Background Context

"The Productivity Commission (PC) has been asked to examine the non-financial barriers to mineral and energy resource exploration in Australia. The inquiry is to examine the exploration approval systems and processes within and across jurisdictions to assess their effectiveness and efficiency, and examine the costs associated with the regulation of exploration activities.

Specifically, the PC has been asked to determine, and recommend how to overcome, any unnecessary regulatory burdens faced by those engaged in mineral and energy resource exploration and examine:

- the complexity and timeframes of the approval and appeals process for exploration
- areas of duplication between Australian, state, territory and local government regulation of exploration
- the costs of non-financial barriers
- options to improve the regulatory environment for exploration activities, having regard to regulatory objectives.

The PC has also been asked to assess the impact of non-financial barriers on the international competitiveness and economic performance of Australia's exploration sector.

Taxation and fiscal policy of the Australian, state, territory and local governments" and the Northern Territory Government's Indigenous land rights regimes is outside the scope of this inquiry."

SUBMISSION TO THE INQUIRY

Executive Summary

The PC has asked for submissions to the inquiry into non-financial barriers to mineral and energy resource exploration in Australia. Although the terms of reference explicitly states that the Territory Government's Indigenous land rights regimes is outside the scope of this inquiry, the *Aboriginal Land Rights Act* 1976 (ALRA) is considered to be the foremost non-financial barrier to exploration in the Northern Territory.

Approximately 50% of the Northern Territory is Aboriginal freehold (ALRA) land. This area is considered to be highly prospective and has potential to provide significant benefits to both local residents (including traditional owners) and the Territory in general, from a region which has few other opportunities for economic development.

As at 31 January 2013, there were 815 outstanding exploration licence applications, of which 282 were in moratorium (compared with 212 outstanding exploration applications on non-Aboriginal freehold land).

Non-financial barriers for exploration attributed to ALRA include:

- timeliness
  - the standard initial negotiation period is excessive and can be as long as 34 months
  - the average time an application spends within the ALRA process (i.e. from when consent to negotiate is issued to receipt of Federal Minister approval) is currently around 43 months
- low turnover
  - right to veto – prevents further consideration for exploration for 5 years (resulting in less land available for new applications to test different theories in respect of deposits and different techniques/technology, and ability to focus on different commodities)
- restricted competition
  - negotiation process logistical requirements for organising and attending on-country meetings
- unclear or silent legislation
  - necessitating negotiation processes to be restarted to avoid legal doubt
- conjunctive agreements
  - requiring consideration of possible mining activities to be taken into account in negotiated agreements prior to commencement of exploration

- duplication of Northern Territory and Commonwealth statutory requirements
  - such as those for environmental management
- ambiguity of legislative requirements for refusal or grant for the entire application area
  - e.g. it is not clear whether refusal or grant can be applied to a portion of the application area
- refusal to grant without a reason
  - no indication of how to improve the process in future applications.

Background

The Standing Council of Energy and Resources discussed the draft terms of reference (ToR) for the PC inquiry into non-financial barriers to mineral and energy resource exploration at the SCER meeting on 8 June 2012 and tasked Officials to prepare comments on the ToR taking into account Ministers' interest in:

- understanding the capacity for the PC to take into account existing information and previous work of the states and territories relevant to this inquiry;
- including native title and Indigenous freehold land issues in the inquiry; and
- seeking clarification of 'cost' references to explicitly exclude financial incentives, fees, charges, royalties and tax, but not exclude broader economic costs such as those associated with regulatory duplication.

These comments were incorporated into comments on the ToR and provided to Treasury.

Treasury subsequently agreed to the Department of Families, Housing, Community Services and Indigenous Affairs' (FaHCSIA) request that the ToR exclude examination of processes under the Commonwealth's ALRA as an independent review of the ALRA exploration and mining provisions is currently being undertaken by Justice Mansfield QC.

The review was to be completed by 31 December 2012, however Justice Mansfield has subsequently obtained an extension until 29 March 2013.

The findings of FaHCSIA's review of ALRA (Part IV Mining) sits within the ToR into Non-Financial Barriers to Exploration in so far as: *In undertaking – the PC - inquiry, the Commission should take into account current or recent reviews commissioned by state, territory and the Commonwealth Government's regarding regulatory approval processes for exploration.*

For inclusion into the PC Inquiry on Non-Financial Barriers to Exploration, Justice Mansfield's findings on the ALRA review will need to be completed by the end of March 2013 which is the due date for submissions on this inquiry.

SCER has expressed the opinion that jurisdictional submissions into non-financial barriers to mineral and energy resource exploration can be broader than the ToR prescribed by the PC.

ALRA

Resource companies seeking to work in the Northern Territory are faced with unique legislation in the form of ALRA, which applies to approximately 50% of the Territory. Under this Act, Aboriginal clan groups hold inalienable freehold rights to land and can veto mining.

The intent of Aboriginal Land Councils established under this Act is to assist Aboriginal people to advance their interests and to exercise their rights to claim and manage their land by ensuring that decisions made by Aboriginal people with respect to land use agreements, are made as a result of 'full and informed consent', and outcomes deliver lasting employment and socio-economic benefits to Aboriginal communities.

ALRA establishes the structures and procedures that resource companies and the Land Councils are required to follow when negotiating land use agreements.

The Department of Mines and Energy's input into the independent review of Part IV of ALRA, which includes non-financial barriers to obtaining consent for mineral and energy exploration on Aboriginal freehold land, have been further attached below to ensure they are considered as part of this review.

Northern Territory Government

2012 REVIEW OF PART IV OF *THE ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976*

Key Stakeholder Submission

by the Northern Territory Government

Executive Summary

The Northern Territory Government (NTG) welcomes this opportunity to provide input to the review of Part IV of the *Aboriginal Land Rights (Northern Territory) Act 1976* (ALRA). The preparation of this submission has been led by the Department of Mines and Energy (DME), in collaboration with the Department of the Chief Minister, the Department of the Attorney-General and Justice and the Department of Regional Development and Indigenous Advancement.

Firstly, the NTG is committed to closing the gap of disadvantage between Indigenous and non-Indigenous Territorians and improving the lives of Aboriginal people in the Northern Territory. The NTG believes that continuing to develop strong partnerships and engage with Indigenous Territorians in relation to resource development of their land can contribute to closing that gap, particularly where mutually beneficial agreements can be reached in respect of exploration and mining.

The regulation and advancement of exploration and mining for minerals and petroleum in the NT is core to the business of DME. Access to land for the purposes of exploration and mining in the NT is subject to the *Mineral Titles Act, Petroleum Act* and associated legislation. DME also manages the administrative procedures associated with ALRA and is cognisant of the requirements of the *Native Title Act.* Since the administration of Part IV of ALRA devolved to the NT in 2007, officers from DME have attended 121 statutory on-country meetings as representatives of the NT Minister and, as such, have obtained a greater understanding of the process and of the difficulties in obtaining consent.

While the NTG supports the current legislative framework, there are opportunities to improve efficiency in respect of access to aboriginal freehold land. The NTG recognises the right of traditional owners to exercise veto where exploration or mining may not be wanted and ALRA is designed to provide traditional owners with that control. However, where exploration and mining is wanted by the traditional owners, ALRA was not designed to unreasonably prolong the process of negotiation.

The underlying objective of the amended Part IV was to establish a quicker process for the granting of exploration and mining tenure on aboriginal land. In general, it is the view of the NTG that this has not been achieved. The level of exploration continues to fall behind exploration on other land in the Territory. Furthermore, it is more costly and less timely to obtain consent to grant.

At a glance, statistical data demonstrates that:

- There has been no improvement in the number of exploration licences (EL) granted per annum on aboriginal freehold land;
- There has been little improvement in the average time taken to grant an EL on aboriginal freehold land;
- There has been no reduction in the number of outstanding EL applications on aboriginal freehold land;
- The number of EL applications received per annum on aboriginal freehold land is reducing (probably reflective of the lack of turnover of aboriginal freehold land);

- The number of petroleum exploration permit applications (EP) on aboriginal freehold land has increased significantly over the past few years, yet the number of permits granted is unchanged.

It is the view of the NT that there is opportunity for significant economic benefits for all Territorians by improving the rate of grant of ELs and EPs. These benefits range from immediate financial benefits to Traditional Owners and local enterprises, to the ultimate benefit of the discovery of a significant mineral or petroleum resource.

In order to realise these opportunities, it is the view of the NTG that any changes to Part IV of ALRA arising from this review will need to:

- Promote a more flexible approach to the consultation and negotiation processes;
- Eliminate ambiguity and provide clarity of process;
- Promote transparency in decision-making processes;
- Reduce potential to restrict competition because of the high financial costs, time and effort of the current negotiation structure;
- Reduce any disincentive posed by the duplication of government statutory processes.

The potential benefits from further amendment to Part IV include:

- Significant economic opportunities available to Traditional Owners in terms of immediate financial and work benefits;
- More effective use of time and effort by Traditional Owners on behalf of their communities;
- More efficient use of Land Council and DME staff resources;
- More streamlined practices leading to a more expedited process.

The discussion and suggested recommendations contained in this submission are made with a view to improving the workability of ALRA by streamlining the process and expediting the granting of ELs, while striking a fair balance between the legitimate interests of each of the involved parties. Some of the issues are technical and others relate to the arduous nature of the current process. Note that some of the suggestions have overlap with other areas, and these have been cross-referenced as applicable. Also note that, whilst discussion throughout this submission generally refers to mineral ELs, for ease of statistical comparison, the same issues also occur in relation to petroleum exploration permits.

TERMS OF REFERENCE

The views of the NTG in respect of the terms of reference are:

1. The extent to which the amendments to Part IV of the Land Rights Act, enacted in 2007, achieved the stated objectives of the legislation, to promote economic development on Aboriginal land by providing for expedited and more certain processes related to exploration and mining on Aboriginal land

In 2003, the NTG and the four Northern Territory Land Councils (LCs) made a joint submission which proposed a number of workability amendments to ALRA. Within that submission, recognition was given to the findings of three previous reports (Reeves report [1998], National Institute of Economic and Industry Research report [1999] and the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs report [1999]) that the processes involved to gain access to aboriginal land should be made 'less complex and more flexible'. While some improvements have been made, it is the view of the NTG that Part IV remains a complex and prescriptive process.

It is acknowledged that some of the objectives were partly achieved, such as a reduced role for the Commonwealth Minister and improved relationships between the parties involved. The NTG believes that these relationships will continue to improve as each party gains a better understanding of the different needs of others.

The changes to ALRA in 2007, specifically aimed at expediting and providing more certain processes for exploration and mining on aboriginal land, have had mixed success in achieving their objectives. Some of these measures, and the extent of their success, are:

- *Establishment of a new standard negotiating period for consent to grant an exploration licence (EL) of 22 months (previously 12 months), based on the assertion that agreement could be reached within two field seasons.* This new timeframe has not achieved success as shown in the discussion on statistics below.
- *Provision for the delegation of decision-making powers of LCs to regional groups.* This has had limited success and it is understood that only one LC has availed itself of this provision. The other LCs still require ratification from the full council, which causes time delays as the full council only meets a number of times per year.
- *Provision for a moratorium to be lifted on an EL at any time.* This has had limited success and has only been used on one occasion by the Tiwi Land Council. A possible constraint is that EL applicants are unable to communicate directly with the Traditional Owners (TOs) and so the TOs are unlikely to direct the LCs to request the lifting of the moratorium.
- *Provision to allow the NT Minister to withdraw consent to prevent warehousing of applications.* While this has had some success, it has not been significant, having only been used on approximately 20 occasions (also see discussion on statistics relating to the number of EL applications received on aboriginal land below).

- *Provisions to allow for reconnaissance surveys.* While the NT is not aware if this is occurring, there is no evidence that reconnaissance has contributed to a reduction in timeframes. The NT acknowledges that the *Mineral Titles Act* (MTA) requires amendment to better facilitate this provision.

In general therefore, it is the view of the NTG that the stated objectives of the amended legislation have not been fully achieved. The level of exploration for minerals and energy continues to fall behind exploration on other land in the Territory. Furthermore, it is more costly and less timely to obtain consent to grant on aboriginal freehold land. Notwithstanding this, the NT acknowledges that there are areas in which some improvements have been made and recognises the increase in the number of consents to grant in the last year. However, at the respective rates of grant, the backlog on aboriginal land will never be addressed.

It is valid to compare the level of grant on aboriginal land with other land because, with the exception of the legislation, all other factors are similar i.e. the same parties are involved. The grant of ELs on non-aboriginal land (excluding NT freehold which, by comparison to the pastoral estate, is minimal) is subject to the *Native Title Act*. While the NT is not directly involved, it is understood that the majority of explorers enter into voluntary agreements through the LCs (as representative bodies) with native title parties. The numbers of granted ELs on this land would indicate that the number of agreements reached is far greater than on ALRA-affected land. This is evidence that agreements can be reached between the same parties; however it is the ALRA process itself which is a major impediment.

In the 1998 Reeves report, John Reeves QC (as he was then known) noted the statistics relating to the numbers of EL applications, ultimate grants and timeframes involved. Similar statistics have been obtained from the Mineral Titles Division (MTD) database which covers the last five years since the legislative changes were made to Part IV. One fundamental aspect of these changes resulted from the assertion by LCs that consent to grant could be obtained within 2 field seasons i.e. 22 months. The following statistics demonstrate that these timeframes are not being met (the tables referred to are at **Attachment A**):

- The number of ELs granted on aboriginal land per annum has not improved, albeit there are minor fluctuations on a year by year basis, nor is the rate of grant versus other land acceptable (since 2007, only 133 ELs were granted on aboriginal land compared to 1419 ELs on other land [**Table 1**]). Also, there are currently only 236 granted ELs on aboriginal land compared to 1255 on other land [**Table 2**]. Considering that aboriginal land covers almost half of the land in the Territory, this is a very low percentage (9%) in comparison to other land (60.6%) (**Attachment B** provides a visual comparison).
- The average time to grant an EL on aboriginal land is currently around 54 months compared to around 9 months on other land [**Table 3**]. Admittedly this includes time spent in the *Mineral Titles Act* (MTA) processes, but does provide a comparison with the figures in the Reeves report. A more accurate measure of the effectiveness of Part IV is provided below and in tables 6 and 7.
- The number of applications received per annum on aboriginal land is less than other land (88 applications on aboriginal land versus 336 on other land in 2011/12 [**Table**

4]) which probably reflects the lack of turnover of land due to the veto period and slow time to grant. In short, there is less vacant land available for new applications. Turnover of land is critical to discoveries and fundamental to exploration regimes in Australia by ensuring the land is actively explored. Under the MTA, an EL is liable to forfeiture if not being actively explored and this aspect is actively monitored by MTD with every EL being reviewed annually. Turnover also allows different explorers to test different theories in respect of the discovery of deposits, different techniques/technology and to focus on different commodities.

- The number of outstanding applications on aboriginal land has maintained similar levels and is consistently higher than other land [**Table 5**]. This higher number of outstanding applications represents lost opportunity. It should be noted that applications in moratorium have been excluded from this measure as they are considered to have been dealt with as a determination has been made.
- There has, over recent years been a significant increase in interest in onshore petroleum exploration. This is reflected in the number of applications received with a total of 57 applications being received in the 2010/11 and 2011/12 years compared to a total of 16 applications being received in the three years prior [**Table 6**] (**Attachment C** provides a visual representation). With one EP proceeding to grant in the last 6 years on aboriginal freehold land, a significant backlog is being created [**Table 7**]. The negotiation process for EPs is potentially more complex than mineral ELs due to the significant size difference and this is discussed further at Recommendation 4. Apart from the logistical issues associated with bringing large numbers of TOs to on-country meetings, the TOs are also less familiar with petroleum exploration techniques which often leads to additional meetings and delays the decision-making process.

Under Part IV there are two possible outcomes for an EL application; consent to grant or veto. The timeframes for making a decision to veto are also excessive, often in excess of the 22 months. This period is not conducive to economic development and results in uncertainty for explorers and costly delays for a nil result. The statistics show that:

- The average time an application spends within the ALRA process (i.e. from when consent to negotiate is issued and Federal Minister approval is received) is currently around 43 months [**Table 8**].
- Over the 5 year period since 2007, 123 ELs were refused consent (note, this does not include ELs arising from a split off where the parent EL is granted) and the average period to decide to veto is currently almost 32 months [**Table 9**]. The process of determining refusal to consent does not require any additional action on behalf of the parties beyond the initial consultation, yet the timeframes are still on average longer than the 22 month standard negotiation period.

2. The extent to which the provisions of Part IV are, in operation, consistent with the provisions of other parts of the Act

In general, the provisions of Part IV appear consistent with other parts of the Act; however there are definitions which appear inadequate or contain redundant provisions, such as the definition of an 'exploration licence', which does not refer to the *Mining Act* (now superseded by the *Mineral Titles Act*), however does refer to titles such as a

prospecting authority which became a redundant title in 1982. Should this review lead to legislative changes to ALRA, it is recommended that the relevant definitions be updated.

Recommendation 1
Definitions should be updated to reflect current titles.

3. The extent to which the delegation of some Part IV powers to the Northern Territory Mining Minister, subsequent to the most recent amendments to Part IV, have resulted in administrative and procedural efficiencies

In July 2007, many administrative functions under Part IV devolved to the Northern Territory and, in particular, s42 which permits a representative of the Minister to attend the on-country meetings. During this period the NT has attended 121 statutory on-country meetings in respect of 519 ELs and 30 petroleum exploration permits (EP); monitored negotiations; assisted in resolving complex issues and generally administered Part IV.

The NT had, for most of the relevant period, five people at various levels involved in administering Part IV, with significant associated costs (including costs to attend the meetings). ALRA is Commonwealth legislation which was administered by the Commonwealth prior to July 2007. On assuming responsibility, the NT recruited staff specifically to undertake the new role in a genuine attempt to facilitate an improved process. These additional staff resources have not been funded or partly funded by the Commonwealth, yet it is understood that funds are provided to LCs for their part of the Part IV process. Furthermore, the resources to fund administration of Part IV have come at a cost to other parts of MTD, which is unsustainable in a small department.

The following costs have been incurred by MTD in respect of administering Part IV since July 2007:

Financial year	Staff costs[1]	ALRA Vehicle	Other s42 meeting costs (flights, accom etc)	Total by year
2007/08	$285,551	$14,550	$20,375	$320,476
2008/09	$307,404	$13,565	$29,544	$350,513
2009/10	$305,061	$16,336	$37,530	$358,927
2010/11	$378,589	$10,816	$35,794	$425,199
2011/12	$295,367	$10,202	$34,398	$339,967
Total over 5 years				**$1,795,082**

The NT has written separately to the Commonwealth Minister in relation to the cost of administration.

During this period, the NT has obtained a greater understanding of the process and difficulties in obtaining consent. In particular, attendance at the on-country meetings has

[1] Based on an estimated 75% of staff time spent dealing with ALRA (the remaining 25% spent on Native Title)

been informative. The devolution of responsibilities has led to a closer working relationship between the NTG and LCs, thereby achieving one of the objectives of the amendments. It is expected this relationship will continue to grow. The devolution also provides for a closer monitoring role by the NT which has led to withdrawal of consent on occasions. It is understood that this monitoring role is generally supported by the main LCs. It is possible that, should the major recommendations in this document be accepted, the continuation of a closer relationship and revised procedures will see a significant improvement in the rate of grant of exploration licences.

In a recent informal meeting with the CLC and NLC at officer level, feedback on the current level of cooperation was positive and, in the main, the suggestions to make the provisions more flexible and less prescriptive were considered reasonable.

Recommendation 2
The NT supports the continued delegation of responsibilities, however believes that funding of the role should be shared between the Commonwealth and the NT.

4. The extent to which Commonwealth and Northern Territory legislation, relevant to exploration and mining on Aboriginal land in the Northern Territory, operates to promote compatibility and procedural efficiencies

There are three sets of relevant resource NT legislation; the *Mineral Titles Act* (MTA), the *Petroleum Act* (PA) and the *Geothermal Energy Act* (GEA).

The MTA commenced on 07 November 2011, replacing the *Mining Act* (MA). The MA had been in force since 1982. The MTA (and regulations) specifically deals with the issue and administration of mineral titles for the exploration and mining of minerals and extractive minerals. The new legislation sees a number of changes to the NT mining regime which include amongst other things, new title types, access provisions for preliminary exploration and transitional arrangements.

The PA commenced in 1984 and deals with the issue and administration of titles and regulation of activities in respect of hydrocarbons (oil and gas). The PA has not in any material way been amended in recent years.

The GEA commenced in 2009 and deals with the issue and administration of titles and regulation of activities in respect of geothermal energy.

ALRA currently includes provisions relating to the exploration and exploitation of minerals (including extractive minerals) and petroleum, however does not deal with geothermal energy. The NT considers it desirable that the Part IV provisions be extended to include geothermal as this would provide a clear and transparent process for all parties. It would also provide a consistent approach for all resource activities. However, should this recommendation be adopted, it is recommended that s48 of ALRA be amended such that the imposition of a moratorium in respect of a geothermal energy permit application does not affect mineral or petroleum applications and vice versa. The GEA provides for exploration permits, retention licences and production leases which would all need to be incorporated in the Part IV provisions and definitions.

Recommendation 3
It is recommended that provisions relating to the GEA be included in Part IV of ALRA.

In terms of compatibility and procedural efficiencies between the respective legislation, it is apparent that the provisions of ALRA may be less efficient for some commodities as opposed to others. Exploration titles for minerals, petroleum and geothermal vary significantly in terms of maximum area size. In approximate terms, the maximum area of an EL is 810 km^2, an EP is 16,200 km^2 and a geothermal exploration permit (GEP) is 6,480 km^2. The area of an exploration title is important as it determines the number of TOs required to be consulted i.e. the greater the area, the more people involved, which leads to potentially more groups, more meetings and varying outcomes. This in turn leads to a less timely and more costly process.

As a case study, negotiation costs for EP139 over the Daly River Land Trust were estimated at $260,000 to cover costs such as project management, field management, legal fees, transport, accommodation, catering and administration charges. This was clearly prohibitive and exploration has not proceeded, despite previous promising signs of petroleum.

Area size specified in NT legislation is similar to that in other jurisdictions in Australia and is generally reflective of the area needed to find or develop a deposit. For example, a shale gas deposit would be considerably larger in area than a gold deposit and therefore it is not feasible to amend the NT legislation in this regard. In order to accommodate these differing circumstances and provide a timely cost effective process, Part IV provisions that are flexible and non-prescriptive are desirable, not only in respect of the meeting and consultation process but also the ability to exclude non-consent areas and consent to part of an application.

Recommendation 4
It is recommended that any amendment to ALRA be flexible enough to accommodate the different title types.

There are a number of other areas where the MTA and ALRA could be better aligned to promote compatibility or amendments made to avoid ambiguity. These are discussed below.

Extractive mineral titles
The NT is of the view that Part IV of ALRA applies to the grant of titles relating to exploration or mining of minerals and not extractive minerals. Accordingly, the provisions for LC consent to the grant of an extractive mineral permit or lease under s19 of ALRA is relied on; however these provisions are unclear and lack structure. Further, the definitions of minerals and extractive minerals do not align, which has potential for confusion. It is the NT's preference that the s19 provisions remain as the authority for extractive minerals, however with amendment.

Further, with the commencement of the MTA, a new title has been included – Extractive Mineral Exploration Licence (EMEL). EMELs are short term (maximum of 2 years with

no provisions for renewal) for the specific purpose of exploration for extractive minerals. Given the short term nature of the EMEL, the low level of activity, and the fact that an EMEL is for extractive minerals only, the NT would request the consent provisions be similar to that for an extractive mineral permit or lease.

Recommendation 5
It is recommended that s19 and associated provisions are amended to clarify the approval process to permit extractive titles, including EMELs, to be processed outside of the provisions of Part IV.

Recommendation 6
Definitions of minerals and extractives between ALRA and the MTA should be aligned.

Changes to definitions
There are a number of definitions in ALRA that are redundant, either due to the passage of time or the commencement of the MTA, and they appear incomplete or for other reasons appear to require amendment. These include:

- The definition of 'exploration licence' which includes references to redundant titles ss (a) to (d) inclusive.
- Miners Rights are now redundant.
- The definition of 'mining interest' should not contain references to exploration retention licences (ERL) and ss (b) and (c) appear redundant.
- The definitions of an 'exploration licence' and 'exploration licence in retention' should align with the MTA, while keeping references to the PA. (Note: s11 MTA lists the title types and the abbreviations; for consistency these should be replicated in ALRA).
- The definition of 'intending miner' should not contain references to ERLs and consideration should be given to redrafting subsection (b) as it refers to redundant legislation.

Recommendation 7
It is recommended that the above mentioned definitions in ALRA be updated and aligned with the MTA.

Transitional provisions
Upon commencement of the MTA, it was necessary to transition existing titles into the new legislation. Some of these titles had direct comparisons e.g. an EL under the MA became an EL under the MTA. However, the opportunity was also taken to rationalise the number of title types for better administration for all parties. This was achieved by removing historic titles, such as Authorised Holdings, which were carried over from pre-1982 legislation, and removing mineral claims which are substantially similar to mineral leases in terms of rights and obligations. There are in the order of 806 of these redundant titles (717 granted and 89 applications) which, due to the differing activities undertaken on them, need to be considered on a case by case basis. The NT is presently undertaking this project, however it is possible that either amendments to the

MTA or ALRA are desirable to ensure optimum compatibility. Accordingly, the NT seeks to be consulted should the Commonwealth propose to amend ALRA so that the relevant legislation is best aligned.

In respect of achieving compatibility and procedural efficiencies, the NT is not opposed to amending its own legislation; however it would also seek to have ALRA amended as appropriate. In particular, the NT is conscious that NT legislation deals with titles both prior to and after the ALRA process, and further is applied to other land in the Territory. It also aligns with other NT legislation such as the *Mining Management Act*, *Sacred Sites Act* and *Territory Parks and Wildlife Conservation Act*. In amending NT legislation, the NT does not want to either jeopardise those links or create a dual regime.

Recommendation 8
It is recommended that the NT be consulted by the Commonwealth in respect of amendments to ALRA.

5. The extent to which Part IV operates to impose costs and confer benefits upon stakeholders;

As previously stated, aboriginal land is largely underexplored, compared to both non-aboriginal land in the NT and prospective land in other parts of Australia. Furthermore, it is an area of high prospectivity which has potential to provide significant benefits to both local residents (including TOs) and the NT in general, from a region which has few other opportunities for economic development.

Under the present process, economic opportunities for TOs arising from exploration are not being maximised in terms of immediate financial and work benefits (albeit small compared to mining) and the chance of finding a mine.

Some of the direct benefits to the TOs arising from exploration include:

- Annual EL rent paid to LCs (e.g. $10k - $20k per EL).
- 5-7% of on-ground expenditure paid to LCs (e.g. $100k expenditure = $5k to LCs).
- Up front agreement fees.
- It is estimated that if 50% of available aboriginal freehold land was granted for exploration, it would generate around $26 million in rent payments alone to LCs over the next 10 years (note: this calculation takes into account a reduction of blocks at the end of each operational period under the MTA, but does not include other companies taking up the reduced area).
- More ELs can result in more mines.

There are also wider flow-on economic and social benefits to the local communities, including direct and indirect employment, training opportunities, improvements in infrastructure, small business opportunities and enhanced health and education services.

In terms of economic benefit to the NT in general, the table below shows the total mineral exploration expenditure (excludes petroleum expenditure) in the Northern Territory over the last 5 years:

Financial year	$Million
2007/08	132.7
2008/09	146.2
2009/10	149.4
2010/11	195.3
2011/12	210.4

Given that only around 9% of aboriginal land is currently under exploration licence, these figures have the potential to increase significantly. With the exception of uranium, mineral resources in the NT belong to the NT. The statistical data provided at Point 1 demonstrates the lack of activity on aboriginal land (which covers almost 50% of the NT) and so the NT is disadvantaged compared to other jurisdictions in attracting royalties that are NT funds for Government.

In respect of the explorer, the costs of the negotiation process and particularly in attending the on-country meetings can be significant. While the NT is not directly aware of all of the costs associated with the process, it understands the financial costs include:

- exploration compensation payments (e.g. a minimum payment, calculation based on size of EL or percentage of exploration costs);
- the cost of negotiating agreements and other LC expenses including stamp duty, secretariat services, LC travel costs etc;
- costs to arrange on-country meetings including travel (often $15k-$35k and higher);
- costs of anthropological surveys and consultant fees;
- costs of sacred site clearance surveys, etc.

There are also costs to the explorer in respect of the time taken to go through the process, as shown by the statistics above. However, the recommendations discussed below could help to reduce these costs (e.g. a more flexible approach to consultation; better utilisation of modern technology).

6. The extent to which the operation of Part IV may restrict competition;

The current provisions may restrict competition, particularly for smaller companies, however it would be difficult to quantify the extent. The restrictions occur because;

- The cost of the negotiation process (including meetings and anthropological surveys) would restrict the ability of smaller companies and individuals to engage.
- The time and effort required to negotiate and comply with agreements would restrict the ability of smaller companies or individuals to participate.
- The duplication of government statutory processes in agreements would be a disincentive e.g. securities, environmental considerations etc.

Having a mix of players is beneficial to exploration and mining as different players have different roles in the process. Generally, a prospector or smaller company will

commence the initial grass-roots exploration. Then, as prospecting develops and leads to the potential for mining, bigger companies and investors get involved and further expand, so the mining industry needs this range of operators. The mix of players not only brings with it varying levels of resources, but also a variety of skills sets and exploration concepts targets which are important in discovering an economic deposit. It is a matter of record that many mines in the NT, such as the Granites, were discovered by small miners/prospectors. To exclude smaller parties from the mix potentially limits the chance of success.

Recommendation 9
The NTG recommends that duplication of government statutory provisions and costs, such as securities and environmental provisions, are not permitted in agreements.

7. The potential for amendments to Part IV that would contribute to more efficient administration and improved outcomes in respect of exploration and mining on Aboriginal land in the Northern Territory

a) Suggested technical amendments to Part IV

In recommending "technical" amendments the NT does not propose any changes to the general scheme of the legislation but simply the workability. Some of these issues contribute to the complex and inflexible nature of the legislation.

Ability to amend s41 applications
Since commencement of the revised Part IV of ALRA, a number of situations have arisen in practice whereby the new legislation is unclear and, either parties have differing interpretations of the legislation, or the legislation is simply silent on a particular situation. These "technical" deficiencies tend to consume an inordinate amount of time to resolve and, at times, the resolution imposes a significant burden on the parties. An example of such a situation is where an applicant changes the mineral commodity being sought and wishes to amend the s41 application (commonly called a proposal). ALRA is silent on how this can be done and the current practice is that the NT Minister's consent to negotiate is withdrawn and reissued and the applicant is required to commence the Part IV process again by submitting a new proposal. This is a burden on all parties, particularly the applicant. In commencing the process again, the LC in some instances will waive the requirement for an initial meeting (as one had already occurred under the previous process); however the NT has concerns that waiving the meeting may not be legally correct. Therefore, the solution to a seemingly simple problem imposes a legal doubt.

Recommendation 10
It is recommended that s41 of ALRA be amended to allow for amendments to applications.

'Non-consent'/restricted areas
Another issue is where consent has been given to grant an EL and the LC identifies areas of non-consent/restricted land within the application. The non-consent areas then become separate ELs and are placed in moratorium for a period of five years. In one

instance, ELA24512 became 20 separate ELs (19 non-consent and one consent area). At the end of the moratorium period, these non-consent areas must again go through the ALRA process. These areas are varying in size, sometimes very small and are often water holes or sacred sites where mining would be unlikely to occur. The results of this current practice are that it is administratively cumbersome as boundaries need to be determined and mapped and new applications lodged. This process also distorts statistics in terms of the number of ELs in moratorium.

The issue in part revolves around the interpretation of consent to grant i.e. does consent to the grant of an EL mean that all of the title area is available for exploration, or is there scope within the EL for non-consent or restricted areas?

The NT is of the view that consent to grant an EL should allow scope for restricted or 'non-consent' areas within the EL and that the provisions allow for the restricted areas to be removed or varied. Such a process would not be dissimilar to the grant of an EL on other land in the NT which is subject to sacred site restrictions/exclusions or restrictions/exclusions for environmental reasons.

Note: this issue is treated differently by the main LCs, which in itself highlights the ambiguity of the interpretation.

Recommendation 11
It is recommended that any non-consent/restricted areas within the area of an application be managed within the Deed for Exploration which sets out the terms and conditions. This would require an amendment of ALRA to clarify 'consent' and 'non-consent'.

Reapplication process following veto
S48 (9) (b) deals with the process of reapplication following veto. The period in which to lodge a new proposal is 30 days with no provision to extend, while initially, under s41, there was 3 months in which to lodge the proposal and provision to extend.

Recommendation 12
It is recommended that the process following veto should simply be to recommence the s41 process.

Special Negotiating Process
S42 (17) to (20) inclusive provides for a special negotiating period in certain circumstances. To impose a maximum period of 12 months in which to reach an agreement without provision to extend does not appear practical and, further, the provisions are unclear as to what occurs if no agreement is reached within the 'special period'. It is recommended further in the document (see Recommendation 16) that negotiating periods be dispensed with, however if this recommendation is not adopted, amendment of these provisions is recommended to make them more workable.

Recommendation 13
It is recommended that, if negotiating periods are not dispensed with, they are amended to make them more workable.

b) Amendments to process

Some of the following recommended changes are more significant and, in some instances, contrary to the philosophy of the present regime. In general, the NT is of the view that the legislation is too prescriptive which in turn leads to frustration by all parties and difficulties with the process. The NT is also of the view that some provisions are impractical and near impossible to comply with in a meaningful manner. One example is the requirements under s41(6) relating to exploration and mining proposals. Explorers generally target a range of minerals, with each mineral requiring differing techniques at the exploration and mining stages. Sometimes the different techniques are subtle; sometimes significant. When applied in a prescriptive manner which is often the case, the section is difficult to comply with to any meaningful extent. In particular, the requirement to detail mining and recovery operations before a deposit is found is not logical as neither the type of mineral, nature of deposit, locality, nature of mining operation or treatment proposed is known at that stage.

The following comments/recommendations are made.

i. S41 – The timeframes and extension process for lodging applications are working well, however the information required to be included in a proposal is excessive. In particular the requirement to provide information relating to potential mining at a point where exploration hasn't even commenced, let alone discovery of a mine, is not meaningful. This is an unnecessary burden on explorers and further leads to unnecessary negotiation through the agreement process.

Recommendation 14
It is recommended that the requirement under s41 (6) (e) to describe possible mining operations be removed.

ii. S42(13) of the ALRA states that the standard negotiation period commences on the day the application is received by the LC. As the LCs do not routinely notify DME of this date, the current practice is for DME to contact the LCs to seek confirmation of the date of receipt (or acceptance) of an application so that the standard negotiating period can be tracked. This would be largely resolved if there was no negotiation period as discussed below.

Recommendation 15
If the 22-month negotiation period remains (see discussion below), it is recommended that s41 be amended to require the LC to advise DME of the date of receipt of the application.

iii. S42 (13) – There is little evidence that a prescribed negotiating period contributes to achieving either consent or veto. In fact, the statistics above show that the average timeframe in making either determination exceeds the standard negotiating period. The timeframe then causes more work in that the LC and EL applicant need to agree (in writing) if they wish to extend the period, advise the NT, and the NT needs to monitor the process. It should be noted that the 22 month period does not begin

until 1st Jan of the following year from when the application is received by the LC so, for example, if an application is received on 2nd January 2012 then the 22-month period does not commence until 1st January 2013. Therefore, the standard negotiating period can actually be up to 34 months which is contradictory to specifying a 22-month period. The flow chart at **Attachment D** outlines the current ALRA negotiation process.

The constant monitoring of the timeframes and re-issue of consent when timeframes are missed is an unproductive administrative process. As an alternative, the NT recommends that the concept of a negotiating period be abolished and the LC and EL applicant be required to briefly report on the progress of negotiations after the initial 2 year period and then on an annual basis thereafter. The report should be brief and contain details of the progress of consultation and negotiations e.g. have the TOs been consulted and, if so, how have agreements been exchanged and responded to etc. Such a report would inform the NT of the progress of negotiations and contribute toward any decision in respect of future deadlines to perform or withdrawal of consent. The main benefit of this suggestion is the reduction in administration in either arranging for an extension to the negotiation period or withdrawing and reissuing consent.

The flowchart at **Attachment E** outlines a proposed process, the main points of which are:

- Following lodgement of the proposal, the LC will consult with TOs on whether to veto or agree to negotiate.
- Negotiations proceed. If, after 2 years (from when the proposal is lodged) no agreement is reached, both LC and applicant report on progress and then on an annual basis if agreement is still not reached.
- When agreement is reached, the LC consents to grant and the EL can be granted under the MTA.
- However, if at any stage during negotiations, it is shown from the reports that either party is not negotiating in good faith, s42 (15) can be triggered to set a 12-month Ministerial deadline during which time parties must negotiate further.
- At the end of the deadline, if there is still no agreement, the Minister can either withdraw consent to negotiate or direct mediation.
- If, at the end of a 3-month mediation period agreement is still not reached, the Minister can withdraw consent.

Recommendation 16
The NT recommends that the concept of a negotiating period be removed and consideration given to the process outlined at **Attachment E**. Should the negotiating period remain, the NT recommends that the commencement date be the date that the application/proposal is received by the LC.

iv. S42 – The consultation process outlined in this section requires meetings (usually on-country) between the parties. It is considered too prescriptive and does not take into account technology, cultural and other changes since the commencement of the ALRA. It also does not take into account situations where the explorer is well known to the TOs and a meeting is unnecessary to reach a determination. In

particular the meeting process is costly, logistically difficult and time consuming. Typically, a large number of TOs may be in attendance in relation to one EL application and they may be required to come from all over the Northern Territory. The associated costs with this include travel, food and accommodation where required. Quite frequently, meetings are cancelled due to a death, or other business, within the community. Further, it is common that TOs complain of too many meetings.

Rather than a prescriptive process the requirement should simply be that LCs must consult with TOs and, at the time of consent or veto, attest that the consultation has been complete and transparent. The LC should consult with the applicant as to how they want to present their case, if at all. Options for this may be to attend a meeting; to display information within the community; to present electronically etc. Particularly where an EL applicant has many holdings, and is already known to the TOs, such processes may streamline the system. Further it should be permitted that a representative group of TOs (as opposed to all TOs) can be the decision makers. This may not work in all communities but may be an option. Note the Tiwi Land Council would probably support this as they effectively do this now.

Recommendation 17
The NT recommends that the consultation process be more flexible to allow LCs and the applicant to determine how consultation should occur.

v. S42 (8) provides for the Federal Minister to consent to the grant of the licence. This appears unnecessary as LCs have consented after consultation with TOs and the ultimate decision to grant rests with the NT. This process does not add value and is an unnecessary delay.

Recommendation 18
It is recommended that the requirement for Federal Minister consent to grant be removed.

vi. S42 (15) – The ministerial deadline provision has not been used, partly because it is difficult to obtain consistent information as to the true status of negotiations and also because the process can disadvantage applicants should a LC be the cause of delays. The NT has however, to the best of its ability, monitored negotiations and on occasions has withdrawn consent and refused applications where it is evident the applicant is not negotiating. The NT applies a number of conditions of its consent requiring active negotiations and enabling it to monitor those negotiations (see **Attachment F**). Further the MTA requires that applicants actively negotiate in good faith (s62 (2) (b) of the MTA and s44 (1) (c) of the Regulations apply – see **Attachment G**).

Recommendation 19
It is recommended this provision remain however, where agreement is not achieved within the deadline period, provisions be included so the Minister can appoint a mediator for a finite period (e.g. 3 months) to help to resolve the matter. This proposal provides an additional means to facilitate an agreement. It is anticipated that such a

deadline would not be common but may be of assistance in more complex negotiation such as for financial aspects of petroleum activities.

vii. It is not proposed that any changes be made to s43 – National Interest Cases.

viii. S44A – This section should state that terms and conditions are not to duplicate NT or Commonwealth statutory requirements including environmental requirements or provisions relating to mining. Such duplication is non-competitive and, in terms of mining provisions, impractical where an economic deposit has not been found. Current practice is to include mining provisions including the mining operation, sacred sites, mining improvements, environmental protection, roads, airstrips, cultural and social impacts, liquor, employment opportunities etc. Typical agreements within one particular LC amounts to around 180 pages, with 60 pages specifically on mining provisions. These requirements cause undue delays in reaching agreement and undue costs to the negotiating parties.

Recommendation 20
The NT recommends that agreements be limited to exploration provisions only (also see Recommendation 24).

c) <u>Other suggested changes</u>

Structure around on-country meetings
After travelling to remote communities (in some cases in excess of five hours driving on dirt roads following a plane journey) applicants are often permitted only approximately 20-30 minutes to present their s41 application, and in some cases as little as 15 minutes. This causes frustration with the applicants as they can pay anything between $15,000 and $35,000 (and higher) for the meetings to be arranged, yet are only given 15 minutes to present. These costs include the provision of lunch to the TO but the applicants are not provided with lunch themselves. The applicants are also prevented in some instances by the Land Councils from talking directly to the TOs which does not allow them to establish and build good relationships. In some cases, the TOs have expressed desire to deal with the applicants directly; however this is not legislatively possible.

Recommendation 21
It is recommended that the Act be amended to provide a less formal structure around the conduct of the s42 meetings and greater communication permitted. It may also be practicable to hold the meetings in the town or community where many TOs reside.

Refusal of consent
There are instances whereby TOs are prepared to consent to, or refuse, part of the application area, however they do not necessarily want to determine the remainder. It may be that they simply want more time to consider the balance. The Act requires that a determination must be made (i.e. yes or no). Accordingly, a third option should be available of continuing to negotiate.

Note: If this recommendation is accepted, minor amendments to the MTA and PA may be required.

Recommendation 22
It is recommended that ALRA should allow a third option of continuing to negotiate.

Reasons for refusal of consent
Explorers are often frustrated when consent has been refused but reason for the refusal is not forthcoming. There is benefit in explorers understanding why an application may be unacceptable and in some instances it may be possible for a problem to be rectified, for example where the issue lies with the work program. There is benefit in providing greater transparency with the LC required to ask the TOs for the reason for refusal and this reason being provided to the applicant. This does not prevent the TOs from refusing consent as they simply don't want exploration, but rather it would provide transparency and also flexibility in the process at an early stage.

Recommendation 23
It is recommended that reasons, even if broadly based, be given for refusal to consent to an application.

Conjunctive Agreements
Agreements to explore are conjunctive in nature in that, in addition to consenting to the grant of an EL, the provisions also require the LCs and TOs to consider and to consent to mining. These provisions are not explicit in the legislation but rather the result of the how the legislation is constructed. The conjunctive consent means that before exploration commences, consideration of possible mining activities needs to be taken into account and terms agreed. These requirements delay and overly complicate the consent and agreement process for exploration and there is argument that removing the conjunctive aspect could expedite the process to access land for exploration.

The reason commonly accepted for conjunctive agreements is that explorers wanted the comfort that, if they found a deposit, consent had already been given to mine. However it is also commonly agreed that, as a rule of thumb, only one in every 1000 ELs results in a significant mine. Therefore, to require such a process for the other 999 ELs that do not result in mines appears unnecessary.

Furthermore, the provisions as they currently stand are a result of legislation drafted in the 1970s. Much has changed since that time, including TOs knowledge of exploration and mining and their interaction with explorers. This knowledge, experience and understanding has demonstrated that, even on non-traditional land (e.g. native title), mining agreements can be agreed separate to the exploration proposal.

Further, environmental and other requirements including the Commonwealth Environmental Protection and Biodiversity Conservation Act and the NT's Environmental Assessment Act, amongst other things, take into account community impact. The effect of these 'new' requirements are that even with TO consent a mining operation may not be approved (e.g. on environmental grounds) or, if consent was given to mine initially and the TOs changed their mind then a company would be reluctant to proceed (e.g. Jabiluka).

Companies generally recognise the risk of doing business and spend a great deal of time and resources on community relations. Evidence of this is the fact that most explorers on non-ALRA land will enter into voluntary "good neighbour agreements" with

native title parties. In light of the above, there are companies that would be willing to forego the benefit of conjunctive consent in preference of a more timely, cost effective process.

Recommendation 24
Accordingly the NT recommends that:

- the exploration agreement not contain provisions pertaining to mining (see also Recommendation 20)
- the conjunctive nature of the consent provisions remain as the default process
- by agreement, the parties may decide to enter into disjunctive arrangements

Short form agreements
It is suggested that a template short form agreement for exploration is developed. The agreement would contain only exploration provisions and not replicate any NT or Commonwealth regulatory provisions. Such an agreement could be negotiated by the LCs and representatives of the exploration industry e.g. AMEC or the Minerals Council. LCs have in the past not favoured standard agreements on the basis that TOs were entitled to individual arrangements; however there are benefits to standardising agreements and, in particular, the timeliness of reaching agreement. It should be noted that standard agreements are currently used in other jurisdictions. To some extent present agreements are standardised, however they are overly detailed and complex in that they contain mining provisions and replicate regulatory provisions.

Recommendation 25
It is recommended that a simple, short form agreement be developed, which would allow for timely agreement, free up resources and allow LCs to focus on other aspects of ALRA.

8. Such other matters as may be pertinent to the review.

Since the commencement of ALRA there has been a backlog of ELs and there is now a growing backlog of EPs. While there will always be outstanding applications to address, the number of applications on which a determination is made per annum (either consent or veto) should match the number of new applications received. The number of applications received is driven by the market and not the Department of Mines and Energy, so to achieve a reduction in the number of outstanding applications requires a significant change in approach. The NT supports such changes.

Should further amendment to Part IV occur as a result of this review, a further review should be conducted in five years from the date the amendments commence, in order to ascertain if the objectives of the amendments are being met and that the process for granting ELs on aboriginal land has been effectively expedited.

Recommendation 26
The NT recommends that, if ALRA is amended as a result of this review, a further review be conducted in five years from the date the amendments commence.

TABLE 1

	Aboriginal land (excludes moratorium)	Other land
2002-03	37	311
2003-04	22	142
2004-05	31	99
2005-06	60	118
2006-07	38	228
2007-08	8	385
2008-09	36	157
2009-10	9	262
2010-11	16	279
2011-12	64	336
Total	321	2317

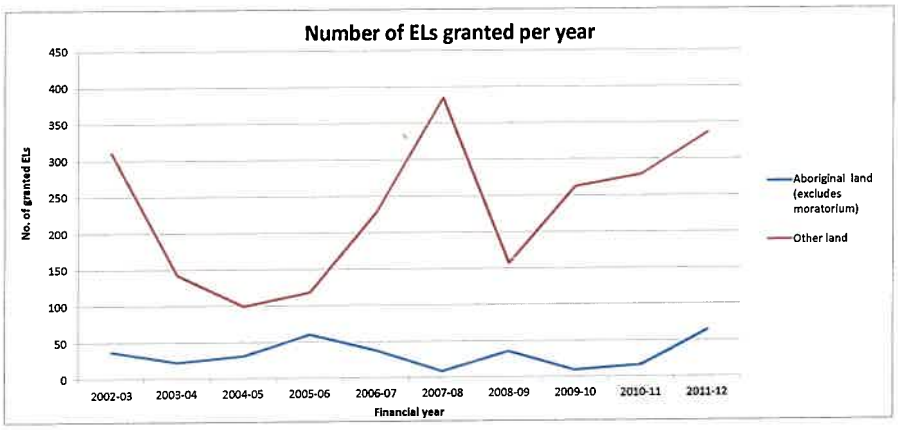


TABLE 2

	Aboriginal land	Other land
30-Jun-03	209	545
30-Jun-04	224	532
30-Jun-05	251	522
30-Jun-06	248	510
30-Jun-07	257	678
30-Jun-08	212	1019
30-Jun-09	204	887
30-Jun-10	192	995
30-Jun-11	180	1094
30-Jun-12	236	1255

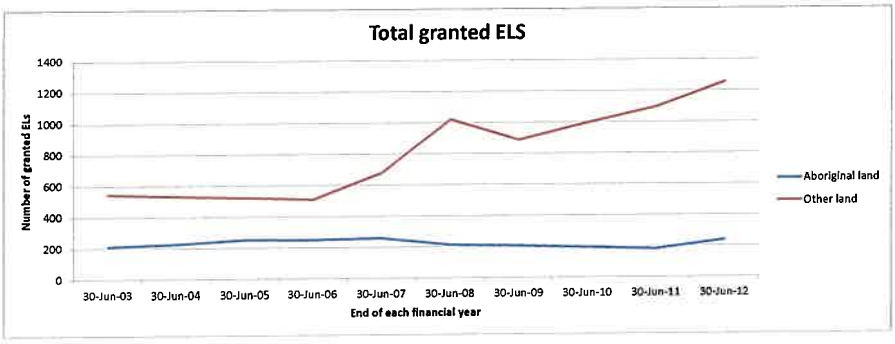


TABLE 3

	Aboriginal land	Other land
2002-03	81.66	28.45
2003-04	93.46	27.59
2004-05	57.11	13.68
2005-06	56.57	10.52
2006-07	43.41	10.39
2007-08	49.2	10.1
2008-09	63.63	9.22
2009-10	48.03	8.02
2010-11	56.61	8.29
2011-12	53.73	8.19

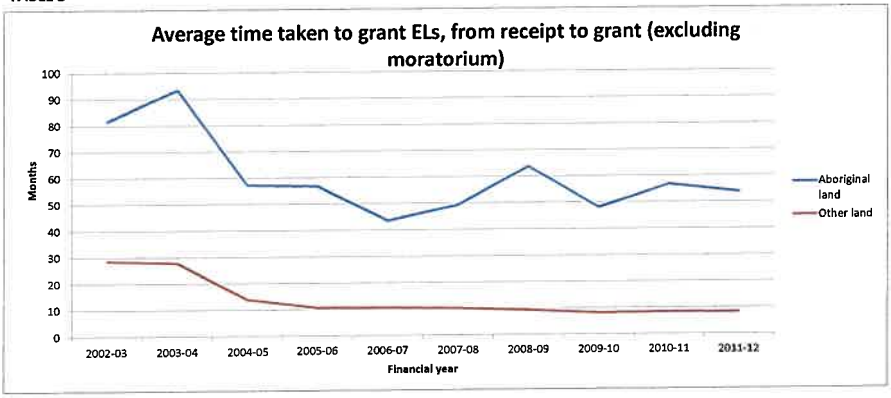


TABLE 4

	Aboriginal land	Other land
2002-03	100	106
2003-04	107	100
2004-05	138	146
2005-06	216	273
2006-07	197	412
2007-08	134	264
2008-09	107	297
2009-10	127	350
2010-11	104	378
2011-12	87	336

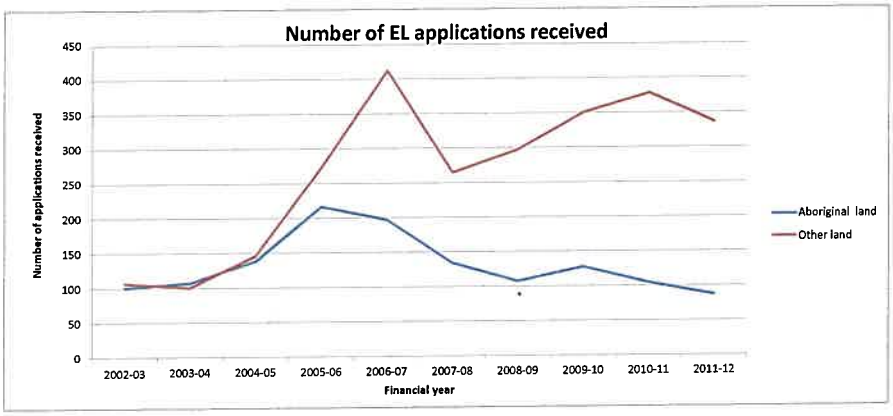


TABLE 5

	Number outstanding on aboriginal land (excluding moratorium)	Number outstanding on other land
30/06/2003	554	194
30/06/2004	518	119
30/06/2005	522	136
30/06/2006	582	268
30/06/2007	707	393
30/06/2008	734	197
30/06/2009	674	215
30/06/2010	690	246
30/06/2011	635	297
30/06/2012	579	252

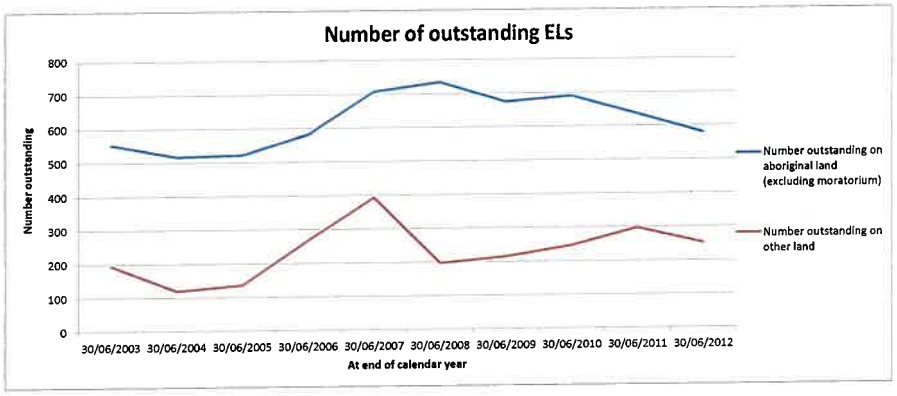


TABLE 6

Financial year	Number of applications received on aboriginal land	Number of applications received on other land
2007-08	5	4
2008-09	1	4
2009-10	10	16
2010-11	20	20
2011-12	37	35

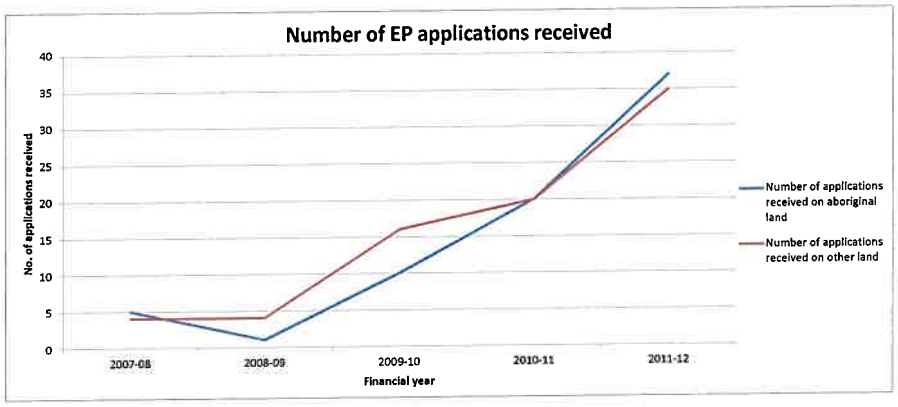


TABLE 7

End of financial year	Number of applications outstanding on aboriginal land	Number of applications outstanding on other land
30/06/2008	24	11
30/06/2009	19	15
30/06/2010	29	27
30/06/2011	50	39
30/06/2012	88	64

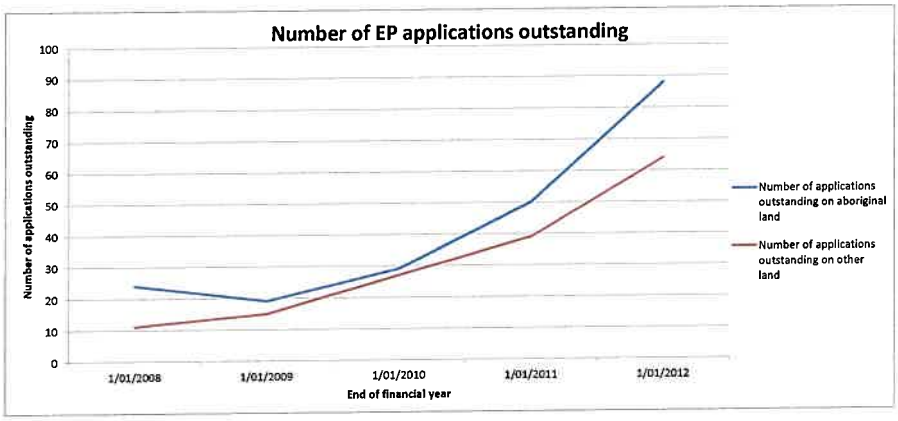


TABLE 8

	Average number of months	Quickest time (within period)	Longest time (within period)
2007-08	25.5	10.19	41.16
2008-09	47.3	16.45	112.9
2009-10	38.9	7.58	84.1
2010-11	37.7	6.74	92.45
2011-12	43.5	5.26	93.68

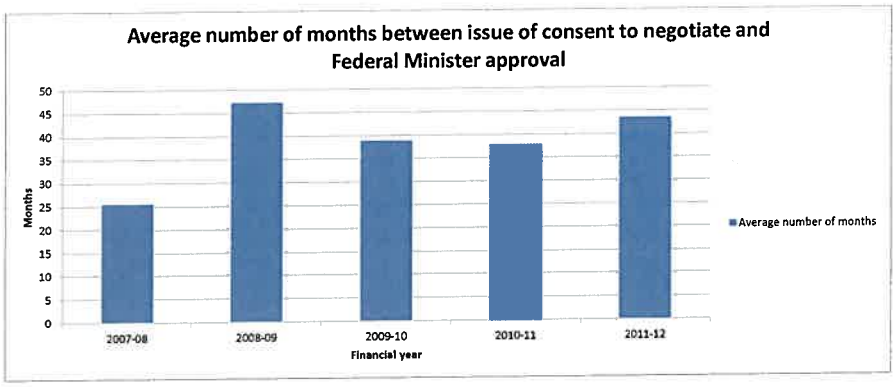
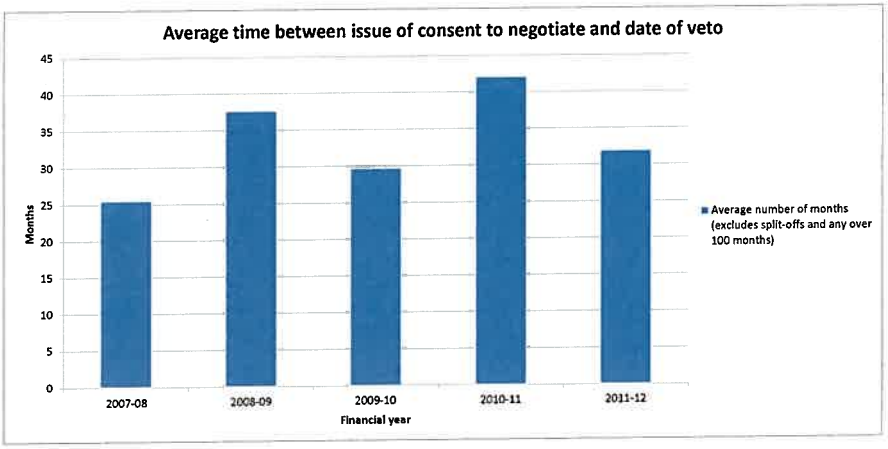
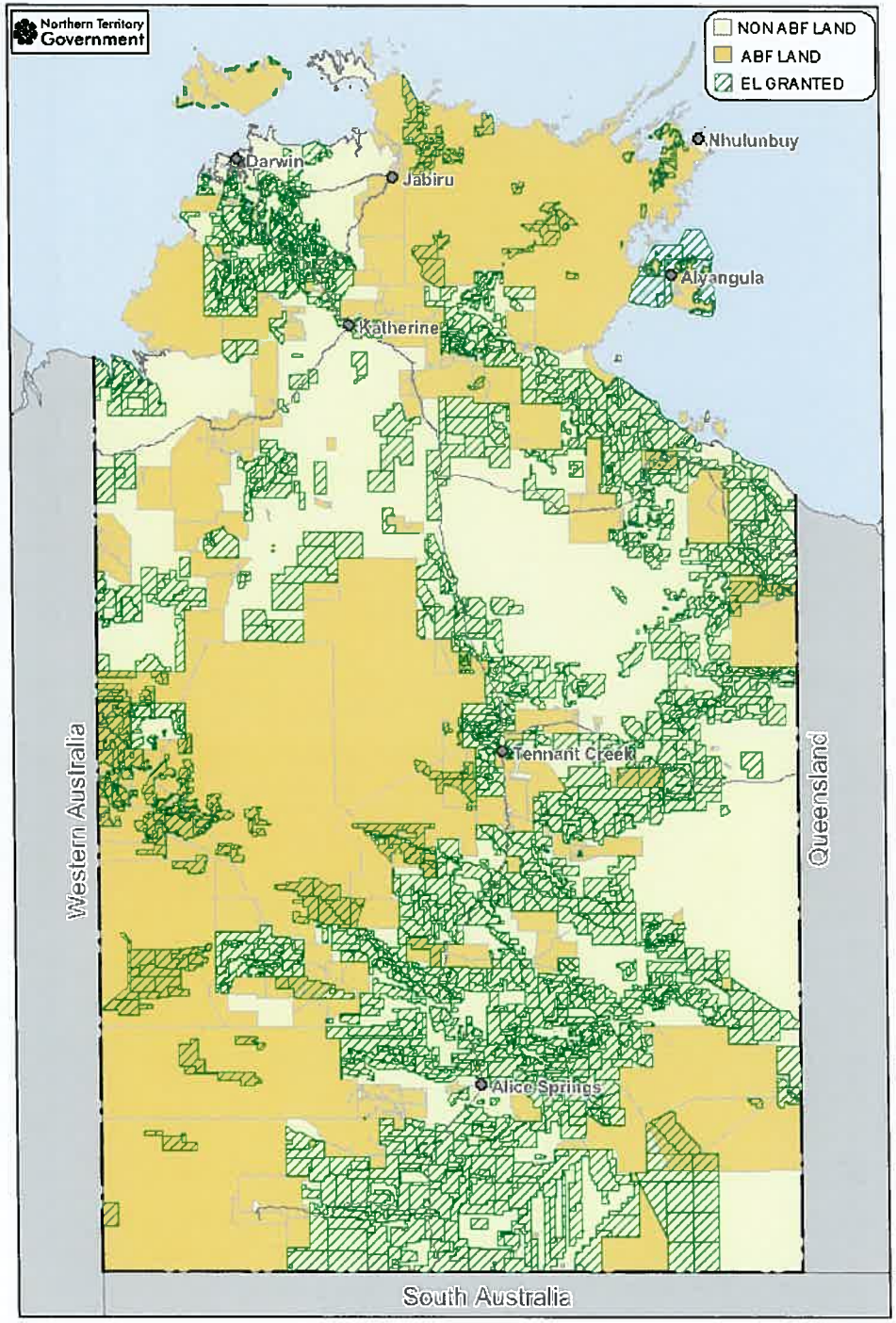


TABLE 9

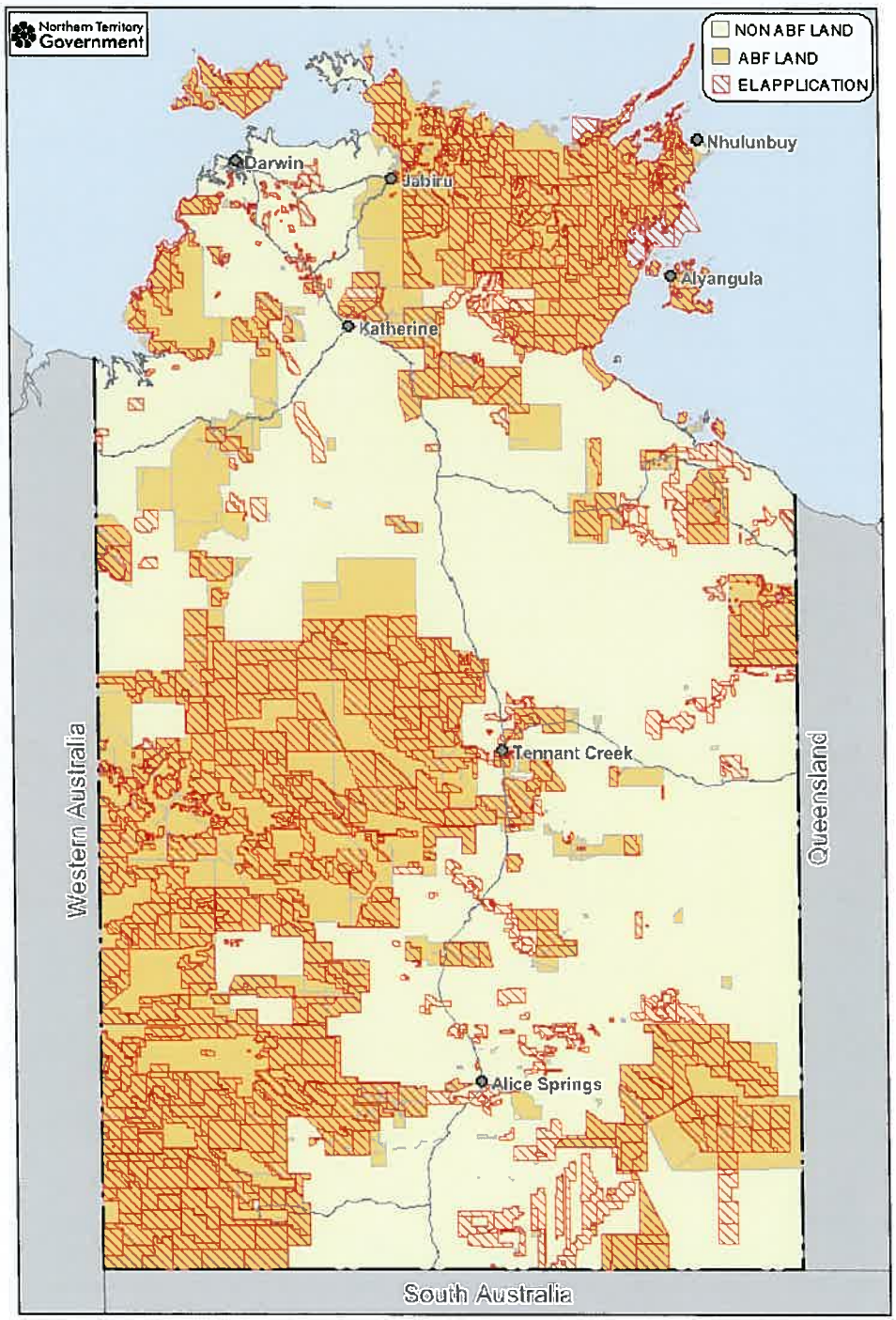
	Average number of months (excludes split-offs and any over 100 months)	Quickest time (within period)	Longest time (within period)	Number veto'd
2007-08	25.4	6.19	80.94	27
2008-09	37.6	6.48	70.81	27
2009-10	29.6	9.61	46.9	16
2010-11	42	8.74	85.42	40
2011-12	31.8	6.39	74.68	5



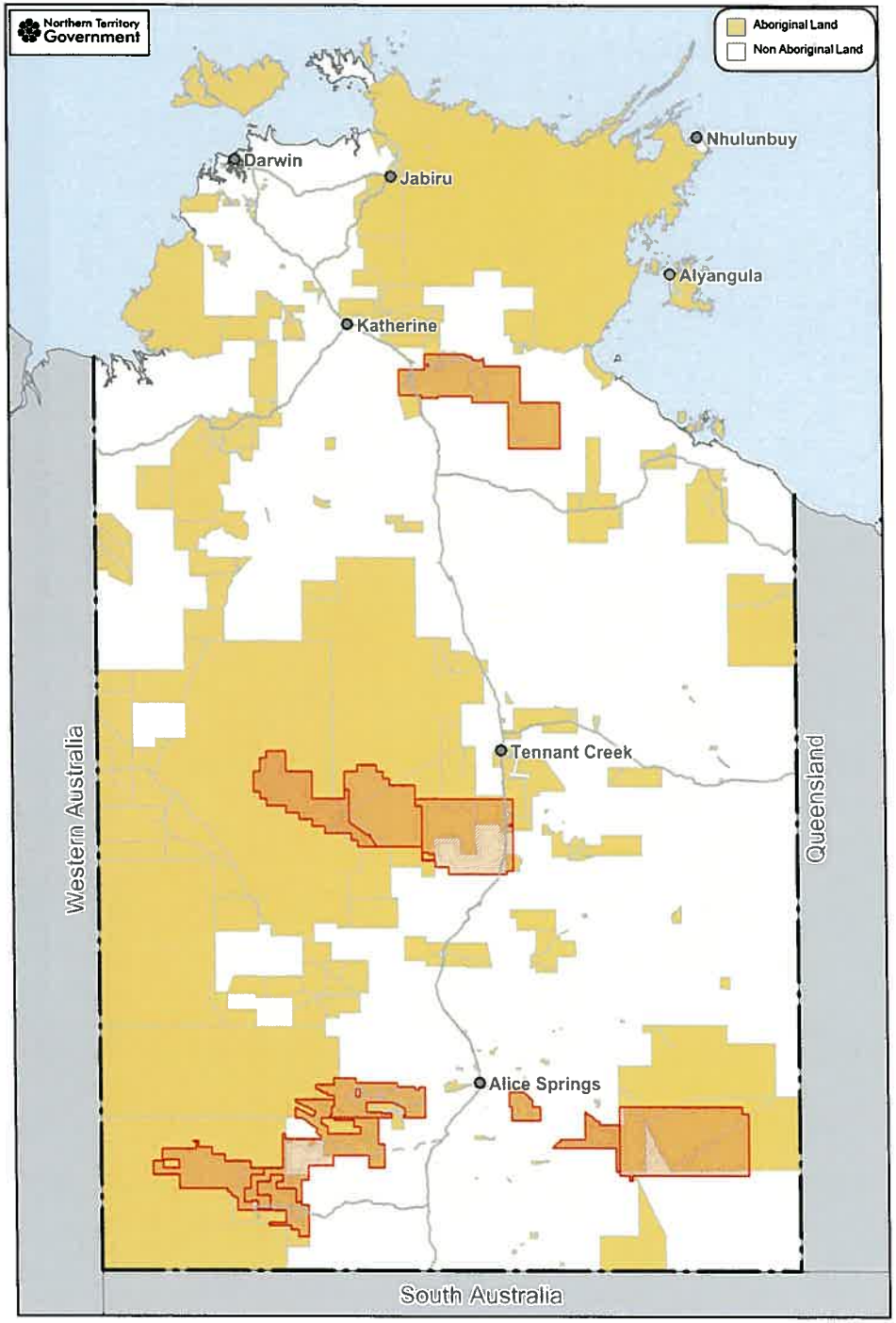
EXPLORATION LICENCES GRANTED - OCTOBER 2012



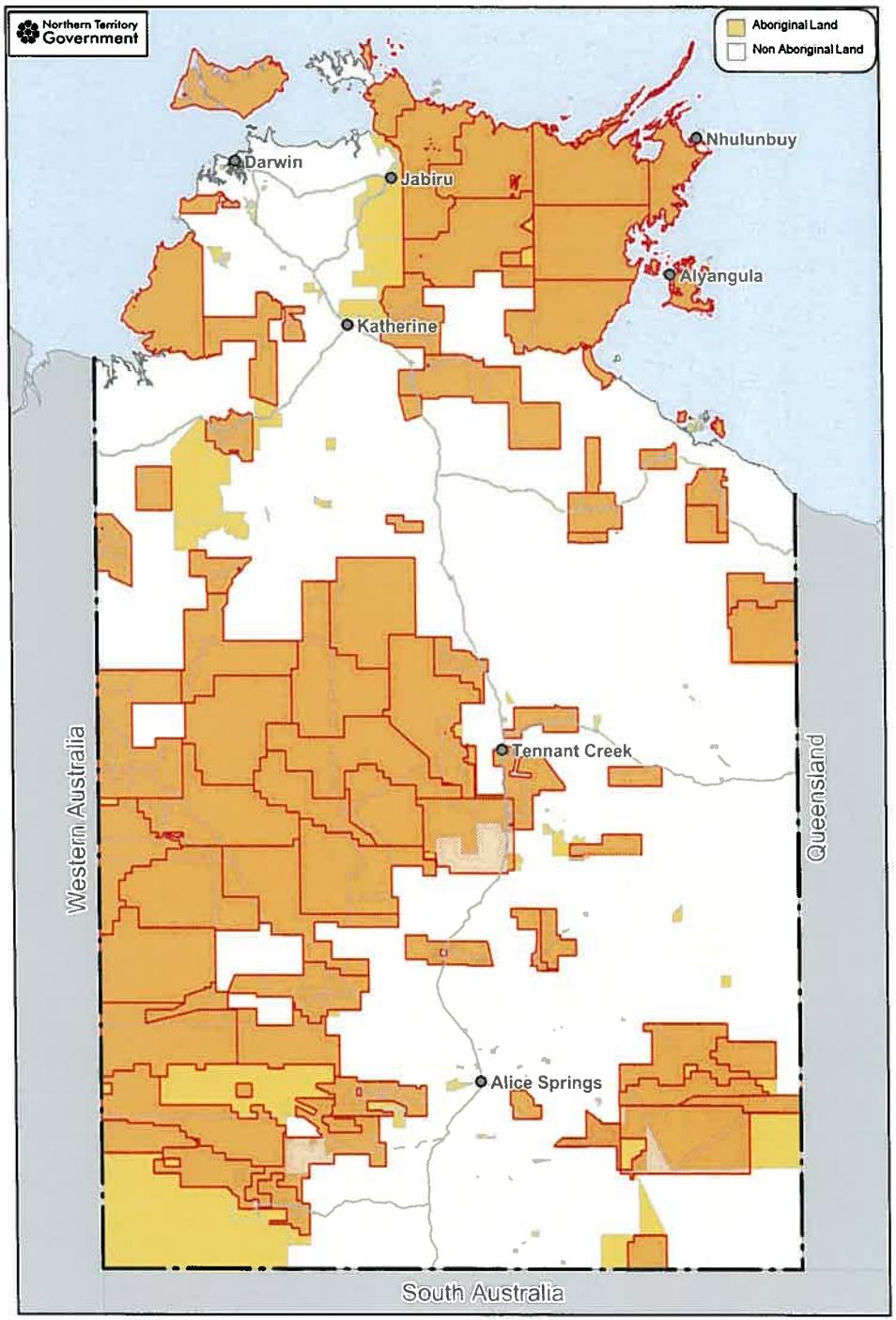
EXPLORATION LICENCE APPLICATIONS - OCTOBER 2012



PETROLEUM EXPLORATION PERMIT APPLICATIONS ON ABF JUNE 2008



PETROLEUM EXPLORATION PERMIT APPLICATIONS ON ABF JUNE 2012



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Read in conjunction with the "Exploration on the Aboriginal Freehold Land" Fact sheet & the *Aboriginal Land Rights (Northern Territory) Act (ALRA) 1976*

Exploration Licences or Permit Applications
Lodged with the Department

↓

Consent to Negotiate
NT Minister for Mines and Energy may issue consent to negotiate s41 ALRA.

↓

Consent Issued (3 months)

↓

"Exploration Applications"
Lodge an application with the relevant Land Council within three months of the date the consent to negotiate was issued. Application to comply with s41(6) ALRA

↓

Application accepted by Land Council

↓

Standard Negotiation Period (22 months)

- Parties consult to progress negotiations to reach an agreement and to the consent to the grant of the Exploration Licence;
- During this process, the Land Council and the applicant will attend meetings with the Traditional Owners for the purpose of explaining and discussing the proposed exploration activities as required by s42 ALRA;
- There is a provision for mutually agreed extensions.

↓

Outcomes of s42 Meeting

↓

Refuse consent to the grant
Refusal of further negotiations.

↓

Moratorium
Exploration Licence or permit application is placed in moratorium for five (5) years. s48 ALRA

↓

Negotiations Re-commence
Traditional Owners may recommence negotiations through their representative body at anytime during this five year period.

↓

End of Moratorium
The applicant must lodge a new exploration application with the relevant Land Council within 30 days of the moratorium end date.

Consent to further negotiations

↓

Consent to Negotiate for the Grant
Traditional Owners consent to further negotiations to formalise an agreement with the applicant. The relevant Land Council approves consent to grant

↓

Federal Minister Approves consent to grant
Consent to grant given by Federal Minister for Families, Housing Community Services and Indigenous Affairs (FaHCSIA)

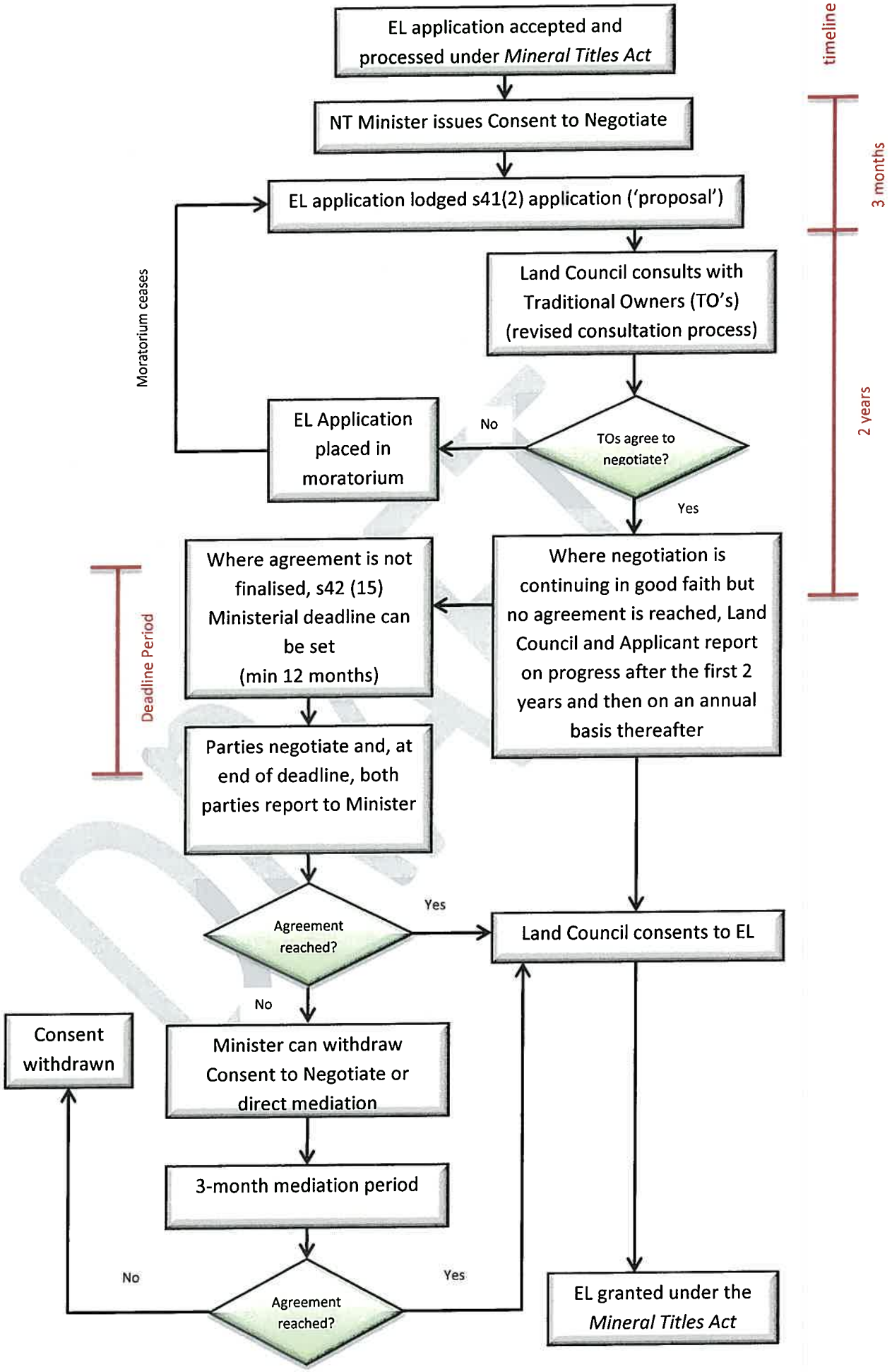
↓

Agreement/Deed
Agreement/Deed provided to the Department to progress Exploration Licence Application to grant

↓

Grant
Department grants exploration licence or permit is grant in accordance with the *Mineral Titles Act* (2010) or the *Petroleum Act*

PROPOSED ALRA EL PROCESS



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ABN: 84 085 734 992

Mineral Titles Division
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Darwin NT 0801
Tel 08 8999 5322
Fax 08 8981 7106
titles.info@nt.gov.au
www.minerals.nt.gov.au

XTitle Holders Name
XContact Name (if applicable)
XAddress
XSUBURB STATE POSTCODE

Dear Sir/Madam

I am pleased to advise that, pursuant to section 62(2) of the *Mineral Titles Act*, I hereby give my consent for X to enter into negotiations with the X Land Council in respect of the application for the grant of Exploration Licence X.

Pursuant to s41 of the *Aboriginal Land Rights (Northern Territory) Act*, you have three (3) months from the receipt of this letter to submit a written application to the Land Council for its consent to the grant of the Licence.

In the event the application is unable to be submitted to the Land Council within the above mentioned timeframe, you are required to contact the Native Title and Aboriginal Land Rights Unit on (08) 8999 5368 or email ntalrunit@nt.gov.au to discuss the options available.

Failure to submit an application prior to the end of this period will result in consent deemed to be withdrawn.

Consent to negotiate is dependent upon compliance with the following conditions.

1. Provide the Director of Titles with a copy of any application lodged with the relevant Land Council.
2. Actively negotiate with the relevant Land Council representing the Aboriginal Traditional Owners.
3. Have an authorised company representative attend meetings with the Aboriginal Traditional Owners as advised by the relevant Land Council.
4. Provide an explanation as to why negotiations are not progressing, if requested.
5. Advise the Director of Titles and the relevant Land Council in writing, any change to the contact address or telephone number within 14 days of such a change.

6. Provide an executed, stamped dutiable deed between the applicant and the Land Council to the Director of Titles before the grant of the Licence can be considered.

Default in respect of any of these conditions may result in withdrawal of consent to negotiate under section 62(2) of the *Mineral Titles Act* and refusal of the application.

In the event that the licence is granted, it will be granted for a term of X (X) years and subject to a minimum expenditure requirement of $X during the first operational year of the term, as well as to the terms and conditions specified in the *Mineral Titles Act*.

Should you have any queries in relation to this matter, please contact Annette Duncan, Manager of the Aboriginal Land Rights Unit on (08) 8999 5368.

Yours sincerely

J P WHITFIELD
Director of Titles
as Delegate of the Minister for Mines and Energy

Xmonth 20XX

(d) any other necessary criteria specified by regulation for the application.

59 Age restriction on individuals who may make application

A person who is an individual may make a mineral title application only if the person has attained 18 years of age.

60 Grant application – declared fossicking area

A person who intends to apply for the grant of a mineral title for any land in a declared fossicking area must first apply to the Minister for consent to include the land in the proposed title area of the application.

61 Grant application – Aboriginal community living area

A person is not entitled to apply for the grant of a mineral title for any excluded land in an Aboriginal community living area unless the person has written consent to do so given by the landowner for the area.

62 Grant application – EL for Aboriginal land

(1) A person must not, under Part IV of the ALRA, enter into negotiations with a Land Council for consent to the grant of an EL for Aboriginal land unless the person:

(a) has applied under this Act for the EL; and

(b) has the Minister's consent to enter into the negotiations.

(2) For subsection (1)(b), the Minister may:

(a) give consent conditionally or unconditionally; or

(b) withdraw consent at any time during the negotiations under the ALRA and refuse to grant the EL; or

(c) refuse to give consent and refuse to grant the EL.

(3) If section 48(1) of the ALRA applies in relation to particular Aboriginal land, a person must not make an application for an EL except with the Minister's approval.

63 Grant application – ML for Aboriginal land

(1) A person is not entitled to apply for the grant of an ML for Aboriginal land unless the person holds an EL or ELR for the land.

(2) For subregulation (1)(b), the datum post is the boundary marker at the north-eastern corner of the survey area.

42 Plan of survey and other information

(1) The plan of survey mentioned in section 76(2) of the Act or regulation 36(b) must clearly depict the survey area in a way that enables it to be accurately located (for example, by showing significant topographical features and boundaries of land held under the *Land Titles Act*).

(2) The plan of survey must include the latitude and longitude in GDA94 of each boundary marker and the dimensions of the boundary lines.

(3) The coordinates of the corners of the survey area must be determined to an accuracy of less than 1 m.

(4) The relevant person must give the Minister sufficient information to enable the accuracy of the survey to be validated.

43 Effect of surveying too much land

If the relevant person has surveyed an area of land that is larger than the survey area, the Minister must require the person to make a further survey, reducing the survey area as specified by the Minister.

Part 4 Mineral title applications and other applications

Division 1 General provisions

44 Necessary criteria for mineral title application

(1) For section 58(2)(d) of the Act, the necessary criteria are as follows:

(a) if the applicant was previously the title holder of a mineral title that is no longer in force – the applicant must have:

(i) paid all outstanding fees (including any late lodgment fees) and rent payable by the applicant in relation to the title; and

(ii) complied with the rehabilitation requirements for the title area;

(b) if the applicant currently holds one or more mineral titles – the applicant must have substantially complied with the rehabilitation requirements for each title area;

(c) if the applicant is currently engaged in negotiations under ALRA or NTA in relation to the grant of another mineral title – the Minister must be satisfied the applicant is actively negotiating in good faith.

(2) In this regulation:

rehabilitation requirements, for a title area, means the requirements for rehabilitation of the area under the *Mining Management Act*.

45 Shape of proposed title area

(1) This regulation applies to an application for the grant of a mineral title other than an EL or EMEL.

(2) The proposed title area must be in the shape of a rectangle, the length of which must not exceed twice the width, unless:

(a) a topographic feature or cadastral boundary of the Territory makes that shape impracticable; and

(b) the Minister approves another shape.

Examples of boundaries for subregulation (2)(a)

1 A topographic feature such as a river or mountain ridge.

2 A cadastral boundary of Aboriginal land or pastoral land.

46 Application fees

(1) The application fee payable for an application mentioned in Schedule 1, Part 1 is specified opposite the application.

(2) A person who pays an application fee is not entitled to a refund of any of the amount paid, even if the application is refused.

47 Refund of amount paid for advertising costs

(1) This regulation applies if the applicant for the grant of a mineral title has paid the advertising costs of giving public notice of the application as mentioned in section 71(1)(b) of the Act.

(2) The Minister must refund the whole amount paid if, before the notice is published, the Minister refuses under section 70 of the Act to grant the mineral title.