Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE

Department/Agency: Northern Land Council
Topic: Aboriginal Land Rights Amendment Bill - consultation

Senator / Member: Thorpe
Question reference number: n/a
Type of question: 18 November 2021, page 8
Date set by the committee for the return of answer: Monday, 22 November 2021

Number of pages: 2

Question:

Mr Beswick: The changes to part 4 benefit all parties to the process of securing exploration and mining agreements on Aboriginal land. They do not alter in any way the land councils' statutory obligations to seek the free, prior and informed consent of traditional owners and other Aboriginal people that may be affected. They are changes that go to administrative efficiencies—updating and streamlining the provisions of the act. The land councils and the membership of the land councils—who themselves are grassroots people representing homelands, remote communities and towns and communities across the length and the breadth of the Northern Territory—have considered these changes. In fact, a very detailed agenda paper outlining all of the part 4 changes was put to the full council of the Northern Land Council in its meeting late last year. I'm very happy to provide you a copy of that paper if you wish to see the level of detail that was provided to council members, who, as I said, are traditional owners and grassroots people.
So there is nothing in the changes to part 4 that, in any way, can be said to favour miners over traditional owners. In fact, the provisions safeguarding the veto right and the protection of sacred sites, which are fundamental to Aboriginal people, remain unchanged.

Senator THORPE: This is a follow-up to that: in your submission you state that this will reduce 'unnecessary meetings' with traditional owners when they have already made up their minds. That means you don't have to meet with the TOs once they say yes; you really don't need to meet with them again after that. Is that what you're saying in your submission?

Mr Beswick: Mr Nugent spoke at length to this very specific provision in his answers earlier. In fact, they're precisely there at the request of traditional owners, who don't want to be humbugged by endless meetings when they've already clearly made their views known to the land councils. So it's traditional owners who were pushing for that particular change, not the miners.

Answer:

A copy of the Agenda Paper is attached.

AGENDA PAPER: LEGAL & MINERALS & ENERGY

Title: Part IV Review – Amendments to Part IV (Mining) of the Land Rights Act

Presented by: Greg McDonald

Meeting: 122nd Full Council Meeting **Location: Katherine** **Venue: Godinymayin Yijard Rivers Arts & Culture Centre** **Dates: 7th – 11th December 2020**		**Decision**	
Implications	**Yes / No**	**Subject matter**	**Yes / No**
Legal	Yes	Land Use Agreements	No
Political	Yes	Mining & Exploration	Yes
Financial	No	Policy	Yes
Community	Yes	Wider community	Yes
Other		Organisational	No
NLC FILE No	NLC 528-042-901	Other	
SIGN OFF		**CHAIRMAN / CHIEF EXECUTIVE OFFICER**	
Samuel Bush-Blanasi			
Marion Scrymgour			

A. Purpose

To endorse proposed amendments to Part IV (Mining) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth).

#198217v3Document name: 122nd Full Council Meeting Agenda Paper
Regions: All Regions

B. Background

1. Part IV (Mining) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) (**Land Rights Act**) provides an administrative regime to control exploration and mining/production on Aboriginal land.

2. Prior to 1987, Part IV provided for a veto at the exploration and mining stage of a project. Amendments to the Land Rights Act in 1987 restricted the veto to the exploration stage.

3. From 1998 to 2006, Part IV was subject to intensive review and reports known as the Reeves report (1998), the HORSCATSIA report (1999) and the Manning report (1999).

4. Following these reports, consultant Mr Bill Gray led a process which culminated in the *Aboriginal Land Rights (Northern Territory) Amendment Bill 2006*. These amendments made significant changes to the Land Rights Act on mining and non-mining provisions. Changes to Part IV included measures to streamline and reduce negotiation timeframes and other measures to address warehousing by exploration companies. 'Warehousing' refers to companies stockpiling applications without actively progressing them, stopping other companies from applying to explore the areas the subject of the applications.

5. The 2006 amendments to the Land Rights Act came into operation on 1 July 2007 and provided for an independent review of the operation of Part IV of the Land Rights Act as soon as practicable after 1 July 2012. This statutory review was undertaken by Land Commissioner Justice Mansfield from 2012-2013 (**Part IV Review**).

6. The Part IV Review involved consultations with the Commonwealth and NT Governments, the four Land Councils and industry. The report, delivered on 28 March 2013, found that "the Review did not indicate that there was ongoing significant disquiet on the part of any section of the key stakeholders" and that "there were various matters raised about the Part IV processes and operations, but with few exceptions they concerned matters of relative detail rather than of deep concern or of policy." The Land Commissioner's report presented 22 recommendations (**Recommendations**) to promote efficiencies in the administration and operation of Part IV.

7. Since 2016, the four Land Councils and the NT and Commonwealth Governments have been members of a collaborative working group in relation to the implementation of Recommendations of the Part IV Review (**Working Group**). The Working Group operated on the understanding that amendments to Part IV should be supported by all members of the Working Group.

8. In May 2020, the Working Group reached an agreed preliminary position on each of the Land Commissioner's Recommendations either supporting or not supporting amendments to Part IV. A summary of these Recommendations and the Working Group positions at **Table 1** below.

9. The Working Group has recommended the following two additional amendments to Part IV:

    1) Giving traditional Aboriginal owners an option of a 10 year moratorium (on top of the 5 years existing) for areas of cultural significance.

    2) Giving Land Councils a power to assess and reject exploration applications that don't contain enough information and that would allow an application to be amended before the commencement of the standard negotiating period.

10. More information about the two extra proposals are included in **Table 2** below.

11. Peak industry organisations have been consulted on the proposed amendments. Industry organisations did not raise any objections to the position proposed by the Working Group, with the exception of one objection from the Association of Mining and Exploration Companies to the option of a long-term (10 year) moratorium (in addition to existing 5 years).

12. The Commonwealth will proceed with the amendments once it receives endorsement from the four Land Councils and the NT Government on the proposed amendments as per the positions reached by the Working Group in Table 1 and Table 2 at Section I.

G. Advice to Full Council

13. All of the Land Commissioner's Recommendations will arguably improve the operation of Part IV of the Land Rights Act. The Recommendations can be broadly grouped into the following five categories:

    a. Improving the application and consent processes for granting exploration licences (Recommendations 1-8).

    b. The role of the Minister for Indigenous Australians in the granting of exploration licences by the NT Government (Recommendations 9-10).

    c. More efficient and consistent operation of Part IV (Recommendations 11-16).

    d. The delegation of functions and powers to the NT Mining Minister (Recommendations 17).

e. Alignment of Part IV with related Australian and NT Government legislation (Recommendations 19-22).

14. The Working Group's recommendation is that twelve of the Land Commissioner's Recommendations should be supported subject to some changes. The Working Group recognised that some of the remaining ten Recommendations could be addressed by procedural changes not requiring legislative amendments to Part IV.

15. The two additional matters recommended by the Working Group also support the more efficient and consistent operation of Part IV.

16. Accordingly, the advice to the Full Council is that it should endorse the amendments to Part IV as recommended by the Working Group.

H. Resolution

That the Full Council resolves with respect to the proposed amendments to Part IV (Mining) of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth):

1. to endorse Recommendations 2-3, 6, 8-10, 13, 17, 19-21 and 22 as per the recommendations of the Working Group outlined in Table 1;
2. to not support Recommendations 1, 4-5, 7, 11-12, 14-16, 18 as per the recommendations of the Working Group outlined in Table 1; and
3. to endorse two additional recommendations of the Working Group outlined in Table 2 .

I. Working Group Positions

Table 1.

2013 Part IV (Mining) Review Recommendations Agreed Working Group positions	WG preliminary positions	Land Rights Act amendment	Working Group Comments	Explanation
Recommendations to improve the application and consent process for granting exploration licences				
Recommendation 1: That amendment to the Land Rights Act aimed at encouraging applicants to comply with the time limit set out in s 41(2) be considered.	**Not supported**		Administrative changes have been implemented by the NTG to encourage applicants to comply with the timeframes for applying to Land Council for consent to grant a licence. Therefore, no need to amend ALRA.	The recommendation supports compliance with the time limit for applicants to seek Land Council consent to grant a licence and seeks to make the process more efficient by providing greater certainty for all parties.
Recommendation 2: That s 41 of the Land Rights Act be amended to require the relevant Land Council to notify the NT Mining Minister (NTMM)	**Supported**	✓		The recommendation will require the NTMM to be notified of the date an exploration application is received by the Land Council, which will support current

of the date upon which it received an application from the applicant.				practice and bring greater certainty and transparency to the application process.
Recommendation 3: That the Land Rights Act be amended to permit an applicant, with the written consent of the Land Council, to amend an application to a Land Council under s 41(1), and that any such amendment be forthwith notified by the Land Council to the NTMM who shall have 28 days thereafter to disallow the amendment.	**Supported**	✓	The recommendation is to allow an application under s41(6) to be amended after the standard negotiation period has commenced. (Note: Refer to Table 2, Item 2, for proposed process to allow an application to be amended before the standard negotiation period has commenced.)	The recommendation proposes a process to enable the amendment of an application after the commencement of the standard negotiation period, allowing the amended application to remain as the original application lodged (free from doubt as to whether the amendment forms part of the original application). The proposed process would replace the current practice where an applicant is required to apply to the NTMM for a fresh consent to negotiate, triggering the lodgement of a new s41(6) application to the relevant Land Council. The recommendation aims to reduce administrative red tape, delays and costs for applicants.
Recommendation 4: That s 42(13) be amended so as to permit negotiating parties to agree to extend the negotiating period initially by two years or a shorter period, rather than two years, and	**Not supported**		The current system of predetermined negotiating periods / extension dates	Both recommendations go to creating greater flexibility in the timeframes for applicants to negotiate with Land Councils.

subsequently by 12 months or a shorter period, rather than 12 months. **Recommendation 5:** That s 42 be amended so as to permit negotiating parties to agree to extend a special negotiating period determined under s 42(18) by 12 months or a shorter period.			facilitates all parties' planning and monitoring. Permitting flexibility would introduce unnecessary administrative burden and complexity. There is no need to amend ALRA.	
Recommendation 6: That s 42 be amended so that: (a) the Land Council be required to convene such meetings as it considers "appropriate" rather than "necessary" with traditional Aboriginal owners; and (b) the Land Council and the applicant may agree to waive the requirement to conduct meetings in accordance with s 42(4).	**Supported**	✓	Land Council support subject to the repeal of s 28A.	The proposed amendment would allow Land Councils more flexibility to determine how traditional Aboriginal owners are consulted in each case, and would support greater efficiency, cost savings and timely resolution of applications. It would also allow meetings with traditional owners about exploration applications to be waived by agreement between the applicant and the Land Council. Section 28A provides for the delegation of Land Council functions to Aboriginal corporations. NIAA is consulting separately with Land Councils regarding the repeal of s 28A, as corporations do not have the same level of

				accountability as Land Councils to the Australian Government or the community.
Recommendation 7: That Land Councils and the relevant representative bodies for exploration and mining companies give consideration to the negotiation of a shorter pro forma exploration agreement for use in Part IV negotiations, with a particular focus on the elimination of terms and security requirements that merely duplicate pre-existing statutory obligations.	**Not supported**		Not supported as agreements are already continuously improved and mature through negotiations between applicants and Land Councils over time.	The recommendation proposes that Land Councils and industry representative organisations negotiate to develop a shorter pro forma exploration agreement.
Recommendation 8: That s 42(4) be amended by adding a requirement that the applicant must pay all costs reasonably incurred for all meetings convened under that section.	**Supported**	✓	To operate in conjunction with the cost recovery regulations proposed under s 33A(1)	The recommendation proposes amendment to the ALRA to explicitly require applicants to pay all costs reasonably incurred for meetings with traditional Aboriginal owners to consider exploration proposals and terms and conditions. There is existing broad provision for Land Councils to recover costs under s 33A. The proposed amendment would support current practice in conjunction with prescribed regulations separately proposed under

				s33A(1). Transparency will remove any doubt in respect of cost recovery relating to Part IV.
Recommendation 9: That consideration be given to the benefit of securing the Minister's consent, and, if it is assessed that it does not add "quality" to the decision making process, to the possible repeal of ss 40(a)(ii), 42(8), (8A), (9), and (10) and other consequential amendments.	**Supported**	✓	Related consents are provided by the Land Council. The Minister's consent is not considered to add quality to the decision making process. Land Council support subject to the repeal of s 28A	The recommendation proposes the repeal of provisions requiring the Minister's consent to the grant of an exploration licence if that consent is not considered to add quality to the decision making process. The proposed amendment would create efficiencies and reduce red tape. Note that the Minister would retain a role in relation to exploration licences in respect of high value applications (s 27(3)) and where the proponent is not operating in accordance with their exploration agreement (s 47).
Recommendation 10: That, in the alternative to Recommendation 9, s 42 of the Land Rights Act be amended so as to require the applicant to provide a copy of the agreement entered into by the Land Council and the applicant as to the terms and conditions to which the grant of the exploration licence is subject, and the Land Rights Act be	**Supported**	✓	Redundant if Rec 9 implemented. It is current practice for the Land Council to provide the Minister	Recommendation 10 provides an alternative to Recommendation 9 and aims to streamline the Ministerial consent process in respect of exploration licence applications.

further amended so that the 30 days within which the Minister's determination must be made runs from the date of receipt of the copy of the agreement.			with the exploration licence agreement. The part of the recommendation requiring the applicant to provide the agreement is therefore not supported.	Currently the 30 day timeframe for Ministerial consent starts from the date the Minister is notified of the Land Council's decision to consent or refuse the grant of an exploration licence. If the Land Council does not at the time of notification provide the agreement and other relevant material, this can create additional pressure in enabling the Minister's consideration and providing consent within the 30 day timeframe. Recommendation 10 provides for the 30 day timeframe for Ministerial consent to run from the date the agreement is provided to the Minister, allowing sufficient time for the Minister to consider and consent to or refuse the application.
Recommendations relating to the more efficient and consistent operation of Part IV				
Recommendation 11: That s 46(1)(a)(viii) be amended so that the quantity of environmental information in relation to a proposed mining works that needs to be included in a s 46 mining proposal be the same as that environmental information	**Not supported**		The recommendation is considered impractical as the timing of the EIS process does not align well with the Part IV process. For example,	Currently, the ALRA requires the applicant to provide in their mining proposal to the Land Council, environmental information in relation to proposed mining works that would be included in an environmental impact statement (EIS).

that is required to be provided under NT environmental legislation.			separate land access from that required for the exploration process would be required to enable field work to produce an EIS. NT/Land Councils agreed to progress any administrative reforms.	The recommendation proposes amendments to require the applicant to provide in their mining proposal, environmental information in relation to proposed mining works consistent with NT environmental legislation. Under NT legislation, an environmental impact statement would be required in circumstances where a mining project is likely to have a "significant environmental impact". The recommended amendment would therefore limit the requirement to provide to the Land Council an EIS only in such circumstances. In other circumstances, the lesser information required in a mining management plan would be required.
Recommendation 12: That ss 40(b) and 43 be repealed. It is a matter of policy whether some provision equivalent to s 40(b) and supporting provisions should be enacted in relation to proposed mineral leases.	**Not supported**		Land Councils confirmed support for this recommendation but noted the WG commitment not to progress amendments without full WG support and noted the Australian Government does not support the recommendation.	The recommendation proposes the repeal of provisions enabling the Governor-General to declare that the national interest requires an exploration licence be granted in the absence of the consent of the Land Council and Minister and establishing a process for negotiating the terms and conditions of the grant.

Recommendation 13: That s 44A(1) to the extent that it prohibits terms and conditions which provide for compensation for the value of minerals removed or proposed to be taken from the land be repealed.	**Supported**	✓		The ALRA provides for a single process for traditional Aboriginal owner consent ('veto') for exploration and mining. Resulting 'conjunctive' agreements typically include essential terms and conditions of proposed mining works at the exploration stage, including those relating to mining royalties. While there are difficulties defining such terms and conditions prior to exploration, conjunctive agreements provide greater certainty to all parties and better enable traditional Aboriginal owners to provide informed consent. Section 44A(1) prohibits an exploration agreement including terms and conditions which provide for compensation for the value of minerals removed or proposed to be taken from the land. Amending s 44A(1) to allow the inclusion of such terms and conditions would provide greater certainty for conjunctive agreement making, and ensure the present practice is lawful.

Recommendation 14: That Part IV be made exempt from the application of s 27(3) so that the Minister's consent is not required both in relation to the payment of over $1,000,000 and in relation to the granting of the exploration licence or mineral lease.	**Not supported**		Retain s 27(3) for Ministerial consent particularly in light of WG support for Rec 9.	The recommendation proposes the removal of the requirement for the Minister's consent where an exploration or mining agreement involves payment or receipt of more than $1,000,000, as the Minister's consent is separately also required in relation to the grant of an exploration licence or mineral lease. If the requirement for the Minister's consent to the grant of exploration licence applications is removed (recommendation 9) then retaining the application of s 27(3) approval to Part IV processes would retain a Ministerial role in high value exploration licence applications.
Recommendation 15: That s 19(11)(a) be repealed insofar as it purports to include extractive mineral titles within the definition of "estate or interest in land". **Recommendation 16:** That a new section be added to the Land Rights Act requiring that an extractive mineral title not be granted unless the Land Council has given notice to the NTMM that it is satisfied of	**Not supported**		The granting of extractive mineral licences under s 19 is not problematic, and there is no compelling case for change	The recommendations propose repealing the inclusion of extractive mineral titles within the s 19 definition of "estate or interest in land", and adding a new section that an extractive mineral title not be granted unless the Land Council gives notice to the NTMM that it is satisfied the consent and consultation provisions of section 19(5) have been met.

all the matters set out in s 19(5). Consequential amendments to the MTA may also be necessary.				The recommendation is intended to address any confusion in respect of extractive mineral titles to the extent they are regarded as "estates or interests in land" for the purposes of s 19, which sets out a scheme for the grant of an estate or interest over Aboriginal land by Land Trusts. This may cause confusion as the grant of an extractive mineral title is not made by a Land Trust, but by the NT Government.
Recommendations for the delegation of functions and powers to the Northern Territory				
Recommendation 17: That the Minister's powers under ss 47(1)(d) and 47(3)(a) be excluded from delegation to the NTMM under s 76(2), and that a requirement to consult the NTMM be added to s 47(3).	**Supported**	✓	The Working Group agreed on an amendment to require the Minister to inform the NTMM of any determination under ss 47(1)(d) and 47(3)(a).	The Minister may currently delegate to the NTMM various functions to make determinations that go to the cancellation of exploration licences and mining interests, except functions that determine whether a cancellation is in the national interest. The exercise of the delegated functions in conjunction with the exercise of the Commonwealth Minister's reserve powers has proven unwieldy and inefficient. Exclusion of the delegated functions under ss 47(1)(d) and 47(3)(a) would provide for the related

				determinations to be made sequentially and more efficiently by the Minister. The inclusion of a requirement to consult the NTMM in relation to s 47(3) would ensure the NTMM's position is considered in respect of any proposed cancellation.
Recommendations relating to the alignment of Part IV with related Australian Government and Northern Territory legislation				
Recommendation 18: That consideration be given to incorporating provisions into the Land Rights Act similar to those set out in s 24MD of the Native Title Act 1993 (Cth) for dealing with the grant of access authorities.	**Not supported**		s 19 is generally utilised for this purpose.	An 'access authority' is a right to enter land outside the title area to construct use and maintain infrastructure associated with authorised activities under the mineral title. The *Mineral Titles Act* (NT) provides for the NTMM to grant an access authority, subject to the consent of the relevant land holder. The applicant may take a refusing landowner to the Lands Planning and Mining Tribunal on the basis the refusal is unreasonable. The Review considers that the grant of access authorities does not adequately address the special interests of traditional owners as land holders. To address this, the Report recommends consideration be given to incorporating provisions in the ALRA similar to those in the *Native Title Act 1993*, to ensure traditional owners' rights in relation to the grant of an access authority are appropriately accommodated in respect to

				Aboriginal land, over and above other land owner interests in the *Mineral Titles Act (NT)*.
Recommendation 19: That s 75, relating to miner's rights, be repealed. **Recommendation 20:** That titles issued under the Geothermal Energy Act (NT) be brought within the operation of Part IV, by including: (a) geothermal exploration permits under the definition of "exploration licence"; and (b) geothermal retention licences under the definition of "exploration retention licence". **Recommendation 21:** That amendments to ss 48(1A) and 3 be made as recommended in this Report in order to ensure separate moratorium provisions run in relation to geothermal energy title applications.	**Supported**	✓		Recommendations 19-22 relate to the alignment of the ALRA with the *Mineral Titles Act* (NT) (MTA) and the *Geothermal Energy Act* (NT) (GEA) to ensure workability of ALRA. Rec 19 – Repeal s 75 'miner's right' as it is a title that no longer exists under MTA. Rec 20 – Update the ALRA to include geothermal exploration titles created under the GEA. Rec 21 – Update ALRA to ensure geothermal energy title applications are subject to separate moratorium periods (as is currently the case for mineral and petroleum exploration titles).
Recommendation 22(1) – That the definitions of "extractive mineral" and "mineral" in s 3 be amended so that they reflect the definitions of those terms contained in ss 10 and 9 respectively of the MTA.	**Supported**	✓	Amendments should retain references to petroleum (refer recommendation 20 – geothermal energy).	Recommendation 22 updates definitions and ensures compatibility with the current *Mineral Titles Act* (NT) in respect of the terms: - Extractive mineral - Mineral

Recommendation 22(2) – That the definition of "exploration licence" in s 3 be amended so that references to "prospecting authorities" are removed, and extractive mineral titles are specifically excluded. **Recommendation 22(3)** – That the definition of "exploration retention licence" in s 3 be amended so that it refers to exploration licences in retention under the MTA, and extractive mineral titles are specifically excluded. **Recommendation 22(4)** – That the definition of "mining interest" in s 3 be amended so that extractive mineral titles are specifically excluded.				- Exploration licence - Exploration retention licence - Mining interest

Table 2.

Other matters	WG agreed position	ALRA amendment	Comments	
1. Long Term Moratoriums for Areas of Cultural Significance – A long-term (10 year) moratorium option (in addition to existing 5 years) would protect industry and Land Councils from unnecessary expenditure and delays.	**Supported**	✓		Past experience shows that some traditional Aboriginal owners are unlikely to change their position on a project within a 5 year timeframe. Consulting about the same or similar applications soon after that period can be expensive, unproductive and at times counter-productive, if seen as a sign of disrespect. Providing traditional Aboriginal owners with the option of a 10 year moratorium period at the time consent for an application is refused would provide considerable time and cost savings where consent is highly unlikely. Note that any moratorium is limited to applications of the same title type (eg. mineral, petroleum, geothermal).

2. Additional Information – s 41 applications– new process for further information to be requested / provided in support of a s 41 application where it has been assessed by Land Council as not being substantially compliant under s 41(6A), prior to the commencement of the negotiating period.	**Supported**	✓	(Note: Refer also to Recommendation 3 which relates to amending the application after the commencement of the standard negotiating period.)	The proposed process would allow an application to be amended before the commencement of the standard negotiating period. The WG proposes amendment to provide for the Land Council, within 3 months of receiving an application, to decide if an application is 'substantially compliant' under s 41(6A) and accept it. Additional information could be sought from / provided by the applicant in support of the application within that timeframe. A consequential amendment would be required to clarify the date the standard negotiation period commences e.g. from the date the Land Council notifies the NTMM an application is substantially compliant. The proposed amendment would create clarity and efficiencies in the Land Councils' assessment of applications, and avoid an applicant having to make a new application to provide further information.

NORTHERN LAND COUNCIL

FULL Council Meeting

Our Land, Our Sea, Our Life

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Regions: All Regions