

NORTHERN TERRITORY OF AUSTRALIA
LANDS AND MINING (MISCELLANEOUS AMENDMENTS) ACT 1998
No. 93 of 1998
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NORTHERN TERRITORY OF AUSTRALIA

No. 93 of 1998

AN ACT

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

[Assented to 23 December 1998]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 — PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Lands and Mining (Miscellaneous Amendments) Act 1998*.

2. COMMENCEMENT

(1) Part 2 is to be taken to have come into operation on the day on which, but immediately after, the *Energy Pipelines Amendment Regulations* (being Regulations 1998, No. 45) commenced.

(2) Part 3 is to be taken to have come into operation on the day on which, but immediately after, the *Energy Pipelines Amendment Act 1998* commenced.

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(3) Part 4 is to be taken to have come into operation on the day on which, but immediately after, the *Lands Acquisition Amendment Regulations* (being Regulations 1998, No. 42) commenced.

(4) Part 5 is to be taken to have come into operation on the day on which, but immediately after, the *Lands Acquisition Amendment Act* (No. 2) 1998 commenced.

(5) Part 7 is to be taken to have come into operation on the day on which, but immediately after, the *Mining Amendment Regulations* (being Regulations 1998, No. 43) commenced.

(6) Part 8 is to be taken to have come into operation on the day on which, but immediately after, the *Mining Amendment Act* (No. 2) 1998 commenced.

(7) Part 10 is to be taken to have come into operation on the day on which, but immediately after, the *Petroleum Amendment Regulations* (being Regulations 1998, No. 44) commenced.

(8) Part 11 is to be taken to have come into operation on the day on which, but immediately after, the *Petroleum Amendment Act* 1998 commenced.

(9) Part 12 is to be taken to have come into operation on the day on which, but immediately after, the *Petroleum (Submerged Lands) Amendment Act* 1998 commenced.

(10) Part 13 is to be taken to have come into operation on the day on which, but immediately after, the *Validation of Titles and Actions Amendment Act* 1998 commenced.

(11) Section 272 is to be taken to have come into operation on the day on which, but immediately before, Parts 2, 3, 4, 5, 7, 8, 10, 11 and 12 are to be taken to have come into operation.

PART 2 — ENERGY PIPELINES ACT

3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 3 of the Principal Act is amended —

- (a) by omitting from subsection (1) the definition of "affected land or waters" and substituting the following:

"'affected land or waters' -

- (a) means land or waters comprised in, or proposed to be comprised in, a permit or licence; and
- (b) in relation to a licence, includes the corridor described in section 66;";
- (b) by omitting "person;" from paragraph (b) of the definition of "owner" in subsection (1) and substituting "person; and";
- (c) by omitting "authority; and" from paragraph (c) of the definition of "owner" in subsection (1) and substituting "authority;";
- (d) by omitting paragraph (d) of the definition of "owner" in subsection (1); and
- (e) by omitting from subsection (1) the definitions of "registered native title claimant" and "registered native title rights and interests" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the Native Title Act or, if the claimant is replaced under section 66B of that Act, means the person who replaced the claimant;

'registered native title rights and interests' means -

- (a) in relation to a registered native title claimant - the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims established and maintained in accordance with Part 7 of the Native Title Act; and
- (b) in relation to a registered native title body corporate - the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the Native Title Act;".

5. NOTICE OF APPLICATION

Section 6 of the Principal Act is amended —

- (a) by omitting "An applicant" and substituting "(1) An applicant";
- (b) by omitting paragraphs (b) and (ba) and substituting the following:
 - "(b) on each owner and occupier of land specified in the application;
 - (ba) on the registered native title claimants and registered native title bodies corporate (if any) in relation to any affected land or waters;
 - (baa) on the representative Aboriginal/ Torres Strait Islander bodies in relation to any of the affected land or waters unless the grant of the permit is not a future act;"
- (c) by omitting all the words from and including "a notice" to and including "in the form" and substituting "notice of the application"; and
- (d) by adding at the end the following:
 - "(2) A notice under subsection (1) is to be in or to the effect of the prescribed form and is to —
 - (a) set out the particulars relating to the application as are provided for in the prescribed form; and
 - (b) contain a statement to the effect that —
 - (i) the council, person or body may, within 28 days after the date of service of the notice, lodge in writing with the Minister representations about the grant of the permit; and
 - (ii) if there are no registered native title claimants or registered native title bodies corporate in relation to any of the affected land or waters, the representative Aboriginal/Torres Strait Islander body in relation to any of the affected land or waters may, within 28 days after being served with the notice, lodge in writing with the Minister comments on the grant of the permit."

6. GRANT OF PERMIT

Section 8 of the Principal Act is amended —

- (a) by omitting from subsection (1) "representations in writing made by a council, person or body referred to in section 6" and substituting "any representations and comments lodged in accordance with the statement referred to in section 6(2)(b)"; and
- (b) by inserting in subsection (2)(b) "or, if there are no registered native title rights or interests in relation to any of the affected land or waters, any comments lodged by representative Aboriginal/Torres Strait Islander bodies in accordance with the statement referred to in section 6(2)(b)" after "interests".

7. TERMS AND CONDITIONS OF PERMIT

Section 9 of the Principal Act is amended by omitting from subsection (1)(c) "registered".

8. APPLICATION FOR LICENCE

Section 13 of the Principal Act is amended —

- (a) by omitting subsection (4)(b) and (ba) and substituting the following:
 - "(b) each owner and occupier of land specified in the application;
 - (ba) the registered native title claimants and registered native title bodies corporate (if any) in relation to any affected land or waters;
 - (baa) the representative Aboriginal/Torres Strait Islander bodies in relation to any of the affected land or waters unless the grant of the licence is not a future act,"; and
- (b) by inserting after subsection (4) the following:
 - "(4A) A notice under subsection (4) is to contain —
 - (a) a description of the affected land or waters of the land;

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- (b) a statement to the effect that a map showing the proposed route of the proposed pipeline may be examined at the place or places, and at the times, specified in the notice; and
- (c) a statement to the effect that –
 - (i) the council, person or body may, within 28 days after the date of service of the notice, lodge in writing with the Minister representations about the grant of the licence; and
 - (ii) if there are no registered native title claimants or registered native title bodies corporate in relation to any of the affected land or waters, the representative Aboriginal/Torres Strait Islander body in relation to any of the affected land or waters may, within 28 days after being served with the notice, lodge in writing with the Minister comments on the grant of the licence."

9. GRANT OF LICENCE

Section 15 of the Principal Act is amended –

- (a) by omitting from subsection (1) "all representations made to him in respect of the proposed pipeline and, in particular" and substituting "any representations and comments lodged in accordance with the statement referred to in section 13(4A)(c) and"; and
- (b) by inserting in subsection (2)(e) "or, if there are no registered native title rights or interests in relation to any of the affected land or waters, any comments lodged by representative Aboriginal/Torres Strait Islander bodies in accordance with the statement referred to in section 13(4A)(c)" after "interests".

10. CONDITIONS OF LICENCE

Section 17 of the Principal Act is amended by omitting from subsection (2)(d) "registered".

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11. VARIATION OF LICENCE BECAUSE OF LEGISLATIVE REQUIREMENTS

Section 21 of the Principal Act is amended by adding at the end the following:

"(3) The Minister must not vary a licence under subsection (2) unless satisfied that the applicant has made suitable arrangements for the acquisition of land, or easements or other interests over land, sufficient to accommodate the variation of the route."

12. APPLICATION TO VARY ROUTE AND LICENCE

Section 21B of the Principal Act is amended —

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

"(b) each owner and occupier of land specified in the application;

(ba) the registered native title claimants and registered native title bodies corporate (if any) in relation to any affected land or waters;

(baa) the representative Aboriginal/ Torres Strait Islander bodies in relation to any of the affected land or waters unless the grant of the variation is not a future act;"

(b) by inserting after subsection (2) the following:

"(2A) A notice under subsection (2) is to contain —

(a) details of the proposed variation; and

(b) a statement to the effect that —

(i) the council, person or body may, within 7 days after the date of service of the notice or the further time allowed in writing by the Minister, lodge in writing with the Minister representations about the grant of the licence; and

(ii) if there are no registered native title claimants or registered native title bodies corporate in relation to any of the affected land or waters, the representative Aboriginal/Torres Strait Islander body in relation to any of the affected land or waters may, within 7 days

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after being served with the notice or the further time allowed in writing by the Minister, lodge in writing with the Minister comments on the grant of the licence."; and

- (c) by omitting subsection (3) and substituting the following:

"(3) In determining whether or not to vary a licence in accordance with an application under subsection (1), the Minister must have regard to any representations and comments lodged in accordance with the statement referred to in subsection (2A)(b).".

13. VARIATION OF LICENCE IN PUBLIC INTEREST

Section 26 of the Principal Act is amended —

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

"(i) a minister, Commonwealth Minister or State Minister; or"; and

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

"(1A) The Minister must not make a direction under subsection (1) unless satisfied that the applicant has made suitable arrangements for the acquisition of land, or easements or other interests over land, sufficient to accommodate the changes in the route or position of the pipeline.".

14. POWER OF MINISTER TO ENSURE CONTINUED USE OF PIPELINE

Section 43 of the Principal Act is amended —

- (a) by omitting from subsection (5) "subsection (6)" and substituting "subsections (5A) and (6)"; and

- (b) by inserting after subsection (5) the following:

"(5A) The Minister must not grant a licence under subsection (5) unless satisfied that the applicant has made suitable arrangements for the acquisition of land, or easements or other interests over land, sufficient to accommodate the pipeline.".

15. REPEAL AND SUBSTITUTION

Sections 67B, 67C and 67D of the Principal Act are repealed and the following substituted:

"67B. COMPENSATION

"(1) Compensation is payable by the holder of a permit to —

- (a) the native title holder in respect of any affected land or waters for the effect of the grant, extension or variation of the permit on the holder's native title rights and interests; and
- (b) the owners and occupiers of any affected land or waters for the loss or damage in respect of that person's interest in the affected land or waters because of the grant, extension or variation of the permit.

"(2) Compensation is payable by the holder of a licence to —

- (a) the native title holder in respect of any affected land or waters for the effect of the grant, renewal or variation of the licence on the holder's registered native title rights and interests for which the holder was not otherwise compensated when land, or easements or other interests over land, were acquired for the purposes of the pipeline; and
- (b) the owners and occupiers of any affected land or waters for the loss or damage in respect of that person's interest in the affected land or waters because of the grant, extension or variation of the licence, being loss or damage for which the person was not otherwise compensated when land, or easements or other interests over land, were acquired for the purposes of the pipeline.

"(3) A person who intends to claim compensation under this section must lodge the claim in writing with the holder of the permit or licence within 3 years after the grant, extension, renewal or variation of the permit or licence or within the further time the Tribunal allows.

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"(4) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (3) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(5) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land or waters.

"(6) In the event of a dispute about compensation payable under this section, the holder of the permit or licence or the owner or occupier or registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal.

"(7) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request.

"(8) A reference in this section to the payment of compensation is to be read as including a reference to the giving of compensation in a form other than money, including the transfer of property and the provision of goods and services."

PART 3 — ENERGY PIPELINES AMENDMENT ACT 1998

16. REPEAL AND SUBSTITUTION

Section 10 of the *Energy Pipelines Amendment Act 1998* is repealed and the following substituted:

"10. TRANSITIONAL PROVISION: PENDING APPLICATIONS

"(1) In this section —

'amended Act' means the Principal Act as amended by this Act and the Energy Pipelines Amendment Regulations (being Regulations 1998, No. 45);

'pending application' means an application under section 5, 13 or 21A of the Principal Act that was pending immediately before the commencement of this section.

"(2) An applicant is to be taken to have complied with a requirement under section 6, 13 or 21B of the amended Act to notify —

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- (a) the registered native title claimants (if any) in relation to any affected land or waters;
- (b) the registered native title bodies corporate (if any) in relation to any affected land or waters; and
- (c) the representative Aboriginal/Torres Strait Islander bodies (if any) in relation to any affected land or waters,

of a pending application if the applicant serves notice of the application in the form required by section 6, 13 or 21B (as the case may be) on those persons within 28 days after the applicant is advised in writing by the Minister that those persons are to be served or within the further time allowed in writing by the Minister."

PART 4 — LANDS ACQUISITION ACT

17. PRINCIPAL ACT

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

18. INTERPRETATION

Section 4 of the Principal Act is amended —

- (a) by omitting from subsection (1) the definition of "affected person" and substituting the following:

"'affected person', in relation to a proposal, means a person who has been served with notice of the proposal under section 32(1)(b) or (f) or (2A);";

- (b) by inserting after the definition of "alternative provision area" in subsection (1) the following:

"'approved determination of native title' has the meaning given in section 253 of the Native Title Act;";

- (c) by omitting from the definition of "claimant" in subsection (1) "'claimant'" and substituting "'claimant' and 'claimant for compensation'";

- (d) by inserting after the definition of "date of acquisition" in subsection (1) the following:

"'future act' has the meaning given in section 233 of the Native Title Act;

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'indigenous land use agreement' means an indigenous land use agreement within the meaning of section 253 of the Native Title Act —

(a) details of which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act; and

(b) that contains statements to the effect described in section 24EB(1)(b), (c) and (d) of the Native Title Act as applicable;";

(e) by omitting from subsection (1) the definition of "land" and substituting the following:

"'land' means land (including the seabed) within the limits of the Territory and includes an interest in land;";

(f) by inserting after the definition of "native title holder" in subsection (1) the following:

"'Native Title Registrar' has the meaning given in section 253 of the Native Title Act;";

(g) by omitting from subsection (1) the definition of "owner" and substituting the following:

"'owner', in relation to land, means the owner of an estate or interest in the land, but does not include a person whose interest or claimed interest in the land cannot be identified by or as a result of an examination of the Register kept by the Registrar-General under Part V of the Real Property Act;";

(h) by omitting from subsection (1) the definition of "proposal" and substituting the following:

"'proposal' means a proposal to compulsorily acquire land under this Act;

'Register of Native Title Claims' means the Register of Native Title Claims established and maintained in accordance with Part 7 of the Native Title Act;"; and

- (j) by omitting from subsection (1) the definitions of "registered native title claimant" and "registered native title rights and interests" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the Native Title Act or, if the claimant is replaced under section 66B of the Native Title Act, means the person who replaced the claimant;

'registered native title rights and interests' means —

- (a) in relation to a registered native title claimant — the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims; and
- (b) in relation to a registered native title body corporate — the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the Native Title Act;".

19. APPLICATION IN RELATION TO NATIVE TITLE

Section 5A of the Principal Act is amended —

- (a) by omitting "This Act" and substituting "(1) This Act"; and
- (b) by adding at the end the following:

"(2) Where section 40 applies in relation to a compulsory acquisition of an interest in land, this Act (other than Divisions 1 and 2 of Part IV and Part V) applies in respect of the acquisition.

"(3) To avoid doubt, any requirement of this Act relating to the service of a notice on a representative Aboriginal/Torres Strait Islander body does not apply if the compulsory acquisition is not a future act."

20. CERTAIN LAND NOT TO BE ACQUIRED

Section 28A of the Principal Act is amended by omitting from subsection (4) "that subsection" and substituting "subsection (1)(b)".

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21. AUTHORISATIONS

Section 29 of the Principal Act is amended by omitting from subsection (1)(b) "works" and substituting "survey or investigation".

22. ENTRY AND WORKS

Section 30 of the Principal Act is amended --

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

"(1) Subject to this section, a person authorised under section 29 may enter and remain on the land specified in the authorisation for the minimum period necessary for the reasonable investigation of the suitability of the land for the proposal."; and

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

"(a) ensure that any work performed for the purposes of a survey or investigation authorised under subsection (1) has as little impact as possible on the land and on anything on or growing on the land;

- (b) subject to any agreement that has been entered into with the owner of the land or the registered native title body corporate in respect of the land, at the end of the survey or investigation, remove from the land anything that person brought onto the land; and".

23. AGREEMENT WITH OWNER, &C.

Section 31A of the Principal Act is amended by omitting from paragraph (a) "entered on the Register of Indigenous Land Use Agreements under the Native Title Act".

24. HEADING TO PART IV

The heading to Part IV is amended by inserting "OF NATIVE TITLE" before "BELOW".

25. APPLICATION ABOVE HIGHWATER MARK, &C.

Section 31B of the Principal Act is amended --

- (a) by omitting from subsection (1)(a) "land" and substituting "an interest in land";

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- (b) by omitting from subsection (1)(b) "land" and substituting "an interest in land"; and
- (c) by inserting after subsection (1) the following:

"(1A) The compulsory acquisition of an interest in land on an onshore place on the seaward side of the mean highwater mark of the sea (other than a compulsory acquisition that is an act to which the consequences of section 24MD(6B) apply) is dealt with under Part IVA."

26. NOTIFICATION OF PROPOSAL

Section 32 of the Principal Act is amended —

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

"(c) if native title rights and interests may be affected by the proposal — caused a copy of the notice to be served on the representative Aboriginal/Torres Strait Islander body or bodies in relation to any of the land;"

- (b) by omitting from subsection (1)(e) "in the approved form";

- (c) by omitting from subsection (1)(f) "(who may be or include a person lodging an objection under section 34(1)) the Minister is satisfied have" and substituting "the Minister is satisfied have";

- (d) by inserting after subsection (2) the following:

"(2A) If the Minister —

- (a) receives an application in accordance with the statement referred to in section 33(3)(c) and is satisfied that the applicant may have an interest in the land proposed to be acquired; or
- (b) is advised in accordance with the statement referred to in section 33(3)(d) that a person has a claim for registration pending as described in section 33(3)(d),

within 14 days after receiving the application or being so advised, the Minister must cause a notice of proposal to be served on the applicant or person."; and

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- (e) by omitting from subsection (3) "subsection (1)(b) or (f)" and substituting "subsection (1)(b) or (f) or (2A).".

27. FORM OF NOTICES

Section 33 of the Principal Act is amended —

- (a) by omitting from subsection (1)(c) "an amount of compensation for" and substituting "the conditions of";
- (b) by omitting subsection (1)(d) and substituting the following:

"(d) a statement indicating —

- (i) the period within which a person served with a notice of proposal may lodge with the Minister an objection to the acquisition so far as it affects the person's interest in the land; and
- (ii) that, if the person is a registered native title claimant or registered native title body corporate in relation to any of the land, the person may lodge an objection to the acquisition so far as it affects the person's native title right and interests.";

- (c) by inserting in subsection (2) "under section 32(1)(b) or (f) or (2A)" after "proposal"; and

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

"(3) A notice of proposed acquisition is to be in the approved form and contain —

- (a) a description of the land proposed to be acquired;
- (b) details of the manner in which it is proposed that the land, if acquired, will be dealt with;
- (c) a statement indicating that a person who has or claims to have an interest in the land that will be divested, modified or affected by the acquisition may, within 21 days of the date of publication of the notice, apply to the Minister for a notice of proposal and must indicate in the application the nature of the interest held or claimed;
- (d) a statement indicating that if —

- (i) within 2 months after the date of publication of the notice, a person advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the land proposed to be acquired; and
- (ii) the Native Title Registrar has not yet decided whether or not to accept the claim for registration in the Federal Court application,

the person may, within 3 months from the date of publication of the notice or any further period allowed in writing by the Minister, lodge an objection to the acquisition so far as it affects the native title rights and interests specified in the claim; and

- (e) a statement indicating that a person referred to in paragraph (c) or (d) is not entitled under this Act to lodge an objection to the acquisition unless the person has been served with a notice of proposal under section 32(2A)."

28. LODGEMENT OF OBJECTIONS

Section 34 of the Principal Act is amended —

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

"(1) Where a person is served with a notice of proposal under section 32, the person may —

- (a) if the person has a claim for registration pending as described in subsection 33(3)(d) — within 3 months after the date of publication of the notice of proposed acquisition or within the further period allowed in writing by the Minister; or
- (b) in any other case — within 2 months after the date of the notice of proposal or within the further period allowed in writing by the Minister,

lodge with the Minister an objection to the acquisition so far as it affects that interest.";

- (b) by omitting from subsection (1A) "A person" and substituting "Subject to subsection (1)(a), a person";

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- (c) by inserting after subsection (1A) the following:

"(1B) An objection lodged under subsection (1)(a) is to be taken not to have been lodged if, by the end of 3 months from the date of publication of the notice of proposed acquisition, the Native Title Registrar —

- (a) has not accepted the claim for registration; or
- (b) has not yet decided whether or not to accept the claim for registration."; and
- (d) by omitting subsection (5) and substituting the following:

"(5) If there are no registered native title claimants or registered native title bodies corporate in relation to any of the land proposed to be acquired and either —

- (a) the purpose of the acquisition is to confer rights or interests in relation to the land proposed to be acquired on the Territory and the Minister makes a statement in writing to that effect before the acquisition takes place;
- (b) the purpose of the acquisition is to provide an infrastructure facility within the meaning of section 253 of the Native Title Act; or
- (c) the acquisition relates solely to land or waters within a town or city within the meaning of section 251C of the Native Title Act,

the representative Aboriginal/Torres Strait Islander body in relation to any of the land proposed to be acquired may, within 2 months after being served with a copy of the notice of proposal under section 32(1)(c) or within the further time allowed in writing by the Minister, lodge in writing with the Minister comments on the acquisition.

"(6) In addition to any other requirements of this Act relating to the consideration of objections and comments about a proposal, the Minister must consider any comments lodged under subsection (5) before determining whether or not to proceed with the proposal."

29. MODIFICATION OR ABANDONMENT OF PROPOSAL

Section 35 of the Principal Act is amended by omitting subsection (2)(a) and (b) and substituting the following:

"(a) each affected person; and".

30. REPEAL AND SUBSTITUTION

Section 36 of the Principal Act is repealed and the following substituted:

"36. INVITATION TO CONSULT

"Subject to section 34(1B); within 14 days after the last day on which any person was entitled under section 34 to lodge an objection to a proposal, the Minister must invite each person who lodged an objection in accordance with section 34 to consult with the Minister in accordance with section 37.".

31. CONSULTATION AND MEDIATION

Section 37 of the Principal Act is amended —

(a) by omitting from subsection (1) "The Minister" and substituting "Subject to section 34(1B), the Minister";

(b) by omitting from subsection (2) "or 43A(4)(d)";

(c) by omitting subsection (3) and substituting the following:

"(3) For the purposes of subsection (1), consultation is to take place over a period of —

(a) if the proposal relates to less than 5 hectares of land — 3 months; or

(b) if the proposal relates to 5 or more hectares of land — 4 months,

commencing at the end of the last day on which any person is entitled under section 34 to lodge an objection to the proposal.";

(d) by omitting from subsection (4) "after the second scheduled meeting" and substituting "within the relevant consultation period"; and

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- (e) by omitting from subsection (5)(b) "if no agreement is reached" and substituting "if the parties agree to mediation but cannot agree on the mediator".

32. APPLICATION TO TRIBUNAL

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

- "(i) the end of the relevant consultation period referred to in section 37(3); or
- (ii) if a matter was referred to mediation under section 37(4) — the end of 30 days after the relevant consultation period referred to in section 37(3); or".

33. NEW SECTION

The Principal Act is amended by inserting after section 38 in Division 2 of Part IV the following:

"38A. PROCEDURE IF NO OBJECTIONS LODGED, OBJECTIONS WITHDRAWN, &C.

"(1) An objection lodged under section 34 may be withdrawn at any time by notice in writing given to the Minister.

"(2) If —

- (a) at the end of the last day on which any person is entitled under section 34 to lodge an objection to a proposal, no such objections have been lodged; or
- (b) after the last day on which any person was entitled under section 34 to lodge an objection to a proposal but immediately before the Minister determines whether or not to proceed with the proposal in respect of each objection lodged, either —
 - (i) the objection has been withdrawn; or
 - (ii) if the objection was lodged by a registered native title claimant — the claimant has been removed from the Register of Native Title Claims for a reason other than because an approved determination of native title that the claimant holds native title in any of the land proposed to be acquired has been made

or the claimant has been replaced under section 66B of the Native Title Act,

the Minister may proceed to compulsorily acquire the land.

"(3) If, after an objection to a proposal has been referred to the Tribunal under section 38, the circumstances in (2)(a) or (b) occur in relation to the proposal —

- (a) the Minister must notify the Tribunal in writing of that fact; and
- (b) on being so notified, the Tribunal must not proceed to make a determination in respect of the matter."

34. REPEAL

Sections 38A and 39 of the Principal Act are repealed and the following substituted:

"39. AGREEMENT AND DETERMINATION UNDER SUBDIVISION P MADE BEFORE 30 SEPTEMBER 1998

"(1) Where, immediately before 30 September 1998 —

- (a) an agreement under section 31(1)(b) of the old Native Title Act had been made; or
- (b) a determination under section 38(1) of the old Native Title Act had been made,

the agreement or determination is saved and applies instead of the pre-acquisition procedures under Divisions 1 and 2 of this Part.

"(2) In subsection (1), 'old Native Title Act' means the *Native Title Act 1993* of the Commonwealth as in force immediately before 30 September 1998."

35. HEADING TO PART IVA

The heading to Part IVA is omitted and the following substituted:

"PART IVA — PRE-ACQUISITION PROCEDURES: CERTAIN ACQUISITIONS BELOW HIGHWATER MARK".

36. APPLICATION

Section 42 of the Principal Act is amended —

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(a) by omitting "Subject" and substituting "(1) Subject"; and

(b) by adding at the end the following:

"(2) To avoid doubt —

(a) this Part applies in relation to —

(i) the compulsory acquisition of an interest in land (other than a native title right or interest) for any purpose; and

(ii) the compulsory acquisition of native title rights and interests for a purpose other than the purpose described in section 24MD(6B) of the Native Title Act; and

(b) Part IV applies in relation to the compulsory acquisition of native title rights and interests for the purpose described in section 24MD(6B) of the Native Title Act.

"(3) Where it is proposed to compulsorily acquire an interest of a type described in paragraph (a) and an interest of a type described in paragraph (b), this Part applies in relation to the firstmentioned interest and Part IV applies in relation to the secondmentioned interest."

37. NOTIFICATION OF PROPOSAL

Section 42A of the Principal Act is amended —

(a) by omitting from subsection (1)(c) "are proposed to be acquired" and substituting "may be affected by the acquisition";

(b) by omitting from subsection (1)(f) "(who may be or include a person lodging comments under section 42C(1))";

(c) by inserting after subsection (2) the following:

"(2A) If the Minister receives an application in accordance with the statement referred to in section 42B(3)(c) and is satisfied that the applicant may have an interest in the land proposed to be acquired, within 14 days after receiving the application, the Minister must cause a notice of proposal to be served on the applicant."; and

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- (d) by omitting from subsection (3) "subsection (1)(b) or (f)" and substituting "subsection (1)(b) or (f) or (2A)".

38. FORM OF NOTICES

Section 42B of the Principal Act is amended —

- (a) by omitting from subsection (1)(c) "an amount of compensation for" and substituting "the conditions of";

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

"(d) a statement indicating the period within which a person served with a notice of proposal may lodge with the Minister comments on the acquisition; and";

- (c) by omitting from subsection (1)(e) "publication of a notice of proposed acquisition under section 42A(1)(e)" and substituting "being served with a copy of a notice of proposal under section 42A(1)(c)";

- (d) by omitting from subsection (2) "section 42A(1)(b) or (f)" and substituting "section 42A(1)(b) or (f) or (2A)"; and

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

"(3) A notice of proposed acquisition is to be in the approved form and contain —

- (a) a description of the land proposed to be acquired;

- (b) details of the manner in which it is proposed that the land, if acquired, will be dealt with;

- (c) a statement indicating that a person who has or claims to have an interest in the land that will be divested, modified or affected by the acquisition may, within 21 days of the date of publication of the notice, apply to the Minister for a notice of proposal and must indicate in the application the nature of the interest held or claimed; and

- (d) a statement indicating that a person referred to in paragraph (c) is not entitled under this Act to lodge comments on the acquisition unless the person has been served with a notice of proposal under section 42A(2A)."

39. COMMENTS ON ACQUISITION

Section 42C of the Principal Act is amended —

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

"(1) Where a person is served with a notice of proposal under section 42A, the person may —

- (a) if the person was served under section 42A(1)(b) — within 2 months after the date of the notice of proposal or within the further period allowed in writing by the Minister; or
- (b) in any other case — within 2 months after the date of publication of the notice of acquisition or within the further period allowed in writing by the Minister,

lodge with the Minister comments on the acquisition.";

- (b) by omitting from subsection (2)(a) "interests" and substituting "interests (if any)";
- (c) by omitting from subsection (2) "may, within the objection period" and substituting "who were served with a copy of the notice of proposal under section 42A(1)(c) may, within 2 months after the date of the notice of proposal"; and
- (d) by omitting subsection (4).

40. ACQUISITION GENERALLY

Section 43 of the Principal Act is amended —

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

"(aa) if the acquisition is under an indigenous land use agreement as referred to in section 31A(a) — in accordance with the terms of the agreement and by causing a notice declaring the land to be acquired to be published in the *Gazette*";

- (b) by inserting in subsection (1)(a) "if the acquisition is by agreement with the owner of the land as referred to in section 31A(b) —" before "by" (first occurring); and

- (c) by inserting in subsection (1)(b) "if the pre-acquisition procedures in Parts IV and IVA as applicable have been complied with —" before "by" (first occurring).

41. ACQUISITION ON URGENCY

Section 44 of the Principal Act is amended —

- (a) by omitting from subsection (1) "sections 34, 36 and 37" and substituting "sections 34, 36, 37, 38, 42C and 42D";
- (b) by omitting from subsection (1)(b) "objection; or" and substituting "objection;";
- (c) by omitting from subsection (1)(c) "Tribunal." and substituting "Tribunal;";
- (d) by adding at the end of subsection (1) the following:
 - "(d) before the period for lodging comments about the objection under section 42C has expired; or
 - (e) where comments on the acquisition have been lodged in accordance with section 42C — without considering those comments.";
- (e) by omitting subsections (2) and (3) and substituting the following:

"(2) The Minister may compulsorily acquire land in accordance with subsection (1) if —

- (a) the compulsory acquisition is not a future act; and
- (b) the Minister certifies in accordance with subsection (3A) that it is not practicable to delay the acquisition.

"(3) The Minister may compulsorily acquire land in accordance with subsection (1) where native title rights and interests may exist if —

- (a) the purpose of the acquisition is to confer rights or interests in relation to the land proposed to be acquired on the Territory and the Minister makes a statement in writing to that effect before the acquisition takes place; and

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- (b) the Minister certifies in accordance with subsection (3A) that it is not practicable to delay the acquisition.

"(3A) Land is not to be acquired in accordance with subsection (1) unless the Minister certifies in writing that, having regard to -

- (a) the urgency of the case; or
- (b) any other exceptional circumstances,

it is not practicable to delay the acquisition until after the pre-acquisition procedures in Part IV or IVA (as applicable) have been complied with."; and

- (f) by omitting from subsection (4) "a certificate under subsection (3)" and substituting "the certificate required under subsection (3A)".

42. RECOMMENDATIONS OF TRIBUNAL

Section 45 of the Principal Act is amended -

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

"(1A) Where, in relation to a proposal to acquire native title rights and interests, the Tribunal recommends that those rights and interests must not be compulsorily acquired, the Minister must comply with the recommendation unless the conditions specified in subsection (2) are satisfied.

"(1B) Where, in relation to a proposal to acquire native title rights and interests -

- (a) the Tribunal recommends that those rights and interests may be compulsorily acquired, whether or not subject to specified conditions; and
- (b) the Minister wishes to compulsorily acquire those rights and interests,

the Minister must comply with the recommendation unless the conditions specified in subsection (2) are satisfied.

"(2) The Minister must comply with a recommendation of the Tribunal referred to in subsection (1A) or (1B) unless -

- (a) the Minister has consulted with the Minister responsible for indigenous affairs (being the Minister to whom responsibility for Aboriginal development is allotted under an Administrative

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Arrangements Order) about the proposal by the Minister to reject or accept the recommendation and any proposal to reject, vary, substitute or add to the conditions in the recommendation;

- (b) the Minister has taken that consultation into account; and
- (c) it is in the interests of the Territory not to comply with the recommendation.";
- (b) by omitting from subsection (2A)(a) "(2)(c) and (d)" and substituting "(2)(a) and (b)";
- (c) by omitting from subsection (2A)(b) "(2)(e)" and substituting "(2)(c)";
- (d) by omitting subsection (2A)(c) and substituting the following:

"(c) reject the recommendation that the rights and interests not be compulsorily acquired and determine to compulsorily acquire those rights and interests subject to the conditions (if any) imposed by the Minister; or"; and
- (e) by inserting in subsection (2A)(d) "that the rights and interests may be compulsorily acquired" after "recommendation" (first occurring).

43. NEW SECTION

The Principal Act is amended by inserting after section 45 the following:

"45AA. WHERE ACQUISITION MAY BE DONE SUBJECT TO CONDITIONS

"(1) Where under this Act land in respect of which native title rights and interests exist may be acquired subject to conditions relating to those rights and interests being complied with by the parties, the conditions have effect and may be enforced as if they were terms of a contract among the parties.

"(2) If a registered native title claimant lodges an objection to the acquisition in accordance with section 34, any other person in the native title claim group concerned is taken to be a party for the purposes of subsection (1)."

44. JUDICIAL REVIEW

Section 45A of the Principal Act is amended —

- (a) by omitting from subsection (2) "on questions of law only"; and
- (b) by omitting subsection (2A) and substituting the following:

"(2A) To avoid doubt, judicial review under subsection (2) does not extend to a review of the decision on its merits.

"(2B) Where the decision being reviewed complies in whole or in part with a recommendation of the Tribunal, the decision is to be taken to include the recommendation and that part of the decision of the Tribunal to make the recommendation."

45. SERVICE OF NOTICE OF ACQUISITION

Section 49 of the Principal Act is amended —

- (a) by omitting subsection (1A)(b) and substituting the following:
- "(b) if native title rights and interests have been acquired — the representative Aboriginal/Torres Strait islander body or bodies in relation to any of the land acquired.";
- (b) by omitting from subsection (2) "or proper officer under subsection (1)(c)(iii) or (iv), the Registrar-General or that proper officer" and substituting ", the Registrar-General"; and
- (c) by omitting from subsection (4) "A notice under subsection (1) does not" and substituting "Service of a notice under subsection (1) does not of itself".

46. OFFERS

Section 50 of the Principal Act is amended —

- (a) by omitting from subsection (1) "this Act, the Minister must cause to be served on that person, unless the person is a registered native title claimant —" and substituting "this Act that is reasonably capable of being assessed, unless the person is a registered native title claimant, the Minister must cause to be served on the person —";

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- (b) by omitting from subsection (1)(a) "land; or" and substituting "land;";
- (c) by omitting from subsection (1)(b) "compensation." and substituting "compensation; or";
- (d) by adding at the end of subsection (1) the following:

"(c) a notice to the effect that the Minister proposes to refer the matter of compensation to the Tribunal under section 51(b).";
- (e) by inserting in subsection (1A) "or within the further time the Tribunal allows under section 52(1A)" after "date of acquisition";
- (f) by omitting from subsection (1B) all the words after "claimant" (second occurring); and
- (g) by inserting after subsection (1B) the following:

"(1C) In the absence of agreement, the compensation that may be payable to a person asserting the acquisition of an interest (other than a native title right or interest) in the acquired land that is not shown on the Register maintained by the Registrar-General under the *Real Property Act* is not determinable by the Tribunal until it is established in a court of competent jurisdiction that the person holds or, but for the acquisition, would have held the interest asserted in the acquired land:

"(1D) In the absence of agreement, compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds or, but for the acquisition, would have held native title in the acquired land."

47. COMPENSATION OTHER THAN MONEY IN RESPECT OF NATIVE TITLE

Section 50A of the Principal Act is amended by omitting all the words from and including "and the purpose" to and including "entitled" and substituting "the person or persons who are entitled".

48. REFERENCE TO TRIBUNAL

Section 51 of the Principal Act is amended —

- (a) by omitting "not served an offer under section 50" and substituting "served a notice under section 50(1)(c)";
- (b) by omitting from paragraph (a) "that interest" and substituting "the interest acquired"; and
- (c) by omitting from paragraph (b) "he shall" and substituting "whether or not the Minister has paid an amount into the Tribunal under paragraph (a), the Minister must".

49. CLAIMS

Section 52 of the Principal Act is amended —

- (a) by inserting in subsection (1) "or within the further time the Tribunal allows under subsection (1A)" after "date of acquisition";
- (b) by omitting subsection (2) and substituting the following:

"(1A) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (1) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(2) Where a person lodges a claim for compensation under subsection (1), the Minister must —

- (a) if the person is asserting the acquisition of an interest (other than a native title right or interest) in the acquired land that is not shown on the Register maintained by the Registrar-General under the *Real Property Act* — within one month after being notified by the person that it has been established in a court of competent jurisdiction that the person holds or, but for the acquisition, would have held the interest asserted in the acquired land; or
- (b) if the person is a registered native title claimant — within one month after being notified by the claimant that an approved determination of native title that the claimant holds or, but for the acquisition, would have held native title in the acquired land has been made,

cause to be served on the person an offer or notice in accordance with section 50(1) in respect of the interest that the person had in the acquired land.

"(2A) Nothing in subsection (2) prevents the Minister from making an offer to a person mentioned in that subsection with a view to reaching an agreement about compensation claimed."; and

- (c) by inserting in subsection (3) "or any further time allowed by the Tribunal under subsection (1A)" after "subsection (1)".

50. ENTRY INTO POSSESSION

Section 54 of the Principal Act is amended —

- (a) by omitting from subsection (1) "required" and substituting "acquired";
- (b) by omitting from subsection (2)(b) "the occupant of the land" and substituting "the former owner of the land or former native title holder in relation to the land"; and
- (c) by omitting from subsection (3) "the occupant of the acquired land" and substituting "the former owner of the acquired land or former native title holder in relation to the acquired land".

51. COMPENSATION FOR ACQUIRED LAND

Section 59 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) In the absence of agreement, compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds or, but for the acquisition, would have held native title in the acquired land.".

52. COMPENSATION FOR ABANDONMENT OF PROPOSALS

Section 60 of the Principal Act is amended by adding at the end ", other than costs incurred as a result of attending, participating in or being represented at consultations for the purposes of section 37(1) or mediation under section 37(4)".

53. DAMAGES

Section 61 of the Principal Act is amended —

- (a) by omitting "A person" and substituting "(1) An owner of land or a native title holder in relation to land"; and
- (b) by adding at the end the following:

"(2) In the absence of agreement, compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds or, but for any subsequent acquisition under this Act, would have held native title in the land.".

54. PREPAYMENTS

Section 62 of the Principal Act is amended —

- (a) by omitting from subsection (1) "under section 50" and substituting "of compensation under section 50(1)(a), unless an amount of compensation for the person's interest has been paid into the Tribunal under section 51(a)"; and
- (b) by adding at the end of subsection (3) "until there is an approved determination of native title that the claimant holds or, but for the acquisition, would have held native title in the acquired land".

55. ASSESSMENT OF COMPENSATION

Section 66 of the Principal Act is amended by adding at the end the following:

"(4) Nothing in this section derogates from the requirement that compensation under this Act is to be on just terms.".

56. COMPENSATION PAYABLE WITHOUT OBJECTION

Section 67A of the Principal Act is amended by adding at the end "or comments on the acquisition under section 42C".

57. NOTICES

Section 68 of the Principal Act is amended by omitting from subsection (1) "claimant" and "section 50(1)" and substituting "claimant for compensation" and "section 50(1)(a) or (b)", respectively.

58. REFERENCE TO TRIBUNAL AFTER FIRST OFFER

Section 69 of the Principal Act is amended by omitting "claimant" and substituting "claimant for compensation".

59. REFERENCE TO TRIBUNAL AFTER FURTHER OFFER

Section 71 of the Principal Act is amended by omitting "claimant" and substituting "claimant for compensation".

60. PAYMENT INTO TRIBUNAL

Section 80 of the Principal Act is amended —

(a) by omitting "The Minister" and "claimant" and substituting "(1) The Minister" and "claimant for compensation", respectively; and

(b) by adding at the end the following:

"(2) An amount paid into the Tribunal under subsection (1) may be paid out in accordance with an order of the Tribunal.".

61. DETERMINATIONS

Section 81 of the Principal Act is amended by omitting "claimant" and substituting "claimant for compensation".

62. NEW SECTION

The Principal Act is amended by inserting after section 81 the following:

"81A. RECONSIDERATION OF DETERMINATION WHERE
DETERMINATION OF NATIVE TITLE REVISED

"If —

(a) on an application under section 61 of the Native Title Act, an approved determination of native title has been revised; and

(b) the revocation, variation or other order made as a consequence of that revision affects native title rights or interests acquired under this Act,

the relevant native title body corporate or the Minister may refer any determination of the Tribunal relating to that acquisition that was made before the revision referred to in paragraph (a) back to the Tribunal for

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reconsideration and the Tribunal may consider the matter and, if it thinks fit, revise the determination accordingly."

63. INSTRUMENT OF DETERMINATION

Section 82 of the Principal Act is amended by omitting from subsection (1) "one month" and substituting "2 months".

64. SERVICE OF DETERMINATIONS

Section 83 of the Principal Act is amended by omitting from paragraph (b) "claimant" and substituting "claimant for compensation".

65. APPEALS

Section 84 of the Principal Act is amended by omitting from subsection (1) "section 81" and substituting "section 81 or 81A".

66. OTHER ACQUISITIONS

Section 89A of the Principal Act is amended by omitting from subsection (1) "otherwise than under this Act where the agreement" and substituting "where the agreement (including an indigenous land use agreement)".

67. SERVICE

Section 90 of the Principal Act is amended by omitting subsection (3)(e) and substituting the following:

"(e) where --

- (i) it relates to a native title right or interest; and
- (ii) there is no registered native title claimant or registered native title body corporate in relation to the land to which the notice or other document relates,

by leaving the notice or document at the address of the representative Aboriginal/Torres Strait Islander body in relation to the land."

68. REPEAL

Section 94 of the Principal Act is repealed.

69. SCHEDULE 2

Schedule 2 to the Principal Act is amended —

- (a) by omitting from clause 1 "a claimant" and substituting "a claimant for compensation";
- (b) by inserting after clause 1 the following:

"1A. RULES TO EXTEND TO NATIVE TITLE RIGHTS AND INTERESTS

"To the extent possible, these rules, with the necessary modifications, are to be read so as to extend to and in relation to native title rights and interests.";

- (c) by adding at the end of clause 2(d) ", other than costs incurred as a result of attending, participating in or being represented at consultations for the purposes of section 37(1) or mediation under section 37(4)"; and
- (d) by omitting from clause 11(1)(a) "or a native title right or interest".

PART 5 — LANDS ACQUISITION AMENDMENT ACT (NO. 2) 1998

70. PRINCIPAL ACT

The *Lands Acquisition Amendment Act (No. 2) 1998* is in this Part referred to as the Principal Act.

71. TRANSITIONAL ARRANGEMENTS

Section 50 of the Principal Act is amended —

- (a) by inserting in the definition of "existing proposal" in subsection (1) "an interest in" before "land";
- (b) by omitting from subsection (2) "land in relation to which there are no" and substituting "interests that are not";
- (c) by omitting from subsection (3)(a) "land in relation to which there are"; and
- (d) by omitting from subsection (3)(b) "in respect of land".

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72. REGULATIONS

Section 51 of the Principal Act is amended by omitting subsection (3) and substituting the following:

"(3) The Administrator may only make regulations under subsection (1) during the period commencing on the day on which this section commences and ending on the day before a determination under section 43A of the Native Title Act 1993 of the Commonwealth is made in respect of the *Lands Acquisition Act*."

PART 6 — LANDS AND MINING TRIBUNAL ACT 1998

73. PRINCIPAL ACT

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

74. INTERPRETATION

Section 3 of the Principal Act is amended —

- (a) by inserting before the definition of "claimant" in subsection (1) the following:

"'approved determination of native title' has the meaning given in section 253 of the Native Title Act;";

- (b) by inserting after the definition of "proceeding" in subsection (1) the following:

"'Register of Native Title Claims' means the Register of Native Title Claims established and maintained in accordance with Part 7 of the Native Title Act;"; and

- (c) by omitting from subsection (1) the definitions of "registered native title claimant" and "registered native title rights and interests" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the Native Title Act or, if the claimant is replaced under section 66B of that Act, means the person who replaced the claimant;

'registered native title rights and interests' means —

- (a) in relation to a registered native title claimant — the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims; and
- (b) in relation to a registered native title body corporate — the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the Native Title Act;".

75. ESTABLISHMENT

Section 4 of the Principal Act is amended by omitting "Land" and substituting "Lands".

76. FUNCTIONS

Section 5 of the Principal Act is amended —

- (a) by omitting from paragraph (b) "in relation to that land" and substituting "where there has been an approved determination of native title that those rights and interests exist or, but for an acquisition under that Act, would have existed in respect of the land";
- (b) by inserting after paragraph (b) the following:
 - "(ba) to hear and make recommendations about applications for the grant of extractive mineral interests referred to the Tribunal under section 100(1)(e) or 111(1)(e) of the Mining Act;";
- (c) by omitting from paragraph (d) "section 140N" and substituting "section 120(4), 140N(4), 140U(4), 174B(3)(a) or 179(3)(a)";
- (d) by omitting from paragraph (f) "section 57P, 81 or 82" and substituting "section 57P(4), 57V(4), 81(3) or 82(2)";
- (e) by omitting paragraph (g) and substituting the following:
 - "(g) to hear and make recommendations about objections by registered native title claimants and registered native title bodies corporate to the extension or grant of a pastoral lease under section 49, 61, 62 or 64 of the *Pastoral Land Act* so far as it affects the registered

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native title rights and interests of the claimants and bodies;

(ga) to hear and determine disputes about compensation referred to the Tribunal under section 72C(4) of the *Pastoral Land Act*"; and

(f) by omitting from paragraph (h) "section 43N" and substituting "section 67B(6)".

77. CONSTITUTION

Section 7 of the Principal Act is amended —

(a) by omitting from subsection (1) "subsection (2)" and substituting "this section";

(b) by adding at the end of subsection (2) "unless the parties agree to the Tribunal being constituted by that member"; and

(c) by adding at the end the following:

"(3) Where the Tribunal was constituted by a particular member for the purpose of making a recommendation about an objection to the doing of an act, the Tribunal is not to be constituted by that same member for the purpose of determining a dispute about compensation for the act payable to the person who lodged the objection unless the parties to the compensation proceeding agree.".

78. APPEARANCE AND REPRESENTATION

Section 12 of the Principal Act is amended —

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

"(ii) the person claiming compensation";

(b) by inserting after subsection (1)(b) the following:

"(ba) if the proceeding is for the purposes of section 5(ba) —

(i) the person who applied for the grant of the extractive mineral interest; and

(ii) the persons (if any) objecting to the grant of the extractive mineral interest;"

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- (c) by omitting subsection (1)(d)(ii) and substituting the following:

"(ii) the person claiming compensation;"

- (d) by omitting subsection (1)(f)(ii) and substituting the following:

"(ii) the person claiming compensation;" and

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

"(g) if the proceeding is for the purposes of section 5(g) —

(i) the Minister to whom the administration of the *Pastoral Land Act* is allotted under an Administrative Arrangements Order; and

(ii) the registered native title claimant or registered native title body corporate objecting to the extension or grant;

(ga) if the proceeding is for the purposes of section 5(ga) —

(i) the Minister to whom the administration of the *Pastoral Land Act* is allotted under an Administrative Arrangements Order; and

(ii) the person claiming compensation;"

79. EVIDENCE

Section 14 of the Principal Act is amended by inserting after subsection (4) the following:

"(4A) In deciding whether or not to require an answer to a question or the production of a document under subsection (4), the Tribunal must take into account the cultural and customary concerns of Aboriginal peoples but not so as to prejudice unduly any party to the proceeding."

80. DECISIONS AND REASONS FOR DECISIONS

Section 17 of the Principal Act is amended —

- (a) by omitting from subsection (1)(a) "30 days" and substituting "2 months";

- (b) by omitting subsection (1)(d)(ii) and substituting the following:

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"(ii) in the case of a proceeding under section 5(ba), (c) or (e) — the Minister to whom administration of the Act under which it is proposed to grant the extractive mineral interest or do the prescribed mining or petroleum act is allotted under an Administrative Arrangements Order.";

(c) by omitting from subsection (2)(a) "section 5(a), (c), (e) or (g)" and substituting "section 5(a), (ba), (c), (e) or (g)"; and

(d) by omitting from subsection (2)(b) "section 5(b), (d), (f) or (h)" and substituting "section 5(b), (d), (f), (ga) or (h)".

81. RECOMMENDATIONS ABOUT OBJECTIONS

Section 22 of the Principal Act is amended —

(a) by omitting from subsection (1) "(1) Without" and substituting "Without";

(b) by omitting from subsection (1) "a recommendation" and substituting "a recommendation under section 5(a), (c), (e) or (g)"; and

(c) by omitting subsections (2) and (3).

82. NEW SECTIONS

The Principal Act is amended by inserting after section 22 the following:

"22A. POWER TO DISMISS OBJECTIONS

"The Tribunal may dismiss an objection of a registered native title claimant or registered native title body corporate to an act if, in the Tribunal's opinion, the objection is not on the ground that the doing of the act would affect the registered native title rights and interests of the claimant or body.

"22B. WITHDRAWAL OF OBJECTIONS

"Where —

(a) an objection to an act is withdrawn; or

(b) if the objection was lodged by a registered native title claimant — the claimant has been removed from the Register of Native Title Claims for a reason other than because an approved determination of native title that the

claimant holds native title in the land in respect of land or waters in relation to which it is proposed to do the act has been made or the claimant has been replaced under section 66B of the Native Title Act,

the Tribunal must not proceed to make a recommendation about the objection and must dismiss the referral of the objection.

"22C. POWER TO PROCEED EX PARTE

"If a party does not appear, the Tribunal may hear the matter and make a recommendation about an objection or determine compensation in the absence of that party.".

83. NEW SECTIONS

The Principal Act is amended by inserting after section 24 the following:

"24A. NO MULTIPLE COMPENSATION PAYABLE FOR ESSENTIALLY SAME ACT

"Despite anything in this Act or another Act -

- (a) compensation is only payable once for acts that are essentially the same; and
- (b) in determining compensation in accordance with this Division, the Tribunal must take into account any compensation awarded under another law of the Territory or a law of the Commonwealth or of a State or another Territory of the Commonwealth.

"24B. CRITERIA FOR DETERMINING COMPENSATION FOR NATIVE TITLE

"(1) The entitlement of a native title holder to compensation for the effect of an act on the holder's native title rights and interests is an entitlement on just terms to compensate the native title holder for any loss, diminution, impairment or other effect of the act on those native title rights and interests.

"(2) If the act is the compulsory acquisition of all or any of the native title rights and interests of the native title holder, in determining compensation on just terms, subject to section 25, the Tribunal may have regard to the principles and criteria for determining compensation set out in the *Lands Acquisition Act*."

84. FORM OF COMPENSATION

Section 25 of the Principal Act is amended —

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

"(1) Subject to this section, compensation determined by the Tribunal may only consist of the payment of money.

"(1A) If the person claiming compensation requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the Tribunal —

- (a) must consider the request; and
- (b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to pay the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation."; and
- (b) by omitting from subsections (2) and (3) "subsection (1)" and substituting "subsection (1A)".

85. NEW SECTION

The Principal Act is amended by inserting after section 26 the following:

"26A. LIMIT ON COMPENSATION

"(1) The total amount of compensation determined by the Tribunal to be payable for an act that extinguishes all native title in relation to particular land or waters is not to exceed the amount that would be payable if the act were instead a compulsory acquisition of a freehold estate in the land or waters.

"(2) Subsection (1) has effect subject to the requirement that compensation is to be on just terms."

86. NEW SECTION

The Principal Act is amended by inserting after section 27 in Part 3 the following:

"27A. INVESTMENT

"The Chairperson of the Tribunal may authorise the investment of money paid into the Tribunal under the *Lands Acquisition Act* in such manner as trust funds may be invested under the *Trustee Act*."

87. TRIBUNAL MAY APPOINT MEDIATOR

Section 36 of the Principal Act is amended —

- (a) by omitting from subsection (5)(b) "Act;" and substituting "Act; or";
- (b) by omitting from subsection (5)(c) "Act; or" and substituting "Act."; and
- (c) by omitting subsection (5)(d).

88. NEW SECTION

The Principal Act is amended by inserting after section 37 the following:

"37A. PROOF OF RECOMMENDATIONS AND DETERMINATIONS

"A copy of a recommendation or determination of the Tribunal that is certified to be a true copy of the recommendation or determination is to be admitted as conclusive evidence of that recommendation or determination and all courts, judges and persons acting judicially may take judicial notice of the Registrar's signature to such a document."

PART 7 — MINING ACT

89. PRINCIPAL ACT

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

90. INTERPRETATION

Section 4 of the Principal Act is amended —

- (a) by omitting from subsection (1) the definition of "affected land" and substituting the following:

"'affected land' means land comprised in, or proposed to be comprised in, a mining interest;"

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- (b) by inserting after the definition of "alternative provision area" in subsection (1) the following:

"'approved determination of native title' has the meaning given in section 253 of the Native Title Act;";

- (c) by inserting after the definition of "exploration retention licence" in subsection (1) the following:

"'extractive mineral' means sand, gravel, rocks or soil extracted, obtained or removed for a purpose other than —

- (a) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or

- (b) processing the sand, gravel, rocks or soil by non-mechanical means;";

- (d) by inserting after the definition of "fossicker's permit" in subsection (1) the following:

"'future act' has the meaning given in section 233 of the Native Title Act;";

- (e) by inserting after the definition of "improvements" in subsection (1) the following:

"'indigenous land use agreement' means an indigenous land use agreement within the meaning of section 253 of the Native Title Act —

- (a) details of which are entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act; and

- (b) that contains statements to the effect described in section 24EB(1)(b), (c) and (d) of the Native Title Act as applicable;";

- (f) by omitting from subsection (1) the definition of "mineral field";

- (g) by omitting from subsection (1) the definitions of "Mining Compensation (Native Title) Fund" and "mining interest" and substituting the following:

"'mining interest' means an exploration licence, exploration retention licence, mineral lease, mineral claim, extractive mineral lease or extractive mineral permit or an authority under section 178;";

(h) by omitting from subsection (1) the definition of "Minister for Lands";

(j) by omitting from subsection (1) the definition of "native title objection" and substituting the following:

"'native title objection' means an objection to a prescribed mining act so far as it affects the registered native title rights and interests of a registered native title claimant or registered native title body corporate that is lodged in accordance with section 140E or 163 by that claimant or body;

'Native Title Registrar' has the meaning given in section 253 of the Native Title Act;";

(k) by omitting from subsection (1) the definitions of "owner" and "occupier" and substituting the following:

"'owner' and 'occupier', in relation to land, means the owner of an estate or interest in the land, but does not include a person whose interest or claimed interest in the land cannot be identified by or as a result of an examination of the Register kept by the Registrar-General under Part V of the *Real Property Act*;";

(m) by omitting from subsection (1) the definition of "prescribed mining registrar's office" in subsection (1) and substituting the following:

"'prescribed mining registrar's office', in relation to a matter affecting land, means the principal office of the mining registrar for the part of the Territory in which the land is situated;

'previous exclusive possession act' has the meaning given in section 3A of the *Validation (Native Title) Act*;";

(n) by omitting from subsection (1) the definition of "private land" and substituting the following:

"'private land' means land that is —

- (a) alienated from the Crown for an estate of freehold;
- (b) the subject of a conditional purchase agreement; or
- (c) the subject of a lease or concession, with or without a right of acquiring the fee simple, other than a lease or concession for pastoral or timber purposes,

but does not include —

- (d) Aboriginal land;
- (e) land held for an estate in fee simple, or in a lease from the Crown, by the Conservation Land Corporation established by section 27 of the *Parks and Wildlife Commission Act*; or
- (f) land held or occupied for mining purposes under this Act or the repealed Act;

'Register of Native Title Claims' means the Register of Native Title Claims established and maintained in accordance with Part 7 of the *Native Title Act*;"

- (p) by omitting from subsection (1) the definitions of "registered native title claimant", "registered native title rights and interests" and "relevant Minister" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the *Native Title Act* or, if the claimant is replaced under section 66B of that Act, means the person who replaced the claimant;

'registered native title rights and interests' means —

- (a) in relation to a registered native title claimant — the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims; and

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(b) in relation to a registered native title body corporate — the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the Native Title Act;"; and

(q) by inserting after the definition of "Tribunal" in subsection (1) the following:

"'Trust Fund' means the Mining Trust Fund established and maintained under section 174H;".

91. REPEAL

Section 8 of the Principal Act is repealed.

92. REPEAL

Part IIA of the Principal Act is repealed.

93. APPLICATION FOR MINER'S RIGHT

Section 9 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) An application under subsection (1) is to be made in the prescribed manner."

94. POWERS OF HOLDER OF MINER'S RIGHT

Section 11 of the Principal Act is amended —

(a) by omitting from subsection (1)(a) "an exploration licence;" and substituting "an exploration licence; and";

(b) by omitting subsection (1)(b) and substituting the following:

"(b) subject to subsection (3), with the consent of a warden, to enter on any land —

(i) not comprised in an exploration licence area held by any other person; or

(ii) not the subject of an application for an exploration retention licence or mining tenement by any other person,

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to survey and reconnoitre the land using non-intrusive means to establish its exploration potential for minerals or extractive minerals and, in connection therewith, to mark out the land in the prescribed manner.";

- (c) by omitting subsection (1)(c), (d) and (f);
- (d) by omitting from subsection (2) "Crown land" and substituting "any land";
- (e) by omitting from subsection (3) "exploration" and substituting "survey or reconnaissance work"; and
- (f) by omitting subsections (3)(a) and (4).

95. GRANT OF EXPLORATION LICENCE

Section 16 of the Principal Act is amended —

- (a) by omitting from subsection (1) "this Act," and substituting "this Act, including Parts XIA and XIB (as applicable) and Part XIII,"; and
- (b) by omitting from subsection (3)(b) "in respect of land that is or includes private land or a park or reserve,".

96. APPLICATIONS

Section 17 of the Principal Act is amended —

- (a) by omitting from subsection (1) "section 162" and substituting "section 140D (if applicable) and section 162"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) Where an application for an exploration licence is lodged —

- (a) within 14 days after lodgement or the further time allowed in writing by the Secretary, the applicant must serve written notice of the making of the application on the persons specified in the list referred to in subsection (1)(c); and
- (b) if Part XIA or XIB applies — the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait

Islander bodies are to be served with notice of the application in accordance with that Part."

97. MINISTER TO RECEIVE APPLICATIONS, OBJECTIONS, &C.

Section 19 of the Principal Act is amended —

(a) by omitting "The" and "lodged in accordance with this Act" and substituting "(1) The" and "lodged under section 163", respectively; and

(b) by adding at the end the following:

"(2) If Part XIA applies and objections are lodged under section 140E(3A), those objections are to be dealt with in accordance with that Part.

"(3) If Part XIB applies and objections are lodged under section 140S(4), those objections are to be dealt with in accordance with that Part."

98. REPEAL AND SUBSTITUTION

Section 20 of the Principal Act is repealed and the following substituted:

"20. OBJECTIONS AND COMMENTS TO BE CONSIDERED

"The Minister must not grant an exploration 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."

99. GRANT OF LICENCE

Section 22 of the Principal Act is amended by omitting from subsection (3) "Where" and substituting "Subject to Parts XIA and XIB as applicable, where".

100. POWER OF LICENSEE

Section 23 of the Principal Act is amended by omitting from subsection (1)(e) "Parts V, VI and VII" and substituting "Parts V, VI, VII, XIA and XIB".

101. NEW SECTION

The Principal Act is amended by inserting after section 24 the following:

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"24A. ADDITIONAL CONDITIONS OF EXPLORATION LICENCE
RELATING TO NATIVE TITLE RIGHTS AND INTERESTS

"(1) In addition to the conditions imposed by or under sections 24 and 166, an exploration licence is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal or otherwise) and endorses on the licence.

"(2) Conditions under subsection (1) may include a condition about ways of minimising the impact of the grant of the exploration licence on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by the grant might be done.".

102. APPLICATION FOR RENEWAL OF EXPLORATION LICENCE

Section 29A of the Principal Act is amended by inserting in subsection (1) "and to Parts XIA and XIB as applicable" after "section".

103. SURRENDER MAY BE REQUESTED

Section 30 of the Principal Act is amended by inserting in subsection (1)(c) "cultural or" before "historic".

104. SUBSTITUTION OF EXPLORATION LICENCE

Section 31A of the Principal Act is amended by omitting from subsection (1) "Nothing" and substituting "Apart from Parts XIA and XIB as applicable, nothing".

105. FORM OF APPLICATION FOR EXPLORATION RETENTION
LICENCE

Section 39 of the Principal Act is amended —

- (a) by omitting from subsection (1) "section 162" and substituting "section 140D (if applicable) and section 162"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) An applicant for an exploration retention licence whose exploration licence in respect of the area of the proposed retention licence has expired must, within 14 days after the date he or she is notified that the Minister has refused to grant the exploration retention licence, vacate the land.".

106. GRANT OF EXPLORATION RETENTION LICENCE

Section 41 of the Principal Act is amended —

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

"(1) Subject to this Act, including Parts XIA and XIB as applicable and Part XIII, on being satisfied that —

- (a) the application is made in accordance with this Act; and
- (b) if the application is made under section 38(1) — there exists on the proposed licence area an ore body or anomalous zone of possible economic potential,

the Minister must grant to the applicant an exploration retention licence over the land or part of the land in respect of which the application is made for a term not longer than the term of the original exploration licence, but in any case not longer than 5 years."; and

- (b) by omitting from subsection (4) "land that is or includes private land or a park or reserve," and substituting "any land".

107. NEW SECTION

The Principal Act is amended by inserting after section 45 the following:

"45A. ADDITIONAL CONDITIONS OF EXPLORATION RETENTION LICENCE RELATING TO NATIVE TITLE RIGHTS AND INTERESTS

"(1) In addition to the conditions imposed by or under sections 45 and 166, an exploration retention licence is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal or otherwise) and endorses on the licence.

"(2) Conditions under subsection (1) may include a condition about ways of minimising the impact of the grant of the exploration retention licence on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by the grant might be done.".

108. APPLICATION FOR RENEWAL OF EXPLORATION RETENTION LICENCE

Section 46 of the Principal Act is amended —

- (a) by omitting from subsection (1) "A licensee" and substituting "Subject to Parts XIA and XIB as applicable, a licensee"; and
- (b) by omitting subsection (3) and substituting the following:

"(3) Subject to section 47 and to Parts XIA and XIB as applicable, the Minister may renew an exploration retention licence —

- (a) for a term not longer than the term of the original exploration retention licence but in any case not longer than 5 years; and
- (b) subject to such conditions in addition to those to which the licence is already subject as the Minister thinks fit."

109. APPLICATION FOR MINERAL LEASE

Section 54 of the Principal Act is amended by omitting from subsection (1) "this Act," and substituting "this Act, including Parts XIA and XIB (as applicable) and Part XIII,".

110. FORM OF APPLICATION FOR MINERAL LEASE

Section 55 of the Principal Act is amended by omitting "section 162" and substituting "section 140D (if applicable) and section 162".

111. NOTICE OF APPLICATION

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

"(1) Where an application for a mineral lease is lodged —

- (a) within 14 days after lodgement or the further time allowed in writing by the mining registrar, the applicant must serve written notice of the making of the application on the persons specified in the list referred to in section 55(j); and

- (b) if Part XIA or XIB applies — the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with that Part."

112. HEARING OF APPLICATION

Section 58 of the Principal Act is amended by omitting from subsection (2) "mineral field" and substituting "part of the Territory".

113. GRANT OF MINERAL LEASE

Section 60 of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words from and including "Subject" to and including "discretion," and substituting "Subject to section 140K if applicable, after considering the recommendation of the warden made under section 59, complying with Part XIB (if applicable) and considering any comments lodged under section 163, the Minister may"; and
- (b) by omitting from subsection (4) "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

114. REPEAL

Section 64 of the Principal Act is repealed.

115. NEW SECTION

The Principal Act is amended by inserting after section 66 the following:

"66A. ADDITIONAL CONDITIONS OF MINERAL LEASE RELATING TO
NATIVE TITLE RIGHTS AND INTERESTS

"(1) In addition to the conditions imposed by or under sections 66 and 166, a mineral lease is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal or otherwise) and endorses on the lease.

"(2) Conditions under subsection (1) may include a condition about ways of minimising the impact of the mineral lease on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by or under the mineral lease might be done."

116. VARIATION AS TO MINERALS RECOVERABLE

Section 67 of the Principal Act is amended by omitting "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

117. APPLICATION FOR RENEWAL OF MINERAL LEASE

Section 68 of the Principal Act is amended —

- (a) by omitting from subsection (1) "A lessee" and substituting "Subject to Parts XIA and XIB as applicable, a lessee"; and
- (b) by omitting from subsection (3) "Where" and substituting "Subject to Parts XIA and XIB as applicable, where".

118. APPLICATION FOR MINERAL CLAIM

Section 82 of the Principal Act is amended by omitting from subsection (1) "this Act," and substituting "this Act, including Parts XIA and XIB (as applicable) and Part XIII,".

119. FORM OF APPLICATION FOR MINERAL CLAIM

Section 83 of the Principal Act is amended —

- (a) by omitting from subsection (1) "section 162" and substituting "section 140D (if applicable) and section 162"; and
- (b) by omitting from subsection (3) "in respect of private land".

120. NOTICE OF APPLICATION

Section 84 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) Where an application for a mineral claim is lodged —

- (a) within 14 days after lodgement or the further time allowed in writing by the mining registrar, the applicant must serve written notice of the making of the application on the persons specified in the list referred to in section 83(1)(d); and
- (b) if Part XIA or XIB applies — the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait

Islander bodies are to be served with notice of the application in accordance with that Part."

121. GRANT OF MINERAL CLAIM

Section 86 of the Principal Act is amended by omitting all the words from and including "Subject" to and including "Regulations," and substituting the following:

"Subject to section 140K if applicable –

- (a) after considering the recommendations of the warden in relation to an application for a mineral claim, complying with Part XIB (if applicable) and considering any comments lodged under section 163; and
- (b) if satisfied that the applicant is not in breach of this Act or the Regulations,

the Minister may".

122. REPEAL

Section 86A of the Principal Act is repealed.

123. NEW SECTION

The Principal Act is amended by inserting after section 89 the following:

"89A. ADDITIONAL CONDITIONS OF MINERAL CLAIM RELATING TO
NATIVE TITLE RIGHTS AND INTERESTS

"(1) In addition to the conditions imposed by or under sections 89 and 166, a mineral claim is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal or otherwise) and endorses on the claim.

"(2) Conditions under subsection (1) may include a condition about ways of minimising the impact of the mineral claim on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by or under the mineral claim might be done.".

124. APPLICATION FOR RENEWAL OF MINERAL CLAIM

Section 90 of the Principal Act is amended —

- (a) by omitting from subsection (1) "The holder" and substituting "Subject to Parts XIA and XIB as applicable, the holder"; and
- (b) by omitting from subsection (3) "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

125. APPLICATION OF PART

Section 95A of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words after "extractive minerals" (first occurring) and substituting ", other than the extraction or removal of extractive minerals to which section 24GE of the Native Title Act applies"; and
- (b) by adding at the end the following:

"(3) The grant of an extractive mineral interest referred to in subsection (2)(d) may be made at the same time as the grant of an interest referred to in subsection (2)(c) but, before any activity is undertaken in the area to which the grant referred to in subsection (2)(d) relates, the procedures under Part XIB must have been complied with.".

126. NEW SECTION

The Principal Act is amended by inserting before section 96 in Division 1 of Part VIII the following:

"95B. APPLICATION OF DIVISION

"This Division applies in relation to the extraction or removal (whether by quarrying or other means) of extractive minerals, clay and stone from on and below the natural surface of the land.".

127. APPROVAL TO APPLY FOR EXTRACTIVE MINERAL LEASE

Section 96 of the Principal Act is amended —

- (a) by omitting from subsection (1) "this Division and unless otherwise provided by the Regulations," and substituting "this Act, including Parts XIA and XIB (as applicable) and Part XIII,";

- (b) by adding at the end of subsection (3) "and any other matter that the Minister considers relevant"; and
- (c) by inserting in subsection (4) "unless Part XIB applies," before "the Minister must".

128. FORM OF APPLICATION FOR EXTRACTIVE MINERAL LEASE

Section 97 of the Principal Act is amended —

- (a) by omitting "section 162" and substituting "section 140D (if applicable) and section 162";
- (b) by omitting from paragraph (c) "extractive mineral or extractive minerals" and substituting "extractive mineral, clay or stone";
- (c) by inserting in paragraph (d)(iv) ", clay or stone" after "extractive mineral" (wherever occurring);
- (d) by omitting from paragraph (g) "area;" and substituting "area; and"; and
- (e) by omitting paragraphs (h) and (j) and substituting the following:

"(h) is to state the names and addresses of the owners and occupiers of affected land."

129. NOTIFICATION AND OBJECTION PROCEDURES FOR LEASE ABOVE HIGHWATER MARK

Section 99 of the Principal Act is amended —

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

"(1A) This section only applies in relation to an application for an extractive mineral lease on an onshore place on the landward side of the mean highwater mark.

"(1) Where an application for an extractive mineral lease is lodged —

- (a) within 14 days after the date of the notice under section 96(4)(a) or the further time allowed in writing by the mining registrar, the applicant must serve notice of the making of the application on the persons referred to in section 97(h); and

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- (b) if Part XIA applies — the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with that Part.";
- (b) by omitting from subsection (4) "section 97(h) may, within 30 days" and substituting "section 99(1) may, within 2 months"; and
- (c) by omitting subsection (5).

130. NEW SECTION

The Principal Act is amended by inserting after section 99 the following:

"99A. NOTIFICATION AND OBJECTION PROCEDURES FOR LEASE BELOW HIGHWATER MARK

"In the case of an application for an extractive mineral lease on an onshore place below the mean highwater mark —

- (a) registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with Part XIB;
- (b) public notification of the application is to be in accordance with that Part; and
- (c) any objections to or comments on the extractive mineral lease are to be lodged and dealt with under that Part."

131. CONSIDERATION OF APPLICATION FOR LEASE ABOVE HIGHWATER MARK

Section 100 of the Principal Act is amended —

- (a) by omitting from subsection (1)(b) "the objections (if any)" and substituting "any objections and comments";
- (b) by omitting from subsection (1) "the Minister must —" and substituting "if there are objections that do not relate to native title rights and interests, the Minister must —";
- (c) by omitting from subsection (2) "the Minister must —" and substituting "if Part XIA does not apply, the Minister must —"; and

(d) by adding at the end the following:

"(3) Where there are objections under both sections 140E(3A) and 163(2), in compliance with section 140K and after considering any objections and recommendation under this Part, the Minister may grant or refuse to grant the extractive mineral lease.".

132. NEW SECTION

The Principal Act is amended by inserting after section 100 the following:

"100A. CONSIDERATION OF APPLICATION FOR LEASE BELOW HIGHWATER MARK

"After considering —

- (a) an application for an extractive mineral lease in respect of an onshore place on the seaward side of the mean highwater mark; and
- (b) in pursuance of section 140T, any objections to or comments on the extractive mineral lease lodged under section 140S(4),

the Minister must grant or refuse to grant the extractive mineral lease.".

133. GRANT OF EXTRACTIVE MINERAL LEASE

Section 101 of the Principal Act is amended —

- (a) by omitting from subsection (1)(a) "extractive mineral or extractive minerals" and substituting "extractive mineral, clay or stone";
- (b) by omitting subsection (1)(b)(v) and substituting the following:

"(v) stacking or storage of the extractive mineral, clay or stone or substances containing the extractive mineral;"
- (c) by omitting from subsection (1)(c) "a specified extractive mineral" and substituting "the extractive mineral, clay or stone";
- (d) by omitting from subsection (1)(d) "a specified extractive mineral or extractive minerals" and substituting "the extractive mineral, clay or stone";

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- (e) by omitting from subsection (2) "extractive minerals" and substituting "extractive mineral, clay or stone"; and
- (f) by omitting from subsection (4) "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

134. REPEAL

Section 101A of the Principal Act is repealed.

135. REPEAL AND SUBSTITUTION

Section 102 of the Principal Act is repealed and the following substituted:

"102. ADDITIONAL CONDITIONS OF EXTRACTIVE MINERAL LEASE RELATING TO NATIVE TITLE RIGHTS AND INTERESTS

"(1) In addition to the conditions imposed by or under section 166, an extractive mineral lease is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal referred to in section 100 or 140K or otherwise) and endorses on the lease.

"(2) Conditions under subsection (1) may include a condition about ways of minimising the impact of the extractive mineral lease on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by or under the extractive mineral lease might be done."

136. APPLICATION FOR RENEWAL OF EXTRACTIVE MINERAL LEASE

Section 103 of the Principal Act is amended —

- (a) by omitting from subsection (1) "The holder" and substituting "Subject to Parts XIA and XIB as applicable, the holder"; and
- (b) by omitting from subsection (3) "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

137. SURVEY OF LEASE AREA

Section 104 of the Principal Act is amended by omitting from subsection (2) "Where land the subject of an application for an extractive mineral lease is Crown land" and substituting "In respect of any land the subject of an application for an extractive mineral lease".

138. NEW SECTION

The Principal Act is amended by inserting before section 107 in Division 2 of Part VIII the following:

"106. APPLICATION OF DIVISION

"(1) This Division applies only in relation to extractive minerals on, or obtained or removed from, the natural surface of the land.

"(2) Any requirement of this Division relating to the service of a notice on a representative Aboriginal/Torres Strait Islander body does not apply in relation to the grant of an extractive mineral permit if the grant is not a future act."

139. APPROVAL TO APPLY FOR PERMIT

Section 107 of the Principal Act is amended —

- (a) by omitting from subsection (1) "Division and unless otherwise provided by the Regulations," and substituting "Act, including Part XIB if applicable,"; and
- (b) by adding at the end of subsection (3) "and any other matter that the Minister considers relevant".

140. FORM OF APPLICATION

Section 108 of the Principal Act is amended —

- (a) by omitting from paragraph (ca) "store, treat, process or refine" and "stored, treated, processed or refined" and substitute "store or process" and "stored or processed", respectively;
- (b) by omitting from paragraph (d) "earthmoving";
- (c) by omitting from paragraph (g) "stored, treated, processed or refined" and substituting "stored or processed"; and
- (d) by omitting paragraphs (h) and (j) and substituting the following:

"(h) state the names and addresses of the owners and occupiers of the affected land;

(ha) state the names and addresses of —

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- (i) the registered native title claimants (if any) in relation to any of the affected land; and
- (ii) the registered native title bodies corporate (if any) in relation to any of the affected land; and
- (j) state the names and addresses of the representative Aboriginal/Torres Strait Islander bodies in relation to any of the affected land unless the grant of the permit is not a future act."

141. NOTIFICATION AND OBJECTION PROCEDURES FOR PERMIT ABOVE HIGHWATER MARK

Section 110 of the Principal Act is amended -

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

"(1A) This section only applies in relation to an application for an extractive mineral permit on an onshore place on the landward side of the mean highwater mark.";

- (b) by omitting from subsection (1) "section 108(h) and (j)" and substituting "section 108(h), (ha) and, if applicable, (j)";
- (c) by omitting from subsection (4) "30 days" and substituting "2 months"; and
- (d) by omitting subsection (5) and substituting the following:

"(5) Where there is no registered native title claimant or registered native title body corporate in relation to any of the affected land, the representative Aboriginal/Torres Strait Islander body in relation to the affected land may, within 2 months after the date of the notice under subsection (1), comment on the grant of the extractive mineral permit."

142. NEW SECTION

The Principal Act is amended by inserting after section 110 the following:

"110A. NOTIFICATION AND OBJECTION PROCEDURES FOR PERMIT
BELOW HIGHWATER MARK

"In the case of an application for an extractive mineral permit on an onshore place on the seaward side of the mean highwater mark —

- (a) registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with Part XIB;
- (b) public notification of the application is to be in accordance with that Part; and
- (c) any objections to or comments on the extractive mineral permit are to be lodged and dealt with under that Part."

143. CONSIDERATION OF APPLICATION FOR PERMIT ABOVE
HIGHWATER MARK

Section 111 of the Principal Act is amended by omitting subsection (1)(b) and substituting the following:

- "(b) any objections and comments lodged under sections 110(4) and (5) and 163(2),".

144. NEW SECTION

The Principal Act is amended by inserting after section 111 the following:

"111A. CONSIDERATION OF APPLICATION FOR PERMIT BELOW
HIGHWATER MARK

"After considering —

- (a) an application for an extractive mineral permit in respect of an onshore place on the seaward side of the mean highwater mark; and
- (b) in pursuance of section 140T, any objections to or comments on the extractive mineral permit lodged under section 140S(4),

the Minister must grant or refuse to grant the extractive mineral permit."

145. GRANT OF PERMIT

Section 112 of the Principal Act is amended by omitting subsection (2) and substituting the following:

"(2) An extractive mineral permit is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal referred to in section 111 or otherwise) and endorses on the permit.

"(3) Conditions under subsection (2) may include a condition about ways of minimising the impact of the extractive mineral permit on registered native title rights and interests in relation to the land concerned, including about any access to the land or the way in which any thing authorised by or under the extractive mineral permit might be done."

146. REPEAL

Section 113 of the Principal Act is repealed.

147. POWER OF PERMIT HOLDER

Section 114 of the Principal Act is amended by omitting from paragraph (b) "store, treat, refine or process" and substituting "store or process".

148. REPEAL AND SUBSTITUTION

Sections 120 and 121 are repealed and the following substituted:

"120. COMPENSATION PAYABLE BY HOLDER OF EXTRACTIVE MINERAL PERMIT

"(1) Compensation is payable by the holder of an extractive mineral permit granted or renewed under this Part to —

- (a) the owner or occupier of land comprised in the extractive mineral permit for the loss or damage in respect of that person's interest in the land because of that grant or renewal; and
- (b) any native title holder for the effect of the grant, renewal or variation on the holder's registered native title rights and interests in the land comprised in the extractive mineral permit.

"(2) A person who intends to claim compensation under this section must lodge the claim in writing with the holder of the extractive mineral permit within 3 years after the grant, renewal or variation (as the case may be) or within the further time the Tribunal allows.

"(3) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(4) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(5) In the event of a dispute about compensation payable under subsection (1), the holder of the extractive mineral permit or the owner or occupier or registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal.

"(6) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request.

"(7) A reference in this section to the payment of compensation is to be read as including a reference to the giving of compensation in a form other than money, including the transfer of property and the provision of goods and services.

"(8) Compensation for the effect of acts to which Part XIB applies is dealt with in section 140U."

149. APPLICATION FOR FOSSICKER'S PERMIT

Section 130B of the Principal Act is amended —

- (a) by omitting from subsection (1) "(1) A corporation" and substituting "A corporation"; and
- (b) by omitting subsection (2).

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150. GRANT OF FOSSICKER'S PERMIT

Section 130C of the Principal Act is amended —

(a) by omitting from subsection (1)(a) "form" and substituting "form and is to include a statement to the effect that the permit is subject to the condition described in subsection (3)"; and

(b) by adding at the end the following:

"(3) It is a condition in respect of every fossicking permit that the right of the holder to fossick does not continue in relation to an area after an approved determination of native title that native title exists in the area has been made except in accordance with an indigenous land use agreement.".

151. POWERS OF HOLDER OF FOSSICKER'S PERMIT

Section 130D of the Principal Act is amended —

(a) by omitting from subsection (1) "fossick for minerals" and substituting "fossick for minerals using hand-held implements";

(b) by inserting after subsection (1)(c) the following:

"(ca) land in respect of which there is an approved determination of native title that native title exists in the land, but only in accordance with an indigenous land use agreement;"; and

(c) by omitting subsection (4).

152. FOSSICKING AREAS

Section 131 of the Principal Act is amended —

(a) by omitting from subsection (1) "Minister for Lands" and substituting "Minister";

(b) by omitting subsection (1)(b) and substituting the following:

"(b) private land, but only with the consent in writing of the owner or occupier of the land;"

(c) by omitting from subsection (1)(c) "Aboriginal land; or" and substituting "Aboriginal land;";

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- (d) by omitting from subsection (1)(d) "Corporation," and substituting "Corporation; or";
- (e) by inserting after subsection (1)(d) the following:
 - "(e) land in respect of which there is an approved determination of native title that native title exists in the land, but only in accordance with an indigenous land use agreement,";
- (f) by omitting subsections (1AA), (1A) and (1B);
- (g) by omitting from subsection (2)(a) and (b) "Minister for Lands" and substituting "Minister";
- (h) by omitting from subsection (2)(c) "Act; or" and substituting "Act;";
- (j) by inserting after subsection (2)(c) the following:
 - "(ca) in the case of a fossicking area comprised of land in respect of which there is an approved determination of native title that native title exists — as an indigenous land use agreement that contains a statement to the effect described in section 24EB(1)(b) of the Native Title Act provides and the Minister specifies in the declaration; or";
- (k) by omitting from subsection (2)(d) "Minister for Lands" (wherever occurring) and substituting "Minister";
- (m) by omitting from subsection (3) "Minister for Lands" (wherever occurring) and substituting "Minister"; and
- (n) by adding at the end the following:

"(4) A declaration under subsection (1)(a), (c) or (d) ceases to have effect on the making of an approved determination of native title that native title exists in the land over which the fossicking area was declared."

153. FOSSICKING ON MINERAL CLAIM

Section 134B of the Principal Act is amended by omitting from subsection (4) all the words after "must be" and substituting the following:

"accompanied by —

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- (c) the written consent to the making of the application of the owner or occupier of the land ; and
- (d) if there is an approved determination of native title that native title exists in the land or there is a registered native title claimant in relation to the land — a copy of an indigenous land use agreement in respect of the land."

154. PRESCRIBED MINING ACTS

Section 140A of the Principal Act is amended —

- (a) by omitting from subsection (1) "Part" and substituting "Act";
- (b) by omitting subsection (1)(d);
- (c) by omitting subsection (1)(f) and (g) and substituting the following:
 - "(f) the grant, variation or renewal of an extractive mineral lease.";
- (d) by omitting subsection (2) and substituting the following:

"(2) A variation, renewal, re-grant, re-making or extension of term to which, by virtue of section 26D(1) of the Native Title Act, Subdivision P of Division 3 of Part 2 of that Act does not apply is not a prescribed mining act."; and

- (e) by omitting subsection (5) and substituting the following:

"(5) Where a determination is in force under section 26A of the Native Title Act in respect of a prescribed mining act, the Minister may, by notice in the Gazette, declare that this Part does not apply in relation to that prescribed mining act and the declaration has effect according to its tenor."

155. APPLICATION

Section 140B of the Principal Act is amended —

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

"(2) A prescribed mining act referred to in subsection (1A)(d) may be done at the same time as a prescribed mining act referred to in subsection (1A)(c) but, before any activity is undertaken in the area to which the prescribed mining act referred to in subsection (1A)(d) relates, the procedures under Part XIB must have been complied with."; and

- (b) by omitting from subsection (3) "subsections (4) and (6)" and substituting "subsections (4) and (5)".

156. REPEAL AND SUBSTITUTION

Section 140C of the Principal Act is repealed and the following substituted:

"140C. ACT VALID IF PROCEDURES COMPLIED WITH

"An act to which this Part applies is only valid to the extent that it affects native title if in relation to the doing of the act the procedures of this Part are complied with, and it is invalid if they are not.".

157. PRESCRIBED MINING ACTS COVERING BOTH ALTERNATIVE PROVISION AREA AND OTHER AREA

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

- "(d) the prescribed mining act referred to in paragraph (c)(ii) may be done at the same time as the prescribed mining act referred to in paragraph (c)(i) but, before any activity is undertaken in the area to which the prescribed mining act referred to in paragraph (c)(ii) relates, the procedures under Subdivision P of Division 3 of Part 2 of the Native Title Act must have been complied with.".

158. FORM OF APPLICATION

Section 140D of the Principal Act is amended —

- (a) by omitting from subsection (1) "An application" and substituting "In addition to any other requirements of this Act relating to the form of an application, an application"; and
- (b) by omitting from subsection (1)(c) "the affected land" and substituting "any of the affected land".

159. NOTIFICATION OF NATIVE TITLE HOLDERS, &C.

Section 140E of the Principal Act is amended —

- (a) by omitting from subsection (1) "Secretary" and substituting "Minister";
- (b) by omitting from subsection (1)(a) "relevant";
- (c) by omitting from subsection (1)(b) "section 43A of the Native Title Act applies" and substituting "section 140B(1)(b) refers";
- (d) by omitting from subsection (2) "Secretary" (first occurring) and substituting "Minister";
- (e) by omitting from subsection (3)(a) "the specified objection period" and substituting "2 months after being served with the notice or, in the case of a person to whom subsection (6) applies, within the further time allowed under that subsection";
- (f) by omitting from subsection (3)(a)(i) "an objection to the prescribed mining act that may include";
- (g) by omitting from subsection (3)(a)(ii) "section 43A of the Native Title Act applies" and substituting "section 140B(1)(b) refers";
- (h) by adding at the end of subsection (3A) "and, if lodged, is to be lodged in duplicate";
- (j) by omitting subsections (3B) and (3C) and substituting the following:

"(3B) Other than where Part XIB applies, if an objection lodged under subsection (3A) or section 163(2) is a native title objection to —

- (a) a prescribed mining act to which section 24MD(6B) of the Native Title Act applies; or
- (b) a prescribed mining act to which section 140B(1)(b) of this Act refers,

this Part applies in relation to the objection.";

- (k) by omitting subsections (5) and (6) and substituting the following:

"(5) An objection may be lodged under subsection (3A) in relation to all of the prescribed mining acts specified in a notice under subsection (1) together or one or more of those acts separately.

"(6) If —

(a) within 2 months after the representative Aboriginal/Torres Strait Islander body or bodies in relation to any of the affected land are served with a notice under subsection (1), a person advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land; and

(b) by the end of the period referred to in paragraph (a), the Native Title Registrar has not yet decided whether to accept for registration the claim made in the application,

in addition to the period referred to in paragraph (a), the person has another month and any further period in addition to that month allowed in writing by the Minister within which to have the claim accepted for registration and also (once the claim is accepted for registration) to lodge an objection to the prescribed mining act.";

(m) by omitting from paragraph (a) of the definition of "notification event" in subsection (7) "this Part" and substituting "this Act"; and

(n) by omitting from subsection (7) the definition of "objection period".

160. RESPONSE TO OBJECTIONS

Section 140F of the Principal Act is amended —

(a) by adding at the end of subsection (1) "and give the applicant a copy of the objection";

(b) by omitting from subsection (2) "21 days after being advised of an objection under subsection (1)" and substituting "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"; and

(c) by omitting from subsection (3)(a) "relevant".

161. CONSULTATION AND MEDIATION

Section 140G of the Principal Act is amended —

- (a) by omitting from subsection (1) "lodges" and substituting "lodge";
- (b) by omitting subsection (2) and substituting the following:

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

- (a) if it relates to an exploration licence or exploration retention licence — 2 months;
- (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) — 3 months; or
- (c) if it relates to a mineral lease — 4 months,

commencing at the end of 7 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.";

- (c) by omitting subsections (3) and (4) and substituting the following:

"(4) If the prescribed mining act is an act to which section 140B(1)(b) refers, subject to section 140H, the applicant and the claimant or body corporate may agree to refer the matter of impact minimisation to mediation at any time within the relevant consultation period referred to in subsection (2)."; and

- (d) by omitting from subsection (5)(b) "if no agreement is reached" and substituting "if the parties agree to mediation but cannot agree on the mediator".

162. APPLICATION TO TRIBUNAL

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

- "(a) the end of the relevant consultation period referred to in section 140G(2); or

- (b) if a matter was referred to mediation under section 140G(4) — the end of 30 days after the relevant consultation period referred to in section 140G(2),".

163. REPEAL AND SUBSTITUTION

Section 140J of the Principal Act is repealed and the following substituted:

"140J. INQUIRY BY MINISTER

"After half of the relevant consultation period referred to in section 140G(2) has expired, the Minister may inquire of the applicant for the prescribed mining act as to the progress of the consultations and if —

- (a) the matter has not been referred to mediation under section 140G(4); and
- (b) the Minister is not satisfied that sufficient progress has been made,

the Minister may direct the parties to attend a meeting or meetings scheduled by the Minister.

"140JA. REFERRAL OF OBJECTIONS TO TRIBUNAL WHERE INSUFFICIENT PROGRESS MADE

"At any time after the end of 30 days after the relevant consultation period referred to in section 140G(2) —

- (a) if a native title objection to the prescribed mining act has not been resolved; and
- (b) whether or not the matter has been referred to mediation under section 140G(4),

the Minister may, in the prescribed form accompanied by the prescribed documents, refer the objection to the Tribunal for hearing."

164. COMPLIANCE WITH RECOMMENDATIONS OF TRIBUNAL

Section 140K of the Principal Act is amended —

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

"(1) Where, in relation to a prescribed mining act, the Tribunal recommends that the prescribed mining act must not be done, the Minister must comply with the recommendation unless the conditions specified in subsection (1B) are satisfied.

"(1A) Where, in relation to a prescribed mining act —

- (a) the Tribunal recommends that the prescribed mining act may be done, whether or not subject to specified conditions; and
- (b) the Minister wishes to do the act,

the Minister must comply with the recommendation unless the conditions specified in subsection (1B) are satisfied.

"(1B) The Minister must comply with a recommendation of the Tribunal referred to in subsection (1) or (1A) unless —

- (a) the Minister has consulted with the Minister responsible for indigenous affairs (being the Minister to whom responsibility for Aboriginal development is allotted under an Administrative Arrangements Order) about the proposal by the Minister to reject or accept the recommendation and any proposal to reject, vary, substitute or add to the conditions in the recommendation;

- (b) the Minister has taken that consultation into account; and

- (c) it is in the interests of the Territory not to comply with the recommendation.";

- (b) by omitting from subsection (2)(a) "(1)(c) and (d)" and substituting "(1B)(a) and (b)";

- (c) by omitting from subsection (2)(b) "(1)(e)" and substituting "(1B)(c)";

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

- "(c) reject the recommendation that the prescribed mining act must not be done and determine to do the act subject to the conditions (if any) imposed by the Minister; or";

- (e) by inserting in subsection (2)(d) "that the prescribed mining act may be done" after "recommendation" (first occurring); and

- (f) by omitting from subsection (2) "and do the prescribed mining act accordingly" and substitute "and, subject to this Act, do the prescribed mining act accordingly".

165. JUDICIAL REVIEW

Section 140L of the Principal Act is amended —

- (a) by omitting from subsection (1) "relevant";
- (b) by omitting from subsection (2) all the words after "review" and substituting "the Minister's decision"; and
- (c) by omitting subsection (2A) and substituting the following:

"(2A) To avoid doubt, judicial review under subsection (2) does not extend to a review of the decision on its merits.

"(2B) Where the decision being reviewed complies in whole or in part with a recommendation of the Tribunal, the decision is to be taken to include the recommendation and that part of the decision of the Tribunal to make the recommendation."

166. REPEAL AND SUBSTITUTION

Section 140M of the Principal Act is repealed and the following substituted:

"140M. PROCEDURE IF NO OBJECTIONS LODGED, OBJECTIONS WITHDRAWN, &c.

"(1) A native title objection may be withdrawn at any time by notice in writing given to the Minister.

"(2) If —

- (a) at the end of the last day on which any registered native title claimant or registered native title body corporate is entitled (whether under section 140E or 163) to lodge a native title objection to a prescribed mining act, no such objections have been lodged; or
- (b) after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 140E and 163) to lodge a native title objection to a prescribed mining act but immediately before the determination that the prescribed mining act is to be done, in respect of each native title objection lodged, either —
 - (i) the objection has been withdrawn; or

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- (ii) if the objection was lodged by a registered native title claimant — the claimant has been removed from the Register of Native Title Claims for a reason other than because an approved determination of native title that the claimant holds native title in the affected land has been made or the claimant has been replaced under section 66B of the Native Title Act,

the Minister may proceed to determine the application for the prescribed mining act."

167. COMPENSATION

Section 140N of the Principal Act is amended —

- (a) by omitting subsections (2), (3) and (4) and substituting the following:

"(2) A person who intends to claim compensation under this section for the effect of a prescribed mining act on their native title rights and interests must lodge the claim in writing with the holder of the relevant mining interest within 3 years after the prescribed mining act is done or within the further time the Tribunal allows.

"(2A) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(3) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(4) In the event of a dispute about compensation payable under subsection (1), the holder of the relevant mining interest or the registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal."; and

- (b) by inserting after subsection (5) the following:

"(5A) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request."

168. REPEAL

Section 140P of the Principal Act is repealed.

169. HEADING TO PART XIB

The heading to Part XIB of the Principal Act is omitted and the following substituted:

"PART XIB — ACTS BELOW HIGHWATER MARK".

170. REPEAL AND SUBSTITUTION

Section 140Q of the Principal Act is repealed and the following substituted:

"140Q. INTERPRETATION

"In this Part, a reference to an act below highwater mark is to be read as a reference to an act to which this Part applies by virtue of section 140R."

171. REPEAL AND SUBSTITUTION

Section 140R of the Principal Act is repealed and the following substituted:

"140R. APPLICATION

"(1) Subject to subsection (2), this Part applies in relation to the notification of an application for, the consideration of objections to and comments on, and compensation for, the grant, renewal or variation of a mining interest on an onshore place on the seaward side of the mean highwater mark, other than an act of the type referred to in section 140B(1)(a).

"(2) Any requirement of this Part relating to the service of a notice on a representative Aboriginal/Torres Strait Islander body does not apply if the act is not a future act.

"(3) Where the grant, renewal or variation of a mining interest is an act of the type referred to in section 140B(1)(a), Part XIA applies.

"(4) Where there is an existing mining interest (in this subsection called 'the earlier right') and that interest is renewed, re-granted, re-made or extended (in this subsection called 'the new right') and —

(a) under the new right the area to which the earlier right related is not extended;

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- (b) the term of the new right is not longer than the term of the earlier right; and
- (c) no rights are created in connection with the new right that were not created in connection with the earlier right,

the procedures under this Part in respect of the notification of applications and the consideration of objections and comments do not apply in relation to the renewal, re-grant, re-making or extension."

172. NOTIFICATION OF APPLICATION

Section 140S of the Principal Act is amended -

- (a) by omitting from subsection (1) "intertidal mining act" and substituting "act below highwater mark";
- (b) by omitting from subsection (1)(c) "(if any) in relation to the affected land" and substituting "in relation to any of the affected land";
- (c) by omitting subsections (3), (4) and (5) and substituting the following:

"(3) A notice under subsection (1) is to contain the prescribed information and a statement to the effect that -

- (a) registered native title claimants and registered native title bodies corporate in relation to any of the affected land may, within 2 months after being served with the notice or within the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary objections to the act; and
- (b) if there are no such registered native title claimants or registered native title bodies corporate in relation to any of the affected land, the representative Aboriginal/Torres Strait Islander body in relation to any of the affected land may, within 2 months after being served with the notice or within the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary comments on the act.

"(3A) As soon as practicable after an application for an act below highwater mark is received in accordance with the provisions of this Act, the Secretary must cause to be published in a newspaper printed and circulating in the Territory a notice that contains the prescribed information and a statement to the effect that any person may, within 2 months after the date of publication of the notice or the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary an objection to the act.

"(4) Objections or comments may be lodged in response to a notice served under subsection (1) in accordance with the statement referred to in subsection (3) and objections may be lodged in response to a notice published under subsection (3A) in accordance with the statement referred to in subsection (3A).

"(4A) To avoid doubt, any objections or comments lodged in accordance with subsection (4) are to be dealt with in accordance with the procedures under this Part and not in accordance with the procedures under any other Part of this Act.

"(5) A notice under subsection (1) or (3A) may relate to more than one act below highwater mark.

"(5A) An objection or comment may be lodged under subsection (4) in relation to all of the acts below highwater mark specified in a notice under subsection (1) or (3A) together or one or more of those acts separately.";

(d) by omitting from subsection (6) "subsection (3)" and substituting "this section"; and

(e) by omitting subsection (6)(a), (b) and (c) and substituting the following:

"(a) the name of the applicant for the act below highwater mark;

(b) the act below highwater mark;

(c) if relevant — the period in respect of which the relevant mining interest is sought;".

173. REPEAL AND SUBSTITUTION

Section 140T of the Principal Act is repealed and the following substituted:

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"140T. MINISTER TO HAVE REGARD TO OBJECTIONS AND COMMENTS

"The Minister must not do an act below highwater mark unless the Minister has taken into account the objections and comments (if any) lodged under section 140S(4).".

174. REPEAL AND SUBSTITUTION

Section 140U of the Principal Act is repealed and the following substituted:

"140U. COMPENSATION

"(1) Compensation for the effect of an act below highwater mark is payable by the holder of the relevant mining interest to —

- (a) the owner or occupier of land comprised in the mining interest for the loss or damage in respect of that person's interest in the land because of the act; and
- (b) any native title holder for the effect of the act on the holder's native title rights and interests in the land comprised in the mining interest.

"(2) A person who intends to claim compensation under this section must lodge the claim in writing with the holder of the relevant mining interest within 3 years after the act below highwater mark is done or within the further time the Tribunal allows.

"(3) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(4) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(5) In the event of a dispute about compensation payable under subsection (1), the holder of the mining interest or the owner or occupier or registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal.

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"(6) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request.

"(7) A reference in this section to the payment of compensation is to be read as including a reference to the giving of compensation in a form other than money, including the transfer of property and the provision of goods and services."

175. HEADING TO DIVISION 1 OF PART XIII

The heading to Division 1 of Part XIII is omitted.

176. FORM OF APPLICATION

Section 162 of the Principal Act is amended by omitting from subsection (1)(d) all the words after "application" and substituting the following:

"relates, including —

- (i) the boundaries of existing land holdings or geographical features; and
- (ii) the location of any residences and other buildings in that area of land and any residences and other buildings within 50 metres of that area of land;"

177. NOTICE OF APPLICATION

Section 163 of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words from and including "As soon as practicable" to and including "a notice showing —" and substituting the following:

"As soon as practicable after an application for the grant of an exploration licence or mining tenement (other than a licence or tenement to which Part XIB applies) is received in accordance with the provisions of this Act, the Secretary must cause to be published in a newspaper printed and circulating in the Territory a notice containing —";

- (b) by omitting from subsection (1)(e) "features; and" and substituting "features;";
- (c) by omitting subsection (1)(f) and substituting the following:

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"(f) a statement to the effect that -

- (i) the owner or occupier of land in respect of which the application is made; and
- (ii) any registered native title claimants and registered native title bodies corporate in relation to that land,

may, within 2 months after the date of publication of the notice or, in the case of a person to whom subsection (5) applies, within the further time allowed under that subsection, lodge in writing at the office of the Secretary an objection to the grant; and

(g) a statement to the effect that any other person may, within 2 months after the date of publication of the notice, lodge in writing at the office of the Secretary comments on the grant.";

(d) by omitting subsections (2) and (3) and substituting the following:

"(2) Objections and comments may be lodged in response to a notice published under subsection (1) in accordance with the statement referred to in subsection (1)(f) or (g), as the case requires.

"(2A) Where -

- (a) the grant of the exploration licence or mining tenement is an act of the type referred to in section 140B(1)(a); and
- (b) there are no registered native title claimants or registered native title bodies corporate in relation to any of the affected land,

the representative Aboriginal/Torres Strait Islander body, in relation to any of that land may, with 2 months after the date of publication of the notice under subsection (1) or within the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary comments on the grant.

"(2B) An objection or comment lodged under subsection (2) or (2A) is to be lodged in duplicate and is to set out the grounds on which it is made.

"(2C) Any objections or comments lodged in accordance with this section that do not relate to registered native title rights and interests are to be dealt with in accordance with the procedures relating to objections to the grant of the relevant mining interest.

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"(2D) Subject to subsections (2E) and (2F), any native title objection lodged in accordance with this section by a registered native title claimant or registered native title body corporate is to be dealt with under Part XIA.

"(2E) An objection to the grant of an extractive mineral permit lodged in accordance with this section by a registered native title claimant or registered native title body corporate is to be dealt with under section 111(1)(b).

"(2F) Where, in relation to a prescribed mining act to which the consequences of section 24MD(6B) of the Native Title Act apply, both native title objections and other objections are lodged, then —

- (a) the native title objections are to be dealt with under Part XIA; and
- (b) the other objections are to be dealt with in accordance with the procedures relating to objections to the grant of the relevant mining interest.

"(3) As soon as practicable after an objection or comment is lodged in accordance with this section, the Secretary must advise the applicant for the grant of the relevant mining interest of the objection or comment and give the applicant a copy of the objection or comment.";

- (e) by inserting in subsection (4) "or comment" after "objection"; and
- (f) by omitting subsections (5) and (6) and substituting the following:

"(5) If —

- (a) within 2 months after the date of publication of a notice under subsection (1), a person advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land; and
- (b) by the end of the period referred to in paragraph (a), the Native Title Registrar has not yet decided whether to accept for registration the claim made in the application,

in addition to the period referred to in paragraph (a), the person has another month and any further period in addition to that month allowed in writing by the Minister within which to have the claim accepted for registration

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and also (once the claim is accepted for registration) to lodge an objection to the prescribed mining act."

178. NEW SECTIONS

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

"166A. WHERE ACTS MAY BE DONE SUBJECT TO CONDITIONS

"(1) Where under this Act an act may be done in relation to land in respect of which native title rights and interests exist subject to conditions relating to those rights and interests being complied with by the parties, the conditions have effect and may be enforced as if they were terms of a contract among the parties.

"(2) If a person lodges a native title objection to the doing of the act, any other person in the native title claim group concerned is taken to be a party for the purposes of subsection (1).

"166B. SECURITY FOR COMPLIANCE WITH THIS ACT AND CONDITIONS OF MINING INTEREST

"(1) Before granting, renewing or varying a mining interest, the Minister may require the applicant for the grant, renewal or variation to lodge with the Minister a security in the form, for the amount and from the person the Minister thinks fit for a purpose specified in subsection (2).

"(2) Security may be required under subsection (1) for any of the following purposes:

(a) to secure the applicant's compliance with this Act;

(b) to secure the applicant's compliance with the conditions to which the grant, renewal or variation is made.

"166C. SECURITY FOR COMPENSATION THAT MAY BE PAYABLE TO NATIVE TITLE HOLDERS

"(1) Before granting, renewing or varying a mining interest, the Minister may require the applicant for the grant, renewal or variation to lodge with the Minister a security in the form, for the amount and from the person the Minister thinks fit for the purpose of securing the payment by the applicant of compensation that may be payable for the effect of the grant, renewal or variation on native title rights and interests.

"(2) Instead of lodging a security in pursuance of a requirement under subsection (1), an applicant may pay into the Trust Fund an amount that the Minister thinks sufficient to cover payment (if any) of the compensation referred to in subsection (1).

"(3) The Territory is not liable to reimburse an applicant for any amount by which a security lodged or an amount paid under this section is insufficient to meet the applicant's liability to pay the compensation referred to in subsection (1).".

179. EXCHANGE OF MINING TENEMENT

Section 168 of the Principal Act is amended by omitting from subsection (1) "Nothing" and substituting "Apart from Parts XIA and XIB as applicable, nothing".

180. APPLICATION FOR VARIATION, &C.

Section 172 of the Principal Act is amended by inserting in subsection (3) "subject to Parts XIA and XIB as applicable," before "the Minister" (first occurring).

181. HEADING TO DIVISION 2 OF PART XIII

The heading to Division 2 of Part XIII is omitted.

182. REPEAL

Section 174A of the Principal Act is repealed.

183. COMPENSATION PAYABLE AFTER GRANT

Section 174B of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words from and including "Subject" to and including "shall be for —" and substituting the following:

"The holder of a mining tenement must pay to the owner and occupier of private land comprised in the mining tenement, in respect of the owner's and occupier's respective interests, compensation for —";

- (b) by omitting from subsection (1)(d) "them;" and substituting "them; and";
- (c) by omitting from subsection (1)(e) "tenement; and" and substituting "tenement.";
- (d) by omitting subsection (1)(f); and

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- (e) by omitting from subsection (3) all the words after "dispute" and substituting "to the warden for determination".

184. REPEAL

Section 174DA of the Principal Act is repealed.

185. REPEAL AND SUBSTITUTION

Section 174E of the Principal Act is repealed and the following substituted:

"174E. INSPECTION OF UNDERGROUND WORKINGS

"Where under a mining tenement mining is authorised under or adjoining private land or land in respect of which there is an approved determination of native title that native exists —

- (a) the owner and occupier or registered native title body corporate (as the case may be) may, with the consent of the Secretary, inspect and survey the underground workings of the holder of the mining tenement; and
- (b) for that purpose, the holder must give that person reasonable access to the workings at all reasonable times."

186. NEW PART

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

"PART XIII A — MINING TRUST FUND

"174H. ESTABLISHMENT OF TRUST FUND

"(1) The Minister must establish and maintain the Mining 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*.

"174J. PAYMENTS INTO TRUST FUND

"(1) A person who is, may be, will be or may become liable under this Act to pay compensation for the effect of an act (including a prescribed mining act) on native title —

- (a) may at any time; and

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- (b) must if required to do so under this Act or another law of the Territory,

pay into the Trust Fund an amount in respect of that compensation.

"(2) Moneys paid into the 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 holder of the relevant mining interest to the native title holder.

"174K. 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 Trust Fund in respect of an act and any of the following happen:

- (a) an approved determination of native title that native title does not exist in the affected land is made;
- (b) the Minister informs the trustee in writing that he or she is not going to do the act;
- (c) the following requirements are satisfied:
 - (i) an approved determination of native title that native title in the affected land 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 act;
 - (iii) the person who paid the trust amount into the Trust Fund or that person's assignee 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 act;
- (d) a determination is made by the Tribunal, on a claim for compensation in respect of the act, that a person is entitled to compensation or that no compensation is payable to any person;

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- (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.

"(2) Where subsection (1)(a) or (b) applies, the trustee must -

- (a) repay the trust amount to the person who paid it into the Trust Fund or to that person's assignee; or
- (b) if that person no longer exists - apply to the Supreme Court for a direction as to the payment of the trust amount.

"(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 act 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 holder of the relevant mining interest 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 person who paid the trust amount into the Trust Fund or that person's assignee or, if the person or assignee (as the case may be) no longer exists, apply to the Supreme Court for a direction as to its payment.

"(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 person who paid it into the Trust Fund or that person's assignee or, if the person or assignee (as the case may be) no longer exists, apply to the Supreme Court for a direction as to the payment of the trust amount.

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

187. LAND IN CERTAIN PARKS AND RESERVES

Section 176 of the Principal Act is amended by omitting from subsection (2) "The Minister" and substituting "Subject to Parts XIA and XIB as applicable, the Minister".

188. ENVIRONMENTAL CONSIDERATIONS RELATING TO CERTAIN PARKS AND RESERVES

Section 176A of the Principal Act is amended by inserting in subsection (2) "subject to Parts XIA and XIB as applicable" after "reserve,".

189. RESERVATION OF LAND FROM OCCUPATION

Section 178 of the Principal Act is amended —

- (a) by omitting from subsection (1G) all the words from and including "Where" to and including "this Act" and substituting the following:

"Where an application for an exploration licence is made by a miner in response to an invitation under subsection (1F), subject to Parts XIA and XIB as applicable, the Minister may grant the exploration licence despite any other provision of this Act"; and

- (b) by omitting from subsection (2) "subsections (4) and (5)" and substituting "subsections (4) and (5) and to Parts XIA and XIB as applicable".

190. RIGHT OF ACCESS

Section 179 of the Principal Act is amended —

- (a) by inserting after subsection (2A) the following:

"(2B) A native title holder who intends to claim compensation under this section must lodge the claim in writing with the person claiming the right of way within 3 years after the act giving rise to the claim is done or within the further time the Tribunal allows.

"(2C) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2B) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(2D) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land."; and

- (b) by inserting in subsection (3) "or registered native title body corporate" after "occupier".

191. REMOVAL OF TIMBER, &C.

Section 180 of the Principal Act is amended —

- (a) by inserting in subsection (1) "and section 24GE of the Native Title Act" after "section"; and
- (b) by omitting from subsection (1) "Crown land" and substituting "land over which there is a non-exclusive pastoral lease within the meaning of section 248B of the Native Title Act".

192. COMPENSATION FOR WORKS

Section 183 of the Principal Act is amended by inserting "or a registered native title body corporate" before "who suffers".

193. COMPENSATION TO PASTORAL LESSEES AND OWNERS OF PRIVATE LAND

Section 184 of the Principal Act is amended by omitting from subsection (1) "(other than a mineral lease in respect of private land)".

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194. COMPENSATION OTHER THAN MONEY IN RESPECT OF NATIVE TITLE

Section 191E of the Principal Act is amended by omitting all the words after "compensation" (last occurring) and substituting "must consider the request".

195. REPEAL

Section 191F of the Principal Act is repealed.

PART 8 — MINING AMENDMENT ACT (NO. 2) 1998

196. REGULATIONS

Section 24 of the *Mining Amendment Act (No. 2) 1998* is amended by omitting subsection (3) and substituting the following:

"(3) The Administrator may only make regulations under subsection (1) during the period commencing on the day on which this section commences and ending on the day before a determination under section 43A of the *Native Title Act 1993* of the Commonwealth is made in respect of the *Mining Act*."

PART 9 — PASTORAL LAND ACT

197. PRINCIPAL ACT

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

198. EXTENSION OF TERM OF PASTORAL LEASE

Section 49 of the Principal Act is amended by omitting from subsection (2) "The Minister may, in the Minister's absolute discretion" and substitute "Subject to Division 4, the Minister may".

199. SURRENDER OF LEASE FOR SUBDIVISION, &C.

Section 61 of the Principal Act is amended by omitting from subsection (8) "shall be granted" and substituting ", subject to Division 4, is to be granted".

200. SURRENDER OF TERM PASTORAL LEASE IN EXCHANGE FOR PERPETUAL PASTORAL LEASE

Section 62 of the Principal Act is amended by omitting subsection (8) and substituting the following:

"(8) An applicant lessee may, if he or she —

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- (a) has indicated to the Minister his or her willingness to accept the proposed perpetual pastoral lease in accordance with subsection (6);
- (b) has paid all rent due and payable under the existing lease; and
- (c) has paid the fee (if any) fixed under subsection (7),

surrender the existing lease and, subject to Division 4, is to be granted a perpetual pastoral lease according to the particulars contained in the notice under subsection (5) commencing immediately on the surrender of the existing lease."

201. SURRENDER OF LEASES AND GRANT OF CONSOLIDATED LEASE

Section 64 of the Principal Act is amended by omitting from subsection (7) "leases, and shall be granted" and substituting "leases and, subject to Division 4, is to be granted".

202. NEW DIVISION

Part 4 of the Principal Act is amended by adding at the end the following:

*"Division 4 — Certain Grants, &c., to be Treated as
Compulsory Acquisitions*

"72A. APPLICATION

"This Division applies in relation to —

- (a) an extension of the term of a pastoral lease under section 49;
- (b) the grant of a new pastoral lease under section 61;
- (c) the grant of a perpetual pastoral lease under section 62; and
- (d) the grant of a new pastoral lease under section 64,

where the extension or grant —

- (e) will affect native title rights and interests; and

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- (f) is an act to which section 24MD(6B) of the *Native Title Act 1993* of the Commonwealth applies by virtue of section 24ID(4) of that Act.

"72B. PROCEDURES UNDER *LANDS ACQUISITION ACT* TO BE COMPLIED WITH

"(1) Divisions 1 and 2 of Part IV and sections 45 and 45A of the *Lands Acquisition Act* (in this Division called 'the applied provisions') apply in relation to an extension or grant to which this Division applies as if it were a compulsory acquisition of native title rights and interests in relation to the land that will be affected by the extension or grant.

"(2) For the purposes of subsection (1) —

- (a) a reference in the applied provisions to the Minister for the time being administering the *Lands Acquisition Act* is to be read as a reference to the Minister for the time being administering this Act; and
- (b) a reference in the applied provisions to the compulsory acquisition of native title rights and interests is to be read as a reference to the extension or grant of a pastoral lease under section 49, 61, 62 or 64 (as the case may be) that affects native rights and interests.

"(3) Where the Minister has complied with Divisions 1 and 2 of Part IV of the applied provisions in respect of an extension or grant to which this Division applies then, subject to section 45 of the applied provisions, the Minister may extend the term of the pastoral lease or grant the new pastoral lease or the perpetual pastoral lease accordingly.

"72C. COMPENSATION

"(1) Compensation is payable by the Territory to the native title holder in respect of any land affected by an extension or grant to which this Division applies for the effect of the extension or grant on the holder's registered native title rights and interests.

"(2) A native title holder or registered native title claimant who intends to claim compensation under this section for the effect of an extension or grant to which this Division applies on their registered native title rights and interests must make the claim within 3 years after the term of the pastoral lease is extended or the perpetual pastoral lease or new pastoral lease is granted, as the case may be.

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"(3) In the absence of agreement, compensation is not payable to a registered native title claimant unless and until the native title claimed by the claimant is determined.

"(4) In the event of a dispute about compensation payable under subsection (1), the Territory or the native title holder may refer the dispute to the Tribunal."

PART 10 — PETROLEUM ACT

203. PRINCIPAL ACT

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

204. INTERPRETATION

Section 5 of the Principal Act is amended —

- (a) by omitting from subsection (1) the definition of "affected land" and substituting the following:

"'affected land' means land comprised in, or proposed to be comprised in, a petroleum interest;"

- (b) by inserting after the definition of "approved" in subsection (1) the following:

"'approved determination of native title' has the meaning given in section 253 of the Native Title Act;"

- (c) by inserting after the definition of "document" in subsection (1) the following:

"'future act' has the meaning given in section 233 of the Native Title Act;"

- (d) by omitting from subsection (1) the definition of "native title objection" and substituting the following:

"'native title objection' means an objection to a prescribed petroleum act so far as it affects the registered native title rights and interests of a registered native title claimant or registered native title body corporate that is lodged in accordance with section 19 or 57F by that claimant or body;"

- (e) by omitting from subsection (1) the definition of "owner" and substituting the following:

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"'owner', in relation to land, means the owner of an estate or interest in the land, but does not include a person whose interest or claimed interest in the land cannot be identified by or as a result of an examination of the Register kept by the Registrar-General under Part V of the *Real Property Act*";

(f) by omitting from subsection (1) the definition of "petroleum interest" and substituting the following:

"'petroleum interest' means a permit, retention licence, production licence or access authority";

(g) by inserting after the definition of "prescribed petroleum act" in subsection (1) the following:

"'previous exclusive possession act' has the meaning given in section 3A of the *Validation (Native Title) Act*";

(h) by omitting from subsection (1) the definition of "private land" and substituting the following:

"'private land' means land that is —

- (a) alienated from the Crown for an estate of freehold;
- (b) the subject of a conditional purchase agreement; or
- (c) the subject of a lease or concession, with or without a right of acquiring the fee simple, other than a lease or concession for pastoral or timber purposes,

but does not include —

- (d) Aboriginal land;
- (e) land held for an estate in fee simple, or in a lease from the Crown, by the Conservation Land Corporation established by section 27 of the *Parks and Wildlife Commission Act*; or
- (f) land held or occupied for purposes under the *Mining Act*, this Act or the repealed Act;

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- (j) by inserting after the definition of "Register" in subsection (1) the following:

"'Register of Native Title Claims' means the Register of Native Title Claims established and maintained in accordance with Part 7 of the Native Title Act;"; and

- (k) by omitting from subsection (1) the definitions of "registered native title claimant" and "registered native title rights and interests" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the Native Title Act or, if the claimant is replaced under section 66B of that Act, means the person who replaced the claimant;

'registered native title rights and interests' means —

- (a) in relation to a registered native title claimant — the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims; and
- (b) in relation to a registered native title body corporate — the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the Native Title Act;".

205. APPLICATION FOR PERMIT

Section 16 of the Principal Act is amended by omitting from subsection (1) "this Act," and substituting "this Act, including Parts IIA and IIB as applicable,".

206. NOTICE OF APPLICATION FOR PERMIT

Section 18 of the Principal Act is amended —

- (a) by omitting from subsection (1) "a notice specifying" and substituting "a notice containing";
- (b) by omitting subsection (1)(e) and substituting the following:

"(e) a statement to the effect that any person may, within 2 months after the date of publication of the notice, lodge in writing at the office of the Minister an objection to the grant."; and

(c) by inserting after subsection (1) the following:

"(1A) If Part IIA or IIB applies, the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with that Part."

207. OBJECTIONS

Section 19 of the Principal Act is amended —

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

"(1) Subject to section 18(3), objections to the grant of a permit may be lodged in response to a notice published under section 18(1) in accordance with the statement referred to in section 18(1)(e)."; and

(b) by adding at the end the following:

"(3) Any native title objection lodged in accordance with this section by a registered native title claimant or registered native title body corporate is to be dealt with under Parts IIA or IIB as applicable."

208. GRANT OF PERMIT

Section 20 of the Principal Act is amended by omitting from subsection (1) "the Minister shall" and substituting "subject to section 57L, the Minister must".

209. APPLICATION FOR RENEWAL OF PERMIT

Section 23 of the Principal Act is amended by inserting in subsection (1) "and to Parts IIA and IIB as applicable" after "section 24".

210. GRANT OR RENEWAL OF PERMIT

Section 25 of the Principal Act is amended by omitting from subsection (1) "the Minister —" and substituting "subject to Parts IIA and IIB as applicable, the Minister —".

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211. CONDITIONS OF PERMIT

Section 27 of the Principal Act is amended by inserting in subsection (1) "and to Parts IIA and IIB as applicable" after "Part".

212. VARIATION, &C., OF CONDITION OF PERMIT

Section 28 of the Principal Act is amended —

- (a) by omitting from subsection (1) "A permittee" and substituting "Subject to Parts IIA and IIB as applicable, a permittee"; and
- (b) by omitting from subsection (2) all the words from and including "Where" to and including "he may," and substituting "Subject to Parts IIA and IIB as applicable, on receiving an application under subsection (1), the Minister may,".

213. RIGHTS CONFERRED BY PERMIT

Section 29 of the Principal Act is amended by omitting from subsection (3) "Division 4 and" and substituting "Division 4, to Parts IIA and IIB (as applicable) and to".

214. APPLICATION FOR RETENTION LICENCE

Section 32 of the Principal Act is amended by omitting from subsection (1) "this Act," and substituting "this Act, including Part IIA if applicable,".

215. GRANT OF RETENTION LICENCE

Section 34 of the Principal Act is amended by omitting from subsection (1) "he may, in his discretion," and substituting "subject to Parts IIA and IIB as applicable, the Minister may".

216. APPLICATION FOR RENEWAL OF RETENTION LICENCE

Section 37 of the Principal Act is amended by omitting from subsection (1) "A retention licensee" and substituting "Subject to Part IIA if applicable, a retention licensee".

217. GRANT OR REFUSAL OF RENEWAL OF RETENTION LICENCE

Section 38 of the Principal Act is amended by omitting from subsection (1) "by notice, inform the retention licensee, that he is prepared to renew the retention licence" and substituting "by notice in writing, inform the licensee that, subject to Parts IIA

and IIB as applicable, the Minister is prepared to renew the licence".

218. CONDITIONS OF RETENTION LICENCE

Section 40 of the Principal Act is amended by omitting from subsection (1) "this Part" and substituting "this Part and to Parts IIA and IIB as applicable".

219. VARIATION, &C., OF CONDITIONS OF RETENTION LICENCE

Section 41 of the Principal Act is amended —

- (a) by omitting from subsection (1) "A retention licensee" and substituting "Subject to Part IIA if applicable, a retention licensee"; and
- (b) by omitting from subsection (2) all the words from and including "Where" to and including "he may," and substituting "Subject to Parts IIA and IIB as applicable, on receiving an application under subsection (1), the Minister may,".

220. RIGHTS CONFERRED BY RETENTION LICENCE

Section 42 of the Principal Act is amended by omitting from subsection (2) "Division 4 and" and substituting "Division 4, to Parts IIA and IIB (as applicable) and to".

221. APPLICATION FOR PRODUCTION LICENCE

Section 45 of the Principal Act is amended —

- (a) by omitting from subsection (1) "this Act," and substituting "this Act, including Part IIA if applicable,"; and
- (b) by inserting after subsection (1) the following:

"(1A) If Part IIA applies, the relevant registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be served with notice of the application in accordance with that Part.".

222. GRANT OF PRODUCTION LICENCE

Section 47 of the Principal Act is amended —

- (a) by omitting from subsection (1) "he shall determine to grant to the applicant the production licence, subject to such conditions as he thinks fit" and substituting "subject to section 57L if applicable, the Minister must determine to grant to the applicant the production licence subject to conditions";
- (b) by omitting from subsection (2) "he may determine to grant to the applicant the production licence, subject to such conditions as he thinks fit, or refuse to grant it" and substituting "subject to section 57L if applicable, the Minister may determine to grant to the applicant the production licence subject to conditions or refuse to grant it"; and
- (c) by adding at the end of subsection (6) "and to the conditions imposed in pursuance of section 57L if applicable".

223. APPLICATION FOR RENEWAL OF PRODUCTION LICENCE

Section 51 of the Principal Act is amended by omitting from subsection (1) "A production licensee" and substituting "Subject to Part IIA if applicable, a production licensee".

224. GRANT OR REFUSAL OF RENEWAL OF PRODUCTION LICENCE

Section 52 of the Principal Act is amended —

- (a) by omitting from subsection (1) "inform the production licensee, by notice, that he is prepared to renew the production licence" and substituting "by notice in writing, inform the licensee that, subject to Parts IIA and IIB as applicable, the Minister is prepared to renew the licence"; and
- (b) by adding at the end of subsection (7) ", and subject to the conditions imposed in pursuance of section 57L if applicable".

225. CONDITIONS OF PRODUCTION LICENCE

Section 54 of the Principal Act is amended by omitting from subsection (1) "this Part" and substituting "this Part and to Parts IIA and IIB as applicable".

226. VARIATION, &C., OF CONDITIONS OF PRODUCTION LICENCE

Section 55 of the Principal Act is amended —

- (a) by omitting from subsection (1) "A production licensee" and substituting "Subject to Part IIA if applicable, a production licensee"; and
- (b) by omitting from subsection (2) all the words from and including "Where" to and including "he may," and substituting "Subject to Parts IIA and IIB as applicable, on receiving an application under subsection (1), the Minister may,".

227. ACCESS AUTHORITIES

Section 57A of the Principal Act is amended —

- (a) by omitting from subsection (2) "A permittee" and substituting "Subject to Part IIA if applicable, a permittee";
- (b) by omitting subsections (3) and (4) and substituting the following:

"(3) Subject to this section and to Parts IIA and IIB as applicable, on receiving an application under subsection (2), the Minister may grant or refuse to grant the access authority.

"(4) An access authority is subject to the conditions that the Minister determines (whether in accordance with a recommendation of the Tribunal or otherwise) and specifies in the authority.";

- (c) by omitting from subsection (5) "The Minister" and substituting "Subject to Parts IIA and IIB as applicable, the Minister"; and
- (d) by omitting from subsection (10) "this section" and substituting "Parts IIA and IIB as applicable".

228. PRESCRIBED PETROLEUM ACTS

Section 57B of the Principal Act is amended —

- (a) by omitting from subsection (1) "this Part" and substituting "this Act";
- (b) by omitting from subsection (1)(a) and (b) "or renewal" and substituting ", renewal or variation";

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(c) by omitting subsection (1)(c) and substituting the following:

"(c) the grant, renewal or variation of a production licence under Division 4 of Part II;"

(d) by omitting from subsection (1)(d) "or renewal" and substituting ", renewal or variation";

(e) by omitting from subsection (1)(e) "section 69(1)(a)" and substituting "section 69"; and

(f) by omitting subsections (2) and (3) and substituting the following:

"(2) A variation, renewal, re-grant, re-making or extension of term to which, by virtue of section 26D(1) of the Native Title Act, Subdivision P of Division 3 of Part 2 of that Act does not apply is not a prescribed petroleum act.

"(3) Where a determination is in force under section 26A of the Native Title Act in respect of a prescribed petroleum act, the Minister may, by notice in the Gazette, declare that this Part does not apply in relation to that prescribed petroleum act and the declaration has effect according to its tenor."

229. APPLICATION

Section 57C of the Principal Act is amended by inserting after subsection (1A) the following:

"(1B) A prescribed petroleum act referred to in subsection (1A)(d) may be done at the same time as a prescribed petroleum act referred to in subsection (1A)(c) but, before any activity is undertaken in the area to which the prescribed petroleum act referred to in subsection (1A)(d) relates, the procedures under Part IIB must have been complied with."

230. REPEAL AND SUBSTITUTION

Section 57D of the Principal Act is repealed and the following substituted:

"57D. ACT VALID IF PROCEDURES COMPLIED WITH

"An act to which this Part applies is only valid to the extent that it affects native title if in relation to the doing of the act the procedures of this Part are complied with, and it is invalid if they are not."

231. PRESCRIBED PETROLEUM ACTS COVERING BOTH ALTERNATIVE PROVISION AREA AND OTHER AREA

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

"(d) the prescribed petroleum act referred to in paragraph (c)(ii) may be done at the same time as the prescribed petroleum act referred to in paragraph (c)(i) but, before any activity is undertaken in the area to which the prescribed petroleum act referred to in paragraph (c)(ii) relates, the procedures under Subdivision P of Division 3 of Part 2 of the Native Title Act must have been complied with.".

232. FORM OF APPLICATION

Section 57E of the Principal Act is amended —

- (a) by omitting from subsection (1) "An application" and substituting "In addition to any other requirements of this Act relating to the form of an application, an application"; and
- (b) by omitting from subsection (1)(c) "the affected land" and substituting "any of the affected land".

233. NOTIFICATION OF NATIVE TITLE HOLDERS, &C.

Section 57F of the Principal Act is amended —

- (a) by omitting from subsection (1)(b) "section 43A of the Native Title Act applies" and substituting "section 57C(1)(b) refers";
- (b) by omitting from subsection (3)(a) "the specified objection period" and substituting "2 months after being served with the notice or, in the case of a person to whom subsection (6) applies, within the further time allowed under that subsection";
- (c) by omitting from subsection (3)(a)(i) "that may include an objection to the prescribed petroleum act so far as it affects their registered native title rights and interests;" and substituting "so far as it affects their registered native title rights and interests; or";

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- (d) by omitting from subsection (3)(a)(ii) "section 43A of the Native Title Act applies" and substituting "section 57C(1)(b) refers";
- (e) by omitting subsection (3)(a)(iii);
- (f) by adding at the end of subsection (3A) "and, if lodged, is to be lodged in duplicate";
- (g) by omitting subsections (3B) and (3C) and substituting the following:

"(3B) Other than where Part IIB applies, if an objection lodged under subsection (3A) or section 19(1) is a native title objection to —

- (a) a prescribed petroleum act to which section 24MD(6B) of the Native Title Act applies; or
- (b) a prescribed petroleum act to which section 57C(1)(b) of this Act refers,

this Part applies in relation to the objection.";

- (h) by omitting subsections (5) and (6) and substituting the following:

"(5) An objection may be lodged under subsection (3A) in relation to all of the prescribed petroleum acts specified in a notice under subsection (1) together or one or more of those acts separately.

"(6) If —

- (a) within 2 months after the representative Aboriginal/Torres Strait Islander body or bodies in relation to any of the affected land are served with a notice under subsection (1), a person advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land; and
- (b) by the end of the period referred to in paragraph (a), the Native Title Registrar has not yet decided whether to accept for registration the claim made in the application,

in addition to the period referred to in paragraph (a), the person has another month and any further period in addition to that month allowed in writing by the Minister within which to have the claim for registration accepted and also (once the claim is accepted for registration) to lodge an objection to the prescribed petroleum act.";

- (j) by omitting from paragraph (a) of the definition of "notification event" in subsection (7) "this Part" and substituting "this Act"; and
- (k) by omitting from subsection (7) the definition of "objection period".

234. RESPONSE TO OBJECTIONS

Section 57G of the Principal Act is amended –

- (a) by omitting from subsection (1) "the grounds for the objection" and substituting "give the applicant a copy of the objection"; and
- (b) by omitting from subsection (2) "21 days after being advised of an objection under subsection (1)" and substituting "14 days after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 19 or 57F) to lodge a native title objection to the prescribed petroleum act".

235. CONSULTATION AND MEDIATION

Section 57H of the Principal Act is amended –

- (a) by omitting from subsection (1) "object to the prescribed petroleum act" and substituting "lodge a native title objection";
- (b) by omitting subsection (2) and substituting the following:

"(2) For the purposes of subsection (1), consultation is to take place over a period of 3 months commencing at the end of 7 days after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 19 or 57F) to lodge a native title objection to the prescribed petroleum act.";

- (c) by omitting subsections (3) and (4) and substituting the following:

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"(4) If the prescribed petroleum act is an act to which section 57C(1)(b) refers, subject to section 57J, the applicant and the claimant or body corporate may agree to refer the matter of impact minimisation to mediation at any time within the consultation period referred to in subsection (2)."; and

- (d) by omitting from subsection (5)(b) "if no agreement is reached" and substituting "if the parties agree to mediation but cannot agree on the mediator".

236. APPLICATION TO TRIBUNAL

Section 57J of the Principal Act is amended by omitting subsection (1)(a) and (b) and substituting the following:

- "(a) the end of the consultation period referred to in section 57H(2); or
- (b) if a matter was referred to mediation under section 57H(4) — the end of 30 days after the consultation period referred to in section 57H(2),".

237. REPEAL AND SUBSTITUTION

Section 57K of the Principal Act is repealed and the following substituted:

"57K. INQUIRY BY MINISTER

"After half of the consultation period referred to in section 57H(2) has expired, the Minister may inquire of the applicant for the prescribed petroleum act as to the progress of the consultations and if —

- (a) the matter has not been referred to mediation under section 57H(4); and
- (b) the Minister is not satisfied that sufficient progress has been made,

the Minister may direct the parties to attend a meeting or meetings scheduled by the Minister.".

"57KA. REFERRAL OF OBJECTIONS TO TRIBUNAL WHERE INSUFFICIENT PROGRESS MADE

"At any time after the end of 30 days after the consultation period referred to in section 57H(2) —

- (a) if a native title objection to the prescribed petroleum act has not been resolved; and

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- (b) whether or not the matter has been referred to mediation under section 57H(4),

the Minister may, in the prescribed form accompanied by the prescribed documents, refer the objection to the Tribunal for hearing."

238. COMPLIANCE WITH RECOMMENDATIONS OF TRIBUNAL

Section 57L of the Principal Act is amended —

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

"(1) Where, in relation to a prescribed petroleum act, the Tribunal recommends that the prescribed petroleum act must not be done, the Minister must comply with the recommendation unless the conditions specified in subsection (1B) are satisfied.

"(1A) Where, in relation to a prescribed petroleum act —

- (a) the Tribunal recommends that the prescribed petroleum act may be done, whether or not subject to specified conditions; and

- (b) the Minister wishes to do the act,

the Minister must comply with the recommendation unless the conditions specified in subsection (1B) are satisfied.

"(1B) The Minister must comply with a recommendation of the Tribunal referred to in subsection (1) or (1A) unless —

- (a) the Minister has consulted with the Minister responsible for indigenous affairs (being the Minister to whom responsibility for Aboriginal development is allotted under an Administrative Arrangements Order) about the proposal by the Minister to reject or accept the recommendation and any proposal to reject, vary, substitute or add to the conditions in the recommendation;
- (b) the Minister has taken that consultation into account; and
- (c) it is in the interests of the Territory not to comply with the recommendation."
- (b) by omitting from subsection (2) (a) "(1)(c) and (d)" and substituting "(1B)(a) and (b)";

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- (c) by omitting from subsection (2)(b) "(1)(e)" and substituting "(1B)(c)";
- (d) by omitting subsection (2)(c) and substituting the following:

"(c) reject the recommendation that the prescribed petroleum act must not be done and determine to do the act subject to the conditions (if any) imposed by the Minister; or";
- (e) by inserting in subsection (2)(d) "that the prescribed petroleum act may be done" after "recommendation" (first occurring); and
- (f) by omitting from subsection (2) "and do the prescribed petroleum act accordingly" and substitute "and, subject to this Act, do the prescribed petroleum act accordingly".

239. JUDICIAL REVIEW

Section 57M of the Principal Act is amended —

- (a) by omitting from subsection (2) "on questions of law only"; and
- (b) by omitting subsection (2A) and substituting the following:

"(2A) To avoid doubt, judicial review under subsection (2) does not extend to a review of the decision on its merits.

"(2B) Where the decision being reviewed complies in whole or in part with a recommendation of the Tribunal, the decision is to be taken to include the recommendation and that part of the decision of the Tribunal to make the recommendation."

240. REPEAL AND SUBSTITUTION

Section 57N of the Principal Act is repealed and the following substituted:

"57N. PROCEDURE IF NO OBJECTIONS LODGED, OBJECTIONS WITHDRAWN, &C.

"(1) A native title objection may be withdrawn at any time by notice in writing given to the Minister.

"(2) If —

- (a) at the end of the last day on which any registered native title claimant or registered native title body corporate is entitled (whether under section 19 or 57F) to lodge a native title objection to a prescribed petroleum act, no such objections have been lodged; or
- (b) after the last day on which any registered native title claimant or registered native title body corporate was entitled (whether under section 19 or 57F) to lodge a native title objection to a prescribed petroleum act but immediately before the determination that the prescribed petroleum act is to be done, in respect of each native title objection lodged, either —
 - (i) the objection has been withdrawn; or
 - (ii) if the objection was lodged by a registered native title claimant — the claimant has been removed from the Register of Native Title Claims for a reason other than because an approved determination of native title that the claimant holds native title in the affected land has been made or the claimant has been replaced under section 66B of the Native Title Act,

the Minister may proceed to determine the application for the prescribed petroleum act."

241. COMPENSATION

Section 57P of the Principal Act is amended —

- (a) by omitting subsections (2), (3) and (4) and substituting the following:

"(2) A person who intends to claim compensation under this section for the effect of a prescribed petroleum act on their native title rights and interests must lodge the claim in writing with the holder of the relevant petroleum interest within 3 years after the prescribed petroleum act is done or within the further time the Tribunal allows.

"(2A) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

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"(3) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(4) In the event of a dispute about compensation payable under subsection (1), the holder of the relevant petroleum interest or the registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal."; and

(b) by inserting after subsection (5) the following:

"(5A) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request.".

242. REPEAL

Section 57Q of the Principal Act is repealed.

243. HEADING TO PART IIB

The heading to Part IIB of the Principal Act is omitted and the following substituted:

"PART IIB — ACTS BELOW HIGHWATER MARK".

244. REPEAL AND SUBSTITUTION

Section 57R of the Principal Act is repealed and the following substituted:

"57R. INTERPRETATION

"In this Part, a reference to an act below highwater mark is to be read as a reference to an act to which this Part applies by virtue of section 57S.".

245. REPEAL AND SUBSTITUTION

Section 57S of the Principal Act is repealed and the following substituted:

"57S. APPLICATION

"(1) Subject to subsection (2), this Part applies in relation to —

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- (a) the notification of an application for, and the consideration of objections to and comments on, the grant of a petroleum permit; and
- (b) compensation for the grant, renewal and variation of a petroleum interest,

on an onshore place on the seaward side of the mean highwater mark, other than an act of the type referred to in section 57C(1)(a).

"(2) Any requirement of this Part relating to the service of a notice on a representative Aboriginal/Torres Strait Islander body does not apply if the act is not a future act.

"(3) Where the grant, renewal or variation of a petroleum interest is an act of the type referred to in section 57C(1)(a), Part IIA applies.

"(4) Where there is an existing petroleum interest (in this subsection called 'the earlier right') and that interest is renewed, re-granted, re-made or extended (in this subsection called 'the new right') and —

- (a) under the new right the area to which the earlier right related is not extended;
- (b) the term of the new right is not longer than the term of the earlier right; and
- (c) no rights are created in connection with the new right that were not created in connection with the earlier right,

the procedures under this Part in respect of the notification of applications and the consideration of objections and comments do not apply in relation to the renewal, re-grant, re-making or extension."

246. NOTIFICATION OF APPLICATION FOR PERMIT

Section 57T of the Principal Act is amended —

- (a) by omitting from subsection (1) "intertidal petroleum act" and substituting "act below highwater mark";
- (b) by omitting from subsection (1)(c) "(if any) in relation to the affected land" and substituting "in relation to any of the affected land";
- (c) by omitting subsections (3) and (4) and substituting the following:

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"(2A) As soon as practicable after an application for the grant of a permit has been lodged, the Minister must —

- (a) cause to be published in the *Gazette*; and
- (b) cause to be published, at the expense of the applicant, in a newspaper circulating in the part of the Territory in which the application area is situated or in such other publication as the Minister thinks fit,

notice of the making of the application.

"(3) A notice under subsection (1) or (2A) is to contain the prescribed information and a statement to the effect that —

- (a) a person who has an estate or interest in land comprised in, or land contiguous with land comprised in, an application area may, within 2 months after the date of publication of the notice or the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary an objection to the grant;
- (b) registered native title claimants and registered native title bodies corporate in relation to any of the affected land may, within 2 months after being served with the notice or within the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary objections to the grant; and
- (c) if there are no such registered native title claimants or registered native title bodies corporate in relation to any of the affected land, the representative Aboriginal/Torres Strait Islander body in relation to any of the affected land may, within 2 months after being served with the notice or within the further time allowed in writing by the Minister, lodge in writing at the office of the Secretary comments on the grant.

"(4) Objections and comments may be lodged in response to a notice served under subsection (1) or published under subsection (2A) in accordance with the statement referred to in subsection (3).";

- (d) by omitting subsection (5) and substituting the following:

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"(5) A notice under subsection (1) or (2A) may relate to the grant of one or more permits.

"(5A) An objection or comment may be lodged under subsection (4) in relation to the grant of all of the permits specified in a notice under subsection (1) or (2A) together or the grant of one or more of those permits separately."; and

(e) by omitting subsection (6)(a), (b) and (c) and substituting the following:

"(a) the name of the applicant;

(b) the period in respect of which the permit is sought;".

247. REPEAL AND SUBSTITUTION

Section 57U of the Principal Act is repealed and the following substituted:

"57U. MINISTER TO HAVE REGARD TO OBJECTIONS AND COMMENTS

"The Minister must not grant a permit below highwater mark unless the Minister has taken into account the objections and comments (if any) lodged under section 57T(4).".

248. REPEAL AND SUBSTITUTION

Section 57V of the Principal Act is repealed and the following substituted:

"57V. COMPENSATION

"(1) Compensation for the effect of an act below highwater mark is payable by the holder of the relevant petroleum interest to —

(a) the owner or occupier of land comprised in the petroleum interest for the loss or damage in respect of that person's interest in the land because of the act; and

(b) any native title holder for the effect of the act on the holder's native title rights and interests in the land comprised in the petroleum interest.

"(2) A person who intends to claim compensation under this section must lodge the claim in writing with the holder of the relevant petroleum interest within 3 years after the act below highwater mark is done or within the further time the Tribunal allows.

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"(3) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (2) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(4) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(5) In the event of a dispute about compensation payable under subsection (1), the holder of the petroleum interest or the owner or occupier or registered native title body corporate to whom compensation may be payable may refer the dispute to the Tribunal.

"(6) If a person entitled to compensation under this section requests that the whole or part of the compensation should be in a form other than money, the person by whom the compensation is payable must consider the request.

"(7) A reference in this section to the payment of compensation is to be read as including a reference to the giving of compensation in a form other than money, including the transfer of property and the provision of goods and services."

249. NEW SECTION

The Principal Act is amended by inserting after section 58 the following:

"58A. WHERE ACTS MAY BE DONE SUBJECT TO CONDITIONS

"(1) Where under this Act an act may be done in relation to land in respect of which native title rights and interests exist subject to conditions relating to those rights and interests being complied with by the parties, the conditions have effect and may be enforced as if they were terms of a contract among the parties.

"(2) If a person lodges a native title objection to the doing of the act, any other person in the native title claim group concerned is taken to be a party for the purposes of subsection (1)."

250. ACCESS

Section 65 of the Principal Act is amended by omitting from subsection (1) "Where" and substituting "Subject to section 82, where".

251. UNIT DEVELOPMENT

Section 69 of the Principal Act is amended by omitting from subsection (1) "Where" and substituting "Subject to Parts IIA and IIB as applicable, where".

252. REPEAL AND SUBSTITUTION

Sections 79 and 80 of the Principal Act are repealed and the following substituted:

"79. SECURITY FOR COMPLIANCE WITH THIS ACT AND CONDITIONS OF PETROLEUM INTEREST

"(1) Before granting, renewing or varying a petroleum interest, the Minister may require the applicant for the grant, renewal or variation to lodge with the Minister a security in the form, for the amount and from the person the Minister thinks fit for a purpose specified in subsection (2).

"(2) Security may be required under subsection (1) for any of the following purposes:

- (a) to secure the applicant's compliance with this Act;
- (b) to secure the applicant's compliance with the conditions to which the grant, renewal or variation is made.

"80. SECURITY FOR COMPENSATION THAT MAY BE PAYABLE TO NATIVE TITLE HOLDERS

"(1) Before granting, renewing or varying a petroleum interest, the Minister may require the applicant for the grant, renewal or variation to lodge with the Minister a security in the form, for the amount and from the person the Minister thinks fit for the purpose of securing the payment by the applicant of compensation that may be payable for the effect of the grant, renewal or variation on native title rights and interests.

"(2) Instead of lodging a security in pursuance of a requirement under subsection (1), an applicant may pay into the Trust Fund an amount that the Minister thinks sufficient to cover payment (if any) of the compensation referred to in subsection (1).

"(3) The Territory is not liable to reimburse an applicant for any amount by which a security lodged or an amount paid under this section is insufficient to meet the applicant's liability to pay the compensation referred to in subsection (1)."

253. COMPENSATION PAYABLE TO OWNERS AND OCCUPIERS WITH REGISTERED INTERESTS

Section 81 of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words from and including "Where" to and including "shall be for —" and substituting the following:

"The holder of a petroleum interest must pay to —

- (aa) the owner of land comprised in the petroleum interest; and
- (ab) any occupier of land comprised in the petroleum interest who has a registered interest in the land,

in respect of the owner's and occupier's respective interests in the land, compensation for —";

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

"(a) the owner of land comprised in the permit and any occupier of the land who has a registered interest in that land of the proposed date of commencement, nature and duration of the permittee's exploration operations and served those persons with a copy of this section;"; and

- (c) by omitting subsection (8) and substituting the following:

"(8) In this section and section 82, 'registered interest', in relation to land, means an interest registered on the Register kept by the Registrar-General under Part V of the Real Property Act.".

254. COMPENSATION FOR RIGHT TO ACCESS

Section 82 of the Principal Act is amended —

- (a) by omitting from subsection (1) all the words after "right," and substituting "the owner of the land and any occupier of the land who has a registered interest in that land are entitled to compensation from the permittee or licensee for the loss or damage in respect of the owner's and occupier's respective interests in the land"; and

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

"(2) Compensation for the effect of the construction of a road or other work carried out to ensure access to a permit or licence area on native title is payable to the native title holder by the permittee or licensee.

"(3) A person who intends to claim compensation under this section must lodge the claim in writing with the holder of the relevant petroleum interest within 3 years after the act giving rise to the claim is done or within the further time the Tribunal allows.

"(4) The Tribunal has the jurisdiction to extend the time for making a claim referred to in subsection (3) as if the claim were an action to which section 44 of the *Limitation Act* applies and the Tribunal were a court for the purposes of that section.

"(5) In the absence of agreement, the compensation that may be payable to a native title holder is not determinable by the Tribunal until there is an approved determination of native title that the holder holds native title in the affected land.

"(6) In the event that an agreement about compensation payable under subsection (1) or (2) is unable to be reached, the permittee or licensee or the owner, occupier or registered native title body corporate may refer the dispute for determination to the Tribunal."

255. CERTAIN OPERATIONS PROHIBITED

Section 111 of the Principal Act is amended by omitting all the words after "except with" and substituting the following:

"the express written approval of —

- (d) the owner of the land or, if the occupier of the land has in the land an interest registered on the Register kept by the Registrar-General under Part V of the *Real Property Act*, the occupier;
- (e) the registered native title body corporate in relation to the land; and
- (f) in the case of a public cemetery within the meaning of the *Cemeteries Act* — the Board of Trustees of the cemetery."

256. NEW PART

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

"PART VA — PETROLEUM TRUST FUND

"117AA. ESTABLISHMENT OF TRUST FUND

"(1) The Minister must establish and maintain the Petroleum 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*.

"117AB. PAYMENTS INTO TRUST FUND

"(1) A person who is, may be, will be or may become liable under this Act to pay compensation for the effect of an act (including a prescribed petroleum act) on native title —

(a) may at any time; and

(b) must if required to do so under this Act or another law of the Territory,

pay into the Trust Fund an amount in respect of that compensation.

"(2) Moneys paid into the 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 holder of the relevant petroleum interest to the native title holder.

"117AC. 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 Trust Fund in respect of an act and any of the following happen:

(a) an approved determination of native title that native title does not exist in the affected land is made;

(b) the Minister informs the trustee in writing that he or she is not going to do the act;

(c) the following requirements are satisfied:

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- (i) an approved determination of native title that native title in the affected land 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 act;
- (iii) the person who paid the trust amount into the Trust Fund or that person's successor or assignee 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 act;
- (d) a determination is made by the Tribunal, on a claim for compensation in respect of the act, 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) apply 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.

"(2) Where subsection (1)(a) or (b) applies, the trustee must —

- (a) repay the trust amount to the person who paid it into the Trust Fund or to that person's successor or assignee; or
- (b) if that person no longer exists — apply to the Supreme Court for a direction as to whom the trust amount is to be paid.

"(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 act under this Act.

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

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- (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 holder of the relevant petroleum interest 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 person who paid the trust amount into the Trust Fund or that person's assignee or, if the person or assignee (as the case may be) no longer exists, apply to the Supreme Court for a direction as to its payment.

"(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 person who paid it into the Trust Fund or that person's assignee or, if that person or assignee (as the case may be) no longer exists, apply to the Supreme Court for a direction as to the payment of the trust amount.

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

257. REPEAL

Sections 117B and 117C of the Principal Act are repealed.

258. APPLICATION, SAVINGS AND TRANSITIONAL

Section 119 of the Principal Act is amended by inserting in subsection (2AA) ", subject to Part IIA if applicable," before "the Minister" (first occurring).

PART 11 — PETROLEUM AMENDMENT ACT 1998

259. REGULATIONS

Section 15 of the *Petroleum Amendment Act 1998* is amended by omitting subsection (3) and substituting the following:

"(3) The Administrator may only make regulations under subsection (1) during the period commencing on the day on which this section commences and ending on the day before a determination under section 43A of the *Native Title Act 1993* of the Commonwealth is made in respect of the *Petroleum Act*."

PART 12 — PETROLEUM (SUBMERGED LANDS) ACT

260. INTERPRETATION

Section 4 of the *Petroleum (Submerged Lands) Act* is amended by omitting from subsection (1) the definitions of "registered native title claimant" and "registered native title rights and interests" and substituting the following:

"'registered native title claimant' has the meaning given in section 253 of the *Native Title Act* or, if the claimant is replaced under section 66B of that Act, means the person who replaced the claimant;

'registered native title rights and interests' means —

- (a) in relation to a registered native title claimant — the native title rights and interests of the claimant described in the relevant entry on the Register of Native Title Claims established and maintained in accordance with Part 7 of the *Native Title Act*; and
- (b) in relation to a registered native title body corporate — the native title rights and interests of the body corporate described in the relevant entry on the National Native Title Register established and maintained under Part 8 of the *Native Title Act*;"

PART 13 — VALIDATION (NATIVE TITLE) ACT

261. PRINCIPAL ACT

The *Validation (Native Title) Act* is in this Part referred to as the Principal Act.

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262. LONG TITLE

The long title of the Principal Act is amended by omitting "those acts" and substituting "certain acts attributable to the Territory".

263. REPEAL

Sections 4B and 4C of the Principal Act are repealed.

264. REPEAL AND SUBSTITUTION

Section 9F of the Principal Act is repealed and the following substituted:

"9F. EFFECT CHANGED BY AGREEMENT

"Sections 9B, 9C, 9D and 9E apply subject to section 24EBA(6) of the Commonwealth Act.".

265. APPLICATION

Section 9G of the Principal Act is amended by adding at the end "attributable to the Territory".

266. NEW SECTIONS

The Principal Act is amended by inserting after section 9J in Part 3B the following:

"9JA. CONFIRMATION OF VALIDITY OF USE OF CERTAIN LAND HELD BY CROWN, &C.

"To avoid doubt, if an act is a previous exclusive possession act because of section 23B(9C)(b) of the Commonwealth Act (which deals with grants to the Crown, &c. and which is set out in clause 7(b) of Schedule 1 to this Act), the use of the land or waters concerned as mentioned in that section is valid.

"9JB. ATTRIBUTION OF CERTAIN ACTS

"If —

- (a) a previous exclusive possession act took place before the establishment of the Territory; and
- (b) the act affected land or waters that, when this section commences, form part of the Territory,

for the purposes of this Part, the act is taken to be attributable to the Territory.".

267. APPLICATION

Section 9K of the Principal Act is amended by adding at the end of subsection (1) "attributable to the Territory".

268. NEW SECTION

The Principal Act is amended by inserting after section 9N in Part 3C the following:

"9NA. ATTRIBUTION OF CERTAIN ACTS

"If —

- (a) a previous non-exclusive possession act took place before the establishment of the Territory; and
 - (b) the act affected land or waters that, when this section commences, form part of the Territory,
- for the purposes of this Part, the act is taken to be attributable to the Territory."

269. CONFIRMATION OF ACCESS TO BEACHES, &C.

Section 13 of the Principal Act is amended by inserting after subsection (1)(d) the following:

"(da) stock routes;".

PART 14 — VALIDATION OF TITLES AND ACTIONS
AMENDMENT ACT 1998

270. REGULATIONS

Section 14 of the *Validation of Titles and Actions Amendment Act 1998* is amended —

- (a) by inserting in subsection (1) "(other than this section)" after "this Act"; and
- (b) by omitting from subsection (1)(b) "the validation of".

PART 15 — MISCELLANEOUS

271. DEFINITIONS

In this Part —

"new Native Title Act" means the Native Title Act 1993 of the Commonwealth as in force on and after 30 September 1998;

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"old Native Title Act" means the Native Title Act 1993 of the Commonwealth as in force immediately before 30 September 1998.

272. DECLARATION IN RESPECT OF CERTAIN REGULATIONS

The amendments to the *Lands Acquisition Act*, *Mining Act*, *Petroleum Act* and *Energy Pipelines Act* made or purporting to have been made by the documents respectively entitled the *Lands Acquisition Amendment Regulations*, the *Mining Amendment Regulations*, the *Petroleum Amendment Regulations* and the *Energy Pipelines Amendment Regulations* (referred to in Gazette No. S37 of 1 October 1998 as Regulations No. 42, 43, 44 and 45 respectively) and tabled in the Legislative Assembly on 7 October 1998, are 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.

273. SAVING: SECTION 21 AGREEMENTS MADE BEFORE 30 SEPTEMBER 1998

By virtue of item 13 of Part 5 of Schedule 2 of the new Native Title Act, where, immediately before 30 September 1998, an agreement under section 21 of the old Native Title Act had been made, the agreement has effect despite anything in the *Mining Act*.

274. TRANSITIONAL: RIGHT TO NEGOTIATE PROCEDURES COMMENCED ON OR AFTER 30 SEPTEMBER 1998

(1) Where —

- (a) on or after 30 September 1998, the Territory gives notice under section 29 of the new Native Title Act of an act under a prescribed Act (in this section called "the section 29 notice"); and
- (b) subsequently, a determination under section 43A(1)(b) of the new Native Title Act is made in respect of alternative provisions to those contained in Subdivision P of Division 3 of Part 2 of the new Native Title Act that are provided for by a law or laws of the Territory in relation to acts under a prescribed Act,

the Territory may —

- (c) continue with the right to negotiate procedures commenced by the section 29 notice; or
- (d) at any time, discontinue those procedures and make an election under subsection (2).

(2) Where the Territory discontinues the right to negotiate procedures under subsection (1)(d) and it is still proposed to do the act, the Territory may elect -

- (a) to disregard anything done in the course of the right to negotiate procedures, in which case all of the procedures under the prescribed Act relating to the doing of the act so far as it affects registered native title rights and interests are to be complied with; or
- (b) to take account of the right to negotiate procedures, in which case all of the procedures under the prescribed Act relating to the doing of the act so far as it affects registered native title rights and interests are to be complied with, subject to the following qualifications:
 - (i) if the right to negotiate procedures were discontinued after the notification day but less than 2 months after that day, then the procedures under the prescribed Act relating to the notification of registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be taken to have been complied with;
 - (ii) if the right to negotiate procedures were discontinued 2 months or longer after the notification day, then the procedures under the prescribed Act relating to the notification of registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies are to be taken to have been complied with and, regardless of the type of act, the period over which consultation with registered native title claimants and registered native title bodies corporate is to take place under the prescribed Act is to be taken to be the period of 2 months commencing on the day on which the parties referred to in subsection (3)(a) and (b) are served with notice of the election.

(3) As soon as practicable after determining to discontinue right to negotiate procedures and making an election under subsection (2), the Territory must give notice in writing of its decision to -

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- (a) the applicant (if any) for the act under the prescribed Act;
 - (b) the registered native title claimants, registered native title bodies corporate and representative Aboriginal/Torres Strait Islander bodies who were negotiation parties in the right to negotiate procedures; and
 - (c) the National Native Title Tribunal.
- (4) The notice served on a person referred to in subsection (3) (a) or (b) is to specify —
- (a) which of the courses of action under subsection (2) the Territory has elected to take; and
 - (b) if it has elected to take the course of action specified in subsection (2) (b), whether subsection (2) (b) (i) or (ii) applies.
- (5) In this section —
- "notification day" has the meaning given in section 29 of the new Native Title Act;
- "prescribed Act" means —
- (a) the *Lands Acquisition Act*;
 - (b) the *Mining Act*; or
 - (c) the *Petroleum Act*;
- "right to negotiate procedures" means the procedures under Subdivision P of Division 3 of Part 2 of the new Native Title Act.

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275. REPEAL OF CONFIRMATION OF TITLES TO LAND (REQUEST)
ACT 1993

The *Confirmation of Titles to Land (Request) Act*
1993 (Act No. 14 of 1993) is repealed.
