The Aboriginal people have suffered much at the hands of white Australians. HERB THOMPSON argues that the increased activity of mining companies in the north of Western Australia opens a new and insidious phase in the disruption of the lives of Aboriginal people.

Herb Thompson

Police arrest blockaders at Noonkanbah Station, 1980.
for the purposes of this article it is simply necessary to recognise that an efficient legal process exists for the state government and mining companies in their pursuit of mineral development in Western Australia. This process specifically excludes reference to Aboriginal people, as a group, uniquely disturbed and uprooted by mining activity; and excludes any positive statement for compensation being made to a people who have been, and continue to be, denied access to any benefits flowing from mining development. Therefore, we must look elsewhere for statements and strategies in the political and economic spheres to discover the relationship between the state, corporations and Aboriginal communities in the Northwest.

WESTERN AUSTRALIAN MINING ACT OF 1978

In Western Australia, mining tenements are divided into three major divisions under the Mining Act of 1978: prospecting licences, exploration licenses and mining leases. A prospecting licence not exceeding two hundred hectares is given to applicants who have marked out the land in accordance with the regulations. No more than ten prospecting licences may be granted to any one person without the approval of the Minister. The licence remains in force for two years and enables the holder to enter the land with employees, vehicles, machinery and equipment; to carry out necessary works such as pits, trenches, holes, bores and tunnels; and to extract or remove a prescribed amount of ore.

An exploration licence may be granted for an area of land not less than ten square kilometres nor more than two hundred square kilometres. The licence remains in force for five years and enables the holder to the same rights and privileges outlined above for the prospecting licence. Those persons holding prospecting and exploration licences then have prior rights to apply for a mining lease. Any one mining lease may not exceed ten square kilometres, but the applicant may be granted as many as are necessary. The leases remain in force for a period of twenty-one years.

In Western Australia a mining company requires a lease before it can start mining. Once these agreements are signed with representatives of the state government, the company will be capable of resisting pressures from any party interested in challenging mining activities or altering the terms of agreement.

The covenants and conditions of a mining lease include: paying the rents and royalties due; using the land only for mining; complying with expenditure requirements; making periodic reports; and promptly reporting details of all minerals of economic significance which are discovered. The mining lease enables the holder to work and mine the land, take any minerals found and dispose of them; do all that is necessary to effectually carry out mining operations; and assume legal ownership of all minerals lawfully mined.

The Mining Act itself makes no specific reference to the rights and obligations of mining companies with respect to Aboriginals; nor does the Act, in any way, consider the effects upon, or the rights of, Aboriginal people who may be physically or socially affected by mining activity. With reference to compensation, the Act specifically excludes the payment of compensation to any lessee of land leased for pastoral purposes. During parliamentary debate before passage of the Act it was noted that this particular exclusion of compensation rights would affect Aboriginal people. Although the point was noted the Act was not changed. The only fact which appears to be clear is that the terms and conditions of the granting of a mining tenement on an Aboriginal reserve and the conditions of entry thereon are matters for decision by the Minister for Mines and Community Welfare. Should these two ministers fail to agree then the decision would be made by the Cabinet.

It has also been pointed out during parliamentary discussion that the Act has been designed so as to assist large corporations and hinder individual prospectors in their search for minerals. The leadership within the Liberal Party has argued that the Act was essential to increase the efficiency of mineral development in Western Australia. It is clear that while most of the large corporations operating in the state support the Act, prospecting organisations, individual mining entrepreneurs (such as Lang Hancock), and even the local branch of the Australian Mining Industry Council are seen to be opposed to the Act as it stands.

THE AUSTRALIAN MINING INDUSTRY COUNCIL (AMIC)

In its Declaration of Policy, 1981, the AMIC established a number of guidelines for mining companies to consider when encountering...
Aboriginal people during their exploration and feasibility programs on mineral claims. James Foots, Chairman of Mt. Isa Mines, put these guidelines into an industry perspective when he said that the mining industry supported the need for clearly and fairly defined rights for Aboriginals which would guide governments, mining companies and Aboriginal communities. He elaborated on this point by saying:

We need to reach agreement about which sites may be of special significance to Aboriginals, how they might best be protected and under what circumstances mining might occur in their vicinity. While the mining industry was in no position to bear the full responsibility for Aboriginal communities in remote areas it recognised that allowances should be made for cultural differences. Many of the Aboriginals' social and economic problems had their origins long ago and this industry should not be expected to carry the nation's burden for events in which it had no part.

Other than allowing for 'cultural differences' and refusing to bear 'full responsibility for Aboriginal communities', it seems that Foots is asking for efficient administrative procedures and clearly specified guidelines which can be agreed upon by mining companies, governments and Aboriginal communities. The likelihood of this occurring must be based on a presumption that harmony and mutuality of interests exists between these three sectors of the Australian community. History has shown us that the opposite has been the case in too many instances to be exceptions, irrespective of the fact that there may have existed individuals with good intentions. From Bougainville to Weipa to Argyle, the interests of Aboriginal people have been in direct conflict with the interests and strategies of governments and corporations in the pursuit of development. This does not mean we should dismiss the good intentions of individuals or scoff at the guidelines of the AMIC. It does mean that we must seriously compare the rhetoric and declarations with the activities of mining corporations in the field.

Of importance to Aboriginal people in the Kimberley, the area to which our attention is directed, the guidelines in the Declaration of Policy provide the following information to mining companies:

- Pay particular attention to legislation relating to Aboriginal sites and artifacts. If a Register of Aboriginal Sites exists, obtain a copy for the area. The traditional owners or custodians will usually be prepared to discuss the presence of significant sites, and if so their location should be identified in discussion with the Aboriginals concerned;
- Ensure that all persons associated with the exploration programme are aware of the legal requirements and of other procedures including techniques to be used and the locality of the work;
- Determine which Aboriginal groups have traditional links with the land and contact them, whether or not they reside on that land. Where possible identify on the ground and record important sites of significance.
- Offer employment to local Aboriginals, if practicable. In any case, encourage the presence of an Aboriginal guide;
- Take care not to disturb Aboriginal sites;
- Remember that Aboriginals will be
particularly concerned with two matters: protection of the Aboriginal community and protection of sites of significance;

• Discussion should be carried out with patience and with continuity of personnel on the company's part. A company officer should be clearly nominated as the liaison officer;

• All company and contractor's employees should be kept fully informed of the relevant sections of the agreements reached with the Aboriginal community. Failure to comply should result in instant dismissal from the projects;

• During the course of the work programme all contact with the Aboriginal community should be through the nominated company representative, and all decisions taken recorded in a manner understood by the Aborigines.

Mr. H.M. Morgan, President of the AMIC, in an address to the Academy of Social Sciences, has further amplified the issues raised in the Declaration of Policy. According to Mr. Morgan:

.... the Mining Industry has consistently supported the desire of the Aboriginal community to have access to traditional areas of land and the industry has no desire to either wilfully or unwittingly, destroy traditional sites of cultural importance .... AMIC companies working in remote areas have established sound principles for contact with Aboriginal communities.

He went on to point out that the Declaration of Policy stresses the importance of early approval to hold discussions directly with the relevant traditional community or their appointed representatives or agents; and that while understandings reached with Aborigines may or may not be legally binding, the company should in any case record agreements in writing and have them signed by the parties or their representatives. Should any damage to the land surface or loss of its use be directly caused by a mining company then compensation should be negotiated. Mr. Morgan concluded the specific discussion of the guidelines by saying, "I doubt that any responsible organisation would allow its employees to pursue any course other than that suggested by them (guidelines)."

After a fairly detailed discussion of the guidelines, the tone of Mr. Morgan's address appears to change quite dramatically. He then goes on the offensive to argue quite strongly that:

It is a matter of grave concern to my industry that we, more than any other, are expected to bear the cost of the legislation designed to implement those principles, and the Mining Industry is often expected to bear the whole community's welfare obligations .... The industry cannot and should not be asked to bear alone the obligations of funding Aboriginal welfare. The industry already pays substantial taxes in the form of royalty taxes, company taxes, freight taxes and taxation of employees and also contributes many benefits to communities in the form of services.

This speech was the opening barrage of a frontal attack on what the AMIC considers to be an increasingly dangerous 'land rights movement'. The AMIC has decided to try a two-pronged public relations assault which on the one hand emphasises its good neighbour policy in the guidelines; and on the other hand attempts to persuade the public that the 'land rights movement' has not only gone far enough and should be stopped now, but that some of the decisions already made should be reversed. The major intention is to try to swing public opinion against the operation of the Northern Territory Act; but the campaign would have obvious ramifications on Aboriginal struggles for compensation and land rights recognition in other parts of Australia as well. Mr. Morgan continues:

The industry requires that maximum access to land must be maintained for exploration and mining purposes .... That can be on land occupied by Aborigines or where Aborigines have had an historical association.

Further, to exemplify the suspicions and the paternalistic nature of the AMIC with regard to the land rights issues, Mr. Morgan continues:

Important Aboriginal sites should not be 'discovered' after the discovery of the orebody.

and

Where land councils and traditional owners are in disagreement the company must carefully determine who represents the traditional owners .... Time has little significance to many Aboriginals. Therefore, any discussions or understanding reached with Aboriginals will be slow.

In preparation for this public relations campaign the AMIC's Aboriginal affairs committee commissioned attitudinal research in southern cities and found, according to AMIC's assistant technical director, Mr. Ken Paterson, "an easily detectable growing cynicism towards land rights". Mr. Paterson also said "we've come to the conclusion that politicians won't make changes until..."
Aborigines discuss negotiating position, Noonkanbah, 1980.

there is an intellectual change in public opinion”. The AMIC presented another document entitled Aboriginal Land Rights: The Need for a National Consensus; and in presenting its case draws heavily on nationalist and patriotic concepts.

In its opening paragraphs, the document argues, “In AMIC’s view the continued operation of the Federal Land Rights Act in its present form may only assist in dividing the nation, thereby creating a legacy for future generations of Australians for which they may not be grateful”. In fact, as reported by Anne Summers, these same words were used by Roderick Carnegie, chairman of CRA Ltd., at an AMIC board lunch with Senator Baume, Minister for Aboriginal Affairs in 1980. Senator Baume had just assumed the portfolio and was invited by the mining companies to an informal private lunch.

Similar sentiments were also expressed by Mr. Morgan in his paper: 

Aboriginal communities may lay claim .... We cannot afford to advance one at the expense of the other, but we can reach a national consensus on the issues we have been discussing. The search for that consensus .... should be directed at ensuring that the Australia of future generations is not left with the legacy of a divided community. The ideology of consensus, nationalism and development are combined well to assault both the humanitarian concern for Aboriginal welfare and the Aborigines’ well-voiced concerns over their survival and self-determination through control over their land. To show concern over the future legacy of a divided community, and not recognise the divided community which exists in Australia at present, appears hypocritical, to say the least.

In comparing the rhetoric with the facts, let us take one simple example of an issue that existed and was reported during the same month in which Mr. Morgan’s address was being presented. The Aboriginal people in Turkey Creek, a community in the Kimberley close to the Argyle diamond development, continued to be disturbed by the activities of some mining and exploration companies near sacred sites. The chairman of the Warmun community, Mr. Bob Nyalcas was reported as saying that one sacred site had already come close to desecration; and a company exploring for diamonds had made no effort to ensure that its activities did not disturb areas of significance to Aboriginal people.

Mr. Nyalcas said the community was also worried about the disclosure that Gem Exploration and Minerals had discovered more diamond deposits in the Argyle area. The Aborigines feared that the exploration would require a significant amount of earthmoving. “Gem has been actively exploring the Durack Ranges and has even built a road through the area”, Mr Nyalcas said. He also pointed out that the community, with the support of the W.A. Museum, had contacted 30 companies with tenements in the area. They had outlined to the companies the need to undertake site surveys and to keep the community informed before exploration commenced. Only three companies up to that point had held talks with the community.

It is evident, from the above situation, that while the Mining Act is being properly adhered to, the AMIC guidelines are being totally ignored by most of the companies in the area.
Further, it is clear from the history of mining activity from Noonkanbah to Argyle that this is the rule rather than the exception.

In taking its case to the public there is no doubt that AMIC will gain enthusiastic agreement with the proposition that the land rights movement has gone too far, from much of the European population in the northern Territory and in parts of Queensland and Western Australia. But AMIC is aware that the people it has to persuade are those Europeans in the southern centres of the population. As the AMIC report asks, "Would it be in Australia's best interests if a similar situation (as exists in the Northern Territory) were to be brought about in the other States as well?" That indeed is the issue! Upon distribution of the AMIC document, Senator Susan Ryan, then Opposition spokesperson on Aboriginal Affairs, attacked AMIC's paper as being "an irresponsible document full of unsubstantiated statements" and said "that far from wanting to promote a consensus, as the document is subtitled, the miners were seeking a confrontation with Aborigines".

The fact is that legislation granting land rights to individual groups has been made to operate in the United States without detriment to the interests of large mining companies. Many Aboriginal groups within Australia would be quite happy for exploration and development to take place on their land with proper consultation and satisfactory compensation. The Mining Act of Western Australia 1978 does not provide for the satisfactory resolution of Aboriginal claims against mining company activities.

The Kimberley Warden, in a case raised by an Aboriginal community to object to applications to mine on a pastoral lease held by the community, in dismissing the objections said:

I have written at some length rather than summarily dismiss the matters raised by the objectors. It would be insensitive not to recognise the sincere and deep interest of these Aboriginal people in the land they see as theirs. It is clear that they are worried, and, to a degree, feel threatened by the mining development in the area. This concern and worry has manifested itself in the objections made to these claims. It is a matter of comfort that this manifestation has taken a lawful, as distinct from an illegal and hostile, form.

If only as a matter of self interest, the Government, the mining companies and the community at large would do well to look at the issues raised in these proceedings, and take positive steps to attempt to abate the concern expressed by the Aboriginal people.12

THE MINING INVASION WILL CONTINUE

A team from the World Council of Churches visited Australia in June and July, 1981. Their criticism of the treatment of Aboriginal people was publicised worldwide and became somewhat embarrassing for Australian politicians at both the state and Commonwealth levels. The team included Bena-Silu of Zaire, Pauline Webb of the U.K., Elizabeth Adler of West Germany, Quince Duncan of Costa Rica and Anwar Barakat of Pakistan. In their report they said:

"The mining invasion of the 1980s in the north of Western Australia will be the most disruptive influence on the lives of Aboriginal people since the arrival of the first Europeans in the area."

The committee also argued that the Kimberley Land Council was an invaluable agent for the Aboriginal people. They recommended that the West Australian government should recognise the KLC as an official Aboriginal organisation and adequately fund it without compromising the Council's independence.

Daryl Kickett, ex-chairman of the KLC, outlined some interesting plans for land councils in Australia's north when he said: "We're going to pass into a very important stage, because it's time the Aboriginal people got a slice of the cake. It's time we got into areas other than pastoral." The 'stage' about which Kickett was talking had to do with a group of Aborigines associated with Aboriginal land councils lobbying for the establishment of an Aboriginal-owned mining company. The company, to be called Abminex Pty. Ltd., would negotiate profit participation with selected mining
During the past year Aborigines have walked off at least five East Kimberley cattle stations, alleging bad treatment by station owners. Personality conflicts were cited in walk-outs from three stations in the Halls Creek area; and conflict over wages was cited by Aboriginal stockmen on two stations in the Turkey Creek area.

Aborigines from the Dju'uru tribe from Nicholson, Sturt Creek and Alice Downs stations near Halls Creek are considering moving to areas of tribal significance near their formal settlements. A spokesman for the Nicholson station group, Mr. Ribgnna Green, said "Aborigines are frustrated by their total dependence on station management for food and money. They also want control over the land on which they live".10

This movement off the stations indicates the very unsettled nature of Aboriginal communities in the Kimberley. Tribes are moving off the stations for a variety of reasons, but at least three can be identified:

- Aborigines, like many other Australians are confronting their employers with demands for higher wages and better working conditions. Along with this there is an increasing concern among the more traditional people that their children are slowly losing their skills of "living on the land";
- Along with this concern for the land, is the fear of the increased activity of mining companies in the area. News travels fast, and the destruction of sacred sites along with the "white people's invasion" at Argyle has led to a large number of elders wanting to move back to areas of tribal significance so as to protect and defend them;
- Some Aborigines have heard of pay-offs by companies to various Aboriginal groups and are moving in that direction in the hope that they will be able to participate in whatever benefits may exist.

It is evident that, even at the exploration and feasibility stage, the mining companies are disrupting the traditional activities of Aboriginal people in the area; and directly affecting their decisions surrounding notions of settlement, mobility and economic survival. This is happening irrespective and independent of the direct threat and disruption to sacred sites in the area. Movements of Aborigines toward and away from significant mining activity are indirectly caused by the mere existence of feasibility and exploration operations in the area. The mining invasion of the 1980s in the north of Western Australia will be the most disruptive influence on the lives of Aboriginal people since the arrival of the first Europeans in the area.