



## Appendix H

# Aboriginal Land Rights Act 1976, Section 46.

## **ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976 - SECT 46**

Terms and conditions to which grant of mining interest subject

(1) An intending miner who seeks the [grant](#) of a [mining interest](#) in respect of [Aboriginal land](#) in respect of which that intending miner holds or held an [exploration licence](#) or an [exploration retention licence](#) (whether that [exploration licence](#) or [exploration retention licence](#) was [granted](#) before or after the land became [Aboriginal land](#)) shall submit to the relevant [Land Council](#) a statement, in writing, setting out:

(a) a comprehensive proposal in relation to the mining works that the intending miner proposes to conduct on the land which includes, but is not limited to, the following particulars:

(i) the anticipated period of activity of the mining works;

(ii) the proposed mining techniques;

(iii) the extent to which the mining and related activities will, or are likely to affect the environment inside and outside the affected land;

(iv) the proposed method and amount of vehicular access to and within the affected land with reference to any proposals to construct roads, landing strips or other access facilities;

(v) the maximum number of people likely to be on the affected land from time to time;

(vi) the water, timber and other requirements to be obtained from the affected land;

(vii) proposals for minimising the effect of the proposed mining works on the affected land;

(viii) any other information of the kind that would, under the [law of the](#) Northern Territory relating to the protection of the environment, be required to be included in an environmental impact statement in relation to the proposed mining works;

(ix) proposals for rehabilitation;

(x) proposals for minimising social impact;

(xi) projected production capacity and scale of operations;

(xii) infrastructure requirements; and

(xiii) terms and conditions relating to payment;

(b) the name, position and qualifications of the person or persons, not exceeding 3 in number, who will represent the intending miner at meetings convened pursuant to subsection (5) or, in

the event that that person or any of those persons is unable so to represent the intending miner, of any other person authorised to represent the intending miner in lieu of the person who is unable so to represent the intending miner.

(2) The intending miner shall cause a copy of the statement to be sent to the Minister.

(3) Where the intending miner submits the statement to the [Land Council](#), the intending miner and the [Land Council](#) shall try, within 12 months after receipt by the [Land Council](#) of the statement or, if a longer period is agreed upon, in writing, between the intending miner and the [Land Council](#), that longer period, to agree upon the terms and conditions to which the [grant](#) of the [mining interest](#) will be subject.

(4) Subject to subsections (7) to (11), inclusive, the [Land Council](#) shall not agree upon the terms and conditions unless:

(a) it has, as far as practicable, consulted the [traditional Aboriginal owners](#) (if any) of the land concerning the terms and conditions and it is satisfied that they understand the nature and purpose of the terms and conditions and, as a group, consent to them;

(b) it has, as far as practicable, consulted any other [Aboriginal](#) community or group that may be affected by the [grant](#) of the [mining interest](#) concerning the terms and conditions and it is satisfied that the community or group has had an adequate opportunity to express its view to the [Land Council](#); and

(c) it is satisfied that the terms and conditions are reasonable.

(5) In order to facilitate consultation between the [Land Council](#) and the [traditional Aboriginal owners](#):

(a) the [Land Council](#) shall convene such meetings with them as it considers necessary to consider the intending miner's mining proposals and discuss the terms and conditions;

(b) the [Land Council](#) shall give reasonable notice to the applicant and the Minister before each meeting which the applicant and the Minister are entitled to attend;

(c) the representatives of the intending miner may attend so much of the first meeting as is appropriate in order to present and explain the intending miner's mining proposals and to outline the intending miner's views concerning the terms and conditions; and

(d) except where the [traditional Aboriginal owners](#) as a group decide, and, through the [Land Council](#), notify the intending miner that the representatives of the intending miner may not attend a subsequent meeting that is so convened--the representatives may attend so much of that subsequent meeting as is appropriate in order further to explain those mining proposals or further to discuss the terms and conditions.

(6) The Minister may, in writing, authorise a specified person, or any person included in a specified class of persons, to:

- (a) attend the first meeting; and
- (b) attend any subsequent meeting.

(6A) However, a person covered by subsection (6) must not attend any subsequent meeting if the [traditional Aboriginal owners](#) as a group:

- (a) decide that the person must not attend; and
- (b) notify the Minister, through the [Land Council](#), of that decision.

(7) If the intending miner and the [Land Council](#) fail, within the period referred to in subsection (3), to agree upon the terms and conditions, either or both of them may, by writing, request the Minister to refer the matters in dispute to a person appointed as a Mining [Commissioner](#) for resolution of those matters by conciliation, or, failing that, by arbitration.

(8) Where a request is made to the Minister under subsection (7), the Minister shall, as soon as practicable, arrange for a person to be appointed as a Mining [Commissioner](#) under [section 48F](#) and that person shall thereupon try, by conciliation, to assist the intending miner and the [Land Council](#) to resolve the matters in dispute.

(9) If the Mining [Commissioner](#) becomes of the opinion that there is no reasonable prospect, by conciliation, of assisting the intending miner and the [Land Council](#) to resolve any matters in dispute between them, he or she shall notify both parties, in writing, that he or she is so satisfied and, unless either party objects, proceed, by arbitration of the matters in dispute, to determine the terms and conditions that should, in his or her opinion, be acceptable to both parties.

(10) If either party objects under subsection (9), the Minister shall, as soon as practicable, arrange for another person to be appointed as a Mining [Commissioner](#) under [section 48F](#) and that person shall, by arbitration of the matters in dispute, determine the terms and conditions that should, in his or her opinion, be acceptable to both parties.

(11) The Mining [Commissioner](#) shall determine terms and conditions that are fair and reasonable and that, in his or her opinion, should have been negotiated by the parties in commercial arms' length negotiations conducted in good faith.

(12) Where the intending miner is willing to enter into an agreement with the [Land Council](#) setting out the terms and conditions determined under this section, the [Land Council](#) shall enter into that agreement.

(13) Where the Minister is satisfied that the [Land Council](#) has refused, or is unwilling, to enter into an agreement in the circumstances referred to in subsection (12), the Minister shall, in the name of, and on behalf of, the [Land Council](#), enter into such an agreement.

(14) Where an agreement is entered into under this section concerning the terms and conditions, the terms and conditions are binding upon the parties and their heirs, successors or assigns.

(15) Nothing in this Part shall be taken to imply that the intending miner must enter into an agreement with the [Land Council](#) to give effect to any terms and conditions determined by the Mining [Commissioner](#) under this section, but, if the intending miner does not enter into the agreement, within 90 days after the determination or such longer period as the Minister may determine on application, within that period of 90 days, by either party, the licence or lease referred to in subsection (1) is cancelled.

(16) Where:

(a) the Mining [Commissioner](#) has, under this section, determined the terms and conditions; and

(b) the intending miner has withdrawn the application for the [grant](#) of the [mining interest](#) because the intending miner is unwilling to accept the terms and conditions so determined;

the Minister shall not consent to the [grant](#) to another intending miner of a [mining interest](#) that will enable the mining of a mineral deposit on the same land, being a deposit that was delineated by a previous intending miner (whether the first-mentioned intending miner or not), unless the Minister is satisfied that the other intending miner has entered into an agreement described in subsection (17).

(17) For the purposes of subsection (16), the agreement shall be an agreement with the previous intending miner or with the heirs, successors or assigns of the previous intending miner to reimburse the previous intending miner, or the heirs, successors or assigns of the previous intending miner, an amount equal to the sum of the exploration expenditure reported by the previous intending miner in accordance with the conditions of the [exploration licence](#) or [exploration retention licence](#) held by the previous intending miner in respect of the land under a [law of the](#) Northern Territory relating to mining for [minerals](#).

(18) Without limiting the generality of the preceding subsections, the terms and conditions of an agreement under this section shall include terms and conditions relating to the payment to the [Land Council](#) of an amount or amounts specified in, or determined under, the agreement.



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