EXPLANATORY STATEMENT

(Issued by Authority of the Minister for Sustainability, Environment, Water, Population and Communities)

Environment Protection and Biodiversity Conservation Act 1999

Environment Protection and Biodiversity Conservation (Kakadu) Proclamation 2013

Subsection 350(1) of the Environment Protection and Biodiversity Conservation Act 1999 (the EPBC Act) provides that the Governor-General may make a Proclamation to revoke or amend the Proclamation of a Commonwealth reserve made under the EPBC Act.

Subsection 344(1) of the EPBC Act prescribes the areas that may be declared as part of a Commonwealth reserve. Such areas include an area that is held under lease by the Commonwealth or the Director of National Parks as specified in sub-paragraph 344(1)(a)(iii).

The purpose of the Proclamation is to amend the Proclamation of Kakadu National Park (Kakadu) to add to Kakadu an area held under lease by the Director of National Parks that is located within the park but was not previously part of the park. The area is commonly known as the Koongarra Project Area (Koongarra).

Kakadu was declared by a Proclamation made under the National Parks and Wildlife Conservation Act 1975 (NPWC Act) on 5 April 1979. The Proclamation was amended by further Proclamations under that Act on 20 December 1985, 12 June 1987, 22 November 1989 and 24 June 1991. These further Proclamations increased the area of the park.

The NPWC Act was replaced by the EPBC Act on 16 July 2000. The Proclamation of Kakadu was continued in force by the Environmental Reform (Consequential Provisions) Act 1999 (Schedule 4, item 3) as if it had been declared a Commonwealth reserve under the EPBC Act.

The Kakadu Proclamation was further amended on 23 May 2007 by a Proclamation under subsection 350(1) of the EPBC Act to include some additional areas in the park.

The boundaries of the areas that make up Kakadu are described in the Schedule to the Proclamation. The Koongarra area was excluded from the original, 1979 Proclamation (along with some other areas) because it was the site of a potential uranium mine. The relevant exclusion was described in paragraph (b) of Part I of the Schedule to the Proclamation. The subsequent Proclamations did not add Koongarra to the park.

Koongarra and surrounding areas of Kakadu are Aboriginal land under the Aboriginal Land Rights (Northern Territory) Act 1976. Mining at Koongarra could only proceed with the consent of the traditional Aboriginal owners. That consent has not been given. Following a request from the senior traditional Aboriginal owner the government committed in 2010 to incorporate Koongarra into Kakadu. Following consultations required by the Aboriginal Land Rights (Northern Territory) Act 1976 the Koongarra land was leased by the Kakadu Aboriginal Land Trust to the Director of National Parks.
Incorporation of the Koongarra area into Kakadu was effected by a Proclamation under subsection 350(1) of the EPBC Act that omitted paragraph (b) of Part I of the Schedule to the Kakadu Proclamation. All the land described in paragraph (b) has become part of the park.

Subsection 351(1) of the Act requires that before the Governor-General makes a Proclamation under subsection 350(1) the Minister must consider a report prepared by the Director of National Parks under section 351. Paragraph 351(6)(a) provides however that this requirement does not apply in relation to a Proclamation that declares an area in the Kakadu Region to be a Commonwealth reserve. The Kakadu Region is defined in the Environment Protection (Alligator Rivers Region) Act 1978 and includes the area of Kakadu. Hence, no report was prepared by the Director of National Parks under subsection 351(1) in relation to the Proclamation.

The Proclamation does not affect the exercise of any native title rights in accordance with the Native Title Act 1993 that may exist within the Koongarra area.

The Proclamation is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

The Proclamation commenced the day after it was registered on the Federal Register of Legislative Instruments.