

NORTHERN TERRITORY OF AUSTRALIA

COBOURG PENINSULA ABORIGINAL LAND, SANCTUARY AND MARINE PARK ACT

As in force at 30 March 1998

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 30 March 1998

COBOURG PENINSULA ABORIGINAL LAND, SANCTUARY AND MARINE PARK ACT

An Act to acknowledge and secure the right of Aboriginals to occupy and use certain land on the Cobourg Peninsula in the Northern Territory of Australia, to vest that land in trustees for Aboriginals, to declare that land to be a national park, making certain provisions relating to the management of adjacent marine areas and for related purposes

Part I Preliminary

1 Short title

This Act may be cited as the *Cobourg Peninsula Aboriginal Land, Sanctuary and Marine Park Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Definitions

In this Act, unless the contrary intention appears:

Aboriginal means a person who is a member of the Aboriginal race of Australia.

Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginals or of a community or group of Aboriginals, and includes traditions, observances, customs and beliefs as applied in relation to particular persons, sites, areas of land, things or relationships.

Aboriginals entitled to use or occupy the sanctuary and/or marine park means the Aboriginals who are not traditional Aboriginal owners but who are entitled by Aboriginal tradition to use or occupy the sanctuary and/or marine park or part thereof whether by reason of spiritual affiliation to the land or part or for whatever other reason may be recognized by Aboriginal tradition.

Board means the Cobourg Peninsula Sanctuary and Marine Park Board established by section 18.

Commission means the Commission within the meaning of the *Parks and Wildlife Commission Act*.

group means all the traditional Aboriginal owners and the Aboriginals entitled to use or occupy the sanctuary and/or marine park.

Land Council means the Northern Land Council established under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.

Land Trust means the Cobourg Peninsula Sanctuary Land Trust established by section 7.

marine park means the Cobourg Marine Park declared under section 12 of the *Territory Parks and Wildlife Conservation Act*.

minerals includes:

- (a) gold, silver, copper, tin and other metals;
- (b) coal, shale, petroleum and valuable earths and substances;
- (c) mineral substances;
- (d) gems and precious stones; and
- (e) ores and other substances containing minerals,

whether suspended in water or not, and includes water.

mining interest means any lease or other interest in land (including an exploration licence) granted under a law of the Territory relating to mining for minerals.

plan of management means the plan of management for the whole or a part of the sanctuary and/or marine park prepared under section 27 by or on behalf of the Board.

sanctuary means:

- (a) the area described in the Schedule as the Cobourg Peninsula Sanctuary; and
- (b) the additional areas, if any, the estate or interest of the Crown in which is granted and vested by section 6 in the Land Trust,

and includes the waters on the sanctuary.

traditional Aboriginal owners means a local descent group of Aboriginals who:

- (a) have common spiritual affiliations to a site on the sanctuary and/or marine park, being affiliations that place the group under a primary spiritual responsibility for that site and for the land on which, or water in which, it is situated; and
- (b) are entitled by Aboriginal tradition, as of right, to forage over land, or fish in water, referred to in paragraph (a).

4 Land Council to consult with traditional Aboriginal owners

Where, under this Act, the Land Council is required to take or consent to the taking of any action in relation to the Land Trust, the Board, the sanctuary or the marine park, it shall not take or consent to the taking of that action unless it has first consulted all, or the relevant, traditional Aboriginal owners and is satisfied that:

- (a) the traditional Aboriginal owners understand the nature and purpose of;
- (b) the traditional Aboriginal owners have had a reasonable opportunity to take advice and express their views on; and
- (c) a majority of the traditional Aboriginal owners have consented to,

the proposed action.

5 Vesting of land in trustees

- (1) Subject to this Act, all the estate and interest held immediately before the commencement of this Act by the Crown in the sanctuary is hereby granted to, and vested in perpetuity in, the Land Trust in trust for the group.
- (2) Subject to subsection (3), the Land Council shall, after due inquiry and consultation, decide who are the members of the group.
- (3) Where any dispute arises between the Land Council and an Aboriginal concerning the Aboriginal's membership of the group, the Supreme Court shall have jurisdiction to make orders and declarations concerning the Aboriginal's membership of the group.

6 Additional areas

- (1) Where, at any time after the commencement of this Act:
 - (a) the land described in paragraph (d) in the Schedule as being excluded from the area of the sanctuary is granted to or otherwise becomes vested in the Territory; or
 - (b) the land described in paragraph (e) in the Schedule as being excluded from the area of the sanctuary ceases to be the subject of a lease from the Crown,

all the estate or interest of the Crown in the land being so granted or vested or ceasing to be the subject of a lease from the Crown, as the case may be, shall thereupon, by force of this section, be granted to, and vested in perpetuity in, the Land Trust in trust for the group.

- (2) Sections 13 and 14 shall, with the necessary changes, apply to and in relation to an estate or interest vested under subsection (1) in the Land Trust.
- (3) Where, immediately before an estate or interest in land was vested under subsection (1) in the Land Trust, there was in force a plan of management or By-laws for or in relation to the sanctuary as then constituted, that plan of management and those By-laws shall, to the extent possible, apply to and in relation to the sanctuary as though the relevant land referred to in subsection (1) formed part of the sanctuary at the time that the plan of management or By-laws, as the case may be, came into force.

7 Trustees

- (1) There is hereby established a Land Trust for the sanctuary to be known as the Cobourg Peninsula Sanctuary Land Trust.
- (2) The Land Trust:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) is capable, in its corporate name, of suing and being sued.
- (3) The common seal of the Land Trust shall be kept by a member of the staff of the Land Council authorized by the Land Council for that purpose.

- (4) The common seal of the Land Trust shall be affixed to a document only with a written authority signed by the Chairman and at least 2 other members of the Land Trust.
- (5) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Land Trust affixed to a document and shall assume that it was duly affixed.
- (6) The Land Trust shall have such functions and duties as are given to or imposed on it by or under this Act and shall have such powers as are reasonably necessary to enable it to carry out its functions and duties.
- (7) The Land Trust:
 - (a) shall not perform its functions except in accordance with a direction given to it by the Board; and
 - (b) where such a direction is given to it, shall take action in accordance with the direction.

8 Members of Land Trust

- (1) In this section and sections 9 and 10, ***member of the Land Trust*** includes the Chairman.
- (2) The Land Trust shall consist of a Chairman and 3 other members.
- (3) The Chairman and members of the Land Trust shall be appointed by the Land Council from amongst the members of the group.
- (4) Subject to sections 9 and 10, a member of the Land Trust holds office for a period of 3 years but is eligible for reappointment.
- (5) Where a member of the Land Trust is, or is about to be, unable, whether on account of illness or otherwise, to perform the duties of his office, the Land Council may appoint a member of the group to act in the place of that member during the period during which that member is unable to perform the duties of his office.
- (6) A person appointed to act in the place of a member of the Land Trust has all the functions, powers and duties of that member.
- (7) The exercise or performance of a power or function by the Land Trust is not affected by reason only of there being a vacancy in the office of a member of the Land Trust.

9 Resignation of trustee

A member of the Land Trust may resign his office by writing signed by him, or with his authority, and delivered to the Land Council.

10 Appointment of new trustees

- (1) The Land Council shall, as soon as practicable after:
 - (a) it receives the resignation of a member of the Land Trust;
 - (b) it forms the opinion that a member has failed properly to perform the duties of his office; or
 - (c) it becomes aware of a member's inability to continue as a member because of his illness or for any other reason,terminate the appointment of the person as a member of the Land Trust.
- (2) The Land Council shall, as soon as practicable after it becomes aware of the death of a member of the Land Trust or it terminates under subsection (1) the appointment of a person as a member of the Land Trust, appoint another person to be a member in his stead.

11 Entitlement to use and occupation

Subject to this Act, the Aboriginals who are, from time to time, members of the group shall be, at all times, entitled to use and occupy the sanctuary and/or marine park.

12 Establishment of national park

- (1) The sanctuary is hereby established in perpetuity as a national park for the benefit and enjoyment of all people.
- (2) The sanctuary and/or marine park shall be used in such manner and upon such conditions as are provided by or under this Act and, when a plan of management is in force, in such manner and upon such conditions as are provided by that plan of management.

13 Deed of grant

- (1) The Administrator shall execute in duplicate a deed of grant of the estate and interest in the sanctuary conferred by this Act and shall forthwith deliver the deed to the Land Trust.

- (2) The deed of grant referred to in subsection (1) shall exclude all roads over which the public had a right of way immediately before the commencement of this Act.
- (3) The deed of grant referred to in subsection (1) shall be expressed to be subject to the reservation, in favour of the Crown, of the right to all minerals in their natural condition or in a deposit of waste material obtained from any surface or underground working on or below the surface of the sanctuary, and the grant of the land is, accordingly, subject to that reservation.
- (4) Where, immediately before the commencement of this Act, the land that constitutes the sanctuary was occupied or used by the Crown or an Authority or agent of the Crown for a particular purpose, the Crown or that Authority or agent, as the case may be, is entitled to continue that occupation or use for that purpose for such period as the land is so required by the Crown or the Authority or agent.
- (5) Without limiting the generality of subsection (4), the Crown or an Authority or agent of the Crown may continue to occupy and use the houses, buildings, wharf and other structures, and the airstrip, existing immediately before the commencement of this Act on that part of the sanctuary known as Black Point.

14 Registrar-General to register deed

- (2) The Land Trust shall, on receiving the deed of grant delivered to it under section 13(1), deliver the deed and the duplicate copy of the deed to the Registrar-General who shall place the deed in the Register and return the duplicate copy to the Land Trust with a notation thereon that it has been duly registered.
- (3) The Registrar-General may, from time to time, require the Land Trust to deliver to him the duplicate copy of the deed of grant registered under this section to enable him to note thereon any necessary amendment or any lease or other dealing in respect of the sanctuary.

15 Annual fee for use of sanctuary as national park

- (1) Subject to subsection (4), the Territory shall pay annually to the Land Council \$20,000 for the use of the sanctuary as a national park.
- (2) An amount paid pursuant to subsection (1) shall, after due inquiry, be paid by the Land Council to or for the benefit of the group.

- (3) A payment under this section shall:
- (a) in the case of an amount to be paid under subsection (1) by the Territory – be made as soon as practicable, but not later than one month, after:
 - (i) the date of commencement of this Act; and
 - (ii) each anniversary of that date; and
 - (b) in the case of an amount to be paid under subsection (2) by the Land Council – as soon as practicable after the relevant amount referred to in subsection (1) is received by it.
- (4) The annual amount to be paid under subsection (1), other than the first, shall be \$20,000 increased by:
- (a) the percentage by which the estimated seasonally adjusted average weekly wage per employed male unit for Darwin published by the Statistician, within the meaning of the *Australian Bureau of Statistics Act 1975* of the Commonwealth, in respect of the September quarter immediately before the payment is to be made exceeds the estimated seasonally adjusted average weekly wage per employed male unit for Darwin published by the Statistician in respect of the September quarter of the year 1980; or
 - (b) where no estimated seasonally adjusted average weekly wage referred to in paragraph (a) has been published in respect of the relevant September quarter, the percentage that the Chief Justice, after consultation with the Statistician, considers would have been the appropriate increase had that average weekly wage been published.

16 Title inalienable

Subject to this Act, the title to the sanctuary vested in the Land Trust is inalienable and cannot be sold, transferred, mortgaged or otherwise dealt with, either at law or in equity, except by way of lease or licence in pursuance of the plan of management.

17 Acquisition

- (1) Subject to this section, nothing in this Act derogates from the right of the Crown to acquire for a public purpose any part of, or an interest in, the sanctuary in accordance with the provisions of the *Lands Acquisition Act*.

- (2) Subject to subsection (3), no procedure required by the *Lands Acquisition Act* for the acquisition of part of, or an interest in, the sanctuary shall be commenced unless the Minister for the time being responsible for the administration of that Act has first consulted with, and given due consideration to the views of, the Board.
- (3) The Minister referred to in subsection (2) shall, at the request of the Board, refer a proposed acquisition of part of, or an interest in, the sanctuary to the Legislative Assembly and thereafter no procedure for the acquisition shall commence except upon a resolution of the Legislative Assembly:
 - (a) in the case of a proposed acquisition of part of an area – passed by a two-thirds majority of all members of the Assembly (excluding the Speaker); and
 - (b) in the case of a proposed acquisition of any easement or right of way on or over, or other interest in, the sanctuary – passed by a majority of all members of the Assembly (excluding the Speaker),

approving of the proposed acquisition.
- (4) For the avoidance of doubt, nothing in this section or the *Lands Acquisition Act* shall be construed as authorizing, for the purposes of mining, the acquisition of part of, or an interest in, the sanctuary.

Part II Administration

18 Establishment of Board

- (1) There is hereby established a Board to be known as the Cobourg Peninsula Sanctuary and Marine Park Board.
- (2) The Board:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) subject to this Act, is capable, in its corporate name, of holding and disposing of real and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall assume that it was duly affixed.

19 Membership of Board

- (1) The Board shall consist of 8 members appointed by the Minister, 4 of whom shall be members of the group and be appointed on the nomination of the Land Council.
- (2) As soon as practicable after an appointment under subsection (1) has been made, the Minister shall cause notice of that appointment to be published in the Gazette.
- (3) Subject to sections 20 and 21, a member of the Board holds office for a period of 3 years but is eligible for reappointment.
- (4) Where a member of the Board is, or is about to be, unable, whether on account of illness or otherwise, to perform the duties of his office, the Land Council may appoint a member of the group to act in the place of that member during the period during which that member is unable to perform the duties of his office, unless the first-mentioned member has, under section 23(4), given to another member a general authority to vote for him at meetings of the Board during the first-mentioned member's inability to perform the duties of his office.
- (5) A person appointed to act in the place of a member of the Board has all the functions, powers and duties of that member.
- (6) The performance or exercise of a function or power of the Board is not affected by reason only of there being a vacancy in the office of a member of the Board.

20 Resignation of member

A member of the Board may resign his office by writing signed by him, or with his authority, and delivered to the Minister.

21 Appointment of new members

- (1) The Minister shall, as soon as practicable after:
 - (a) he receives the resignation of a member of the Board;
 - (b) being advised in writing by the Land Council that, in its opinion, a member appointed on the nomination of the Land Council has failed properly to perform the duties of his office;
or
 - (c) he becomes aware of a member's inability to continue as a member because of the member's illness or for any other reason,

terminate the appointment of the person as a member of the Board.

- (2) The Minister shall, as soon as practicable after he becomes aware of the death of a member of the Board or he terminates under subsection (1) the appointment of a person as a member of the Board, appoint another person, with the same qualification for membership as the person in whose stead he is appointed, to be a member of the Board.

22 Chairman and Deputy Chairman

- (1) The Minister shall, as soon as practicable after the establishment of the Board or at any time when the office of Chairman of the Board is vacant, convene a meeting of the Board for the purpose of electing a member of the Board as the Chairman of the Board.
- (2) The Minister shall appoint one of the members appointed under section 19(1) on the nomination of the Land Council to preside at a meeting referred to in subsection (1).
- (3) The Chairman of the Board shall be elected by the Board from amongst the members appointed under section 19(1) on the nomination of the Land Council.
- (4) Where a Chairman is elected at a meeting referred to in subsection (1), he shall preside at that meeting in place of the person appointed under subsection (2) by the Minister.
- (5) The Board shall, as soon as practicable after its establishment, elect one of its members appointed under section 19(1) on the nomination of the Land Council to be the Deputy Chairman and shall thereafter, whenever the position of Deputy Chairman is vacant, elect a member, with the same qualification, to be the Deputy Chairman.
- (6) Subject to subsection (7), a person elected under this section as the Chairman or the Deputy Chairman, while he remains a member of the Board, holds office for 3 years and is eligible for re-election.
- (7) The Board may, at any time, by resolution, elect a new Chairman or Deputy Chairman having the qualification referred to in subsections (3) and (5) and, on the passing of such a resolution, the person who held that office immediately before that resolution was passed ceases to hold that office.

23 Calling of meetings, procedure, &c.

- (1) The Chairman or Deputy Chairman shall call such meetings of the Board as are necessary for the performance of its functions and the exercise of its powers.

- (2) The Minister may, at any time, direct the Chairman or the Deputy Chairman to call a meeting of the Board and the Chairman or Deputy Chairman shall call a meeting accordingly.
- (3) At a meeting of the Board:
 - (a) the Chairman shall preside if he is present or, if he is not present, the Deputy Chairman shall preside or, if neither the Chairman or Deputy Chairman are present, the members of the Board present shall elect one of their number to preside;
 - (b) subject to subsection (4), 6 members, of whom 4 shall be members appointed under section 19(1) on the nomination of the Land Council, constitute a quorum;
 - (c) questions arising shall be determined by a majority of the votes of the members and, in the event of an equality of votes, the person presiding shall have a casting vote as well as a deliberative vote; and
 - (d) subject to this Act, the Board shall determine the procedures to be followed at or in connection with the meeting.
- (4) A member of the Board may, in writing under his hand or with his authority, give to another member a general authority to vote for him at a meeting of the Board and the member given that authority may vote for the first-mentioned member at that meeting and shall, for the purposes of subsection (3)(b), be counted towards a quorum as though he were also the first-mentioned member.
- (5) The Board shall cause records of its meetings to be kept and, as soon as practicable after each meeting, shall cause a copy of the minutes of the meeting to be given to each member of the Board and to the Land Council.
- (6) A member of the Board may require the Board to admit to a meeting of the Board such persons as he considers necessary to advise him on matters being considered at the meeting and may require the Board to allow such persons or any of them to address the meeting on his behalf, and the Board shall admit those persons and allow them to address the meeting accordingly.
- (7) A person admitted to a meeting of the Board pursuant to subsection (6) shall not vote on any matter at that meeting.

Part III Functions and powers of the Board and the Commission

24 Functions of Board

The functions of the Board are:

- (a) to prepare plans of management for the control and management of the sanctuary and/or marine park;
- (b) to protect and enforce the right of the group to use and occupy the sanctuary and/or marine park;
- (c) to determine, in accordance with the plan of management, the rights of access to parts of the sanctuary and/or marine park of persons who are not members of the group;
- (ca) to advise the Minister for the purposes of section 34A;
- (d) to ensure adequate protection of sites on the sanctuary and marine park of spiritual or other importance in Aboriginal tradition; and
- (e) such other functions in and in relation to the sanctuary and/or marine park as are imposed on it by or under the plan of management.

25 Functions of Commission

- (1) The functions of the Commission in relation to the sanctuary and marine park include, on behalf of and subject to the directions of the Board:
 - (a) the preparation of plans of management; and
 - (b) the control and management of the sanctuary and marine park.
- (2) For the avoidance of doubt, where in the preparation of the plan of management, or in the control and management of the sanctuary or marine park, a difference of opinion between the Commission and the Board arises, the difference shall be resolved by a resolution of the Board and the Commission shall prepare the plan of management or control and manage the sanctuary or marine park, as the case may be, in accordance with that resolution.

26 Powers

- (1) Subject to this Act and the plan of management, the Board and the Commission shall have, in relation to the sanctuary and marine

park, the power to do all things that are necessary or convenient to be done for or in connection with, or incidental to the performance of, their respective functions and the exercise of their respective powers.

- (2) Without limiting the generality of subsection (1), the Board may:
 - (a) employ staff;
 - (b) obtain the advice and assistance of persons who are expert in any matter with which the Board is concerned; and
 - (c) give lawful directions to the Land Trust concerning the performance of its functions.

Part IV Plans of management

27 Plans of management

- (1) As soon as practicable after the commencement of this Act and from time to time as the occasion requires, the Board shall cause to be prepared a plan of management for the sanctuary and/or marine park.
- (2) A plan of management prepared in pursuance of subsection (1) shall set out a detailed description of the manner in which it is proposed that the sanctuary and/or marine park shall be managed and shall include:
 - (a) a general description of all existing or proposed buildings, structures, facilities or other developments on the sanctuary and/or marine park; and
 - (b) a detailed description of the operations for the exploration for or recovery of minerals, or excavation, works or other operations, that may be carried out on the sanctuary.
- (3) Where the plan of management provides for operations for the exploration for or recovery of minerals, or for excavation or other works, the plan shall set out the conditions, if any, that are to be applicable to those activities.
- (4) In the preparation of the plan of management, regard shall be had to:
 - (a) the protection of areas and things of significance to Aboriginals;

- (b) the limitations, if any, imposed by Aboriginal tradition on the use of any part of the sanctuary and/or marine park;
 - (c) existing, proposed and desirable living, commercial and recreational areas for the group or members of the group;
 - (d) the regulation of the appropriate use, appreciation and enjoyment of the sanctuary and/or marine park;
 - (e) the preservation of the sanctuary and/or marine park in its natural condition and the protection of its special features, including objects and sites of spiritual, biological, historical, palaeontological, archaeological, geological and geographical interest, whether or not of importance in Aboriginal tradition;
 - (f) the protection, conservation and management of native flora and fauna within the sanctuary and/or marine park and the natural environment generally;
 - (g) the protection of the sanctuary and/or marine park against damage;
 - (h) the employment and training of Aboriginals;
 - (j) the functions of the Commission under other laws of the Territory; and
 - (k) any advice provided by the Minister in relation to the marine park.
- (5) When the Board has prepared a plan of management for the sanctuary and/or marine park it shall, subject to subsections (6), (7) and (8), forward it to the Minister for tabling in the Legislative Assembly.
- (6) Before forwarding a plan of management to the Minister the Board shall forward it to the Land Council and seek the Land Council's written consent (which consent shall not be unreasonably withheld) to the Board forwarding it to the Minister.
- (7) The Land Council shall, within 90 days after receiving the plan of management under subsection (6), in writing to the Board:
- (a) consent to the plan of management being forwarded to the Minister; or
 - (b) refuse to consent, giving its reasons for so refusing,

and in either case may make such comments on the plan as it thinks fit.

- (8) Where the Board is advised under subsection (7) that the Land Council has refused its consent, it shall, within a reasonable time, consider the reasons for the refusal and either:
- (a) change the plan of management and seek the Land Council's consent to the plan, as changed, being forwarded to the Minister (in which case this subsection and subsections (6), (7) and (9) shall apply to and in relation to the plan as so changed); or
 - (b) forward the plan of management to the Minister together with the reasons of the Land Council for its refusal to consent and any comments of the Land Council.
- (9) The Minister shall, on the first sitting day of the Legislative Assembly after a plan of management for the sanctuary and/or marine park forwarded under subsection (5) is received by the Minister, cause it, and any reasons of the Land Council for its refusal to consent and any comments, to be tabled in the Legislative Assembly.

28 Consideration of plan by Assembly

- (1) For the purposes of this section and section 29, ***plan of management*** includes part of the plan of management, and where under this section a part only of the plan of management is disallowed, the plan of management with that part omitted shall come into operation as provided by subsection (3) and the part disallowed shall be dealt with in accordance with this section as a separate amending plan of management.
- (1A) Subsections (6), (7) and (8) do not apply to or in relation to a plan of management for the marine park.
- (2) Subject to subsection (3), the Legislative Assembly may, in pursuance of a motion notice of which is given within 5 sitting days after the plan of management has been tabled in the Assembly, pass a resolution disallowing the plan of management.
- (3) Subject to subsection (4), if no notice of a motion to disallow a plan of management is given within the time referred to in subsection (2) or the Legislative Assembly does not pass a resolution in accordance with that subsection disallowing a plan of management, the plan of management comes into operation on the day immediately following the fifth sitting day referred to or on the day immediately following the last day on which such a resolution could have been passed, as the case may be.

- (4) If, before the expiration of 5 sitting days after a plan of management has been tabled in the Legislative Assembly:
- (a) the Assembly expires or is prorogued; and
 - (b) notice of motion for the disallowance of the plan of management has not been given,
- the plan of management shall, for the purposes of this section, be deemed to have been laid before the Legislative Assembly on the first sitting day of the Assembly after the expiration or prorogation.
- (5) If the Legislative Assembly passes a resolution, in accordance with subsection (2), disallowing a plan of management, the Minister shall direct the Board to prepare a fresh plan of management and the Board shall thereupon reconsider the matter and prepare a fresh plan of management or again forward to the Minister the same plan of management, and in relation to the preparation of or dealing with the fresh plan of management, or with the same plan of management again forwarded to the Minister, as the case may be, section 27 and subsections (2), (3) and (4) of this section apply as though the plan of management were the first plan of management prepared for the sanctuary.
- (6) Where a plan of management disallowed by the Legislative Assembly is again forwarded under subsection (5) to the Minister and is again disallowed by the Legislative Assembly, the Minister shall forward it to the Chief Justice who shall consider it and make recommendations to the Minister and the Board on possible ways of resolving the differences between the Legislative Assembly and the Board in relation to the plan of management and suggested amendments, if any, to the plan of management.
- (7) The Chief Justice, in carrying out his function under subsection (6), may inform himself in whatever manner he thinks fit about any fact he considers relevant to his consideration of the plan of management.
- (8) The Minister shall, at the request of the Board, table in the Legislative Assembly the recommendations under subsection (6) of the Chief Justice, and the tabling of those recommendations shall be deemed to be the tabling under section 27 of the plan of management to which the recommendations relate, amended in accordance with those recommendations, and this section applies as though it were the first plan of management prepared for the sanctuary.
- (9) As soon as practicable after a plan of management has come into operation, the Minister shall publish a notice in the *Gazette*, and in

such newspapers as he thinks fit, stating that the plan of management has come into operation and giving an address where copies of the plan of management may be inspected or purchased.

29 Amendment, &c., of plan of management

- (1) The Board may, at any time, amend a plan of management, and sections 27(2), (3), (4), (5), (6) and 28 apply in relation to such amendment in the same manner as they apply in relation to the plan of management.
- (2) A plan of management may be revoked by a new plan of management, but the revocation shall not take effect until the new plan of management comes into operation.

30 Access to areas

- (1) Except as prohibited, restricted or regulated by or under this Act, the plan of management or any other law in force in the Territory, any person may enter and remain on the sanctuary.
- (2) Subject to subsection (3), the Board may, by a notice displayed in the relevant part of the sanctuary, designate that part of the sanctuary as land to which access by persons, other than members of the group, is prohibited or restricted, according to the terms of the notice.
- (3) Except in the performance of a function under this Act, or otherwise in accordance with this Act or a law in force in the Territory, a person who is not a member of the group shall not enter or remain on that part of the sanctuary designated in a notice referred to in subsection (2) otherwise than in accordance with the terms of the notice.

Penalty: \$1,000.

- (4) Where a plan of management is in force, the prohibition or restriction of access to part of the sanctuary designated by a notice referred to in subsection (2) shall be deemed to be included in, and form part of, the plan of management.
- (5) The plan of management shall make provision for:
 - (a) access by fishermen to the shore of those parts of the sanctuary known as Curlew Bay and Barrow Bay and at Port Essington (in the vicinity of Victoria Settlement); and
 - (b) access to airstrips by the public,

and other reasonable access by the public to the sanctuary commensurate with the status of the area as a national park.

31 Actions not to be taken except in accordance with plan of management

(1) Without limiting the generality of Part III, but subject to subsection (2):

- (a) no excavation shall be carried on;
- (b) no building or other structure shall be erected;
- (c) no work shall be carried on; and
- (d) no timber shall be felled or taken,

on or from the sanctuary or marine park, except in accordance with the plan of management.

(2) At a time when no plan of management is in force, the Board and the Commission may perform their respective functions on the sanctuary or marine park for the purpose of preserving, protecting and managing it.

Part V Mining

32 Effect of Part

This Part has effect notwithstanding any other law of the Territory.

33 Mining activities

No operations for the exploration for or recovery or processing of minerals shall be carried on the sanctuary, other than operations that are carried on with the approval of the Board in accordance with the plan of management, and no mining interest shall be granted in respect of the sanctuary except with the prior written approval of the Board.

34 Fees or compensation amounts for right to explore and mine on sanctuary

(1) The plan of management for the sanctuary shall not provide for operations for the exploration for or recovery or processing of minerals unless the Board has agreed with the applicant for a mining interest on the sanctuary for the payment of fees or amounts by the applicant to the Land Council for the right to carry out those operations.

- (2) All fees or amounts paid to the Land Council pursuant to an agreement under subsection (1) shall be dealt with and paid out by the Land Council as though they were royalty payments in respect of mining on Aboriginal land, and the sanctuary was Aboriginal land, under the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth.
- (3) Where the Board has determined that the plan of management for the sanctuary should provide for operations for the exploration for or recovery or processing of minerals by an applicant for a mining interest or by a holder of a mining interest granted with the approval in writing of the Board in pursuance of section 33, but the Board and the applicant or holder are unable to agree on the amount of the fee referred to in subsection (1), the question shall be referred to the Chief Justice to determine the amount which, in his opinion, should be paid and, upon his so determining, the Board and the applicant for or holder of the mining interest, as the case may be, shall be deemed to have agreed to the payment of the amount accordingly.

34A Mining activities on marine park

The Board may provide advice to the Minister, for consideration by the Minister primarily responsible for the administration of the *Mining Act* and any other law of the Territory relating to the exploration for or recovery of minerals, on any matter relating to such exploration or recovery or proposals for such exploration or recovery on the marine park, and any advice so provided shall be passed on and considered accordingly.

Part VI By-laws

35 By-laws

- (1) The Board may make by-laws for the sanctuary, not inconsistent with this Act, any other law of the Territory or the plan of management, prescribing all matters required or permitted by this Act or the plan of management to be prescribed by by-laws or necessary or convenient to be so prescribed for carrying out or giving effect to the functions and powers of the Board and the Commission.
- (2) Without limiting the generality of subsection (1), but subject to subsection (3), by-laws may be made:
 - (a) providing for the prohibition or the regulation of fishing;
 - (b) providing for the prohibition of the use of firearms;

- (c) providing for the prohibition of the setting of traps;
- (d) providing for the requiring of persons, upon entering the sanctuary, to declare all items of fishing equipment, firearms, ammunition and traps in their possession;
- (e) providing for the prohibition or the regulation of the carrying of fishing equipment, firearms, ammunition and traps;
- (f) providing for the seizure of fishing equipment, firearms, ammunition and traps reasonably suspected of being carried or used in contravention of a by-law or the plan of management;
- (g) regulating or prohibiting the pollution of water;
- (h) providing for the protection and preservation of the sanctuary and property and things thereon;
- (j) providing opening times and closing times for access to the sanctuary by persons who are not members of the group;
- (k) regulating or prohibiting access to the sanctuary by persons or classes of persons;
- (m) providing for the removal from the sanctuary of persons who are believed, on reasonable grounds, to be trespassers or to have contravened or failed to comply with a provision of this Act, a by-law or the plan of management;
- (n) regulating or prohibiting camping;
- (p) providing for the safety of persons;
- (q) regulating or prohibiting the use of fire;
- (r) regulating the conduct of persons;
- (s) providing for the prevention or control of nuisances;
- (t) regulating or prohibiting the carrying on of any trade or commerce;
- (u) providing for fees and charges to be imposed on persons, who are not members of the group, entering, camping on or using the sanctuary or using services or facilities provided by or on behalf of the Board;
- (w) regulating or prohibiting the use of vehicles and providing for signs and road markings for those purposes;

- (y) regulating or prohibiting, and providing for the imposition and collection of charges for:
 - (i) the parking or stopping of vehicles;
 - (ii) the mooring of vessels;
 - (iii) the landing of aircraft; and
 - (iv) the use of vehicles and vessels;
- (z) providing for the removal of vehicles, aircraft or vessels from places where they have been left in contravention of the by-laws or have been abandoned and for the impounding of such vehicles, aircraft or vessels;
- (za) making provision to the effect that, where a contravention of a provision of the by-laws relating to the parking or stopping of vehicles occurs in respect of a motor vehicle, the person who is to be regarded as the owner of the motor vehicle for the purposes of the by-laws (who may, in accordance with the by-laws, be or include a person in whose name the motor vehicle is registered under a law of the Territory) is to be deemed to have committed an offence against the provision so contravened, whether or not he in fact contravened that provision;
- (zb) enabling a person who is alleged to have contravened a provision of the by-laws relating to:
 - (i) littering;
 - (ii) the use of vehicles or vessels;
 - (iii) the parking or stopping of vehicles;
 - (iv) the mooring or landing of vessels; or
 - (v) the landing, use or flying of aircraft,to pay to the Board, as an alternative to prosecution, a specified sum in lieu of the penalty by which a contravention of that provision is otherwise punishable;
- (zc) regulating or prohibiting the use of vessels on, and the passage of vessels through, the sanctuary and the landing and use of aircraft in, and the flying of aircraft over, the sanctuary;

- (zd) regulating or prohibiting the taking of animals or plants into or out of the sanctuary and providing for the control of animals on the sanctuary;
 - (ze) providing for the impounding, removal, destruction or disposal of animals found straying on the sanctuary;
 - (zf) regulating or prohibiting the laying of baits and the use of explosives and poisons on the sanctuary;
 - (zg) providing for the collection of specimens and the pursuit of research for scientific purposes on the sanctuary; and
 - (zh) providing for any matter incidental to or connected with any of the foregoing.
- (3) A by-law shall not regulate the use by a member of the group or prohibit him from having in his possession or using any firearm, ammunition, trap, net or fishing equipment used or intended to be used by him in connection with the exercise of his right, as a member of the group, to use and occupy the sanctuary or a part of the sanctuary.
- (4) A provision of the by-laws regulating or prohibiting the flying of aircraft over the sanctuary does not have any force or effect to the extent to which it is inconsistent with a law of the Commonwealth or the Territory, but such a provision shall not be taken for the purposes of this subsection to be inconsistent with such a law if it can be complied with without contravention of that law.
- (5) The power to make by-laws conferred by this Act may be exercised:
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
 - (b) so as to make, in respect of cases in relation to which it is exercised, the same provision for all those cases or different provisions for different cases or classes of cases.
- (6) The power to make by-laws conferred by this Act shall not be taken, by implication, to exclude the power to make provision for or in relation to a matter by reason only of the fact that:
- (a) a provision is made by or under this Act in relation to that matter or another matter; or
 - (b) power is expressly conferred by or under this Act to make provision by by-laws for or in relation to another matter.

- (7) The by-laws may provide, in respect of an offence against or under this Act or the by-laws, for the imposition of:
 - (a) a fine not exceeding \$5,000; or
 - (b) a fine not exceeding \$1,000 for each day during which the offence continues.
- (8) In proceedings for an offence against a by-law, an averment of the prosecutor, contained in the information or complaint, that, at a specified time a person was on the sanctuary or a particular part of the sanctuary to which the by-law relates, is prima facie evidence of that fact.
- (9) A prosecution for an offence against a by-law shall not be commenced except with the written authority of the Board or its Chairman, or the Director of the Commission.

36 Inconsistent by-laws

Where a by-law made under this Act is inconsistent with an Act of the Territory, the latter shall prevail and the by-law shall, to the extent of the inconsistency, be invalid.

Part VII Miscellaneous

37 Territory Parks Act provisions to apply

- (1) Parts IV and VIII and sections 112, 113, 115, 118 and 119 of the *Territory Parks and Wildlife Conservation Act* apply to and in relation to the sanctuary as though it were a park within the meaning of that Act.
- (2) Regulations and by-laws made under the *Territory Parks and Wildlife Conservation Act* apply to and in relation to the sanctuary, as though it were a park within the meaning of that Act, to the extent that they are not inconsistent with the plan of management or a by-law made under this Act.
- (3) For the avoidance of doubt, a plan of management shall not be made under the *Territory Parks and Wildlife Conservation Act* in respect of the sanctuary and/or marine park.

38 Audit, &c., provisions

- (1) The Board shall, within the period of 6 months immediately following the end of the financial year or such other period as the Minister determines, prepare a report on its operations during the financial year and forward it to the Minister.

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- (2) The Minister shall table the report under subsection (1), together with the financial statement and report of the Auditor-General on the financial statement required pursuant to subsection (3), in the Legislative Assembly within 6 sitting days of the Assembly after the delivery of the later of the reports to the Minister.
 - (3) Subject to subsection (2), section 10 of the *Financial Management Act* applies to and in relation to the Board as if its activities were a Government Business Division within the meaning of that Act.
 - (4) For the purposes of the application of section 10 of the *Financial Management Act* as referred to in subsection (3), the Board shall in writing, nominate an employee of the Commission to be its Accountable Officer.

39 Lease to be granted to company

- (1) Subject to subsection (2), but notwithstanding any other provision of this Act, the Land Trust shall grant to Paspaley Pearling Company Pty. Limited a lease for a term of not less than 25 years of the land situated at that part of the area known as East Station Point, Port Bremer which, immediately before the commencement of this Act, was occupied or used by or on behalf of that company, having an area of not more than 50 acres and on which are erected buildings and other improvements, including 2 wharves and a well, being land adjacent to the land registered under the *Real Property Act* as Northern Territory Portions 1724 and 1725.
- (2) If the Land Trust and the company referred to in subsection (1) cannot, within 6 months after the commencement of this Act, agree upon the identity, area or boundaries of the land referred to in that subsection or a term, covenant or condition to which the lease is to be subject, the Chief Justice may determine the identity, area and boundaries of the land and the terms, covenants and conditions to apply and, on the Chief Justice so determining, the lease shall be deemed to have been executed by the Land Trust and the company and have effect accordingly.

40 Land ceasing to be part of the sanctuary

Where the sanctuary or any part of it ceases for any reason to be the sanctuary or part of the sanctuary, the title to the land comprising the sanctuary or that part, as the case may be, vested by this Act in the Land Trust shall continue to be so vested notwithstanding that cessation, and the Land Trust:

- (a) shall remain in existence; and
- (b) shall have, in relation to the land, the functions, powers and duties as though it were a Land Trust under and within the

meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth and a reference to **the Minister** in that Act were a reference to the Minister for the time being administering this Act.

41 Reservations revoked

- (1) All reservations under the *Crown Lands Act* relating to the sanctuary or part of the sanctuary and in force immediately before the commencement of this Act are hereby revoked.
- (2) Where a reservation referred to in subsection (1) was for historic interest or historic purposes, all buildings, structures, foundations, walls, excavations, objects or things on the land the subject of the reservation shall be protected and preserved as though the land continued to be subject to a reservation for historic interest or historic purposes, and the plan of management shall, accordingly, provide for such protection and preservation.

42 No repeal by implication

The effect of a provision of this Act shall not be amended, modified or varied except by express provision in an Act.

Schedule Cobourg Peninsula Sanctuary

section 3

ALL THAT piece or parcel of land known as Cobourg Peninsula containing an area of about 1916 square kilometres above low-water mark and lying to the west of a line on a true bearing of 231 degrees from a point on the sea coast at low-water mark distance about 10 miles on a true bearing of 245 degrees from Coombe Point, Mount Norris Bay, including:

- (a) the islands adjacent to the coast of that land and known as Sandy Island No. 2, Sandy Island No. 1, Allaru Island, Burford Island, Greenhill Island, Wangoindjung Island, Warldagawaji Island, Warla Island, Wunmiyi Island, Morse Island and Mogogout Island; and
- (c) the unnamed high black rock approximately 2.5 kilometres in a westerly direction from the most westerly point between Shamrock Bay and Silvio Bay,

but excluding:

- (d) all that parcel of land containing an area of 259 hectares more or less bounded by an imaginary line commencing at a point on the sea coast at low-water mark 60.35 metres east of the Cape Don Lighthouse jetty; thence on a true bearing of 215 degrees 10 minutes for a distance of approximately 3,540.5 metres to meet the sea coast at low-water mark; thence generally northwesterly, northeasterly, southeasterly and southwesterly along the said low-water mark to the point of commencement; and
- (e) all that piece of land known as Northern Territory Portion 900 being the whole of the land comprised in Special Purposes Lease 153 situated on the eastern shore of Knocker Bay, Port Essington and being the land more particularly described in the Register of Crown Leases Volume 56 Folio 75.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
 app = appendix
 bl = by-law
 ch = Chapter
 cl = clause
 div = Division
 exp = expires/expired
 f = forms
 Gaz = Gazette
 hdg = heading
 ins = inserted
 lt = long title
 nc = not commenced

od = order
 om = omitted
 pt = Part
 r = regulation/rule
 rem = remainder
 renum = renumbered
 rep = repealed
 s = section
 sch = Schedule
 sdiv = Subdivision
 SL = Subordinate Legislation
 sub = substituted

2**LIST OF LEGISLATION*****Cobourg Peninsula Aboriginal Land and Sanctuary Act 1981 (Act No. 64, 1981)***

Assent date 20 July 1981
 Commenced 3 September 1981 (*Gaz* S17, 3 September 1981)

Statute Law Revision Act 1983 (Act No. 58, 1983)

Assent date 28 November 1983
 Commenced 28 November 1983

Statute Law Revision Act (No. 2) 1987 (Act No. 59, 1987)

Assent date 31 December 1987
 Commenced 31 December 1987

Real Property (Consequential Amendments) Act 1991 (Act No. 33, 1991)

Assent date 25 June 1991
 Commenced 1 October 1991 (*Gaz* S49, 1 October 1991)

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
 Commenced 1 April 1995 (s 2, s 2 *Financial Management 1995* (Act No. 4, 1995) and *Gaz* S13, 31 March 1995)

Parks and Wildlife Commission (Consequential Amendments) Act 1995 (Act No. 46, 1995)

Assent date 15 November 1995
 Commenced 29 November 1995 (s 2, s 2 *Conservation Commission Amendment Act 1995* (Act No. 43, 1995) and *Gaz* S42, 29 November 1995)

Cobourg Peninsula Aboriginal Land and Sanctuary Amendment Act 1996 (Act No. 3, 1996)

Assent date 20 March 1996
 Commenced 19 April 1996 (*Gaz* S9, 19 April 1996)

