

Serial 84
Lands and Mining
Tribunal
Mr Stone

NORTHERN TERRITORY OF AUSTRALIA
LANDS AND MINING TRIBUNAL BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to establish the Lands and Mining Tribunal

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 Tribunal Act 1998*.

2. COMMENCEMENT

This Act comes into operation on the date fixed by the Administrator by notice in the *Gazette*.

3. DEFINITIONS

(1) In this Act, unless the contrary intention appears —

"claimant", in relation to a proceeding to which Division 3 of Part 2 applies, means the party to the proceedings to whom it is claimed compensation is payable;

"member" means a member of the Tribunal and includes the Chairperson;

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"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;

"presiding member", in relation to a proceeding, means the member constituting the Tribunal for the purposes of the proceeding;

"proceeding" means a proceeding of the Tribunal;

"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;

"Registrar" means the Registrar of the Lands and Mining Tribunal appointed under section 33(1);

"Tribunal" means the Lands and Mining Tribunal established by section 4.

(2) A reference in this Act 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 2 — ESTABLISHMENT, FUNCTIONS, &c.

4. ESTABLISHMENT

The Land and Mining Tribunal is established.

5. FUNCTIONS

The Tribunal has the following functions:

- (a) to hear and make recommendations about objections to the acquisition of land under the *Lands Acquisition Act* by persons whose interests in the land will be divested, modified or affected by the acquisition, including objections by registered native title claimants and registered native title bodies corporate to the acquisition so far as it affects the registered native title rights and interests of the claimants and bodies;

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- (b) to hear and determine claims for compensation referred to the Tribunal under Part VIII of the *Lands Acquisition Act*, including claims for compensation for the effect of an acquisition of land on native title rights and interests in relation to that land;
- (c) to hear and make recommendations about objections by registered native title claimants and registered native title bodies corporate to the doing of prescribed mining acts to which Part XIA of the *Mining Act* applies so far as the doing of those acts affects the registered native title rights and interests of the claimants and bodies;
- (d) to hear and determine disputes about compensation referred to the Tribunal under section 140N of the *Mining Act*;
- (e) to hear and make recommendations about objections by registered native title claimants and registered native title bodies corporate to the doing of prescribed petroleum acts to which Part IIA of the *Petroleum Act* applies so far as the doing of those acts affects the registered native title rights and interests of the claimants and bodies;
- (f) to hear and determine disputes about compensation referred to the Tribunal under section 57P, 81 or 82 of the *Petroleum Act*;
- (g) to hear and make recommendations about objections by registered native title claimants and registered native title bodies corporate to the doing of prescribed pipeline acts to which Part IIIA of the *Energy Pipelines Act* applies so far as the doing of those acts affects the registered native title rights and interests of the claimants and bodies;
- (h) to hear and determine disputes about compensation referred to the Tribunal under section 43N of the *Energy Pipelines Act*;
- (j) the other functions conferred on the Tribunal by or under this Act or any other law of the Territory.

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6. POWERS

Subject to this Act, the Tribunal may do all things necessary or convenient to be done in connection with the performance of its functions.

7. CONSTITUTION

(1) Subject to subsection (2), for the purpose of hearing a matter referred to in section 5, the Tribunal is to be constituted by one member.

(2) The Tribunal is not to be constituted by a member who has acted as a mediator in the matter.

8. INDEPENDENCE OF TRIBUNAL

In performing a function or exercising a power under this Act, the Tribunal is not subject to the direction of the Minister.

PART 3 — PROCEEDINGS

Division 1 — Proceedings Generally

9. LODGEMENT OF APPLICATIONS, &c.

An application or other document required to be made or given to the Tribunal is to be lodged at the office of the Registrar.

10. SITTINGS

The Tribunal is to sit at the times and in the places in the Territory determined by the Chairperson.

11. CONDUCT OF PROCEEDINGS GENERALLY

(1) A proceeding is to be conducted with as little formality and technicality, and with as much expedition, as a proper consideration of the matter before the Tribunal permits.

(2) The Tribunal is bound by the rules of natural justice.

(3) Subject to this Part and any other Act, the practice and procedure of the Tribunal is to be —

(a) as prescribed by the rules; or

(b) if no practice or procedure is prescribed by the rules — as determined by the Tribunal.

12. APPEARANCE AND REPRESENTATION

(1) Subject to any other Act, the following persons are parties to a proceeding:

- (a) if the proceeding is for the purposes of section 5(a) –
 - (i) the Minister to whom the administration of the *Lands Acquisition Act* is allotted under an Administrative Arrangements Order; and
 - (ii) the person objecting to the acquisition;
- (b) if the proceeding is for the purposes of section 5(b) –
 - (i) the Minister to whom the administration of the *Lands Acquisition Act* is allotted under an Administrative Arrangements Order; and
 - (ii) the person to whom compensation is payable;
- (c) if the proceeding is for the purposes of section 5(c) –
 - (i) the registered native title claimant or registered native title body corporate objecting to the doing of the prescribed mining act; and
 - (ii) the person who applied under the *Mining Act* for the doing of the prescribed mining act;
- (d) if the proceeding is for the purposes of section 5(d) –
 - (i) the person liable to pay compensation; and
 - (ii) the person to whom compensation is payable;
- (e) if the proceeding is for the purposes of section 5(e) –
 - (i) the registered native title claimant or registered native title body corporate objecting to the doing of the prescribed petroleum act; and

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- (ii) the person who applied under the *Petroleum Act* for the doing of the prescribed petroleum act;
 - (f) if the proceeding is for the purposes of section 5(f) —
 - (i) the person liable to pay compensation; and
 - (ii) the person to whom compensation is payable;
 - (g) if the proceeding is for the purposes of section 5(g) —
 - (i) the registered native title claimant or registered native title body corporate objecting to the doing of the prescribed pipeline act; and
 - (ii) the person who applied under the *Petroleum Act* for the doing of the prescribed pipeline act;
 - (h) if the proceeding is for the purposes of section 5(h) —
 - (i) the person liable to pay compensation; and
 - (ii) the person to whom compensation is payable;
 - (j) a person permitted by the Tribunal to appear as a party to the proceeding.
- (2) A person appearing before the Tribunal may be represented by —
- (a) a legal practitioner; or
 - (b) an agent.
- (3) A person who represents another person before the Tribunal has the same protection and immunity as a legal practitioner appearing for a party in a proceeding before the Supreme Court.

13. HEARINGS TO BE IN PUBLIC

The hearing of a proceeding is to be open to the public unless the Tribunal orders otherwise.

14. EVIDENCE

(1) The Tribunal is not bound by the rules of evidence but may inform itself of a matter relevant to a proceeding in the manner it thinks appropriate.

(2) Evidence in a proceeding may be given orally or in writing.

(3) The Tribunal may take evidence on oath or affirmation and, for that purpose, the presiding member —

(a) may require a person appearing before the Tribunal to take an oath or affirmation; and

(b) may administer an oath or affirmation to a person appearing before the Tribunal.

(4) The presiding member may require a person appearing before the Tribunal —

(a) to answer a question relevant to the proceeding; or

(b) to produce a document relevant to the proceeding.

(5) Subject to subsection (6), a person must not refuse or fail to comply with a requirement under subsection (3) (a) or (4).

Penalty: \$2,500 or imprisonment for 6 months.

(6) A witness appearing before the Tribunal has the same protection and immunity as a witness in proceedings before the Supreme Court.

15. SUMMONS

(1) A presiding member may order a person —

(a) to attend before the Tribunal; or

(b) to produce the documents specified in the order that are in the person's possession or control.

(2) A person must comply with an order under subsection (1).

Penalty: \$1,000 or imprisonment for 6 months.

16. ASSISTANCE FOR TRIBUNAL

(1) The Tribunal may engage consultants with appropriate expertise to assist it in relation to proceedings.

(2) Subject to the terms of engagement and any rules made under section 20, a consultant may assist the Tribunal by appearing in a proceeding.

17. DECISIONS AND REASONS FOR DECISIONS

Within —

- (a) 30 days after hearing a proceeding; or
- (b) if another Act specifies a different period — that period,

subject to any other Act, the presiding member must —

- (c) make a decision about the matter the subject of the proceeding; and
- (d) provide the decision and the reasons for the decision in writing to —
 - (i) the parties to the proceeding;
 - (ii) the persons specified in subsection (2); and
 - (iii) if the Minister to whom administration of the Act under which the act the subject of the proceeding is done is not a party to the proceeding — that Minister.

18. COSTS

Each party to a proceeding is to bear its own costs unless the Tribunal orders otherwise.

19. WITNESS EXPENSES

(1) A witness appearing before the Tribunal is entitled to be paid fees and expenses in accordance with the scale of fees and expenses in respect of attendance in the Supreme Court.

(2) The fees and expenses are payable by the person who requested the appearance of the witness (whether by summons or otherwise) and may be recovered as a debt due by that person to the witness.

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20. RULES

The Chairperson may make rules, not inconsistent with this Act —

- (a) relating to the practice and procedure of the Tribunal; or
- (b) prescribing fees in respect of proceedings in the Tribunal.

21. CONTEMPT OF TRIBUNAL

A person must not —

- (a) insult a presiding member in relation to the performance of his or her functions or the exercise of his or her powers as the Tribunal;
- (b) interrupt a proceeding;
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting; or
- (d) do any other act or thing that would, if the Tribunal were a court of record, constitute contempt of that court.

Penalty: \$2,500 or imprisonment for 6 months.

Division 2 — Objection Proceedings

22. RECOMMENDATIONS ABOUT OBJECTIONS

(1) Without limiting the generality of section 5 so far as it relates to the making of recommendations about the doing of an act that affects native title rights and interests, the Tribunal may make a recommendation —

- (a) upholding an objection to the act so far as it affects registered native title rights and interests; or
- (b) that contains conditions about the doing of the act that relate to registered native title rights and interests.

(2) Where the Tribunal makes a recommendation under subsection (1)(b) in respect of 2 or more acts that, by virtue of a project provision, comprise a single act, a condition contained in that recommendation is not required —

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- (a) to apply to all of the acts comprising the single act; or
- (b) to be the same for all of those acts to which it does apply.
- (3) In subsection (2), "project provision" means —
 - (a) section 140E(5) of the *Mining Act*;
 - (b) section 57F(5) of the *Petroleum Act*; or
 - (c) section 47E(5) of the *Energy Pipelines Act*.

23. ISSUES PREVIOUSLY DECIDED NOT TO BE RE-OPENED

If —

- (a) a proceeding is for the purpose of making a recommendation in relation to the doing of an act under an Act referred to in section 5 (other than the *Lands Acquisition Act*) (in this section called "the current proceeding");
- (b) the parties to the current proceeding were previously involved in the making of an agreement, or as parties in a proceeding in which a recommendation was made, in relation to the doing of an act under the same Act in relation to the same area; and
- (c) an issue was decided in the agreement or during the previous proceeding,

the parties to the current proceeding must not, without leave of the Tribunal, seek to vary the decision on the issue.

Division 3 — Compensation Proceedings

24. DETERMINATION OF COMPENSATION

Subject to any other Act, after hearing a dispute about compensation, the Tribunal must determine —

- (a) whether compensation is payable to the claimant; and
- (b) if so — the amount of compensation that is payable.

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25. COMPENSATION OTHER THAN MONEY IN RESPECT OF NATIVE TITLE

(1) Without limiting the generality of section 24 or any provision relating to compensation under any other Act, where —

- (a) the claimant is a native title holder who is claiming compensation for the effect of an act on native title; and
- (b) the claimant 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 —

- (c) must consider the request; and
- (d) 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.

(2) If a person does not transfer property or provide goods or services in accordance with a recommendation under subsection (1), the claimant may request the Tribunal to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

(3) If a person transfers property or provides goods or services in accordance with a recommendation under subsection (1), the transfer of the property or the provision of the goods or services constitutes full payment of the compensation in respect of which the recommendation was made.

26. COMPENSATION NOT TO INCLUDE PROFITS, &c.

The Tribunal must not determine the amount of compensation payable for the effect of an act on native title rights and interests by reference to —

- (a) the amount of profits made;
- (b) any income derived; or
- (c) any things produced,

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by any person as a result of doing anything in relation to the land or waters in respect of which the act was done.

27. ENFORCEMENT OF DETERMINATIONS

(1) A determination under section 24 (including a determination for the purposes of section 25(2)) of the amount of compensation payable to a claimant is recoverable as a debt due to the claimant by the person liable to pay the compensation.

(2) A claimant may register a determination referred to in subsection (1) in a court of competent jurisdiction by filing in the court —

(a) a copy of the determination that is certified by the Registrar to be a true copy; and

(b) an affidavit stating the amount unpaid under the determination.

(3) A determination registered under subsection (2) is to be taken to be an order of the court in which it is registered for the payment of the unpaid amount and may be enforced accordingly.

PART 4 — MEMBERS AND STAFF

28. MEMBERSHIP

(1) The Tribunal is to consist of a Chairperson and at least 3 other members.

(2) Members are to be appointed in writing by the Administrator.

(3) A person is not eligible for appointment as a member unless the person is enrolled as a legal practitioner (however described) of the High Court, the Supreme Court, or a Supreme Court of a State or another Territory of the Commonwealth and has been so enrolled for at least 5 years.

29. TERMS AND CONDITIONS

(1) A member holds office for the period (not exceeding 5 years) specified in the instrument of appointment but is eligible for reappointment.

(2) If, at the expiry of a member's term of office, a matter being heard by the Tribunal as constituted by the member has not been finally disposed of, the member is to continue in office until the matter is finally disposed of as if the term of office had not expired.

(3) A member is to be appointed on a full-time basis.

(4) Subject to this Part, a member holds office on the terms and conditions (including terms and conditions as to remuneration and allowances) specified in the instrument of appointment.

30. RESIGNATION AND REMOVAL FROM OFFICE

(1) A member may resign his or her office by writing signed by the member and given to the Administrator.

(2) The Administrator must terminate the appointment of a member if the member —

- (a) ceases to be eligible for appointment as a member under section 28(3);
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of creditors; or
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 32.

(3) The Administrator may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.

31. ACTING MEMBERS

(1) The Administrator may appoint a member to act as the Chairperson —

- (a) during a vacancy in the office of the Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is for any reason unable to perform the functions of the office.

(2) The Administrator may appoint a person to act as a member other than the Chairperson —

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

(3) A person appointed to act under subsection (1) or (2) during a vacancy in an office must not act in that office continuously for more than 12 months.

(4) A person is not to be appointed to act as a member under subsection (2) unless the person is eligible under section 28(3) to be appointed as a member.

(5) Anything done by or in relation to a person purporting to act in pursuance of an appointment under subsection (1) or (2) is not invalid on the ground that —

- (a) the appointment was ineffective or had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

32. DISCLOSURE OF INTERESTS

(1) A member who has a direct or indirect interest, pecuniary or otherwise, in a matter the subject of proceedings before the Tribunal must, as soon as possible after the member becomes aware of that interest and that the matter is the subject of a proceeding before the Tribunal, disclose the interest to the Tribunal.

(2) A disclosure in pursuance of subsection (1) is to be lodged in the office of the Registrar.

(3) A member who makes a disclosure under subsection (1) is not to constitute the Tribunal for the purpose of hearing the matter to which the disclosure relates.

33. REGISTRAR AND STAFF

(1) The Minister must, in writing, appoint a person to be the Registrar of the Lands and Mining Tribunal.

(2) In addition to the Registrar, the staff of the Tribunal is to consist of employees within the meaning of the *Public Sector Employment and Management Act* provided by the Minister.

(3) In performing a function or exercising a power under this Act —

- (a) the Registrar is subject to the direction of the Chairperson; and

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- (b) the other members of staff are subject to the direction of the Chairperson and the Registrar.

34. LEGAL IMMUNITY

(1) This section applies to a person who is or has been —

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal;
- (c) acting under the direction or authority of the Tribunal; or
- (d) participating in a proceeding of the Tribunal.

(2) No civil or criminal proceedings lie against a person to whom this section applies in relation to an act done or omitted to be done in good faith in the performance or purported performance of a function, or the exercise or purported exercise of a power, under this Act.

35. CONFIDENTIALITY

(1) This section applies to a person who is or has been —

- (a) a member of the Tribunal;
- (b) a member of the staff of the Tribunal; or
- (c) acting under the direction or authority of the Tribunal.

(2) A person to whom this section applies must not directly or indirectly —

- (d) make a record of, communicate to a person, or otherwise make use of, information acquired by him or her under this Act; or
- (e) produce to a person, or permit a person to have access to, a document provided to him or her for the purposes of this Act.

Penalty: \$5,000.

(3) Subsection (2) does not apply if the recording, communication, use, production or permission is for the purposes of this Act or is authorised by or under this Act or another Act.

PART 5 — MISCELLANEOUS

36. TRIBUNAL MAY APPOINT MEDIATOR

(1) Where under a prescribed provision the parties in a matter have agreed to refer the matter to mediation, either party may apply to the Tribunal for the appointment of a mediator to conduct the mediation.

(2) On receipt of an application under subsection (1), the Registrar must choose from the panel referred to in subsection (3) a person to mediate in the matter.

(3) The Chairperson must appoint in writing a panel of persons who are willing to act as mediators for the purposes of a prescribed provision.

(4) The persons who may be appointed under subsection (3) include but are not limited to members of the Tribunal.

(5) In this section, "prescribed provision" means —

- (a) section 37 of the *Lands Acquisition Act*;
- (b) section 140G of the *Mining Act*;
- (c) section 57H of the *Petroleum Act*; or
- (d) section 43G of the *Energy Pipelines Act*.

37. APPEALS AGAINST COMPENSATION DETERMINATIONS

(1) Subject to any other Act, a person aggrieved by a determination of the Tribunal under section 24 (including a determination for the purposes of section 25(2)) may appeal to the Supreme Court.

(2) An appeal under this section is an appeal in the strict sense.

(3) On hearing an appeal under this section, the Supreme Court may consider the evidence that was presented to the Tribunal and any question of law and may —

- (a) confirm the determination of the Tribunal;
- (b) vary that determination;
- (c) substitute its own determination for that determination; or

(d) dismiss the appeal.

(4) A determination that is varied or substituted by the Supreme Court under subsection (3) has affect as a determination of the Tribunal.

38. ANNUAL REPORT

(1) The Chairperson must provide the Minister with a report on the performance of the Tribunal's functions and the exercise of the Tribunal's powers during each financial year not later than 3 months after the end of the financial year.

(2) The Minister must lay a copy of the report before the Legislative Assembly not later than 6 sitting days after receiving it.

39. REGULATIONS

The Administrator may make regulations, not inconsistent with this Act, prescribing matters —

- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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