



Northern  
Territory  
Government

DEPARTMENT OF PRIMARY INDUSTRY, FISHERIES AND MINES

Northern Territory *Mining Act*  
Recommendations  
for change

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## **FOREWORD**

A More Workable and Responsive Act.

The Northern Territory's economy is booming. The unprecedented 7.5% growth is the highest of all Australian jurisdictions and is largely due to the robust state of the resources sector, and high demand for commodities from China and emerging Asian powers.

With mining and petroleum sectors currently accounting for 25% of the Northern Territory economy, and a more significant 40% if LNG and alumina production is included, the importance of the resource sector to the Territory's economy cannot be underestimated.

In the Northern Territory, the minerals sector has been able to expand due to streamlined government processes and responsible management of the *Mining Act*.

When the Department of Primary Industry, Fisheries and Mines was created in 2005, it adopted the philosophy that a series of "rolling reviews" would be undertaken to ensure that the various sections of the department continued to remain focused on government's goals and delivered services in the most efficient and transparent manner.

In this context I am pleased to say that the review of the *Mining Act* will deliver contemporary legislation providing streamlined mining tenure processes and greater accountability.

In undertaking a review of the *Mining Act*, there was recognition that substantial parts of the existing legislation were serving the community and stakeholders well. Those parts will be retained.

It was also recognised that significant changes have occurred since the Act commenced in 1982 including changes in information technology, Indigenous law, market globalisation and the recent commodity boom. Amendments to the Act to accommodate these changes are proposed.

A number of recommendations in this booklet will require further detail; this detail will be developed as the Bill is drafted and opportunity for comment will be available once drafting has been completed.

I encourage you to read this booklet as it is a valuable insight into the new legislative regime for exploration and mining tenure in the Northern Territory.

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## INTRODUCTION

The Northern Territory's *Mining Act* (the Act) commenced in 1982, replacing the *Mining Ordinance* of 1939. The enactment of the new legislation was significant as it modernised and simplified the regime for the administration of mining tenure.

Since its commencement, the Act has generally served government, industry and the community well, providing a regime that is competitive with other jurisdictions and taking into account issues unique to the Territory, such as the application of the *Aboriginal Land Rights (Northern Territory) Act*.

The Act has since been the subject of a series of legislative amendments, several of which introduced substantial changes. Nevertheless, the Act and its subordinate legislation, the *Mining Regulations*, have not been subject to a comprehensive review since commencement.

It is timely that the Act be reviewed to ensure it meets the changing nature of the mining industry and can manage the future requirements of a dynamic and diverse resource industry. A review of the Act and its role in creating a climate that attracts exploration activity and expenditure is a key government priority.

The Terms of Reference for the review of the *Mining Act* was subsequently followed by the public release of a Discussion Paper. Submissions were invited and a formal process of consultation with stakeholders commenced.

Consultation on the Review was widespread. Members of the Working Group met with the Northern Territory Minerals Council, the Extractive Industry Association, the Environment Office, the Environmental Defenders Office, Land Councils, the Institute of Surveyors Australia (NT Division), Gem Clubs, officials from the Departments of Justice, Chief Minister and Planning and Infrastructure, as well as the Aboriginal Areas Protection Authority. The Working Group also held a number of public forums in the major regional centres.

The general public were invited to comment via newspaper advertisements placed in the NT News, regional papers, the Koori Mail and the Australian Mining Monthly.

The mining industry is significant to the Territory's economy. Its products are predominantly exported and, as such, face fierce competition on the fluctuating international commodities market. Critical issues such as globalisation, advances in information technology, changing community values and growing environmental awareness all impact on the growth and diversity of the local industry and constantly test the effectiveness of the regulatory regime that is in place.

In Australia, domestic issues such as the emergence of native title law, reduction in exploration expenditure, the implementation of a goods and services tax and a new geodetic map datum have, amongst other factors, impacted on the operation of the Act, which is now nearly 25 years old.

The review working group examined the submissions received in response to the Discussion Paper. Over 40 submissions were received, bringing on board a range of matters including policy issues, technical, legal and administrative imperatives affecting mining legislation. This final report constitutes the culmination of that examination and the responses to a wide variety of proposals. In effect, the report sets out the basis of a new Act, facilitating in the most modern and effective manner available, the grant and management of exploration and mining tenure in the Territory.

It is proposed that the present *Mining Act* be repealed and replaced with newly drafted legislation that reflects many of the suggestions received during consultation as well as those issues known to the Department as requiring modification or change. To this end, it is proposed that the new legislation, to be known as the *Mineral Tenure Act*, to clearly emphasise that it is the mineral tenure issuing and regulating legislation. The new Act will of necessity include many of the existing clauses in the current *Mining Act*, but will exclude others considered to be redundant. These include previously amended sections that refer to *Native Title Act* requirements (alternative provisions) that were subsequently disallowed by the Commonwealth Senate during 1998/99. Wholesale changes have been avoided however significant changes in detail will be made to simplify tenure management and to actively encourage exploration in the Territory.

The focus of the new Act will be on encouraging active exploration on granted exploration licences and the continuous operation of mining tenements. One significant change will be for mineral claims to be converted to either exploration licences or mineral leases, in an effort to focus on the actual basis for their continued existence. Exploration licences will be granted for an extended period, with more stringent expenditure requirements and penalties for non performance. Exploration retention licences will be available, subject some minor changes.

The recommendations contained this report address the objectives as outlined above.

Amendments to the *Mining Regulations* will be necessary to support the implementation of some of the recommendations and there will be some changes to fees and charges.

## 1. NEW ACT

Due to the scope of the proposed legislative changes, it is recommended that the existing *Mining Act* be repealed and replaced with newly drafted legislation that better reflects modern approaches to issuing mineral titles and their management. In recommending this approach, it is recognised that significant aspects of the existing regime will remain however; the new Act will be noticeably different from the current legislation. It will also provide an opportunity to reformat the legislation, making it is easier to read and more logical in approach.

It is recommended that the new legislation be named the *Mineral Tenure Act*.

The change in name will more accurately reflect the purpose of the legislation, i.e. to deal with mineral title matters, and will provide a clear distinction from other acts that grant petroleum tenure and monitor mine and environmental regimes, for example, the *Mining Management Act*.

### **Recommendation 1**

- 1.1 That the *Mining Act* be repealed and replaced with a new act.
- 1.2 That the new act be re-named to more accurately reflect the purpose of the legislation. *The Mineral Tenure Act*.

## 2. OBJECTIVES OF THE NEW ACT

Notwithstanding that the objectives in the *Mining Act* are relatively new, the Working Group took the opportunity to examine them as part of the review process and proposed a number of changes.

These changes reflect the fact that the key role of the Act is the grant of valid tenure for mineral exploration and mining. The objectives also reflect society's desire for clear and transparent processes and will enhance the government's desire to drive active utilisation of tenure by tenement holders.

### **Recommendation 2**

That the objectives of the new Act be:

- 2.1 To provide an equitable and transparent framework for the issuing of secure tenure, within which persons may undertake activities to explore for, and develop mineral and extractive mineral deposits.
- 2.2 To provide for the administration of mining and exploration titles on a commercial basis, which will facilitate maximising the value of the mineral resources of the Northern Territory.
- 2.3 To provide a mining tenure regime that takes into account the rights and interests of all Territorians and appropriately compliments other Territory and Commonwealth legislation.

### 3. ADMINISTRATION

The decision making functions of the Act will be rationalised to ensure that the responsibility for decisions fall appropriately on the Minister, the Chief Executive of the Department administering the Act and other officers, by delegation in accordance with their responsibilities.

The involvement of the Administrator in the current decision making processes of the mining legislation appears to be largely historic and accordingly, it is determined that, to the extent feasible, those powers will reside with the Minister.

#### **Recommendation 3**

That the powers and functions of statutory positions under the new Act. be:

- 3.1 “The Minister” holds all decision making powers relating to the grant and forfeiture of titles, the determination of conditions attached to titles, the amount of security, etc. to be lodged with respect to titles and the making of guidelines under s8AA;
- 3.2 “The Chief Executive” (CE) is allocated all other administrative decision making powers under the Act. The decision making would then be assigned to officials within the Department, where appropriate. However, the search and seizure power under s190A should expand specifically to Police Officers and to those persons designated as Mining Officers under the *Mining Management Act*;
- 3.3 A delegation power will be provided for functions allocated to both the Minister and the CE; and
- 3.4 “The Department” is specified as the place of lodgement of all “materials” required to be lodged under the Act.

#### 4. MINER'S RIGHTS

The issuing of a Miner's Right has been a common feature of mining title legislation in the past, but is now viewed as being a historic feature with no place in legislation as they serve no real purpose. It is proposed to repeal these provisions, as continuing to issue them is deemed to be an unnecessary administrative requirement that does not add value to the tenure grant process.

Miner's Rights do not in any way establish the applicant's bona fides as a genuine explorer or miner, nor do they provide the Territory with any information about the holder other than the person's name. The nature and extent of survey and reconnaissance work permitted under a Miner's Right is restricted and a Miner's Right does not apply on Aboriginal Freehold land.

The Working Group's view is that the Miner's Right should be discontinued and that access to land should be assured, subject to certain conditions.

##### **Recommendation 4**

- 4.1 That the provisions relating to the requirement to hold Miner's Rights in the *Mining Act* not be included in any new legislation.
- 4.2 That the minimum age for a person to be entitled to obtain an exploration or mining title be 18 years (raised from 15).
- 4.3 That the rights and conditions of a corporation or a person entering land for the purpose of marking out a mining tenement, or carrying out reconnaissance and low-level exploration activities are to be prescribed in the Act.

Such conditions are to specify:

- the responsibility to provide the land holder with the identity and contact details of the person desiring access;
  - the responsibility, if applicable, to provide the land holder with details of the corporate entity, on whose behalf any activity may be carried out;
  - the responsibility to provide the land holder with general details of proposed activities, including the timing of these activities; and
  - a requirement to take into account any genuine concerns of the land holder.
- 4.4 That the right to prospect, reconnoitre and carry out low-level exploration be expanded to allow bona fide explorers the ability to access land without title. These rights are to be subject to conditions prescribed in legislation or are to be applied by way of guidelines which will provide for activities similar to those that were allowed pursuant to a Miners Right.

- 4.5 Administrative guidelines will be subject to Ministerial approval and in some cases, conditions will be set. Any access would be subject to other applicable legislation including the *Aboriginal Land Rights (Northern Territory) Act*, the *Sacred Sites Act* and the *Native Title Act*.
- 4.6 That, subject to Ministerial approval and any conditions set, explorers be permitted to carry out geoscientific airbourne surveys over any land. The Minister will need to be satisfied that the survey is of broader benefit to the Territory and that the interests of existing title holders or applicants have been considered prior to approving such surveys over applications or granted titles held by other parties. Any such approvals would be subject to other applicable legislation including the *Aboriginal Land Rights (Northern Territory) Act*, the *Sacred Sites Act* and the *Native Title Act*. Administrative guidelines will be developed for such approvals.
- 4.7 Where a geoscientific airbourne survey has been undertaken within two years of the making of an Exploration Licence application over the area covered by the survey, the applicant may claim that expenditure toward the first years exploration expenditure on the grant of the exploration licence, upon providing evidence of contributing to the cost of survey.

## 5. EXPLORATION LICENCES

Exploration Licences are the principal form of tenure for mineral exploration in the Territory. An Exploration Licence provides the holder with the exclusive right to undertake exploration activities within the licence area and the exclusive right to apply for a mining title. In terms of the number of Exploration Licences applied for and granted each year, monitoring expenditure, annual reporting, review processes and relinquishment requirements, represent significant administrative workload.

Recommendations are made for changes to the exploration licence provisions. The aim being to provide a regime that is consistent with the Act's objectives, that is competitive with other jurisdictions, encourages exploration activity, maximises exploration expenditure (and the chances of exploration success) by ensuring exploration covenants are met, provides for the release of land that is not being actively explored, and takes into account the genuine needs of the exploration industry.

### **Recommendation 5**

- 5.1 That graticular sections based on the GDA 94 graticular system remain the basis for administering Exploration Licences.
- 5.2 That in certain circumstances, Exploration Licence boundaries may be aligned with land tenure and topographical and cadastral boundaries.

### **Recommendation 6**

- 6.1 That the definition of "Land area of the Territory" be redefined to enable applications for Exploration Licences in Northern Territory Offshore Waters (within the 3 Nautical Mile Limit) to be accepted, processed and granted.

### **Recommendation 7**

- 7.1 That Exploration Licences remain as the primary title for the exploration of minerals within the Territory.
- 7.2 That the general flexibility afforded by the Exploration Licence provisions under the *Mining Act* is retained, but provides for a greater level of performance and accountability.

- 7.3 That Exploration Licence applications be accompanied by an up-front, non-refundable administrative fee that will be set in Regulations.
- 7.4 The maximum term of an Exploration Licence will be 6 years with provision for ongoing 2 year renewals, provided all conditions of title (including expenditure) are met. Renewals are not to be subject to compulsory reduction.
- 7.5 Biennial area reductions of 50%.
- 7.6 The minimum size of an Exploration Licence will be 4 graticular blocks, excepting titles that currently exist or those that will result from transitional provisions of this Act.
- 7.7 The maximum size of an Exploration Licence will be 250 graticular blocks.
- 7.8 Allow limited non-intrusive reconnaissance and exploration to be carried out on an Exploration Licence application.
- 7.9 Allow an applicant for or the holder of an exploration licence the exclusive right to apply for a mining tenement. (This provision is not applicable to Aboriginal Freehold land.)
- 7.10 Provide for an Exploration Licence to be granted as a single entity, while excluding an area (for example a railway reserve) which may otherwise split the Exploration Licence area.
- 7.11 Provide for separate Exploration Licence applications over differing land tenure where, due to legislative procedures associated with that land tenure, there may be different processes required for the grant of those Exploration Licences.
- 7.12 Provide for the splitting of applications, including the allocation of a new licence number, but retaining the original application details, such as date of application.
- 7.13 Where an Exploration Licence application is over an area that is intensively occupied by other mining tenure, provide the Minister with discretion as to whether to accept the application.
- 7.14 Provide through legislation and by way of administrative guidelines, for the electronic lodgement of applications.

7.15 Annual rent to be increased in line with the term of the licence, but at a flatter rate than that under the *Mining Act*. The annual rent per graticular block to be set in the Regulations.

7.16 That Guidelines be developed (similar to those provided by s8AA of the *Mining Act*) for:

- financial capacity of applicants;
- technical capacity of applicants;
- reporting requirements;
- criteria for assessing variations of the covenant and waivers of reduction; and
- exploration expenditure.

7.17 Allow expenditure and reporting to be assessed on a project area basis, which could include a number of Exploration Licences.

7.18 For the purpose of assessing performance, allow over-expenditure in a previous year to offset under-expenditure in later years.

7.19 Where a licence holder does not meet expenditure on a rolling 2 year cumulative basis, the penalty is to be the loss of blocks at 50% of under expenditure, i.e. 1% of area for every under-spend of 2% against the guidelines (or covenant).

7.20 If there is under-expenditure in a particular year, waivers of reduction will not be considered.

7.21 Provide for the Minister to determine a deferral of reduction without an initiating request from the Exploration Licence holder. Enacting such a provision would afford the Minister greater flexibility in managing performance.

7.22 Annual reporting of exploration activity is to be separate from the reporting of expenditure and submission of the following year's exploration proposals. This would allow for efficient administrative assessment of performance, while allowing time for explorers to complete more detailed technical reports. It would also allow reporting to be aligned with reporting requirements under the *Mining Management Act*.

- 7.23 Automatic financial penalties to apply for the late lodgement of statutory reports with those penalties to be linked to time (e.g. \$50 per report for each week overdue) and set in Regulations.
- 7.24 The provision for retention status to be subject to set criteria (see Proposal 8 below).
- 7.25 Allow Exploration Licences to be granted for the exploration of “extractive” minerals. These licences are to be for a maximum 2 year period over a maximum area of four graticular blocks.
- 7.26 Remove the requirement to publish a notice on cessation of an Exploration Licence. This information can more conveniently be displayed on the Titles Information System.
- 7.27 Retain the 30 day moratorium period on new Exploration Licence applications on the cessation of an Exploration Licence, but have the moratorium period commence on the expiry of the licence.
- 7.28 Remove the requirement (currently under s16(3)(b) of the *Mining Act*) to lodge a security for compensation that may be required under the Act. Other provisions will address compensation issues.
- 7.29 Allow for the amalgamation of existing Exploration Licences to new Exploration Licences. As no new land is being included, it will not be necessary to re-notify. The features of the amalgamated licence will be the same as for a normal Exploration Licence, but the annual rent will commence at the next exploration licence rent increment above the parent licences.

### **Recommendation 8**

That retention status can be applied to all or part of an Exploration Licence, subject to following provisions:

- 8.1 The retention area to be based on graticular blocks.
- 8.2 There be no requirement to re-notify parties about a retention application.
- 8.3 The retention area must contain a resource or potential resource that has been significantly explored. The area of land may include sufficient area for infrastructure should development proceed.
- 8.4 The area would be subject to a work program approved by the Minister. The work program will not necessarily include exploration, but will need to focus on progressing the development of the deposit.

- 8.5 The annual rent is to be the equivalent of that for a mature exploration licence.
- 8.6 The Minister will have the capacity to require development of the deposit or to require the holder to show cause as to why the title should not be cancelled.
- 8.7 The term of retention area to be up to 5 years, with provision for renewal, subject to acceptable work program performance.
- 8.8 The balance of the Exploration Licence to continue on the grant of retention status, subject to standard licence provisions including expenditure.

## 6. MINING TENEMENTS

Granted mining tenements in the Territory comprise a mixture of Mineral Leases, Mineral Claims, Extractive Mineral Leases and Authorised Holdings. With the exception of the Extractive Mineral Leases and a small number of Mineral Leases, many of these tenements are under utilised and have not been subject to any recent geological assessment.

The focus of the recommendations in respect of mining tenements is to rationalise the range of mining tenements, to encourage exploration on tenements by reverting them to exploration licences in instances where further exploration is necessary and to require that tenements with a known and proven resource are actively developed.

The result of such a regime would be that a large number of exploration licences in the Territory would be actively explored and that, while there would be significantly fewer mining tenements, those tenements would be used for the purpose for which they were granted.

### **Recommendation 9**

9.1 That Mineral Leases continue to be the principle title for the mining of minerals.

### **Recommendation 10**

10.1 That applications for Mineral Leases be supported by details of the mineral resource within the proposed lease area, the financial and technical capacity of the proponent to progress mining development, and details of the proposed mining operations.

### **Recommendation 11**

11.1 That Mineral Claims and Authorised Holdings granted for mining purposes, be incorporated into Mineral Leases to provide one title type for the mining of minerals.

### **Recommendation 12**

12.1 That a regime be developed which requires the active exploration and/or mining of all titles. Such a regime would be multi faceted and include:

- an increase in the annual rent of Mineral Leases
- annual expenditure designed to actively progress the development of an ore body;

- annual reporting; and
- where no ore body exists, the ability for the mining tenement to revert to an exploration licence.

### **Recommendation 13**

13.1 That the legal description of mining tenement boundaries be by geographic co-ordinate system rather than marked survey boundaries.

This process would be phased in over several years to allow for the accurate measurement of coordinates for all tenements.

### **Recommendation 14**

14.1 That the purpose of a Mineral Lease be expanded to include the evaluation and exploration of the mineral deposit, the mining of extractive minerals (quarrying) and tourist fossicking (in accordance with s13AB of the *Mining Act*).

14.2 That objections to the grant of a Mineral Lease be heard in the Lands, Planning and Mining Tribunal (see comments under Chapter 9 on Wardens).

14.3 That the requirement for a Mining Warden to recommend the grant of a Mineral lease, where there are no objections, be discontinued.

14.4 That the requirement for a Mining Warden's approval to mark out an application (where applicable) be discontinued.

14.5 That access rights for the purpose of marking out an application be prescribed (see the proposal under Chapter 4 on "Miner's Rights").

14.6 That the requirement to survey a Mineral Lease and to obtain the Surveyor General's approval for such a survey be retained. However, the requirements for such a survey are to be examined to reduce the cost of the survey.

14.7 That where an authority to occupy a mineral lease application area is provided, such authority expires if the boundary is not surveyed within six months.

14.8 To accommodate small miners and tourist fossicking, that provision be made for Mineral Leases of less than 40 hectares in area, to be marked similar to current requirements. Marking out in this manner is to be restricted to a single Mineral Lease and not groups of Mineral Leases.

- 14.9 That the provisions of Mineral Claims relating to priority under the *Mining Act* continue to apply where a Mineral Lease is marked out (taken possession of).
- 14.10 That the provision to “use the lease area continuously and exclusively for the purposes for which it is demised” be redrafted to clarify the holder’s responsibilities in the use of the Mineral Lease. The present provision is open to a narrow interpretation.
- 14.11 That no provision be made for third party claims where work commitments are not met.
- 14.12 The inclusion of a provision to allow the Minister to require the holder of the Mineral Lease to show cause as to why mining should not be carried out.
- 14.13 That the current provision allowing the surrender of a Mineral Lease only when all conditions of title have been met, be retained. This provision is to be expanded to include conditions under the *Mining Management Act*.
- 14.14 The inclusion of provisions to allow for the subdivision and amalgamation of mineral tenements.
- 14.15 That reporting provisions be modified to take into consideration any reports lodged under the *Mining Management Act* (i.e. remove the potential for a requirement for dual reporting).
- 14.16 The inclusion of transitional provisions to incorporate all existing mining tenements (from the *Mining Act* and the repealed *Mining Ordinance*) into the new regime.

## **7. EXTRACTIVE MINERAL LEASES AND PERMITS**

Extractive minerals are materials such as sand, gravel, rock or soil that are used in the construction industry. Extractive Mineral Leases are generally granted for the longer term quarry type operations, while Extractive Mineral Permits are granted for the extraction of sand, gravel, rock or soil, usually from the surface of the land.

In general, the provisions for the mining of extractive minerals work well and consequently few changes are recommended.

### **Recommendation 15**

- 15.1 That Extractive Mineral Leases and Permits remain specific titles in the new legislation.
- 15.2 That extractive mining be defined to avoid confusion with construction activities where an Extractive Mineral Permit is not required.
- 15.3 That subject to legal advice the “approval to apply” provisions be repealed.
- 15.4 That the term of an Extractive Mineral Permit be extended to 5 years.
- 15.5 That a partial surrender of an Extractive Mineral Permit be permitted.
- 15.6 That a reduced rental be applied to that area of an Extractive Mineral Permit that has been rehabilitated, but is subject to ongoing monitoring prior to the release of the rehabilitation security.

## 8. FOSSICKING

Fossicking is a low-impact recreational activity that is, in the main, carried out by tourists and enthusiasts for short periods of the year. Fossicking is often carried out in designated fossicking areas declared under the *Mining Act*.

The Act provides for the issue of fossicking permits for either recreational or commercial tour operation purposes. The Working Group is of the view that the administration of fossicking can be adequately administered within the legislation and without the need for a permit system, which is an unnecessary administrative process that does not provide benefit to government, landholders or fossickers.

### **Recommendation 16**

16.1 That the issuing of fossicking permits not be continued in the new legislation.

### **Recommendation 17**

17.1 Provide the capacity to administer fossicking in existing Fossicking Areas.

17.2 Allow a capacity to create new Fossicking Areas.

17.3 Remove specific provisions for commercial fossicking on Mineral Leases in favour of a right for all Mineral Lease holders to carry out any commercial activity related to mining.

17.4 Retain the requirement for fossickers to obtain written approval from landholders and mining title holders to access areas for fossickers.

17.5 Require that landholders be provided with the identity of the individual/s desiring access for fossicking purposes.

17.6 Require that landholders be provided with details of proposed activities, such as the area involved, timing etc.

17.7 Require that landholders be provided with details of any proposed campsites, etc. planned to be used by fossickers.

## 9. WARDENS AND WARDEN'S COURTS

The Warden sitting in the Warden's Court has traditionally been the institution for the hearing of objections to mining tenements and the determination of disputes regarding mining matters.

The *Mining Act* provides jurisdiction to the Warden's Court and the Lands, Planning and Mining Tribunal to determine contentious mining tenure matters. The latter institution being a product of the 1998/99 Native Title related amendments to the *Mining Act* and other land-related legislation.

It is not considered desirable that two separate institutions adjudicate mining matters and there is benefit in having a single entity in the Territory deal with land-related matters for reasons of expertise.

### **Recommendation 18**

18.1 That there be only one legal institution, the Lands, Planning and Mining Tribunal, to deal with matters relating to objections to mining tenements and take the role of the current Warden in the determination of disputes and other mining-related matters.

18.2 That the office of "Warden" not continue in the new legislation and that all administrative duties currently performed by a Warden are carried out by Departmental officials.

## 10. COMPENSATION

The *Mining Act* contains a number of provisions that provide for the compensation of landholders and other parties affected by the grant of titles or the impact of activities authorised under the Act.

In the first instance, the Act contemplates that the level of compensation will be determined by agreement between the affected parties. However, where this is not possible, the Lands, Planning and Mining Tribunal or Minister, as the case may be, may determine the level of compensation. The Act also provides for appeals to such determinations to be heard by the Supreme Court.

Where compensation has not been determined, the Act provides that a security may be required, in the event that compensation is payable by the titleholder at a later date. The establishment of a Mining Trust Fund currently caters for such securities.

With the exception of some technical deficiencies in the provisions relating to the refund of money held in trust in the Mining Trust Fund, the compensation provisions under the legislation have not attracted a lot of comment, nor is the Department aware of any significant problems arising in this area.

The following changes are recommended to the current compensation provisions:

### **Recommendation 19**

- 19.1 That, with the exception of some minor technical changes, the compensation provisions contained in the *Mining Act* be adopted in the new legislation.
- 19.2 That reference to the Warden for the determination of compensation issues be replaced by reference to the Lands, Planning and Mining Tribunal. This proposal is consistent with the proposal for the Tribunal to deal with all matters under the proposed legislation (see Recommendation 18).
- 19.3 That the type of security acceptable under the Act (i.e. cash, bank guarantee etc) be defined.
- 19.4 That the Mining Trust Fund be broadened to provide a trust fund for all types of security.
- 19.5 That the Mining Trust Fund provisions be amended to ensure that funds lodged in trust can be returned to the titleholder and that the conditions for the release of the funds be further described.
- 19.6 That a sunset clause be provided for affected parties to claim compensation.

- 19.7 The deletion of mandatory provisions requiring a security be lodged in the event the titleholder is required to pay compensation under the Act (such as s16(3)(b), s41(4) and s173(3) of the *Mining Act*) and replacement by discretionary provisions.
- 19.8 That the Minister has the power to request a security at any time throughout the life of the title, rather than only at the time of grant and renewal. This provision is to be subject to a change in circumstances relating to the tenement that warrants a variation in the level of security.
- 19.9 That in assessing the requirement for a security, the existence of any compensation agreements be taken into account.
- 19.10 With respect to the resolution of compensation claims, that claims be resolved in a timely manner.
- 19.11 That it be an offence for a title holder to enter or have entered into an agreement that is contrary to the provisions of the Act, or adversely impacts the title holders performance with the provisions of the Act.
- 19.12 That provision be made for the use of a private arbitrator for the resolution of compensation matters.

## 11. NATIVE TITLE PROVISIONS

In 1998/99, to address native title associated issues, an alternative native title process for dealing with applications was provided for in parts XIA and XIB of the *Mining Act*. However, the alternate native title provisions did not become operable as they were disallowed by the Senate. Since then, in order to progress outstanding title applications, the Territory has effectively used Commonwealth *Native Title Act* processes.

To facilitate the use of the Commonwealth *Native Title Act*, it was necessary to provide a number of transitional provisions in the *Mining Act*. These provisions were designed to deal with the backlog of titles at that time.

The alternate native title provisions contained in Parts XIA and XIB of the *Mining Act*, and the transitional provisions, are no longer required. Accordingly, it is proposed that these provisions not be included in the new legislation.

### **Recommendation 20**

20.1 That the redundant native title transitional provisions and proposed alternate native title provisions contained in the *Mining Act* not be included in the new legislation.

## **12. RESERVATION OF LAND FROM OCCUPATION**

A specific proposal in the Discussion Paper examined provisions related to s178 “reservation of land from occupation”. Section 178(1) provides that an area of land may be reserved to prohibit the recovery of any mineral from that land. Section 178(2) allows the Minister to authorise various activities, including exploration and mining, within a reserve. The dual purpose of a reserve can lead to confusion and a reduction of confidence in the application of a s178 reserve.

In order that there is a clear distinction between reserves created to prohibit exploration and/or mining, and reserves created to provide for future development, it is recommended that separate “reserve” provisions apply for each category.

The following recommendation is made with respect to this section:

### **Recommendation 21**

21.1 That separate provisions be developed for reserves created to prohibit exploration and/or mining, and reserves created to provide for future development.

### 13. PENALTIES

The *Mining Act* contains financial penalties for various breaches of the Act, ranging from failure to lodge statutory reports to unauthorised mining.

Imposing penalties for trivial matters which require a judicial determination (for example, for late lodgement of a report) is not desirable and, as such, have not been imposed in the past. The preferred practice has been to use other provisions in the Act, such as the cancellation of a title, to ensure compliance.

It is recommended that such penalties be discontinued in the new legislation and penalties retained only for the more substantial matters.

The new penalty regime will be assessed against similar penalty levels applying across other Territory legislation. In addition, all financial penalties will be expressed in terms of penalty units, rather than the current monetary levels, in accordance with Northern Territory Government policy.

In some instances, where it is practicable to implement and desirable to do so, penalties have been replaced with "late fees" (see Recommendation 7.22).

#### **Recommendation 22**

22.1 That penalties for non compliance with routine statutory matters be discontinued in the new legislation and penalties retained only for the more substantial matters such as unauthorised mining or occupation of the land.

22.2 That the remaining penalty levels be adjusted to better reflect contemporary values and practices and be expressed in terms of penalty units.

## 14. DEALINGS

The ability to deal in exploration and mining tenure (including extractive mining titles) is essential to the development of an active mining industry. Similarly, the provision of a public register that clearly identifies parties that have an interest in a title, is important in an open and transparent system.

An extensive review of s173 and s174, of the *Mining Act* “Dealings and Caveats” has been independently carried out and number of recommendations made to improve the current provisions.

The recommendations below reflect recommendations flowing from the review and submissions received.

### **Recommendation 23**

- 23.1 That approval and registration be required for any transfer of title and any other dealing (such as an agreement) that involves a transfer of interest in a title.
- 23.2 That, where a dealing affects such a transfer of an interest in a title, there be a requirement that a transfer of that interest be lodged for registration.
- 23.3 That the register include a description of the dealings affecting interests in a title (provided by the parties to the dealing), so that government or third parties are able to identify situations where the legal holders of the title may change over time.

### **Recommendation 24**

- 24.1 That registration of all dealings, other than those involving a change of control of title, be made possible (but voluntary).
- 24.2 That Ministerial approval of such dealings is not necessary.
- 24.3 That registration of such a dealing ensures that, if otherwise legally effective, it would take precedence over other subsequently registered dealings and unregistered dealings.

### **Recommendation 25**

- 25.1 That the existing scheme of caveats contained in s174 of the *Mining Act* be retained.
- 25.2 That caveats specify the interest held and that they only be permitted where there is a direct interest in the title.

25.3 That further caveats cannot be lodged for the same reason/event as a caveat that has been previously dealt with.

25.4 That caveats be able to exclude certain specified dealings.

### **Recommendation 26**

26.1 That “Substantial Compliance” provisions that exist in the *Mining Act* be adopted and enhanced to provide a greater measure of security of title.

26.2 That the transfer of applications and all titles, including all authorisations and Ministerial authorisations (such as those in s178, 181, and 182 of the *Mining Act*) be permitted.

26.3 That all titles be able to be dealt with in the same manner.

26.4 That Extractive Mineral Permits and Exploration Licences are able to be mortgaged.

26.5 That it be a prerequisite of the registration of a transfer, that the incoming party lodge any security required under the proposed Act or *Mining Management Act*.

26.6 That the Minister has the ability to correct an error in the register.

26.7 That consideration be given to refining the process of the registration of a transfer to provide parties with additional security during settlement.