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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT
BILL 2006**

EXPLANATORY MEMORANDUM

**(Circulated by Authority of the Minister for Families, Community
Services and Indigenous Affairs, the Honourable Mal Brough, MP)**

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT BILL 2006

OUTLINE

Overview

1. This Bill implements reforms to the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) arising from three reviews of the ALRA conducted over the last nine years. Each of the reviews recommended amendments to streamline and modernise the ALRA to facilitate better outcomes for Aboriginal people and other stakeholders.
2. The Bill seeks to promote economic development on Aboriginal land by providing for expedited and more certain processes related to exploration and mining on Aboriginal land. It also facilitates the leasing of Aboriginal land and the mortgaging of leases. In addition the Bill makes provision for long term leases over townships on Aboriginal land to make it easier for Aboriginal people to own homes and businesses on land in townships.
3. The Bill contains provisions which foster the devolution of decision making to local Aboriginal communities. This includes allowing the delegation of Land Council powers to regional groups and clarifying the provisions for the establishment of new Land Councils.
4. The Bill seeks to improve the performance and accountability of Land Councils and incorporated bodies which receive payments for the use of Aboriginal land. Land Councils will in future be funded on the basis of workloads rather than a guaranteed funding formula, and bodies receiving payments for the use of land will have to specify the purpose of payments they make to Aboriginal people.
5. The Bill also disposes of claims to land which cannot be heard or finalised or which are clearly inappropriate to grant.

Financial impact statement

6. There are expected to be costs of up to \$15 million over five years from 2006-07 to 2010-2011 to assist with the establishment of the township leasing scheme. The necessary funds will be sourced from the Aboriginals Benefit Account.

REGULATION IMPACT STATEMENT

Problem and Background

1. The purpose of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) is to provide for the granting of traditional Aboriginal land in the Northern Territory (NT) for the benefit of Aboriginal people. The ALRA also regulates development on that land. The ALRA establishes Aboriginal Land Councils to assist, consult with and protect the interests of traditional Aboriginal owners of the land and other Aboriginal residents.
2. In November 1997, Mr John Reeves QC commenced a comprehensive independent review of the ALRA. The report of the review (*Building on Land Rights for the Next Generation* – the Reeves report) was provided to the Australian Government in August 1998. The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCATSIA) was asked to inquire into the Reeves report in December 1998. The report of the HORSCATSIA inquiry (*Unlocking the Future* – the HORSCATSIA report) was tabled in Parliament in August 1999. As HORSCATSIA was conducting its inquiry, a national competition policy review of Part IV (the exploration and mining provisions) of the ALRA was being undertaken by Dr Ian Manning of the National Institute of Economics and Industry Research as part of the Australian Government's review of legislation that may restrict competition. The report of that review (the Manning report) was also released in August 1999.
3. The Australian Government's primary objective in seeking to reform the ALRA is to facilitate a higher level of economic development on Aboriginal land. This is to be done without undermining the ALRA's current balance of interests under which traditional owners of Aboriginal land must consent to minerals exploration. The Government's reform proposals relate predominantly to two areas: Part IV of the ALRA dealing with exploration and mining; and provisions that will allow for more direct Aboriginal traditional owner participation in decisions about development of their land (by devolution of decision-making by Land Councils).
4. All three reports contain recommendations for reform.

The Reeves report

5. The Reeves report criticised the two large mainland Land Councils as being overly centralised and unresponsive to the local concerns of NT Aboriginal people. Mr Reeves found that the ALRA has been very successful in granting land to Aboriginal people but that it has been less successful in benefiting Aboriginal people in other ways. Mr Reeves concluded that most Aboriginal people in the NT do not appear to have gained a significant economic benefit from inalienable freehold title to over 40 per cent of the NT. Mr Reeves also found that development on Aboriginal land, especially mining, has not proceeded optimally. The key recommendations of the Reeves report include a system of 18 Regional Land Councils (RLCs) with a peak organisation, the NT Aboriginal Council (NTAC), and a deregulated system for exploration and mining on Aboriginal land.

The HORSCATSIA report

6. The HORSCATSIA report rejected the key recommendations of the Reeves report but agreed with many of the Reeves report's findings and suggested incremental reform rather than the Reeves report's more comprehensive changes.

The Manning report

7. The Manning report found that the operation of the exploration and mining provisions was improving and recommended incremental changes to: limit the time for the negotiation of agreements to two field seasons (a period slightly longer than two years taking into account the NT wet season) with the possibility of extensions; and improve relations between the Land Councils and the NT Government (which regulates exploration and mining on Aboriginal land under the NT *Mining Act*).

Objectives

8. The principal objectives are to improve access to Aboriginal land for development, especially mining, to provide for the establishment of devolved decision making structures for Aboriginal people, and to improve the socio-economic conditions of NT Aboriginal people.

Issue 1: Development of Aboriginal land

9. Part IV of the ALRA provides for an administrative regime to control exploration and mining on Aboriginal land. It provides Aboriginal landowners with a right to consent to exploration on their land (the exploration veto) and negotiation timeframes that can be extended (without limitation as to the length or number of extensions) by the Australian Government Minister. A veto on an exploration licence application generally places a five year moratorium on the land concerned before any negotiations can recommence. There is a national interest override of the exploration veto exercisable by the Governor-General (that has never been used). The process is initiated by a mining company obtaining a consent to negotiate with traditional owners (issued by the NT Government) for an agreement which covers exploration and (usually) provisions about any possible mining.

10. The issue for Government is how to facilitate more exploration and mining while retaining the veto. The three reports all recommend retaining the traditional owners' right to refuse development. Prior to 1987 the ALRA provided for Aboriginal people to have a veto at both the exploration and mining stages. Amendments to the ALRA in 1987 restricted the veto to the exploration stage. The Government made a commitment in its 1996 election platform to retain the veto at the exploration stage.

11. In relation to the development of Aboriginal land, the principal objective is to improve the processes for exploration and mining companies to operate on Aboriginal land. The main problems that need to be addressed include shortening the long negotiation timeframes (which currently are regularly extended with the agreement of the Minister) and restricting the ability of some mining companies to gain exploration access to large tracts of Aboriginal land, allegedly without having any real intention of pursuing exploration (known as warehousing), thereby restricting access by other companies that would be willing to explore.

Issue 2: Devolved decision making

12. There are four Land Councils established under the ALRA. Two represent small island communities (the Tiwi and Anindilyakwa Land Councils) and the mainland is divided into two areas represented by the large Northern and Central Land Councils. The large Land Councils have a limited regionalisation policy that is hampered by restrictions on delegation in the ALRA. The Land Councils can and have established Regional Committees but those Committees have limited decision making powers due to the restrictions on delegation (for example, Regional Committees are unable to approve exploration and mining agreements). Previous attempts to establish new Land Councils have failed under the current provisions of the ALRA (with the exception of the Tiwi and Anindilyakwa Land Councils).

13. In relation to devolved decision making the objective is to enable NT Aboriginal people to have more control over development decisions on the mainland by allowing for the decentralisation of the present Land Council structure. There is a need for a more flexible administrative structure to better represent the concerns of NT Aboriginal people at the local level.

Issue 3: Aboriginal socio-economic development

14. The ALRA establishes the Aboriginals Benefit Account (ABA) to receive mining royalty equivalent payments (from consolidated revenue), which are equal to the amount of any mining royalties received by the NT (or the Australian Government for uranium) in respect of a mining interest on Aboriginal land. The ABA received \$49.8 million in 2004/2005. Under the ALRA, the ABA has distributed 40 per cent of revenue to Land Councils for administrative costs; 30 per cent via royalty associations to Aboriginal people in areas affected by mining; and the remaining 30 per cent is used: to provide supplementary funding for Land Councils, for general purpose grants to NT Aboriginal people, for ABA administration costs (ABA administration costs have been only 0.5 per cent), and to increase the equity of the ABA (\$102.9 million at 30 June 2005). The Minister is advised on the distribution of general purpose grants by a statutory Advisory Committee.

15. Due to the sunset clause on making new claims, that took effect in 1997, the processing of land claims is approaching finalisation. This heralds an increasing focus on other aspects of the ALRA, including social and economic benefit derived from the optimal management of Aboriginal land. The Reeves report criticised the ALRA for failing to improve the socio-economic conditions of NT Aboriginal people. The HORSCATSIA report argued that socio-economic advancement was not the primary purpose of the ALRA. Both reports recommended improvements in accountability provisions related to the disbursement and expenditure of funds under the ALRA.

16. There is a need to maximise the social and economic benefits of the ALRA for NT Aboriginal people. However, the funds derived from the operation of the ALRA are small in comparison with other Government outlays. The main responsibility for the social and economic advancement of NT Aboriginal people rests with the NT Government and relevant Australian Government agencies. The objective is to ensure that the mining royalty equivalent payments are used optimally to increase Aboriginal participation in the economy through business activities and to expand industry development in the NT.

Options

17. Possible options for achieving the principal objectives are set out below.

Issue 1: Development of Aboriginal land

Option A - Reeves

18. The Reeves report recommended a deregulated approach to mining in which mining companies and RLCs would reach agreements that were unrestricted as to content in an unrestricted timeframe and present them to the NT Government to issue the relevant tenement. There would be no role for government in the process.

Option B - HORSCATSIA

19. The HORSCATSIA report recommended unrestricted exploration and mining agreements and the retention of the current role of the NT Government as 'gatekeeper' for the process.

Option C - Manning

20. The Manning report similarly recommended unrestricted agreements. The report also recommended: a core negotiating period of two "field seasons" (the seven months between April and October which excludes the wet season and busy ceremonial times); greater cooperation between the NT Government and the Land Councils; prevention of inactive exploration and mining companies restricting access by other companies to Aboriginal land; and confirmation of Land Council user charging arrangements.

Option D – alternative options

21. To encourage shorter timeframes for the negotiation of exploration agreements the NT Government and Land Councils have proposed that the NT Minister be provided with the discretion to set a deadline for negotiations after a core negotiating period of essentially two "field seasons" (approximately 30 months). If a company was not pursuing negotiations adequately, a company's consent to negotiate could be withdrawn by the NT Minister. The current five year moratorium which applies after traditional owners have vetoed exploration could be set aside at any time on the initiative of the Land Council and agreement of the NT Minister, subject to the current safeguard that it not be for commercial advantage.

22. The prohibition on delegating the Australian Government Minister's powers under Part IV (the exploration and mining provisions) could be removed. This would allow for a greater role for the NT Government in the exploration and mining provisions and is proposed by the NT Government and Land Councils. The national interest override and final approval of exploration and mining agreements would however remain with the Australian Government.

Issue 2: Devolved decision making

Option A - Reeves

23. The Reeves report recommended the dismantling of the two large mainland Land Councils and the establishment of 18 RLCs with an umbrella organisation, the NTAC, providing financial and strategic oversight. The aim of the Reeves report's recommendations is to provide for decision making at the regional level.

Option B - HORSCATSIA

24. The HORSCATSIA report recommended improving the procedures to create new Land Councils by outlining a transparent process and defining that the Aboriginal majority in favour of a new Land Council should be at least 60 per cent. The report also recommended relaxing the restrictions on the delegation powers of the existing Land Councils to allow for regional groups to exercise decision making responsibilities. The HORSCATSIA report also recommended that Aboriginal landowners be able to 'opt out' of representation by a Land Council.

Option C – alternative options

25. A more appropriate hurdle for a new Land Council would be a 55 per cent majority. Another option proposed by the NT Government and Land Councils to ensure that new Land Councils are workable would be to include a viability assessment. The assessment would include an examination of governance structures, administrative capacity and representative capacity.

26. An alternative option to the HORSCATSIA report for devolution of decision making would be to provide for application to the Minister by Aboriginal groups seeking to exercise regional Land Council powers as a step towards full Land Council status. This would enable regional groups to develop their organisational capacity without needing to perform the full range of Land Council functions.

Issue 3: Aboriginal socio-economic development

Option A - Reeves

27. The Reeves report recommended using the ALRA as the primary mechanism to address Aboriginal socio-economic disadvantage in the NT. The report recommended that all Government money, both NT and Australian Government, be provided to the proposed NTAC for distribution for the advancement of Aboriginal people. The Reeves report recommended that mining royalty equivalents be distributed only in accordance with a statement of purposes which would include prohibiting individual payments and an improved system of reporting and accountability for Aboriginal organisations which receive payments. The Reeves report recommended that the mining royalty equivalents derived from mining on Aboriginal land be paid in the first instance to the NTAC and only passed on to Aboriginal landowners who could demonstrate that mining had an actual adverse effect.

Option B – HORSCATSIA

28. The HORSCATSIA report put the view that the ALRA is not the primary vehicle for the economic advancement of NT Aboriginal people. The report recommended appropriate accountability mechanisms, a statement of purposes for the use of mining royalty equivalents and canvassed increasing from 30 per cent to 40 per cent the share of funds going to Aboriginal people in areas affected by mining. The HORSCATSIA report also canvassed distributing the ABA payments that go to Aboriginal people in areas affected by mining through a grants scheme rather than as an entitlement.

Option C – alternative options

29. To address the concerns about the payment of mining royalties, it could be a requirement that such payments not be made without a specified purpose. This should result in more targeted expenditure of royalty moneys. Formalising the Minister's capacity to build up the equity of the ABA, by allowing the Minister to prescribe a minimum level from time to time, would ensure the long term viability of the ABA. Enabling the Minister to appoint members with professional expertise to the ABA Advisory Committee would strengthen the Committee.

Impact Analysis

Groups affected

30. All reform options have a potential impact on Aboriginal people in the NT and their representative bodies, business (including the mining industry), the NT Government and the Australian Government.

Costs and Benefits

Issue 1: Development of Aboriginal land

31. Each option considered has the intention of increasing access to Aboriginal land for development and each is expected to achieve this benefit, although with varying degrees of success. As per the Government's commitment in its 1996 election policy the veto at the exploration stage is to be retained, despite its cost to business.

Option A – Reeves

Benefits

32. Removing government from the process of exploration and mining on Aboriginal land, except for issuing a tenement following a successful negotiation, would benefit traditional owners by recognising that the right of veto is equivalent to an ownership right. The veto is regarded as a *de facto* property right, and an unregulated system of land access would essentially give *de jure* recognition to the veto as a property right. This would allow Aboriginal people greater power in agreement making. It may benefit miners by reducing bureaucratic red tape.

Costs

33. The Reeves report recommendation of an unregulated system for mining on Aboriginal land would place unreasonable pressure on Aboriginal people and possibly lead to anti-competitive arrangements between Land Councils and resource companies. There is a proper role for Government to regulate resource development in the interests of orderly access and transparency. The Reeves report recommendations would leave the NT Government with little ability to properly manage the mineral resources vested in the Crown. An unregulated system that had few statutory controls could result in little incentive for negotiations to progress to finalisation, an outcome of no benefit to Aboriginal people or the mining industry. This potential inefficiency in the management of mineral resources would not be of benefit to either the NT Government or the NT community (including business other than mining). The Reeves report recommendations may mean that mining companies may be involved in protracted negotiations with Aboriginal traditional owners that would have a negative impact on the companies by tying up their resources and allocation of capital. Mining companies may be limited in their ability to pursue other opportunities while their resources are expended on these negotiations. The difficulty experienced by mining companies under such a system may act as a disincentive for the future development of mineral resources in the NT.

Option B – HORSCATSIA

34. This option is marginally better than Option A because it maintains a role for the NT Government.

Benefits

35. Freedom of contract would remove a legislative fetter that is generally ignored in any case. It would remove the legal uncertainty in regard to exploration agreements that include reference to the value of minerals likely to be extracted at the mining stage, and is supported by the NT Government and Land Councils. The retention of the role of the NT Government in managing mineral resources should be of benefit to all groups because it provides for a fair and transparent system for resource companies to seek access to Aboriginal land on a first-come, first-served basis and is supported by all stakeholders.

Costs

36. Freedom of contract has been criticised by elements of the mining industry as it could raise unrealistic expectations of Aboriginal people of the likely benefits from any mining. It is likely to require resource companies to engage in negotiations about terms of agreement that would apply at the mining stage up front prior to exploration. Some companies see this as a disincentive as pre-exploration they have no indication as to the real minerals potential of a tenement (and few exploration proposals lead to development). Removing the restrictions on exploration agreements would alter the balance of interests under the ALRA.

Option C – Manning

37. Option C maintains the role of government, supports freedom of contract and goes further in addressing negotiating timeframes than the previous two options.

Benefits

38. The Manning report recommendation of a core negotiating period encompassing two “field seasons” reflects current best practice. It is proposed by the NT Government and Land Councils and is supported by the mining industry. Preventing inactive mining companies from warehousing Aboriginal land is of benefit to all groups except mining companies that want to warehouse. Statutory confirmation of the ability of Land Councils to charge for services as recommended by the Manning report would add transparency to existing arrangements and would benefit developers. These proposals are supported by the NT Government, Land Councils and mining industry.

Costs

39. The proposals retain the ability to extend negotiating timeframes indefinitely. There is no mechanism to set a deadline for negotiations, which allows for an unending process which is of no benefit to traditional owners, miners or Government.

Option D – alternative options

40. This option includes mechanisms for encouraging agreement which the other options do not (ie. ability to set a deadline for negotiations, ability to withdraw consent to negotiate and greater role for the NT Government in administration).

Benefits

41. Processes to streamline negotiations on exploration and mining agreements would improve the access to Aboriginal land for these purposes for the benefit of all groups. The ability of the NT Government to set a deadline for negotiations after an appropriate core period may encourage quicker agreements, end unnecessarily protracted negotiations and benefit all groups. It would penalise inactive mining companies and allow traditional owners to cease fruitless negotiations without having to exercise the veto. There would be a greater incentive for mining companies to negotiate on access for exploration and development which may potentially offer further royalties to the NT Government (and royalty equivalents to the ABA) and increased economic benefits for the NT community, particularly Aboriginal people.

42. Allowing for the consent to negotiate to be withdrawn if a mining company is not pursuing negotiations adequately will benefit traditional owners who want to negotiate with a company that wants to negotiate properly and reward those companies that have a good reputation in negotiating with traditional owners. Mining companies will no longer be able to ‘warehouse’ areas of Aboriginal land with no intention of exploring in the short or medium term.

43. Allowing for the moratorium to be set aside with Land Council consent at any time will be beneficial to the development of Aboriginal land for all concerned. It introduces more flexibility to the process.

44. An increased role for the NT Government in the exploration and mining provisions would provide more direct and local administration which would benefit all groups. It would reduce the role of the Australian Government Minister in a matter that is primarily a NT land management issue.

45. The above proposals are the recommended Australian Government position and are supported by the NT Government, Land Councils and the mining industry.

Costs

46. Allowing negotiations to continue beyond a core period by allowing extensions to that core period may not result in any quicker timeframes for the negotiation of agreements than the current ALRA. However, key stakeholders would not support removing the ability for extensions to a core negotiating period because it removes their flexibility. A review of the operation of the new arrangements will be conducted after five years, primarily to test whether timeframes are being observed.

Issue 2: Devolved decision making

47. The intention of each option considered is to support local decision making structures. The benefits of more accountable Land Councils with responsibilities devolved to local groups would be greater attention to the needs of local Aboriginal groups and better social and economic outcomes for them. Local decision making could potentially lead to more economic (especially exploration and mining) development or, at least, lower costs for developers and quicker negotiation of land access.

48. The large Land Councils provide a degree of certainty to developers that the required consent and consultation processes of the ALRA have been fulfilled. Any reform measures to provide for devolved decision making must retain the current checks and balances that protect the interests of both Aboriginal landowners and developers. The benefits of dealing more directly with the traditional owners of the land must be balanced with the need to ensure agreements continue to provide certainty for developers and are beneficial to Aboriginal people.

Option A – Reeves

Benefits

49. Smaller Land Councils with decision making at the regional level would potentially benefit traditional owners and developers. RLCs would have the flexibility to make decisions according to their own decision making processes and based on their own assessment of their needs (economic, social and cultural). Exploration and mining companies would be better able to deal with local traditional owners without going through a large Land Council intermediary and build direct, constructive working relationships. The companies would then be better able to negotiate outcomes with traditional owners that reflected their shared interests in development. Outcomes would be more timely with local decision making as the processes and resource constraints of the large Land Councils can lead to lengthy negotiation timeframes.

Costs

50. The proposed NTAC's oversight functions would reduce local autonomy. 18 RLCs would not be operationally feasible at this stage given the limited physical and social infrastructure in the NT and limited community governance capacity. Regionally decided decision making processes would not necessarily provide primary decision making power to traditional Aboriginal landowners. Such processes could be counter to traditional Aboriginal decision making processes.

Option B – HORSCATSIA

Benefits

51. The HORSCATSIA report recommendations concerning new Land Council provisions and regionalisation by the existing Land Councils would provide mechanisms for Aboriginal groups desiring increased local decision making to achieve it. The maintenance of Land Council certification of traditional owner consent as recommended by HORSCATSIA would retain the existing certainty that developers have under the ALRA. On balance, the HORSCATSIA proposals are a more moderate and viable step towards Land Council reform than the approach of the Reeves report. The proposals would allow for the evolutionary development of local decision making bodies as those bodies would be established when local groups were ready and willing to take on further responsibilities.

Costs

52. A 60 per cent majority hurdle for new Land Councils would continue to, in effect, make the establishment of new Land Councils difficult. 'Opting out' presents potential administrative problems and could lead to a lack of certainty. Any group that opted out of the Land Council structure would have to be adequately resourced and there may be increased pressure on development interests to resource those groups. Under the ALRA a Land Council endorses that traditional owners have consented to an agreement and that other Aboriginal people affected have been consulted. This ensures that the right Aboriginal people have been consulted on any development proposal. Opting out of the Land Council system may reduce the certainty that all of the right people have been consulted.

Option C – alternative options

Benefits

53. Rather than the 60% threshold proposed by HORSCATSIA, a 55% majority hurdle for new Land Councils would be a more appropriate threshold. It would allow change to the status quo, but still ensure a new Land Council was supported by the community. A viability assessment for the establishment of a new Land Council would ensure organisational capacity existed. This would be beneficial to all identified affected groups. Regionalisation of decision making by application to the Minister would ensure a transparent process and would provide regional groups, that may not have a good relationship with the existing large Land Councils, with the opportunity to initiate the devolution process independently of the existing large Land Councils. These proposals are the preferred Australian Government position.

Issue 3: Aboriginal socio-economic development

54. Each option considered has the intention of increasing the economic development of Aboriginal land. This is in the interests of developers and Aboriginal people as long as both benefit from development of the land. For those benefits to be realisable it is important that public moneys are spent optimally for the benefit of recipients.

Option A – Reeves

Benefits

55. While increased accountability requirements for those Aboriginal organisations in receipt of mining royalty equivalents may raise their compliance costs, the benefits of ensuring the long term viability of those organisations should outweigh any costs. Improved accountability is the preferred Australian Government position.

Costs

56. The ALRA is primarily a land management Act. To expand its functions to include the Reeves report's proposal that all Government funding be channelled through the proposed NTAC is not favoured by either the Australian Government or NT Government as it would centralise decision making about funding of Aboriginal affairs in the NT. This would not benefit any group.

57. The Reeves report recommendation that Aboriginal landowners only receive payments if they can demonstrate an actual adverse effect from mining would provide less incentive to agree to mining than the current arrangements which entail an automatic entitlement to payments. This would not benefit Aboriginal people or mining companies as it would reduce the incentives to proceed with negotiations. Fewer agreements would not benefit the NT Government or community.

Option B – HORSCATSIA

Benefits

58. The increased accountability mechanisms for the use of mining royalty equivalents is favoured by all affected groups and is the preferred Australian Government position.

Costs

59. An increase from 30 per cent to 40 per cent of mining royalty equivalents going to areas affected may not result in more exploration agreements as the veto is primarily exercised for cultural reasons. There would be consequently less funds for the general benefit of all Aboriginal people in the NT. A grants scheme for areas affected monies would be detrimental to Aboriginal landowners and is not recommended as the funds are essentially compensation. It is not appropriate for affected people to compete for compensation payments. This would be of no benefit to any group.

Option C – alternative options

Benefits

60. Requiring specific purposes for payments should result in more targeted expenditure of royalty moneys. Given the volatility of mining royalty equivalent income, allowing the Minister to prescribe a minimum level for the equity of the ABA would ensure the long term viability of the ABA. Adding professional expertise to the ABA Advisory Committee should assist in providing more strategic advice to the Minister. These proposals are the preferred Australian Government position.

Costs

61. Requiring specific purposes for payments may be criticised by some NT Aboriginal people as constraining their choices.

Summary of Impact Analysis of Issue 1: Development of Aboriginal Land

62. All four options considered include the maintenance of the veto at the exploration stage. Maintaining the veto is a Government policy commitment. The deregulated system proposed by Option A (Reeves) would likely lead to anti-competitive outcomes and less exploration and mining. The incremental approach of Option B (HORSCATSIA) fails to address the timeframes for negotiations and is likely not to lead to improvements. Option C (Manning) fails to address the extensions to the core negotiating period but would nevertheless likely lead to marginal improvements that would benefit all groups. Option D (alternatives) attempts to limit extensions and most significantly delegates most exploration and mining decisions on Aboriginal land to the NT Government. Option D is likely to be of considerable benefit to all groups. The likely outcome of a more responsive local administration is increased exploration and mining where traditional owners wish it to occur, which is in the interests of all affected groups.

Consultation

63. The three reviews provided all stakeholders with a number of opportunities to present their views. The Reeves and HORSCATSIA review processes involved extensive public hearings at which 2000 people attended and 170 written submissions totalling 6000 pages were produced.

64. The then Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon John Herron, announced a review of the ALRA and the terms of reference in July 1997. Mr Reeves was appointed to conduct the review in October 1997. Mr Reeves conducted a full public review. An issues paper was circulated in November 1997, community visits and public hearings in 22 Territory communities occurred between December 1997 and March 1998 and 98 written submissions were received. Mr Reeves reported in August 1998.

65. The then Minister referred the Reeves report for inquiry by HORSCATSIA in December 1998. HORSCATSIA conducted 31 public hearings and meetings between March and June 1999 and received 72 written submissions. The HORSCATSIA report was tabled in Parliament in August 1999.

66. The national competition policy review of Part IV of the ALRA conducted by Dr Manning for the National Institute of Economics and Industry Research was commissioned by the Aboriginal and Torres Strait Islander Commission in January 1999. Submissions were received from the major stakeholders, a statistical survey was conducted, an informal meeting of the major stakeholders was held, a draft report was circulated to major stakeholders and comments were taken into account. The report was publicly released in August 1999.

67. The Land Councils, representing NT Aboriginal people, have criticised the Reeves report and generally supported the HORSCATSIA report. The mining industry favours proposals to encourage development on Aboriginal land.

68. The former Minister for Immigration and Multicultural and Indigenous Affairs, the Hon Philip Ruddock MP, initiated a new round of consultation early in 2002 with the particular aim of seeking the views of the new NT Government. The Minister released an options paper on reforms to the ALRA to all major stakeholders in April 2002. Most stakeholders responded promptly. Independently of the Australian Government, the Land Councils and the NT Government conducted discussions and a joint NT Government/Land Council response to the options paper was provided to the Australian Government in June 2003, and publicly released in September 2003.

69. The Australian Government has proceeded to build on the NT Government/Land Council response to develop some alternative options on the basis of the views of other groups as expressed through the extensive review and consultation processes and by taking into account the recommendations of the reviews.

Recommendations and Conclusion

Issue 1: Development of Aboriginal land

70. The preferred option for improving development on Aboriginal land is Option D which has appropriate timeframes for the negotiation of agreements. A core period of essentially two field seasons (approximately 30 months) sets a realistic timeframe for the negotiation of exploration and mining agreements. The possibility of the NT Government setting a deadline after the core period should add rigour to the expectation that most negotiations will be completed within the core period. A flexible moratorium and the withdrawal of companies that do not pursue negotiations adequately introduces further flexibility to the processes for mining companies to obtain access to Aboriginal land and for traditional owners to negotiate with mining companies.

71. Delegation of most Part IV decisions to the NT Government would lead to faster and more responsive processes under a local jurisdiction and would enable the Australian Government Minister to be largely removed from issues that are primarily land management issues for the NT. However, only the Australian Government would have the power to override the veto in the national interest as it is not appropriate that such a decision be made locally.

72. A review of the operation of the revised exploration and mining provisions will be conducted after five years to test whether the new arrangements have led to improved outcomes.

73. Statutory confirmation of the ability of Land Councils to charge for its services will confirm existing practice.

74. These mechanisms should strengthen Aboriginal control of their land and facilitate an increase in business development on Aboriginal land.

Issue 2: Devolved decision making

75. The preferred option to encourage devolved decision making is to facilitate the establishment of new Land Councils and allow for greater devolution of existing Land Council powers to the regions by either the large Land Councils or the Minister. The amended new Land Council provisions will provide for a transparent assessment process, viability criteria and a plebiscite of resident Aboriginal people requiring that 55 per cent of those voting be in favour, of the establishment of a new Land Council. This will ensure that any new Land Council will be operationally viable and represent all Aboriginal people in its area. The delegation powers of the Land Councils will be expanded to allow regional groups to exercise decision making responsibilities. Regionalisation through application to the Minister will provide a platform for those groups to later become new Land Councils.

76. These recommendations provide a balance in allowing for local decision making while retaining organisational viability and certainty for business. Business will be able to negotiate more directly with Aboriginal landowners in an environment where it can be certain that it is dealing with the right people and that any agreements will be secure.

Issue 3: Aboriginal socio-economic development

77. Within the ALRA context, the preferred option to improve the socio-economic conditions for Aboriginal people is to ensure that mining royalty equivalents are used for the best interests of recipients. A prescribed minimum level of equity for the ABA will provide for the long term viability of the ABA. Adding professional expertise to the ABA Advisory Committee will improve advice to the Minister.

78. Improved accountability will ensure that royalty monies are not dissipated and are used for beneficial purposes. The royalty associations that receive mining royalty equivalents will benefit from monitoring mechanisms that assist long term financial viability. The royalty associations will be subject to consistent reporting requirements, transparent royalty distribution mechanisms and a requirement that moneys paid by the associations must be for a specified purpose.

Implementation, Administration and Review

79. New Land Councils will be initiated by application to the Minister. Regionalisation of existing Land Councils will be initiated by the Land Council or by application to the Minister. The Minister will delegate most Part IV decisions to the NT Government. A review of the operation of the new arrangements for exploration and mining will be conducted after five years.

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 2006**

NOTES ON CLAUSES

Clause 1 – Short title

1. This clause provides for the short title of the Act.

Clause 2 – Commencement

2. This clause provides for 3 commencement dates. Sections 1-3 and other provisions that need to come into effect as soon as possible will commence on Royal Assent. Most of the provisions will come into effect on a day to be proclaimed, with a default commencement the day after 6 months after Royal Assent. The remaining provisions, primarily those relating to mining, will come into effect on a day to be proclaimed. These provisions do not have a default commencement after 6 months as they are intended to commence at the same time as complementary Northern Territory legislation.

Clause 3 – Schedule(s)

3. This clause provides that each Act specified in a Schedule to the Act is amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms.

Schedule 1 – Part 1 – Amendments

Item 1 – Amendment of the *Aboriginal and Torres Strait Islander Act 2005*

4. The Office of Evaluation and Audit (Indigenous Programs) (OEA(IP)) currently has functions to evaluate and audit Land Councils to the extent that the evaluation or audit concerns ‘relevant programs’ as defined in section 193V of the *Aboriginal and Torres Strait Islander Act 2005*. This item amends section 193X of the *Aboriginal and Torres Strait Islander Act 2005* to expand the OEA(IP)’s power to give it a broader function of evaluating or auditing Land Councils when requested to do so by the Minister administering Part 4B of the *Aboriginal and Torres Strait Islander Act 2005*.
5. This item also amends section 193X to confirm that OEA(IP) can evaluate or audit the activities or operations of persons receiving money under various provisions in the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Principal Act), to the extent that the evaluation or audit concerns the money or benefits derived from it.

Amendments to Part I of the Principal Act – Preliminary

Items 2 - 3 – Definitions

6. These items insert definitions of ‘Commonwealth Electoral Roll’ and ‘Electoral Commissioner’ in section 3. These are required for the purposes of the new provisions relating to the establishment of new Land Councils (see items 50-52).

Item 4 – Definition of ‘excludable matter’

7. This item amends subsection 3(1) to insert a definition of ‘excludable matter’ for the purposes of Land Council minutes. These are matters that should remain confidential to Land Council members for various reasons. Item 73 will require Land Councils to keep minutes and allow certain persons to inspect them, other than parts that relate to excludable matters.

Item 5 – Definition of ‘intending miner’

8. This item amends subsection 3(1) to replace the definition of intending miner and remove the requirement for an ‘intending miner’ to hold an exploration licence, exploration retention lease or exploration retention licence. It is part of a series of amendments to ensure that sections 45 and 46 of the Principal Act can apply to renewals of mining interests over Aboriginal land (except where subsection 3(4) applies).

Item 6 – Definition of ‘mining interest’

9. This item amends subsection 3(1) to clarify that the definition of ‘mining interest’ includes renewals of certain leases, licences, interests or rights, except those covered by subsection 3(4). It is part of a series of amendments to ensure that sections 45 and 46 of the Principal Act can apply to renewals of mining interests over Aboriginal land (except where subsection 3(4) applies).

Item 7 – Definition of Northern Territory Valuer-General

10. This item inserts a definition of Northern Territory Valuer-General. It is relevant to the rent payable under new subsection 19A(6) for townships leases (refer to item 46).

Item 8 – Definition of Northern Territory entity

11. This item inserts a definition of Northern Territory entity (NT entity). This is relevant to new subsection 19A(6) which allows townships leases to be granted to an NT entity (refer to item 46). NT entity means a person approved

by the Chief Minister of the Northern Territory under new subsection 3AA(1) (refer to item 13).

Item 9 – Definition of petroleum

12. This item replaces the definition of petroleum in subsection 3(1). It provides that the definition of petroleum is the same as the meaning given in the *Petroleum Act* of the Northern Territory (NT). The existing definition was close to that in the *Petroleum Act* of the NT but making the definitions the same means that the Principal Act and the relevant NT legislation can operate in tandem more completely. This change is important for the changes to the moratorium provisions in item 133.

Item 10 – Definition of ‘qualifying area’

13. This item inserts a definition of ‘qualifying area’ in subsection 3(1) being an area wholly in the area of a Land Council, or partly in the area of one Land Council and partly in the area of one or more other Land Councils. This is required for the purposes of the new provisions relating to the establishment of new Land Councils (see items 50-52).

Item 11 – Definition of township

14. This item inserts a definition of township, in relation to a Land Trust, and provides that it has the meaning given in new section 3AB (refer to item 13). This definition is relevant to new section 19A which deals with township leases (refer to item 46).

Item 13 – Approval of NT entities; meaning of township

15. This item inserts new sections 3AA and 3AB. New subsection 3AA(1) provides for the approval of NT entities by the Chief Minister of the Northern Territory. New subsections 3AA(2) and (3) ensure that Northern Territory Ministers have any necessary executive authority in situations where the Northern Territory itself becomes an NT entity (and therefore able to hold a township lease under new section 19A), and in situations where, for example, a statutory authority is established under Northern Territory legislation for the purpose of it being approved as an NT entity. These provisions are intended to put the matter of executive authority beyond doubt, in the context of the *Northern Territory (Self-Government) Act 1978* and the Northern Territory (Self-Government) Regulations.

16. New section 3AB provides for 2 types of areas vested in Land Trusts to be townships. New subsection 3AB(2) will allow areas of land of a kind prescribed by the regulations to be townships. This will allow generic descriptions of townships, for example, by reference to an area of land’s classification under particular Northern Territory legislation. New subsection 3AB(3) provides for a particular area of land to be prescribed by the regulations to be a township for the purposes of the applicable Land Trust.

Amendments to Part II of the Principal Act – Grants of land to Aboriginal Land Trusts

Item 14 – Establishment of Land Trusts

17. This item provides that the requirement in subsection 4(1) for the Minister to establish Land Trusts to hold land described in Schedule 1 is subject to subsections 10(1) and (2). This item is part of a series of amendments to provide that land (whether in Schedule 1 or not) can be granted to existing Land Trusts, rather than a new Land Trust having to be established for each land grant (where the special circumstances in subsection 11(1AB) do not exist).

Item 15 – Land Trusts and transfers of land under subsection 19(4)

18. This item amends section 4 to clarify that the Minister can establish a new Land Trust to hold land that is to be transferred to it from another Land Trust under subsection 19(4). It also amends section 4 to provide that the Minister can abolish a new Land Trust established for this purpose, if the Land Trust holding the land advises that the transfer will not go ahead. This item is part of a series of amendments to ensure that subsection 19(4) transfers can proceed without the need to rely on implied powers or consequences.

Item 16 – Anindilyakwa Land Trust

19. This item amends section 4 to establish the Anindilyakwa Land Trust and sets out the boundaries of the land to be held by it, being the land set out in new Schedule 6 of the Principal Act. This land is the same as the land covered by the Anindilyakwa Land Council. This item is part of a series of amendments to rectify the current situation whereby the Anindilyakwa Land Council has been established but the Arnhem Land Aboriginal Land Trust holds the land covered by the Land Council. It is intended that a new Land Trust, the Anindilyakwa Land Trust, hold the land covered by the Anindilyakwa Land Council.

Item 17 – Varying Land Trust boundaries

20. This item amends section 4 to allow the Minister to vary the boundaries of land to be held by a Land Trust in situations where an existing Land Trust is to be used to hold land yet to be granted, or where an existing Land Trust is to transfer some of its land under subsection 19(4) (refer to item 15 and items 21-33).

Item 18 – Common seals of Land Trusts

21. This item replaces the subsections 4(5) and (5A) relating to the affixing of common seals by Land Trusts. The provisions have been simplified to remove requirements relating to the Chair and to allow the common seal to be affixed with the written authority of at least 3 members (or 2 members if the Trust consists of only 3 members).

Item 20 – Membership of Land Trusts

22. This item amends subsection 7(7) to extend the period which Land Trust members can be appointed from 3 to 5 years.

Items 21 - 23 – Recommendations for Schedule 1 land

23. These items amend paragraphs 10(1)(a) and 10(2)(a) to provide for the Minister to determine (under new subsection 10(2AA)) that a specified existing Land Trust should hold an area of land described in Schedule 1. These items are part of a series of amendments to provide that land (whether described in Schedule 1 or not) can be granted to existing Land Trusts, rather than a new Land Trust having to be established for each land grant (where the special circumstances in subsection 11(1AB) do not exist).

Items 24 - 33 – Recommendations for non-Schedule 1 land

24. These items are part of a series of amendments to provide that land (whether described in Schedule 1 or not) can be granted to existing Land Trusts, rather than a new Land Trust having to be established for each land grant (where the special circumstances in subsection 11(1AB) do not exist). Recommendations for grant of non-Schedule 1 land may be made under subsections 11(1), (1AB) (1AD) or (1AE). These provisions (other than subsection 11(1AB)) are being amended to provide that in each case the Minister can recommend the grant of land to an existing Land Trust rather than needing to establish a new one.

25. Subsection 11(1AA) is being amended to take account of the fact that establishment of a new Land Trust will no longer be required. The amendments to subsection 11(5) are consequential upon the amendments to the recommendation-making provisions.

Item 34 – Grant of land to Anindilyakwa Land Trust

26. This item is part of a series of amendments to rectify the current situation whereby the Anindilyakwa Land Council has been established but the Arnhem Land Aboriginal Land Trust (ALALT) holds the land covered by the Land Council. It is intended that a new Land Trust, the Anindilyakwa Land Trust (ALT), hold the land covered by the Anindilyakwa Land Council. This item inserts new section 12AAB to provide for the Governor-General to execute a deed of grant to the ALT of the area of land of the Anindilyakwa Land Council.

27. Where the ALALT holds relevant land in fee simple (via Arnhem Land type 1 deeds), the Governor-General may execute deeds of grant of an estate in fee simple to the ALT which take effect on delivery. Where the Northern Land Council holds a deed of grant in fee simple in relevant land in escrow for the ALALT (via Arnhem Land type 2 deeds), the Governor-General may execute deeds of grant of an estate in fee simple to the ALT be held in escrow by the Anindilyakwa Land Council.

28. New subsection 12AAB(4) sets out the effect of new deeds of grant on the existing ones in favour of the ALALT, providing for revocation or partial cessation of the existing deeds as necessary. It also sets out the effect of new deeds of grant on the boundaries of the land that is held by the ALALT, providing for the boundaries to be reduced accordingly.

29. New subsection 12AAB(6) preserves existing rights, titles or interests in the relevant land, despite the new deeds. New subsection 12AAB(7) provides for references in documents to Arnhem Land type 1 or 2 deeds to be read as references to the new deeds, as far as the reference relates to relevant land. New subsection 12AAB(8) preserves agreements entered into by the ALALT with respect to relevant land, as if they had been agreements entered into by the ALT.

Items 35-36 – Occupation by the Crown

30. Item 35 amends subsection 14(3) to assist interpretation.

31. Item 36 inserts new subsections 14(3A), (3B) and (3C) to deal with the situation where land to which subsection 14(1) applies is included in a township and there is a township lease under new section 19A. New subsection 14(3A) makes clear there is nothing in section 14 to prevent this occurring.

32. New subsection 14(3B) provides that if this occurs nothing in section 14 prevents the NT entity from granting a sublease to the body entitled to occupation (the Commonwealth, the Northern Territory or an Authority, as the case may be). Where such a sublease is granted new subsection 14(3C) provides that section 14 ceases to apply to the land. The intention is that bodies entitled to occupation will move towards getting a sublease rather than rely on the statutory rights in section 14.

Items 37-38 – Payments in respect of occupation by the Crown

33. These items amend subsection 15(1) to make it subject to subsection 15(1A) and to insert new subsection 15(1A). New subsection 15(1A) provides that if the land to which subsection 15(1) applies is leased to an NT entity under new section 19A, the Crown must pay rent to the NT entity rather than to the Land Council. This is because the NT entity will already be paying rent for the entire township area to the Land Council (which receives money for the traditional Aboriginal owners). If there is no sublease providing for the body entitled to occupation to pay rent to the NT entity (see item 36), payments in the nature of rent by the occupying body should go to the NT entity as head lessee. It is intended that all rent due to a Land Council for a township area would be as set out in new subsection 19A(6).

Item 39 – Appropriation for payments to Land Councils

34. This item inserts a reference to payments to an NT entity under section 15 to take account of the insertion of subsection 15(1A).

Item 40 – Dealings with interests in land held by Land Trusts

35. This item amends subsection 19(1) to make it subject to new subsection 19A, which provides for the grant of township leases.

Item 42 – Transfer of land between Land Trusts

36. This item inserts new subsections 19(4AA) and (4AB) to deal with the effect of transfers of land between Land Trusts. Existing rights, titles and interests are preserved and existing agreements entered into by the transferor Land Trust in respect of the land are preserved as if they were entered into by the transferee Land Trust. This item is part of a series of amendments to ensure that subsection 19(4) transfers can proceed without the need to rely on implied powers or consequences.

Item 43 – Ministerial consent for grants of interests under section 19

37. This item replaces subsection 19(7) to provide that Ministerial consent is not required for the grant of estates or interests by Land Trusts where the term does not exceed 40 years.

Item 44 – Consent to transfer under subsection 19(8)

38. This item inserts new subsections 19(8A) and 19(8B) to clarify that the consent given under subsection 19(8) to the transfer of an estate or interest granted by Land Trusts under section 19 can be given by the Land Council at the time it gives the direction to grant the estate or interest. Where the consent of the Minister was required to the granting of that estate or interest, the Minister can, at the time he or she gives such consent, also give consent to the estate or interest being transferred.

39. Advance consent will also be able to be given to the granting of estates or interests dependent on the original estate or interest. One of the purposes of these amendments is to facilitate the use of estates or interests in Aboriginal land for security against borrowings.

Item 45 – Authorisations to enter Aboriginal land

40. This item adds new subsections 19(13) and (14) to enable Land Trusts, where they have granted an estate or interest in land, to also give authorisations to specified persons, or a class of persons, to enter or remain on land for a specified purpose related to that estate or interest. A corresponding amendment to section 70, which provides for an offence of entering or remaining on Aboriginal land, will ensure that entry in accordance with an authorisation is a defence.

41. The purpose of the amendments is to ensure that the Land Trusts have the ability to authorise appropriate entering and remaining on Aboriginal Land where an estate or interest has been granted. Currently in subsection 70(2) there is a limited exception to the offence in subsection 70(1) which relies on the person entering or remaining for a purpose that is necessary for the use or enjoyment of the estate by the owner of the estate or interest. Where a person has an authorisation from a Land Trust under new subsection 19(13), there would be no need to rely on the exception in subsection 70(2) and the requirement that entering or remaining was necessary within the terms of that subsection.

Item 46 – Township leases

42. This item inserts new section 19A to provide for the grant of township leases and to regulate some aspects of these types of leases. New subsection 19A(1) provides for a Land Trust to grant a lease of a township to an NT entity, with the consent of the Minister and at the direction of the Land Council.

43. New subsection 19A(2) provides that a Land Council must not give a direction under subsection 19A(1) unless the traditional owners have consented, affected Aboriginal communities and groups have been consulted and the terms and conditions of the proposed lease (other than those relating to matters covered by section 19A) are reasonable.

44. New subsection 19A(3) provides that failure to comply with subsection 19A(2) does not invalidate a grant except where the person to whom the grant was made procured the direction by fraud.

45. New subsections 19A(4) and (5) provide that the term of a lease under section 19A is 99 years, unless before the end of the 79th year a Land Trust grants another section 19A lease. In this case the original lease ends at the time the other lease takes effect.

46. New subsection 19A(6) provides that a section 19A lease must provide for annual rent, which must not exceed 5% of the improved capital value of the land (as assessed by the Northern Territory Valuer-General).

47. New subsection 19A(7) provides that the only consideration that may be given for section a 19A lease is the rent provided for in subsection 19A(6).

48. New subsection 19A(8) provides that a section 19A lease must not be transferred, except to another NT entity with the approval of the Minister. This provision is to prevent the sale of section 19A leases.

49. New subsection 19A(9) provides that a section 19A lease must not be used as security for a borrowing. This provision continues to apply if a section 19A lease is transferred.

50. New subsection 19A(10) preserves existing rights, titles and interests in a township once it is leased under section 19A. (Subsection 19A(10) will continue to operate if a lease is transferred). New subsection 19A(11) provides that if the existing rights, titles and interests were granted by the Land Trust, they take effect on leasing under section 19A as if they were granted by the NT entity on the same terms and conditions. New subsection 19A(12) provides that, on transfer of a lease, such rights, titles and interests on transfer of a lease take effect as if they were granted by the transferee entity.

51. New subsection 19A(13) clarifies that a section 19A lease does not prevent subleases.

52. New subsection 19A(14) provides that a section 19A lease must not contain any provision requiring the consent of any person to the grant of a sublease. This provision continues to apply if a section 19A lease is transferred.

53. New subsection 19A(15) provides that a section 19A lease must not contain any provision about rent in relation to a sublease. This provision continues to apply if a section 19A lease is transferred.

Items 47 - 49 – Transfers of land between Land Trusts

54. These items amend existing section 20A which deals with the application of certain Northern Territory laws to dealings with or dispositions of estates or interests in land by Land Trusts. New subsections 20A(2) and (3) are being inserted to provide that transfers of land between Land Trusts under subsection 19(4) are not subject to stamp duty or similar taxes or subdivision requirements. New subsection 20A(4) would require the Northern Territory Registrar-General to register an instrument of transfer given under subsection 19(4). These provisions are being inserted to facilitate transfers of land between Land Trusts.

Amendments to Part III of the Principal Act – Aboriginal Land Councils

Items 50 - 52 – Establishment of new Land Councils

55. These items replace subsections 21(3)-(6) with a revised procedure for establishing new Land Councils. Item 52 inserts new sections 21A – 21D dealing with the establishment process. The current provisions have constrained the establishment of new Land Councils. The new provisions are intended to encourage groups, which have the capacity to perform Land Council functions, appropriate management structures and the support of the relevant communities, to apply to the Minister to establish a new Land Council.

56. The application process for new Land Councils is set out in new section 21A. An application would set out the boundaries of the qualifying area (refer to item 10 above). New subsection 21B would require the Minister to be satisfied that the qualifying area is appropriate and that the proposed Land Council will be able to satisfactorily perform Land Council functions before supporting an application.

57. If the Minister supports an application, he or she would request a plebiscite on the matter to be conducted by the Australian Electoral Commission under new subsection 21C. Generally the persons entitled to vote would be adult Aboriginals on the Commonwealth Electoral Roll whose place of living recorded on the Roll is in the qualifying area. Other adult Aboriginals may be entitled to vote under rules to be made under new subsection 21C(4). The rules may deal with other matters relating to the holding of a vote.

58. New subsection 21C(5) would provide that if at least 55% of the formal votes cast by persons entitled to vote are in favour of the proposed Land Council, the Minister may establish the new Land Council. Provisions are included in new section 21C to change the boundaries of existing Land Councils (subsection 21C(9)) and to inform Aboriginals about the existence of the new Land Council (subsection 21C(10)).

59. New section 21D provides for situations where a person's claimed name is different to the name on the Electoral Roll, and allows the person's name to be taken to be on the Roll in certain circumstances.

Item 55 – Deputy Chairs of Land Councils

60. This item amends subsection 22A(2) so that it provides (when read with subsection 22(1)) that the Deputy Chair of a Land Council, like the Chair, is a director for the purposes of all provisions of the *Commonwealth Authorities and Companies Act 1997*. This means that the reporting obligations for Land Councils under that Act are the responsibility of both the Chair and the Deputy Chair.

Item 56 – Land Council functions

61. This item inserts new section 23AA dealing with how Land Council functions are to be performed. It would require Land Councils to determine priorities, perform functions in a timely manner, maintain appropriate organisational structures and administrative processes, and ensure that these structures and processes operate in a fair manner.

Items 57 - 58 – Secrecy offence

62. These items amend the penalties in subsection 23E(2) and 23E(4) relating to secrecy of Land Council information to remove the references to monetary fines and insert references to penalty units in line with current Commonwealth practice.

Item 59 – Powers of Land Council

63. This item inserts a new power for a Land Council, on request of an Incorporated Aboriginal Association that has received an amount from the Council under the Principal Act, to provide administrative and other assistance to the Association. It is intended that Land Councils will be able to charge fees for such services (refer to item 74).

Item 60 – Ministerial approval of contracts

64. This item amends subsection 27(3) to provide that Land Councils must seek Ministerial approval for contracts involving the payment or receipt of an amount exceeding \$1,000,000 or a higher amount if prescribed. The current threshold is \$100,000.

Items 61 - 64 – Delegation by Land Council

65. These items replace the delegation provision in section 28 to update it to refer to functions as well as powers, and to extend the delegations possible. A Land Council would be able to delegate any of its powers and functions except the determination making power in section 35 (and prescribed functions or powers) to a committee established under section 29A. This will mean Land Councils have the capacity to streamline decisions on exploration and mining under Part IV and other land use decisions.

66. A Land Council would also be able to delegate its powers and functions regarding land use (including exploration and mining) to certain bodies corporate that have applied for a delegation of powers and functions under new section 28A (refer to item 65).

67. A Land Council will also be able to delegate decisions under new section 67B (refer to item 193) about the granting of estates or interests while land is subject to a traditional land claim to section 29A committees or to bodies corporate which have applied under new section 28A.

Item 65 – Delegation of Land Council powers or functions to bodies corporate

68. This item inserts new subsections 28A - 28F to provide for certain bodies corporate to apply for delegation of a Land Council's powers or functions. The intention is to allow bodies corporate to apply for delegation of some or all of a Land Council's powers and functions regarding land use in a part of the area covered by a Land Council. The application process is set out in section 28A. A majority of members of the body corporate must be either traditional owners of the relevant part of the area or Aboriginals who live in that part.

69. Where the Land Council refuses an application, new section 28C would allow the body corporate to apply to the Minister to approve the request for a delegation of powers/functions. The Minister must not do so unless the Minister has consulted the Land Council concerned and is satisfied the body will be able to satisfactorily perform the powers/functions in the part of the area. If the Minister approves the request, then the effect of the notice of approval would be that the Land Council is taken to have made the delegation under section 28.

70. New section 28B sets out the processes for varying or revoking a delegation to a body corporate. Where a body corporate requests revocation of a delegation or variation of a delegation to reduce its scope, the Land Council is taken to have revoked the delegation, or reduced its scope accordingly. The Land Council may, on application by the body increase the scope of the delegated powers. The Land Council may with the approval of the Minister vary or revoke a delegation. The Minister may give a direction to a Land Council to vary or revoke the delegation, and the delegation is taken to be revoked or varied accordingly. Under new section 28C the Minister could approve a request to add to the scope of delegated powers if the Land Council has refused.

71. New section 28D would provide that where there is a delegation to a body corporate in force, the Land Council can not perform the powers/functions to the extent that they are covered by the delegation. New section 28E would provide that where there is a delegation to a body corporate in place, the Land Council must, on request, provide the body with reasonable facilities and assistance. These provisions are considered necessary to deal with situations where the Land Council may have opposed an application. New section 28F will require a body corporate exercising delegated powers/functions to record decisions and give copies of decisions to the relevant Land Council, and persons or bodies affected by the decisions.

Item 66 – Eligibility for membership of Land Councils

72. This item inserts eligibility requirements for membership of Land Councils. New subsection 29(3) would provide that if a disqualifying event happens a person is not eligible to be a member for a certain period of time. New subsection 29(4) would provide that a person ceases to be a member if a disqualifying event happens.

73. The disqualifying events are set out in new subsection 29(5) and relate to conviction for offences against the laws of the Commonwealth, a State or a Territory together with a sentence of imprisonment for a certain term. The periods of ineligibility are set out in new subsection 29(6). If a person serves a term of imprisonment the period is 2 years from the release from prison. If a person does not serve a term of imprisonment, the period is 2 years from the date of conviction.

Item 67 – Register of Land Council members’ interests

74. This item inserts a new section 29AA to provide for a register of Land Council members’ direct or indirect pecuniary interests to be held by the Land Council. Interests would be disclosed in accordance with a Ministerial determination.

Item 68 - 70 – Land Council committees

75. These items amend section 29A to provide for a more transparent process for appointment of committee members by Land Councils, rules for committees’ conduct and for increased accountability for committees’ decision making. These changes are considered necessary given the widened scope for delegation of Land Council powers/functions (refer to items 61-64).

Item 71 – Rules for Land Council meetings

76. This item replaces subsection 31(7) dealing with rules for Land Council meetings. Under the new provisions Land Councils would be required to make

written rules dealing with conduct of meetings and obtain Ministerial approval for these rules. Provision would be made for inspection of the rules by traditional owners of land in the Land Council area and Aboriginals living in the area.

Item 72 – Reference to *Rules Publication Act 1903*

77. This item repeals subsection 31(8) dealing with the status of Land Council rules for the purposes of the *Rules Publication Act 1903*. It is no longer necessary given the *Legislative Instruments Act 2003*.

Item 73 – Land Council minutes

78. This item amends section 31 to add provisions dealing with the keeping and inspection of Land Council minutes. A Land Council would be required to allow traditional owners of land in the Land Council area and Aboriginals living in the area to inspect the minutes at reasonable times without charge, except parts of the minutes relating to excludable matters (refer to item 4).

Item 74 – Fees for Land Council services

79. This item inserts new section 33A to provide for Land Councils to charge fees for services prescribed in the regulations. It is intended that the services prescribed would include conduct of negotiation meetings in relation to applications for the grant of exploration licences and mining interests.

Items 75 – Capital costs of Land Councils

80. This item amends subsection 34(1) to provide that Land Councils must prepare estimates of expenditure to meet administrative and capital costs. It is an amendment consequential to changes to subsection 34(2) (refer to item 78).

Item 77 – Notification of expected fees and other income of Land Council

81. This item inserts a new subsection 34(1A) which will require Land Councils, at the time they submit their estimates, to notify the Minister of expected fees that would be received under new section 33A and expected other income (such as from asset sales) for the period to which the estimates relate. This will enable the Minister to gain an overall picture of a Land Council's expected financial position for the period concerned.

Items 78 – Capital costs of Land Councils

82. This item amends subsection 34(2) to provide that (subject to subsection 34(3)) a Land Council must not expend its moneys to meet its administrative costs or capital costs otherwise than in accordance with estimates approved by the Minister. The inclusion of 'capital costs' is to ensure that Land Councils are able to plan for and obtain approval for long term capital purchases, which may not otherwise be covered by the term 'administrative costs'.

Item 79 – Land Council expenditure capped

83. This item inserts new subsection 34(3AA) to provide that a Land Council must not exceed the total expenditure provided for in its approved estimates.

Item 80 – Definition of administrative costs for section 34

84. This item replaces the definition of administrative costs in subsection 34(4). New subsection 34(4) would expand the definition to include the costs of a Land Council providing services for which it may charge a fee under section 33A. The purpose of this amendment is to ensure that the estimates show a complete picture of expected expenditure on administrative costs, whether or not some of those costs are expected to be offset by the receipt of fees.

Item 81 – Application of Land Council money

85. This item replaces subsection 35(1) to provide that a Land Council may carry over excess money for administrative and capital costs received under subsection 64(1) and other excess income (such as from fees) to the next financial year. A Land Council will no longer have to pay out excess moneys within a certain period.

Item 82 – Payment of moneys received under subsection 64(3)

86. This item amends subsection 35(2), requiring Land Councils to pay out moneys received under subsection 64(3), to provide that the requirement is subject to other provisions in section 35. This amendment corresponds with the insertion of a new subsection 35(6A) providing for suspension of such payments (refer to item 92).

Item 84 – Repeal of subsection 35(2A)

87. This item repeals subsection 35(2A) which deals with the use of money paid to a Land Council under subsection 64(8). This amendment is consequential to the repeal of subsection 64(8) (refer to item 181).

Item 85 – Payment of moneys received under exploration or mining agreements

88. This item amends subsection 35(3) which requires Land Councils to pay out moneys received under exploration or mining agreements to certain bodies if the agreements make no provision in relation to the application of moneys. This requirement will be subject to other provisions in section 35. This amendment corresponds with the insertion of a new subsection 35(6A) providing for suspension of such payments (refer to item 92).

Item 87 – Certain payments by the Commonwealth or the Northern Territory

89. This item inserts a new subsection 35(4A) to provide that if a Land Council receives a land use payment under subsection 35(4) from the Commonwealth, the Northern Territory or an Authority and the payment is of a prescribed kind, then when paying out the amount the Land Council must advise the person to whom payment is made that the amount is an accountable amount. New sections 35B and 35C will impose requirements on bodies corporate receiving accountable amounts (refer to item 101). The activities/operation of a person receiving an accountable amount may be evaluated or audited by OEA(IP) (refer to item 1).

90. The purpose of these amendments is to increase the accountability requirements for significant payments by Governments. This is part of a series of amendments to increase accountability for payments flowing to communities from the Aboriginals Benefit Account (ABA) or as a result of the beneficial provisions for exploration and mining on Aboriginal land.

Item 88 – Payments in respect of townships

91. This item inserts new subsection 35(4B) to provide that if a Land Council receives a payment under a section 19A lease, the Land Council must (within 6 months) pay an amount equal to that payment to an Incorporated Aboriginal Association for the benefit of the traditional Aboriginal owners.

Item 89 – Amendment of subsection 35(5)

92. This item makes an amendment to subsection 35(5) consequential to the changes to subsection 35(1) (refer to item 81).

Item 90 – Amendment of subsection 35(6)

93. This item amends subsection 35(6) which requires a Land Council to pay out moneys in accordance with a Ministerial determination. The requirement will be subject to other provisions in section 35. This amendment corresponds with the insertion of a new subsection 35(6A) providing for suspension of such payments (refer to item 92).

Item 92 – Suspension of payments under section 35 determinations

94. This item inserts new subsections 35(6A)-(6E) to give a Land Council power to suspend payments to a body corporate under determinations made under subsections 35(2),(3) or (6) if the body corporate spends the money but does not comply with the reporting requirements in new subsection 35C (refer to item 101). Provision is made for the money that would have been paid to be held in trust until the suspension is lifted. However, if instead of lifting the suspension the Land Council varies or revokes the determination so that it applies instead to another body corporate, the money held in trust is to be paid to the other body corporate.

95. The purpose of these amendments is to ensure that bodies corporate comply with reporting requirements and to enable suspension of payments in situations where bodies corporate are not complying with reporting obligations. This is part of a series of amendments to increase accountability for payments flowing to communities from the ABA or as a result of the beneficial provisions for exploration and mining on Aboriginal land.

Item 93 – Repeal of subsection 35(7)

96. This item repeals subsection 35(7) providing for a Land Council to hold money required to be distributed under subsection 35(1) in trust. This amendment is consequent to the changes to subsection 35(1) (refer to item 81).

Item 94 - Payments held in trust

97. This item amends subsection 35(8) to refer to money paid under new subsection 35(4B).

Item 95 – Amendment of subsection 35(9)

98. This item removes the references to subsection 35(1) from subsection 35(9) which deals with requests to Land Councils to hold money on trust. This amendment is consequent to the changes to subsection 35(1) (refer to item 81).

Item 96 – Requests for payments to be held in trust

99. This item amends subsection 35(9) to refer to money required to be paid in accordance with new subsection 35(4B).

Item 97 – Investment of moneys held in trust

100. This item adds a reference to subsection 35(6B) to subsection 35(10).

Item 98 – Amendment of subsection 35(10)

101. This item amends subsection 35(10) dealing with investment of money held on trust by a Land Council to remove the reference to subsection 35(7). This amendment is consequential to the repeal of subsection 35(7) (refer to item 93).

Item 100 – Repeal of subsection 35(12)

102. This item repeals subsection 35(12). The effect of this amendment is that only Incorporated Aboriginal Associations (or Aboriginal Councils) can receive payments under subsections 35(2) and (3). Subsection 35(12) currently enables certain Aboriginal communities or groups which were not Incorporated Aboriginal Associations as defined in section 3 of the Principal Act to be taken to be Incorporated Aboriginal Associations for the purposes of subsections 35(2) and (3). The amendment will mean this will no longer be possible and groups receiving money under subsections 35(2) and (3) will need to incorporate under the *Aboriginal Councils and Associations Act 1976*. This amendment will have a delayed commencement to allow time for affected groups to incorporate under the *Aboriginal Councils and Associations Act 1976*.

Item 101 – Replacement of section 35A

103. This item replaces section 35A and inserts new sections 35B and 35C. New section 35A deals with the procedure for Land Councils to make determinations under subsections 35(2) or (3) and Ministerial determinations under subsection 35(6). When making a determination under subsections 35(2) or (3) in relation to a body corporate a Land Council must have regard to any recent OEA(IP) report on the body and whether the body has complied with section 35C (if applicable) in the previous 5 financial years.

104. Under new section 35A determinations must not exceed 5 years (new subsection 35A(2)). They may be revoked or varied by Land Councils although for subsection 35(6) determinations, Ministerial approval is required (new subsections 35A(3) and (4)).

105. New section 35B provides for notification requirements for bodies corporate receiving money from Land Councils under determinations, under exploration or mining agreements, under land use agreements (where the Land Council has advised that the amount is an accountable amount), and under new subsection 35(4B). Bodies corporate spending such money must advise the recipient of the purpose for the payment.

106. New 35C deals with reporting obligations of bodies corporate spending money that is received under determinations, under exploration or mining agreements and under land use agreements (where the Land Council has advised that the amount is an accountable amount), and under new subsection 35(4B). It replaces existing section 35A. The bodies corporate must give Land Councils a copy of their financial statements for the relevant year and a report setting out the purpose of payments and the details of payments, including the recipients. The Land Councils will not be required to make this information public.

107. New sections 35A-35C are part of a series of amendments to increase accountability for payments flowing to communities from the ABA or as a result of the beneficial provisions for exploration and mining on Aboriginal land.

Item 102 – Land Council annual reports

108. This item replaces section 37 relating to additional information that a Land Council must include in its annual report under the *Commonwealth Authorities and Companies Act 1997*. The report must specify the total fees received for services relating to exploration and mining agreements, and the total of other fees received. The report must also include details of determinations made and details of payments made under determinations made under subsections 35(2) and 35(6) and under land use agreements (where the amount is an accountable amount) and under subsection 35(4B).

109. Under new section 37 a Land Council would also need to report on money held in trust, the activities of bodies corporate or section 29A committees exercising delegated power, and consultants engaged.

Item 103 – OEA(IP) reports and financial directions

110. This item inserts new section 38 to provide that if the Minister receives an OEA(IP) report on a body corporate receiving money from a Land Council, the Minister must provide a copy of the report to the relevant Land Council. This provision will ensure that Land Councils are able to take such reports into account when making determinations (refer to item 101).

111. This item also inserts new section 39 to provide that the Minister may give written directions to a Land Council about the administration of the Land Council's finances. This provision is considered necessary given the special situation of Land Councils as statutory authorities whose members are not appointed by the Minister.

Amendments to Part IV of the Principal Act – Mining

Item 104 – Consent for exploration

112. This item replaces paragraph 40(a) to provide that Land Council consent to the grant of an exploration licence is given under subsection 42(1) and Ministerial consent is given under subsection 42(8). This is to avoid confusion as to which provisions consents are actually given under.

Items 106 - 107 – Applications for consent to the grant of exploration licences

113. These items replace subsection 41(2), insert new subsection 41(2A) and consequentially repeal subsection 41(4). Some redundant provisions in subsection 41(2) are being removed. There will be an initial 3 month and a maximum 6 month period for making applications for consent regarding exploration licences after receiving the NT Mining Minister's consent to negotiate.

Item 108 – Form of section 41 application

114. This item inserts new subsection 41(6A) to provide that substantial compliance with the list of requirements for applications for consent regarding exploration licences is sufficient. The purpose of this amendment is to ensure that applications with minor defects will still be valid applications. This is important given the strict requirements for applications to be within time.

Item 109 – Notification requirements re application for consent regarding exploration licences

115. This item will repeal subsection 41(7) which requires a Land Council to notify affected Aboriginal communities or groups within 30 days of receiving applications for consent regarding an exploration licence. The provision has caused confusion given the requirements for Land Councils to arrange negotiation and consultation meetings under subsection 42(2).

Item 110 – Deemed withdrawal of section 41 applications

116. This item inserts new section 41A to clarify that applications for consent regarding exploration licences lapse if the NT Mining Minister's consent is withdrawn under the relevant NT legislation before a decision is made on the section 41 application. The intention of the requirement for the NT Mining Minister's consent has always been that the consent is a precondition to the negotiations and agreement provided for in section 42.

Items 111 - 112 – Decision of Land Council on application for consent regarding exploration licence

117. These items amend subsection 42(1) to require a decision of a Land Council on an application for consent regarding an exploration licence to be in writing and a Land Council to notify relevant parties of the day of its decision. The latter is important for the operation of the moratorium provisions in section 48 (refer to item 144).

Item 113 – No decision within negotiating period

118. This item inserts new subsections 42(1A) and (1B). New subsection 42(1A) is consequential to the removal of the deemed consent of a Land Council if no decision has been made before the end of the negotiating period (refer to item 115). Since there will be no deemed consent of a Land Council in these circumstances it is appropriate for negotiation processes under the Principal Act, and procedures under the NT mining legislation, to cease. Therefore the new subsection 42(1B) provides that in these circumstances the consent of the NT Mining Minister is deemed to be withdrawn (refer to item 110).

Item 114 – Representatives of the Minister

119. This item replaces subsection 42(5) dealing with the representatives of the Minister at negotiation meetings concerning an application for an exploration licence. It provides for the Minister to authorise a specified person or class of persons to attend the meetings referred to in paragraph 42(4)(c) and subsequent meetings (subject to paragraph 42(5)(b)).

Item 115 – Removal of the deemed consent of a Land Council if no decision made

120. This item replaces subsection 42(7). It will remove the deemed consent of a Land Council if no decision has been made before the end of the negotiating period (refer to item 113). Deemed consent will only occur where a Land Council has notified the Minister that the parties agree that the terms and conditions relating to the consent should be dealt with by arbitration.

Item 116 – Ministerial consent to grant of licence

121. These items amend subsection 42(8). Amended subsection 42(8) requires any Ministerial decision on consent to the grant of an exploration licence to be in writing.

Item 118 – Conciliation provisions

122. This item amends subsection 42(11) to refer to subsection 42(7). This amendment is consequential to the changes to subsection 42(7) (refer to item 115).

Item 119 – Negotiating period

123. This item replaces subsections 42(13) - (15) and inserts new subsections (16)-(20). A new negotiating period for consents to the grant of exploration licences would be introduced (subsection 42(13)). The negotiating period would be a minimum of 22 months from the date of application (most applications would have more than 22 months). This would ensure that there were 2 field seasons (April to October inclusive) for negotiation in respect of each application (the standard negotiating period). The standard negotiating period could be extended by agreement between the parties for a 2 year period. After that the period could be extended by agreement between the parties for 12 months at a time.

124. At any time after the standard negotiating period has ended the Minister could (after consultation with the parties and the NT Mining Minister) determine a deadline specifying the end of the negotiating period, provided the date set is a least 12 months after the determination (subsection 42(15)). If this provision is delegated to the NT Mining Minister consultation with that Minister becomes redundant.

125. Where, after an application has lapsed because no decision by a Land Council was made in time and there is a repeat application by the same person in substantially the same terms, new subsections 42(17) - (18) would provide for the Minister to determine a negotiating period of not more than 12 months.

Item 120-121 – National interest cases

126. These items amend and expand the provisions in section 43 relating to the negotiating period for cases where the Governor-General has proclaimed that the national interest requires that the exploration licence be granted. There is no significant change in substance to these provisions but they required redrafting as a result of the cross reference to subsection 42(14) which is being changed. Also changes to delegation policy for Ministerial

powers (refer to item 202) made it preferable for section 43 to be read as a stand alone provision, dealing with consultation obligations and representatives of the Minister at consultation meetings. New subsection 43(6) replaces existing subsection 42(14) in respect of extension of the negotiating period for national interest cases.

Item 122 – Arbitration in accordance with NT legislation

127. This item amends subsection 44(2) to provide for any arbitration covered by subsection 42(7) (being where the parties have agreed to arbitration) to be conducted in accordance with the *Commercial Arbitration Act* of the NT, rather than in accordance with the provisions of section 44.

Item 123 – Arbitration under section 44

128. This item replaces subsection 44(4) and removes the reference to subsection 42(7). This change is consequential to the change in item 122. The arbitration procedure set out in subsections 44(3)-(8) will apply only to national interest cases

Item 124 – Land Council to enter arbitrated agreement

129. This item amends subsection 44(9) to refer to agreements determined 'in accordance' with the section. This change is consequential to the change described for item 122.

Items 125 - 127 – Grants of mining interests

130. Items 125 and 126 are part of a series of amendments to ensure that sections 45 and 46 apply to renewals of mining interests over Aboriginal land (except where subsection 3(4) applies). The new definitions of mining interest and intending miner mean that for renewals of mining interests, an agreement between the Land Council and the intending miner is required and the consent of the Minister is required. However new subsection 45(2) provides that if the agreement covering the original mining interest covered the terms and conditions to which a renewal would be subject, another agreement is not necessary. New subsection 45(3) ensures that the Minister can consent to renewal at the time he or she consents to the grant of the original lease.

131. Item 127 is part of a series of amendments to ensure that sections 45 and 46 apply to renewals of mining interests over Aboriginal land (except where subsection 3(4) applies). This item amends section 46 to remove the references to an intending miner who holds an exploration licence or exploration retention lease. An intending miner in the context of section 46 may be a person seeking a renewal of a mining interest.

Item 128 – Representatives of the Minister

132. This item replaces subsection 46(6) dealing with the representatives of the Minister at negotiation meetings concerning an application for a mining interest. It provides for the Minister to authorise a specified person or class of persons to attend the first meetings and subsequent meetings (subject to Land Council notification to the contrary).

Items 129 - 131 – Appointment of Mining Commissioner

133. These items amend subsections 46(7), (8) and (10) to remove or revise the references to the Minister appointing persons as a Mining Commissioner. This is because the Minister does not appoint all Mining Commissioners. In some cases the Attorney-General will appoint Mining Commissioners. The revised wording of subsections 46(7), (8) and (10) reflects this.

Item 132 – Vitiating of consent

134. This item replaces section 47 dealing with vitiating of consent for exploration works and mining works. There is no significant change in substance to these provisions but they required redrafting as a result of the changes to delegation policy for Ministerial powers (refer to item 202). Delegation of the Minister's powers under Part IV to the NT Mining Minister will be possible under revised section 76. However, delegation of powers with respect to national interest cases will not be possible. Redrafting of section 47 was necessary in order to be able to identify the national interest powers separately in revised section 76.

Item 133 – Moratorium for exploration licences dealing with petroleum or other minerals

135. This item inserts a new subsection 48(1A). The effect of this subsection is that the moratorium provisions in section 48 will operate independently for applications for exploration licences for petroleum and for applications for exploration licences for minerals other than petroleum. That is, where there is a refusal of consent to the grant of an exploration licence for petroleum in respect of an area of land, that refusal will trigger the moratorium provisions in respect of further applications for the grant of an exploration licence for petroleum in respect of that area, but will not prevent applications for exploration licences for minerals other than petroleum in respect of that area, and vice versa.

Item 134 – Change to subsection 48(1) - moratorium

136. This item amends subsection 48(1) to also refer to applications for exploration as provided in new subsection 48(4A). This change is consequential to the change described in item 142.

Item 136 – Land Council application to lift moratorium

137. This item amends paragraph 48(3)(b) to allow a Land Council to apply to the Minister to lift a moratorium on further applications for exploration licences at any time after refusal of the first application, rather than only from 2 years after the refusal.

Item 137 – Change to subsection 48(3) - moratorium

138. This item amends subsection 48(3) to provide that it is subject to subsection 48(3A). This change is consequential to the addition of subsection 48(3A) (refer to item 139).

Item 139 – Body corporate with right to apply after moratorium lifted no longer exists

139. This item inserts new subsection 48(3A) to deal with the situation where a body corporate, which would have had the right to re-apply for an exploration licence after a moratorium period has been lifted under subsection 48(3), has been wound up without assigning its rights. Currently in this situation, the 90 day period for the original applicant referred to in subsection 48(3) creates a hiatus period during which no application can be made. New subsection 48(3A) will remove the hiatus period by allowing the Minister to authorise another person to make an application under section 41 (within the period applicable under subsection 41(2)).

Item 140 - Change to subsection 48(4) – moratorium

140. This item amends subsection 48(4) to provide that it is subject to subsection 48(4A). This change is consequential to the addition of subsection 48(4A) (refer to item 142).

Item 142 – Rights to apply in re-application period; consent of the NT Mining Minister

141. This item inserts new subsections 48(4A) and (4B). New subsection 48(4A) deals with the situation where a body corporate, which would have had the right to re-apply for an exploration licence during the re-application period after a moratorium period referred to in subsection 48(2), has been wound up without assigning its rights. In this situation, the 30 day re-application period for the original applicant would be a hiatus period during which no application could be made. New subsection 48(4A) will remove the hiatus period by allowing other persons to make applications under section 41 (within the period applicable under subsection 41(2)).

142. New subsection 48(4B) provides that a person cannot make an application for the grant of an exploration licence as provided for in subsections 48(2),(3) (4) or (4A) unless the person has in force a consent of the NT Mining Minister. This clarifies that the provisions dealing with re-applications or application made after a moratorium in section 48 is lifted or has ended do not bypass the precondition for the consent of the NT Mining Minister in section 41.

Item 143 – Moratorium – Where exploration licence or mining interest has been cancelled

143. This item amends subsection 48(5) to provides for correct cross references. This change is consequential to the change described at item 132.

Item 144 – Re-application period after moratorium ended

144. This item amends paragraph 48(9)(b) to start the 5 year moratorium on the day on which a refusal to consent to the grant of an exploration licence was made, rather than the day on which the NT Mining Minister received notice of the refusal. This is to ensure that a delay in notifying the NT Mining Minister does not extend a moratorium period (see also item 112).

Item 146 – Agreements regarding land subject to claim

145. This item replaces subsection 48A(3) dealing with agreements between Land Councils and miners about mining interests regarding land subject to claim. Currently subsection 48A(3) refers to persons who hold exploration licences and who have lodged applications for mining interests as being the persons entitled to make such agreements. This does not deal with the situation where a person wishes to renew an existing mining interest (in that case a person will not hold an exploration licence).

146. New subsection 48A(3) is drafted to cover a person who has lodged an application for a mining interest, whether that be the first mining interest or a renewal. Such persons can make agreements with Land Councils setting out the terms and conditions to which the mining interest will be subject if the land becomes Aboriginal land before the grant of the mining interest. This amendment regarding agreements for land under claim complements the series of amendments ensuring that sections 45 and 46 of the Principal Act apply to renewals of mining interests over Aboriginal land (except where section 3(4) applies).

Items 147 - 150 – References to appointment of Mining Commissioners

147. These items amend sections 48B, 48E and 48F regarding appointment of Mining Commissioners. The revisions are made to take account of the fact that the Minister does not appoint all Mining Commissioners. In some cases the Attorney-General will make the appointment.

Items 151 - 153 – Appointment of Mining Commissioners

148. These item amend subsection 48F(1) to improve readability and to update the existing reference to the Institute of Arbitrators Australia. Item 153 also adds new paragraph 48F(1)(d) to allow a person prescribed by the regulations to be appointed as a Mining Commissioner. This is to provide for flexibility and to cover the possibility that the name of the Institute of Arbitrators and Mediators Australia may change.

Item 154 – References to appointment of Mining Commissioners

149. This item amends subsection 48F(2) to correct the reference to appointment of Mining Commissioners. The revision takes account of the fact that the Minister does not appoint all Mining Commissioners. In some cases the Attorney-General will make the appointment.

Items 155 - 158 – Appointment of Mining Commissioners

150. These items amend section 48F to correct cross references and to update the existing reference to the Chamber of Mines (Incorporated).

Item 159 - 162 – Offences in connection with mining interests

151. These items amend section 48J dealing with offences in connection with mining interests. Item 159 amends the offence in subsection 48J(1) to make clear that payments by persons to Land Councils in return for services as provided for in new section 33A (refer to item 74) are not payments to which the offence will apply.

152. Items 160 – 161 amend subsections 48J(2) and 48J(4) to update the penalty provisions to remove references to monetary fines and insert references to penalty units in line with current Commonwealth practice.

153. Item 162 repeals subsection 48J(5) which currently provides that a payment of costs reasonably incurred by a Land Council in connection with negotiations for agreements under Part IV are not payments to which the offence in subsection 48J(1) applies. This subsection is no longer necessary given the change to subsection 48J(1) made by item 159.

Amendments to Part V of the Principal Act – Aboriginal Land Commissioners

Items 163 - 164 – Functions of Commissioner

154. These items amend subsections 50(2B) and 50(2D) to improve readability.

Item 165 – Appointment of Commissioner

155. This item repeals subsection 52(3) to remove the age restriction on appointment as an Aboriginal Land Commissioner.

Items 166 - 167 – Commissioners to be judges or former judges

156. These items amend subsection 53(1) to provide that former Judges can be appointed as an Aboriginal Land Commissioner, and as a consequence repeal subsection 53(2) which provides that a person's office as a Commissioner ceases if they are no longer a Judge.

Items 168 - 170 – Offences in sections 54, 54A and 54AA

157. These items update the penalty provisions in sections 54, 54A and 54AA to remove references to monetary fines or penalties and insert references to penalty units in line with current Commonwealth practice.

Item 171 – Acting Commissioners

158. This item amends subsection 57(4) dealing with acting appointments to reflect the fact that former judges may be appointed as Aboriginal Land Commissioners (refer to items 166 -167). It is appropriate for former judges who are acting Commissioners to have the same powers as judges who are acting Commissioners and the change to subsection 57(4) provides for this.

Amendments to Part VI of the Principal Act – Aboriginals Benefit Account

Item 172 – Minimum investment amount of the Aboriginals Benefit Account

159. This item inserts new section 62A to provide for the Minister to determine an 'investment amount' for the Aboriginals Benefit Account (ABA). The 'investment amount' will be the amount of ABA money that it is intended to be earning investment income at a particular time. This will enable the ABA to be protected to some extent against a downturn in funds coming in as a result of a downturn in mining activity on Aboriginal land.

Items 173 - 174 – Payments for Land Councils

160. These items amend subsection 64(1) to remove the requirement for the Minister to distribute 40% of the amounts credited to the ABA to Land Councils. The amended section 64(1) provides for Land Councils to be paid such amounts from the ABA as the Minister determines having regard to their estimates, their expected income from fees and other sources, and any existing surplus. The amended subsection 64(1) would provide for funding of Land Councils to be in accordance with activities to be undertaken and resources available.

Item 175 – Debits from the ABA

161. This item repeals subsection 64(2) which is no longer necessary as there are more than 2 Land Councils.

Item 177 – Debits from ABA for township leases

162. This item inserts new subsection 64(4A) which provides for the ABA to be used for payments in relation to township leases granted under section 19A, including for payment of rent to traditional owners by an NT entity holding a lease.

Items 178 - 179 – Grants from the ABA

163. These items amend subsection 64(5) and insert new subsection 64(5A) to provide that both grants and loans under subsection 64(4) may be on such conditions as the Minister thinks fit. New subsection 64(5B) is also inserted to provide that if a condition of payment is breached, the Minister may recover relevant amounts.

Item 180 – Payments to be applied in accordance with directions

164. This item amends subsection 64(7) to insert a reference to new subsection 64(4A) to require that payments made under subsection 64(4A) be applied in accordance with the relevant Ministerial direction.

Item 181 – Additional money for administrative costs of Land Councils

165. This item repeals subsection 64(8) which provides for the Minister to direct that additional money be debited from the ABA to cover administrative costs of a Land Council, where the Land Council has insufficient funds. This provision is no longer necessary given the changes made to subsection 64(1) (refer to items 173 -174).

Items 182-183 - Debit of additional amounts from the ABA

166. These items make changes to subsections 64A(5) and (7) to add a reference to capital costs. These amendments follow from the intention to allow scope for Land Councils to meet capital costs (refer to item 78).

Items 184-186 – ABA Advisory Committee

167. These items add new subsections 65(4) and (5) to provide for the Minister to appoint 1 or 2 additional members to the Advisory Committee, and make consequential amendments to subsection 65(2) and (3). The additional members must have expertise in land management or financial management.

168. New subsections 65(6) and (7) are also being added to provide that members may be appointed or elected for a period of three years at a time, with provision for re-appointment or re-election.

Amendments to Part VII of the Principal Act – Miscellaneous

Items 189 - 192 – Claims taken to be finally disposed of for the purposes of subsection 67A(5)

169. Item 189 amends subsection 67A(5) to provide that it is subject to subsections (6), (7), (8), (9), (12), (13) and (17).

170. Items 190 -191 amend subsection 67A(5) to provide that where the Commissioner is unable to make a finding that there are Aboriginals who are the traditional owners of a claimed area of land (as opposed to a definite finding that there are traditional owners or there are no traditional owners), and the Commissioner so informs the Minister, the claim is taken to be finally disposed of.

171. Item 192 inserts new subsections 67A(6) - (17).

172. Subsection 67A(6) deals with post-sunset claims and claims over stock routes. The clear intention of subsection 50(2A) is that claims made after the period referred to in subsection 50(2A) has expired cannot progress. The clear intention of subsection 50(2D) is that certain claims over stock routes or stock reserves can not progress. New subsection 67A(6) provides that such claims are taken to be finally disposed of for the purposes of subsection 67A(5).

173. Subsection 67A(7) deals with claims where insufficient information has been provided to assess a claim. It allows the Commissioner to request further information from the applicants. If the applicants fail to provide this information within 6 months of the making of the request, and if the

Commissioner determines in writing that the further information has not been provided within time, the claim is taken to be finally disposed of.

174. Subsection 67A(8) deals with repeat claims where the Commissioner is unable to perform the assessment function in paragraph 50(1)(a) because the Commissioner has not made any of the findings required to justify a repeat assessment (refer to subsection 50(2B)). It allows the Commissioner to determine in writing that there are not sufficient grounds to make one of the findings required for repeat assessment. It also allows the Commissioner to request that the applicants provide further information within 6 months and to determine in writing that the further information has not been provided within time. In either case, if a determination is made the repeat claim is taken to be finally disposed of.

175. Subsection 67A(9) deals with claims where the consent of the Aboriginals with estates or interests in the land is required for claims to progress (refer to subsection 50(2C)). It allows the Commissioner to determine that the consent has been refused. It also allows the Commissioner to request that the consent be provided within 6 months and to determine in writing that the consent has not been provided within that time. In either case, if a determination is made the claim is taken to be finally disposed of.

176. Subsection 67A(10) provides for copies of the Commissioner's determinations under subsections 67A(7),(8) or (9) to be provided to the applicants and the Chief Minister of the NT.

177. Subsections 67A(12)-(16) deal with claims to the intertidal zone; to beds and banks of rivers and creeks; and to islands in rivers and creeks (claims to qualifying land). The broad intention is that such claims, where the claimed land is not contiguous to other claimed land or to Aboriginal land, are to be taken to be finally disposed of. It is not considered appropriate for strips of intertidal land to be granted in the absence of contiguity with other Aboriginal land above the high water mark. Nor is it considered appropriate to grant narrow strips of land over beds and banks of rivers and creeks or isolated islands in rivers and creeks, if such land is not contiguous to other claimed land or Aboriginal land.

178. New subsection 67A(12) provides for claims to qualifying land, which are not contiguous to Aboriginal land or claimed land to be finally disposed of. New subsection 67A(13) provides for claims to qualifying land to be disposed of if in future the claimed land that they are contiguous with is not granted (or becomes unable to be granted). Subsections 67A(12) and (13) apply to cases where an application covers more than one area of qualifying land, as well as to cases where an application covers one area of qualifying land. Provision is made in both subsections 67A(12) and (13) for partial disposal of claims to qualifying land.

179. New subsection 67A(14) provides a definition of 'qualifying land' for the purposes of new subsections 67A(12) and (13). New subsections 67A(15) and (16) clarify when beds, banks and islands are taken to be contiguous with Aboriginal land or claimed land. These provisions take account of the multitude of different possibilities for claims to the beds and banks of, and to islands in, rivers and creeks.

180. Subsection 67A(17) provides that several particular claims are taken to be finally disposed of. These are claims to narrow pieces of land bordering rivers where the claimed land is not contiguous to claimed land or Aboriginal land (esplanade claims). These claims are unusual and the siting of the land is considered to be inappropriate for granting.

Item 193 – Granting of estates or interests while land subject to traditional land claim

181. This item inserts new section 67B to provide for the granting of certain interests while land is still subject to a land claim. New 67B will disapply subsections 67A(1) and (2), which nullify grants of estates or interests before a claim is finally disposed of, in certain circumstances. The circumstances are that the Land Council for the area enters an agreement in relation to the grant. For grants of estates or interests which exceed 40 years the consent of the Minister is required. Grants of estates in fee simple are not intended and consequently there is provision for claims to continue to be assessed (new subsection 67B(8)).

182. New subsection 67B(3) provides for Land Councils to be satisfied that the traditional owners consent and that the terms and conditions are reasonable, and to consult with affected Aboriginal communities or groups. New subsections 67B(6) and (7) deal with payments to Land Councils in a similar way to other land use payments. New subsection 67B(9) preserves the estate or interest granted if the land concerned is granted to a Land Trust under section 12.

Items 194-198 – Penalty for entering sacred site

183. Item 194 amends subsection 69(1) to update the penalty provision to replace the reference to a monetary penalty with references to penalty units in line with current Commonwealth practice. The penalty provision has also been revised to refer to a penalty for an individual and a penalty for a body corporate. In addition the penalty has been increased significantly to ensure that it matches the penalty for equivalent offences under NT legislation.

184. Items 195-198 make stylistic changes to subsections 69(3) and (4).

Item 199 – Penalty for entering Aboriginal land

185. This item amends subsection 70(1) to update the penalty provision to replace the reference to a monetary penalty with a reference to penalty units in line with current Commonwealth practice. The amount of the penalty has been set to reflect the penalty for equivalent offences under NT legislation.

Item 200 – New defences for entering Aboriginal land

186. This item inserts 2 new defences to the offence in subsection 70(1) of entering or remaining on Aboriginal land. The defence in new subsection 70(2B) corresponds to the provision for Land Council authorisations in new subsection 19(13) (refer to item 45). Currently in subsection 70(2) there is a limited exception to the offence in subsection 70(1) which relies on the person entering or remaining for a purpose that is necessary for the use or enjoyment of the estate by the owner of the estate or interest. New subsection 70(2B) would mean that where a person has an authorisation from a Land Trust under new subsection 19(13), there would be no need to rely on the exception in subsection 70(2) and to show that entering or remaining was necessary within the terms of that subsection.

187. New subsection 70(2C) inserts a defence, in relation to a leased township under section 19A, to the offence in subsection 70(1). The current limited exception to the offence described in subsection 70(2) requiring a purpose for entry to be necessary for the use or enjoyment of an estate or interest in Aboriginal land by the owner of that interest is not considered to be broad enough for a leased township under section 19A. New subsection 70(2C) provides that it is a defence, if the person entered or remained on a part of a leased township for any purpose related to (rather than necessary for) the use or enjoyment of an estate or interest in the whole or part of the leased land by the owner of the estate or interest. The scope of the defence in subsection 70(2C) means that it applies to the use or enjoyment of subleases.

188. For both the new defences (subsections 70(2B) and (2C)) the defendant will bear the evidential burden of proving he or she is covered by the defence. This is appropriate in these cases because the matters are likely to be peculiarly within the knowledge of the defendant, and significantly more difficult and costly for the prosecution to disprove than for the defendant to establish.

Items 201-202 – Delegation by the Minister

189. Item 201 amends subsection 76(1) to provide that the Minister's powers and functions under section 19A are not delegable.

190. Item 202 replaces the entire section 76 dealing with delegation of the Minister's powers. This item will commence after item 201, at the time when the mining amendments commence. New section 76 will refer to delegation of power and functions, and will provide that powers and functions under Part II, III, V, VI or VII are delegable to a person, except powers and functions under new section 19A relating to the leasing of townships.

191. Powers and functions under Part IV will only be delegable to the NT Mining Minister and these are subject to certain exceptions. The exceptions include decisions about consent to the grant of an exploration licence or mining interest; national interest matters; the application of the *Atomic Energy Act 1953* or other Acts (section 48C) and related matters (subsection 48E(3)); and the function of tabling proclamations (subsection 48G(1)).

Item 203 – Remuneration for ABA Advisory Committee

192. This item amends subsection 77(1) to refer to members of the ABA Advisory Committee. This ensures that any remuneration and allowances for members are covered by subsections 77(2) and (3).

Item 204 – Regulations

193. This item amends the regulation making power in section 78 to replace the reference to monetary fines with a reference to penalty units in line with current Commonwealth practice.

Item 205 – Schedule 6

194. This item adds Schedule 6 which sets out the boundaries of the land to be held by the Anindilyakwa Land Trust established under new subsection 4(2A) (refer to item 16).

Part 2 – Application and transitional provisions

Schedule 1 – Part 2 – Application and transitional provisions

Item 206 – Application – audit reports

195. This item deals with the application of the provisions adding to the functions of the OEA(IP).

Item 207 – Application – renewal of mining interests

196. This item provides that the amendment made by item 6 (which ensures renewals of mining interests are caught by the definition of mining interests) applies to renewals after commencement of that item.

Item 208 – Application – transfers of land between Land Trusts

197. This item provides that the amendments made by items 42 and 49 relating to transfers between Land Trusts apply to transfers made after commencement of those items.

Item 209 – Application – Land Trust grants of estates or interests in land

198. This item provides that the amendment made by item 43 applies to grants after commencement of that item, and the amendment made by item 45 applies to grants of estates or interests before or after commencement of that item.

Item 210 – Application – entry into contracts

199. This item provides that the amendment made by item 60 applies in relation to contracts entered into after commencement of that item.

Item 211 – Transitional – Land Council delegations

200. This item ensures the power to consent under preserved section 40 is not delegable under subsection 28(1) and that the power to consent under preserved section 40 is delegable under subsection 28(3).

Item 212 – Application – disclosure of pecuniary interests by Land Council members

201. This item provides that the amendment made by item 67 applies to interests arising before or after commencement of that item.

Item 213 – Application – Land Council committees

202. This item deals with the application of provisions relating to the appointment of section 29A committee members and minutes of section 29A committees.

Item 214 – Application – minutes of Land Council meetings

203. This item provides that the requirement for Land Councils to keep minutes and allow inspection of them in item 73 applies to meetings held after commencement of that item.

Item 215 – Application and transitional – Land Council may charge fees for services

204. This item provides that the amendment made by item 74 regarding fees for services applies to services provided after commencement of that item, and continues the application of subsection 48J(5) in some cases.

Item 216 – Application – estimates of Land Council costs

205. This item provides for the application of provisions amending the estimates process for Land Councils.

Item 217 – Application – application of moneys of Land Council

206. This item provides for the application of various items amending section 35 regarding the application of moneys of a Land Council in relation to financial years beginning on or after commencement of those items. It provides for a corresponding application for the repeal of subsection 64(8).

Item 218 – Transitional – amounts held in trust under subsection 35(7) of the Aboriginal Land Rights (Northern Territory) Act 1976

207. This item provides for the paying out of amounts held on trust under subsection 35(7) (which is being repealed).

Item 219 – Transitional – amounts held in trust for a body covered by subsection 35(12) of the Aboriginal Land Rights (Northern Territory) Act 1976

208. This item provides for paying out of amounts held on trust for bodies covered by subsection 35(12) (which is being repealed).

Item 220 – Application – Land Council determinations under section 35 of the Aboriginal Land Rights (Northern Territory) Act 1976

209. This item provides that the changes to section 35 determination making in new section 35A apply to determinations made after commencement of item 101.

Item 221 – Transitional – old Land Council determinations under section 35 of the Aboriginal Land Rights (Northern Territory) Act 1976 of limited effect

210. This item provides that a determination under subsections 35(2) or (3) that is in force when this item commences may remain in force for a maximum of five years.

Item 222 – Application – spending of money received from Land Council under the Aboriginal Land Rights (Northern Territory) Act 1976

211. This item provides for the application of new accountability requirements in sections 35B and 35C.

Item 223 – Application – Land Council annual report

212. This item provides that the new requirements for Land Council annual reports apply in relation to financial years ending after commencement of item 102.

Item 224 – Application and transitional - mining

213. This item provides for the application of various provisions dealing with consent to the grant of exploration licences; the consent to negotiate given by the NT Mining Minister; cancellation of exploration licences or mining interests and refusals to consent to the grant of exploration licences.

Item 225 – Application – acting Aboriginal Land Commissioner

214. This item provides for the application of the amendment relating to the powers of acting Commissioners.

Item 226 – Application and transitional – Aboriginals Benefit Account

215. This item provides for the application of various amendments to section 64, and deals with the application of paragraph 64(1)(b) to estimates submitted before commencement of item 226.

Item 227 – Application – Account Advisory Committee

216. This item provides for the application of changes to appointment and election of members of the ABA Advisory Committee.

Item 228 – Application – traditional land claims

217. This item provides for the application of provisions amending section 67A and inserting new section 67B.

Item 229 – Transitional – existing loan conditions continue in operation

218. This item provides for the existing conditions for loans made under subsection 64(4) to continue.

Item 230 – Transitional – rules for Land Council meetings

219. This item continues approved rules of a Land Council (made under subsection 31(7)) in force.

Item 231 – Transitional - Land Council delegations

220. This item continues certain Land Council delegations (made under subsection 28(1)) in force.

Item 232 – Transitional – Ministerial delegations

221. This item continues certain Ministerial delegations (made under subsection 76(1)) in force.

Item 233 – Transitional regulations

222. This item provides for regulations of a transitional nature relating to the amendments made by the Act.

Schedule 1 – Part 3 – Review of mining provisions

Item 234 – Review of mining provisions

223. This item requires the Minister to arrange for an independent review of the operation of Part IV of the Principal Act after the amended Part IV has operated for 5 years. The report of the review must be tabled.

Legislative Instruments

224. Items 19, 23, 33, 34, 45, 46, 52, 65, 70, 71, 92, 101, 103, 113, 117, 119, 132, 172, 179, 192 and 193 provide that instruments are not legislative instruments. These provisions are to assist readers.

Notes

225. Items 12, 41, 53, 54, 76, 83, 86, 91, 99, 105, 135, 138, 141, 145, 176, 187 insert notes to assist readers.