

NORTHERN TERRITORY OF AUSTRALIA
MINING AMENDMENT ACT (NO. 2) 1994

No.26 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 26 of 1994

AN ACT

to amend the *Mining Act*

[Assented to 18 May 1994]

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:

1. SHORT TITLE

This Act may be cited as the *Mining Amendment Act (No. 2) 1994*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 4(1) of the Principal Act is amended -

- (a) by inserting after the definition of "inspector" the following:

"'land' means land within the jurisdictional limits of the Territory and includes waters within those limits;";

Mining Amendment (No. 2)

- (b) by inserting at the end of the definition of "owner" and "occupier" the words "but does include a native title holder within the meaning of section 224 of the *Native Title Act 1993* of the Commonwealth"; and
- (c) by omitting the definition of "private land" and substituting the following:

"'private land' means -

- (a) land (other than Aboriginal land and land held for an estate in fee simple, or on lease from the Crown, by the Conservation Land Corporation established by section 27 of the *Conservation Commission Act*) that is alienated from the Crown for an estate of freehold or is the subject of a conditional purchase agreement or 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for pastoral or timber purposes) but does not include land held or occupied for mining purposes under this Act or the repealed Act; or
- (b) land in respect of which there are native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth;"

5. NEW PART

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

"PART IIA - SPECIAL PROVISIONS RELATING TO CERTAIN ACTS AFFECTING NATIVE TITLE

"8A. INTERPRETATION

"(1) In this Part 'Commonwealth Act' means the *Native Title Act 1993* of the Commonwealth.

"(2) Unless the contrary intention appears, a word or expression used in the Commonwealth Act has the same meaning in this Part (and in the remainder of this Act for the purposes of the application of this Part) as it has in the Commonwealth Act.

"8B. WARDEN'S COURT MAY BE "ARBITRAL BODY" FOR PURPOSE OF COMMONWEALTH ACT

"(1) If the Commonwealth Minister determines that the warden's court is a recognised State/Territory body, that court as constituted by a warden who is a magistrate is, and in pursuance of section 27 of the Commonwealth Act

is hereby allowed and has the necessary jurisdiction to be, an arbitral body under Subdivision B of Division 3 of Part 2 of that Act.

"(2) Notwithstanding subsection (1), the warden's court does not have the power to make a determination of native title but may act on any approved determination of native title as though it were lawfully made by the warden's court.

"8C. OTHER PROVISIONS OF THIS ACT TO CONTINUE TO APPLY

"Except to the extent that they are inconsistent with this Part and the Commonwealth Act, the other provisions of this Act continue to apply to and in relation to a permissible future act covered by subsection 26(2) of the Commonwealth Act according to their tenor.

"8D. POWERS, &c.

"(1) To ensure that this Act is consistent with and gives effect to the objects and provisions of the Commonwealth Act, this Act, with the prescribed changes, applies to native title.

"(2) Without limiting subsection (1), this Act applies to native title with the changes, if any, prescribed by the Regulations that, in the opinion of the Administrator, are necessary or convenient to ensure that -

- (a) warden's courts as constituted in this Part become recognised State/Territory bodies and arbitral bodies;
- (b) warden's courts will have available to them appropriate expertise (including expertise in matters relating to Aboriginal peoples) for performing their functions in relation to native title;
- (c) an act under this Act may be excluded from the coverage of subsection 26(3) (which deals with acts excluded from the right to negotiate) of the Commonwealth Act in appropriate cases;
- (d) the expedited procedure in section 32 of the Commonwealth Act may apply in appropriate cases; and
- (e) this Act may comply with subsection 43(2) (which deals with alternative right to negotiate provisions) of the Commonwealth Act."

6. POWERS OF HOLDER OF MINER'S RIGHT

Section 11 of the Principal Act is amended by adding at the end the following:

"(4) Subsection (1) does not authorise the carrying out of an act which affects native title rights and interests within the meaning of the *Native Title Act 1993* of the Commonwealth, but nothing in this subsection prevents a miner from applying for and being granted an area of land under a mining tenement, an exploration retention licence or exploration licence."

7. GRANT OF LICENCE

Section 22 of the Principal Act is amended -

(a) by omitting from subsection (1) "grant an exploration licence" and substituting "grant one or more exploration licences"; and

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

"(1AA) Where the Minister grants an exploration licence in respect of part only of the land to which the application relates, the application, unless the Minister expressly states otherwise when granting the exploration licence, remains in force in respect of the remainder of the land to which the application relates until the application is further dealt with under this Act."

8. JURISDICTION

Section 145 of the Principal Act is amended by omitting all words after paragraph (j) and substituting the following:

"(k) the recovery of penalties for a breach of a provision of this Act or the Regulations or any other law in force in the Territory in respect of which a warden or warden's court has jurisdiction,

and such other jurisdiction as is conferred on it by or under this Act or any other law in force in the Territory."

9. PROCEEDINGS

Section 146(2) of the Principal Act is amended by omitting "In any proceeding" and substituting "Subject to Part IIA, in any proceeding".

10. COMPENSATION PAYABLE

Section 174B(1) of the Principal Act is amended -

- (a) by omitting "The owner and occupier" and substituting "Subject to section 174DA, the owner and occupier"; and
- (b) by omitting "compensation for" and substituting "compensation on account of the granting of the mining tenement which compensation shall be for".

11. MINISTER TO BE SATISFIED WITH ARRANGEMENTS

Section 174C(2) of the Principal Act is amended -

- (a) by inserting after "section 174B" the words "or on compensation in a form other than money";
- (b) by inserting after "compensation to be paid" the words "or arrangements to be made"; and
- (c) by inserting after "amount so determined shall be payable" the words "or the arrangement made".

12. COMPENSATION IN RESPECT OF ADJOINING LAND

Section 174D of the Principal Act is amended -

- (a) by inserting in subsection (1), after "entitled to be paid compensation", the words "or to be otherwise compensated in pursuance of section 174DA";
- (b) by inserting in subsection (3), after "amount to be paid under", the words "or arrangement to be made in pursuance of"; and
- (c) by inserting in subsection (3), after "compensation already paid", the words "or other benefit provided in lieu of compensation in money".

13. NEW SECTION

The Principal Act is amended by inserting after section 174D the following:

"174DA. COMPENSATION, OTHER THAN MONEY, IN RESPECT OF
NATIVE TITLE

"Where private land in respect of which compensation is payable under section 174B, 174C or 174D comprises native title rights or interests, the person or persons who may be entitled to compensation may request that the compensation should be in a form other than money and the other party involved in the negotiations -

- (a) must consider the request; and
- (b) must negotiate in good faith in relation to the request."

14. COMPENSATION TO PASTORAL LESSEES AND OWNERS OF PRIVATE LAND

"Section 184 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) There shall be payable by the holder of an exploration licence, exploration retention licence or mining tenement (other than a mineral lease in respect of private land) to the owner and occupier of private land or the lessee of a pastoral lease under the *Pastoral Land Act*, as the case may be, compensation in accordance with this section on account of the granting of the exploration licence, exploration retention licence or mining tenement which compensation shall be for -

- (a) in the case of the holder of an exploration licence or his servant or agent -
 - (i) damage caused to the private land, including improvements on the land; or
 - (ii) damage caused to the land comprised in the pastoral lease, including improvements on the land, in excess of that reasonably necessary for the purposes of carrying out the exploration activities permitted by the licence to be carried out; and
 - (b) in the case of the holder of a mining tenement or exploration retention licence or his servant or agent - damage caused to the land and improvements referred to in paragraph (a), other than the land or improvements on land the subject of the mining tenement or exploration retention licence."
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