

NORTHERN TERRITORY OF AUSTRALIA
LANDS AND MINING (MISCELLANEOUS AMENDMENTS)
ACT (NO. 2) 1999

No. 26 of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. 26 of 1999

AN ACT

to amend certain Acts consequent upon the enactment of the *Native Title Amendment Act 1998* of the Commonwealth

[Assented to 17 June 1999]

[Second reading 8 June 1999]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Lands and Mining (Miscellaneous Amendments) Act (No. 2) 1999*.

PART 2 – LANDS ACQUISITION ACT

2. Principal Act

The *Lands Acquisition Act* is in this Part referred to as the Principal Act.

3. Interpretation

Section 4 of the Principal Act is amended by inserting after the definition of "notice of proposal" in subsection (1) the following:

" 'notice of proposed acquisition' means a notice referred to in section 32(1)(e);".

4. New section

The Principal Act is amended by inserting after section 31B in Division 1A of Part IV the following:

"31C. Acquisition of native title valid if procedures complied with

"A compulsory acquisition of native title rights and interests to which this Part applies is only valid if in relation to the compulsory acquisition the procedures of this Part are complied with, and it is invalid if they are not."

5. Form of notices

Section 33 of the Principal Act is amended by omitting subsection (1)(c) and substituting the following:

"(c) an invitation to the person on whom the notice is served to negotiate with the Minister the conditions of the acquisition of the person's interest by agreement under this Act and advice to the person that in the absence of agreement the land will be compulsorily acquired but that the land will only be acquired (whether by agreement or compulsorily) after all objections lodged in accordance with section 34 have been dealt with under this Part; and".

6. Lodgement of objections

Section 34 of the Principal Act is amended by omitting from subsection (3)(b) "state the manner in which it is said that the acquisition would affect" and substituting "contain particulars of the effect that the acquisition would have on".

7. Modification or abandonment of proposal

Section 35 of the Principal Act is amended by omitting from subsection (4)(b) "a greater impact" and substituting "a greater impact (which, in the case of a proposal to deal with the land in a manner that affects native title rights and interests, means a greater impact or affect on native title)".

8. New section

The Principal Act is amended by inserting before section 36 in Division 2 of Part IV the following:

"35A. Agreement is anticipated and strongly encouraged

"It is anticipated that the parties concerned will only have recourse to the provisions of this Act relating to the procedure for dealing with an objection to a proposal or determining compensation payable for the acquisition of an interest in acquired land if they are unable to resolve those objections by agreement or to

reach an agreement about that compensation, and the parties concerned are strongly encouraged to resolve objections by agreement and to reach agreement about compensation; it being noted that the parties may enter into one or more agreements relating to the resolution of objections, compensation or both and that agreement may be reached, in the case of objections, at any time before the Minister decides to compulsorily acquire the land and, in the case of compensation, at any time before compensation is paid and, in either case, as a result of discussions held at any time and whether as part of the consultations under section 37 or otherwise than under this Act."

9. Consultation and mediation

Section 37 of the Principal Act is amended –

- (a) by omitting from subsection (4) "section 38" and substituting "subsection (4A) and section 38";
- (b) by inserting after subsection (4) the following:

"(4A) Subject to section 38, in the case of an acquisition to which section 5A(1)(b) applies, either the Minister or the person objecting to the acquisition may, after inquiring in writing of the other party as to that party's attitude towards mediation, refer the matter to mediation and the matter is to be taken to have been referred accordingly.";

- (c) by omitting from subsection (5) "subsection (4)" and substituting "subsections (4) and (4A)"; and
- (d) by omitting from subsection (5)(b) "but cannot agree on the mediator" and substituting "under subsection (4) but cannot agree on the mediator or one of the parties refers the matter to mediation under subsection (4A) but the parties cannot agree on the mediator".

10. Application to Tribunal

Section 38 of the Principal Act is amended by omitting paragraph (a)(ii) and substituting the following:

- "(ii) if a matter was referred to mediation under section 37(4) or (4A) and the parties have agreed to the mediation being conducted or continuing to be conducted during a further period of 30 days after the relevant consultation period referred to in section 37(3) – the end of that further period; or".

11. Criteria for making recommendation

Section 38AA of the Principal Act is amended –

- (a) by omitting subsection (2)(a) and substituting the following:
 - "(a) all objections in relation to the effect that the acquisition will have or is likely to have on registered native title rights and interests that were referred to the Tribunal and all submissions made to the Tribunal about those objections, which may include objections and submissions about those objections as to the effect of the acquisition on any of the following:
 - (i) the enjoyment by the native title claim group of those registered native title rights and interests;
 - (ii) the way of life, culture and traditions of the native title claim group;
 - (iii) the development of the social, cultural and economic structures of the native title claim group;
 - (iv) the freedom of access by the native title claim group to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions;
 - (v) any area or site, on the land or waters concerned, of particular significance to the native title claim group in accordance with their traditions;"
- (b) by adding at the end the following:

"(4) In subsection (2)(a), 'native title claim group', in relation to registered native title rights and interests, means –

 - (a) the registered native title claimants and the persons on whose behalf the claim in respect of those native title rights and interests is made; or
 - (b) the persons in respect of whom there is an approved determination of native title to the effect that those persons hold native title, including the members of a registered native title body corporate."

12. Procedure if no objections lodged, objections withdrawn etc.

Section 38A of the Principal Act is amended —

- (a) by omitting from subsection (3) "subsection (2)(a) or (b)" and substituting "subsection (2)(b)(i) or (ii)"; and
- (b) by adding at the end the following:

"(4) If the circumstances in subsection (2)(b)(i) or (ii) occur in relation to a proposal after the Tribunal has made a recommendation in relation to the proposal, section 45 does not apply and the Minister may proceed to compulsorily acquire the land."

13. Recommendations of Tribunal

Section 45 of the Principal Act is amended by omitting subsection (2AA) and substituting the following:

"(2AA) Prior to consultations under section (2)(a) —

- (a) the Minister must ensure that the submissions (if any) made to the Tribunal by the registered native title claimant or registered native title body corporate objecting to the acquisition, the Tribunal's recommendation and the Tribunal's reasons for making the recommendation are provided to the Minister responsible for indigenous affairs; and
- (b) the Minister responsible for indigenous affairs must ensure that he or she is aware of the content of the submissions, recommendation and reasons."

14. Service of notice of acquisition

Section 49 of the Principal Act is amended by omitting from subsection (1AB) all the words after "accompanied" and substituting the following:

"by —

- (a) a copy of those conditions; and
- (b) if the Tribunal recommended that the land may be compulsorily acquired subject to conditions relating to native title rights and interests that are different from the conditions referred to in paragraph (a) — a statement to the effect that there is a difference."

15. Damages

Section 61 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) Nothing in this section prevents the payment by the Territory and acceptance by a person referred to in subsection (1) under an agreement of valuable consideration in satisfaction for damages to which that person is or may be entitled under this section."

16. New Part

The Principal Act is amended by inserting after Part VIII the following:

"PART VIIIA – LANDS TRUST FUND

"83A. Establishment of Trust Fund

"(1) The Minister must establish and maintain the Lands Trust Fund.

"(2) For the purposes of subsection (1), an Accountable Officer's Trust Account is to be established under section 7 of the *Financial Management Act*.

"83B. Payments into Trust Fund

"(1) If the Minister decides to compulsorily acquire land in respect of which native title rights and interests exist or may exist subject to a condition that a specified amount be paid into trust in respect of compensation that will or may be payable for the effect of the acquisition on those native title rights and interests, the Territory must pay that amount into the Lands Trust Fund.

"(2) Moneys paid into the Lands Trust Fund under subsection (1) and interest earned on those moneys are to be used to pay amounts in respect of the compensation payable by the Territory to the native title holder.

"83C. How trust amounts to be dealt with

"(1) This section applies if an amount (in this section called 'the trust amount') is being held in the Lands Trust Fund in respect of a compulsory acquisition and any of the following happen:

- (a) an approved determination of native title that native title does not exist in the land the subject of the acquisition is made;
- (b) the Minister informs the trustee in writing that he or she is not going to compulsorily acquire the land;
- (c) the following requirements are satisfied:

- (i) an approved determination of native title that native title in the land the subject of the acquisition exists has been made;
 - (ii) the relevant registered native title body corporate advises the trustee in writing that it wishes to accept the trust amount instead of any compensation to which the native title holder may be entitled under this Act for the effect of the acquisition;
 - (iii) the Minister advises the trustee in writing of his or her agreement to the registered native title body corporate accepting the trust amount instead of any compensation to which the native title holder may be entitled under this Act for the effect of the acquisition;
- (d) a determination is made by the Tribunal, on a claim for compensation in respect of the acquisition, that a person is entitled to compensation or that no compensation is payable to any person;
- (e) none of paragraphs (a), (b), (c) and (d) applies and, on the application of any person, the Supreme Court decides that it would be just and equitable in all the circumstances to pay the trust amount to that person or another person (it not however being a sufficient ground for the purposes of this paragraph that a person has made or is required to make an application to the Federal Court for a determination of native title in respect of any of the land the subject of the acquisition).

"(2) Where subsection (1)(a) or (b) applies, the trustee must repay the trust amount to the Territory.

"(3) Where subsection (1)(c) applies –

- (a) the trustee must pay the trust amount to the registered native title body corporate; and
- (b) the native title holder has no further entitlement to compensation for the effect of the acquisition under this Act.

"(4) Where subsection (1)(d) applies and the determination is that a person is entitled to an amount of monetary compensation –

- (a) if the trust amount is the same as the amount determined – the trustee must pay the trust amount to the person;
- (b) if the trust amount is less than the amount determined – the trustee must pay the trust amount to the person and the Territory must pay the shortfall to the person; or

- (c) if the trust amount is more than the amount determined, the trustee must –
 - (i) pay the person so much of the trust amount as equals the amount determined; and
 - (ii) refund the excess to the Territory.

"(5) Where subsection (1)(d) applies and the transfer of property or the provision of goods or services constitutes some or all of the compensation, the trustee must apply to the Supreme Court for a direction as to the payment of the trust amount.

"(6) Where subsection (1)(d) applies and the determination is that no compensation is payable or to be given to any person, the trustee must repay the trust amount to the Territory.

"(7) Where subsection (1)(e) applies, the trustee must pay the trust amount in accordance with the decision of the Supreme Court.

"(8) If the Minister enters into a written agreement with a registered native title claimant that the claimant accepts the trust amount or part thereof on behalf of the native title holders who are signatories to the agreement, being all the native title holders in relation to the land the subject of the acquisition, instead of any compensation to which those native title holders may be entitled under this Act for the effect of the acquisition, the trustee –

- (a) must pay the trust amount or part thereof in accordance with the agreement to the registered native title claimant; and
- (b) if applicable – must pay the remainder of the trust amount to the Territory; and
- (c) the native title holders who are signatories to the agreement have no further entitlement to compensation for the effect of the acquisition under this Act.

"(9) The Minister must not enter into an agreement under subsection (8) unless satisfied that, having regard to the information (if any) provided by the Aboriginal/Torres Strait Islander body or bodies in relation to any of the land the subject of the acquisition and any other relevant matter, the signatories to the agreement are the only native title holders in relation to that land and that it is unlikely that there are any other native title holders in relation to that land."

PART 3 – LANDS AND MINING TRIBUNAL ACT

17. Principal Act

The *Lands and Mining Tribunal Act* is in this Part referred to as the Principal Act.

18. Functions

Section 5 of the Principal Act is amended –

- (a) by omitting "The Tribunal" and substituting "Subject to subsection (2), the Tribunal"; and
- (b) by adding at the end the following:

"(2) The Tribunal must not proceed to hear and make recommendations about objections under subsection (1)(a), (c) or (e) unless the parties to the proceeding have complied with sections 36, 37 and 38 of the *Lands Acquisition Act*, sections 140F, 140G and 140H of the *Mining Act* or sections 57G, 57H and 57J of the *Petroleum Act*, as the case requires.

"(3) For the purposes of subsection (2), the non-participation in the consultation process by the party objecting to the acquisition or to the doing of the prescribed mining act or prescribed petroleum act is not a ground for refusal by the Tribunal to hear and make recommendations about the objections."

19. Independence of Tribunal

Section 8 of the Principal Act is amended by omitting "in respect of a proceeding".

20. Summons

Section 15 of the Principal Act is amended by inserting in subsection (2) ", in the absence of reasonable excuse," after "must".

21. Decisions and reasons for decisions

Section 17 of the Principal Act is amended by omitting from subsection (1)(d) "the decision and the reasons for the decision" and substituting "the decision, the reasons for the decision and any relevant findings of fact".

22. Rules

Section 20 of the Principal Act is amended –

- (a) by omitting "The Chairperson" and substituting "(1) Subject to subsection (2), the Chairperson"; and

- (b) by adding at the end the following:

"(2) The Chairperson must make rules, not inconsistent with this Act, relating to the practice and procedure of the Tribunal for the protection from disclosure of culturally sensitive information.

"(3) For the purpose of making rules under subsection (2), the Chairperson must seek the views of the Aboriginal Land Councils established by or under the *Aboriginal Land Rights (Northern Territory) Act 1976*, other than those Councils that only have responsibility for Aboriginal land within the meaning of that Act, and take those views (if any) into account."

23. Recommendations about objections

Section 22 of the Principal Act is amended —

- (a) by omitting "Without" and substituting "(1) Without";
- (b) by omitting from paragraph (b) "interests" and substituting "interests and that are to be complied with by any of the parties to the proceeding"; and
- (c) by adding at the end the following:

"(2) The Tribunal must not make a recommendation containing a condition that has the effect that a native title holder is to be entitled to compensation worked out by reference to —

- (a) the amount of profits made;
- (b) any income derived; or
- (c) any things produced,

by any person as a result of doing anything in relation to the land or waters after the act is done.

"(3) If a condition to be complied with is that an amount is to be paid into the Lands Trust Fund under the *Lands Acquisition Act*, the Mining Trust Fund under the *Mining Act* or the Petroleum Trust Fund under the *Petroleum Act* and held in trust until dealt with in accordance with section 83C of the *Lands Acquisition Act*, section 174K of the *Mining Act* or section 117AC of the *Petroleum Act*, as the case requires —

- (a) the Tribunal must specify the amount in its recommendation; and
- (b) if it is decided to do the act subject to that condition — the amount, when paid, is to be held in trust until it is dealt with in accordance with that section."

PART 4 – MINING ACT

24. Principal Act

The *Mining Act* is in this Part referred to as the Principal Act.

25. Grant of exploration retention licence

Section 41 of the Principal Act is amended –

- (a) by omitting from subsection (1) "must" and substituting "may"; and
- (b) by inserting after subsection (1) the following:

"(1A) The Minister must not grant an exploration retention licence until he or she has considered all objections and comments lodged in accordance with this Act against the grant and the answers (if any) to those objections and comments."

26. Grant of mineral lease

Section 60 of the Principal Act is amended by omitting from subsection (1) "not exceeding 25 years".

27. Notification of native title holders etc.

Section 140E of the Principal Act is amended –

- (a) by omitting from subsection (3)(b) "state the manner in which it is said that the doing of the act is likely to affect" and substituting "contain particulars of the effect that the doing of the act would be likely to have on";
- (b) by omitting from paragraph (d)(ii) of the definition of "prescribed information" in subsection (7) "features; and" and substituting "features"; and
- (c) by inserting after paragraph (d) of the definition of "prescribed information" in subsection (7) the following:

"(da) a program of proposed works to be engaged in on the land under the relevant mining interest, including a description of how those works are to be carried out; and".

28. Response to objections

Section 140F of the Principal Act is amended –

- (a) by inserting after subsection (1) the following:

"(1A) As soon as practicable but in any event within 14 days after receiving from the Secretary a copy of an objection, an applicant for the grant of an exploration licence or exploration retention licence must, by notice in writing, invite the registered native title claimant or registered native title body corporate who lodged the objection to consult with the applicant in accordance with section 140G(1).";

- (b) by omitting from subsection (2) "an applicant" and substituting "an applicant other than an applicant for the grant of an exploration licence or exploration retention licence"; and
- (c) by omitting from subsection (3) "subsection (2)" and substituting "this section".

29. New section

The Principal Act is amended by inserting after section 140F the following:

"140FA. Agreement is anticipated and strongly encouraged

"It is anticipated that the parties concerned will only have recourse to the provisions of this Act relating to the procedure for dealing with native title objections or determining compensation payable for the effect of a prescribed mining act on native title if they are unable to resolve those objections by agreement or to reach an agreement about that compensation, and the parties concerned are strongly encouraged to resolve objections by agreement and to reach agreement about compensation; it being noted that the parties may enter into one or more agreements relating to the resolution of objections, compensation or both and that agreement may be reached, in the case of objections, at any time before the Minister decides to do the prescribed mining act and, in the case of compensation, at any time before compensation is paid and, in either case, as a result of discussions held at any time and whether as part of the consultations under section 140G or otherwise than under this Act."

30. Consultation and mediation

Section 140G of the Principal Act is amended –

- (a) by omitting subsection (2) and substituting the following:

"(2) For the purposes of subsection (1), consultation is to take place over –

- (a) if it relates to an exploration licence or exploration retention licence – the period commencing on the day on which the registered native title claimant or registered native title body corporate receives the invitation referred to in section 140F(1A) and ending on the last day of the period of 2 months that commences at the end of 14 days after the last day on which any registered native title claimant or

registered native title body corporate was entitled (whether under section 140E or 163) to lodge a native title objection to the prescribed mining act;

- (b) if it relates to a mineral claim, extractive mineral lease or an act to be done under an authority referred to in section 140A(1)(e) – the period of 3 months commencing at the end of 14 days after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 140E or 163) to lodge a native title objection to the prescribed mining act; or
 - (c) if it relates to a mineral lease – the period of 4 months commencing at the end of 14 days after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 140E or 163) to lodge a native title objection to the prescribed mining act.";
- (b) by omitting from subsection (4) "the applicant and the claimant or body corporate may agree to" and substituting "either the applicant or the claimant or body corporate may, after inquiring in writing of the other party as to that party's attitude towards mediation,"; and
 - (c) by omitting from subsection (5)(b) "agree to mediation but".

31. Application to Tribunal

Section 140H of the Principal Act is amended by omitting paragraph (b) and substituting the following:

- "(b) if a matter was referred to mediation under section 140G(4) and the parties have agreed to the mediation being conducted or continuing to be conducted during a further period of 30 days after the relevant consultation period referred to in section 140G(2) – the end of that further period,".

32. Criteria for making recommendation

Section 140JB of the Principal Act is amended –

- (a) by omitting subsection (1)(a) and substituting the following:
 - "(a) all objections in relation to the effect that the prescribed mining act will have or is likely to have on registered native title rights and interests that were referred to the Tribunal and all submissions made to the Tribunal about those objections, which may include objections and submissions about those objections as to the effect of the act on any of the following:

- (i) the enjoyment by the native title claim group of those registered native title rights and interests;
- (ii) the way of life, culture and traditions of the native title claim group;
- (iii) the development of the social, cultural and economic structures of the native title claim group;
- (iv) the freedom of access by the native title claim group to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions;
- (v) any area or site, on the land or waters concerned, of particular significance to the native title claim group in accordance with their traditions;" and

(b) by adding at the end the following:

"(3) In subsection (1)(a), 'native title claim group', in relation to registered native title rights and interests, means —

- (a) the registered native title claimants and the persons on whose behalf the claim in respect of those native title rights and interests is made; or
- (b) the persons in respect of whom there is an approved determination of native title to the effect that those persons hold native title, including the members of a registered native title body corporate."

33. Compliance with recommendations of Tribunal

Section 140K of the Principal Act is amended by omitting subsection (1C) and substituting the following:

"(1C) Prior to consultations under subsection (1B)(a) —

- (a) the Minister must ensure that the submissions (if any) made to the Tribunal by the registered native title claimant or registered native title body corporate objecting to the doing of the prescribed mining act, the Tribunal's recommendation and the Tribunal's reasons for making the recommendation are provided to the Minister responsible for indigenous affairs; and
- (b) the Minister responsible for indigenous affairs must ensure that he or she is aware of the content of the submissions, recommendation and reasons."

34. Procedure if no objections lodged, objections withdrawn etc.

Section 140M of the Principal Act is amended by adding at the end the following:

"(3) If the circumstances in subsection (2)(b)(i) or (ii) occur in relation to a prescribed mining act after the Tribunal has made a recommendation in relation to that act, section 140K does not apply and the Minister may proceed to determine the application for the prescribed mining act.

"(4) Where a native title objection was not lodged, or is withdrawn, because the parties have reached an agreement –

- (a) the parties may advise the Minister that they have reached an agreement and what the terms of that agreement are; and
- (b) if so advised, the Minister –
 - (i) must take into account any terms of the agreement about minimising the impact of the prescribed mining act on registered native title rights and interests; and
 - (ii) may take into account any other terms of the agreement,

when making a decision whether or not to do the prescribed mining act and, if he or she decides to do the act, when making a decision as to the conditions to which the doing of the act is to be subject."

35. Notice of application

Section 163 of the Principal Act is amended –

- (a) by omitting from subsection (1) "an exploration licence or mining tenement" and substituting "an exploration licence, exploration retention licence or mining tenement";
- (b) by omitting from subsection (2A)(a) "the exploration licence or mining tenement" and substituting "the exploration licence, exploration retention licence or mining tenement";
- (c) by omitting from subsection (5) "If" and substituting "Subject to subsection (5A), if"; and
- (d) by inserting after subsection (5) the following:

"(5A) Subsection (5) does not apply in relation to affected land that is Aboriginal land within the meaning of the *Aboriginal Land Rights (Northern Territory) Act 1976* of the Commonwealth."

36. Notification of conditions relating to native title

Section 165A of the Principal Act is amended by omitting all the words after "affected land" and substituting the following:

"of—

- (a) the decision to do the act; and
- (b) if the act is subject to conditions relating to native title rights and interests — those conditions,

and, if the Tribunal recommended that the act may be done subject to conditions different from the conditions referred to in paragraph (b), the notice is to include a statement to the effect that there is a difference".

37. New section

The Principal Act is amended by inserting after section 166C the following:

"166D. Complaints procedure

"(1) This section applies in relation to an activity authorised by or under this Act that is being conducted, to any extent, on an area of land that is an alternative provision area where there is a determination in force under section 43A(1)(b) of the Native Title Act in respect of the provisions of this Act.

"(2) If—

- (a) a registered native title claimant or registered native title body corporate in relation to land on which an activity is being conducted; or
- (b) the owner of that land,

is of the opinion that the activity is being conducted in a manner that adversely affects his or her registered interests in the land, the claimant, body corporate or owner may lodge in writing with the Minister a complaint about the matter.

"(3) Without limiting the generality of subsection (2), the things that may be complained of include the following:

- (a) the effect that the activity is having on a sacred site within the meaning of the *Northern Territory Aboriginal Sacred Sites Act*;
- (b) the activities of fossickers.

"(4) On receipt of a complaint under subsection (2), the Minister may do one or more of the following:

- (a) seek an explanation about the matter from the person conducting the activity the subject of the complaint;
- (b) request the person conducting the activity to attend a meeting with the Minister or a person authorised by the Minister to discuss the matter;
- (c) request the person conducting the activity and the complainant to attend a conference with the Minister or a person authorised by the Minister with a view to resolving the matter,

and, having done one or more of the things referred to in paragraphs (a), (b) and (c), may do one or more of the following:

- (d) give the person conducting the activity notice in writing requiring the person to take specified action within a specified period and, if the person fails to comply with the notice, authorise another person to enter the land and take that action, the costs of that other person taking that action being a debt due and payable to the Territory by the person to whom the notice was given;
- (e) subject to this Act, vary the conditions to which the conduct of the activity is subject;
- (f) subject to this Act, take any other action, including cancelling the relevant mining interest, as the Minister considers appropriate."

38. How trust amounts to be dealt with

Section 174K of the Principal Act is amended—

- (a) by omitting from subsection (1)(e) "another person" and substituting "another person (it not however being a sufficient ground for the purposes of this paragraph that a person has made or is required to make an application to the Federal Court for a determination of native title in respect of any of the affected land)"; and
- (b) by adding at the end the following:

"(8) If—

- (a) the person who paid the trust amount into the Trust Fund or that person's assignee enters into a written agreement with a registered native title claimant that the claimant accepts the trust amount or part thereof on behalf of the native title holders who are signatories to the agreement, being all the native title holders in relation to the affected land, instead of any compensation to which those native title holders may be entitled under this Act for the effect of the act; and

- (b) the Minister is satisfied that, having regard to the information (if any) provided by the representative Aboriginal/Torres Strait Islander body or bodies in relation to any of the affected land and any other relevant matter, the signatories to the agreement are the only native title holders in relation to the affected land and that it is unlikely that there are any other native title holders in relation to that land,

then —

- (c) the trustee —
 - (i) must pay the trust amount or part thereof in accordance with the agreement to the registered native title claimant; and
 - (ii) if applicable — must pay the remainder of the trust amount to the person who paid it into the Trust Fund or that person's assignee or, if that person no longer exists, apply to the Supreme Court for a direction as to the payment of the remainder; and
- (d) the native title holders who are signatories to the agreement have no further entitlement to compensation for the effect of the act under this Act."

PART 5 — PETROLEUM ACT

39. Principal Act

The *Petroleum Act* is in this Part referred to as the Principal Act.

40. Notification of native title holders etc.

Section 57F of the Principal Act is amended —

- (a) by omitting from subsection (3)(b) "state the manner in which it is said that the doing of the act is likely to affect" and substituting "contain particulars of the effect that the doing of the act would be likely to have on";
- (b) by omitting from paragraph (d)(ii) of the definition of "prescribed information" in subsection (7) "features; and" and substituting "features;"; and
- (c) by inserting after paragraph (d) of the definition of "prescribed information" in subsection (7) the following:
 - "(da) a program of proposed works to be engaged in on the land under the relevant petroleum interest, including a description of how those works are to be carried out; and"

41. New section

The Principal Act is amended by inserting after section 57G the following:

"57GA. Agreement is anticipated and strongly encouraged

"It is anticipated that the parties concerned will only have recourse to the provisions of this Act relating to the procedure for dealing with native title objections or determining compensation payable for the effect of a prescribed petroleum act on native title if they are unable to resolve those objections by agreement or to reach an agreement about that compensation, and the parties concerned are strongly encouraged to resolve objections by agreement and to reach agreement about compensation; it being noted that the parties may enter into one or more agreements relating to the resolution of objections, compensation or both and that agreement may be reached, in the case of objections, at any time before the Minister decides to do the prescribed petroleum act and, in the case of compensation, at any time before compensation is paid and, in either case, as a result of discussions held at any time and whether as part of the consultations under section 57H or otherwise than under this Act."

42. Consultation and mediation

Section 57H of the Principal Act is amended –

- (a) by omitting from subsection (4) "the applicant and the claimant or body corporate may agree to" and substituting "either the applicant or the claimant or body corporate may, after inquiring in writing of the other party as to that party's attitude towards mediation,"; and
- (b) by omitting from subsection (5)(b) "agree to mediation but".

43. Application to Tribunal

Section 57J of the Principal Act is amended by omitting paragraph (b) and substituting the following:

- "(b) if a matter was referred to mediation under section 57H(4) and the parties have agreed to the mediation being conducted or continuing to be conducted during a further period of 30 days after the relevant consultation period referred to in section 57H(2) – the end of that further period,".

44. Criteria for making recommendation

Section 57KB of the Principal Act is amended –

- (a) by omitting subsection (1)(a) and substituting the following:

"(a) all objections in relation to the effect that the prescribed petroleum act will have or is likely to have on registered native title rights and interests that were referred to the Tribunal and all submissions made to the Tribunal about those objections, which may include objections and submissions about those objections as to the effect of the act on any of the following:

- (i) the enjoyment by the native title claim group of those registered native title rights and interests;
- (ii) the way of life, culture and traditions of the native title claim group;
- (iii) the development of the social, cultural and economic structures of the native title claim group;
- (iv) the freedom of access by the native title claim group to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions;
- (v) any area or site, on the land or waters concerned, of particular significance to the native title claim group in accordance with their traditions;" and

(b) by adding at the end the following:

"(3) In subsection (1)(a), 'native title claim group', in relation to registered native title rights and interests, means —

- (a) the registered native title claimants and the persons on whose behalf the claim in respect of those native title rights and interests is made; or
- (b) the persons in respect of whom there is an approved determination of native title to the effect that those persons hold native title, including the members of a registered native title body corporate."

45. Compliance with recommendations of Tribunal

Section 57L of the Principal Act is amended by omitting subsection (1C) and substituting the following:

"(1C) Prior to consultations under subsection (1B)(a) —

- (a) the Minister must ensure that the submissions (if any) made to the Tribunal by the registered native title claimant or registered native title body corporate objecting to the doing of the prescribed petroleum act, the Tribunal's recommendation and the Tribunal's reasons for making the recommendation are provided to the Minister responsible for indigenous affairs; and
- (b) the Minister responsible for indigenous affairs must ensure that he or she is aware of the content of the submissions, recommendation and reasons."

46. Procedure if no objections lodged, objections withdrawn etc.

Section 57N of the Principal Act is amended by adding at the end the following:

"(3) If the circumstances in subsection (2)(b)(i) or (ii) occur in relation to a prescribed petroleum act after the Tribunal has made a recommendation in relation to that act, section 57L does not apply and the Minister may proceed to determine the application for the prescribed petroleum act.

"(4) Where a native title objection was not lodged, or is withdrawn, because the parties have reached an agreement —

- (a) the parties may advise the Minister that they have reached an agreement and what the terms of that agreement are; and
- (b) if so advised, the Minister —
 - (i) must take into account any terms of the agreement about minimising the impact of the prescribed petroleum act on registered native title rights and interests; and
 - (ii) may take into account any other terms of the agreement,when making a decision whether or not to do the prescribed petroleum act and, if he or she decides to do the act, when making a decision as to the conditions to which the doing of the act is to be subject."

47. Notification of conditions relating to native title

Section 70A of the Principal Act is amended by omitting all the words after "affected land" and substituting the following:

"of —

- (a) the decision to do the act; and

- (b) if the act is subject to conditions relating to native title rights and interests — those conditions,

and, if the Tribunal recommended that the act may be done subject to conditions different from the conditions referred to in paragraph (b), the notice is to include a statement to the effect that there is a difference".

48. How trust amounts to be dealt with

Section 117AC of the Principal Act is amended —

- (a) by omitting from subsection (1)(e) "another person" and substituting "another person (it not however being a sufficient ground for the purposes of this paragraph that a person has made or is required to make an application to the Federal Court for a determination of native title in respect of any of the affected land)"; and

- (b) by adding at the end the following:

"(8) If —

- (a) the person who paid the trust amount into the Trust Fund or that person's assignee enters into a written agreement with a registered native title claimant that the claimant accepts the trust amount or part thereof on behalf of the native title holders who are signatories to the agreement, being all the native title holders in relation to the affected land, instead of any compensation to which those native title holders may be entitled under this Act for the effect of the act; and
- (b) the Minister is satisfied that, having regard to the information (if any) provided by the representative Aboriginal/Torres Strait Islander body or bodies in relation to any of the affected land and any other relevant matter, the signatories to the agreement are the only native title holders in relation to the affected land and that it is unlikely that there are any other native title holders in relation to that land,

then —

- (c) the trustee —

- (i) must pay the trust amount or part thereof in accordance with the agreement to the registered native title claimant; and
- (ii) if applicable — must pay the remainder of the trust amount to the person who paid it into the Trust Fund or that person's assignee or, if that person no longer exists, apply to the Supreme Court for a direction as to the payment of the remainder; and

- (d) the native title holders who are signatories to the agreement have no further entitlement to compensation for the effect of the act under this Act."

49. New section

The Principal Act is amended by inserting after section 117B the following:

"117C. Complaints procedure

"(1) This section applies in relation to an activity authorised by or under this Act that is being conducted, to any extent, on an area of land that is an alternative provision area where there is a determination in force under section 43A(1)(b) of the Native Title Act in respect of the provisions of this Act.

"(2) If—

- (a) a registered native title claimant or registered native title body corporate in relation to land on which an activity is being conducted; or
- (b) the owner of that land,

is of the opinion that the activity is being conducted in a manner that adversely affects his or her registered interests in the land, the claimant, body corporate or owner may lodge in writing with the Minister a complaint about the matter.

"(3) Without limiting the generality of subsection (2), the things that may be complained of include the effect that the activity is having on a sacred site within the meaning of the *Northern Territory Aboriginal Sacred Sites Act*.

"(4) On receipt of a complaint under subsection (2), the Minister may do one or more of the following:

- (a) seek an explanation about the matter from the person conducting the activity the subject of the complaint;
- (b) request the person conducting the activity to attend a meeting with the Minister or a person authorised by the Minister to discuss the matter;
- (c) request the person conducting the activity and the complainant to attend a conference with the Minister or a person authorised by the Minister with a view to resolving the matter,

and, having done one or more of the things referred to in paragraphs (a), (b) and (c), may do one or more of the following:

- (d) give the person conducting the activity notice in writing requiring the person to take specified action within a specified period and, if the person fails to comply with the notice, authorise another person to enter the land and take that action, the costs of that other person taking that action being a debt due and payable to the Territory by the person to whom the notice was given;
- (e) subject to this Act, vary the conditions to which the conduct of the activity is subject;
- (f) subject to this Act, take any other action, including cancelling the relevant petroleum interest, as the Minister considers appropriate."

PART 6 – MISCELLANEOUS

50. Declaration in respect of certain regulations

(1) The amendments of the *Mining Act* and the *Lands and Mining Tribunal Act* made or purporting to have been made by the document entitled the Mining Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 11) and tabled in the Legislative Assembly on 21 April 1999 are to be taken to have been made and to have and always to have had effect according to their tenor (including as to their commencement) as if made by an Act.

(2) The amendments of the *Lands Acquisition Act* and the *Lands and Mining Tribunal Act* made or purporting to have been made by the document entitled the Lands Acquisition Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 12) and tabled in the Legislative Assembly on 21 April 1999 are to be taken to have been made and to have and always to have had effect according to their tenor (including as to their commencement) as if made by an Act.

(3) The amendments of the *Petroleum Act* and the *Lands and Mining Tribunal Act* made or purporting to have been made by the document entitled the Petroleum Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 13) and tabled in the Legislative Assembly on 21 April 1999 are to be taken to have been made and to have and always to have had effect according to their tenor (including as to their commencement) as if made by an Act.

(4) The transitional provisions made or purporting to have been made by the document entitled the Mining Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 11) and tabled in the Legislative Assembly on 21 April 1999, and amended or purporting to have been amended by the document entitled Amendments of Mining Amendment Regulations (referred to in *Gazette* No. S22 of 20 April 1999 as Regulations No. 14) and tabled in the Legislative Assembly on 27 April 1999, are to be taken to have been made and

amended and to have and always to have had effect according to their tenor (including as to their commencement) as if made and amended by an Act.

(5) The transitional provisions made or purporting to have been made by the document entitled the Petroleum Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 13) and tabled in the Legislative Assembly on 21 April 1999, and amended or purporting to have been amended by the document entitled Amendments of Petroleum Amendment Regulations (referred to in *Gazette* No. S22 of 20 April 1999 as Regulations No. 15) and tabled in the Legislative Assembly on 27 April 1999, are to be taken to have been made and amended and to have and always to have had effect according to their tenor (including as to their commencement) as if made and amended by an Act.

(6) The amendments of the *Mining Amendment Act (No. 2) 1998* made or purporting to have been made by the documents entitled the Mining Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 11) and Amendments of Mining Amendment Regulations (referred to in *Gazette* No. S22 of 20 April 1999 as Regulations No. 14) and tabled in the Legislative Assembly on 21 April 1999 and 27 April 1999 respectively are to be taken to have been made and to have and always to have had effect according to their tenor (including as to their commencement) as if made by an Act.

(7) The amendments of the *Petroleum Amendment Act 1998* made or purporting to have been made by the documents entitled the Petroleum Amendment Regulations (referred to in *Gazette* No. S19 of 16 April 1999 as Regulations No. 13) and Amendments of Petroleum Amendment Regulations (referred to in *Gazette* No. S22 of 20 April 1999 as Regulations No. 15) and tabled in the Legislative Assembly on 21 April 1999 and 27 April 1999 respectively are to be taken to have been made and to have and always to have had effect according to their tenor (including as to their commencement) as if made by an Act.
