

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) BILL 1976

CLAUSE NOTES

1.

As the short title to the Bill indicates, the Bill is concerned with the granting of land rights to the Aboriginal people of the Northern Territory. The long-title indicates that the central purpose of the legislation is to provide for the grant of traditional land.

The Bill relies on all relevant powers of the Parliament and, in particular, on the provisions of Sections 122 and 51 (xxvi) of the Constitution, which state :

"122. The Parliament may make laws for the government of any Territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

51. The Parliament shall, subject to this Constitution have power to make laws for the peace, order and good government of the Commonwealth with respect to

....

....

....

(xxvi) The people of any race for whom it is deemed necessary to make special laws."

The purpose of the Bill is to give effect to policy on the granting of land rights to Aboriginals in the Northern Territory and the recommendations of the Second Report of the Aboriginal Land Rights Commission (the Woodward Report).

Clauses amended/to be amended since the Bill was introduced on

4 June are indicated thus *.

CLAUSE 1 - Short Title

CLAUSE 2 - Commencement

Commencement date will be fixed by Proclamation but operation of Clause 69 may be deferred. Clause 69 relates to entry onto Aboriginal land. Deferment will allow for a law of the Territory to exempt certain classes of persons from entry permit requirements and provide machinery for other persons to obtain permits to enter Aboriginal land before Clause 69 becomes operative.

*CLAUSE 3

Clause 3(1) Definitions.

Aboriginal ...

This definition conforms with the Constitutional power of the Australian Government to make laws with respect to the people of any race. Since the Bill has application only to the Northern Territory it is not necessary to include Torres Strait Islanders within the definition of "Aboriginal".

Aboriginal Council ...

The proposed Aboriginal Councils and Associations Bill will define "Aboriginal Council" as an Aboriginal Council established by Part III of that Bill. On application by a number of Aboriginals living in a particular area, a Registrar of Aboriginal Corporations will be obliged to explain and discuss the application with Aboriginals in that area and if he is satisfied as to certain conditions, including that a substantial majority of Aboriginals living in the area is in favour of establishment of the Council, the Council will be established. The Aboriginal Councils and Associations Bill will specify procedures to be followed by these Councils, including ways in which moneys can be expended.

Definition of sacred site provided in relation to new clauses 65A and 68A.

Definition of exploration licence provided in relation to

amendments to Clause 39 on consent procedures, and petroleum permit has been added to ensure that procedures in relation to oil and gas are the same as those for other exploration and mining.

Clause 3(2) Mining interests : Where appropriate such interests are dealt with specifically in the body of the Act, but since minerals remain the property of the Crown, mining interests granted over reserves, etc., are not affected by the grant of fee simple in the land to Trusts.

*Clause 3(4)

The consent procedures do not apply to the renewal of a mining interest and the amendment will make it clear that a right of renewal conferred prior to the land becoming Aboriginal land would be protected.

*Clause 3(5)

In this clause (and wherever else it appears) the previous reference to 'the Schedule' is amended to 'Schedule .1.'. A limited number of public roads are excluded from the grant of land but Aborigines will control entry onto their land.

PART II - GRANTS OF LAND TO ABORIGINAL LAND TRUSTS

(Refer to paragraphs 70-89 of the Woodward Report. Other specific paragraph references are given below, where appropriate.)

*Clause 4

The Minister may establish Land Trusts and shall establish Trusts for the areas described in the schedule - the reserves and other traditional lands to be transferred initially to Aboriginal ownership.

The amendment will make it clear that a Trust may hold title to more than one area in schedule (e.g. Arnhem Land Islands and mainland; Bathurst and Melville Islands).

*Clause 5

The Clause defines the functions of Land Trusts which are to be title-holding bodies only. The exercise of any powers deriving from their ownership of land is subject, under sub-clause (2), to any direction given by the relevant Land Council.

Sub-clause (1)(c) refers to Aboriginal land over which another person already has a lease which prevents the grant of freehold title. The acquisition of such an interest will allow the Land Council to deliver the title deed to the Land Trust.

The amendment will delete reference to 'communities', to bring this clause into line with other provisions to the effect that land is held for the benefit of groups of Aboriginals entitled by tradition to its use and occupation.

Clause 6

All moneys due to the Trust are to be paid to the Land Council.

Clause 7

This Clause provides for the membership of Land Trusts.

(Paragraphs 361-365 of the Woodward Report refer.) Trust members are generally to be nominated by Land Councils (in consultation with traditional owners) and are to be Aboriginals living in the area.

Members of a Land Trust are appointed by the Minister.

The Minister may appoint an acting member of a Land Trust.

The amendment to Sub-clause (6) will provide, as an exception, for traditional owners, who live outside the area of the Land Council but whose traditional land is in the area, to be members of Trusts.

Clause 8

At the request of the appropriate Land Council, the Minister shall terminate the appointment of a member of a Land Trust if the Land Council requests in writing and the Minister is satisfied that the member has failed properly to perform the duties of his office.

Clause 9

A member of a Land Trust may resign.

Clause 10

The Minister shall recommend to the Governor-General that fee simple title to land described in the schedule be vested in Land Trusts provided no other person has an estate or interest in the land.

Sub-clause (2) deals with the case where some other person has a conflicting interest. In such cases, a freehold title deed will be issued but held in escrow by a Land Council until the interest expires or is acquired.

The amendment will clearly preserve the Special Purpose Lease granted to Nabalco at Gove under the Special Purpose Leases Ordinance and the Mining (Gove Peninsula Nabalco Agreement) Ordinance, by ensuring that these are treated as land leases to be held in escrow, not mining interests.

*Clause 11

This allows for traditional land which is vacant Crown land to be transferred to Aboriginal ownership (other than the reserves and other lands listed in the schedule).

The amended clause will, in addition, allow a Land Trust to be formed for alienated land where title is held by Aborigines (i.e. pastoral properties which are leased to Aborigines and which might become Aboriginal land if the Commissioner so recommends).

A new Sub-clause gives authority for the Minister to create a Land Trust for the Ranger area if the Ranger Inquiry recommends that land there should become Aboriginal land.

Clause 12

This Clause provides for the Governor-General to grant freehold title but specifies that minerals remain the property of the Crown. Sub-clause (3) reserves public roads from the freehold title. Sub-clause (5) provides that such freehold title be registered and dealt with according to the normal laws of the Northern Territory.

Clause 13

This Clause prevents the Crown from granting interests in Aboriginal land the subject of a title deed held in escrow except where the Crown is obliged under law to grant such an interest, or the relevant Land Council consents, or in the circumstances outlined in sub-clause (2)(b).

*Clause 14

The Crown is entitled to continue existing usage of Aboriginal land and may obtain a lease from a Land Trust.

The amendment will allow occupiers of Crown property to exercise rights, privileges and duties of an owner while in occupation (to allow for repair and maintenance, etc., where lease not negotiated).

Sub-clause (4) limits the Commonwealth's powers under the Atomic Energy Act so that it is governed by the sections on mining.

Clause 15

A rental fixed by the Minister will be paid for Crown usage of Aboriginal land for purposes other than community purposes.

Sub-clause (2) provides that forestry purposes are deemed not to be community purposes and that rental payments under sub-section (1) shall not include royalties.

Clause 16

Payments received by the Crown in respect of Aboriginal land shall be paid to the relevant Council (e.g. lease rentals, mining lease rentals, licence fees).

Clause 17

The Consolidated Revenue Fund is appropriated to enable payments as per Clause 16.

Clause 18

Unless given at least 12 months notice by a Land Council, missions will be entitled to continue occupying Aboriginal land and if, after due notice, such entitlement ceases, Land Councils will be obliged to compensate missions for improvements financed at mission expense. (Paragraph 134 of the Woodward Report refers.)

Clause 19

Leases over Aboriginal land may not be granted without the consent of the Land Council and, where the lease is to a non-Aboriginal (other than

the Crown, a Crown authority or a mission) the consent of the Minister is also required. (Paragraph 144(x) of the Woodward Report refers.)

Sub-clause (5) prevents a Land Council from giving consent to a lease if the traditional Aboriginal owners of the land do not consent to the grant.

Leases over Aboriginal land may be granted and land may be transferred to another Trust or surrendered to the Crown.

Sub-clause (4)(b)

Amendment will clearly permit the transfer of part of land from one Trust to another, to allow for the possibility of vesting land in individual clan groups.

Sub-clauses (2), (3), (4), (5), (6)

Amendment will confirm the passive role of Trusts, by removing the phrase "with the consent" which might suggest that the Trust might have power to act on its own initiative, and substituting "at the direction".

Clause 20

Power is given to the Minister to issue a lease to meet the Government's obligations under the Gove and Groote Eylandt agreements on behalf of a Land Trust where negotiations have failed, but only after Arbitrator has been appointed and has determined fair terms and conditions for a lease.

PART III - ABORIGINAL LAND COUNCILS

(Refer to paragraphs 335-360 of the Woodward Report.)

Clause 21

The Minister may establish at least two Land Councils. A Northern and a Central Land Council were set up following the first report of the Aboriginal Land Rights Commission but the Bill does not restrict the number of Councils. It is possible that Aboriginals may decide that responsibility for the administration of their land should be on a more local basis, in which case additional Land Councils can be established.

Land Councils are to be bodies corporate.

CLAUSE 23

This Clause defines the functions of Land Councils (see paragraph 359 of the Woodward Report).

Sub-clause (2) emphasises that Land Councils are acting for traditional owners and provides that they cannot give any direction to a Land Trust except with the advice and consent of traditional owners.

The amendments will :

sub-clause (1)(a) - provide that Councils respond to the "wishes" as well as the "opinions" of Aboriginals in the area.

sub-clause (1)(f) - provide for Land Councils to assist traditional owners who make claims on traditional grounds to land outside reserves.

sub-clause (2) - provide for Land Councils, with the approval of the Minister, to perform any function that may be conferred by a Northern Territory law, e.g. authorising entry to Aboriginal land, consenting to declaration of sites of significance, negotiating wildlife conservation agreements.

CLAUSE 24

A register recording the names of Aboriginal traditional owners of areas of Aboriginal land is required to determine which persons should receive rental and other payments which may derive from that land and identify persons whose consent may be necessary before a Land Council can give a direction to a Land Trust or consent to the granting of a mining interest.

Maps showing the sites of groups of traditional owners will serve to indicate which groups should be consulted on any matter. (Definition of boundaries may be possible progressively but would present difficulties for the initial operation of the legislation.)

CLAUSE 25

This Clause provides that Land Councils should attempt reconciliation of disputes concerning Aboriginal land and that as far as possible such disputes are resolved by Aboriginals themselves rather than the Courts.

CLAUSE 26

With Clause 6, this Clause ensures that Land Councils handle moneys associated with leases, etc., on Aboriginal land and otherwise deal with financial matters on behalf of Land Trusts.

CLAUSE 27

This Clause confers all necessary powers on Land Councils, including the power to employ staff or engage consultants on terms and conditions approved by the Public Service Board.

CLAUSE 28

This power of delegation will enable Land Councils, if they so wish, to allow officers and members to act on behalf of the Council.

The amendments will exempt from delegation to individual members of the Land Council or a member of the staff power to make final decisions on the acquisition and granting of interests in Aboriginal land and mining interests, and on the allocation and distribution of moneys received from the Aboriginals Benefit Trust Account.

CLAUSE 29

Membership of Land Councils is generally restricted to Aboriginals living in the area of the Council, to be chosen by local Aboriginals in ways they consider appropriate as approved by the Minister. It is intended that the Land Councils should reflect traditional organisation and it is therefore not provided that members be elected by ballot.

The amendment (sub-clause 1) will allow traditional owners, elsewhere resident, to be members of Land Councils.

CLAUSE 30

This Clause provides for the offices of Chairman and Deputy Chairman of a Land Council.

CLAUSE 31

This Clause provides for the convening of Land Council meetings, the conduct of meetings and the making of rules for meetings.

CLAUSE 32

Land Councils shall maintain one or more bank accounts into which will be paid all moneys received by them.

CLAUSE 33

With the approval of the Minister a Land Council may borrow from a bank.

CLAUSE 34

Proposed expenditures by Land Councils are to be approved on an annual basis by the Minister. Sub-clause (3) allows a degree of flexibility.

CLAUSE 35

This Clause distinguishes three types of revenue received by Land Councils and specifies the manner of disbursement for each type of revenue :

1. Mining royalties from the Aborigines Benefit

Trust Account to be used for Land Council

administrative expenses; any surplus will be

paid to communities in the area, as determined

by the Land Council on the basis of need.

2. Mining royalties from the Aboriginals Benefit Trust Account to be paid by the Land Council to the community or communities affected by the particular mining operations.
3. Moneys paid under agreements relating to mining on Aboriginal land to be applied in accordance with the relevant agreement or paid to Aboriginal communities as the Land Council determines.
4. Rents and other moneys derived from particular areas of land to be paid to traditional owners by the Land Council.

Sub-clause (5) provides that any other moneys received by a Land Council shall be disbursed in a manner approved by the Minister. Agreements may be concluded under Section 43 or 44.

CLAUSE 37

Land Councils shall maintain proper accounts and records.

CLAUSE 38

Minister may have an inspection and audit of these accounts and records.

CLAUSE 39

Public servants appointed to the staff of a Land Council retain their existing rights.

PART IV - MINING INTERESTS AND MINING OPERATIONS

(Refer to paragraphs 537-708 of the Woodward Report.)

CLAUSE 40

The consent of Land Councils and of the Minister is necessary for the grant of a mining interest, except where mining exploration or development is required in the national interest.

The amendments will :

- sub-clause (2) - provide for consent only at the exploration stage unless there is substantial variation in the proposals agreed at the time the exploration licence was granted;
- sub-clause (3) - exempt from the consent procedure applications for mining tenements made prior to the introduction of the Act and lodged pursuant to exploration licences;
- sub-clauses (4) - exempt from consent procedure existing holders of
and (5) permits under Petroleum (Mining and Prospecting) Ordinance (N.T.).
- sub-clause (6) - the Ranger project area is exempt from the consent procedures of the Bill.

CLAUSE 41

Mining operations authorised under the Atomic Energy Act or any other Act are also subject to Aboriginal consent, except where such operations are required by the national interest.

The amendment will exempt the Ranger project area from consent procedures.

CLAUSE 42

Provision was made for the Minister to have an inquiry made, where Aboriginal consent is withheld, into whether the national interest may require the grant of the mining interest.

The amendment deletes the clause and replaces it with a clause that provides for the tabling of any proclamation made under sections 39 and 40 before both Houses of Parliament.

CLAUSE 43

Payments may be negotiated in consideration of consent to exploration or mining and are to be paid only to Land Councils, which distribute such payments to the groups named in the agreement.

Although consent may not be required in special circumstances mining companies are still obliged to negotiate fair terms and conditions.

Agreements in relation to the recovery of minerals shall take into account the benefit to Aborigines from royalties, and may take into account the value of minerals.

(The intention is that agreements should not prejudice any decision to raise the rate of royalty for a particular mining operation.)

Agreements may provide for distribution of moneys paid under them to groups but not to individuals.

CLAUSE 44

Where consent to mining is withheld only because negotiations on the terms of agreement with the applicant mining company break down, the Minister may appoint an Arbitrator. The Clause provides that terms and conditions determined by the Arbitrator shall be acceded to by the Land Council if accepted by the applicant for the grant.

The amendment provides that an Arbitrator shall take into account the rate of royalties payable to Aborigines as indicated in Clause 41(A).

CLAUSE 45

An Arbitrator may be appointed where negotiations on fair terms (not consent) break down including negotiations with the Commonwealth where the Commonwealth is operating as a miner.

CLAUSE 46

An arbitrator may be appointed to deal with the prescribing

of appropriate terms and conditions where consent is not required, and where the parties have been unable to agree on terms and conditions. Sub-Clause (3) gives the Minister authority to sign the agreement if the Land Council refuses to accept arbitrated decisions.

CLAUSE 47

Payments may be negotiated in consideration of consent to mining operations and are to be paid only to Land Councils, which distribute such payments to the communities or groups named in the agreement.

(Paragraph 609(v) of the Woodward Report refers.)

Land Councils will have available necessary expert advice and will conduct all negotiations. The Clause protects companies from the charge that consent was obtained by payments in the nature of bribes to Aborigines. Severe penalties are provided for payment or offer of illegal payments. Officers of companies are defined for the purposes of this Clause as in the A.C.T. Companies Ordinance, as follows :

"Officer" in relation to a corporation, includes :

- a. a director, secretary or employee of the corporation;
- b. a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; and
- c. a liquidator of the corporation, appointed in a voluntary winding up;

but does not include -

- d. a receiver who is not also a manager;
- e. a receiver and manager appointed by the court; or
- f. a liquidator appointed by the court or by the creditors.

CLAUSE 48

A Land Council shall not give consent to mining on Aboriginal land unless the traditional owners agree and any other Aboriginal communities or groups that may be affected have been consulted.

PART V - ABORIGINAL LAND COMMISSIONER

(Refer to paragraphs 709-733 of the Woodward Report.)

CLAUSE 49

This creates the office of Aboriginal Land Commissioner.

(An Interim Land Commissioner, Mr Justice R.C. Ward, was appointed in April 1975 and has conducted investigations and reported on a number of Aboriginal land claims.)

CLAUSE 50

This Clause defines the purposes for which a Commissioner is to be appointed: essentially to investigate and report on Aboriginal traditional land claims (see Definitions). The Commissioner will deal solely with traditional claims leaving those areas required on a needs basis to be provided through the normal process of Territory law.

A special examination will be made of the likely extent of traditional claims to pastoral areas (alienated land).

Guidelines indicating matters to be taken into account and reported upon are set down.

The general purpose of providing traditional land bases for Aboriginal groups, as recommended by Woodward, is stated.

The amendment to sub-clause 1(a) will empower the Commissioner specifically to deal with claims to alienated land held by Aboriginals (e.g. Wattie Creek, Willowra, Kildurk Stations) in accordance with the Government's commitment.

CLAUSE 51

This Clause confers necessary powers upon the Commissioner.

CLAUSE 52

This Clause specifies the mode and term of appointment of the Commissioner.

CLAUSE 53

The person appointed as Commissioner must be a Judge of the Northern Territory and shall retain his judicial office and continue to receive the same salary, etc.

CLAUSE 54

The Commissioner may require persons to attend before him and furnish information. Penalties are provided for persons refusing or failing to do so.

CLAUSE 55

The Commissioner is required to inform the Minister of any business interests.

CLAUSE 56

The Minister may grant leave of absence to a Commissioner.

CLAUSE 57

Where there is a vacancy in the office of Commissioner or a Commissioner is unable, for any reason, to carry out his duties, this Clause allows for appointment of an acting Commissioner for a period not exceeding 12 months.

CLAUSE 58

The Commissioner may resign.

CLAUSE 59

Staff can be engaged under the Public Service Act.

CLAUSE 60

Consultants to the Commissioner may be engaged on terms and conditions approved by the Public Service Board. It is expected that the Commissioner will require anthropological advice in some cases and that

this might be provided by persons engaged in the capacity of consultants.

CLAUSE 61

The Commissioner shall report annually to the Minister who shall have such reports laid before each House of Parliament.

PART VI - ABORIGINAIS BENEFIT TRUST ACCOUNT

(Paragraphs 603-609 of the Woodward Report refer.)

CLAUSE 62

An Aboriginais Benefit Trust Account is established.

Section 62A of the Audit Act states :

- " (1) The Treasurer may establish Trust Accounts and define the purposes for which they are established.
- (2) Subject to this section, the Trust Accounts established by or under this section and existing immediately prior to the commencement of this sub-section shall continue as trust accounts under this section.
- (3) All moneys standing to the credit of an account which is a Trust Account established under, or continued by, this section or established under any other Act as a Trust Account for the purposes, or within the meaning, of this section, shall be deemed to be moneys standing to the credit of the Trust Fund.
- (4) The Treasurer may direct that any Trust Account shall be closed and thereupon after all liabilities of the Account have been met the Account shall be closed accordingly.

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- (4A) The Treasurer may direct that any moneys standing to the credit of any Trust Account which are not required for the purposes of that Account and the balance of moneys standing to the credit of a Trust Account closed under the last preceding sub-section shall be paid as provided in the next succeeding sub-section.
- (4B) Where any amount is required in accordance with the last preceding sub-section to be paid, that amount shall, to such extent as it was appropriated out of moneys standing to the credit of the Loan Fund, be paid to the Loan Fund and any balance of that amount shall be paid to the Consolidated Revenue Fund.
- (5) The following moneys may be paid to the credit of the Trust Account to which they relate :
- a. All moneys appropriated by law for the purposes of any Trust Account;
 - b. All moneys received from the sale to any person or Department of any articles purchased or produced, or for work paid for, with moneys standing to the credit of a Trust Account; and
 - c. All moneys paid by any person for the purpose of any Trust Account.
- (6) Moneys standing to the credit of a Trust Account may be expended for the purposes of the account.

(7) Where -

- a. an amount has been received by the Commonwealth and paid to the credit of the Trust Fund; and
- b. the repayment of that amount; or a part of that amount, to any person is required or permitted by or under any Act or otherwise by law,

the repayment may be made from moneys standing to the credit of the Trust Fund."

CLAUSE 63

Sub-clause (1) closes the Aborigines Benefits Trust Fund, which is to be replaced by the Aborigines Benefit Trust Account (A.B.T.A.).

Section 21 of the Northern Territory (Administration) Act states :

"(1) A Fund is hereby established to be known as the Aborigines Benefits Trust Fund.

(2) The Fund is a Trust Account for the purposes of section sixty-two of the Audit Act 1901-1957.

(3) Subject to the next two succeeding sub-sections, there shall be paid into the Fund any amounts from time to time received by or on behalf of the Commonwealth -

- a. as royalties under a law of the Territory, being royalties in respect of mining, or the taking of timber, on land to which this section applies;

- b. as rent payable under a lease of land to which this section applies, other than a lease granted under a law of the Territory relating to mining; or
- c. as revenue of any other kind that the Minister determines, from time to time, by instrument in writing to be revenue to which this paragraph applies, being revenue derived from land to which this section applies; and
- d. as interest on, or repayment of, any loan referred to in sub-section (7) of this section.

(4) Where -

- a. moneys have been expended by or on behalf of the Commonwealth in connexion with the establishment and development of planted forests, or the development of native forests, on land to which this section applies; and
- b. the Minister considers that some or all of that expenditure should be offset against royalties in respect of the taking of timber from the forests so developed,

the Minister may, for that purpose, direct, by instrument in writing, that a portion of each amount of those royalties received by or on behalf of the Commonwealth while the direction is in force, being a portion fixed by, or in accordance with, the direction, shall be paid into the Consolidated Revenue Fund.

(5) Where -

- a. moneys have been expended by or on behalf of the Commonwealth in connexion with the subdivision of land to which this section applies (including the provision of roads, water, sewerage and other services); and
- b. the Minister considers that some or all of that expenditure should be offset against rents payable under leases of land to which this section applies,

the Minister may, for that purpose, direct by instrument in writing, that a portion of each amount of those rents received by or on behalf of the Commonwealth while the direction is in force, being a portion fixed by, or in accordance with, the direction, shall be paid into Consolidated Revenue Fund.

(6) Moneys standing to the credit of the Fund may be expended -

- a. for any purpose that the Minister considers to be for the benefit of -
 - (i) Aborigines in general
 - (ii) a particular class of Aboriginal; or
 - (iii) a particular Aboriginal; and
- b. to meet the expenses of administering the Fund.

but shall not be expended except in accordance with a direction in writing under the hand of the Minister.

(7) Without affecting the generality of the last preceding sub-section, a payment out of the Fund may be by way of a loan (whether secured or unsecured) by the Commonwealth on such conditions as the Minister thinks fit.

- (8) Interest received from the investment of moneys standing to the credit of the Fund forms part of the Fund.
- (9) This section applies to the following land:
- a. land that is a reserve by virtue of having been proclaimed or declared under a law of the Territory -
 - (i) to be reserved for the use and benefit of the Aboriginal inhabitants of the Territory;
 - (ii) to be reserved for the use and benefit of the Aboriginal native inhabitants of the Territory;
 - (iii) to be a reserve for Aboriginals; or
 - (iv) to be reserved for the use and benefit of wards; and
 - b. land that is not such a reserve but that, at any time after the second day of September, One thousand nine hundred and fifty-three was such a reserve."

Sub-clause (2) provides for all mining royalties received by the Crown in respect of Aboriginal land to be paid into the A.B.T.A.

Sub-clause (3) provides for Ministerial determination of the rate of royalty to be paid where the statutory rate is increased above the rates applying at the commencement of the legislation.

Sub-clause (4) provides for payments from Consolidated Revenue into the A.B.T.A. in respect of mining on Aboriginal land by the Atomic Energy Commission or any other Authority of Australia. Since such authorities are not normally obliged to pay royalties, special provision is required.

Sub-clause (5) defines the level of payments into the A.B.T.A. under sub-clause (4) as being the same as would be paid as royalties by any private mining company, or any higher amount which may be agreed upon between the Ministers.

CLAUSE 64

Moneys shall be paid from the Trust Account as follows :

- a. 40% to Land Councils to cover administrative costs with any surplus being paid to Aboriginal communities;
- b. 30% to the Land Council for the area in which the particular mining interest exists, for distribution to Aboriginal Councils of communities affected by mining interest;
- c. 30% for the general benefit of Aborigines of the Northern Territory as determined by the Minister;
- d. administrative costs of the A.B.T.A. may be met from the account.

CLAUSE 65

A Trust Account Advisory Committee is established to advise the Minister concerning payments of moneys for the general benefit of Aborigines of the Northern Territory. A committee advising the Minister on payments from the Aborigines Benefits Trust Fund has been in existence for some years, but was not established by legislation.

Amendment provides for Aboriginal traditional owners resident outside Northern Territory to be members of Advisory Committee.

PART VII - MISCELLANEOUS

CLAUSE 66

"Estate or interest" in Aboriginal land for the purposes of this Part includes mining interests for the following reasons :

- a. Construction of roads (Clause 68) on Aboriginal land may be necessary for the enjoyment of rights granted to the holder of a mining interest.
- b. The imposition of entry permit requirements (Clause 69) would otherwise lessen the rights of a holder of a mining interest.

CLAUSE 67

This does not prevent acquisition of Aboriginal land under the Lands Acquisition Act since that act has application in the Northern Territory independent of the Northern Territory (Administration) Act 1910-1973, but does prevent acquisition under an Ordinance of the Northern Territory.

(Paragraphs 103 and 104 of the Woodward Report refer.)

CLAUSE 68

Subject to the exceptions outlined in sub-clause (3) no road is to be constructed over Aboriginal land without the consent of the relevant Land Council (with the advice and consent of traditional owners) and no person, other than an Aboriginal, is entitled to use a road so constructed, unless he holds a permit or the Minister has directed otherwise.

CLAUSE 69

New clause dealing with sacred sites wherein a penalty is created for the desecration of sacred sites and general principles are expressed but the detail is left to the Legislative Assembly.

CLAUSE 70

(Paragraphs 109-122 of the Woodward Report refer.)

Sub-clause (1) provides that Aboriginals may enter and remain upon Aboriginal land but that this right does not extend to interfering

25.

with the use or enjoyment of interests granted in Aboriginal land.

Sub-clause (2) makes it an offence for a person other than an Aboriginal to enter or remain on Aboriginal land except as provided under a law of the Northern Territory.

It is expected that the Legislative Assembly will introduce an Ordinance to provide that persons such as policemen and public servants acting in the course of their duties, candidates for elected office, and Members of the Australian Parliament or the Legislative Assembly, will not require entry permits, and that Aboriginal communities may authorise the entry of other persons. Provision should also be made for the removal of persons from Aboriginal land where their continued presence is unacceptable.

Sub-clause (3) provides that a person is entitled to enter on a particular area of Aboriginal land, without a permit, where such entry is necessary for the use or enjoyment of an interest granted over that area of Aboriginal land. It also protects the holders of an interest in Aboriginal land from having their use or enjoyment of that interest interfered with by the presence on that land of persons to whom entry permits may be issued under a law of the Northern Territory.

Sub-clause (4) provides a defence against proceedings which may be instituted under this Clause.

CLAUSE 71

Aboriginals are entitled to use or occupy Aboriginal land in accordance with Aboriginal tradition. This reinforces the provision in Clause 4 that Land Trusts hold title for the benefit of groups of Aboriginals entitled by tradition to use and occupy the land.

CLAUSE 72

Certain laws of the Northern Territory, e.g. the Licensing Ordinance, contain special provisions relating to Aboriginal land. This Clause ensures that those provisions continue to apply until such time as the Aborigines concerned request that they no longer apply at which time the Minister may request the Governor-General to make regulations accordingly.

Section 140(E) of the Licensing Ordinance states :

140E - (1) A person shall not take liquor on to land included in a reserve or mission lease without the prior approval, which is in force, of the person in charge of the reserve or mission lease.

Penalty : One hundred pounds or imprisonment for six months.

(2) Where the person in charge of a reserve or mission lease has given his prior approval, which is in force, for the consumption of liquor on a specified part of the land included in the reserve or mission lease but not on any other part of such land, a person shall not have liquor in his possession on any other part of the land included in the reserve or mission lease without the prior approval which is in force, of the person in charge of the reserve or mission lease for that possession.

Penalty : One hundred pounds or imprisonment for six months.

27.

- (3) Where the person in charge of a reserve or mission lease has not given his prior approval which is in force, for the consumption of liquor on any part of the land included in the reserve or mission lease, a person shall not have liquor in his possession on any part of the land included in the reserve or mission lease without the prior approval which is in force, of the person in charge of the reserve or mission lease for that possession.

Penalty : One hundred pounds or imprisonment for six months.

- (4) An approval under this section to take liquor on to any land included in a reserve or mission lease or to have liquor in possession on any such land may be given or made orally or in writing.
- (5) In this section "mission lease" and "reserve" have the same meanings as in section one hundred and forty C of this Ordinance."

CLAUSE 73

New clause expresses general principles, and provides enabling power, for the Northern Territory Legislative Assembly making laws in relation to sacred sites, entry to Aboriginal land, wildlife conservation and entry to seas off Aboriginal land.

CLAUSE 74

It is intended that local ordinances relating to matters such as water control, soil erosion, bushfire control and disease prevention should apply to Aboriginal land.

CLAUSE 75

A miner's right does not apply to Aboriginal land except to the extent of preserving any existing interests held by virtue of a miner's right.

CLAUSE 76

This Clause allows the Minister to delegate any of his powers under this Act.

CLAUSE 77

Remuneration for members of Land Councils and Land Trusts shall be determined by the Remuneration Tribunal.

CLAUSE 78

This Clause empowers the Governor-General to make all necessary regulations to give effect to this Act.

*Schedules

- . The Tanami Desert is deleted from the Schedule.
- . An additional Schedule has been added to describe the Ranger project area which will be exempt from the consent procedures of the Bill.