

NORTHERN TERRITORY OF AUSTRALIA
MISCELLANEOUS ACTS AMENDMENT (ABORIGINAL COMMUNITY
LIVING AREAS) ACT

As in force at 1 December 2000

TABLE OF PROVISIONS

Section

PART I – PRELIMINARY

1. Short title
2. Commencement
3. Purpose
4. – 7. [PART II] [Repealed]

PART III – AMENDMENTS TO *ASSOCIATIONS INCORPORATION ACT*

8. Prescribed property

PART IV – AMENDMENTS TO *LANDS ACQUISITION ACT*

9. New section
28A. Certain land not to be acquired
10. Effect of notice of acquisition

PART V – AMENDMENTS TO *MINING ACT*

11. New section
174AA. Aboriginal community living areas
12. Reservation of land from occupation

PART VI – AMENDMENTS TO *FENCES ACT*

13. New Section
23A. Dividing fences between pastoral lease and Aboriginal community living area

PART VII – AMENDMENTS TO *REAL PROPERTY ACT*

14. Repeal and substitution
113. Registration after statutory vesting or grant
15. Notices of statutory restrictions

PART VIII – MISCELLANEOUS

16. Aboriginal association may convert certain interests in land to community living area

SCHEDULE

Endnotes

NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 1 December 2000. Any amendments that commence after that date are not included.

MISCELLANEOUS ACTS AMENDMENT (ABORIGINAL COMMUNITY LIVING AREAS) ACT

An Act to amend certain Acts to make provision for the excision of certain areas of land from pastoral leases and the granting of an estate in fee simple in those areas as living areas for the benefit of Aboriginals who are or have been ordinarily resident on those pastoral leases or other Aboriginals, and for related purposes

PART I – PRELIMINARY

1. Short title

This Act maybe cited as the *Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act*.

2. Commencement

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

3. Purpose

The purpose of this Act is to give effect to the Memorandum of Agreement between the Commonwealth and the Northern Territory on the granting of Community Living Areas in Northern Territory Pastoral Districts, signed on 7 September 1989 and a copy of which is printed in the Schedule.

4. – 7. [PART II] [Repealed]

PART III – AMENDMENTS TO ASSOCIATIONS INCORPORATION ACT

8. Prescribed property

Section 26A of the *Associations Incorporation Act* is amended –

- (a) by omitting from subsection (3) "Except" and substituting "Subject to subsection (3A), except"; and

(b) by inserting after subsection (3) the following:

"(3A) Where prescribed property is land granted for the purposes of an Aboriginal community living area in pursuance of Part IV of the *Crown Lands Act*, nothing in subsection (1) empowers the Minister to consent to the disposal of the fee simple of any part of the land other than for the purpose of –

- (a) registering under the *Real Property Act* interests (including easements and easements in gross) which, except for this subsection, would otherwise be able to be registered; or
- (b) giving effect to a recommendation of the Community Living Areas Tribunal established under the *Crown Lands Act* made pursuant to section 105A of that Act in relation to an abandoned Aboriginal community living area."

PART IV – AMENDMENTS TO *LANDS ACQUISITION ACT*

9. New section

The *Lands Acquisition Act* is amended by inserting in Part X, before section 29, the following:

"28A. Certain land not to be acquired

"(1) The Minister may not compulsorily acquire any prescribed land or an interest in prescribed land except –

- (a) for the purpose of the provision of essential services and facilities being power (including gas), water, sewerage, road or communication services or facilities to or across the prescribed land, or access to any of them; or
- (b) where the prescribed land is held subject to the reservation that the Territory can acquire the part or interest for the purpose for which it is proposed to be acquired.

"(2) In subsection (1) 'prescribed land' means land granted to, and held by, an incorporated association within the meaning of the *Associations Incorporation Act* or an Aboriginal association within the meaning of the *Aboriginal Councils and Associations Act 1976* of the Commonwealth as a community living area for Aboriginals, having been excised (by agreement or otherwise) for that purpose from a pastoral lease within the meaning of the *Crown Lands Act*.

"(3) In any dispute under this section, the Minister shall refer the matter in dispute to the Community Living Areas Tribunal established by section 95 of the *Crown Lands Act* and the provisions of Part IV of that Act, with the necessary

changes, shall apply as if the matter in dispute were an application under that Part and the Minister and the association were parties to the application.

"(4) Nothing in subsection (1) empowers the Minister to compulsorily acquire the fee simple of any part of the prescribed land other than the interests referred to in that subsection."

10. Effect of notice of acquisition

Section 46 of the *Lands Acquisition Act* is amended by inserting after subsection (1) the following:

"(1A) Where a notice of acquisition describes land that is to be excised from a pastoral lease (within the meaning of the *Crown Lands Act*) as an Aboriginal community living area, either by agreement or by reason of the acceptance by the Minister of a recommendation to that effect made pursuant to Part IV of that Act, an estate in fee simple in the land described in the notice of acquisition is, upon publication in the *Gazette* of the notice and by virtue of this subsection, granted to the association formed pursuant to Part IV of the *Crown Lands Act* to take the land.

"(1B) Land granted by subsection (1A) –

(a) is granted subject to –

(i) the provisions of sections 19A, 20 and 20A of the *Crown Lands Act*; and

(ii) any mining tenement, exploration licence, exploration retention licence, reserve, occupation or other right under the *Mining Act*; and

(b) is granted as prescribed property within the meaning of the *Associations Incorporation Act*,

but is otherwise granted freed and discharged from all other interests, trusts, restrictions, dedications, reservations, obligations, encumbrances, contracts, licences, charges or rates of any kind, and for this purpose any interest that a person had in the granted land is divested or modified to the extent necessary to give effect to this subsection."

PART V – AMENDMENTS TO *MINING ACT*

11. New section

The *Mining Act* is amended by inserting after section 174A the following:

"174AA. Aboriginal community living areas

"(1) Where private land is land granted in pursuance of Part IV of the *Crown Lands Act* to an association for an Aboriginal community living area, then, subject to existing mining tenements, exploration licences, and exploration retention licences, a mining tenement, exploration licensing or exploration retention licence shall not, except with the consent of the owner, be granted on that private land within a distance of 1 km from a point on the land designated by the association and advised to the Minister within 30 days after the grant being effected or within such extended period as the Minister, in special circumstances, may allow.

"(2) An association referred to in subsection (3) may from time to time apply to the Minister to designate another point on the land from which the 1 km distance is measured and, subject to existing mining tenements, exploration licences, or exploration retention licences, the Minister may approve the designated point.

"(3) Nothing in this section empowers the limitation distance to extend beyond the boundaries of the private land."

12. Reservation of land from occupation

Section 178 of the *Mining Act* is amended –

(a) by omitting from subsection (2) the words "subsection (4)" and substituting "subsections (4) and (5)"; and

(b) by adding at the end the following:

"(5) The Minister shall not –

(a) cancel a reservation under subsection (1) of any land which has been granted to an association in pursuance of Part IV of the *Crown Lands Act* for an Aboriginal community living area except with the consent of the owner and the approval of the Administrator; or

(b) authorize under subsection (2) the occupation of such land except after consultation with the owner."

PART VI – AMENDMENTS TO *FENCES ACT*

13. New Section

The *Fences Act* is amended by inserting after section 23 the following:

"23A. Dividing fences between pastoral lease and Aboriginal community living area

"(1) In this section, 'pastoral lease' means a pastoral lease within the meaning of the *Crown Lands Act*.

"(2) The lessee of a pastoral lease from which has been excised an area of land in pursuance of Part IV of the *Crown Lands Act* for an Aboriginal community living area shall not be liable to join in or contribute to the construction or, subject to subsection (3) and sections 14(2) and 15(2) and (5), the repair of a dividing fence between the pastoral lease and the excised land but otherwise has the same rights and duties under this Act as an owner of the pastoral lease, and this Act shall be construed, where the context so requires, as if a reference to contribution were a reference to provision or repair, as the case may be, of the dividing fence or the full cost involved.

"(3) Where a boundary of an excised area of land referred to in subsection (2) was, immediately before that excision, a boundary of the pastoral lease from which it was excised, the lessee of the pastoral lease is liable under this Act to contribute equally to the cost of the repair of so much of the dividing fence between the excised land and the pastoral lease as is equal to the length of the boundary of the excised land that, immediately before the excision, formed the boundary of the pastoral lease."

PART VII – AMENDMENTS TO *REAL PROPERTY ACT*

14. Repeal and substitution

Sections 113, 114 and 115 of the *Real Property Act* are repealed and the following substituted:

"113. Registration after statutory vesting or grant

"(1) Where the Registrar-General is satisfied, either on an application in the prescribed form or of his own motion, that land or any interest in land has become vested in or granted to a person by or under an Act (including an Act of the Commonwealth), the Registrar-General –

- (a) shall make in the Register Book such entries in relation to the land as he considers necessary in connection with the vesting or grant; and

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act

- (b) may issue such certificates of title as he thinks fit in consequence thereof and, where that is necessary or appropriate, cancel any existing certificate of title.

"(2) The Registrar-General may exercise the power conferred by subsection (1)(a) whether or not the duplicate certificate of title to the land in question is produced to him.

"(3) Where an interest in land is transferred to the Territory pursuant to section 69(5) of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the interest shall be treated for the purposes of subsection (1) as having vested in the Territory under that Act on the execution of the transfer."

15. Notices of statutory restrictions

Section 191B of the *Real Property Act* is amended –

- (a) by inserting in subsection (1) after "may" the words "or, where the land is prescribed property within the meaning of the *Associations Incorporation Act* and was granted to an association by section 46(1A) of the *Lands Acquisition Act*, shall"; and
- (b) by inserting in subsection (3) after "subsection (1)" the words "instead of the Territory Minister".

PART VIII – MISCELLANEOUS

16. Aboriginal association may convert certain interests in land to community living area

(1) This section applies to an association of Aboriginals incorporated under the *Associations Incorporation Act* or the *Aboriginal Councils and Associations Act 1976* of the Commonwealth which –

- (a) is the registered proprietor under the *Land Title Act* of an estate in fee simple of land in the Territory;
- (b) is the lessee of a parcel of land under the *Special Purposes Leases Act*; or
- (c) is the lessee under the *Crown Lands Act* of a Crown lease for a term of years.

(2) An association to which this section applies may, in writing, apply to the Minister to have its interest in the relevant land converted to an estate in fee simple for the purposes of an Aboriginal community living area to be held on the same terms and conditions and subject to the same reservations and restrictions that would apply if the land were an excision from a pastoral lease granted to the

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act

association in pursuance of a successful application under Part 8 of the *Pastoral Land Act*.

(3) The Minister may, in his discretion, accept an application under subsection (2) or reject it.

(4) If the Minister accepts an application under subsection (2) and is satisfied that any charges, rates, rent, or encumbrances of any kind relating to the land have been paid or discharged and any covenants relating to the land have been kept, he or she shall, by notice in the *Gazette*, indicate acceptance of the application, and upon publication of the notice and by virtue of this subsection the same consequences flow in relation to the land as if the notice of acceptance were a notice of acquisition (within the meaning of the *Lands Acquisition Act*) of land to be excised from a pastoral lease published in pursuance of section 46(1A) of that Act.

SCHEDULE

Section 3

**MEMORANDUM OF AGREEMENT BETWEEN THE COMMONWEALTH
AND THE NORTHERN TERRITORY OF THE GRANTING OF
COMMUNITY LIVING AREAS IN NORTHERN TERRITORY PASTORAL
DISTRICTS**

Discussions were held between the Prime Minister and the Chief Minister of the Northern Territory on 6/7 September in relation to the question of Aboriginal living areas and Aboriginal land claims to stock routes and stock reserves in the Northern Territory.

They agreed that action will be taken as a matter of urgency to give effect to the provisions of this Memorandum which constitute a package to be implemented in a cooperative and coordinated manner.

For the Commonwealth's part action will be taken to provide land on portions of stock routes and stock reserves. For the Northern Territory's part action will be taken to provide living areas through excisions from pastoral leases.

Stock Routes and Stock Reserves

The Commonwealth will amend the Aboriginal Land Rights (Northern Territory) Act 1976, as a matter of priority, to provide for the grant, by way of inclusion in a Schedule to the Act, of certain parts of existing stock routes and reserve claims.

The selection of the areas to be included within the Schedule to the Act will be determined after consultation between the two Governments.

The Commonwealth undertook that, in providing Aboriginals with living areas on stock routes and stock reserves, the following principles will apply:

- it will schedule only a small proportion of the land subject to existing claims;
- scheduling will not take place where agreement has been reached that the Aboriginals' needs can be satisfactorily met by a pastoral excision, or a combination of part of the stock route claim with an adjacent excision; and
- there will be no scheduling in relation to those parts of claims which might unreasonably interfere with a pastoralist's interest, for example, by dividing a property, or encroaching on the homestead.

Upon enactment of the scheduling legislation the Commonwealth will then proclaim the June 1987 amendments to the Land Rights Act, which will mean that the stock route claims not scheduled will lapse. The Commonwealth also agreed that the regulation-making power providing for a stock reserve to be deemed to be available for land claim will be removed.

Pastoral Lease Excisions

Excisions will be granted under a special freehold title to be provided under Northern Territory legislation, the details of which are indicated at Attachment A. Such title will ensure that:

- there is statutory protection against alienation or encumbrance of the land;
- the Minister may not compulsorily acquire any such land except for a purpose agreed at the time of the grant, or the provision of certain essential services to, or across, the land;
- the power to compulsorily acquire shall not extend to acquisition of a fee-simple interest;
- actual living areas with a substantial buffer zone are to be reserved from mineral exploration and mining, with provision for compensation for disturbance; and
- there is a statutory right of access to the land.

The eligibility criteria for applications for pastoral lease excisions are to be:

1. Any group with the consent of the pastoral lessee.
2. Any group with a demonstrated need which was ordinarily resident on the pastoral lease at any time since 1968.
3. Any other group with an historical residential association with a lease that can demonstrate that it has a present need for a community living area.

In determining need, the Minister and the Tribunal referred to below will have regard to whether the applicants already have adequate housing circumstances or land upon which this might be provided.

The primary intention is to provide secure tenure for those Aboriginal groups in need, particularly for those Aboriginal groups presently or recently resident on pastoral leases. There is no intention to allow for a flood of claims which may be seen as providing for a land rights approach to alienated land.

The process for dealing with applications is outlined in the flowchart at Attachment B.

In essence, the parties will initially seek to reach agreement on the application. Failing agreement, application may be made to the Minister for determination. If the Minister does not accept the application, he will seek advice of a Special Tribunal, which will comprise a legal practitioner of 10 years standing appointed by the Chief Justice of the Northern Territory Supreme Court, a Land Council representative and a representative of the pastoral industry. If the Minister rejects

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act

a recommendation of the Tribunal, he must state his reasons and there will be provision for appeal to the Northern Territory Supreme Court.

Role of the Land Councils

The Northern Territory's legislation will specify that, when requested to do so, a Land Council may act on behalf of an applicant. In accordance with Section 23(2) of the Land Rights Act, the Commonwealth Minister for Aboriginal Affairs will approve the Land Councils performing this function.

Timing

Reflecting their joint intention to give effect to their agreement as a matter of urgency, the two Governments intend that passage of legislation will be sought in the Commonwealth Parliament and the Northern Territory Legislative Assembly in October 1989. This will provide the necessary legislative base for early progress on the granting of living areas.

Joint Review Group

Recognising the importance of the issue and of the action to flow from this Memorandum, the Prime Minister and the Chief Minister have agreed to establish a Joint Review Group to monitor implementation. The Review Group will report to the Prime Minister, the Minister for Aboriginal Affairs and the Chief Minister on a regular basis.

(Signed)
R. J. L. Hawke
Prime Minister

(Signed)
Marshall Perron
Chief Minister of the
Northern Territory

PROPOSED NORTHERN TERRITORY STATUE LAW REVISION BILL –
COMMUNITY LIVING AREAS

1. Crown Lands Act
 - provide for voluntary surrender of part of a pastoral lease expressly for the purpose of a living area;
 - admit the eligibility criteria and procedural guidelines as a schedule to the Act;
 - note that recently enacted amendments to the Associations Incorporation Act and the Real Property Act address the question of alienability.
2. Lands Acquisition Act
 - provide for the compulsory acquisition of part of a pastoral lease for the purposes of a living area;
 - provide a process for handling applications for excisions as outlined in the flow chart at Attachment B;
 - provide that the Minister may not compulsorily acquire land comprising a pastoral lease excision or an interest in such land except
 - where the prescribed land was granted subject to the reservation that the Territory can acquire the part or interest for the purpose for which it is proposed to be acquired; or
 - for the purpose of the provision of essential power, water, sewerage, road or communication services to or across the prescribed land;

Any dispute will be determined in accordance with the procedures at Attachment B.

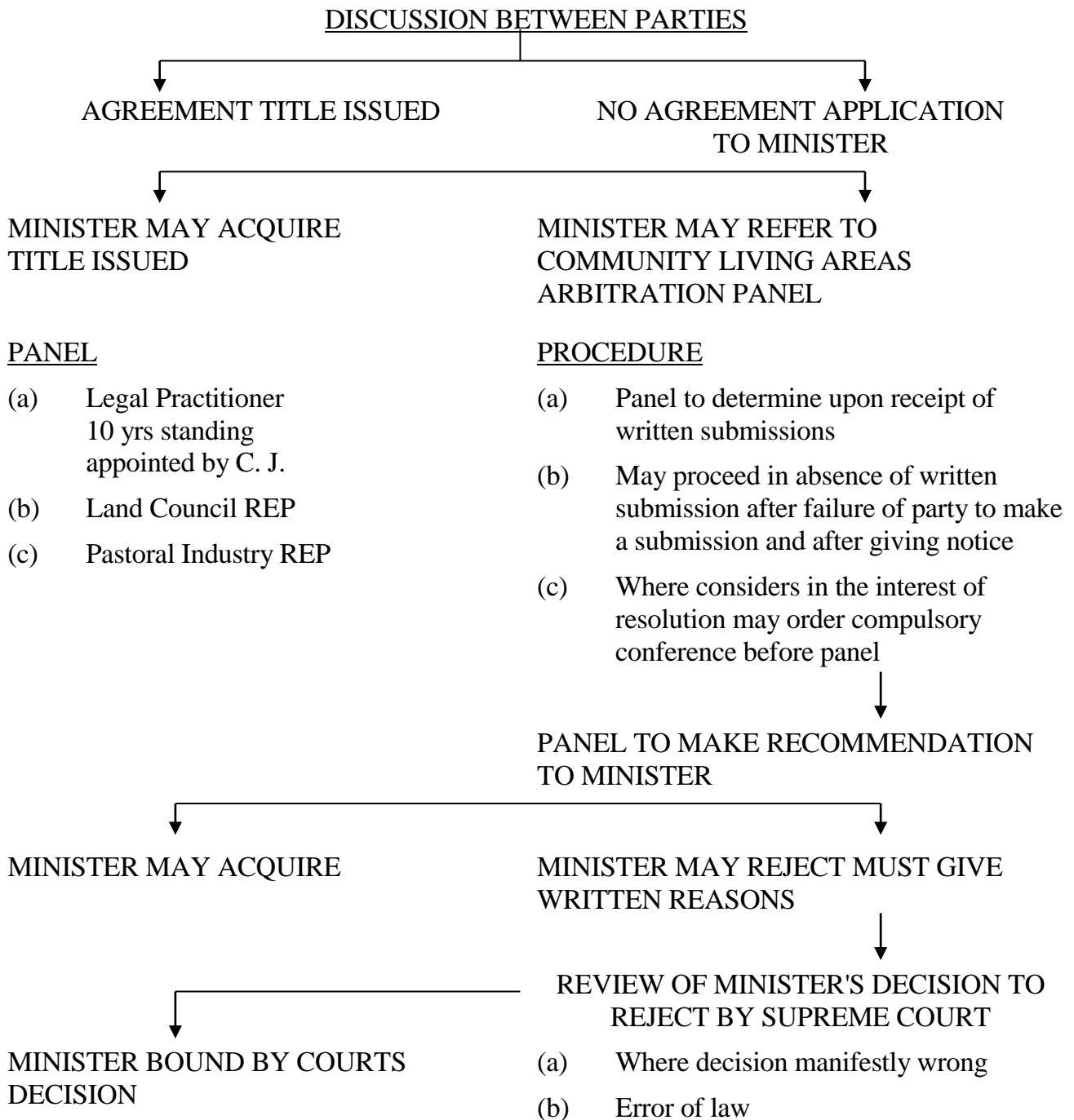
 - provide that power to compulsorily acquire shall not extend to acquisition of a fee-simple interest.
3. Mining Act
 - provide that a mineral lease cannot be granted in respect of living area within a specified (greater than the currently prescribed 50 m or 200 m) distance of the principal location of the community,

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act

- (N. B. the provisions of the *Mining Act* section 73 and *Petroleum Act* section 81 provide for compensation to be payable to owners or occupiers);
- 4. General
 - provide that the grounds for acquisition for essential public purposes could be identified at the time of a grant and be registered as a memorial on the title under the *Real Property Act*;
 - those protections and restrictions would apply to the current living areas held under Crown Lease (term) when leases surrendered in exchange for a freehold title;
 - where living areas are already held under freehold title, titles may be surrendered in exchange for a new freehold title in order to be subject to the same protections and restrictions.

FLOW CHART

PROCESS FOR ISSUE OF PROPOSED COMMUNITY LIVING AREAS
UNDER NORTHERN TERRITORY LEGISLATION



* The Parties will generally be permitted up to 6 months before application may be made to the Minister but the Minister will have discretion to increase or decrease that period if he considers this to be appropriate in the circumstances of a particular case or cases.

ENDNOTES

1. KEY

Key to abbreviations

amd = amended

bl = by-law

ch = Chapter

div = Division

exp = expires/expired

f = forms

Gaz = *Gazette*

hdg = heading

ins = inserted

lt = long title

N/C = not commenced

od = order

om = omitted

pt = Part

r = regulation/rule

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

2. LIST OF LEGISLATION

Miscellaneous Acts Amendment (Aboriginal Community Living Areas) Act 1989 (Act No. 78, 1989)

Assent date 22 December 1989

Commenced 1 March 1990 (*Gaz* S12, 28 February 1990)

Crown Lands Act 1992 (Act No. 18, 1992)

Assent date 30 April 1992

Commenced 26 June 1992 (s 2, s 2 *Pastoral Land Act 1992* (Act No. 17, 1992) and *Gaz* S33, 26 June 1992)

Pastoral Land (Consequential Amendments) Act 1992 (Act No. 39, 1992)

Assent date 25 June 1992

Commenced 26 June 1992 (s 2, s 2 *Pastoral Land Act 1992* (Act No. 17, 1992) and *Gaz* S33, 26 June 1992)

Land Title (Consequential Amendments) Act 2000 (Act No. 45, 2000)

Assent date 12 September 2000

Commenced 1 December 2000 (s 2, s 2 *Land Title Act 2000* (Act No. 2, 2000) and *Gaz* G38, 27 September 2000, p 2)

3. LIST OF AMENDMENTS

pt II hdg rep No. 18, 1992, s 107

ss 4 – 7 rep No. 18, 1992, s 107

s 16 amd No. 39, 1992, s 3; No. 45, 2000, s 11