

NORTHERN TERRITORY OF AUSTRALIA
MINE MANAGEMENT AMENDMENT BILL 1998

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Mine Management 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 *Mine Management Amendment Act 1998*.

2. COMMENCEMENT

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

3. PRINCIPAL ACT

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

4. NEW PART

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

"PART VIIA — ENVIRONMENTAL MANAGEMENT

"Division 1 — General Environmental Offences

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"27. APPLICATION

"This Part does not apply in relation to a substance that is prescribed under the *Waste Management and Pollution Control Act* to be an ozone-depleting substance.

"28. INTERPRETATION

"(1) In this Part, unless the contrary intention appears -

'Chief Executive Officer' means the Chief Executive Officer of the Agency for the time being allocated administration of this Act under an Administrative Arrangements Order;

'contaminant' means a solid, liquid or gas or any combination of such substances and includes -

- (a) noise, odour and heat;
- (b) a prescribed substance or prescribed class of substances; and
- (c) a substance having a prescribed property or prescribed class of properties;

'environment' means land, air, water, organisms and ecosystems and includes -

- (a) the well-being of humans;
- (b) structures made or modified by humans;
- (c) the amenity values of an area; and
- (d) economic, cultural and social conditions;

'environmental harm' means -

- (a) any harm to or adverse effect on the environment; or
- (b) any potential harm (including the risk of harm and future harm) to or potential adverse effect on the environment,

of any degree or duration and includes environmental nuisance;

'environmental nuisance', in relation to land, means -

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- (a) an adverse effect on the amenity of the land caused by noise, smoke, dust, fumes or odour; or
- (b) an unsightly or offensive condition on the land;

'exploration' means all modes of searching for and evaluating deposits of minerals or extractive minerals, but does not include fossicking within the meaning of the *Mining Act*;

'extractive mineral' has the meaning it has in the *Mining Act*;

'land' includes water and air on, above or under land;

'material environmental harm' means environmental harm that -

- (a) is not trivial or negligible in nature;
- (b) consists of an environmental nuisance of a high impact or on a wide scale;
- (c) results, or is likely to result, in not more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of not more than \$50,000 or the prescribed amount (whichever is greater);

'mineral' has the meaning it has in the *Mining Act* and includes a prescribed substance within the meaning of the *Atomic Energy Act 1953* of the Commonwealth;

'mining' means all modes of extracting minerals or extractive minerals by underground, surface or open-cut workings;

'mining activity', in relation to land, means any of the following activities authorised under a relevant Act to be carried out on the land:

- (a) exploration;
- (b) mining;

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- (c) processing;
- (d) extraction of minerals or extractive minerals from waste material;
- (e) transport and storage of waste material,

and includes an activity carried out on the land for the purposes of or in connection with an activity referred to in paragraph (a) to (e) (inclusive);

'processing' means processing of minerals or extractive minerals;

'relevant Act' means -

- (a) an Act of the Territory;
- (b) an Act of the State of South Australia under which a title is continued in force by virtue of section 191 of the *Mining Act*; or
- (c) an Act of the Commonwealth;

'serious environmental harm' means environmental harm that is more serious than material environmental harm and includes environmental harm that -

- (a) is irreversible or otherwise of a high impact or on a wide scale;
- (b) damages an aspect of the environment that is of a high conservation value, high cultural value or high community value or is of special significance;
- (c) results or is likely to result in more than \$50,000 or the prescribed amount (whichever is greater) being spent in taking appropriate action to prevent or minimise the environmental harm or rehabilitate the environment; or
- (d) results in actual or potential loss or damage to the value of more than \$50,000 or the prescribed amount (whichever is greater);

'waste material' means -

- (a) a solid, liquid or gas; or

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(b) a mixture of such substances,

that is left over, surplus or is an unwanted by-product from a mining activity and includes a prescribed substance or class of substances.

"(2) For the purposes of this Part, loss, in relation to an act or failure to act, includes the reasonable costs and expenses that would be incurred in taking all reasonable and practicable measures -

(a) to prevent or mitigate environmental harm caused by or resulting from the act or failure to act; and

(b) to make good environmental harm resulting from the act or failure to act.

"(3) For the purposes of this Part, environmental harm may be caused by an act or failure to act whether the harm -

(a) is caused directly or indirectly or is a direct or indirect result of the act or failure to act; or

(b) results from, or is caused by, the act or failure to act alone or from the combined effects of the act or failure to act and other factors.

"(4) Where, in this Part, the penalty is specified at the foot of a provision to be an environmental offence level 1, 2, 3 or 4, an offence against the provision is designated to be an environmental offence level 1, 2, 3 or 4, respectively, within the meaning of the *Environmental Offences and Penalties Act*.

"29. GENERAL ENVIRONMENTAL OFFENCES

"(1) A person must not, in the course of carrying out a mining activity on land, intentionally do an act, or intentionally fail to do an act, where -

(a) the act or failure causes serious environmental harm to land some or all of which is land on which the activity is being carried out; and

(b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the act or failure to act.

Penalty: environmental offence level 1.

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"(2) A person must not, in the course of carrying out a mining activity on land, do an act, or fail to do an act, where -

- (a) the act or failure to act causes serious environmental harm to land some or all of which is land on which the activity is being carried out; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the act or failure to act.

Penalty: environmental offence level 2.

"(3) A person must not, in the course of carrying out a mining activity on land, intentionally do an act, or intentionally fail to do an act, where -

- (a) the act or failure to act causes material environmental harm to land some or all of which is land on which the activity is being carried out; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the act or failure to act.

Penalty: environmental offence level 2.

"(4) A person must not, in the course of carrying out a mining activity on land, do an act, or fail to do an act, where -

- (a) the act or failure to act causes material environmental harm to land some or all of which is land on which the activity is being carried out; and
- (b) he or she knows, or ought reasonably be expected to know, that serious environmental harm or material environmental harm will or might result from the act or failure to act.

Penalty: environmental offence level 3.

"(5) A person must not, in the course of carrying out a mining activity on land, do an act, or fail to do an act, causing environmental nuisance to land some or all of which is land on which the activity is being carried out.

Penalty: environmental offence level 4.

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"30. DEFENCES TO GENERAL ENVIRONMENTAL OFFENCES

"(1) It is a defence to a prosecution for an offence against section 29 if it is proved that the act or failure to act was authorised under a relevant Act.

"(2) It is a defence to a prosecution for an offence against section 29 if it is proved that the alleged offence did not result from a failure on the defendant's part to exercise reasonable diligence.

"(3) It is a defence to a prosecution for an offence against section 29 in relation to a particular contaminant or waste material if it is proved the defendant complied with -

- (a) a provision of an environment protection objective within the meaning of the *Waste Management and Pollution Control Act*; or
- (b) a condition of an approval, permit, lease, licence or authorisation under a relevant Act,

that fixed maximum allowable levels for the particular contaminant or waste material.

"30A. ALTERNATIVE VERDICTS AVAILABLE

"In a proceeding for an offence against -

- (a) section 29(1), the person charged with the offence may be found guilty alternatively of an offence against section 29(2), (3), (4) or (5);
- (b) section 29(2), the person charged with the offence may be found guilty alternatively of an offence against section 29(3), (4) or (5);
- (c) section 29(3), the person charged with the offence may be found guilty alternatively of an offence against section 29(4) or (5); or
- (d) section 29(4), the person charged with the offence may be found guilty alternatively of an offence against section 29(5).

"30B. CONTINUING OFFENCES

"Where a court is satisfied on finding a person guilty of an offence against a provision of this Part that the person continued to contravene, or to fail to comply with, the provision after the date when he or she was notified of the alleged offence, the court may, in addition to the penalty, if any, specified for the offence, impose a further penalty in respect of each day

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during which the offence continued to be committed after the first day on which it was committed not exceeding 10% of the penalty specified for the offence.

*"Division 2 - Liabilities of
Employers, Employees, &c.*

"30C. ACTIONS, &c., OF EMPLOYEE OR AGENT OF BODY CORPORATE ARE THOSE OF BODY CORPORATE

"(1) Where in proceedings for an offence against this Part it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show -

- (a) that the conduct was engaged in by a director, manager, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, manager, employee or agent had the relevant state of mind.

"(2) For the purposes of a prosecution for an offence against this Part, conduct engaged in on behalf of a body corporate by a director, manager, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate.

"(3) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

"30D. DIRECTOR MAY BE LIABLE FOR OFFENCE OF BODY CORPORATE

"(1) Where a body corporate commits an offence against this Part, every person who is a director of or who is concerned in the management of the body corporate is to be taken to have committed the same offence.

"(2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that -

- (a) the body corporate had, under this Part, a defence to the offence that the defendant is, apart from this section, to be taken to have committed;
- (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;

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- (c) the defendant did not know, and ought not reasonably be expected to have known, that the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the body corporate.

"(3) A person may be proceeded against and found guilty under a provision in pursuance of subsection (1) whether or not the body corporate has been proceeded against or found guilty under the provision.

"(4) Notwithstanding anything in this Part or the *Environmental Offences and Penalties Act*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1).

"30E. LIABILITY FOR MANAGERS, EMPLOYEES AND AGENTS

"(1) For the purposes of a prosecution for an offence against this Part, conduct engaged in on behalf of a person other than a body corporate (in this section called the 'employer') by a manager, employee or agent of the person within the scope of his or her actual or apparent authority is taken to have been engaged in also by the employer.

"(2) An employer may be proceeded against and found guilty under a provision in pursuance of subsection (1), whether or not the manager, employee or agent has been proceeded against or found guilty of an offence against that provision.

"(3) It is a defence to a prosecution for an offence committed by virtue of subsection (1) if the defendant establishes that -

- (a) the person who committed the offence that the defendant is to be taken to have committed under subsection (1) had, under this Act, a defence to the offence that the defendant is, apart from this subsection, to be taken to have committed;
- (b) the act or omission that constituted the offence took place without the defendant's authority, permission or consent;

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- (c) the defendant did not know, and ought not reasonably be expected to have known, the offence was to be or was being committed and took all reasonable steps to prevent or stop the commission of the offence or a similar offence; or
- (d) the defendant could not by the exercise of reasonable diligence have prevented the commission of the offence by the person who committed the offence.

"(4) Notwithstanding anything in this Act or the *Environmental Offences and Penalties Act*, a person is not liable to be punished by imprisonment for an offence if the person would not have been found guilty of the offence except for subsection (1).

"(5) For the purposes of this section, a reference to engaging in conduct is to be read as including a reference to failing or refusing to engage in conduct.

"30F. COSTS OF TAKING ACTION TO BE DEBT DUE AND PAYABLE

"(1) Where a person does an act that is prohibited, or fails to do an act the person is required to do, by or under this Part, the Chief Executive Officer may cause to be carried out works or acts that are, in the opinion of the Chief Executive Officer, necessary to -

- (a) prevent environmental harm that is caused by the person's action or failure to act; or
- (b) clean up or rectify environmental harm likely to have been caused by the person's act or failure to act.

"(2) A person authorised in writing by the Chief Executive Officer to carry out works or acts for the purposes of subsection (1) in premises or on land on behalf of the Chief Executive Officer may enter the premises (unless they are residential premises) or land and carry out the works or acts.

"(3) The amount of the expense incurred by the Territory in carrying out works or acts under subsection (1) is a debt due and payable to the Territory by the person whose act or failure caused or was likely to have caused the environmental harm.

"30G. DEBTS DUE TO TERRITORY, &c.

"(1) Where a debt is payable to the Territory under this Part, the debt -

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- (a) is to bear interest at the rate determined by the Chief Executive Officer by notice in the Gazette;
- (b) may be recovered, together with that interest, as a debt due to the Territory; and
- (c) where the debt was incurred by the debtor in relation to acts performed or not performed on land owned by the debtor - the debt is a statutory charge, within the meaning of the *Real Property Act*, on the land.

"(2) Where, under this Part, 2 or more persons are liable for a debt to the Territory, they are jointly and severally liable for the whole debt.

"(3) A person who under this Part is liable for a debt may recover contribution from another person who is likewise liable, either by joining that other person as a party in an action brought by the Territory to recover the debt or by bringing a separate action in a court of competent jurisdiction.

"(4) A court hearing a claim for contribution under subsection (3) must consider the relative benefit to each party of the works or action under section 30F(1) that gave rise to the debt and may make an order as to contribution and as to costs as it thinks fit."

5. LIABILITY OF PERSONS

Section 51 of the Principal Act is amended by inserting after subsection (3) the following:

"(3A) This section does not apply in relation to an offence against Part VIIA."

