



Monday 17 July

Mr Elton Humphery  
Committee Secretary  
Community Affairs Committee  
Department of The Senate  
PO Box 6100  
Parliament House ACT 2600

Via email: [community.affairs.sen@aph.gov.au](mailto:community.affairs.sen@aph.gov.au)

Dear Mr Humphery,

**Inquiry into Aboriginal Land Rights (Northern Territory) Amendment Bill 2006**

The Minerals Council of Australia (MCA) welcomes the opportunity to provide submission to the Senate Community Affairs Committee inquiry into the Aboriginal Land Rights (Northern Territory) Amendment Bill 2006 (Bill).

The MCA is the peak national body representing Australia's exploration, mining and minerals processing industry, with a membership that accounts for more than 85% of annual mineral industry output in Australia. There is increasing community recognition of the strengthening relationships between the minerals industry and Indigenous Australians, in working together to deliver mutually beneficial and sustainable outcomes.

An important initiative in this regard is the *MCA and Federal Government Memorandum of Understanding on Indigenous Employment and Enterprise Development* that establishes a strategic partnership between the minerals industry and Government to work together with Indigenous communities to improve socio-economic outcomes for Indigenous Australians in mining regions. One of the eight pilot sites for these new working arrangements is located in the Northern Territory (NT) - Newmont's Tanami operation.

The basis of the MCA's active engagement in the long-standing review of the *Aboriginal Land Rights (Northern Territory) Act* (ALRA) is to improve the efficiency and operability of the legislation as an enabling framework to facilitate the development of mutually beneficial agreement-making with Indigenous Australians, so as to facilitate economic development in the NT, in ways which do not diminish Indigenous rights.

Foundational to this approach is the Australian minerals' industry's respect for Indigenous Australian's rights, interests and special connections to land and waters, and support for the recognition and protection of those rights and interests. Specifically, the Council supports the intent and operation of ALRA, in ensuring the primary role of Indigenous Australians to control and manage land subject to ALRA, and the Acts role in providing a secure and defined system of land access for the sustainable development of natural resources in the NT.

The Council's position on the review of ALRA is informed not only by member companies, but indirectly through consultations with the Northern and Central Land Council, senior Australian Government officers, and the NT Minerals Council.

In reviewing the proposed Bill to amend ALRA, the MCA identifies key areas where the Bill could be further improved in relation to:

- Part IV – Mining;
- the establishment of new Land Councils; and
- the delegation to bodies corporate.

This, in respect of those aspects that have direct implications for minerals development in the NT or which have the opportunity to impact upon the overall stability and effectiveness of the Aboriginal land rights system.

#### **Part IV-Mining**

The MCA supports the proposed amendments to Part IV of the Act, which will reduce complexity and increase the flexibility of the mining provisions. However, the MCA considers that there are two key issues related to the Part IV mining provisions where the Bill could be further improved.

First, the MCA considers that during the negotiation periods for the grant of exploration licences or a mining interest, there should be a requirement that the parties 'negotiate in good faith' as currently exists under the *Native Title Act*. This is consistent with proposed amendments to ALRA that give increased powers to the NT Mining Minister to determine a deadline specifying the end of the negotiating period for the grant of exploration licences, as a means of ensuring active negotiations and to prevent 'warehousing'. This proposed measure would further underscore the onus on all parties to adequately pursue negotiations in a timely manner.

Second, the MCA considers that the NT Mining Minister should be empowered with the right to revoke the consent to negotiate at the end of the negotiation period for the terms and conditions of exploration licences, in cases where the Land Council has not made a decision before the end of the negotiation period. The Amendment Bill proposes a new sub-section 42(1B), which provides that where the Land Council has not made a decision before the end of the negotiation period, the consent of the NT Mining Minister is 'deemed to be withdrawn'. The MCA view is that it would be inappropriate for a Government consent to be 'deemed withdrawn' through the actions of a party to the negotiations, rather than being actively withdrawn by the relevant Minister.

#### **Recommendation**

***The MCA recommends that the amendments to Part IV include:***

- ***a requirement on all parties to negotiate in good faith during the negotiation periods for the terms and conditions of the grant of exploration licences or a mining interest, consistent with the requirements of the Native Title Act; and***
- ***a provision that the NT Mining Minister is the relevant party empowered to withdraw the consent to negotiate at the end of the negotiation period, where the Land Council has not made a decision. That is, the withdraw of the consent should not be 'deemed' as currently proposed by the new section 42 (1B).***

#### **Establishment of new Land Councils**

The Australian minerals industry's primary interest is in ensuring that Land Councils are stable and appropriately resourced, both financially and in terms of human capacity, to effectively and efficiently carry out their responsibilities. To this effect, the MCA supports measures to improve the accountability and performance outcomes of Land Councils.

The MCA supports the clarification of the process for establishing new Land Councils, however, the MCA considers that the requirement, as proposed in Section 21C for a 55% positive vote by adult Aboriginal residents living within a prescribed area, is too low a threshold. While the MCA notes that the Mining Minister may, by regulation, provide that other adult Aboriginal persons may also be eligible to vote, but that in its current form there is no provision in the Bill to ensure that Traditional Owners are included in the vote. It is not unusual for Traditional Owners not to be residents or not to represent the majority of the residents in a given area notwithstanding their traditional interests

The MCA is concerned that without the substantial support of traditional owners, that any approval for a new land Council may be counterproductive, destabilising and unworkable. Accordingly, the MCA considers that the a decision to establish a new Land Council require a more substantive majority vote in favour of the proposal by persons affected by the proposal, and particularly Traditional Owners of the area to be covered. The MCA suggests that the threshold should be raised to a majority requirement of two thirds of eligible voters, including the Traditional Owners of the given area. The MCA understands that the Land Councils are advocating a similar position, proposing that the appropriate threshold be 70% of eligible voters. Including traditional owners.

The MCA supports in-principle the requirement of section 21B(2) that prior to a vote being taken on the proposed establishment of the Land Council, that the Commonwealth Minister be satisfied that the qualifying area is an appropriate area for the establishment of a new Land Council, and that the new Land Council will be able to satisfactorily perform the functions of a Land Council. We consider this an appropriate precursor in ensuring that proposed new Land Councils have the capacity to be effective and efficient in the delivery of their statutory responsibilities.

A related concern is the possibility that a new Land Council could be established with responsibilities under ALRA, but that the native title representative body responsibilities, pursuant to the Native Title Act, would remain with the original Land Council. The MCA does not support establishment of new Land Councils where this would lead to increased complexity in the land rights system, delays and cost inefficiencies by virtue of the requirement to negotiate through two different organisations with varying responsibility for land matters in an area.

#### **Recommendation**

***The MCA recommends that the provisions for the establishment of new Land Councils should include the requirement for:***

- ***a positive vote by the Traditional Owners of the given area; and***
- ***a two-thirds majority vote in favour of the proposal.***

***The MCA recommends that the establishment of new Land Councils should not be approved where this would result in the establishment of separate institutional arrangements under the Native Title Act and ALRA which would add complexity, delays, inefficiencies and costs.***

#### **Delegation to Bodies Corporate**

The MCA supported the proposal for the delegation of Land Council powers as outlined in the joint submission made by the Northern Territory Government and the four Land Councils (Joint Submission, 2003).

However, the Bill has gone further than anticipated in the Joint Submission (2003) in providing for the delegation of powers to bodies corporate and at the behest of the Minister. The delegation of powers to a body corporate includes the delegation of powers under Part IV, which are the mining related provisions of direct interest to the minerals industry.

It is the Australian minerals industry's primary interest that institutions with Land Council powers be stable, and appropriately resourced, both financially and in terms of human capacity, to effectively and efficiently carry out their responsibilities. Stability and workability can only be assured when there is a substantive majority of support for the establishment of new institutional arrangements by both the Traditional Owners of the area affected by the decision, in addition to substantive support by the Aboriginal residents of a given area.

The Bill provides that the body corporate requesting delegated powers must have a majority of members who are either Traditional Owners or Aboriginal residents of the given area over which powers are sought. However, this provision does not necessarily mean that a substantive majority of both the Traditional Owners and Aboriginal residents for the given area support the delegation of powers. Without this level of support it is likely that the delegation of certain powers to a body corporate will be destabilising and unworkable.

The MCA does not support situations where a project proponent needs to negotiate with a raft of institutions that have discrete responsibilities for land issues within a given area. Under the current proposals there exists the extraordinary 'unintended consequence' that a project proponent may be required to negotiate with multiple institutions each carrying different decision making responsibilities over the same land area. Such a scenario would lead to disjunctive processes, increased complexity, and inefficiencies to the detriment of all interested parties.

#### **Recommendation**

***The MCA recommends that the provisions for the delegation of powers to bodies corporate should include a requirement for the substantive support of both Traditional Owners and Aboriginal residents of the given area for the delegation of powers.***

***The MCA recommends that the delegation of powers to bodies corporate should not be approved where this would result in the establishment of multiple and separate institutional arrangements under ALRA which would lead to disjunctive processes, increased complexity, and inefficiencies to the detriment of all interested parties.***

### **Distribution of resources**

Governments have a proper role in ensuring that the institutional framework required of legislation such as ALRA, is appropriately resourced, both financially and in terms of human capacity, so that the statutory Land Councils can effectively and efficiently carry out their statutory responsibilities, including their responsibilities for ensuring that land access for minerals development (land business) is undertaken in accordance with the requirements of ALRA. The characteristics of appropriate resourcing include that the funding base is secure, performance based, budgeted triennially and allocated annually, and that it is sufficiently flexible in allowing for increased activity.

The resourcing of other activities, which are not land access-based, particularly those related to the development of sustainable Indigenous communities (other business), should be shared between government, industry and Indigenous communities, pursuant to their respective responsibilities. For example, MCA supports the hypothecation of a percentage of existing mining royalty equivalents for training and employment initiatives to assist Indigenous people to become work-ready so as to take up the employment and enterprise development opportunities provided by the mining sector.

The Amendment Bill proposes various amendments to the Aboriginal Benefits Account (ABA), which receives the equivalent to the sum of the mining royalty payments received each year by the Northern Territory and Australian Government in relation to mining on Aboriginal Land.

ALRA was designed to ensure that the equivalent of mining royalties paid from mining on Aboriginal land was re-invested in the administration of ALRA, distributed to Aboriginal persons affected by mining and otherwise distributed for the benefit of Aboriginal people in the Northern Territory. Guaranteed funding of Land Councils has also been critical to ensuring that any financial disadvantage imposed by ALRA's statutory requirements are minimised by ensuring that the Land Councils are funded to cover their own costs related to the requirements of ALRA.

The funds in the ABA should be used for special measures specifically targeted to directly benefiting Indigenous people rather than for the basic social services that governments should be delivering from mainstream programs, such as providing community infrastructure such as sewerage, health care and education services.

This policy embedded in ALRA is consistent with industry transparency initiatives to ensure a greater re-distribution of the benefits of minerals industry to the regions in which industry operates. This is consistent with *Enduring Value - the Australian Minerals Industry Sustainable Development Framework* which provides that those communities most impacted by mining activities should also be the communities that most benefit from mining activities – including through the distribution of royalty or royalty equivalent payments directly to these regions.

The MCA is concerned that the proposed amendments to the distribution of ABA and other related amendments in ALRA indicate a significant policy change towards increased cost shifting to the minerals industry for the costs of Indigenous participation in the legislative procedures related to exploration and mining under ALRA.

In the case of ALRA, the cost shifting to industry acts as a 'double dip effect' against the minerals industry, given that the minerals industry already pays mining royalties whose equivalent should already be directed towards such costs. The MCA is also concerned that Government appears to be prepared to use ABA monies as a substitute for Government shortfall in funding basic social services to communities, that is, that Government may use ABA monies to fund government services that should be funded by mainstream programs.

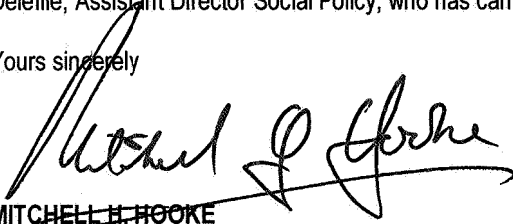
### **Recommendation**

***The MCA recommends that the policy intent in the use and distribution of ABA funds is maintained as originally intended and that ABA funds are not used as a substitute for Government shortfall in providing basic social services to communities.***

The MCA is broadly supportive of the proposed amendments to ALRA as contained in the Amendment Bill, and considers that the MCA's recommendations contained in this submission will ensure that ALRA is both an appropriate and effective system for the protection of Indigenous rights and an efficient and secure system for the development of minerals resources.

Should you have any queries on this submission please do not hesitate to contact me directly, or Ms Anne-Sophie Deleffie, Assistant Director Social Policy, who has carriage of this issue in the MCA Secretariat, on 6233 0631.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mitchell H. Hooke', with a long horizontal flourish extending to the right.

**MITCHELL H. HOOKE**  
**CHIEF EXECUTIVE**