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ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)
AMENDMENT BILL 1986

Date introduced: 22 October 1986
House: House of Representatives
Presented by: Hon. Clive Holding, M.P.,
Minister for Aboriginal Affairs

DIGEST OF BILL

Purpose

To amend the Aboriginal Land Rights (Northern Territory) Act 1976 ("the Principal Act"), in particular to impose a time limit for land claims and to generally prevent claims relating to stock routes.

Background

In June 1983, the Minister for Aboriginal Affairs requested Mr Justice Toohey of the Federal Court, who had been the first Aboriginal Land Commissioner, to review the provisions and operation of the Aboriginal Land Rights (Northern Territory) Act in light of the following principles:

- . Aboriginal land to be held under inalienable freehold title;
- . protection of Aboriginal sites;
- . Aboriginal control in relation to mining on Aboriginal land;
- . access to mining royalty equivalents;
- . compensation for lost land to be negotiated[1].

The report on the review, "Seven Years On" was tabled in Parliament in March 1984 and contained a number of recommendations which were to form the basis of the Government's proposed amendments to the Principal Act.

Initially, the Minister stated that in relation to mining, the system of negotiations and agreements would be improved to the satisfaction of the mining industry but that the Government had accepted the view that where Aboriginal land holders had a fundamental objection to any exploration on their land, their views should be respected[2]. The decision on the "veto" met with strong criticism from the Northern Territory Government, and the Australian Mining Industry Council which argued that its retention would obstruct development in the Northern Territory[3]. Aboriginal Land Councils, while protesting the shelving of a national land rights plan, welcomed the decision to retain the "veto"[4] but expressed opposition to a number of the proposed amendments[5].

To allow for fresh discussion with Aborigines, miners and other interest groups, the Government deferred introduction of the Amendment Bill until after the winter Parliamentary recess. By late September, 1986, the main points of conflict between the various groups were[6]:

- . provisions to put a time limit on Aborigines' discussions of mining applications;
- . a five year ban preventing Aboriginal groups which had rejected mining applications from reconsidering their position during that period;
- . the appointment of a mining commissioner to resolve disagreements on mining on Aboriginal land;
- . the removal of the right of Aborigines to claim stock routes and reserves;
- . the power of the Northern Territory Government to acquire Aboriginal land for public purposes, subject to Commonwealth approval.

Meanwhile, the Northern Territory Government had also expressed its concern with the proposed amendment to give Aboriginal Land Councils the power to prosecute for the desecration of sacred sites, a matter currently controlled by Northern Territory legislation[7].

As a result, this as well as proposed amendments dealing with the unresolved points of conflict have been deferred, with the exception of the proposed amendment to

prevent claims for stock routes and reserves. In introducing the Bill, the Minister stated that the passage of this particular amendment would be contingent upon effective progress being made with discussions between the Northern Territory Government, pastoralists and Land Council towards allowing the excision of small living areas from pastoral properties for Aboriginal communities. The issue of mining and exploration on Aboriginal land will be reconsidered upon the submission of revised proposals to Cabinet by the Minister for Aboriginal Affairs and the Minister for Resources and Energy[8].

Main Provisions

For a detailed analysis of the provisions of the Bill, refer to the Explanatory Memorandum.

Clause 5 will amend section 4 of the Principal Act to provide a scheme for the amalgamation of areas of land held by different Land Trusts within a single Land Trust where this is the wish of the traditional Aboriginal owners (proposed sub-section 4(1B)).

Clause 8 will insert a new section 11A into the Principal Act to permit a Land Council to negotiate an agreement with a person who wishes to obtain an estate or interest (including a licence) in land which is the subject of a land claim. The Land Council may agree that if the land is granted to a Land Trust the interest will then be granted to that person (proposed sub-sections 11A(1) and 11A(2)). The Land Council is not to make such an agreement unless it is satisfied that the traditional Aboriginal owners understand its nature and purpose, and consent to the proposed grant which must be made on reasonable terms and conditions. In addition, any Aboriginal community or group that may be affected must be consulted and have adequate opportunity to express its view (proposed sub-section 11A(3)). Failure to comply with these requirements will not, however, invalidate an agreement (proposed sub-section 11A(6)).

A licensee who loses grazing, occupation or miscellaneous licence rights to the use of certain land upon its being granted to the traditional Aboriginal owners will be eligible for compensation. The amount of compensation is to be agreed to by the licensee and the Commonwealth or, if agreement cannot be reached, determined by the Federal Court (proposed sub-sections 12AD(1) and 12AD(4) which will be inserted into the Principal Act by clause 10).

Section 19 of the Principal Act requires Ministerial consent before a Land Council may grant an interest in land that exceeds a certain time length. This will be extended from 10 years to 21 years for grants to Aborigines for certain purposes and from 5 years to 10 years for grants to the Commonwealth, Northern Territory, an Authority or mission (clause 12 which will amend section 19 of the Principal Act).

Land Councils will be given the additional functions of assisting Aborigines in the protection of sacred sites; negotiating, on behalf of the traditional Aboriginal owners and any other interested Aborigines, with persons who wish to obtain an estate or interest in land held by a Land Trust or subject to a land claim; assisting Aborigines in carrying out commercial activities; and providing any assistance for Land Trusts in the area (clause 13 which will amend section 23 of the Principal Act).

Sub-section 27(3) prevents a Land Council from entering, or allowing a Land Trust in its area to enter, a contract to receive or pay more than \$50 000 without the approval of the Minister. Clause 18 will increase this amount to \$100 000 and allow for a higher amount to be prescribed by regulation.

Clause 25 will amend section 50 of the Principal Act which deals with the functions of an Aboriginal Land Commissioner, to prevent the hearing of:

- . an application made more than 10 years after this Bill comes into operation;
- . an application which has been unsuccessful in a previous hearing unless the basis on which ownership is claimed is substantially different from that which was previously contended or new evidence is available or there is another appropriate ground and the application is likely to succeed;
- . an application for alienated Crown land held by or on behalf of Aborigines without written consent of the registered proprietor(s);
- . an application for land which is a stock route or reserve unless, in the case of a stock route, it is contiguous to and between other land being claimed or, in the case of a stock

reserve, regulations declare it capable of being claimed, or the application has been part heard by a Commissioner before this Bill comes into operation;

A new section 54AA, to be inserted into the Principal Act by clause 29, will empower a Commissioner to prohibit or limit the publication of, or access to, information or written material produced to a Commissioner for the purposes of a traditional land claim (proposed sub-section 54AA(1)). The Commissioner will also be empowered to restrain certain persons or classes of persons from being in the vicinity of the place where information or material is to be produced (proposed sub-section 54AA(1)). An offence against this section will carry a fine of \$2000 or imprisonment for 12 months or both for people, or a fine of \$10 000 for companies (proposed sub-section 54AA(3)).

An estate or interest will not be capable of being granted in land which is the subject of a traditional land claim (clause 33 which will insert a new section 67A into the Principal Act).

Clause 34 will amend section 70 of the Principal Act to ensure that where a person has an estate or interest in Aboriginal land or land in its vicinity and there is no other practicable way of gaining access to it, that person will be entitled to cross the Aboriginal land by a route agreed upon with the Land Council. If there is a failure to agree, the Minister will appoint an Arbitrator who will determine the route (proposed sub-section (4)), taking into account the location of any sacred site and residential area (proposed sub-section (6)).

A number of sub-sections of the Act require a Land Council to obtain the consent of the traditional Aboriginal owners before taking any action affecting their land. Clause 36 will deem consent to have been given if the owners have reached their decision in accordance with their own traditional decision making process or in accordance with a

process which they have agreed to and adopted (proposed section 77A).

For further information, if required, contact the Law and Government Group.

6 February 1987

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References

1. Seven Years On: Report by Mr Justice Toohey to the Minister for Aboriginal Affairs on the Aboriginal Land Rights (Northern Territory) Act 1976 and Related Matters, AGPS, Canberra, 1984.
2. Minister for Aboriginal Affairs, News Release, 3 March 1986.
3. The Australian Financial Review, 7 March 1986.
4. The News, Northern Territory, 4 March 1986.
5. The Australian, 17 May 1986.
6. The Australian Financial Review, 17 September 1986.
7. The Sydney Morning Herald, 19 September 1986.
8. Minister for Aboriginal Affairs, News Release, 22 October 1986.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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