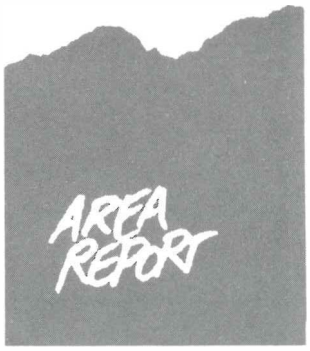

Resource development and Aboriginal land in the Northern Territory of Australia

By Greg Crough

One of the most important issues facing the Australian public and mining industry is whether the present negotiation process with Aboriginal land owners will continue and even be extended to other parts of Australia than the Northern Territory.

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Introduction

In 1976 the Commonwealth Parliament passed the *Aboriginal Land Rights (Northern Territory) Act*. This was the first comprehensive land rights legislation in Australia. Under the Act, most of the former Aboriginal reserves in the Northern Territory became Aboriginal land. This transferred to Aboriginal ownership about 258 km^2 of government reserve land.

In addition, the Act enabled traditional Aboriginal land owners to claim other areas of land. These areas were either unalienated crown land (usually desert and semi-desert), or pastoral land purchased on behalf of Aboriginal interests. The claims are prepared on behalf of the traditional owners by Commonwealth Government-funded Land Councils, and the claims are heard by an Aboriginal Land Commissioner. As a result of the land claims process, it is expected that within a few years almost half of the Northern Territory will be owned by Aboriginal people. At the present time about 35 per cent of the land area of the Territory is under Aboriginal ownership. The Northern Territory occupies about one-sixth of the land area of Australia.

The large areas of Aboriginal land in the Northern Territory demonstrate that the Commonwealth Government can effectively legislate to enable Aboriginal people to gain legal title to their traditional lands. The question many ask is why the Commonwealth is prepared use its constitutional powers to legislate only in the Northern Territory. The Commonwealth Government has avoided acting in the other States on the grounds that land and development matters are primarily the responsibility of State Governments.

Despite the large areas of Aboriginal land, significant numbers of Aboriginal people are living on very small parcels of land excised from pastoral leases, or are struggling to obtain such excisions. Others remain landless, and are forced to live in town camps in the larger urban centres and towns. Even for many of those living on Aboriginal land, the land is often totally surrounded by pastoral leases.

For those people and interests which give primary emphasis to commercial resource development, particularly pastoralism and mining, the large areas of Aboriginal land can easily be portrayed as a threat to their preferred form of development. The traditional Aboriginal land owners have land use decision making powers conferred on them under Commonwealth legislation. They have an ability to make decisions about their lifestyles, society and culture that hundreds of thousands of Aboriginal people in the past two hundred years have been denied.

But even for the traditional Aboriginal land owners of the Northern Territory, this situation is relatively recent. Despite the intentions of the original drafters of the legislation, many Aboriginal claimants have been forced to endure more than a decade of waiting to see parts of their traditional lands returned. Thousands of Aboriginal people will never be in a position to enjoy such an experience, either because they will have passed away, or because they are prevented from claiming their land now that it has been alienated by non-Aboriginal interests. Others are forced to endure long delays as their attempts to secure pastoral excisions are caught up in an inordinately complicated set of procedures.

For those traditional Aboriginal land owners who have been fortunate enough to gain legal title to their lands, notwithstanding their decision making powers under the Act, there has been a considerable degree of pressure placed on them regarding development on their land. Indeed, the pressure to open their land to a variety of commercial resource-based projects is increasing. Even something apparently as straightforward as sealing, or upgrading the standard of a road on Aboriginal land, can put enormous external development pressure on traditional

landowners as their land becomes more easily accessible by tourists.

After more than one hundred years of colonisation in the Northern Territory, Aboriginal people were finally given the opportunity to regain some of their traditional lands. It seemed, for a time during the late 1970s, as if the seemingly inexorable expansion of the limits of the non-Aboriginal frontier had finally been interrupted. In a little over a decade, certain non-Aboriginal interests opposed to Aboriginal land rights have become increasingly assertive. Their cause is substantially helped by the national recession and the country's present economic difficulties. While the outward frontier quickly expanded from the beginnings of first non-Aboriginal settlement in Sydney, Australia's largest city, it was interrupted in northern Australia.

Before it was interrupted, however, the lives of Aboriginal people were disrupted, many were removed from their traditional lands, and commercial interests had immense areas of land and resources made available to them by governments at virtually no cost. It is often forgotten, in the present day debates about the "limitations" on mining and pastoralism, that much of what is now Aboriginal land or land under claim has been subject to considerable exploration and mining activity, and sometimes pastoral activity, in the past hundred years. Many of the largest mining projects in Australia are on Aboriginal land, but were approved by governments in a period well before the Commonwealth was prepared to legislate for land rights in the Northern Territory.

Despite what it often suggested, large areas of Aboriginal land and land under claim are not pristine wilderness. Clearly some of these areas have been little affected by non-Aboriginal activities. But many of the areas are crisscrossed by seismic lines, carry the scars of previous mining activity, and are often hemmed in between other land uses. Some of the pastoral leases which have been purchased on behalf of Aboriginal interests were in a very poor condition at the time of the purchases.

Much of this land is the least well-watered country, and encompasses large areas of harsh, arid desert and semi-desert country. While there is a rich array of sacred sites and other areas of importance to Aboriginal people on this land, there is no denying that the pastoral alienation of the land resulted in most of the best land in the Northern Territory being controlled by non-Aboriginal interests.

The Northern Territory Government, and certain other interests opposed to Aboriginal land rights, have consistently used certain statistics about the proportion of the Northern Territory under Aboriginal ownership to suggest that the development potential of the Northern Territory is threatened.

It is a bizarre situation where the statutory bodies funded by the Commonwealth Government to assist Aboriginal claimants to claim land have been actively undermined by the Northern Territory Government, which is specifically funded by the Commonwealth for the legal costs associated with land claim litigation.

Some examples of mining and exploration on Aboriginal land

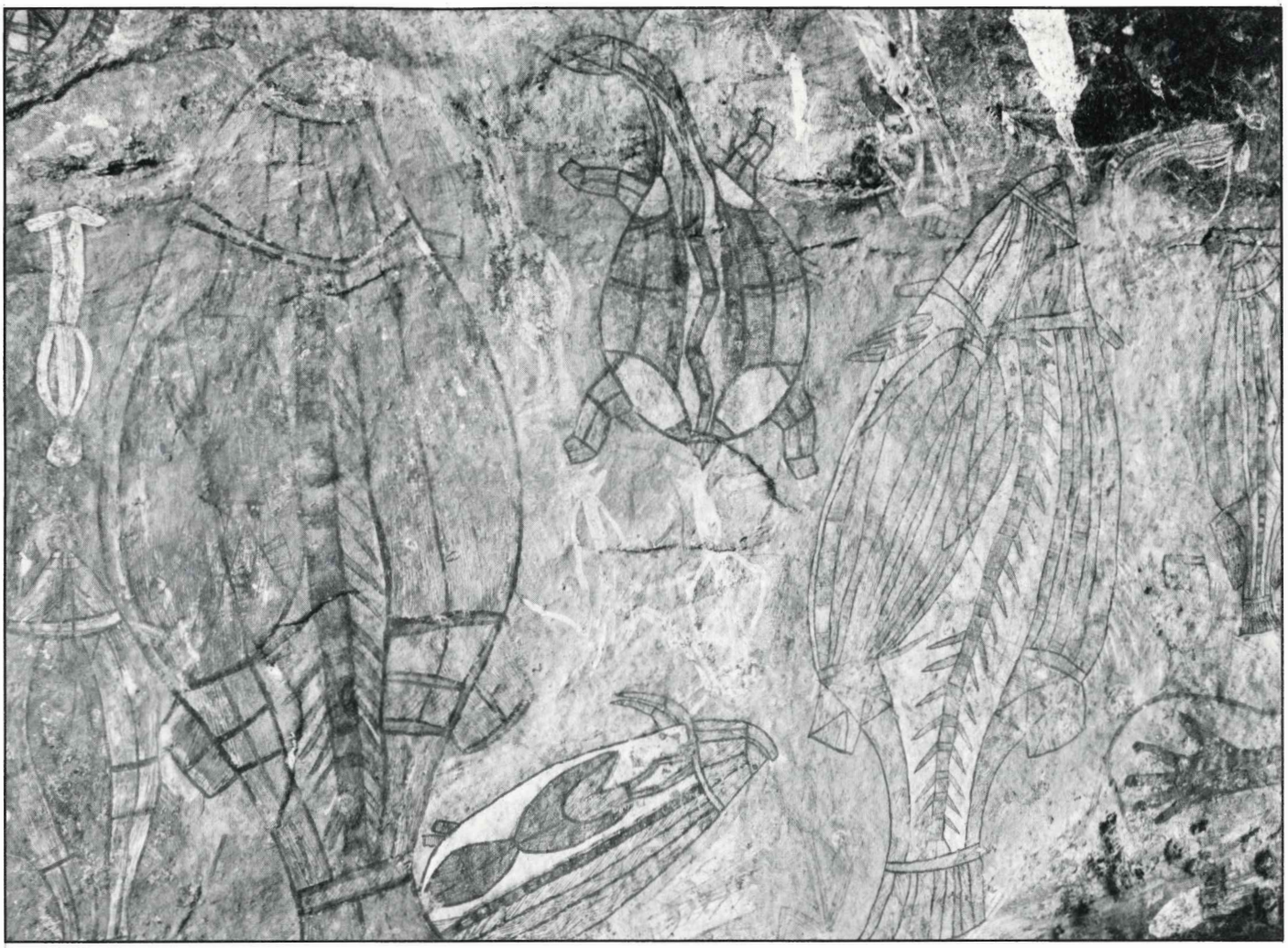
The Arnhem Land Reserve, before it was declared Aboriginal freehold land, had its boundaries changed a number of times, particularly in response to the need to facilitate the exploitation of certain mineral deposits. Perhaps the most publicised change, because of the legal challenge in the Northern Territory Supreme Court mounted by a group of Aboriginal people from Yirrkala, was the excision of 140 square miles from the Reserve to enable the development of the bauxite deposits on the Gove Peninsula by a consortium led by the Swiss Aluminium Corporation (Alusuisse). The size of the area excised provided the company with flexibility for siting of the town, port, alumina refinery and mining activities. As Rowley suggested, it would not be correct to say that the excision of such a large area disregarded the "rights" of Aboriginal people, since "rights had not been conceded in the century and a half of contact" (Rowley 1970, 160).

The bauxite deposit was the subject of the *Minerals (Acquisition) Ordinance 1953*, and Special Mineral Leases were granted to a number of companies in November 1958 and July 1961. In a statement on the Welfare of Aborigines of Gove Peninsula to the House of Representatives in April 1963, the Minister for Territories stated quite simply that:

> "Excision was regarded as the most practical way of handling the administrative arrangements to be made both in respect of the mining venture and the welfare of Aborigines ... When talking of compensation I think that in the interests of accuracy it should be stated that the creation of an Aboriginal reserve in 1931 did not create any legal title to the land or resources of that reserve for those living on it" (Hasluck 1963, 483).

The bauxite mining and alumina refining project on the Gove Peninsula is one of Australia's largest mineral projects, and since production commenced in 1971 has generated hundreds of millions of dollars in revenue. The value of production of the project in 1990 was more than 531 MAUD.

The Aboriginal people of Groote Eylandt, who had been living on what was formerly a separate reserve which was incorporated in the Arnhem Land Reserve in 1963, have been similarly affected by a large scale mining project. In July 1964 the *Groote Eylandt Mining Company Pty Ltd* (GEMCO), a subsidiary of the Broken Hill Proprietary Company Ltd, was granted Special Mining Leases over an area of 33 km^2, for a re-



newable period of 21 years. This is also one of Australia's largest mining projects, and the value of production was estimated at about 260 MAUD in 1990.

Probably the most contentious mineral development, from a broad national perspective, was the approval of the development of the Energy Resources of Australia Ltd uranium mine in the Kakadu National Park region. The history of the development of this mine is too complex to discuss here, and is presently the subject of protracted legal action between the Northern Land Council, the company and the Commonwealth Government. Another uranium mine, operated by Queensland Mines Ltd at Nabarlek in Arnhem Land, met with strong objections from Aboriginal people nearby in Oenpelli.

However, because the discovery of the uranium deposit preceded the *Aboriginal Land Rights (Northern Territory) Act* the traditional owners could not prevent the mine from proceeding.

Two other large uranium deposits within Kakadu National Park, the Jabiluka and Koongarra deposits, are the subject of Special Mineral Leases which also predate the Act. Their development is precluded by existing Commonwealth Government policy.

While some Aboriginal people were consulted about these mining projects, since they had no legal title to the land they were in no position to negotiate the terms and conditions of the projects. As one of the Aboriginal Land Commissioners indicated:

> "A major problem for Aboriginal people has been and continues to be the failure to have any property rights in land because without that there is no way they can make people negotiate with them. They are only ever consulted and consultation is of no value because in the end people in consulting Aborigines have made decisions, or they have not consulted them. They do not really listen to them, there is no bargaining and no negotiation"
>
> (Aboriginal Land Commissioner 1979, 50).

The same point was made by Commissioner Johnston in his *National Report of the Royal Commission into Aboriginal Deaths in Custody*, which was released in April 1991.

The first recommendation on "Self Determination" refers explicitly to the need for negotiation with appropriate Aboriginal communities and organisations (Johnston 1991, 7). Without land rights legislation in the Northern Territory, it is hard to see how relations between Aboriginal and non-Aboriginal people would have advanced much beyond the stage of consultation within a pre-determined non-Aboriginal policy agenda.

In the reports of Aboriginal Land Commissioners there are many references to exploration and mining activity on the land that has subsequently become Aboriginal land, or been claimed. The information in these reports gives a good indication of the extent to which mining and exploration has already impacted on the lives of Aboriginal people.

There are a number of Aboriginal land claims which cover large areas of land in

Four of Australia's major uranium deposits, Jabiru, Nabarlek, Koongarra and Jabiluka, are situated in the Northern Territory. They are all located on Aboriginal land, within Kakdu National Park. However, because the uranium deposits are subject of Special Mineral leases which predate the Aboriginal Land Rights Act, the traditional owners have not been able to prevent the mines from proceeding. Photo shows Aboriginal rock paintings in caves at Obiri Rock, near the Arnhem land border.

the Tanami Desert. Justice Toohey's Report on the Warlmanpa, Warlpiri, Mudbura and Warumungu Land Claim (Aboriginal Land Commissioner 1982b) refers to the "gold rush" around the Tennant Creek region, which began in late 1933, which precipitated the revocation of the original Warramunga Aboriginal Reserve.

The land in the Kaytej, Warlpiri and Warlmanpa land claim, south west of the above claim, was similarly affected by the gold boom of the early 1930s. According to Justice Toohey:

> "Increases in the price of wolfram led to the establishment of mines at Barrow Creek and Wauchope. Mines were operating also in the western Warlpiri country – at Mount Hardy, Mount Doreen, Tanami and the Granites; and in eastern Kaytej country at Hatches Creek. The mining industry depended upon labour and many Warlpiri and Kaytej were employed carting rock and working windlasses."
>
> (Aboriginal Land Commissioner 1982b, 6).

Very considerable tungsten and wolfram mining occurred in the Hatches Creek region, on some of the land included in the Wakaya/Alyawarre land claim. Justice Toohey noted that at the height of the World War II boom there were than 200 miners at Hatches Creek, although there has been little activity there since 1957 (Aboriginal Land Commissioner 1991, 51).

The *Report on the Daly River (Malak Malak) Land Claim* notes that the claim area includes land where copper had been mined and where silver, lead and zinc prospects have been explored since the 1890s. Justice Toohey refers to the violence between Aboriginal and non-Aboriginal people at the Coppermine in 1884, which resulted in four miners being killed. During the period 1972-77 more than 40 mineral leases were pegged and applied for by one company, Western Nuclear Australia Ltd, and the time of the land claim the entire area was covered by exploration licence applications (Aboriginal Land Commissioner 1982a, 2, 73).

For many of the other areas of land under claim, there are, or were at the time of the claim, pre-existing exploration licences. For example, virtually all of the land of the Stokes Range land claim was covered by two exploration licences. Some of the land in the Nicholson River (Waanyi/Garawa) land claim was covered by exploration licences and mineral leases. An exploration licence was granted by the Northern Territory Government to part of the Garawa/Mugularrangu (Robinson River) land claim in 1988, six years after the claim was lodged by the Northern Land Council. A large number of mining leases and exploration licences cover the land included in the Finniss River land claim. Even one of the most inaccessible parts of the Northern Territory, included in the Western Desert land claim, was almost completely covered by exploration leases.

All of these interests are protected under certain provisions of the *Aboriginal Land Rights (Northern Territory) Act*.

Aboriginal land and the present "development" debate

In early 1992 Australia is deep in recession. At least one million people are unemployed, industrial production is continuing to decline, Australia's foreign debt is still rising, and there appears to be no solution in sight to the country's international trade difficulties. As is usual during a period of economic and social difficulty, large sections of the community are desperate to blame someone else for their problems.

Sometimes it is newly-arrived migrants, particularly migrants of Asian origin, who are supposed to be taking jobs away from "Australians", or are content to claim social security benefits. At other times it is environmentalists, who are said to be undermining "development" because of their insistence that decision-makers take more account of environmental factors. This might be acceptable in a boom, but, so the argument goes, the country cannot afford such a luxury at this time.

Another group which is more subtly being blamed are Aboriginal people who own land. Many Australians are not prepared to openly criticise traditional Aboriginal land owners, although many are quite happy to blame their "white advisers". But there is no doubt that as the recession continues, certain interests, particularly the mining industry and sections of government, are becoming more vocal and more assertive. *The Aboriginal Land Rights Act (Northern Territory)* has been a particular focus of criticism for a number of years, but even where Aboriginal people have no real rights to control development, particularly in Western Australia and Queensland, Aboriginal people and their advisers have been still been subjected to strong criticism.

For example, the Western Australian Government announced that it would amend its heritage legislation, and the Legislative Assembly passed *the Aboriginal Heritage (Marandoo) Bill* in February 1992 to facilitate the development of the very large Marandoo iron ore project. As the Minister for Aboriginal Affairs stated in her introduction to the bill:

> "This Bill has been prompted by ongoing concern about balancing the need for development projects in these difficult economic times with the legitimate needs of Aboriginal people to have their culture and heritage protected not only for their benefit but also for the benefit of future generations of Australians" (Watson 1992, 7913).

This quote reflects an increasing trend in public debate in Australia about land use and development issues. Aboriginal peo-

ple have made important gains in the Northern Territory. But there is no doubt that certain industry groups believe that Aboriginal people have achieved too much, and these groups are prepared to voice this concern very publicly.

The argument is that the costs of the recession have to be borne equally by everyone in the community. In a depressed economic climate, these types of views appear perfectly reasonable.

They are very much like the nineteenth century view that the rights of Aboriginal people could be ignored because economic growth, industrial development and "progress" were more important. In the end Aboriginal people would benefit once they became assimilated into the non-Aboriginal population.

The Commonwealth Government is obviously not immune from these views. Many senior public servants, and some ministers, actively promote these ideas. Indeed, now that the decision to prevent mining at Coronation Hill has been made, some ministers seem intent on ensuring that such a decision will never be made again.

Under pressure from the mining industry, in particular, the *Aboriginal Land Rights (Northern Territory) Act* has been amended a number of times. The most comprehensive amendments to the mining provisions of the legislation were in 1987. Despite the success of the industry in having the Act changed, criticism of the operations of the mining provisions and of the two major Northern Territory Land Councils has continued. The industry has been strongly backed by the Northern Territory Government. The decision by the Commonwealth Government at the end of 1991 to prevent gold and palladium mining at Coronation Hill in the Northern Territory, based primarily on Aboriginal social and cultural grounds, has further enraged the industry, and led to calls for more open access to Aboriginal and other land.

However, it should be noted that the mining industry, and most notably its representative body, the *Australian Mining Industry Council* (AMIC), has been critical of certain provisions of the legislation for about two decades. In the Second report of the Aboriginal Land Rights Commission, Justice Woodward summarised the position of the industry as put to him by AMIC. It is remarkable how consistent the industry's position has been over this period.

AMIC argued that nothing should be done to stifle discovery and development; the mineral wealth belongs to the whole community, and no landowners should be in a position to "lock away" such valuable resources; any form of assistance which would significantly set Aboriginal people apart from the rest of the community would be disruptive; traditionally, the minerals and metals of modern civilisation had never been part of Aboriginal life; governments must retain the power to grant exploration and mining titles over areas independent of other land use; in granting land rights to Aborigines the land titles should not carry with them any measure of mineral ownership; mining will only occupy a minute proportion of the areas presently reserved for Aborigines; the rights of Aborigines in relation to mineral developments on their land should take place within the existing legal framework; and it would be undesirable to allow negotiations for an interest based on the value of the minerals.

After considering the industry's position, Justice Woodward concluded:

> "I believe that to deny to Aborigines the right to prevent mining on their land is to deny the reality of land rights" (Woodward 1974, 102-104).

When the Commonwealth announced in 1989 that the Industry Commission would undertake an inquiry into mining and minerals processing, many in the industry and government expected that the Commission would recommend substantial changes to the Act. One of the terms of reference related specifically to access to land.

In its submission to the Commission, AMIC argued that the "veto powers" of traditional Aboriginal land owners should be removed and a set of non-discriminatory access provisions should be established with simpler administration; negotiations should incorporate earlier participation by traditional owners; and Aboriginal land should be made available for exploration on a similar basis to other land, subject to appropriate protection of Aboriginal social, cultural and spiritual interests. The general flavour of AMIC's submission can be seen from the following quote:

> "... since the late 1960s the industry has witnessed a steady encroachment over vacant Crown land and leasehold, particularly for the purposes of creating new conservation areas and for the allocation of land to Aborigines. With exploration and mining effectively prohibited in national parks and conservation reserves, and with the granting of the right to Aboriginal landowners to veto exploration or mining access, the industry now faces a situation where over 20 per cent of the Australian land mass is effectively sterilised from exploration or mining" (Australian Mining Industry Council 1990, 34-35).

While the Industry Commission did recommend a number of changes to the *Aboriginal Land Rights (Northern Territory) Act*, it generally reinforced the views of Justice Woodward. On the issue of whether the Act was undermining the industry in the Northern Territory, the Commission concluded:

> "The holding of land rights may lead to smaller levels of mining (and more particularly exploration) activity in the Territory, relative to those which would have occurred. However, provided Aboriginal

landowners face appropriate incentives, it would be wrong to conclude from this that land and subsurface resources were not being devoted to their socially optimal use" (Industry Commission 1991, 67).

On the so-called "right of veto", the Commission stated:

> "The Commission accepts that Aborigines should have a right to veto mineral development on their land" (Industry Commission 1991, 68).

There is increasing pressure to amend the Northern Territory legislation, and a round-table conference to discuss possible amendments was jointly convened by the Minister for Aboriginal Affairs and the Minister for Resources at Yulara in mid-March. The Minister for Resources has made his view very clear:

> "The Act, which is designed to assist the Aboriginal people, has caused more divisions in the Northern Territory than any other piece of legislation, and if not amended it will prove to be more of a deterrent than a boost to Aboriginal development and self-management" (reported in The Australian, 9 March 1992).

The views of the Minister for Aboriginal Affairs on this issue are less clear, although in deciding not to use his powers under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* to prevent mining at the Yackabindie project in Western Australia, the Minister was reported as saying that the primary concerns of the local Aboriginal people could be met through employment and training programs.

Although the mining industry has persistently argued the case for the further opening of Aboriginal land to resource development, there is another significant group in the Australian community that values this land for other reasons. The Commonwealth has recently released a report on wilderness in Australia, which includes extensive discussion of the relationship between concepts of wilderness and Aboriginal land use practices. What is clear from the report is that the overwhelming proportion of so-called wilderness in Australia is in fact Aboriginal land, or land under claim. The largest areas, understandably, are in the Northern Territory, Western Australia, South Australia, and Cape York Peninsula (Robertson, Vang and Brown, 1992).

Conclusion

It is not uncommon to see in the media statements by government ministers and industry leaders about the need to do something about the country's economic problems. The public has been offered the competing visions of the Government's "One Nation" package and the Opposition's "Fightback!" package. Both sides have promised to encourage large scale resource projects, with "fast-tracking" the new buzz word.

Unfortunately, Aboriginal people in some of the more remote parts of Australia are being seriously affected by parts of this agenda. For many Aboriginal people, there is nothing new in what is happening. Aboriginal land, long unwanted because it was seen as wasteland, has increasingly become valuable to sections of the non-Aboriginal community. Access to this land for "development" has become, in the eyes of some groups, absolutely essential to the future economic welfare of the country.

Aboriginal people are not inherently opposed to commercial development on their land, as the evidence from the Northern Territory demonstrates. But it must be on their terms and at a pace that they determine. At the moment, despite the external pressures, this is largely still the case for those Aboriginal people who have successfully obtained title to their land. The *Aboriginal Land Rights (Northern Territory) Act* requires non-Aboriginal interests wishing to obtain access to Aboriginal land to ***negotiate*** with traditional Aboriginal land owners, and not just consult them. Whether the Australian community is prepared to allow that situation to continue, and indeed to extend it to Aboriginal people in other parts of Australia, will be one of the most important issues facing the country in coming years.

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