

Serial 109
Lands and Mining
(Miscellaneous
Amendments)
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA
LANDS AND MINING (MISCELLANEOUS AMENDMENTS) BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

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

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 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.

(2) Part 4 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.

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(3) Part 6 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.

(4) Part 8 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.

(5) Part 9 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.

PART 2 — CROWN LANDS ACT

3. PRINCIPAL ACT

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

4. SUBDIVISION OF LEASE, &c.

Section 42 of the Principal Act is amended by adding at the end of subsection (8) "and Division 3A".

5. SURRENDER OF LEASES AND GRANT OF CONSOLIDATED LEASE

Section 43 of the Principal Act is amended by adding at the end the following:

"(9) This section applies subject to Division 3A."

6. SUBDIVISION APPLICATIONS WHERE *PLANNING ACT* APPLIES

Section 44 of the Principal Act is amended by adding at the end the following:

"(10) This section applies subject to Division 3A."

7. TERM OF LEASE

Section 56 of the Principal Act is amended by adding at the end the following:

"(3) This section applies subject to Division 3A."

8. NEW DIVISION

Part 3 of the Principal Act is amended by inserting after Division 3 the following:

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*"Division 3A - Certain Grants, &c., to be Treated as
Compulsory Acquisitions*

"59A. APPLICATION

"This Division applies in relation to -

- (a) the grant of a new lease under section 42, 43 or 44; and
- (b) the extension of the term of a lease, or the renewal of a lease, under section 56,

where the grant, extension or renewal -

- (c) will affect native title rights and interests; and
- (d) 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.

"59B. 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 a grant, extension or renewal 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 grant, extension or renewal.

"(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 grant, extension or renewal of a lease under section 42, 43, 44 or 56 (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 a grant, extension or renewal to which this Division applies then, subject to section 45 of the applied provisions, the Minister may grant the new lease, extend the term of the lease or renew the lease accordingly.

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"59C. COMPENSATION

"(1) Compensation is payable by the lessee to the native title holder in respect of any land affected by a grant, extension or renewal to which this Division applies for the effect of the grant, extension or renewal 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 a grant, extension or renewal to which this Division applies on their registered native title rights and interests must make the claim within 3 years after the new lease is granted, the term of the lease is extended or the lease is renewed, as the case may be.

"(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 lessee or the native title holder may refer the dispute to the Tribunal."

PART 3 - ENERGY PIPELINES ACT

9. REPEAL

Section 67D of the *Energy Pipelines Act* is repealed.

PART 4 - ENERGY PIPELINES AMENDMENT ACT 1998

10. 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.

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"(2) An applicant is to be taken to have complied with a requirement under section 6, 13(4) or 21B(2) of the amended Act to notify -

- (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(4) or 21B(2) (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 5 - LANDS AND MINING TRIBUNAL ACT 1998

11. PRINCIPAL ACT

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

12. FUNCTIONS

Section 5 of the Principal Act is amended -

- (a) 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*";
- (b) by omitting from paragraph (d) "section 140N" and substituting "section 120(4), 140N(4), 140U(4), 174B(3)(a) or 179(3)(a)";
- (c) by omitting from paragraph (f) "section 57P, 81 or 82" and substituting "section 57P(4), 57V(4), 81(3) or 82(2)";
- (d) by omitting paragraph (g) and substituting the following:

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- "(g) to hear and make recommendations about objections by registered native title claimants and registered native title bodies corporate to the grant, extension or renewal of a lease under section 42, 43, 44 or 56 of the *Crown Lands Act* so far as it affects the registered native title rights and interests of the claimants and bodies;
- (ga) to hear and determine disputes about compensation referred to the Tribunal under section 59C(4) of the *Crown Lands Act*;
- (gb) 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 native title rights and interests of the claimants and bodies;
- (gc) to hear and determine disputes about compensation referred to the Tribunal under section 72C(4) of the *Pastoral Land Act*"; and
- (e) by omitting from paragraph (h) "section 43N" and substituting "section 67B(5)".

13. APPEARANCE AND REPRESENTATION

Section 12 of the Principal Act is amended -

- (a) 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"; and
- (b) 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 *Crown Lands Act* is allotted under an Administrative Arrangements Order; and

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- (ii) the registered native title claimant or registered native title body corporate objecting to the grant, extension or renewal;
- (ga) if the proceeding is for the purposes of section 5(ga) —
 - (i) the person liable to pay compensation; and
 - (ii) the person to whom compensation is payable;
- (gb) if the proceeding is for the purposes of section 5(gb) —
 - (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;
- (gc) if the proceeding is for the purposes of section 5(gc) —
 - (i) the person liable to pay compensation; and
 - (ii) the person to whom compensation is payable;".

14. DECISIONS AND REASONS FOR DECISIONS

Section 17 of the Principal Act is amended —

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

"(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.";
- (b) by omitting from subsection (2)(a) "section 5(a), (c), (e) or (g)" and substituting "section 5(a), (ba), (c), (e), (g) or (gb)"; and
- (c) by omitting from subsection (2)(b) "section 5(b), (d), (f) or (h)" and substituting "section 5(b), (d), (f), (ga), (gc) or (h)".

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15. RECOMMENDATIONS ABOUT OBJECTIONS

Section 22 of the Principal Act is amended -

- (a) by omitting from subsection (1) "a recommendation" and substituting "a recommendation under section 5(a), (c), (e), (g) or (gb)";
- (b) by omitting from subsection (3)(a) "Act;" and substituting "Act; or";
- (c) by omitting from subsection (3)(b) "Act; or" and substituting "Act."; and
- (d) by omitting subsection (3)(c).

16. REPEAL AND SUBSTITUTION

Section 25 of the Principal Act is repealed and the following substituted:

"25. RULES ABOUT COMPENSATION FOR EFFECT ON NATIVE TITLE

"Sections 49, 51 and 51A of the Native Title Act apply, with the necessary modifications, in relation to the determination of the amount of compensation payable for the effect of an act on native title rights and interests."

17. 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).

PART 6 - MINING ACT

18. PRINCIPAL ACT

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

19. HEADING TO PART XIB

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

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"PART XIB — ACTS BELOW HIGHWATER MARK".

20. 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."

21. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

Section 140S of the Principal Act is amended by omitting from subsections (1), (3), (5) and (6)(a) and (b) "intertidal mining act" and substituting "act below highwater mark".

22. RELEVANT MINISTER TO HAVE REGARD TO COMMENTS

Section 140T of the Principal Act is amended by omitting "intertidal mining act" and substituting "act below highwater mark".

23. COMPENSATION

Section 140U of the Principal Act is amended by omitting from subsections (1) and (2) "intertidal mining act" and substituting "act below highwater mark".

PART 7 — PASTORAL LAND ACT

24. PRINCIPAL ACT

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

25. 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".

26. 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".

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27. 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 -

- (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."

28. 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".

29. NEW DIVISION

Part IV 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,

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where the extension or grant -

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

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"(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.

"(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 lessee or the native title holder may refer the dispute to the Tribunal."

PART 8 — PETROLEUM ACT

30. PRINCIPAL ACT

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

31. 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".

32. 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."

33. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

Section 57T of the Principal Act is amended by omitting from subsections (1), (3), (5) and (6)(a) and (b) "intertidal petroleum act" and substituting "act below highwater mark".

34. MINISTER TO HAVE REGARD TO COMMENTS

Section 57U of the Principal Act is amended by omitting "intertidal petroleum act" and substituting "act below highwater mark".

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35. COMPENSATION

Section 57V of the Principal Act is amended --

- (a) by omitting from subsection (1) "intertidal petroleum act" (wherever occurring) and substituting "act below highwater mark"; and
- (b) by omitting from subsection (2) "intertidal petroleum act" and substituting "act below highwater mark".

PART 9 -- VALIDATION (NATIVE TITLE) ACT

36. PRINCIPAL ACT

The *Validation (Native Title) Act* is in this Part referred to as the Principal Act.

37. LONG TITLE

The long title of the Principal Act is amended by omitting "those acts" and substituting "certain acts attributable to the Territory".

38. REPEAL

Sections 4B and 4C of the Principal Act are repealed.

39. 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."

40. APPLICATION

Section 9G of the Principal Act is amended by adding at the end "attributable to the Territory".

41. NEW SECTIONS

The Principal Act is amended by inserting after section 9J in Part 3B the following:

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"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."

42. APPLICATION

Section 9K of the Principal Act is amended by adding at the end of subsection (1) "attributable to the Territory".

43. 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."

44. 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;"

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PART 10 - VALIDATION OF TITLES AND ACTIONS
AMENDMENT ACT 1998

45. 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 11 - REPEAL

46. 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.

