

EXPLANATORY STATEMENT

(Issued by Authority of the Minister for the Environment and Water Resources)

Environment Protection and Biodiversity Conservation Act 1999

Proclamation to Amend the Proclamation of Kakadu National Park

Subsection 350(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (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.

The purpose of this Proclamation is to amend the Proclamation of Kakadu National Park (Kakadu) to rectify the partial invalidity of the Proclamation as found by the High Court in 1997 in relation to a number of mining lease areas.

Kakadu was established in 3 stages between 1979 and 1991. Stage 1 was established by a Proclamation 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 (Stage 2), and 12 June 1987, 22 November 1989 and 24 June 1991 (Stage 3). The boundaries of the Park are described in the Schedule to the Proclamation. The Schedule has 11 parts (I to XI).

The NPWC Act was replaced by the *Environment Protection and Biodiversity Conservation Act 1999* (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 establishment of Stage 3 incorporated into Kakadu a number of areas that were the subject of mining leases at the time of Proclamation. In 1997 the High Court ruled (in *Newcrest Mining (WA) Ltd. v. Commonwealth*) that the park Proclamation was invalid with respect to 23 mining leases because the Proclamation, together with an absolute prohibition on mining in the park under the NPWC Act, had effected an acquisition of property from the lease holder other than on just terms as required by section 51(xxxi) of the Constitution. Subsequent inquiries disclosed a further 6 mining leases that, based on the High Court decision, had not been validly declared part of the park between 1987 and 1991.

The Proclamation has incorporated these mining lease areas into Kakadu now that the Government has reached a settlement with the holder of the current leases (Newcrest Operations Ltd).

The boundaries of the areas that make up Stage 3 are currently described by Parts VII to XI of the Schedule to the Kakadu Proclamation. The boundaries of the areas are generally described by reference to degrees of latitude and meridians of longitude. Together the areas now comprise Northern Territory Portion 220 (vested in the Director of National Parks) and most of Northern Territory Portion 4774 (which is

Aboriginal land vested in the Gunlom Aboriginal Land Trust and leased to the Director).

Incorporation of the 29 mining leases into Kakadu was effected by a Proclamation under subsection 350(1) of the EPBC Act to amend the Kakadu Proclamation. This Proclamation omitted Parts VII to XI of the Schedule to the Kakadu Proclamation and substituted new Parts of the Schedule that described the outer boundaries of the same area (by reference to NT Portions 220 and 4774). All land within that area, including the 29 mining leases, is now part of the Park.

Subsection 351(1) of the EPBC 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 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).

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

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