

NORTHERN TERRITORY OF AUSTRALIA

MINING AMENDMENT BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Mining Act*

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 1998*.

2. COMMENCEMENT

(1) Sections 3 to 15 (inclusive) and sections 17 to 22 (inclusive) come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(2) Sections 16, 23 and 24, to the extent those sections apply in relation to acts to which section 24MD(6B) of the *Native Title Act 1993* of the Commonwealth applies, come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(3) Sections 16, 23 and 24, to the extent those sections apply in relation to acts to which section 43A of the *Native Title Act 1993* of the Commonwealth applies, come into operation on the date fixed by the Administrator by notice in the *Gazette*.

(4) Section 25 comes into operation on the commencement of the *Validation of Titles and Actions Amendment Act 1998*.

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3. PRINCIPAL ACT

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

4. INTERPRETATION

Section 4 of the Principal Act is amended —

- (a) by inserting after the definition of "Aboriginal Land" in subsection (1) the following:

"'affected land', in relation to an application for a prescribed mining act, means land that will be or is reasonably likely to be affected by the activities of the applicant if the prescribed mining act is done;

'alternative provision area' has the meaning given in section 43A(2) of the Native Title Act;";

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

"'mining interest' has the meaning given in section 140A;";

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

"'Minister for Lands' means the Minister to whom responsibility for land administration and usage is allotted under an Administrative Arrangements Order;

'native title' and 'native title rights and interests' have the meaning given in section 223 of the Native Title Act;

'Native Title Act' means the *Native Title Act 1993* of the Commonwealth;

'native title holder' has the meaning given in section 224 of the Native Title Act;";

- (d) by omitting from the definitions of "owner" and "occupier" in subsection (1) "within the meaning of section 224 of the *Native Title Act 1993* of the Commonwealth" and substituting ", whether or not identifiable by such an examination";

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(e) by inserting after the definition of "park or reserve" in subsection (1) the following:

"'prescribed mining act' has the meaning given in section 140A;";

(f) by omitting paragraph (b) of the definition of "private land" in subsection (1) and substituting the following:

"(b) land (not being an alternative provision area) in respect of which there are native title rights and interests;";

(g) by inserting after the definition of "private land" in subsection (1) the following:

"'registered native title body corporate' has the meaning given in section 253 of the Native Title Act;

'registered native title claimant' has the meaning given in section 253 of the Native Title Act;

'registered native title rights and interests' has the meaning given in section 30(3) of the Native Title Act;

'relevant Minister', in relation to a prescribed mining act, means —

(a) if the prescribed mining act is the declaration of a fossicking area under section 131 — the Minister for Lands; or

(b) in the case of any other prescribed mining act — the Minister;";

(h) by inserting after the definition of "repealed Act" in subsection (1) the following:

"'representative Aboriginal/Torres Strait Islander body' has the meaning given in section 253 of the Native Title Act;";

(j) by inserting after the definition of "tourist fossicking" in subsection (1) the following:

'Tribunal' means the Lands and Mining Tribunal established by the *Lands and Mining Tribunal Act*;".

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5. LICENCE NOT TO BE GRANTED OVER EXISTING LICENCE AREAS

Section 18 of the Principal Act is amended by omitting paragraph (a) and substituting the following:

"(a) is the subject of an exploration licence;

(aa) is the subject of an application that was lodged on a day before the day on which the first-mentioned application was lodged; or".

6. APPLICATION FOR EXTRACTIVE MINERAL PERMIT

Section 107 of the Principal Act is amended by omitting from subsection (1) "a mining registrar" and substituting "the Minister".

7. FORM OF APPLICATION

Section 108 of the Principal Act is amended by omitting from paragraph (a) "prescribed mining registrar's office" and substituting "office of the Secretary".

8. NOTICE TO BE GIVEN TO LANDHOLDERS

Section 110 of the Principal Act is amended -

(a) by omitting from subsection (1) "the mining registrar allows" and substituting "the Secretary in writing allows";

(b) by omitting from subsection (2) "mining registrar" (wherever occurring) and substituting "Secretary";

(c) by omitting from subsection (3) "the mining registrar allows" and substituting "the Secretary in writing allows"; and

(d) by omitting from subsection (3) "mining registrar" (second occurring) and substituting "Secretary".

9. OBJECTIONS TO BE CONSIDERED

Section 111 of the Principal Act is amended by omitting "mining registrar" and substituting "Minister".

10. GRANT OF PERMIT

Section 112 of the Principal Act is amended by omitting from subsections (1) and (2) "mining registrar" and substituting "Minister".

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11. SECURITY FOR COMPLIANCE WITH ACT

Section 113 of the Principal Act is amended by omitting "mining registrar" (wherever occurring) and substituting "Minister".

12. RENEWAL

Section 115 of the Principal Act is amended —

- (a) by omitting from subsection (1) "mining registrar" and substituting "Minister";
- (b) by omitting from subsection (2) "the prescribed mining registrar's office" and substituting "the office of the Secretary"; and
- (c) by omitting from subsections (3) and (4) "mining registrar" and substituting "Minister".

13. CANCELLATION

Section 118 of the Principal Act is amended by omitting "mining registrar" and substituting "Minister".

14. SURRENDER

Section 119 of the Principal Act is amended by omitting from subsection (1) "mining registrar" and substituting "Minister".

15. FOSSICKING AREAS

Section 131 of the Principal Act is amended —

- (a) by omitting from subsection (1) "Minister" and substituting "Minister for Lands";
- (b) by inserting after subsection (1) the following:

"(1AA) The Minister for Lands may only make a declaration under subsection (1) on the application in writing by the Minister for the time being administering this Act (other than this section)."; and

- (c) by omitting from subsections (1A), (2), (2)(a) and (d) and (3) "Minister" (wherever occurring) and substituting "Minister for Lands".

16. NEW PART

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

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"PART XIA — PRESCRIBED MINING ACTS AFFECTING REGISTERED
NATIVE TITLE RIGHTS AND INTERESTS

"140A. PRESCRIBED MINING ACTS, &c.

"(1) For the purposes of this Part, subject to subsections (2) and (3), the following acts are prescribed mining acts:

- (a) the grant, variation or renewal of an exploration licence;
- (b) the grant, variation or renewal of an exploration retention licence;
- (c) the grant, variation or renewal of a mining tenement;
- (d) the declaration of a fossicking area under section 131;
- (e) the authority to occupy and use land for a specified purpose under section 178;
- (f) the grant of permission to cut and remove timber under section 180;
- (g) the authority to enter land under section 181 or 182 for a purpose specified in that section.

"(2) A renewal referred to in subsection (1) is not a prescribed mining act if —

- (a) it is a renewal to which section 24IC or 26D of the Native Title Act applies; or
- (b) it is a past act by virtue of section 228(4) of the Native Title Act.

"(3) A variation referred to in subsection (1) is not a prescribed mining act if it is a variation to which section 24IC or 26D of the Native Title Act applies.

"(4) Where, as a result of a prescribed mining act, a person has a right of access under section 179, the prescribed mining act includes the giving of that right of access.

"(5) For the purposes of this Part —

- (a) a mining interest is the licence, tenement, area, authority or permission granted, varied, renewed, declared or given by a prescribed mining act; and

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- (b) the holder of a mining interest that is a fossicking area is to be taken to be the Minister.

"140B. APPLICATION

"(1) Subject to subsection (2), this Part applies in relation to a prescribed mining act that —

- (a) affects registered native title rights and interests;
- (b) is an act to which Subdivision P of Division 3 of Part 2 of the Native Title Act applies; and
- (c) relates, to any extent, to an area of land that is an alternative provision area.

"(2) Where there is a determination 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.

"(3) Subject to subsections (4) and (6), the requirements of this Part are in addition to and not in derogation of the other requirements under this Act.

"(4) In the event of an inconsistency between this Part and another provision of this Act, this Part prevails.

"(5) For the purposes of subsection (3), this Part is consistent with another provision of this Act if it is capable of operating concurrently with that other provision.

"(6) Where, but for this subsection —

- (a) an objection to a prescribed mining act may be lodged under this Part or another Part; or
- (b) a question about compensation for the effect of a prescribed mining act on native title may be referred to a person or body under this Part or another Part,

the objection may be lodged or the question referred under either this Part or that other Part but not both and this Act applies to the objection or referral accordingly.

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"140C. ACT VALID IF PROCEDURES COMPLIED WITH

"(1) A prescribed mining act is 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.

"(2) If —

- (a) a prescribed mining act is done in respect of land; and
- (b) the prescribed mining act is, to the extent that it affects native title in relation to part of the land, invalid,

then —

- (c) the invalidity does not affect the validity of the prescribed mining act to the extent that it affects native title in relation to the remainder of the land; and
- (d) the prescribed mining act has effect as if it had been done only in relation to the remainder of the land.

"140D. FORM OF APPLICATION

"An application for a prescribed mining act is to contain —

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

"140E. NOTIFICATION OF NATIVE TITLE HOLDERS, &c.

"(1) Within 14 days after the notification event or within the further time allowed in writing by the Secretary —

- (a) if the prescribed mining act is an act to which section 24MD(6B) of the Native Title Act applies — the Minister must serve written notice of the making of the application on the

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persons referred to in section 140D(a), (b) and (c); or

- (b) if the prescribed mining act is an act to which section 43A of the Native Title Act applies — the applicant must serve written notice of the making of the application on the persons referred to in section 140D(a), (b) and (c).

"(2) Within 14 days after the applicant serves notice in writing of the application under subsection (1)(b) or within the further time allowed in writing by the Secretary, the applicant must provide the Secretary with the evidence of service of the notice and the method of service that the Secretary requires.

"(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 lodge, in writing within the specified objection period at the office of the Secretary —

- (i) if the prescribed mining act is an act to which section 24MD(6B) of the Native Title Act applies — an objection to the prescribed mining act that may include an objection to the prescribed mining act so far as it affects their registered native title rights and interests;

- (ii) if the prescribed mining act is an act to which section 43A of the Native Title Act applies — an objection to the prescribed mining act so far as it affects their registered native title rights and interests; and

- (iii) if the prescribed mining act will entitle the applicant to a right of access under section 179 — an objection to the right of access so far as it affects their registered native title rights and interests; and

- (b) an objection to the prescribed mining act so far as it affects registered native title rights and interests is to state the manner in which it is said that the doing of the act would affect those registered native title rights and interests.

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"(4) A notice under subsection (1) may relate to 2 or more prescribed mining acts.

"(5) If —

- (a) the Minister determines in writing that 2 or more prescribed mining acts constitute or form part of a project to be carried out in a specified area;
- (b) the notice under subsection (1) relating to those acts —
 - (i) identifies the project;
 - (ii) states that the acts to which the notice relates constitute or form part of the project (whether or not the notice separately specifies the area that each act will affect); and
 - (iii) has attached to it a copy of the determination,

this Part applies to all of those prescribed mining acts as if they were a single act.

"(6) Where —

- (a) the Minister makes a determination under subsection (5) (a); and
- (b) there are 2 or more applicants for the prescribed mining acts that constitute or form part of the project,

the Minister must specify in the determination which of those applicants is, for the purposes of this Part, to be the applicant for the single act and this Part applies accordingly.

"(7) In this section —

'notification event' means —

- (a) if the prescribed mining act is the grant of a mining interest under this Act — the notification of the applicant in writing that, subject to compliance with this Part, the Minister proposes to grant the mining interest to the applicant; or
- (b) in the case of any other prescribed mining act — the lodgement of the application for the prescribed mining act;

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'objection period' means --

- (a) if the prescribed mining act is an act to which section 24MD(6B) of the Native Title Act applies -- 2 months after the day on which the notice is served on the person; or
- (b) if the prescribed mining act is an act to which section 43A of the Native Title Act applies -- 30 days after the day on which the notice is served on the person;

'prescribed information' means --

- (a) the name of the applicant for the prescribed mining act;
- (b) the prescribed mining act applied for;
- (c) if relevant -- the period in respect of which the relevant mining interest is sought;
- (d) either --
 - (i) a description of the land in respect of which the application is made sufficient to enable an interested person to determine its location; or
 - (ii) a map that indicates that land by reference to the boundaries of existing landholdings or geographical features; and
- (e) the information (if any) prescribed by the regulations.

"140F. RESPONSE TO OBJECTIONS

"(1) As soon as practicable after an objection to a prescribed mining act is lodged in accordance with a statement referred to in section 140E(3), the Secretary must advise the applicant for the prescribed mining act in writing of the objection and the grounds for the objection.

"(2) Within 21 days after being advised of an objection under subsection (1), an applicant must, by notice in writing, invite the registered native title claimant or registered native title body corporate who lodged the objection to consult with the applicant in accordance with section 140G(1).

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"(3) The regulations may make provision in relation to the procedures to be observed during consultation under subsection (2), including in relation to —

- (a) meetings (whether scheduled by the applicant or the Minister under section 140J) for the purposes of section 140G;
- (b) mediation under section 140G(4); and
- (c) the costs relating to the holding of those meetings or the conduct of that mediation.

"140G. CONSULTATION AND MEDIATION

"(1) An applicant for a prescribed mining act must consult with any registered native title claimants or registered native title bodies corporate who object to the prescribed mining act about ways of minimising the impact of the prescribed mining act on registered native title rights and interests in relation to the affected land, including (if relevant) about any access to that land (whether under section 179 or otherwise) or the way in which anything authorised by the prescribed mining act might be done (in this section called "impact minimisation").

"(2) For the purposes of subsection (1), an applicant is to be taken to have consulted with a claimant or body if the applicant attends at least 2 meetings (whether scheduled by the applicant or by the Minister under section 140J) for the purpose of consulting with the claimant or body about impact minimisation.

"(3) For the purposes of subsection (2), the scheduled date of the second meeting is to be at least 14 days after the scheduled date of the first meeting.

"(4) If the prescribed mining act is an act to which section 43A of the Native Title Act applies, subject to section 140H, the applicant and the claimant or body may agree to refer the matter of impact minimisation to mediation at any time after the second scheduled meeting referred to in subsection (2).

"(5) For the purposes of subsection (4) —

- (a) the parties may agree on the appointment of a mediator; or
- (b) if no agreement is reached — either party may apply to the Tribunal for the appointment of a mediator under section 36 of the *Lands and Mining Tribunal Act*.

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"140H. APPLICATION TO TRIBUNAL

"At any time after —

- (a) the second scheduled meeting referred to in section 140G(2); or
- (b) the expiry of 30 days from the date on which a matter was referred to mediation under section 140G(4),

either the applicant for the prescribed mining act or the registered native title claimant or registered native title body corporate objecting to the prescribed mining act may apply to the Tribunal to have the objection to the prescribed mining act heard.

"140J. INQUIRY BY MINISTER

"(1) After the expiry of 60 days from the lodgement of an objection under section 140E(3), the relevant Minister may inquire of the applicant for the prescribed mining act whether the scheduled meetings referred to in section 140G(2) have been held and —

- (a) if neither meeting has been held, may schedule 2 meetings in accordance with section 140G(3); or
- (b) if only one meeting has been held, may schedule another meeting in accordance with section 140G(3),

to enable the applicant to consult with the registered native title claimant or registered native title body corporate who lodged the objection for the purposes of section 140G(1).

"(2) If, on inquiry after the expiry of 120 days from the lodgement of an objection under section 140E(3), the relevant Minister is not satisfied that sufficient progress is being made in any consultation between the applicant for the prescribed mining act and the registered native title claimant or registered native title body corporate who lodged the objection, the relevant Minister may refer the objection to the Tribunal for hearing.

"140K. COMPLIANCE WITH RECOMMENDATIONS OF TRIBUNAL

"(1) Where the Tribunal makes a recommendation —

- (a) upholding an objection to a prescribed mining act so far as it affects registered native title rights and interests; or

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- (b) that contains conditions about the doing of a prescribed mining act that relate to registered native title rights and interests,

the relevant Minister must comply with the recommendation unless the relevant Minister —

- (c) has consulted the Minister responsible for indigenous affairs (being the Minister to whom responsibility for aboriginal development is allotted under an Administrative Arrangements order);
- (d) has taken the consultation into account; and
- (e) is satisfied that it is in the interests of the Territory not to comply with the recommendation.

"(2) In subsection (1), 'in the interests of the Territory' includes —

- (a) for the social or economic benefit of the Territory (including of Aboriginal peoples and Torres Strait Islanders); and
- (b) in the interests of the relevant region or locality in the Territory.

"140L. JUDICIAL REVIEW

"(1) A person aggrieved by a decision of the relevant Minister under this Act to do a prescribed mining act where the prescribed mining act affects registered native title rights and interests may apply to the Supreme Court for judicial review of the decision.

"(2) On receipt of an application under subsection (1), the Supreme Court may review the relevant Minister's decision on questions of law only.

"(3) In this section, 'person aggrieved' means a registered native title claimant or registered native title body corporate —

- (a) whose registered native title rights and interests are affected by the prescribed mining act; and
- (b) who lodged an objection to the prescribed mining act under section 140E(3).

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"140M. WITHDRAWAL OF OBJECTIONS

"(1) An objection lodged under section 140E(3) may be withdrawn at any time.

"(2) If all objections to a prescribed mining act lodged under section 140E(3) are withdrawn, the relevant Minister may proceed to determine the application for the prescribed mining act.

"140N. COMPENSATION

"(1) Compensation for the effect of a prescribed mining act on native title —

- (a) is payable to the native title holder by the holder of the mining interest to which the prescribed mining act relates; and
- (b) includes compensation for the effect on native title of activities done under that mining interest as a result of the prescribed mining act.

"(2) A native title holder or registered native title claimant who intends to claim compensation for the effect of a prescribed mining act on their registered native title rights and interests must make the claim within 3 years after the doing of the prescribed mining act.

"(3) Compensation is not payable to a registered native title claimant unless and until the native title claimed by the claimant is determined to exist.

"(4) In the event of a dispute about the compensation payable under subsection (1), the person liable to pay compensation or the person to whom compensation is payable may refer the dispute to the Tribunal.

"(5) To avoid doubt —

- (a) compensation is payable to a person under subsection (1); and
- (b) a claim for compensation may be made by a person under subsection (2),

whether or not the person lodged an objection to the prescribed mining act under section 140E(3).

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"(6) 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.

140P. MINING COMPENSATION (NATIVE TITLE) FUND

"(1) The Minister must establish and maintain the Mining Compensation (Native Title) Fund (in this section called 'the Fund').

"(2) A person who is, may be, will or may become liable under section 140N to pay compensation for the effect of a prescribed mining 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 Fund an amount in respect of that compensation.

"(3) Moneys paid into the Fund under subsection (2) and interest earned on those moneys are to be used for the following purposes:

- (a) to pay amounts in respect of the compensation to the native title holder;
- (b) to indemnify the Territory in respect of compensation for the effect of the prescribed mining act on native title paid to the native title holder by the Territory under the Native Title Act.

"(4) Where the Minister is satisfied that it is no longer necessary to retain in the Fund an amount for a purpose specified in subsection (3), the Minister must return the amount and the interest earned on that amount to the person who paid it into the Fund.

"(5) For the purposes of this section, the Treasurer must open an official bank account under the *Financial Management Act* and all moneys paid into the Fund are to be paid into that account."

17. FORM OF APPLICATION

Section 162 of the Principal Act is amended by omitting from subsection (2) "or mining registrar, as the case may be, with whom the application is required by this Act to be lodged".

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18. REFUSAL OF APPLICATION

Section 162A of the Principal Act is amended –

- (a) by omitting from subsection (1) "or, in the case of an extractive mineral permit, a mining registrar,"; and
- (b) by omitting from subsection (2) "or, in the case of an application for an extractive mineral permit, the mining registrar,".

19. NOTICE OF APPLICATION

Section 163 of the Principal Act is amended –

- (a) by omitting from subsection (1) "or mining registrar, as the case may be, with whom it is lodged";
- (b) by inserting in subsection (1) "in the Territory" after "printed"; and
- (c) by omitting from subsection (4) "or mining registrar with whom the application was lodged,".

20. SUBSTANTIAL COMPLIANCE

Section 164A of the Principal Act is amended –

- (a) by omitting from subsection (1) "Notwithstanding any other provision of this Act" and substituting "Subject to Part XIA but despite the other provisions of this Act"; and
- (b) by omitting subsection (2) and substituting the following:

"(2) The grant or renewal of an exploration licence, exploration retention licence or mining tenement is not to be impeached because of an informality or irregularity in the application or in any proceeding previous to the grant or renewal except on the ground that there has been fraud or that Part XIA has not been complied with."

21. NEW SECTIONS

The Principal Act is amended by inserting after section 191C the following:

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"191D. COMPENSATION: TIME LIMIT ON CLAIMS

"A claim for compensation payable under this Act that is not made within 3 years after the doing of the activity giving rise to the claim is, by virtue of this section, statute barred.

"191E. COMPENSATION OTHER THAN MONEY IN RESPECT OF NATIVE TITLE

"Where —

- (a) compensation is payable under this Act to a native title holder for the affect of a prescribed mining act on native title; and
- (b) the native title holder requests that the whole or part of the compensation should be in a form other than money,

the person liable to pay the compensation must —

- (c) consider the request; and
- (d) negotiate in good faith in relation to the request."

22. TRANSITIONAL PROVISION: EXTRACTION MINERAL PERMITS

Subject to section 23, any act or thing relating to an extractive mineral permit that was done in accordance with the Principal Act as in force immediately before the commencement of this Act is to be taken to have been done in accordance with the Principal Act as amended by this Act.

23. TRANSITIONAL PROVISION: PENDING APPLICATIONS

(1) This section applies in relation to applications for prescribed mining acts within the meaning of the Principal Act as amended by this Act that were pending immediately before the commencement of this section.

(2) An application is to be taken to comply with section 140D of the Principal Act as amended by this Act if the applicant provides the information referred to in that section in writing to the Secretary within 14 days after being notified in writing by the Secretary that the information is required or within the further time allowed in writing by the Secretary.

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(3) The Minister or an applicant is to be taken to have complied with section 140E of the Principal Act as amended by this Act if the Minister or applicant (as the case requires) serves written notice of the making of the application on the persons referred to in section 140D(a), (b) and (c) of that Act within -

- (a) in the case of the Minister - 28 days after being advised by the Secretary that the information referred to in subsection (2) has been received from the applicant; or
- (b) in the case of the applicant - 14 days after being advised in writing by the Secretary that those persons are to be served or within the further time allowed in writing by the Secretary.

24. REGULATIONS

(1) The Administrator may make regulations -

- (a) amending this Act (other than this section), the *Mining Act* or any other Act in relation to any matter arising from, connected with or consequential upon the enactment of the *Native Title Amendment Act 1998* of the Commonwealth in so far as that Commonwealth Act affects the doing under the *Mining Act* of a future act within the meaning of section 233 of that Commonwealth Act ; or
- (b) containing savings or transitional provisions connected with or consequential upon the enactment of this Act or an amendment under paragraph (a).

(2) Regulations made under subsection (1) may be expressed to have taken effect on a day earlier than the day on which the regulations are made, other than a day earlier than the day on which this section commences.

(3) The Administrator may only make regulations under subsection (1) during the 12 months commencing on the day on which this section commences.

25. REPEAL OF *MINING AMENDMENT ACT 1997*

The *Mining Amendment Act 1997* is repealed.
