ABORIGINAL LAND RIGHTS – THE PREFERRED COMMONWEALTH MODEL

By Douglas G. Williamson* Q.C.

NATIONAL LAND RIGHTS LEGISLATION

Preferred National Land Rights Model

On 20 February 1985 the Commonwealth Minister for Aboriginal Affairs released proposals which the Commonwealth put forward as the basis for national Aboriginal land rights legislation. A copy of the proposals is set out in full as an attachment to this paper. The Minister, Mr. Holding, said that it was intended that consultation would take place with State and Territory Governments, as well as with Aboriginal, mining, rural and other groups, to gauge their responses to the proposals.

It was stated that the proposals, by their nature, were not advanced as a final outline of Commonwealth legislation, but as a preferred basis for the purpose of consultations. The Minister indicated that he would be reporting back to Cabinet once consultations had concluded. Consideration would then be given to specific proposals for legislation, taking full account of the concerns and suggestions put to the Government.

The Proposals

The Preferred Model is couched in broad terms, with no attempt by Government at this stage to descend to the level of particularity necessary for legislative drafting. Obviously, much will turn upon the precise provisions eventually adopted.

It is proposed that national legislation will operate concurrently with 'compatible' State legislation. The Aboriginal Land Rights (Northern Territory) Act 1976 (Cth.) will be amended consistently with the national legislation.

The proposals cover a very wide range of subject matter:

- Title to Aboriginal land, the availability of land for claim, land claim procedures, the assessment of claims, protection of prior interests, the excision of community living areas from pastoral properties, access to Aboriginal land.
- Mineral exploration and development on Aboriginal land, the status of existing mining interests.
- Identification, declaration and protection of sites of significance.

It is necessary to read the proposals in full, but in this paper it is convenient to summarize the features relating to mineral exploration and development.

* LL.B. (Hons.)(Melb.) Q.C. Barrister Vic., N.S.W., W.A., A.C.T., Tas.

Exploration and Development

The proposals contain the following general propositions:

- No Aboriginal veto over exploration or mining.[1]
- Appropriate compensation for actual damage or disturbance to land, such compensation not to take into account the value of minerals — no private royalties.[2]
- Aboriginal access to a proportion of ordinary royalties received by Government.[3]

The above propositions are then elaborated with respect to exploration titles and mining or development titles.

Exploration Title

Consent by the Aboriginal land holder and agreement as to terms and conditions must be sought prior to grant of exploration title.[4] If consent is not given, or agreement is not reached, there will be reference to an independent Tribunal (or other appropriate authority), which will make recommendations to Government.[5]

The Tribunal will have regard to the criteria specified in clause 9.9, which include benefits to the economy, the activity to be carried out, the wishes or objections of the Aboriginal land holder, and proposals to minimize disruption.

Government will determine whether and on what terms and conditions exploration will take place, having regard to the views of the parties, the recommendations of the Tribunal, and terms and conditions set out in legislation. The latter will include provisions for protection of declared sacred sites and compensation for damage or disturbance to land.[6]

Subsequent Title

Aboriginal consent or Government approval of exploration will include the applicant's right to apply for a mining or production lease on that land.[7]

Mining or Development Title

Title to mine for minerals or petroleum will be granted subject to agreement with the Aboriginal land holder on terms and conditions. If agreement is not reached, there will be reference to an independent Tribunal (or other appropriate authority) to 'determine' compensation

1 Commonwealth Preferred National Land Rights Model. Released 20 Feb. 1985 cl. 9.2.
2 *Ibid* cl. 9.4.
3 *Ibid* cl. 9.5.
4 *Ibid* cl. 9.7.
5 *Ibid* cl. 9.8.
6 *Ibid* cl. 9.10.
7 *Ibid* cl. 9.12.

payable and to 'recommend' to Government such other terms and conditions that it considers should be acceptable to both parties.[8]

In determining compensation for 'actual damage', the Tribunal will have regard to any 'special sensitivity' involved in the 'relationship of the land', and to 'loss or damage (social or spiritual)' likely to be suffered.[9]

The Tribunal will take into account proposals to minimize loss or damage, and the wishes of the Aborigines as to the form of compensation, but will not have regard to the value of the minerals proposed to be mined.[10]

In making recommendations to Government on other terms and conditions, the Tribunal will have regard to the criteria listed in clause 9.16. Those criteria refer to various forms of physical and cultural impact caused by the project, and the impact of the proposed terms and conditions (including compensation) upon the economic viability of the project.

The determination of the Tribunal as to compensation will be 'definitive', but after considering the Tribunal's recommendations, Government will decide on what terms and conditions mining is to take place pursuant to clause 9.17.

Initial Response to Proposals

The proposals achieved a notable double by attracting swift disapproval from mining interests and Aboriginal interests alike.

The Australian Mining Industry Council saw the proposals as a modification of the Northern Territory legislation to bring it more into line with the South Australian legislation, and contended that each of those models had disastrous effects. Criticism was directed particularly to what was described as restricted access to land, unlimited compensation, and insufficient protection of existing mining titles. The mechanisms for Tribunal and Government review were described as productive of uncertainty, delay and animosity, the deterrent effect of which would constitute a *de facto* veto. It was urged that the Western Australian draft legislation should be the basis of any national model.

Aboriginal representatives saw the proposals as destructive of effective Aboriginal veto. It was contended that denial of the ability to control exploration or mining on Aboriginal land was a denial of the fundamental nature of Aboriginal land rights. Aboriginal opposition was strongly expressed in demonstrations at Canberra in mid-May, 1985. It was reported in the *Australian* (22 May 1985) that the Minister for Aboriginal Affairs would recommend to the Prime Minister that the proposed introduction of national legislation in the Budget session of Parliament should be delayed. It was also reported that the Prime Minister was considering allowing more time for Aboriginal consultation, including a series of national and State Aboriginal forums.

8 *Ibid* cls. 9, 13, 14.
9 *Ibid* cls. 9, 15.
10 *Ibid* cls. 9, 15.

Further Comments

Recent developments in the States and Northern Territory are discussed in the following pages. The impact of the Preferred Model is considered from the viewpoints of both the Aboriginal Land Councils and the Australian Mining Industry Council respectively below. Accordingly comments upon the Preferred Model in this paper will be restricted to a few selected issues.

Consent and Compensation

One issue is the extent to which consent and compensation can be separated. In the abstract, either there is a valid objection to exploration and mining, or there is not. If there is a valid objection, compensation is not the answer. In practice however, the giving of consent ordinarily depends upon the outcome of negotiations for the terms and conditions. The Preferred Model appears to accept the reality of that position.

The Assessment of Compensation

A second issue is the approach to assessment of compensation. Section 12(2) of the Northern Territory Act (as amended in 1980) provides that a deed of grant of Aboriginal land shall be subject to the reservation that minerals remain vested in the Crown. Section 43(1) provides that in consideration of consent to the grant of a mining interest a Land Council may require payment and such other terms and conditions as are agreed.

The writer is more familiar with the views of the Central Land Council ('CLC') than other Land Councils, but assumes that the CLC views are typical in the present context. It would appear that the Council rejects the notion that payments under the Act should be confined to compensation for physical damage, economic loss and cultural disturbance. Instead, the statutory provisions are regarded as giving rise to commercial rights in the Aboriginal people to share in the proceeds of resources development. Miners, on the other hand, reject the view that the traditional owners have a commercial interest in minerals that they do not own.

It is against this background that the Preferred Model proposes that the value of minerals in the ground should not be taken into account when assessing compensation. However, a proposal to consider the impact of proposed terms and conditions upon the economic viability of the project[11] has the potential to be inverted into consideration of the maximum compensation that the project can bear. That prospect, plus the intangible nature of some of the forms of damage to be compensated, is likely to excite attention amongst miners.

11 *Ibid* cls. 9, 16.

Exploration and Mining

The link between Aboriginal consent to exploration and entitlement to proceed with subsequent mining gives rise to real problems for Aborigines and miners alike.

Section 40(2) of the Northern Territory Act provides that if an explorer puts before a Land Council proposals for both exploration and the recovery of minerals, and the Council consents to a grant of an exploration licence, then subsequent consent is not required for the grant of a further mineral interest for the recovery of minerals, if it is in substantial accordance with the earlier proposals for recovery. There is however, the need pursuant to section 43(2) to reach agreement upon terms and conditions for the grant of a further mineral interest.

The contrast between section 40(2) and the proposals in clauses 9.12 and 9.13 is significant. There is no requirement in the Preferred Model to put up proposals for mining at the outset, and if consent to exploration is granted, there is no requirement for later consent to mining. There is however, the need to reach agreement upon terms and conditions for mining.

The proposals have not taken the path recommended by Mr. Justice Toohey in his report 'Seven Years On', that an alternative be added to section 40(2) whereby consents to exploration and mining could be approached 'disjunctively', *i.e.*, separately and successively. The problem about that recommendation is the unwillingness of an explorer to spend millions of dollars, and several years of time upon exploration with no real expectation that a mining title will follow in the ordinary course of events.

It seems however, that the proposals leave the Aboriginal land holder with the same problem that he has under section 40(2) of the Northern Territory Act — should he consent to exploration, with clause 9.12 consequences, if he does not have adequate knowledge of what is likely to happen if mining were to proceed? He may be interested in something more fundamental than clause 9.13 compensation. There is a danger that the proposals may reinforce the reluctance of the Aboriginal land holder to consent to exploration in the first place.

Perhaps the practical course is for the explorer to give to the Aboriginal land holder such limited information as is available about potential mining at the pre-exploration stage, and at the post-exploration stage the land holder may need to rely upon the provisions proposed in clause 11 for the protection of sites of special and sacred significance when and if specific mining proposals do arise for consideration.

Sites of Significance

Clause 11 of the proposals appears to foreshadow the next stage in the evolution of the Aboriginal and Torres Strait Islander Heritage (Interim Protection) Act 1984 (Cth.). The Interim Protection Act has a sunset provision[12] by which it will cease to be in force at the expiration of two years from the commencement date, 25 June 1984.

12 S.33.

The Interim Protection Act operates concurrently with consistent State and Territory heritage legislation (section 7). Its expressed purposes are the preservation and protection from injury or desecration of 'areas' and 'objects' in Australia and in Australian waters, being areas and objects that are of 'particular significance' to Aboriginals in accordance with Aboriginal tradition.[13] The concept of Aboriginal tradition is given a statutory definition[14] that is capable of extremely wide application. The Act is not confined in operation to Aboriginal land, and thus it may be applied to an area (which is defined to include a site) or an object on either Crown land or private land.

The Interim Protection Act vests a wide discretion in the Minister for Aboriginal Affairs to make a protective declaration in respect of an area or object, and for authorized officers to make emergency declarations of very short duration. The Act prescribes offences and substantial penalties for contravention of a provision of a declaration.

In answer to criticism that the Interim Protection Act may provide a means for Aborigines to claim *de facto* land rights in the absence of land rights legislation, it was stated the legislation '. . . is not interim land rights legislation nor is it intended to be an alternative to land claim procedures. The Minister will not be making declarations with respect to vast areas of land in *de facto* recognition of a claim which Aboriginals may wish to make later under another law'.[15]

No doubt similar questions will be raised with respect to the proposals in clause 11 of the Preferred Model, particularly concerning the potential impact of the proposals upon existing mining interests, whether on Crown land or private land.

Under the proposals the functions presently exercised by the Minister will be exercised by 'a separate independent Commonwealth Authority', which will conduct hearings and evaluate claims for protection.[16] Primary responsibility for protection will remain with the States where relevant legislation exists, but an overriding responsibility ('in the nature of an appeal' against State refusal of protection) appears to be envisaged in clauses 11.2 and 11.4

It remains to be seen what circumstances will constitute 'such special and sacred significance'[17] that sites will be protected under the Preferred Model. This terminology may be compared with the requirement for 'particular significance to Aboriginals in accordance with Aboriginal tradition' in the definitions of significant Aboriginal area and significant Aboriginal object in section 3(1) of the Interim Protection Act, and the requirement for 'fundamental importance to the traditional owners' in the definition of sacred site in section 3 of the Maralinga Tjarutja Land Rights Act, 1984 (S.A.).

13 S.4.
14 S.3(1).
15 'How the Act Works' Dep't of Aboriginal Affairs, 1984.
16 *Supra* cl. 11.3.
17 *Ibid* cl. 11.3

Helpful discussions of the detailed provisions of the existing Commonwealth and South Australian protection legislation are contained in the articles by David Bennett Q.C. and Charles Bagot in *AMPLA Bulletin.*[18] C. Bagot discusses further the protective and other provisions of the South Australian Act below.

The proposals in clause 11 of the Preferred Model should be considered against the background of the existing Commonwealth and South Australian legislation referred to above.

18 (1984) 3 *AMPLA Bulletin* 39 and 34 respectively.

ATTACHMENT

COMMONWEALTH PREFERRED NATIONAL LAND RIGHTS MODEL
Released 20 February 1985

1. General Principles

1.1 Commonwealth legislation to:
- be capable of operating concurrently with compatible State legislation;
- be capable of embracing proposed as well as existing State laws;
- add rights to those accorded under State laws where necessary.

1.2 The Aboriginal Land Rights (Northern Territory) Act 1976 to be amended consistent with the Commonwealth preferred model.

1.3 The Commonwealth not to seek to override State land rights legislation which is consistent with the Commonwealth's preferred model.
- The application of Commonwealth legislation to depend ultimately on the action of the States to implement land rights legislation.

1.4 Aboriginal land to be subject to normal Commonwealth laws and to State laws to the extent they are consistent with the principles in Commonwealth legislation.

2. Title to Aboriginal Land

2.1 Title to Aboriginal land to be vested in local, or as appropriate regional, Aboriginal bodies established for this purpose.
- These bodies to be supported by regional and local organisations to represent community interests, facilitate land claims and to administer matters in respect of Aboriginal land.

2.2 Land vested in these Aboriginal bodies as a general rule to be held under inalienable freehold title
- and not to be sold, mortgaged or otherwise disposed of by the holders of this title.

2.3 Alternative forms of title (including partially alienable title) to be permitted in limited circumstances
- to ensure consistency with surrounding title such as in non-tribal or urban areas;
- where Aboriginal people so require and land is granted as a result of direct negotiation with the relevant Government.

2.4 Grants of inalienable freehold title should be made in respect of
- Aboriginal reserves and mission land currently occupied by Aborigines; and
- land granted as a consequence of successful land claims.

3. Claiming and Vesting of Lands

3.1 All Aboriginal reserves and mission land currently occupied by Aborigines to be available for direct grant to relevant Aboriginal bodies.

3.2 Land to be available for claim by Aborigines:
- former Aboriginal reserves and mission land which are currently vacant Crown land, unoccupied and unallocated
- vacant Crown land which is subject to a mining interest or tenement (Subject to considerations set out in Section 10)

- all other vacant Crown land which is unused and unallocated for other purposes
- Commonwealth National Parks, where applicants can establish that they have a traditional entitlement or historical association with the land and are willing to accept a grant of land conditional upon its continued use as a National Park.

3.3 Land not available for claim:
- all private land
- land set aside for public purposes, including stock routes and stock reserves
- existing public roads
- any other alienated land, including land such as pastoral leases in which all interests are held by or on behalf of Aborigines.

4. Land Claim Procedures

4.1 Aboriginal claims for land grants to be on the basis of:
- traditional entitlement;
- historical association;
- long term occupation or use; and/or
- specified purposes (for example, the needs of town campers).

4.2 Applications for land grants to be made within 10 years of the proclamation of the legislation.

5. Assessment of Claims

5.1 Provision to be made for respective parties to resolve claims to vacant Crown land through a process of negotiation and agreement.

5.2 An independent Tribunal or other appropriate authority to be available in each State and Territory to consider and recommend on applications for land grants where
- there is a dispute with respect to an application
- competing claims are made over the same area
- issues of detriment (or other issues) arise.

5.3 All parties with an interest in the claim to have an opportunity to put their case to the Tribunal.
- Governments to ensure that all parties have equal rights in presenting their case in respect of land claims, including access to legal aid.

5.4 The Tribunal to assess the merits or otherwise of each application and to make appropriate recommendations to Government concerning the granting of the land as Aboriginal land.
- The Tribunal to determine the compensation to be payable in respect of property, improvements and other interests in the land which is subject to a successful land claim or site protection.

5.5 Where the Government does not accept in part or full the recommendations of the Tribunal on the granting of the land claim, relevant parties to be advised of the reasons for that decision.

6. Protection of Prior Interests

6.1 All legitimate prior interests in land the subject of claim or grant to be protected, including
- existing recreation and mining interests (See Section 10)
- existing rights to use of water courses through and other bodies of water within claimed area
- right of access to travel over public roads.

6.2 New roads constructed over Aboriginal land, not being land previously set aside for that purpose, to be the subject of negotiation with affected Aboriginal communities including as to terms and conditions of use
- if necessary with reference to an independent Tribunal for recommendation to Government.

7. Community Living Areas

7.1 Provision to be made in each State and Territory for Aborigines to apply for excision of community living areas from pastoral properties within five years of the proclamation of the legislation.
- This procedure to apply primarily, if not exclusively, in the Northern Territory and Western Australia where legislative proposals are currently under consideration.

7.2 Applications for such excisions to be on the basis of long term residence on or use of the land by the applicants or their parents.
- Such excisions to relate to living area needs only and not form the basis of land claims.

7.3 Aboriginal people to be permitted access to pastoral properties for the purposes of preparing a claim for excision, subject to appropriate safeguards to
- protect the privacy of the pastoralist and other residents of the property
- avoid disruption to the pastoral operation.

7.4 An independent Tribunal or other appropriate authority to assess applications and make recommendations to Government on the granting or otherwise of the excision, having regard to the relevant criteria including
- the continued viability of the pastoral property
- the privacy of other residents.

7.5 Secure title to be granted to community living areas excised from pastoral properties. Title to rest with the Aboriginal community concerned
- In the event of long term abandonment (but not less than three years), the pastoralist on the property from which it was excised may apply for return of the area.

7.6 Compensation to be payable to the pastoralist in respect of property, improvements and other interests in the land excised.

7.7 Commercial activities on the excision, such as the running of cattle, to be undertaken only with the agreement of the pastoralist and to be subject to any statutory approval.

7.8 Living areas to be subject to normal Commonwealth laws and State laws to the extent they are consistent with Commonwealth law.

8. Access to Aboriginal Land

8.1 Access to Aboriginal land generally to be subject to the consent of the Aboriginal land holder.

8.2 Appropriate recourse to the law to be available to Aboriginal land holders in respect of a breach of conditions applicable to entry to and use of Aboriginal land, with appropriate penalties to be provided.
- A breach of conditions under the permit of entry for general prospecting purposes to result in a penalty, suspension or revocation of the permit for that area, as appropriate.

8.3 Right of access for Commonwealth and State officials on duty to be preserved.

9. Mineral Exploration and Development on Aboriginal Land

9.1 Aborigines are to be able to exercise substantial rights over exploration and mining on their land and be given an opportunity to seek a negotiated settlement or to raise objections and argue their case before an appropriate Tribunal if they do not wish activity to proceed.

9.2 There is to be no veto over exploration or mining on Aboriginal land

- the final decision on whether exploration or mining is to proceed on Aboriginal land to rest with Government.

9.3 Mechanisms to resolve disputes over access to Aboriginal land not to constitute a de facto veto.

9.4 Aborigines to be entitled to appropriate compensation for actual damage or disturbance to their land, such compensation not to take into account the value of minerals likely to be discovered or mined (i.e. no private royalty to be payable).

9.5 Aborigines to have access to payments in the nature of mining royalty equivalents, i.e. a payment made by Government which represents a proportion of the ordinary royalties received by Government in respect of mining on Aboriginal land. The relevant Government to determine the proportion to be so paid and the distribution of such payments to the Aboriginal people, including those affected by mining operations.

(a) General Prospecting (Pre-title)

9.6 Entry to Aboriginal land for general prospecting purposes (i.e. pre title) to require an appropriate permit of entry issued under relevant State or Territory mining legislation.

(b) Exploration Title

9.7 Title to prospect or explore for minerals or petroleum on Aboriginal land not to be granted except

- with the prior consent of the Aboriginal land holder and agreement as to the terms and conditions on which such exploration is to take place; or
- on such terms and conditions as are approved by the Government.

9.8 In the event that either

- consent of the Aboriginal land holder is withheld; or
- consent is granted subject to terms and conditions which are unacceptable to the applicant; or
- the land holder fails to decide on an application for exploration within six months

the matter to be referred to an independent Tribunal or other appropriate authority for consideration and recommendation within a specified time to Government.

9.9 In considering its recommendations on whether exploration should take place on Aboriginal land, the Tribunal/authority to have regard to specific criteria including:

- the nature and extent of the benefits flowing to the economy as a whole from exploration and any subsequent mining activity;
- the size, location and type of activity to be carried out;
- the wishes or objections of the Aboriginal land holder to exploration and any subsequent mining activity taking place on their land;
- proposals by the applicant to minimise any disruptive activity.

9.10 After considering the Tribunal's recommendations, Government to determine within a specified time whether and on what terms and conditions exploration is to take place on Aboriginal land, having regard to:

- the views of the land holder and the applicant;
- the recommendations of the Tribunal/authority;
- terms and conditions set out in legislation for exploration on Aboriginal land, including protection of declared sacred sites and compensation for damage or disturbance to the land.

9.11 Consent by the Aboriginal land holder or approval by Government to exploration on Aboriginal land to include the applicant's right to apply for renewal of that title, subject only to the terms and conditions agreed with the land holder or determined by the Minister remaining appropriate.

9.12 Consent by the Aboriginal land holder or approval by Government to exploration to include the applicant's right to apply for a mining or production lease on that land.

(c) Mining or Development Title

9.13 Title to mine for minerals or petroleum on Aboriginal land to be granted subject to an agreement with the relevant Aboriginal land holders on the terms and conditions under which development is to take place

- if agreement cannot be reached within a specified time, either party to apply to the Tribunal/authority to conciliate the dispute.

9.14 If agreement cannot be reached within a further specified period, the Tribunal/authority to determine the compensation to be payable for such mining on Aboriginal land and to recommend to Government such other terms and conditions it considers should be acceptable to both parties.

9.15 In determining compensation for actual damage payable to Aboriginal people under a mining agreement, the Tribunal to have regard to any special sensitivity involved in the relationship of the land for the Community and to loss or damage (social or spiritual) suffered or likely to be suffered by the Aborigines affected and to take into account:

- proposals by the applicant to minimise or rectify such loss or damage;
- the wishes of the Aborigines as to the form of compensation that would best suit their requirements;

but not to have regard to the value of minerals proposed to be mined.

9.16 In making recommendations on other terms and conditions to Government, the Tribunal/authority to have regard to:

- the nature and extent of the benefits flowing to the economy as a whole from mining activity;
- the size, location and type of activity to be carried out;
- the requirement for general purpose leases and ancillary leases for housing and other facilities and services and the needs of the applicant for access to the mining area;
- the need to minimise the impact on the way of life and Aboriginal tradition of the land holders and of any Aboriginal community or group which may be affected by the proposed mining activity;
- objections raised by the land holders or groups with regard to any interference and proposals made by the applicant to accommodate these;
- the impact of the proposed terms and conditions, including compensation, on the economic viability of the project.

9.17 After considering the Tribunal's recommendations, Government to decide on what terms and conditions mining is to take place on Aboriginal land

— The determination of the Tribunal as to compensation to be definitive.

9.18 If the applicant is unable to proceed with the mining proposal on the basis of the compensation determined by the Tribunal and other terms and conditions determined by Government, continuation of its interests in that land to be subject to the relevant provisions of State or Territory mining legislation.

9.19 Where because of changed circumstances implementation of the mining plan departs significantly from that originally approved, Government to retain the right to determine whether the terms and conditions determined remain appropriate.

— the matter to be referred to the Tribunal for consideration as appropriate.

9.20 Approval to mine to include the right to apply for renewal of that title and any ancillary leases.

10. Existing Mining Interests

10.1 Where a claim is made in respect of land that is subject to an existing exploration licence or mining lease (or ancillary leases), that claim, if successful under the provisions of Section 5, to be granted subject to the continuation of that interest and any renewal of that interest or related interests.

— Grant of Aboriginal title to overlay the existing interest which is to remain fully protected at law and not subject to an agreement on terms and conditions or compensation with the Aboriginal land holders.

10.2 A new mining or production lease taken out as a consequence of an existing tenement (e.g. an exploration or prospecting licence) to be granted subject to an agreement with the relevant Aboriginal land holders as to the terms and conditions under which such development is to take place.

10.3 Where agreement cannot be reached within a specified period, the matter to be referred to a Tribunal/authority for consideration.

— The Tribunal to determine whether compensation is to be payable in respect of the proposed activity and to recommend to the Minister such other terms and conditions it considers should be acceptable to both parties (based on the criteria set out in para. 9.14).

10.4 After considering the Tribunal's recommendations, Government to decide on what terms and conditions such activity is to take place on Aboriginal land.

11. Sites of Significance

11.1 Mechanisms to be available in each State and Territory for the identification and declaration of sites of significance to the Aboriginal people.

11.2 Primary responsibility for protection of sites of significance to Aborigines to rest with the States. Sites declared under State law as having a special and sacred significance to Aborigines not to be disturbed by activities such as exploration or mining and their continued protection not to be open to negotiation.

11.3 A separate independent Commonwealth Authority to be established to conduct hearings and to evaluate claims in respect of heritage protection

— in particular, to examine claims and to evaluate the merits of declaring sites to be of such special and sacred significance as to warrant protection, including from exploration and mining activities.

11.4 The Commonwealth Authority to operate in the first instance only where States lack legislation protecting sites.

— the Authority to act in the nature of an appeal in the States only where protection is not granted under existing State laws.

11.5 On the basis of the findings and recommendations of the Commonwealth Authority, Government to decide whether or not to declare the site and the nature of protection to be accorded to it

— sites so declared as having a special and sacred significance to be given the full protection of the law and not to be subject to negotiation in respect of mining, exploration or other activity, save only in the national interest.

11.6 In the event that Government does not accept in full the recommendations of the Authority, a statement of reasons to be tabled in the Parliament.