licence is cancelled by force of this subsection.

“(7) If the Minister determines that subsection (4) applies:

- (a) if the mining interest applied for has not yet been granted—the application shall not be granted; or
- (b) if the mining interest has been granted—the interest is cancelled by force of this subsection.

No further applications within certain periods

“48. (1) Where a Land Council refuses to consent to the grant of an exploration licence in respect of particular land, a further application under section 41 shall not be made in respect of that land, or an area within that land, by any person except as provided in subsection (2), (3) or (4).

“(2) Where a Land Council has refused to consent to the grant of an exploration licence, the applicant may, during the re-application period, make a further application under section 41 to the Land Council in respect of the same land or an area within that land.

“(3) Where:

- (a) a Land Council has refused to consent to the grant of an exploration licence;
- (b) not less than 2 years from the refusal, the Land Council applies to the Minister under this subsection; and
- (c) the Minister, after consultation with the Commonwealth Minister responsible for mineral resources matters and the Northern Territory Mining Minister, is satisfied on reasonable grounds that:
 - (i) the refusal was for a reason or reasons other than a desire to maximise the amount of financial compensation to be received, whether at the exploration or the mining stage;
 - (ii) the circumstances or concern that resulted in the refusal are no longer applicable; and
 - (iii) the public interest requires that a further application under section 41 be made in respect of the same land or an area within that land;

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the Minister shall authorise such an application to be made:

- (d) within 90 days—by the original applicant; or
- (e) if the original applicant fails to apply within that period or notifies the Minister that he or she does not intend to apply—by any other person.

“(4) Where:

- (a) a Land Council has refused to consent to the grant of an exploration licence in respect of particular land; and
- (b) the applicant:
 - (i) has failed during the re-application period to make an application under subsection (2); or
 - (ii) has notified the Minister in writing within that period of the intention not to make such an application;

a person other than the applicant may apply to the Land Council for consent under section 41 in respect of the first-mentioned land or an area within that land.

“(5) Where an exploration licence or mining interest in respect of particular land is cancelled under subsection 47 (6) or (7), an application under section 41 or 46, as the case may be, in respect of that land, or an area within that land, shall not be made by any person within 5 years of the cancellation except with the consent of the Minister given after consultation with the Northern Territory Mining Minister.

“(6) The Minister shall not give consent under subsection (5) to a person other than the previous holder of the licence or interest unless the other person has entered into an agreement under subsection (7).

“(7) For the purposes of subsection (6), the agreement shall be an agreement with the previous holder or with his or her heirs, successors or assigns to reimburse the previous holder or his or her heirs, successors or assigns, an amount equal to the sum of the exploration expenditure reported by the previous holder in accordance with the conditions of the exploration licence or exploration retention lease held by the previous holder in respect of the land under a law of the Northern Territory relating to mining for minerals.

“(8) Without limiting the generality of the preceding subsections, the terms and conditions of an agreement under this section may include terms and conditions relating to the payment to the Land Council of an amount or amounts specified in, or determined under, the agreement.

“(9) In this section:

- (a) a reference to a person, in the case of a person who has died or been wound up or has assigned his or her rights under this Part, includes a reference to the heirs, successors or assigns of the person; and

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- (b) a reference to the re-application period, in relation to a refusal by a Land Council to consent to the grant of an exploration licence, means the period of 30 days commencing 5 years after notice of that refusal so to consent is received by the Northern Territory Mining Minister.

Land Council may enter agreement concerning exploration or mining of land subject to claim

“48A. (1) A Land Council may enter into an agreement with a person who has, under the law of the Northern Territory relating to mining, made application for an exploration licence in respect of land that is the subject of an application referred to in paragraph 50 (1) (a) and is in the area of that Land Council setting out the terms and conditions to which, if the land becomes Aboriginal land before the grant of that licence, the grant of that licence will be subject.

“(2) A Land Council may enter into an agreement with a person who holds an exploration licence in respect of land that is the subject of an application referred to in paragraph 50 (1) (a) and is in the area of that Land Council setting out the terms and conditions subject to which, if the land becomes Aboriginal land, the person may carry out the exploration works authorised by the licence.

“(3) A Land Council may enter into an agreement with a person who:

- (a) under the law of the Northern Territory relating to mining, holds an exploration licence in relation to land that is the subject of an application referred to in paragraph 50 (1) (a) and is in the area of that Land Council; and
- (b) has lodged an application, under that law, for the grant of a mining interest in respect of that land;

setting out the terms and conditions to which, if the land becomes Aboriginal land before the grant of that mining interest, the grant of that mining interest will be subject.

“(4) A Land Council shall not enter into an agreement under subsection (1), (2) or (3) in respect of an area of land unless it is satisfied that:

- (a) the traditional Aboriginal owners of the land understand the nature and purpose of the agreement and, as a group, consent to it; and
- (b) any Aboriginal community or group that may be affected by the agreement has been consulted and has had an adequate opportunity to express its views to the Land Council.

“(5) An agreement referred to in subsection (1) or (2) is binding on the successors to the Land Council.

“(6) Where, before an area of land became Aboriginal land, a Land Council had entered into an agreement under subsection (1) with a person

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who has made application for an exploration licence in respect of that land, then, for the purposes of this Part, when the land becomes Aboriginal land:

- (a) the consent of the Land Council to the grant of the exploration licence is not required; and
- (b) the agreement shall be taken, for all purposes, to be an agreement under section 44 as to terms and conditions to which the grant of that exploration licence will be subject.

“(7) Where, before an area of land becomes Aboriginal land, a Land Council had entered into an agreement under subsection (3) with a person who has made application for the grant of a mining interest in that land, then, for the purposes of this Part, when the land becomes Aboriginal land:

- (a) the person shall be treated as an intending miner; and
- (b) the agreement shall be taken, for all purposes, to be an agreement under section 46 as to the terms and conditions to which the grant of that mining interest will be subject.

Variation of terms and conditions

“48B. (1) Where:

- (a) an agreement setting out the terms and conditions subject to which an exploration licence or mining interest will be granted to a person (in this section called ‘the person’) has been entered into by or on behalf of a Land Council with the person;
- (b) the licence or interest has been granted to the person;
- (c) for reasons (other than financial reasons) outside the control of the person it is not practicable for the person to carry out the exploration or mining works to which the licence or interest relates in accordance with those terms and conditions; and
- (d) the person and the Land Council are unable to agree whether, or in what respect, the terms and conditions should be varied and the agreement does not contain any provision for variation of the agreement;

either or both of them may, by writing, request the Minister to appoint a Mining Commissioner to determine whether, and in what respect, those terms and conditions should be varied.

“(2) The Minister shall, as soon as practicable, appoint a person under section 48F as a Mining Commissioner, who shall determine the matters referred to in subsection (1).

“(3) Where the Mining Commissioner determines that the terms and conditions should be varied and determines the respects in which they should be so varied, then, if the person is willing to enter into an agreement with the Land Council to vary the terms and conditions in accordance with the determination, the Land Council shall enter into an agreement to that effect.

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“(4) Where the Minister is satisfied that the Land Council has refused, or is unwilling, to enter into an agreement in the circumstances referred to in subsection (3), the Minister shall, in the name of, and on behalf of, the Land Council, enter into such an agreement.

“(5) Subsection 46 (12) applies to an agreement under section 46 as varied under this section as it applied to the agreement before it was so varied.

Application of Acts authorising mining on Aboriginal land

“48C. (1) The *Atomic Energy Act 1953* or any other Act authorising mining for minerals does not apply in relation to Aboriginal land so as to authorise a person to enter or remain, or do any act, on the land unless:

- (a) the Governor-General has, by Proclamation, declared that both the Minister and the Land Council for the area in which the land is situated have consented to the application of that Act in relation to entry on that land; or
- (b) the Governor-General has, by Proclamation, declared that the national interest requires the application of that Act in relation to entry on that land.

Payments in respect of mining under Acts

“48D. (1) Where, by virtue of a Proclamation under section 48C, the *Atomic Energy Act 1953* or any other Act authorising mining for minerals applies, in the manner referred to in that section, in respect of any Aboriginal land, that Act shall not be taken to authorise a person to enter or remain, or do any act, on that land unless the Commonwealth has entered into an agreement under seal with the relevant Land Council for the acceptance by the Commonwealth of such terms and conditions as are provided for in the agreement, including terms and conditions relating to the payment to the Land Council by the Commonwealth of an amount or amounts specified in, or ascertained in accordance with, the agreement.

“(2) An agreement under subsection (1) may make provision for the distribution of any money paid to the Land Council under the agreement to or for the benefit of such groups of Aboriginals as are specified in the agreement.

“(3) Where a Land Council, in entering into an agreement under subsection (1), fails to comply with subsection 23 (3) in respect of Aboriginal land to which the agreement relates, that failure does not invalidate the entry by the Land Council into the agreement.

“(4) A payment by the Commonwealth under an agreement under this section shall be made out of money appropriated by the Parliament for the purpose.

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Arbitration on required agreement

“48E. (1) Where the Minister is satisfied that:

- (a) a Land Council has refused, or is unwilling, to negotiate with respect of the terms and conditions of an agreement required by subsection 48D (1); or
- (b) the Land Council and the Commonwealth cannot agree on the terms and conditions of the agreement;

the Minister may, after consultation with the Land Council, appoint a person as a Mining Commissioner, in accordance with section 48F, to determine the terms and conditions that, in the opinion of the Mining Commissioner, should be acceptable to both parties for the purposes of this subsection.

“(2) Where the Mining Commissioner has determined the terms and conditions of the agreement and the Commonwealth is willing to enter into the agreement with the Land Council, the Land Council shall enter into the agreement.

“(3) Where the Minister is satisfied that the Land Council has refused, or is unwilling, to enter into the agreement under subsection (2), the Minister may, in the name of, and on behalf of, the Land Council, enter into the agreement.

Appointment as Mining Commissioner

“48F. (1) Where the Minister is required to appoint a Mining Commissioner for purposes relating to an exploration licence, the Minister shall appoint:

- (a) a person who holds, or has held, office as a Judge of the Federal Court of Australia;
- (b) a legal practitioner of at least 5 years standing; or
- (c) a Fellow of the Institute of Arbitrators Australia.

“(2) Where the Minister is required to appoint a Mining Commissioner for purposes relating to a mining interest, the Minister shall notify the Attorney-General who shall, after consultation with the Commonwealth Ministers respectively responsible for Aboriginal affairs matters and mineral resources matters, appoint a person who holds, or has held office, as a Judge of the Federal Court of Australia.

“(3) The Minister shall not appoint a Mining Commissioner for a purpose relating to an exploration licence unless the Minister has submitted the names of not less than 3 persons having the qualifications set out in subsection (1) to the Land Council and the applicant referred in section 42 or 44, or to the Land Council and the person referred to in section 44B, as the case may be.

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“(4) Where the Minister has submitted the names of persons to a Land Council, or to a Land Council and another person, under subsection (2), the Minister shall appoint as a Mining Commissioner:

- (a) if the Minister is satisfied that the Land Council, or that the Land Council and that other person, as the case requires, agree to the appointment of one of the persons whose names have been so submitted—the person so agreed upon; or
- (b) if the Minister is satisfied that there is no reasonable prospect that the Land Council or the Land Council and that other person, as the case requires, will so agree—a person having the qualifications set out in subsection (1) whom the Minister considers suitable to be so appointed.

“(5) In the performance by a Mining Commissioner of an arbitration function relating to an exploration licence, the Mining Commissioner shall be assisted by 2 persons appointed for that purpose by the Minister.

“(6) Of the persons appointed under subsection (4), one shall be nominated, in writing, by the Land Council concerned and the other shall be nominated, in writing, by the Northern Territory Chamber of Mines (Incorporated).

Proclamations to be laid before Parliament

“48G. (1) The Minister shall, as soon as practicable after the making of a Proclamation referred to in paragraph 40 (b) or subsection 48C (1), cause a copy of the Proclamation to be laid before each House of the Parliament.

“(2) Either House of the Parliament, within 15 sitting days of that House after a copy of a Proclamation has been laid before that House under subsection (1), may, in pursuance of a motion upon notice, pass a resolution disapproving of the declaration in the Proclamation.

“(3) Where:

- (a) a notice referred to in subsection (2) is given with respect to a Proclamation; and
- (b) at the expiration of the period during which a resolution disapproving of the declaration in the Proclamation could have been passed:
 - (i) the notice has not been withdrawn and the relevant motion has not been called on; or
 - (ii) the relevant motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the declaration in the Proclamation shall be deemed to have been disapproved of.

“(4) If:

- (a) neither House of the Parliament passes a resolution in accordance with subsection (2) disapproving of the declaration in a Proclamation; and

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- (b) the declaration in the Proclamation has not been deemed to have been disapproved of under subsection (3);

the Proclamation takes effect on the day immediately following the last day upon which a resolution disapproving of the declaration in the Proclamation could have been passed.

“(5) If, before the expiration of 15 sitting days of a House of the Parliament after a copy of a Proclamation referred to in subsection (1) has been laid before that House:

- (a) the House of Representatives is dissolved or expires, or the Parliament is prorogued; and
- (b) a resolution for the disapproval of the declaration in the Proclamation has not been passed by the first-mentioned House;

the copy of the Proclamation shall, for the purposes of this section, be deemed to have been laid before that first-mentioned House on the first sitting day of that first-mentioned House after the dissolution, expiry or prorogation, as the case may be.

Agreements for entry on Aboriginal land

“48H. (1) An agreement made, or deemed to have been made, under section 44 or 46 may include provisions regulating or authorising the entry of persons on Aboriginal land for purposes relating to the subject-matter of the agreement.

“(2) Without affecting the generality of subsection (1), an agreement referred to in that subsection may provide for the issue of permits by the Land Council concerned to persons wishing to enter on Aboriginal land for purposes relating to the subject-matter of the agreement.

“(3) The issuing and revocation of permits referred to in subsection (2) shall be in accordance with the terms of the relevant agreement and not otherwise.

“(4) This section shall not be taken, by implication, to limit the kinds of estates or interests that can be the subject of an agreement or a determination under subsection 70 (4).

Offence in connection with mining interest

“48J. (1) Except as provided by section 42, 43, 44, 46, 48A, 48B or 48D or subsection (2) or as expressly provided by any other law, a person shall not 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 a mining interest in Aboriginal land.

“(2) An offence against subsection (1) is an indictable offence and, subject to this section, is punishable on conviction by:

- (a) in the case of a natural person—a fine of \$5,000 or imprisonment for a period of 2 years, or both; or

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(b) in the case of a body corporate—a fine of \$25,000.

“(3) Notwithstanding that an offence against subsection (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

“(4) Where a court of summary jurisdiction convicts a person of an offence against subsection (1), the maximum penalty that the court may impose is:

(a) in the case of a natural person—a fine of \$2,000 or imprisonment for 12 months, or both; or

(b) in the case of a body corporate—a fine of \$10,000.

“(5) In subsection (1), a reference to a payment does not include a reference to a payment of costs reasonably incurred by a Land Council in connection with negotiations for, or the preparation of, an agreement under this Part.”.

Consents of traditional Aboriginal owners

6. Section 77A of the Principal Act is amended by omitting ‘subsection 11A (3), 19 (5), 23 (3), 48 (1) or 68 (2)’ and substituting ‘this Act’.

Transitional

7. (1) Where, before the day of commencement of this section, a Land Council has entered into negotiations with a person who seeks the grant of a mining interest in respect of Aboriginal land concerning the giving, by that Land Council, of consent to the grant of that mining interest but the Land Council has not, before that day, consented to the grant of that mining interest, the applicant may notify the Minister, in writing, within 30 days after that day, that the applicant elects that subsections 40 (1) and (2) and section 43 of the Principal Act as in force immediately before that day continue to apply in relation to those negotiations.

(2) Where an applicant elects, pursuant to subsection (1), that subsections 40 (1) and (2) and section 43 of the Principal Act as in force immediately before the day of commencement of this section continue to apply in relation to negotiations being conducted with a Land Council, those provisions shall be taken to have continued so to apply on and after that day and before the making of that election, and to continue so to apply thereafter, as if they had not been repealed.

(3) If, at any time, the applicant or the Land Council notifies the Minister, in writing, that it is of the view that there is no reasonable prospect that the negotiations will be successful, the continued operation of the provisions specified in subsection (2) shall forthwith cease.

(4) Where an applicant or a Land Council notifies the Minister, in accordance with subsection (1) or (3), of any matter, the applicant or Land

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Council shall send a copy of that notification to the Land Council or to the applicant, as the case requires.

(5) In this section, "mining interest" has the same meaning as it has for the purposes of the Principal Act as in force immediately before the day of commencement of this section.

Savings

8. Notwithstanding the repeal of Part IV of the Principal Act, that Part as in force immediately before the commencement of this section continues to apply in relation to:

- (a) the land described in Schedule 2 to the Principal Act, being land known as the Ranger Project Area; and
 - (b) the land referred to in subsection 41 (3) of that Part;
- and to any agreement in respect of that land.

NOTE

1. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 70 and 83, 1978; No. 189, 1979; No. 12, 1980; No. 92, 1981; Nos. 16 and 80, 1982; Nos. 63 and 72, 1984; Nos. 63 and 93, 1985; and Nos. 0 and 0, 1987.

*[Minister's second reading speech made in—
Senate on 7 May 1987
House of Representatives on 3 June 1987]*