

NORTHERN TERRITORY OF AUSTRALIA
LANDS AND MINING (MISCELLANEOUS AMENDMENTS) ACT 1999

No. 1 of 1999

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NORTHERN TERRITORY OF AUSTRALIA

No. 1 of 1999

AN ACT

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

[Assented to 19 February 1999]
[Second reading 17 February 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 1999*.

2. Commencement

(1) Part 2 is to be taken to have come into operation on the day on which, but immediately after, Part 4 of the *Lands and Mining (Miscellaneous Amendments) Act 1998* commenced.

(2) Part 4 is to be taken to have come into operation on the day on which, but immediately after, Part 6 of the *Lands and Mining (Miscellaneous Amendments) Act 1998* commenced.

PART 2 – LANDS ACQUISITION ACT

3. Principal Act

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

4. Application in relation to native title

Section 5A of the Principal Act is amended –

- (a) by omitting from subsection (2) "and Part V"; and
- (b) by inserting after subsection (2) the following:

"(2A) If, on or after 30 September 1998 but before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force, a notice under section 29 of the Native Title Act is given in respect of a compulsory acquisition of native title rights and interests that relates to an alternative provision area, then section 40 of this Act applies."

5. Application above highwater mark, &c.

Section 31B of the Principal Act is amended –

- (a) by omitting from subsection (1) "subsection (2)" and substituting "subsections (2) and (3)"; and
- (b) by adding at the end the following:

"(3) Divisions 1 and 2 of this Part do not apply in relation to a compulsory acquisition to which section 40 applies."

6. Compulsory acquisition where right to negotiate applies

Section 40 of the Principal Act is amended –

- (a) by inserting in subsection (1)(a) ", is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies" after "area";
- (b) by omitting from subsection (1)(b) "time." and substituting "time;"
- (c) by adding at the end of subsection (1) the following:

"(c) a compulsory acquisition of native title rights and interests that relates to an alternative provision area and is done after a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force if, in respect of the acquisition, a notice under section 29 of the Native Title Act is given on or after 30 September 1998 but before the determination comes into force;

- (d) a compulsory acquisition of native title rights and interests that relates to an alternative provision area and is done after a determination under section 43A(1)(b) of the Native Title Act in

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respect of the relevant provisions of this Act ceases to be in force."; and

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

"(2) Divisions 1 and 2 of this Part do not apply in relation to a compulsory acquisition to which this section applies.

"(3) Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, a compulsory acquisition to which this section applies may only be done under section 43(1)(b) of this Act after the Minister has complied with the procedures in that Subdivision."

7. Abandonment of proposal

Section 41 of the Principal Act is amended –

- (a) by inserting in subsection (4) "once a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force" after "the proposal"; and
- (b) by adding at the end the following:

"(6) The abandonment of a proposal in relation to which section 40(1)(c) applies does not prevent the Minister from compulsorily acquiring the native title rights and interests the subject of the proposal once a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of this Act comes into force if in doing so the Minister complies with Divisions 1 and 2 of this Part and in so complying the Minister causes the relevant notices of proposal to be served under section 32(1) at least 12 months after notice of the abandonment is given under subsection (2)."

8. Service of notice of acquisition

Section 49 of the Principal Act is amended by inserting after subsection (1AA) the following:

"(1AB) Where land is compulsorily acquired under section 43(1)(b) subject to conditions relating to native title rights and interests, the copy of the notice of acquisition served on the persons referred to in subsection (1A)(a)(i) and (ii) is to be accompanied by a copy of those conditions."

9. Offers

Section 50 of the Principal Act is amended –

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- (a) by omitting from subsection (1) all the words from and including "the opinion" to and including "compensation" (first occurring) and substituting the following:

"the opinion that –

- (aa) a person specified in section 49(1A)(a) who has been served with a notice under section 49(1)(c)(i); or
- (ab) a person who has lodged a claim for compensation under section 52(1) and in relation to whom section 52(2) applies,

has a claim for compensation";

- (b) by omitting from subsection (1)(a) "land;" and substituting "land; or";
- (c) by omitting from subsection (1)(b) "compensation; or" and substituting "compensation.";
- (d) by omitting subsection (1)(c); and
- (e) by inserting after subsection (1) the following:

"(1AA) If the Minister is of the opinion that –

- (a) a person specified in section 49(1A)(a) who has been served with a notice under section 49(1)(c)(i); or
- (b) a person who has lodged a claim for compensation under section 52(1) and in relation to whom section 52(2) applies,

has a claim for compensation under this Act that is not reasonably capable of being assessed, unless the person is a registered native title claimant, the Minister must cause to be served on the person a notice to the effect that the Minister proposes to refer the matter of compensation to the Tribunal under section 51(b)."

10. Reference to Tribunal

Section 51 of the Principal Act is amended by omitting "section 50(1)(c)" and substituting "section 50(1AA)".

11. Claims

Section 52 of the Principal Act is amended –

- (a) by omitting from subsection (1) all the words from and including "A person" to and including "may" and substituting the following:

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"Where a person had, or asserts to have had, an interest in acquired land immediately before the date of acquisition, including –

- (a) a registered native title body corporate;
- (b) a person asserting an interest (other than a native title right or interest) that is not shown on the Register maintained by the Registrar-General under the *Real Property Act*; and
- (c) a registered native title claimant or any other person asserting a native title right or interest,

the person may";

(b) by inserting before subsection (2)(a) the following:

"(aa) if the person holds or, but for the acquisition, would have held an interest in the acquired land, including a registered native title body corporate who holds or would have held native title – within one month after the claim is lodged;"

- (c) by omitting from subsection (2)(b) "native title claimant" and substituting "native title claimant or other person asserting a native title right or interest";
- (d) by omitting from subsection (2)(b) "the claimant" (wherever occurring) and substituting "the person"; and
- (e) by omitting from subsection (2) "an offer or notice in accordance with section 50(1)" and substituting "an offer under section 50(1)(a) or (b) or a notice under section 50(1AA) (as the case requires)".

12. Compensation for acquired land

Section 59 of the Principal Act is amended by inserting after subsection (1) the following:

"(1A) A person who has a claim for compensation under subsection (1) may lodge that claim under section 52(1)."

13. Determinations

Section 81 of the Principal Act is amended by omitting "this Part" and substituting "section 51(b) or this Part".

14. Instrument of determination

Section 82 of the Principal Act is amended by omitting from subsection (1) "this Part" and substituting "section 51(b) or this Part".

PART 3 – LANDS AND MINING (MISCELLANEOUS AMENDMENTS) ACT 1998

15. Repeal

Section 274 of the *Lands and Mining (Miscellaneous Amendments) Act 1998* is repealed.

PART 4 – LANDS AND MINING TRIBUNAL ACT

16. Functions

Section 5 of the *Lands and Mining Tribunal Act* is amended by omitting from paragraph (b) "Part VIII" and substituting "section 51(b) or Part VIII".

17. Power to dismiss objections

Section 22A of the *Lands and Mining Tribunal Act* is amended –

(a) by omitting all the words from and including "The Tribunal" to and including "to an act" and substituting "(1) The Tribunal may dismiss an objection to an act under the *Mining Act* or the *Petroleum Act* by a registered native title claimant or registered native title body corporate"; and

(b) adding at the end the following:

"(2) The Tribunal may dismiss an objection to a compulsory acquisition under the *Lands Acquisition Act* by a person if, in the Tribunal's opinion, the objection is not on the ground that –

(a) if the person is a registered native title claimant or registered native title body corporate – the compulsory acquisition would affect the registered native title rights and interests of the claimant or body; or

(b) in any other case – the compulsory acquisition would affect the person's interest in the land proposed to be acquired."

18. Withdrawal of objections

Section 22B of the *Lands and Mining Tribunal Act* is amended by inserting in paragraph (b) "either" after "because".

PART 5 – MINING ACT

19. Principal Act

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

20. Application

Section 140B of the Principal Act is amended –

- (a) by omitting from subsection (1) "(1A) and (2)" and substituting "(1A), (2), (2A) and (2B)"; and
- (b) by inserting after subsection (2) the following:

"(2A) This Part does not apply in relation to a prescribed mining act that affects native title rights and interests and relates to an alternative provision area if, in respect of the act, a notice under section 29 of the Native Title Act is given on or after 30 September 1998 but before a determination under section 43A(1)(b) of that Act in respect of the relevant provisions of this Act comes into force.

"(2B) Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, the Minister may do a prescribed mining act to which, by virtue of subsection (2A), this Part does not apply after having complied with the procedures in that Subdivision."

21. Consultation and mediation

Section 140G of the Principal Act is amended by omitting from subsection (1) all the words after "affected land," and substituting the following:

"including –

- (a) if the prescribed mining act is an act to which section 24MD(6B) of the Native Title Act applies and it is relevant to do so – about any access to that land (whether under section 179 or otherwise) or the way in which anything authorised by the prescribed mining act might be done; or
- (b) if the prescribed mining act is an act to which section 140B(1)(b) refers – about any access to that land (whether under section 179 or otherwise) or the way in which anything authorised by the prescribed mining act might be done,

in this section called 'impact minimisation' "

22. Procedure if no objections lodged, objections withdrawn, &c.

Section 140M of the Principal Act is amended by inserting in subsection (2)(b)(ii) "either" after "because".

23. Compensation

Section 140N of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) In the event of a dispute about compensation payable under subsection (1) –

- (a) the holder of the relevant mining interest; or
- (b) the person to whom compensation is payable, being –
 - (i) the registered native title body corporate; or
 - (ii) if there is an approved determination of native title that a person holds native title in the affected land but there has been no determination under either section 56 or sections 56 and 57 of the Native Title Act – that person,

may refer the dispute to the Tribunal."

24. New section

The Principal Act is amended by inserting after section 165 the following:

"165A. Notification of conditions relating to native title

"Where the Minister does a prescribed mining act, the Minister must give notice in writing to the registered native title claimants and registered native title bodies corporate in relation to any of the affected land of the doing of the act and, if the act is subject to conditions relating to native title rights and interests, those conditions."

PART 6 – PETROLEUM ACT

25. Principal Act

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

26. Notice of application for permit

Section 18 of the Principal Act is amended –

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- (a) by omitting from subsection (1)(e) "any person" and substituting "a person who has an estate or interest in relation to land comprised in, or land contiguous with land comprised in, an application area";
- (b) by omitting from subsection (1A) "of the application in accordance with that Part" and substituting "in accordance with section 57F or 57T, as the case requires";
- (c) by omitting from subsection (3) "interest in land" and substituting "interest in relation to land"; and
- (d) by omitting subsection (4).

27. Application

Section 57C of the Principal Act is amended –

- (a) by omitting from subsection (1) "subsection (1A)" and substituting "subsections (1A), (1C) and (1D)"; and
- (b) by inserting after subsection (1B) the following:

"(1C) This Part does not apply in relation to a prescribed petroleum act that affects native title rights and interests and relates to an alternative provision area if, in respect of the act, a notice under section 29 of the Native Title Act is given on or after 30 September 1998 but before a determination under section 43A(1)(b) of that Act in respect of the relevant provisions of this Act comes into force.

"(1D) Subject to Subdivision P of Division 3 of Part 2 of the Native Title Act, the Minister may do a prescribed petroleum act to which, by virtue of subsection (1C), this Part does not apply after having complied with the procedures in that Subdivision."

28. Consultation and mediation

Section 57H of the Principal Act is amended by omitting from subsection (1) all the words after "affected land," and substituting the following:

"including –

- (c) if the prescribed petroleum act is an act to which section 24MD(6B) of the Native Title Act applies and it is relevant to do so – about any access to that land or the way in which anything authorised by the prescribed petroleum act or the grant of the licence might be done; or

- (d) if the prescribed petroleum act is an act to which section 57C(1)(b) refers – about any access to that land or the way in which anything authorised by the prescribed petroleum act or the grant of the licence might be done,

in this section called 'impact minimisation' ".

29. Procedure if no objections lodged, objections withdrawn, &c.

Section 57N of the Principal Act is amended by inserting in subsection (2)(b)(ii) "either" after "because".

30. Compensation

Section 57P of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(4) In the event of a dispute about compensation payable under subsection (1) –

- (a) the holder of the relevant petroleum interest; or
- (b) the person to whom compensation is payable, being –
 - (i) the registered native title body corporate; or
 - (ii) if there is an approved determination of native title that a person holds native title in the affected land but there has been no determination under either section 56 or sections 56 and 57 of the Native Title Act – that person,

may refer the dispute to the Tribunal."

31. New section

The Principal Act is amended by inserting after section 70 the following:

"70A. Notification of conditions relating to native title

"Where the Minister does a prescribed petroleum act, the Minister must give notice in writing to the registered native title claimants and registered native title bodies corporate in relation to any of the affected land of the doing of the act and, if the act is subject to conditions relating to native title rights and interests, those conditions."

32. New section

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

"117B. Service of documents

"A document required by or under this Act to be served on a person may, unless the contrary intention appears, be served –

- (a) on that person personally;
- (b) by post to the person's usual or last-known place of abode or business; or
- (c) by leaving it with a person apparently of or above the age of 16 years at the first-mentioned person's usual or last known place of abode or business."