

NORTHERN TERRITORY OF AUSTRALIA  
MINING AMENDMENT REGULATIONS

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Regulations 1999, No. 11

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## NORTHERN TERRITORY OF AUSTRALIA

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### Regulations under the *Mining Amendment Act (No. 2) 1998*

I, NEIL RAYMOND CONN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Mining Amendment Act (No. 2) 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998*.

Dated 16 April 1999.

N R CONN  
Administrator

By His Honour's Command

DENIS G BURKE  
Chief Minister

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\* Notified in the *Northern Territory Government Gazette* on 16 April 1999.

**MINING AMENDMENT REGULATIONS**

**1. Citation**

These Regulations may be cited as the Mining Amendment Regulations.

**2. Principal Act**

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

**3. Notification of native title holders etc.**

Section 140E of the Principal Act is amended –

- (a) by inserting in subsection (1)(a) and (b) "and on the Native Title Registrar" after "section 140D(a), (b) and (c)";
- (b) by omitting from subsection (3)(a) "after being served with the notice" and substituting "after the date specified in the notice (being 21 days after the notification event)";
- (c) by omitting from subsection (3)(b) "would" and substituting "is likely to";
- (d) by omitting subsection (6) and substituting the following:

"(6) If, within 3 months after the date specified in the notice served on the representative Aboriginal/Torres Strait Islander body or bodies under subsection (1) (being 21 days after the notification event), a person (other than a person served under subsection (1)) advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land, the person may, within 4 months after the date so specified, lodge an objection to the prescribed mining act.

"(6A) An objection lodged under subsection (6) is to be taken not to have been lodged if, by the end of 4 months from the date so specified in the notice served on the representative Aboriginal/Torres Strait Islander body or bodies under subsection (1), the Native Title Registrar –

- (a) has not accepted the claim for registration; or
- (b) has not yet decided whether or not to accept the claim for registration."; and
- (e) by omitting from subsection (7) the definition of "notification event" and substituting the following:

"notification event" means the lodgement of the application for the prescribed mining act;".

**4. New section**

The Principal Act is amended by inserting after section 140E the following:

**"140EA. Declaration to alter objection period**

"(1) The Minister may by notice in the *Gazette* declare that, in respect of an application for a prescribed mining act or a class of applications for prescribed mining acts –

- (a) a reference in this Act to the period of 3 months specified in section 140E(6) is to be read as the period specified in the declaration, being a period that is longer than 3 months;
- (b) a reference in this Act to the period of 4 months specified in section 140E(6) is to be read as a reference to the period specified in the declaration, being a period that is at least one month longer than the period specified in the declaration for the purposes of paragraph (a);
- (c) a reference in this Act to the period of 3 months specified in section 163(5) is to be read as the period specified in the declaration, being a period that is longer than 3 months; and
- (d) a reference in this Act to the period of 4 months specified in section 163(5) is to be read as a reference to the period specified in the declaration, being a period that is at least one month longer than the period specified in the declaration for the purposes of paragraph (c),

and this Act has effect accordingly.

"(2) If the Minister makes a declaration under subsection (1), the Minister must make a declaration under each of subsection (1)(a), (b), (c) and (d)."

**5. Consultation and mediation**

Section 140G of the Principal Act is amended –

- (a) by omitting from subsection (2) "7 days" and substituting "14 days"; and
- (b) by adding at the end the following:

"(6) Nothing in this section is to be taken to prevent the parties from commencing consultations before the period referred to in subsection (2) commences.

"(7) The parties are encouraged to consult with a view to resolving objections and nothing in this section is to be taken to prevent the parties from doing so."

**6. Inquiry by Minister**

Section 140J of the Principal Act is amended by omitting "the applicant" and substituting "the parties to the consultations".

**7. Referral of objections to Tribunal by Minister**

Section 140JA of the Principal Act is amended –

- (a) by omitting "At any time" and substituting "(1) At any time"; and
- (b) by adding at the end the following:

"(2) In deciding whether to exercise his or her discretion under subsection (1), without limiting the relevant matters that the Minister may take into account, the Minister must inquire of the parties as to the progress of the consultations or mediation (as the case may be) and must take the responses received (if any) into account."

**8. New section**

The Principal Act is amended by inserting after section 140JA the following:

**"140JB. Criteria for making recommendation**

"(1) In making a recommendation in relation to a prescribed mining act, the Tribunal must take into account all matters that the Tribunal considers relevant, including –

- (a) all objections lodged with and submissions made to the Tribunal in relation to the effect that the prescribed mining act will have or is likely to have on registered native title rights and interests;
- (b) ways of minimising the impact of the prescribed mining act on registered native title rights and interests, including in relation to –
  - (i) access to the land or waters on which it is proposed to do the act; and
  - (ii) ways in which the act might be done;
- (c) the economic or other significance of the prescribed mining act to the Territory and to the region in which the land or waters on which it is proposed to do the act are located, including the Aboriginal peoples who live in that region; and
- (d) the public interest in the doing of the prescribed mining act.

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"(2) Before making a recommendation in relation to a prescribed mining act –

- (a) the Tribunal must inquire of the parties to the proceeding whether there are any issues relevant to its recommendation in relation to which the parties have reached agreement; and
- (b) if such an agreement has been reached and the parties consent to the Tribunal doing so, the Tribunal must (if relevant) take the agreement into account."

**9. Compliance with recommendations of Tribunal**

Section 140K of the Principal Act is amended –

- (a) by inserting after subsection (1B) the following:

"(1C) The Minister must ensure that, prior to consultations under subsection (1B)(a), the Tribunal's recommendation and the Tribunal's reasons for making the recommendation are provided to the Minister responsible for indigenous affairs.";

- (b) by omitting from subsection (2)(a) "subsection (1B)(a) and (b)" and substituting "subsections (1B)(a) and (b) and (1C)"; and

- (c) by inserting after subsection (2) the following:

"(2A) Within 28 days after being notified under section 165A of the decision to do a prescribed mining act that is in accordance with a decision of the Minister of a kind referred to in subsection (2)(c) or (d), any of the following persons may in writing request the Minister for reasons for that decision:

- (a) a registered native title claimant or registered native title body corporate who lodged a native title objection;
- (b) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act and holds native title on trust for a person who lodged a native title objection in his or her capacity as a registered native title claimant;
- (c) a person who lodged a native title objection in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made;
- (d) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged a native title objection,

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unless the objection was subsequently withdrawn.

"(2B) Within 28 days after receiving a request in accordance with subsection (2A), the Minister must provide written reasons for the decision to the person who requested them.

"(2C) Nothing in this section is to be taken to affect the Minister's discretion to decide not to do a prescribed mining act, including where that discretion is exercised as a result of consultations with the Minister responsible for indigenous affairs."

### **10. Judicial review**

Section 140L of the Principal Act is amended—

- (a) by omitting from subsection (2B) all the words after "the Tribunal," and substituting "the recommendation, that part of the decision of the Tribunal to make the recommendation and the Tribunal's reasons for that part of its decision are all to be taken to form part of both the decision being reviewed and the record of the decision being reviewed";
- (b) by inserting after subsection (2B) the following:

"(2C) Where in pursuance of section 140K(2B) the Minister has provided reasons for the decision being reviewed, those reasons are to be taken to form part of both that decision and the record of that decision."; and

- (c) by omitting subsection (3) and substituting the following:

"(3) In this section, 'person aggrieved' means any of the following persons whose registered native title rights and interests are affected by the prescribed mining act:

- (a) a registered native title claimant or registered native title body corporate who lodged a native title objection;
- (b) a registered native title body corporate that is registered on the National Native Title Register maintained under the Native Title Act and holds native title on trust for a person who lodged a native title objection in his or her capacity as a registered native title claimant;
- (c) a person who lodged a native title objection in his or her capacity as a registered native title claimant where, in respect of the relevant native title determination application, an approved determination that the claimant holds native title in the affected land has since been made;

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- (d) a person who under section 66B of the Native Title Act replaced a registered native title claimant who lodged a native title objection,

unless the objection was subsequently withdrawn."

**11. Procedure if no objections lodged, objections withdrawn etc.**

Section 140M of the Principal Act is amended –

- (a) by adding at the end of subsection (1) ", whether by agreement or otherwise"; and
- (b) by omitting from subsection (2)(b) "section 140E and 163" and substituting "section 140E or 163".

**12. New section**

The Principal Act is amended by inserting after section 140M the following:

**"140MA. Consultations may continue**

"Nothing in this Part is to be taken to affect the ability of the parties to continue efforts to resolve an objection to a prescribed mining act until such time as the Minister decides whether or not to do the act, including while the objection is before the Tribunal."

**13. Notice of application**

Section 163 of the Principal Act is amended –

- (a) by omitting from subsection (1)(f) and (g) "after the date of publication of the notice" and substituting "after the date specified in the notice (being 21 days after the application was lodged)";
- (b) by omitting from subsection (2A) "with 2 months" and substituting "within 2 months"; and
- (c) by omitting subsection (5) and substituting the following:

"(5) If, within 3 months after the date specified in a notice published under subsection (1) (being 21 days after the application for the prescribed mining act was lodged), a person (other than a person served under section 140E(1)) advises the Minister in writing that the person has made an application to the Federal Court for a determination of native title in respect of any of the affected land, the person may, within 4 months after the date so specified, lodge an objection to the prescribed mining act.



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"(6) An objection lodged under subsection (5) is to be taken not to have been lodged if, by the end of 4 months from the date so specified in the notice published under subsection (1), the Native Title Registrar –

- (a) has not accepted the claim for registration; or
- (b) has not yet decided whether or not to accept the claim for registration."

**14. Notification of conditions relating to native title**

Section 165A of the Principal Act is amended –

- (a) by omitting "does" and substituting "decides to do"; and
- (b) by omitting "doing of" and substituting "decision to do".

**15. Where acts may be done subject to conditions**

Section 166A of the Principal Act is amended by omitting from subsection (1) "exist" and substituting "exist or may exist".

**16. Transitional: applications lodged after 1 October 1998**

(1) This section applies in relation to applications for prescribed mining acts lodged on or after 1 October 1998 but before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of the Principal Act as amended by these Regulations comes into force.

(2) An application is to be taken to comply with section 140D of the Principal Act as amended by these Regulations 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.

(3) The information provided by an applicant under subsection (2) is to be current as at the date on which the applicant was notified that the information was required.

(4) An applicant is to be taken to have complied with section 140E(1)(b) of the Principal Act as amended by these Regulations if the applicant 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 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.

**17. Transitional: applications pending before determination under section 43A(1)(b) of Native Title Act comes into force**

(1) This section applies in relation to applications for prescribed mining acts —

- (a) that were pending immediately before 1 October 1998; or
- (b) lodged on or after 1 October 1998 but before a determination under section 43A(1)(b) of the Native Title Act in respect of the relevant provisions of the Principal Act as amended by these Regulations comes into force.

(2) Where an applicant is required under the Principal Act as amended by these Regulations to notify an owner or occupier of the making of an application, the applicant is to be taken to have complied with that requirement if the applicant serves written notice of the making of the application on the owner or occupier within 14 days after being advised in writing by the Secretary under section 23 of the *Mining Amendment Act (No. 2) 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998* or regulation 16 that the persons referred to in section 140D(a), (b) and (c) are to be served or within the further time allowed in writing by the Secretary under that section or regulation to notify those persons.

(3) Subject to subregulations (4) to (8) inclusive, section 163 of the Principal Act as amended by these Regulations applies in respect of an application.

(4) The Secretary is to be taken to have complied with section 163(1) of the Principal Act as amended by these Regulations if the Secretary publishes the notice referred to in that provision as soon as practicable after the Secretary advises the applicant that the persons referred to in section 140D(a), (b) and (c) are to be served.

(5) For the purposes of section 163(1)(f) and (g) of the Principal Act as amended by these Regulations, the date to be specified in the notice published in accordance with subregulation (4) is the date that is 21 days after the day on which the Secretary advises the applicant that the persons referred to in section 140D(a), (b) and (c) are to be served.

(6) Subject to subregulations (7) and (8), a notice that was published in respect of an application in accordance with section 163(1) of the Principal Act as in force immediately before the commencement of these Regulations is to be disregarded.

(7) An objection or comment in respect of an application lodged under section 163(2) or (2A) of the Principal Act as in force immediately before the commencement of these Regulations is to be taken to have been lodged under

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section 163(2) or (2A) of the Principal Act as amended by these Regulations in response to the notice in respect of the application published in accordance with subregulation (4).

(8) Nothing in this section is to be taken to prevent a person who lodged an objection or comment in respect of an application under section 163(2) or (2A) of the Principal Act as in force immediately before the commencement of these Regulations from lodging a further objection or comment in respect of the same application under section 163(2) or (2A) of the Principal Act as amended by these Regulations.

**18. Amendment of *Lands and Mining Tribunal Act***

Section 22A of the *Lands and Mining Tribunal Act* is amended by inserting immediately after subsection (1) the following:

"(1A) In subsection (1), 'would affect', in relation to an act under the *Mining Act*, means would be likely to affect."

**19. Amendment of *Mining Amendment Act (No. 2) 1998***

Section 23 of the *Mining Amendment Act (No. 2) 1998* as amended by the *Lands and Mining (Miscellaneous Amendments) Act 1998* is amended by inserting after subsection (2) the following:

"(2A) The information provided by an applicant under subsection (2) is to be current as at the date on which the applicant was notified that the information was required."

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