SUBMISSION TO THE HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON ABORIGINAL AND TORRES STRAIT ISLANDER AFFAIRS INQUIRY OINTO THE REEVES REPORT ON THE *ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976*

Commonwealth Department of Industry, Science and Resources

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INTRODUCTION

The *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA) came into effect on 26 January 1977. Despite numerous amendments and reviews of the legislation over the last 20 years, there are still problems with the workability of the mining provisions.

The ALRA incorporates measures recommended by Justice Woodward to facilitate economic development for Aboriginal people. However, despite the fact that Aboriginal land granted under ALRA covers 42% of the Territory with a further 10% under claim, in the last 20 years no new mines have been established under the ALRA.

The Commonwealth Department of Industry, Science and Resources (ISR), then the Department of Primary Industries and Energy (DPIE) welcomed the Reeves Review of the ALRA and the opportunity to contribute to improving its workability, particularly in relation to Part IV.

This submission is based on the DPIE submission to the Reeves Review with updated options and recommendations.

ISR supports the broad thrust of the model put forward in the Reeves Report, in particular, increasing the number of land councils, allowing mining companies more direct contact with traditional owners, and the increasing the traditional owners' share of royalty payments.

SCOPE OF THE SUBMISSION

This submission focuses on the operation of the exploration and mining provisions of the Act and the recommendations of Chapter 24 (Exploration and Mining) in the Reeves Report. The submission also considers other recommendations of the Reeves Report within the terms of reference for this Inquiry which have an impact on the exploration and mining provisions, such as the proposed system of Regional Land Councils.

ISR submits that some of the exploration and mining provisions of ALRA, as currently implemented, unduly impede exploration and mining activities on Aboriginal land in the Northern Territory, to the detriment of the mining sector and its contribution to the economy of the Northern Territory and Australia.

ISR also submits that these impediments to the operation of the exploration and mining provisions of ALRA undermine those purposes of the Act relating to Aboriginal control over activities on the land; a fair balance between Aboriginal interests and the wider Northern Territory and Australian community; and a means for economic development for Aboriginal people in the Northern Territory.

BACKGROUND

The ALRA gave effect to the recommendations of Justice Woodward's Aboriginal Land Rights Commission. One of the key areas of ALRA gave Aboriginals the right to consent or veto mineral exploration or mining on Aboriginal land.

Conjunctive and disjunctive agreements

Under the original provisions, Aboriginal approval was required for both exploration and mining activities. The manner in which this right of approval was exercised depended on whether a disjunctive or conjunctive approach was followed.[1] In the event of a disjunctive agreement, further consent would have to be negotiated before any mining activities could be undertaken. If a conjunctive agreement covering terms and conditions for both exploration and mining were negotiated, further approval at the mining stage would only be required if the intended mining operation did not substantially accord with the terms and conditions originally negotiated. Accordingly, an Aboriginal right of veto could operate at both the exploration and mining stage.

By the early 1980s, the mining industry and the Northern Territory Government were expressing the view that the scheme for dealing with exploration licence applications on Aboriginal land was inhibiting mineral exploration and development in the Northern Territory. The primary concerns were the delays experienced in resolving applications and the potential investment insecurity brought about by the existence of a veto at both the exploration and the mining stage. Only one agreement between Aboriginals and mining companies was concluded under the Act in the ten years following its enactment in 1977.[2]

1987 amendments

After extensive consultations with the mining industry, the Northern Territory Government and the Land Councils, new exploration and mining provisions were introduced into the ALRA in June 1987. These new provisions were intended to set out clearly the rights and obligations of Land Councils and mining companies and require negotiations to be carried out and decisions to be reached within defined parameters and time limits. The exercise of the Aboriginal veto was confined to the exploration stage only.

In the event that agreement could not be reached at the mining stage (following agreement on exploration), either party could seek arbitration on the matter. Thus, the amendments effectively imposed a disjunctive approach on questions of access for exploration and mining, with separate agreements having to be negotiated at each stage but Aboriginals only having one opportunity to exercise a right of veto. It is worth noting that the arbitration provisions under the ALRA have never been used since they were introduced ten years ago.

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[1] A disjunctive agreement requires separate negotiation at both the exploration and mining stage; a conjunctive agreement is the negotiation of provisions relating to both exploration and mining at the exploration stage.

[2] Second reading of the *Aboriginal Land Rights Bill (No. 3)* in the Senate by Senator Evans, 7 May 1987.

The 1991 Industry Commission inquiry into Mining and Minerals Processing in Australia concluded in its report that "there was widespread consensus that the existing system was not working as well as it might" and recommended substantial changes to the mining provisions and related aspects of the legislation.

Stockdale decision

In March 1992, Justice Kearney of the Supreme Court of the Northern Territory handed down a decision ('the Stockdale decision') in a case brought by the Northern Territory Government which asked the Court to rule on the legality of an exploration agreement between Stockdale Prospecting Ltd and the Northern Land Council.

Justice Kearney found that clauses in the agreement, which introduced a second veto at the mining stage, were void because they contravened the provisions of the ALRA. Justice Kearney reaffirmed the Act's stipulation of a "once only" veto at the exploration stage and also reiterated that the Act imposed a disjunctive structure, requiring separate consideration of access for exploration and mining in accordance with relevant procedures.

Current position regarding agreements

Following the Stockdale decision, the current general practice in relation to exploration licence applications is still for a conjunctive agreement to be negotiated, but with no second veto to be included. Thus the agreement will cover both the exploration stage and include a broad framework of general provisions concerning the mining stage. Should an economic mineral deposit be discovered then the detailed conditions concerning development of the deposit can then be negotiated within the broad framework set out in the original agreement.

Postponement of the Review

The then Minister for Resources, Senator Gareth Evans, had said in 1986 that the Government would review the operation of the new (1987) provisions two years after their introduction. Consideration of this matter was postponed by the then Minister for Aboriginal Affairs, Mr Gerry Hand, in 1989 because of the very large number of exploration licence applications that had been received by the Land Councils soon after the introduction of the new provisions.

Consideration was further delayed as a result of the commencement of the Industry Commission inquiry into mining and minerals processing in Australia in October 1989.

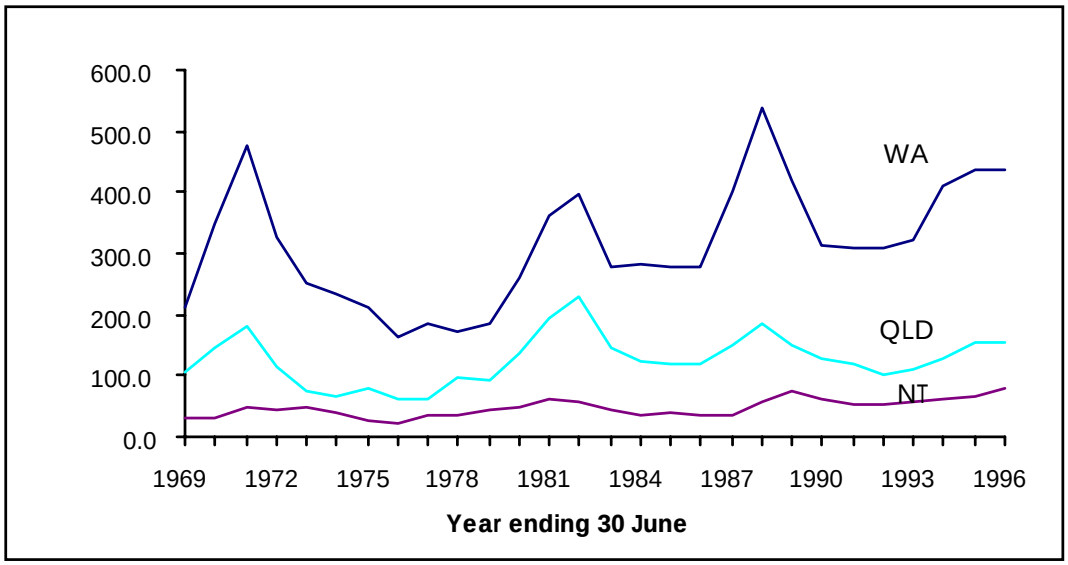
In March 1992 a roundtable conference was convened by the Commonwealth Government, with interested parties (the four Northern Territory Aboriginal Land Councils, mining industry representatives and the Northern Territory Government) to discuss the range of possibilities for dealing with concerns about the exploration and mining provisions of the ALRA. While various proposals were considered, no consensus was reached on possible changes, and further review of the Act was postponed until the Commonwealth had considered matters arising from the Mabo decision.

In September 1993 the Commonwealth Government, with the support of the Northern Territory Government, established a Committee of Darwin to identify, inter alia, ways of expanding and diversifying the Northern Territory's economic base. The 1995 report of the Committee recommended that the review of the operation of the ALRA be reopened, and made a number of proposals.

MINERAL EXPLORATION AND DEVELOPMENT

Some of the world's largest mines and mineral deposits occur in the Northern Territory, which is highly prospective.[3] The mineral resources currently mined at Groote Eylandt (manganese), Gove (bauxite), and Ranger (uranium) as well as the HYC zinc-lead-silver deposit in McArthur Basin and Jabiluka (uranium-gold) and Koongarra (uranium) deposits in the Alligator Rivers Region are all world-class deposits. These mines and deposits occur in highly prospective geological provinces and if access for exploration is improved, other large mineral deposits are expected to be discovered. However access for continuing exploration and geoscientific research outside the highly prospective provinces is required to identify other mineral provinces in the Northern Territory.

Figure 1 Mineral exploration expenditure (excluding petroleum) in Western Australia, Queensland and the Northern Territory, 1968/69 - 1995/6



Source: ABS Catalogue No 8412.0 *Actual and Expected Private Minerals Exploration*, 1980-1996; 8407.0 *Mineral Exploration in Australia*, 1976 - 1988; 10.41 *Mineral Exploration in Australia*, 1972 - 1975; CPI figures from ABARE Commodity Statistics.

Exploration activity in the Northern Territory

Access to large areas is essential for exploration to be successful in identifying new mineral deposits. This is because only about 10 in 1,000 exploration programs progress to the feasibility stage (where high impact drilling and delineation of

[3] This assessment was provided by the Bureau of Resource Sciences.

orebodies may be required) and only 1 in 1,000 exploration programs actually result in the establishment of a mine.

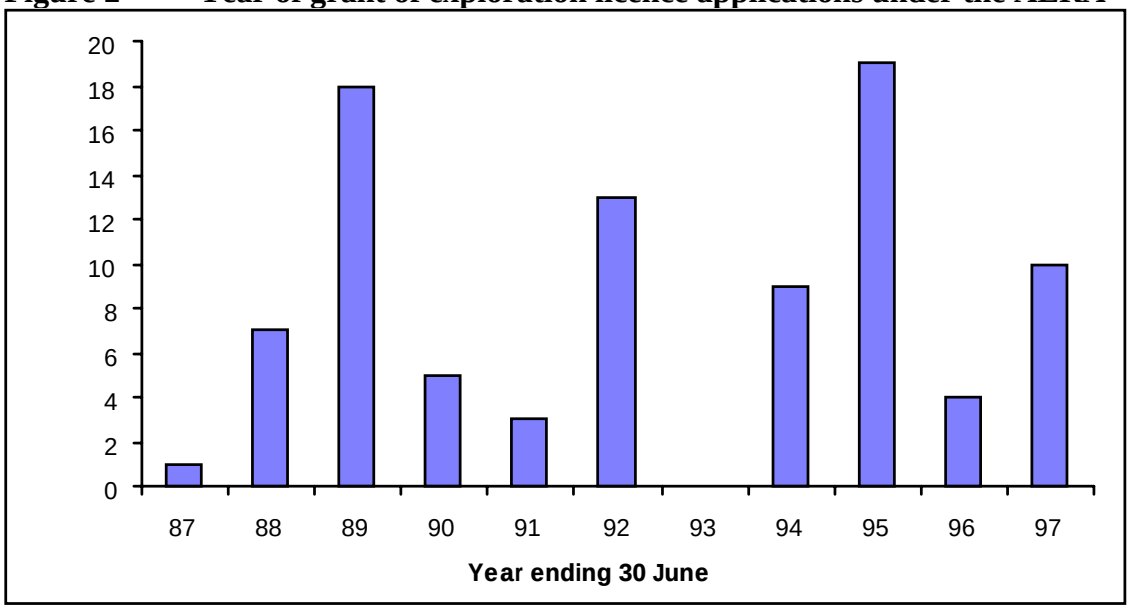
Despite known high prospectivity, exploration has not been increasing in the Northern Territory at the same rate as it has been increasing in other highly prospective states, such as Western Australia and Queensland (see Figure 1).

While exploration expenditure in Western Australia and Queensland has been largely responsive to minerals prices, in the Northern Territory this has not been the case. The 1993 report, *Economic effects of land rights in the Northern Territory*, by the Centre for International Economics (CIE) concluded that:

> "one possible reason for these differences is that there has been little exploration in Aboriginal land. It is probable that the uncertainties and costs associated with the ALRA have impeded the exploration industry."[4]

Manning, in a 1995 paper commissioned by ATSIC to assess the CIE report, calculated that exploration expenditure in the Northern Territory, as a proportion of total Australian exploration expenditure, has remained steady at 5 - 10% from 1970 to 1989, and has been increasing since 1989.[5]

Figure 2 Year of grant of exploration licence applications under the ALRA



Source: From information provided by the Northern Territory Department of Mines and Energy in a personal communication.

However, this ignores the peaks in exploration in Western Australia and Queensland in 1981-2 and 1987-8 which were very subdued in the Northern Territory. This seems to suggest that exploration expenditure in the Northern Territory is influenced by factors unique to the Territory.

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[4] Centre for International Economics, *Economic effects of land rights in the Northern Territory*, Report commissioned by the Western Australian Government, 1993, p. 37.

[5] I Manning, *"Aboriginal rights and mining in the Northern Territory"*, National Economic Review, No. 32, June 1995, p. 13.

As can be seen in Figure 1, the Northern Territory experienced a peak in exploration expenditure in 1987-88, a year after the high price of gold increased exploration in Western Australia and Queensland. The peak in 1988-89 in the Territory can also be partly attributed to an increase in exploration licences granted on Aboriginal freehold land (see Figure 2).

Between 1971 and 1981, the Northern Territory Department of Mines and Energy did not grant consent for exploration licences on Aboriginal land. The first applications were received by the Land Councils in 1983 and the first exploration licence granted under the ALRA was in late 1986.

Part of the delay from 1976 to 1986 in approving exploration licence applications arose from the process of determining the status of land as Aboriginal freehold or otherwise, identifying traditional owners, and developing consultation procedures.[6]

As shown in Figure 2, the number of exploration licences granted under the ALRA increased throughout 1987-88, with 18 exploration licences granted in 1988-89. This partly explains the increase in exploration expenditure in the Northern Territory in 1988-89.

Figure 3 Summary of claims lodged under the ALRA

	Sq Km	% of NT
GRANTED ABORIGINAL LAND		
Commonwealth Title	275,499	20.46
NT Title	14,620	1.09
Scheduled	270,193	41.62
Total Granted *	560,312	41.62
OUTSTANDING LAND CLAIMS		
In Progress	37,416	2.78
Awaiting Hearing	104,552	7.77
Stock Routes and Reserves	3,268	.24
Total Outstanding	145,235	10.79
TOTAL AREA GRANTED OR UNDER CLAIM	**705,547**	**52.41**

***** Minor discrepancies may occur in totals due to rounding

Source: Northern Territory Department of Mines and Energy in personal communication, November 1997.

Mineral exploration activity on Aboriginal land

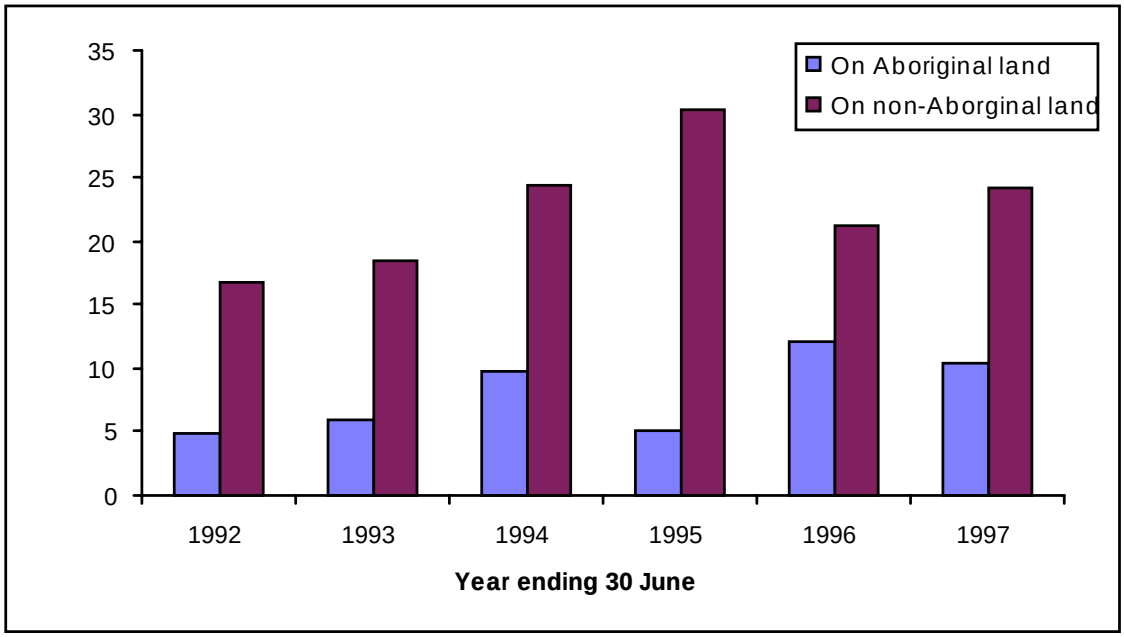
Currently 41.62%, or 560,312 km^2 of the Northern Territory has been granted to Aboriginal people. A further 10.79% (145,235 km^2) is under claim.[7] (see Figure 3).

[6] Ibid, p. 24.

The level of exploration expenditure on Aboriginal land is well below that on non-Aboriginal land (see Figure 4).

In 1996-7 for example, exploration expenditure on Aboriginal land totalled $12.4 million. More than twice this amount, $28.9 million was spent on exploration on non-Aboriginal land.[8] Between 1991-2 and 1996-7, in any given year, exploration expenditure on non-Aboriginal land was at least double the exploration expenditure on Aboriginal land in the Northern Territory (with the exception of 1995-6).

Figure 4 Exploration expenditure* on Aboriginal and non-Aboriginal land, 1992 - 1997



Source: Provided by Northern Territory Department of Mines and Energy, November 1997.

* Note that these figures for exploration expenditure provided by the Northern Territory Department of Mines and Energy are significantly lower than the exploration expenditure for the Northern Territory figures published by the ABS. This discrepancy arises because exploration licences are effectively only on 'greenfields', that is, not on production leases.

Another measure of exploration activity is the proportion of exploration licences on Aboriginal and non-Aboriginal land. As at 30 June 1996 there were 724 current exploration licences in the Northern Territory.[9] 668 of these, or 91% of licences are on non-Aboriginal land. Current exploration licences cover a total of 182,718 square kilometres, of which 147,122 square kilometres, or 81% is non-Aboriginal land.

It could be argued that the lack of exploration activity on Aboriginal land in the Northern Territory may be related to its low prospectivity. However, the geological evidence does not support this argument.

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[7] Figures provided by the Northern Territory Department of Lands, Planning and Environment. Note that these figures are agreed to by the Northern Land Council.

[8] Figures provided by the Northern Territory Department of Mines and Energy in personal communications. Note that these figures were complied from the 'Titles' database from reports received into the Department of Mines and Energy.

[9] Figures from the Northern Territory Department of Mines and Energy in personal communication on 12 July 1996.

Figure 5 shows that a significant proportion of known highly prospective geological provinces in Northern Territory are in Aboriginal lands or under land claims.[10] The presence of large operating mines and undeveloped deposits in Aboriginal lands emphasises the high potential of these provinces. Such provinces include:

- western Arnhem Land with high potential for uranium deposits similar to Ranger and Jabiluka; modern exploration in this region is necessary to investigate the potential for gold and other types of deposits,
- eastern Arnhem Land and other Aboriginal lands and land claims to the south east over the McArthur Basin for base metal deposits similar to the McArthur River deposit,
- areas of high potential for gold deposits in the Granite-Tanami inliers and north western Arunta Province,
- areas of high potential for various types of gold and base metal deposits in the geological provinces around Tennant Creek; rocks similar to those in the McArthur Basin are present in part of the area south of Tennant Creek and suggest potential for McArthur River type base metal deposits.

Available exploration expenditure statistics suggest that in comparison with Western Australia and Queensland, the Northern Territory is relatively underexplored. Exploration statistics suggest that at least some of the Aboriginal lands are even more unexplored and the application of modern exploration techniques could well upgrade the mineral potential of other geological provinces in Aboriginal lands.

Increased exploration in Aboriginal lands would:

- lead to discoveries of mineral deposits in known areas of high potential,
- accelerate the accumulation of geoscientific knowledge and may upgrade the mineral potential of other geological provinces with previously unrecognised types of mineral deposits.

[10] Figure 5 and this assessment of prospectivity in the Northern Territory was provided by the Bureau of Resource Sciences.

(Figure 5 – Aboriginal land, mineral deposits and mineral potential)

Mine Development on Aboriginal land

Figure 6 lists current mines in the Northern Territory on Aboriginal land. The projects in Group 1 pre-date the introduction of the ALRA and were not required to gain Aboriginal consent. Although the proponents of the projects in Group 2 were required to negotiate with Aboriginal owners in accordance with the requirements of the ALRA, the veto provisions which would have applied in other circumstances were excluded from these negotiations.

Only the mines listed in Group 3, where discoveries were made after the introduction of the ALRA, were developed under agreements reached in circumstances where the veto provisions of the ALRA applied. However, it should be noted that Dead Bullock Soak involved exploitation of a satellite orebody associated with the Granites Mine and, in the case of the Zapopan Tanami Gold Mine, a new agreement had to be negotiated to allow exploitation of an extension of the orebody beyond the boundaries of the original lease.

Therefore not one mine in the Northern Territory has been established under the ALRA since it came into effect in 1977.

Figure 6 Mining projects on Aboriginal land

Group 1: Mine operating prior to introduction of ALRA - no Aboriginal consent required

- Nabalco Bauxite Mine (Gove), 1965
- GEMCO Manganese Mine (Groote Eylandt), 1968
- the old Tanami Mine at Tanami

Group 2: Mines or mining agreements finalised after the introduction of the ALRA but relate to mineral discoveries which pre-dated the ALRA, ie mines operated in already existing licences - no Aboriginal consent required

- Ranger Uranium mine, 1981
- Nabarlek Uranium mine, 1979
- Magellan oil field, Mereenie, 1981
- Palm Valley gas field, 1983
- Jabiluka Uranium mine, 1982
- the Granites gold mine (North Flinders Limited), 1983
- Koongarra uranium mine, 1990
- Zapopan Tanami gold mine, 1983

Group 3: Mines discovered subsequent to the introduction of the ALRA

- Zapopan Tanami gold mine (extension), 1990 - extension of parent mine that did not require consent
- Dead Bullock Soak gold mine (North Flinders Limited), 1990 - extension of parent mine that did not require consent

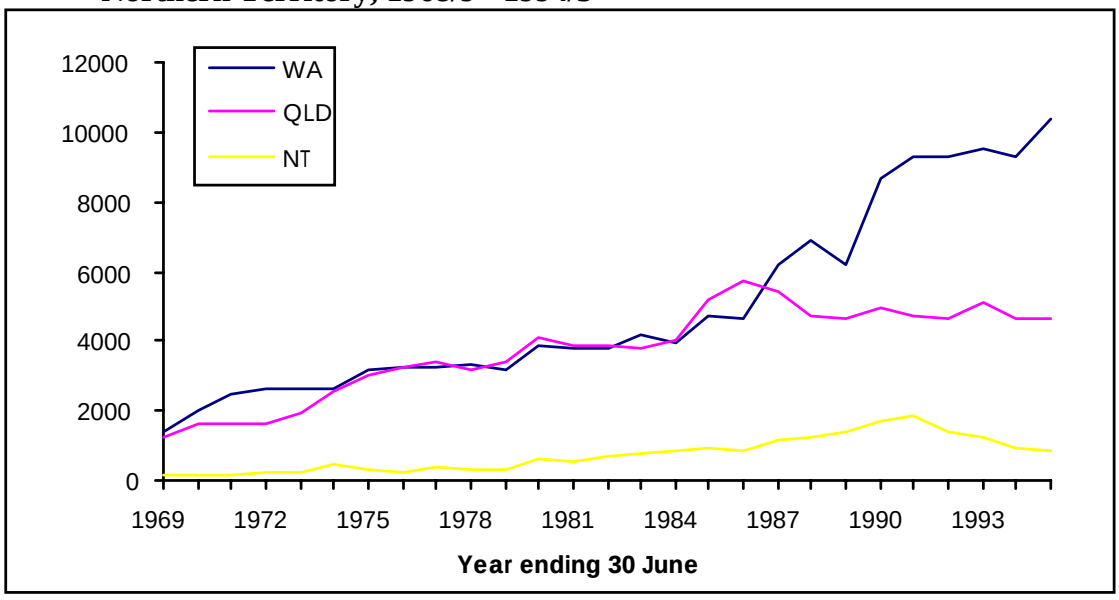
In comparison, on non-Aboriginal land in the Northern Territory, there have been a number of new mines or prospects discovered. Gold has been the most extensively explored mineral, and discoveries include Tom's Gully, Mt Todd, Goodall and the Pine Creek Gold Mine.

Mineral production

As can be seen from the previous section, the majority of mineral production which occurs today in the Northern Territory is sourced from mines that were approved before the ALRA came into full effect. This has masked the full impact of the Act to some extent.

The value of mineral production in the Northern Territory has not been increasing at the same rate as mineral production in Western Australia and Queensland (see Figure 7). This rate will continue to decline, as mines which began before the ALRA reach the end of their production and are not replaced by new mines which have been stalled by the ALRA.

Figure 7 Mineral production in Western Australia, Queensland and the Northern Territory, 1968/9 - 1994/5



Source: ABS Cat 8414.0 *Australian Mining Industry*, 1990/1 - 1994/5; 8405.0 *Mining Production, Australia*, 1975/6 - 1989/90; 10.51 *Mineral Production*, 1971/2 - 1974/5; CPI figures from ABARE Commodity Statistics.

EXPLORATION LICENCE APPLICATIONS

Number of ELAs

Since the enactment of the ALRA in 1977 to October 1997, there was 1534 exploration licence applications (ELAs) to the Northern Territory Department of Mines and Energy, with 796 applications being granted consent to negotiate with the Land Councils.[11] As shown in Figure 2, only 90 applications have been granted consent by the Land Councils.

As at October 1997 there were 327 applications under consideration by the Land Councils, 136 with the Northern Land Council and 191 with the Central Land Council. There were no current applications with either the Tiwi Land Council or the Anindilyakwa Land Council.

Figure 8 Status of exploration licence applications with consent to negotiate with Land Councils, as at 31 October 1997

Consent to negotiate with Land Councils given by NT Mining Minister		
Total ELAs given consent to negotiate		796
Applications lapsed (ie not made within 3 months) or withdrawn before receipt by Land Councils		213
Progress by Land Councils		
Outstanding applications		486
Pending consent by Northern Territory Minister	50	
Proposals yet to be lodged with Land Councils	19	
Under consideration by Land Councils	327	
Proposals refused by Land Councils (Vetoed)	82	
Pending grant by NT Minister (Approved by Land Council)	8	
Approved by Land Council and granted by NT Minister		87
(Discrepancy in data		10)

Source: Data provided by the Northern Territory Department of Mines and Energy.

Extensions to ELAs

Of the 327 applications under consideration by the Land Councils, 53 applications are greater than 6 years old. Of these, 50 applications are with the Northern Land Council and three with the Central Land Council.

[11] Figures provided by the Northern Territory Department of Mines and Energy.

The average extension time for the 53 applications greater than 6 years old, is 8.4 years, an average of 1.4 years by mutual agreement, and 7.05 years average granted by the Minister for Aboriginal and Torres Strait Islander Affairs. A number of these applications have been extended up to 12 times. Others have been granted fewer extensions, but have been granted up to 5 years on one extension.

Extension by mutual agreement

Section 42 (13) of the ALRA allows that during the first twelve month negotiating period, the applicant and the Land Council have a once only right to agree in writing on a longer negotiating period. The extension period is arbitrary, ranging from a few months to a number of years. In practice this once-off extension has usually been between 6 and 12 months, although in some cases has been up to 4 years.

Extension by Minister for Aboriginal and Torres Strait Islander Affairs

The 1987 amendments to S. 41 (4) allowed that where the applicant and relevant Land Council could not agree within twelve months they would have "such further time as either the parties agree or the Minister allows - in which to give or refuse its consent and to come to an agreement".[12] The intention of this amendment therefore was to allow such time as the parties required to negotiate an agreement. In practice this amendment has led to numerous extensions of time being agreed to by the Minister for Aboriginal and Torres Strait Islander Affairs.

Deeming provisions

The 1987 amendments also introduced deeming provisions so that "if a Land Council has neither consented nor refused to consent at the end of the 12 months, consent shall be deemed to have been given by the Land Council".[13] However, since 1987 the deeming provisions have never been exercised.

Consultation with the Northern Territory Minister for Mines and Energy

The Minister for Aboriginal and Torres Strait Islander Affairs, in making the decision to extend the negotiating period is required by the ALRA to consult with the Northern Territory Minister for Mines and Energy.

Over the past few years, the Northern Territory Minister for Mines and Energy has recommended on most occasions to the Minister for Aboriginal and Torres Strait Islander Affairs, that the extension sought should not be approved on the grounds that the Land Council has already had sufficient time to negotiate an agreement. The vast majority of extensions applied for by the Land Councils have however been approved.

Reducing extensions to ELAs

[12] Second reading of the *Aboriginal Land Rights Bill (No. 3)* in the Senate by Senator Evans, 7 May 1987, p. 2525.
[13] Ibid.

It is generally recognised that it takes a long time to reach an agreement on exploration licence applications on Aboriginal land under the ALRA. This situation reflects the roles and responsibilities of the Land Councils, the content of agreements, the number of meetings required to reach agreement and ongoing extensions to the negotiating period granted by the Minister for Aboriginal and Torres Strait Islander Affairs.

The major concern of the mining companies is the time taken in reaching agreements with the Land Councils. This is seen as more a lack of resources in the Councils, particularly competent people with mining related skills, rather than any intransigence on the part of the Councils.

DISCUSSION

TIMEFRAMES

There is no doubt that the major concern with the ALRA involves the way the provisions allow for continuous delays in processing exploration licence applications. It is also apparent that this concern is shared by both the industry and the Land Councils.

From the industry viewpoint there is an understandable reluctance to enter negotiations involving the investment of considerable resources in terms of time and capital, when such negotiations can drag out over years, with limited likelihood of consent to the exploration licence application.

From the Land Councils' viewpoint, there is a concern that some mining companies may not be entering negotiations in good faith, and are instead seeking to tie up parcels of land rather than relinquish it to competitors.

The Land Councils are reluctant to exercise the veto as to do so would quarantine the land for five years, and at the end of that time they face negotiating with the same company all over again (as the same company has first right of refusal).

<u>Recommendation</u>

The imposition of statutory timelines into the process is considered the most effective mechanism for avoiding the inordinate delays which plague the present process. Such timelines would provide a clearer and more certain process for all parties, in contrast to the current situation where numerous extensions to the negotiation period are the norm, leading to a process which is in effect open-ended to the detriment of all parties.

. It is proposed that an upper limit on the total time available for negotiation over an exploration licence application be two years with no extensions of time beyond two years (with the power to consent/veto available throughout this period).

- The applicant company's approval to negotiate with the traditional owners expires after two years. Where no agreement has been reached in two years, the company's approval expires and other companies can apply for these areas immediately.

- If the original company wishes to re-apply for the exploration licences, it can do so after twelve months has elapsed, but it would not be prevented from continuing informal discussions with the traditional owners during that period.

- Extension beyond two years would be allowed only where an ELA area has to be split, for instance where the application covers more than one traditional owner area, and one group agrees to negotiating while the other exercises the veto. In this case, the two year period would commence again for negotiations on the non-refused area.

. Where the veto is exercised, under current arrangements the land in question is 'quarantined' for five years, after which the same company has first right of refusal. We believe competition would be enhanced if other applicants were given the chance to take the place of the previously unsuccessful applicant, and if the 'quarantine' period were reduced from five to two years, with the option for the traditional owners to re-open negotiations after one year.

. Another way of addressing the current difficulties with timelines, and introducing greater competition to the process, would be for the NT Government to be given the power to withdraw its approval for a company to negotiate with a Land Council in relation to Aboriginal land, if it considered the company in question was not genuinely seeking agreement.

- In order for them to keep track of negotiations, the NT Government would be able to request the company to provide a status report at any time.

- The NT Government would be able to withdraw its approval at any time during the two-year negotiating period if of the view that the company was not negotiating in good faith. Other interested companies would then have the opportunity to apply for exploration licences over that land.

- Withdrawal by the NT Government of a company's approval to negotiate over those exploration titles would prevent that company from re-applying for those titles for a period of twelve months.

. The NT Government could also be given the power to extend the negotiating period for up to twelve months if it were satisfied there were good reasons to do so.

ROLE OF NT GOVERNMENT

Recommendation

. The ownership of minerals in the Northern Territory (other than uranium which is owned by the Commonwealth) is vested in the NT Government, which accordingly has responsibility for granting mineral titles. (It also administers titles in relation to uranium on behalf of the Commonwealth). In view of this, ISR believes there is a strong case for retaining the current arrangements which give the NT Government responsibility for assessing the suitability of exploration and mining companies' proposals and programs prior to their entering into negotiations with the Land Councils in respect of land granted under the ALRA.

. It might assist in developing a more competitive operating environment if companies were to adopt a more proactive approach to developing good relationships with Aboriginal communities, by making contact with communities, subject to permit requirements, before they apply for exploration licences and are granted formal approval to negotiate with the traditional owners. A system of regionally-based land councils would facilitate the adoption of this approach.

- The regional councils should also be encouraged to facilitate and promote this type of activity.

REGIONAL LAND COUNCILS

Section 21(1) of the ALRA states that the Northern Territory must be divided into at least two areas and establish an Aboriginal Land Council for each area. The original provisions of the ALRA envisioned that a greater number of Land Councils would be established over time, to better represent the relevant groups of traditional owners.

Currently there are four Land Councils in the Northern Territory, the Northern Land Council (NLC), the Central Land Council (CLC), the Tiwi Land Council and the Anindilyakwa Land Council. The NLC and the CLC have the greatest responsibilities as they cover the mainland of the Northern Territory between them. Consequently, the majority of exploration licence applications are referred to the Northern and Central Land Councils.

In its Strategic Plan, the NLC has introduced regionalisation, which will include giving more decision making powers to Regional Councils.[14] In effect this will mean a number of "mini Land Councils" within the NLC. This is seen as a positive step. The NLC has also proposed an amendment to the Act delegating the power of consent for exploration and mining applications to regional councils. ISR supports this proposed amendment.

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[14] Northern Territory Aboriginal Land Rights Act Fact Sheet No. 6, *Our Land Our Law - Northern Territory Aboriginal Land Rights Act, Northern* Land Council, 1997.

The Land Councils argue that one of the reasons for the delays in processing exploration licences has been due to a lack of resources. Given the area covered by both the Northern Land Council and the Central Land Council, it is not apparent that providing more resources would necessarily overcome delays. The option of establishing additional Land Councils may be more effective in addressing the processing backlog.

Recommendation

. ISR endorses the progressive introduction of a system of regional land councils which would be desirable for the following reasons:

- encourage the development of (direct) relationships between exploration and mining companies and Aboriginal communities;

- empower the communities by giving them more direct involvement in consultations concerning whether exploration and mining should take place on their lands, and if so, under what conditions;

- speed up the process by enabling greater resources to be devoted to negotiating with mining companies than is possible at present, because the large Land Councils are required to perform many functions, on behalf of many communities under the Act;

  .. this may allow a scaling down of the administrative structure and overheads of the land councils

  .. it may also permit more efficient discharge of the wider range of functions handled by the land councils because of the smaller numbers of clients that would be associated with each regional council

- reduce negotiating periods as meetings between traditional owners and their representatives could be held more frequently;

- bring decision making closer to those people affected; and

- reduce negotiating costs as people would have less distance to travel.

. New regional land councils would need to be established progressively, to avoid the risk of a ‘freeze’ on activity during the transition period. In addition, time would be needed to allow these new councils to be able to operate effectively and for the Aboriginal communities to develop confidence in them.

. Regional land councils would also enable meetings between traditional owners and their representatives to be held more frequently. This would contribute to decreasing the amount of negotiating time on exploration and mining proposals and reduce the barriers to entry for small companies.

ROYALTIES

Current arrangements for disbursement of payments by the Aboriginals Benefit Reserve (ABR) are:
30 per cent to traditional owners on whose land the mine is situated;
40 per cent to the representative Land Council; and
30 per cent for the benefit of NT Aboriginal people generally.

The Industry Commission recommended that "the share of royalty equivalents currently earmarked for the administration of Land Councils be paid to the Aborigines on whose land mines are established. (This would increase their share of royalty equivalents from 30 to 70 per cent and the Commission is confident that this would go a long way towards providing more appropriate incentives for traditional owners to make the 'best' decisions from their own and the nation's point of view)"[15].

This recommendation was opposed by the Land Councils on the grounds that it "suffers from a basic misunderstanding of the purpose and operations of the ABTA, in particular the equity objectives." Also, that "the Commission has assumed that diverting royalty payments to the traditional landowners of areas under mineral lease would provide an 'incentive' to make a decision in favour of mining. This overlooks the culturally based reasons for refusal which operate in many cases."

Industry supported the recommendation as the Aboriginal communities would benefit directly and significantly.

Recommendation

. ISR believes consideration should be given to increasing the traditional owners' current share (30%) of royalty payments, in order to provide a greater economic incentive for them to agree to exploration and mining on their lands, as well as to provide them with a greater share of the economic benefits of mining.

. Consideration should also be given to extending royalty payments to those affected by mining who are not traditional owners. This would give communities clearer economic signals on which to decide on exploration proposals.

PERMIT SYSTEM

Recommendation

. ISR believes the permit system should be abolished for those wishing to enter Aboriginal land for business purposes.

[15] Industry Commission, *Mining and Minerals Processing in Australia, Industry Commission Report No. 7,* AGPS, Vol 1, p. xliii.

. Alternatively, if the current permit system is retained for social reasons it should be simplified so there is presumption of entry for commercial discussions.

- A simplified permit system would also reduce the administrative burden on land councils.