NATIVE TITLE AND RECENT AUSTRALIAN MINERAL EXPLORATION TRENDS

Ashley Lavalle*

The Federal Labor Opposition's decision in late-August 2000 to vote with the Howard Government to endorse the Queensland Labor Government's state native title regime was a controversial one, causing the resignation of shadow Aboriginal Affairs minister, Daryl Melham, who claimed that the deal undermined the native title rights of indigenous people. But the decision was bound to be controversial if only for the apparent high stakes riding on the decision: namely its repercussions for the mining industry in Queensland, which in recent years has been beset by plummeting levels of exploration expenditure.[1] Premier Peter Beattie argued that the approval of his Government's legislation would "get mining and exploration moving again in Queensland" (cited in McKenna and Franklin, 2000). In contrast Queensland Mining Council (QMC) chief executive, Michael Pinnock, was "absolutely devastated" by the outcome which, he argued, would exempt only around 20 percent of exploration permits from the Right to Negotiate process (see below), thereby perpetuating the state's exploration malaise (cited in McKenna and Franklin, 2000).

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1 The term exploration used throughout refers to the phase of mining that includes searching for a particular mineral, which is then developed if discovered in sufficient quantities. Exploration expenditure is important as an indicator of industry trends because without high levels of mineral exploration, future mineral development will suffer. Hence the London-based journal *Mining Magazine's* description of exploration as "the lifeblood of the world mining industry" (1998a: 1).

Despite contradicting each other, both statements share a common thread of agreement: the assumption that native title related factors are a key reason for the decline in Queensland exploration, and that legislative change could remedy the situation.

This article contends that these assumptions are not justified – that the outcome of the decision will have little bearing (negative or positive) in the short term on Queensland exploration. The critical determinants of the downward trend in Queensland mineral exploration have been not domestic (i.e. native title), but international: they include preeminently the 1997-98 Asian economic crisis, the corresponding fall in commodity prices (the Asian "tigers" were large consumers of metals) and the difficulties mining companies have experienced since in raising sharemarket capital. Owing to these factors mineral exploration has fallen not just in Australia, but worldwide.

As world commodity prices remain low, and the trend by sharemarket investors away from mining stocks has not been reversed, any legislative changes made are unlikely to yield a significant turnaround in exploration in particular, and industry confidence in general, either in Queensland or Australia. Unless there is a rebound in commodity markets, based on a strengthening of demand for minerals, the outlook of mining will improve only marginally.

To support the argument that it is market-related factors that have exerted the heaviest influence on recent patterns of exploration spending, trends in Queensland are examined closely vis-à-vis those in other states. The analysis indicates that exploration spending has fallen sharply since July 1997 in *every* state. While exploration has been reduced markedly in Queensland, it is consistent with national and international trends.

It is conceded that native title administration difficulties in some states have not helped exploration. However, the advent of global industry recession means that even in the complete absence of native title Australian mining companies would have been forced to make major cuts in exploration expenditure. Native title has thus not been a leading factor in recent exploration trends in Australia.

Mining and Native Title: the Background

In 1992, the High Court decided in the historic *Mabo* case that native title[2] had survived European settlement in a particular part of Australia, the Murray Islands, overturning the doctrine of *terra nullius*, the view that Australian land was unowned at the time of European settlement. The implications of the decision, however, extended far beyond that small area:

> The problem was highlighted in the case of a miner wanting access to the Gibson Desert for mineral exploration. Prior to *Mabo*, the miner would simply deal with a public servant in Perth and obtain the necessary exploration permit. After *Mabo*, the public servant could not automatically issue such a permit. The State government would first of all need to be satisfied that there were no native title holders or that the native title holders had been treated in a non-discriminatory way. There was no register of native title holders. The State officials would throw the responsibility back to the miner who would claim that he [sic] had neither the time, money nor resources to determine the facts of native title (Brennan, 1998: 15).

The Native Title Act 1993 (NTA) was the Keating Labor Government's legislative response to *Mabo*. It aimed principally to validate land titles granted since the enactment of the Racial Discrimination Act 1975 (RDA) [3] and to facilitate land claims arising from the judgement. A

2 Recognised by the common law of Australia, native title refers to the rights and interests in land or water that Aboriginal or Torres Strait Islanders enjoy as part of their traditional laws and customs, including such pursuits as hunting, gathering and fishing (Butt et al., 1994: 30).

3 Prior to *Mabo*, many titles were granted over land on which native title potentially existed. The enactment of the RDA in 1975 meant that all title-holders, including native title-holders, were required to be accorded equal treatment under the law and be notified of any actions that would harm their interests, such as the granting of a mining tenement. As native title-holders were not informed of their rights in respect of titles granted after 1975, many titles were potentially invalid. The NTA thus validated titles granted between the enactment of the RDA in 1975 and January 1 1994 (the commencement of the NTA).

National Native Title Tribunal (NNTT) was established ostensibly[4] to determine the existence of native title, the rights and interests of the native title-holders and to give jurisdiction to the Federal Court for contested claims (Dept. of P.M. & Cabinet, 1994: 4,5). The NTA included a Right to Negotiate (RTN).[5]

To the mining industry native title appeared to constitute a threat because of its capacity to restrict access to land for the purposes of exploration and development (MacDonald, 1997: 119). However, from its perspective the High Court's *Wik* decision on 23 December 1996 had far greater implications. *Wik* decided that the existence of a pastoral lease on a particular piece of land did not necessarily extinguish native title, and that the rights of the pastoralist and the native title-holder may coexist. Because pastoral leases covered a large part of Australia's landmass (approximately 42 percent) the decision provoked political uproar and great concern among mining leaders, who predicted that the damage apparently already inflicted on their industry by *Mabo* and the NTA would be compounded unless native title rights were curtailed (see, for example, AMEC, 1998).

This response was unremarkable given that mining leaders have consistently claimed since the *Mabo* decision that native title has harmed the industry in a number of important ways, such as by increasing the proportion of mineral exploration funds spent offshore by Australian

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4 Bartlett (1996: 108, 112) argued that the NNTT had in actuality, by merely confirming the extinguishment of native title, served as an instrument of Aboriginal dispossession.

5 The RTN provided native title-holders with some control over terms and conditions of mining on their land. Native title-holders were given two months in which to respond to the Government's notification of its wish to grant a title, after which time the proposal was allowed to proceed. If native title-holders did respond, a further period in which to negotiate was permitted: four months for exploration proposals, six months for others. If agreement was not reached within this period, the National Native Title Tribunal (NNTT), or a recognised State/Territory body, had a period of four months for exploration proposals and six months for others in which to determine what the outcome should be. The relevant minister could override the tribunal's decision in the national or state/territory interest (ATSIC, 1997: 9).

miners (for a critique see Manning, 1997 & 1998; Lavelle, 1999: Chs 2 & 3).

The Howard Government responded with its Native Title Amendment Bill 1997 (or Ten Point Plan), the central tenets of which were: the removal of the RTN with miners on pastoral leases; a once-only RTN on Vacant Crown Land, compared with the then-existing two-stage (at both exploration and development) RTN; a stricter RTN registration test, setting out tougher eligibility rules for proving a connection to the land; and a "sunset clause" disallowing any native title claims after a six year period. The Senate's amendments to the bill were twice rejected by the House of Representatives[6] before a compromise (the Native Title Amendment Act 1998[7] (NTAA)) was negotiated in July 1998 between the Government and independent Senator, Brian Harradine (then-holder of the balance of power in the Senate).

However, that was not the end of the matter. The Act did not remove the RTN with miners on pastoral leases; it merely gave each State government the right to do so when formulating their own compatible native title regime. To date, Queensland has been the only state to gain approval from Federal Parliament for its native title legislation.[8] However, even in this case the time lapsed between the *Wik* decision and federal approval has been close to four years. Queensland Mining Council (QMC) chief executive, Michael Pinnock, has claimed that the

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6 The Senate amendments centred around four key aspects of the Plan: the removal of the RTN with miners on pastoral leases; the "Sunset Clause", which set a six-year deadline for making a claim; the non-application of the plan to the requirements of the RDA; and the registration test enforcing stricter eligibility rules for lodging a native title claim (Fischer, 1998: 4).

7 The amended version of the Plan (NTAA) saw the states given the responsibility to decide whether to remove the RTN, the Sunset Clause scrapped, the legislation not subjected clause by clause to the RDA, and a tougher registration test in place (see Brennan, 1998: Chs 7 & 8).

8 Tabled in State Parliament on 21 October, the Native Title (Queensland) State Provisions Amendment Bill (No.2) 1998 mirrored the NTAA in confirming the extinguishment of native title on grants made between 1 January 1994 and 23 December 1996 (the date of the *Wik* decision), but went beyond the NTAA by largely maintaining the RTN for mining on pastoral leases. However, procedural rights for mineral exploration did not exceed the minimum required by the NTAA, which entailed no obligation to negotiate, only to consult (Burke, 1998).

delay held up 1200 exploration permits in Queensland (cited in McKenna, 2000). Meanwhile, according to Syvret (2000: 70), some 11 000 exploration and mining permits await processing by the West Australian Government, whose native title legislation has been rejected by the Senate.

The industry has nominated various aspects of native title, including these delays in establishing compatible state regimes and the consequent failure of state governments to process exploration permit applications, and continuing apparent problems associated with the registration test,[9] as key factors in the decline in mineral exploration expenditure across Australia. Apex Drilling's Nola Wolski (cited in Reardon, 1999) claimed that native title was as much to blame for the decline in gold exploration in Western Australia in 1999 as was the low gold price (see below). Aus drill manager, Brian Mann, argued that "we've had downturns before but then we didn't have Native Title" (cited in Drummond, 1999a: 46). Barry Velnagel, deputy director of the mining industry's national lobby group, the Minerals Council of Australia's (MCA), claimed that native title-related delays were a "leading" cause of the low exploration levels across Australia (Velnagel, 1999). West Australian Chamber of Minerals and Energy chief executive, Ian Satchwell, commented: "If you can't get access to land, you can't explore. The native title regime is stifling exploration" (cited in Syvret, 2000: 70).

The industry's dissatisfaction with native title has, however, not prevented it from negotiating many agreements (both within and outside the framework of the NTA) with indigenous land-owners governing mineral exploration and development. The burgeoning literature on just this specific aspect of native title is one indicator of this (see, for example, Doenau 1999; McKenna 1995; Smith 1998; O'Faircheallaigh 1995; Kauffman 1998; Senior 1998). By as early as mid-1998, 1100 agreements had been negotiated within the framework of the NTA alone,

9 For example, Michael Pinnock asserted that the toughening of the registration test included in the NTAA had proven in retrospect to be "totally useless" because the NNTT was continuing to accept multiple native title claims on overlapping areas, complicating negotiations with land-holders (Pinnock, 1999).

873 of which were related to "future acts"[10] (NNTT, cited in Doneau 1999: 20).

Despite this, and evidence that some mining companies have been more accepting of native title and have at times attempted to make it work,[11] the industry in general remains, as we have seen, convinced that native title is preventing much mineral exploration in Australia.

Recent Australian Exploration Trends

Exploration expenditures in Australia trended upwards following the end of the early 1990s recession and the consequent strengthening of mineral commodity prices. Exploration spending (excluding petroleum) rose from $604.0 million in 1991-92 to a peak of $1148.6 million in 1996-97. Since then, however, it has fallen sharply. Between 1996-97 and 1999-00 it fell by over 40 percent to a level almost below that of 1992-93 (see Table 1).

Table 1: Annual Mineral Exploration Expenditure (excluding petroleum) in $millions (constant)

1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00
631.8	792.6	893.3	960.2	1148.6	1066.8	837.8	676.3

Sources: ABS, 1998a; ABS, 2000: 12.

This fall in exploration coincided with one of the industry's worst ever economic crises. Profitability fell in 1997-98 to its lowest level in almost twenty years, with mining companies on average returning a profit on

10 According to Doenau (1999: 10), "future acts usually relate to the right to mine, the variations in the conditions of a right to mine, [or] an extension of the time period allowed for the right to be exercised..."

11 Rio Tinto (formerly CRA), under the leadership of chief executive Leon Davis, is one apparent example. Senior (1998, 4) writes: "In March 1995, the corporate culture of CRA...was undergoing a considerable change. Leon Davis...saw in the Native Title Act an opportunity to shift group policy towards a more constructive resolution of disputes." Senior's argument is supported elsewhere (see Davis & Gottliebsen 1994; Davis 1997).

shareholder funds of just 1.8 percent, compared to the previous ten year average of 8.65 percent (MCA, 1998: 36). It rose in 1998-99 to 3.7 percent, a result that was still, however, amongst the worst since the early 1980s (MCA, 1999: 2). Significant labour retrenchments followed: according to the MCA the number of workers employed directly by the industry fell from 70 489 in 1996-97 to just 56 459 in 1998-99, with the 13 percent fall in the 1997-98 year representing the largest annual decline in ten years (MCA, 1998: 5, 36; MCA, 1999: 5). The Mining Industry Action Group claimed in September 2000 that some 70 percent of geologists in Australia were unemployed (cited in West, 2000).

The crisis hit gold mining particularly hard, causing the collapse of one major gold miner, Australian Resources (Howarth & Hextall, 1999), the appointment of receivership to at least two others, Charters Towers Gold and Australasian Gold (Syvret & Pheasant, 1998) and the suspension of mining by Resolute Ltd at its Marymia gold mine in Western Australia in February 1998 (Bloomberg, 1998). In August 1999 Resources Analyst, Sharif Oussa, estimated that somewhere between 30 and 50 percent of all gold mines in Australia, and possibly worldwide, could close due to low profitability as a result of the falling gold price (cited in *SBS World News*, 1 August 1999). The circumstances moved Association of Mining and Exploration Companies (AMEC) Vice-President, David Harley, to lament that Australia was witnessing the end of its great minerals boom (cited in Le Grand, 1999), while Construction, Forestry Mining and Energy Union Queensland District Secretary (mining and energy), Greg Betts, suggested that the downturn was perhaps the worst since Federation (Betts, 1999).

It cannot be proven that a policy in place for over three years was responsible for either the sudden, sharp decline in mineral exploration from July 1997 or the above-described general industry crisis. In February 1997, citing then-strong capital expenditure trends, one analyst predicted that the mining industry would be booming in 1999 (Hutchings, 1997). While there are questions about the validity of basing such a prediction on capital investment trends alone,[12] other criteria,

12 According to QMC chief executive, Michael Pinnock, capital expenditure figures are a poor indicator of the industry's overall state, since they reflect decisions made

including exploration trends, could just as easily have been used in February 1997 as a basis on which to make such a prediction.

The task remains to explain the rapid turnaround in industry confidence since mid-1997. An explanation of the industry's sudden change in fortunes more persuasive than has been propounded by mining leaders would, it is argued, focus on the three main, interrelated, factors to which the Metals Economics Group (cited in Bell, 1999a: 28) attributed the 31 percent slump in world mining exploration from $US5.1 billion in 1997 to $US3.5 billion in 1998: the Asian economic crisis, the decline in commodity prices that followed it, and the difficulties miners have since experienced in raising sharemarket capital.

The Asian Economic Crisis

The economic crisis that began with the devaluation of the Thai currency, the baht, in July 1997 and which spread eventually to the rest of the Asian "tigers", is arguably the single most important factor contributing to the crisis that engulfed the Australian (and world) mining industry in 1998-00. Prior to the crisis, these countries had been heavy purchasers of metals. According to the International Monetary Fund (IMF), non-Japan Asian countries accounted for 65 percent of the total growth in worldwide industrial commodity consumption in the years 1992-1996; and, depending on the metal, they accounted for between 50 and 100 percent of the increase in world demand for metals over this period (cited in Wyatt, 1999a). Economic recession, and the ensuing contraction in consumer demand, naturally produced a corresponding decline in commodity prices. As economist Stephen Roach put it: "[T]he crisis economies of Asia were, by far, the most commodity-intensive consumers in the world... Not surprisingly, as Asia went, commodity prices were quick to follow" (cited in Wyatt, 1999a).

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by companies many years prior about existing mines rather than new ones. Rising capital expenditure may simply be a result of the upgrading of old equipment, and therefore not an accurate reflection of industry sentiment (Pinnock, 1998).

The effect was such that in the period between the Thai devaluation in July 1997 and September 1998, the *Economist* All-Items Commodity Price Index fell 30 percent to its lowest level in real terms in 25 years, while industrial commodities fell to their lowest level since the 1930s (*The Economist*, 1998: 17). By November 1998 copper, lead and aluminium had lost approximately one-third of their value, the price of zinc had fallen 40 percent and nickel 50 percent (Wyatt, 1998a). Although the fall in the price of gold pre-dated the Asian crisis its problems were exacerbated: it fell from $US415/oz in early 1996 (Wyatt, 1998b) to an 18-year low of around $US250/oz in August of 1999.[13] On average commodity prices fell 11 percent in the year ending 30 June 1999, the full effects of which Australian miners were somewhat insulated from by the depreciation of the Australian dollar (MCA, 1999: 4).

The impact of the Asian crisis was such that Westpac economist, Bill Evans, described it as "the most significant shock to commodity markets since the dissolution of the Soviet Union and the global economic slowdown in the early 1990s" (cited in Papuc, 1998).

Commodity Prices

Commodity prices arguably are the single most important determinant of exploration spending levels. According to Knight and Davies (cited in Bambrick & Miskelly, 1978: 470):

> Every new [mining] exploration program stems from a choice of commodity. This will usually be a marketing decision by executive management, based on assessments of the future demand, supply and price outlook for the commodity.

Aboriginal Legal Service Spokesperson, Glenn Shaws, put it somewhat more bluntly: "If they [miners] are not going to get a proper dollar value for the ore, they are not going to take it out of the ground" (cited in Martin, 1999).

13 It has since recovered slightly, but still remains at around $US270/oz.

The mining industry is usually a price-taker: because mineral prices are largely determined by the interaction of supply and demand on the world market, there is little scope for control over movements in commodity prices. Consequently, when prices decline costs, including those derived from exploration, are cut in order to maintain profitability (*Mining Magazine*, 1998b: 2). Largely in response to the falling commodity prices and tighter budgetary pressures many major mining companies, including Placer Dome, Delta Gold, BHP, Newcrest Mining and Rio Tinto, announced significant cuts to projected *global* exploration spending for 1998 and 1999 (Boomberg, 1999; Flint *et. al.*, 1999; Howarth, 1998; Howarth, 1999). The *Financial Times Business Yearbook Mining 2000* commented:

> [T]he continuing climate of depressed metal prices has prompted some startling and major movements on the corporate front... Exploration budgets have been severely pruned back and the general trend is for companies to concentrate expenditure on developing existing assets, with huge cuts back on "green field" exploration. Indeed, it seems that companies have elected to cut back in all areas of discretionary spending and reduce general overheads wherever possible (Financial Times, 1999: xi).

There is thus a direct correlation between the exploration cuts made by major miners and the fall in world commodity prices that followed the onset of the Asian crisis. As the ABS commented, the trend in falling exploration expenditure "which commenced in the September quarter 1997, has coincided with falls in average world prices for many of the major mineral commodities" (1998b: 3).

The correlation is particularly evident in the case of gold. One of the responses of the MCA (1997), to Manning's (1997) claim that the impact of native title on exploration between 1992-97 had been negligible, was to point out that the high levels of exploration Manning referred to masked the fact that much of it was concentrated on gold, while exploration on other commodities was much lower. The simple reason for this anomaly was the high gold price over that period. According to the Australian Bureau of Agricultural and Resource Economics (ABARE), gold exploration increased at an average of 16 percent per year in the period 1992-97 (1999: 27). ABARE attributed this largely to the rising gold price (1999: 27), concluding that gold mining "profitability and thus the price of gold will be the main influences on levels of exploration effort" (1999: 15). ABARE considered a range of factors, including land access, important but nominated prices as the major short-term determinant (1999: 3).

If the rise in gold exploration can be attributed largely to the rising gold price, the converse is also true: the collapse in the price of gold that began in 1997 saw expenditure on gold exploration fall from $728.3 million in 1996-97 to $374.8 million in 1999-00 (ABS, 1999: 11; ABS, 2000: 13). The fact that gold accounted for almost 75 percent of the decline in total exploration expenditure over this period (ABS, 1999: 11; ABS, 2000: 13), together with the fact that gold has experienced a sharper decline in price than any other commodity, indicates the strength of the relationship between prices and exploration.

Problems in Raising Sharemarket Capital

One of the obvious effects of lower commodity prices is to reduce revenue, since companies earn less income for any minerals that are eventually developed. A flow-on effect of this is a reduction in the amount of funds that can be invested in mineral exploration.

A second consequence of the Asian economic crisis and the ensuing fall in commodity prices was the decision by many sharemarket investors to abandon resource companies, whose short-term prospects had rapidly diminished. As Table 2 shows, several major resource companies experienced a severe decline in their share prices in the period immediately following the Asian crisis.

Consequently, six mining companies were among the Australian Stock Exchange's 30 worst-performing stocks in 1998: the share price of Orogen Minerals fell 44 percent over the year; North Ltd's by 34.7 percent; Pasminco's by 33.5 percent; MIM's by 24.5 percent; QCT Resources' by 21.8 percent; and BHP's by 16.2 percent (Guy, 1999). In contrast, no mining company was among the 30 best-performing stocks for that year (Guy, 1999).

Table 2: Resource Company Share Prices ($)

Company	Price 1/7/97	Price 14/1/98	Percentage Fall
MIM	1.95	0.78	60.0
Western Mining	8.36	4.80	42.6
Pasminco	2.63	1.55	41.1
BHP	19.52	14.00	28.3
North Ltd	5.04	3.96	21.4
Rio Tinto	22.47	18.3	18.6

Source: O'Meara, 1998.

The difficulty in raising capital drove some miners to reinvent themselves as internet stocks in the hope of capitalising on the then-rising share prices of firms in that industry. Bell (1999b: 29) put the number of companies that chose this option at around a dozen, while Wyatt (1999b) claimed that 24 gold miners were "exploring the internet rather than the earth". One gold miner reluctant to do so was, Robert Money:

> If you went out and found an orebody tomorrow, the market would say 'So what?' No-one's interested in bloody gold anymore, but you read these high-tech things [internet stocks] where the shares go to 50cent [sic] or a dollar, or more (cited in Drummond, 1999b).

The effect of lower commodity prices and reduced sharemarket investment was thus to deprive mining companies of the some of the funds necessary to carry out exploration. Australia's largest goldmining company Normandy Mining's native title adviser, Dr. Helen McDonald, nominated the lack of "spare dollars around" as a much greater obstacle to mineral exploration than native title (McDonald, 1999). Despite arguing that native title is the "third and perhaps the most destructive" of the three main sources of mineral explorers' problems (the other two being lack of sharemarket capital and the low gold price), Syvret admitted:

> Junior exploration companies...have largely shut up shop because they have run out of capital, despite a roaring

> sharemarket. By and large, investors...aren't interested in mining stocks large or small anymore, but instead are mesmerised by the spectacular returns to be had from technology shares (2000: 68).[14]

A PricewaterhouseCoopers study found that in the years 1996-1999, the Australian mining industry was deprived of more than $10 billion in shareholder value (cited in Wyatt, 2000a).

It should be clear from all this that recent Australian mineral exploration trends are largely attributable to the sudden changes that the industry's commercial and market environments underwent from mid-1997. These changes are evident in the massive restructures that have since characterised mining worldwide – described by the *Financial Times* as "some of the greatest...in the industry's history" (1999: ix).

Thus, it has not been just Australian mineral exploration that has declined sharply in the past few years: falling exploration has been a global trend. It was noted earlier that according to the respected industry analyst, the Metals Economics Group, world exploration fell 31 percent from $US5.1 billion in 1997 to $US3.5 billion in 1998, a fall that it attributed to the market-related factors outlined above. As Wyatt (2000b) pointed out, the fall in Australian exploration "is not just an Australian phenomenon. Slumping global commodity markets in 1998 and early 1999 triggered a cut in minerals and mining exploration worldwide." Wyatt (2000b) cited the prediction of Dr Ian Gould, Normandy Mining's group managing director, that after peaking at $US8 billion in 1997 (including petroleum expenditure) global exploration would be half that level in 2000.

There is no sign in the near future of a real improvement in the industry's outlook. Commodity prices have not recovered sufficiently to spark a turnaround. The IMF's September 2000 *World Economic Outlook* reported:

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14 The recent reduced confidence in internet stocks among investors may improve somewhat the future prospects of "old" economy stocks such as mining.

> The prices of...nonfuel commodities have shown modest increases since early 1999, but still remain well below their 1995-97 averages. The prices of most *metals* and some industrial inputs have increased from their lowest levels in mid-1999, but the increases have been less than might be expected given the rise in global demand. For example, through the end of August 2000, the price of copper remained about 30 percent below its 1995-97 average... (IMF, 2000: 112).

The IMF projected a recovery in metal prices in the near future, but added that they would remain below previous peaks (2000: 112).

Thus as Acacia Resources' administration manager of exploration, John Millikan, argued, even if native title were removed as an impediment, the trend in mineral exploration levels would not change (Millikan, 1999). This point was substantiated by Western Metals' projects exploration manager, Craig Guatkin, who went so far as to say that some companies were using native title delays as an excuse for not exploring when economic factors were the main culprit (Guatkin, 1999). The National Institute of Economic and Industry Research's (NIEIR) deputy director, Dr. Ian Manning, claimed that many companies would in fact be relieved that exploration applications had been held up, as severe cash flow problems would have rendered much exploration non-viable (Manning, 1999).

Ultimate confirmation that it is the above factors that are the underlying cause of the low levels of exploration since late-1997 will come only when, and if, commodity prices improve substantially. The late-September 1999 rise in the gold price from around $US250/oz to above $US320/oz – a response primarily to the IMF's decision to not fund its debt relief commitment to the Heavily Indebted Poor Countries (HIPCs) by selling 10 million ounces of gold (Sykes, 1999) – provided an indication of what might occur. Asked in early October 1999 what impact the price rise was having in Kalgoorlie, the goldmining capital of Australia, local celebrity "Fanny Cracker" responded:

> There is the opportunity [for prosperity]. New resources are opening up. New projects are opening up. Mining, things that were put on hold, on the backburner, are now up and running

> again. So has the promise of new employment prospects (cited in Channel Nine's *Today on Saturday*, 2 October 1999).

Alas, the price did not stay above $US300/oz for long. However, that the price rise could lead to such an immediate change in outlook – even if this has proved premature – is testament to the importance of strong commodity prices to industry confidence.

Queensland Mineral Exploration Trends

Michael Pinnock claimed in November 1998 that of the three main contributors to the $50 million slump in mineral exploration in Queensland over the preceding three years – low commodity prices, difficulties in raising sharemarket capital and the then-Queensland Borbidge Government's decision in early-1997 to freeze the issuing of mining leases in response to the *Wik* decision (cited in McCarthy, 1998) – the Borbidge freeze and his successor the Beattie Government's native title legislation, which maintained the RTN at the high impact exploration and mining development phases,[15] were the most important factors. More recently, Pinnock has claimed that the "downturn in exploration [in Queensland] is almost entirely native title related" (cited in Ryan, 2000) and that the state has lost $300 million in lost exploration due to the delay in gaining federal approval for Beattie's legislation (cited in Roberts and Grattan, 2000). Junior explorer Strike Mining's Tony Fawdon (cited in Syvret, 2000: 70) stated that in Queensland "we are suffering the worst downturn in the exploration industry's history, largely due to the native title 'gridlock'."

There is no doubting that the downturn in Queensland exploration expenditure has been severe, falling from $160.7 million in 1996-97 to $82.6 million in 1999-2000 (ABS, 1999: 10; ABS, 2000: 12). However, this is consistent with results recorded over that period in other states and for Australia as a whole (see Table 3).

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15 Under the NTA, the RTN existed at both exploration and development phases of mining (ATSIC, 1997: 9). The mining industry desired for the RTN to not exist at either phase.

The results show that while mineral exploration expenditure in Queensland effectively halved over that period, Tasmania's fell by around two-thirds. Exploration in two states other than Queensland (Western Australia and New South Wales), and Australia as a whole, fell by at least 40 percent. Meanwhile, in the remaining states exploration fell by approximately 35 percent. Thus between 1996-97 and 1999-00, every state in Australia recorded a significant real decline in exploration expenditure.

Table 3: Exploration Expenditure (excluding petroleum) by State: $millions (constant), % change between 1996-97 and 1999-00, and % change in each state's share of total exploration

Year	NSW	VIC	QLD	SA	WA	TAS	NT	AUST
1996-97	94.1	51.8	160.7	35.1	691.7	26.0	88.9	1148.6
1997-98	88.2	43.1	133.2	45.0	660.4	20.7	75.9	1066.8
1998-99	65.6	37.0	93.8	41.9	523.1	11.9	64.5	837.8
1999-00	56.1	33.8	82.6	22.6	415.0	8.8	57.5	676.3
% Change	-40.4	-34.7	-48.6	-35.6	-40.0	-66.2	-35.3	-41.1
% Share Change	0.1	0.5	-1.8	0.2	1.1	-1.2	0.8	

Source: ABS, 1999: 10; ABS, 2000: 12.

In terms of each state's share of total exploration for this period, the pattern does not alter remarkably. While it is true that only one other state (Tasmania) recorded a decrease in its share of total exploration, the increases in the other states were nearly all (Western Australia being the exception) below one percent.

The fact that Western Australia's performance has been slightly better than Queensland's over this period casts doubt on the argument that trends in the latter are driven by native title difficulties. If that were the case, it would be expected that Western Australia would have suffered the worst falls in exploration since as of early-2000 it had some 11 000 mining and exploration permits held up (Syvret, 2000: 70), ostensibly as a result of the WA Government's failure to have approved by the Senate its state native title regime.[16]

The fact that New South Wales suffered an exploration decline between 1996-97 and 1999-00 similar in magnitude to that of Western Australia (approximately 40 percent) also casts doubt on industry leaders' arguments. Although New South Wales has been much less affected by native title than have both Queensland and Western Australia, its share of total exploration spending fell from 9 percent in mid-1997 to 6 percent in the 1998 September-quarter (Bell, 1999c: 34). Bell attributed this fall primarily to low commodity prices and the departure from the state of several major resource companies, citing the observation of one industry analyst: "Given where metal prices are, nobody wants to know about copper, and nobody wants to know about gold, either" (cited 1999c: 36). It is a significant fact that Bell, who is not normally reserved when it comes to drawing conclusions about the relationship between native title and exploration trends (see Bell, 1999d), not once mentioned native title as an issue in New South Wales' exploration decline.

The above analysis demonstrates that, in terms of declining exploration, Queensland has not fared qualitatively worse than elsewhere. Queensland's exploration decline cannot, it seems, be attributed to factors uncommon to other states. Undoubtedly the inability to process some 1200 permits in Queensland would have had some impact. Yet it is clear that even in the absence of this backlog, exploration levels would have fallen markedly. The Queensland Department of Mines and Energy's acting executive director of resource development, Dr. Geoff Dickie, conceded that if native title were removed as an issue exploration would remain depressed because of low commodity prices and because mining stocks were as "flat as a tack" (Dickie, 1999). Even Michael Pinnock

16 However, the West Australian Labor Opposition's Eric Ripper claimed in July 1999 that almost 80 percent of exploration license applications held up were so because of understaffing in the relevant department. Ripper further claimed that this was because of the Premier, Richard Court's, desire to exploit fears about native title (cited in Grove, 1999), a perhaps not implausible claim given Mr Court's well-known antipathy towards native title: it was his government that initiated an unsuccessful High Court bid to overturn the NTA (Hunt & Young, 1995: 17).

privately admitted that it was "impossible" to discern the impact on exploration of low commodity prices from native title (Pinnock, 1999).

The determinants identified above as crucial to spending trends across Australia, and indeed globally, thus also apply to the low exploration levels in Queensland. It was misleading for the QMC and other mining leaders to suggest that improving Queensland's exploration performance hinged significantly on removing apparent native title-related impediments when the real ones were commercial and market derived, and exceedingly inaccurate for Michael Pinnock to claim a figure of $300 million in lost spending due to native title; if the latter claim were true then Queensland would be the only state to have performed the remarkable feat of increasing its exploration spending in a period during which the industry suffered arguably its worst global recession!

Conclusion

The evidence indicates overwhelmingly that the decline in exploration levels in Australia cannot be attributed largely to native title, but to the severe downturn that characterised the mining industry globally in the wake of the 1997-98 Asian economic crisis. Even if State governments had managed early on to implement regimes compliant with the NTAA, it is clear that exploration levels in Australia would have fallen commensurate with global levels from late-1997. Furthermore, the exploration problems cannot be viewed in isolation from other recent features of the industry, such as low profitability, labour retrenchments and mine closures.

It could, of course, be argued that, even taking into account the market-related factors that have contributed to the industry's problems, exploration would have been higher if native title were not an issue. The difficulty, however, is that, not only is it impossible to discern the impact of native title amidst the effects of the Asian crisis, the same argument could be made in relation to a number of other variables, such as exchange rates, interest rates and taxation levels. What is important is not the hypothetical level of exploration in the absence of native title, but the level of exploration with native title; and native title issues did not prevent strong exploration prior to the Asian crisis in mid-1997.

The evidence supporting the argument that native title has not impacted significantly on recent exploration trends is in stark contradiction to the industry's emphatic belief to the contrary, which it has repeatedly stated publicly. This raises the question as to why the industry has responded to native title in the way that it has. A discussion of this question is, however, beyond the scope of this paper and can be found elsewhere (see Lavelle, 2001).

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