

**SUBMISSION TO THE HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON INDUSTRY AND RESOURCES
INQUIRY INTO RESOURCES EXPLORATION IMPEDIMENTS**

BY

**THE OFFICE OF ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS
OF THE DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AND
INDIGENOUS AFFAIRS**

Introduction

1. On 25 June 2002 the Chairman of the House of Representatives Standing Committee on Industry and Resources, Mr Geoff Prosser MP, invited the Department of Immigration and Multicultural and Indigenous Affairs (DIMIA) to make a submission to the Inquiry into Resources Exploration Impediments. The Office of Aboriginal and Torres Strait Islander Affairs of DIMIA provides this submission.
2. The Committee is conducting an inquiry into any impediments to increasing investment in mineral and petroleum exploration in Australia. This submission addresses the fourth term of reference for the Inquiry, namely "Access to land including Native Title and Cultural Heritage issues".
3. As native title is primarily handled by the Attorney-General's Department and cultural heritage issues primarily by the Department of the Environment and Heritage, this submission is focused on access to land in terms of the operation of the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act).

Overview of the Land Rights Act

4. The Land Rights Act commenced operation on 26 January 1977. The Act implemented the main recommendations of the Woodward Land Rights Commission to facilitate Aboriginal claims to and ownership of traditional lands in the Northern Territory. Aboriginal reserves were granted immediately and a claims process was established for vacant crown land. Land granted under the Act is inalienable freehold title for the benefit of Aboriginal traditional owners. The operation of the Act has resulted in almost 50% of the Northern Territory being transferred to Aboriginal groups.
5. The Land Rights Act generally gives traditional owners the right to withhold consent or to negotiate agreements for exploration and mining over Aboriginal land. The Act also establishes a mechanism for the distribution of mining royalty equivalents for the benefit of Aboriginal people. The Act establishes land councils to identify and represent the interests of the traditional owners in claiming and managing their traditional lands.

Reform of the Land Rights Act

6. The last major review of the Land Rights Act was in 1983. In 1997 the Government commissioned Mr John Reeves QC to conduct a comprehensive review of the legislation. Reeves reported in 1998 and the then Minister for Aboriginal and Torres Strait Islander Affairs, Senator the Hon John Herron, asked the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs to report on Reeves' recommendations. The Committee reported in 1999. Also in 1999 a National Competition Policy review of the exploration and mining provisions of the Land Rights Act was undertaken.
7. The three reports comprise an extensive consideration of possible reforms and involved wide consultation with stakeholders. The Government is considering its response to the three reports and is further consulting stakeholders in an effort to reach agreement on reforms to the Act.

The exploration and mining provisions of the Land Rights Act

8. Part IV of the Land Rights Act provides for an administrative regime to control exploration and mining on Aboriginal land. The process is initiated by a mining company obtaining a consent to negotiate with traditional owners (issued by the Northern Territory government). It provides Aboriginal traditional owners with a right to consent to exploration on their land (the exploration "veto") and negotiation timeframes that can be extended (without limitation to the length or number of extensions) by the Commonwealth 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 Veto

9. Prior to 1987 the Land Rights Act provided for Aboriginal people to have a veto at both the exploration and mining stages. Amendments to the Act in 1987 restricted the veto to the exploration stage. The removal of the 'dual veto' has provided greater certainty for mineral resource companies but has added unnecessary complexity to exploration agreements because, as traditional owners cannot veto mining, they are less likely to agree to exploration and, where they do agree to exploration, they are more likely to incorporate in the exploration agreements detailed provisions about mining.

The Results

10. The Northern Territory government issues regular statistics on exploration licences on Aboriginal land. The attached statistics are current as at 31 May 2002.
11. The statistics indicate that of a total of 1216 Consents to Negotiate issued by the Northern Territory government over the last 20 years, 302 Exploration licences have been granted, 122 Exploration Licence Applications have been vetoed, and

more than half of the original applications remain outstanding.

12. The statistics indicate that the system is not working very efficiently. The numbers also indicate that many traditional owners are not refusing consent and may be interested in exploration of their land.

The problems that need addressing

13. The three recent reviews of the Land Rights Act referred to in paragraph 6 identified various problems with the operation of the exploration and mining provisions of the Act and recommended a number of amendments to improve the processes for mineral resource companies to operate on Aboriginal land.
14. The main problems are restrictions on the content of agreements between Aboriginal people and mining companies, the long negotiation timeframes which can be and are regularly extended with the agreement of the Minister, and the possible ability for mineral resource companies to gain exploration access to large tracts of Aboriginal land without having any real intention of pursuing exploration (warehousing), thereby restricting access by other companies that would be willing to explore.
15. Other problems include the lack of local decision making under the current centralised land council structure, the funding of negotiations and the direct involvement of a Commonwealth Minister in what is primarily a land management issue in the Northern Territory.

Conclusion

16. Exploration and mining on Aboriginal land has been slow which has not assisted in overcoming the socio-economic disadvantages faced by Aboriginal Territorians.
17. There is a need to streamline the regulation of exploration and mining on Aboriginal land for the benefit of Aboriginal and non-Aboriginal people in the Northern Territory. The Government's current consideration of reforms to the Land Rights Act will seek to address these issues.