

Queensland



**NATIVE TITLE
(QUEENSLAND) STATE
PROVISIONS AMENDMENT
ACT (No. 2) 1998**

Act No. 38 of 1998

Queensland



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PROVISIONS AMENDMENT ACT (No. 2)
1998**

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Queensland



Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998

Act No. 38 of 1998

An Act to amend the *Fossicking Act 1994* and the *Mineral Resources Act 1989* for native title purposes, and to amend the *Native Title (Queensland) Act 1993*

[Assented to 27 November 1998]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998*.

Commencement

2. Parts 3 and 4 commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF FOSSICKING ACT 1994

Act amended in pt 2

3. This part amends the *Fossicking Act 1994*.

Amendment of s 3 (Definitions)

4. Section 3, definition, “owner”—

omit, insert—

‘ “owner” see section 8(1).’.

Replacement of s 11 (Act’s application to native title land)

5. Section 11—

omit, insert—

‘Act’s application if approved determination of native title

‘11.(1) This Act does not apply to land or waters if—

- (a) there is an approved determination of native title over the land or waters; and
- (b) the determination provides that native title exists over the land or waters.

‘(2) However, this Act does apply to the land or waters if—

- (a) there is an indigenous land use agreement for the land or waters that is registered on the register of indigenous land use agreements; and
- (b) the agreement provides for fossicking over the land or waters.

‘(3) In this section—

“approved determination of native title” see *Native Title Act 1993* (Cwlth), section 253.

“indigenous land use agreement” see *Native Title Act 1993* (Cwlth), section 253.

“register of indigenous land use agreements” see *Native Title Act 1993* (Cwlth), section 253.’.

PART 3—AMENDMENT OF MINERAL RESOURCES ACT 1989

Act amended in pt 3

6. This part amends the *Mineral Resources Act 1989*.

Amendment of s 5 (Definitions)

7. Section 5—

insert—

‘ **“Commonwealth Native Title Act”** means the *Native Title Act 1993* (Cwlth).

“native title provisions” means the following provisions—

- part 12
- part 13
- part 14
- part 15
- part 16
- part 17
- part 18.

“tribunal” means the Land and Resources Tribunal.’.

Amendment of s 25 (Conditions of prospecting permit)

8. Section 25—

insert—

‘**(5)** To remove doubt, it is declared that a condition may limit the extent of the holder’s entitlements under section 18(1).¹’.

Amendment of s 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

9. Section 271(1), after ‘section 269(4)’—

insert—

‘or 579²’.

¹ Section 18 (Entitlements under prospecting permit)

² Section 579 (Tribunal must consider consultation matters and agreed issues)

Insertion of new pts 12–18

10. After section 418—

insert—

**‘PART 12—INTRODUCTION TO NATIVE TITLE
PROVISIONS**

‘Application of native title provisions

‘419.(1) The native title provisions state requirements in addition to parts 3 to 7 that have effect instead of the right to negotiate provisions.

‘(2) However, the native title provisions apply to an act only if it is an act—

- (a) to which the right to negotiate provisions are expressed to apply under section 26³ of the Commonwealth Native Title Act; or
- (b) determined in writing by the Commonwealth Minister to be an act that is—
 - (i) an approved exploration etc. act; or
 - (ii) an approved gold or tin mining act.

‘Effect of failure to comply with native title provisions

‘420. An act to which the native title provisions apply is invalid to the extent that it affects native title unless the requirements of the native title provisions are complied with.

‘Definitions for native title provisions

‘421. In the native title provisions—

“alternative provision area” means an alternative provision area under section 43A(2) of the Commonwealth Native Title Act.

³ Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

“applicant”, for a proposed mining tenure, includes, if the context permits, a person who intends to apply for the proposed mining tenure.

“approved opal or gem mining area” means an area of land that is—

- (a) an approved opal or gem mining area determined in writing by the Commonwealth Minister under section 26C⁴ of the Commonwealth Native Title Act; and
- (b) prescribed under a regulation.

“decision” includes the following—

- (a) determination;
- (b) for a decision of the tribunal—a recommendation made by the tribunal.

“mining tenure” means a prospecting permit, mining claim, exploration permit, mineral development licence or mining lease.

“native title notification party”, for land, means—

- (a) a registered native title body corporate whose name is contained in the national native title register because of an approved determination of native title in relation to any of the land; or
- (b) a registered native title claimant in relation to any of the land; or
- (c) a representative Aboriginal/Torres Strait Islander body for an area that includes any of the land.

“non-exclusive land” means land over which native title has not been extinguished, but only to the extent that the land is a place mentioned in section 26(3)⁵ of the Commonwealth Native Title Act.

“non-monetary compensation” includes the following—

- (a) the transfer of land or other property;
- (b) the provision of goods or services;
- (c) the creation of employment opportunities.

⁴ Section 26C (Excluded opal or gem mining) of the Commonwealth Native Title Act

⁵ Section 26(3) (When subdivision applies - *Seas and intertidal zone excluded*)

“registered native title rights and interests” means registered native title rights and interests under section 30(3) of the Commonwealth Native Title Act.

“relevant special interest publication”, for a proposed mining tenure, means a newspaper or magazine that—

- (a) caters mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders; and
- (b) circulates in the geographical area that may be affected by the proposed mining tenure or, if the area is an offshore place, the geographical area closest to it; and
- (c) is published at least once a month.

“right to negotiate provisions” means part 2, division 3, subdivision P of the Commonwealth Native Title Act.

‘Other provisions for interpretation of native title provisions

‘422.(1) Words and expressions used in the Commonwealth Native Title Act and the native title provisions have the same meaning in the native title provisions as they have in the Commonwealth Native Title Act.

‘(2) Subsection (1) applies except so far as the context or subject matter otherwise indicates or requires.

‘(3) However, subsection (1) does not apply to a word or expression defined in section 5.⁶

‘(4) Without limiting subsection (3), a reference in the native title provisions to land, or to land or waters, is a reference to land as defined in section 5, other than land to the seaward side of the mean high-water mark of the sea.

‘(5) In a native title provision that is about a proposed mining tenure, a reference to the non-exclusive land is a reference to the non-exclusive land that is, or that is included in, the land for which the proposed mining tenure is to be granted.

⁶ Section 5 (Definitions)

‘(6) In a native title provision that is about an existing mining tenure, a reference to the non-exclusive land is a reference to the non-exclusive land that is, or that is included in, the land for which the mining tenure has been granted.

‘Application of Judicial Review Act

‘423.(1) This section applies to an act to which the alternative provisions apply.

‘(2) To ensure compliance with section 43A(4)(f) of the Commonwealth Native Title Act, it is declared that the decision to do the act is a decision to which the *Judicial Review Act 1991* applies.

‘(3) Subsection (2) does not limit the *Judicial Review Act 1991*.

‘(4) In this section—

“**alternative provisions**” means laws of Queensland that, under section 43A of the Commonwealth Native Title Act, have effect instead of the right to negotiate provisions.

‘PART 13—NATIVE TITLE PROVISIONS FOR PROSPECTING PERMITS

‘Division 1—Preliminary

‘Purpose of pt 13

‘424. The purpose of this part is—

- (a) to state additional requirements that apply for—
 - (i) the granting of a prospecting permit under part 3 if the permit is a proposed low impact prospecting permit over non-exclusive land; and

-
- (ii) the exercise of the entitlement, under a low impact prospecting permit, to enter non-exclusive land; and
 - (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26A⁷ of the Commonwealth Native Title Act.

‘Exclusion of certain prospecting permits from pt 13

‘**425.(1)** This part does not apply to a prospecting permit if—

- (a) there is an indigenous land use agreement for an area registered on the register of indigenous land use agreements; and
- (b) the agreement provides that a prospecting permit, that must include conditions stated or described in the agreement, may be granted over land included in the area other than in compliance with the right to negotiate provisions; and
- (c) the agreement also provides that this part does not apply to land included in the area; and
- (d) the prospecting permit includes the conditions mentioned in paragraph (b) and is granted over land included in the area.

‘**(2)** Also, this part does not apply to a prospecting permit if the permit is—

- (a) granted over non-exclusive land; and
- (b) solely for purposes necessary to enable the permit holder to apply for the granting of a mining claim or mining lease over the non-exclusive land.⁸

⁷ Section 26A (Approved exploration acts etc.) of the Commonwealth Native Title Act

⁸ For the condition described in subsection (2)(b), see section 18(1)(a) (Entitlements under prospecting permit).

‘Limited application of pt 13 to prospecting permit in approved opal or gem mining area

‘426. This part applies to a proposed prospecting permit in an approved opal or gem mining area only if under section 26C(1) or (1A) of the Commonwealth Native Title Act the grant of the permit is not an act excluded from the application of the right to negotiate provisions.

‘Definitions for pt 13

‘427. In this part—

“**applicant**” means the applicant for the proposed low impact prospecting permit.

“**application notice**” see section 430(1).

“**consultation period**” see section 433.

“**low impact prospecting permit**” see section 428.

‘Meaning of “low impact prospecting permit”

‘428. For this part, a “**low impact prospecting permit**” is a prospecting permit that—

- (a) is granted over land that is, or includes, non-exclusive land; and
- (b) at least to the extent the permit is granted over non-exclusive land, excludes all entitlement to enter for hand mining.

‘Division 2—Notification requirements

‘Application of div 2

‘429. This division states additional requirements that apply for the granting of a low impact prospecting permit.

‘Requirement to notify

‘430.(1) The applicant must give written notice (**“application notice”**) of the applicant’s intention to lodge an application for a low impact prospecting permit, or of the lodgement of the application, to—

- (a) each native title notification party for the land to which the application relates; and
- (b) the mining registrar.

‘(2) The notice must be given no earlier than 14 days before the lodgement.

‘(3) The notice must state the following—

- (a) whether or not the application has been lodged;
- (b) a description of the land;
- (c) details of the activities proposed for the land;
- (d) an outline of the expected impact on the land of the proposed activities;
- (e) that the applicant must not act under the permit applied for to enter non-exclusive land unless the applicant has complied with all the applicant’s obligations for consultation with the native title notification parties provided for in division 3.

‘(4) The notice may also state a day for consultation to start under division 3.

‘(5) The day must be at least 14 days after the giving of the notice to all of the native title notification parties.

‘Division 3—Consultation requirements before entry

‘Requirement to consult

‘431.(1) It is a condition of a low impact prospecting permit that the permit holder must not act under the permit to enter the non-exclusive land unless the holder has consulted with each native title notification party for the land to which the permit relates.

‘(2) However, the condition does not require consultation with a native title notification party about an entry if the party has given the permit holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

‘Consultation matters

‘432.(1) The purpose of the consultation is to minimise the impact of the entry or activities authorised under the low impact prospecting permit on the exercise of native title rights and interests in relation to the land that will be affected by the entry or activities.

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)⁹ of the Commonwealth Native Title Act, as follows—

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;
- (b) any access to the land or waters to which the native title rights and interests relate by—
 - (i) the persons mentioned in paragraph (a); or
 - (ii) any person who will do anything that is authorised because of, or results from, or otherwise relates to, the entry;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the entry and affects native title rights and interests, is to be done.

‘Consultation period

‘433.(1) The “consultation period” for the permit holder’s entry—

- (a) starts on the day (the “consultation start day”)—

⁹ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

-
- (i) stated for that purpose in the application notice for the permit; or
 - (ii) if the day was not stated in the application notice, stated in a written notice given to each of the native title notification parties by the holder; and

(b) ends 14 days after the consultation start day.

‘(2) A notice under subsection (1)(a)(ii) must be given at least 14 days before the consultation start day.

‘(3) The holder and the native title notification parties may agree to extend the consultation period.

‘(4) If at any time the holder and the native title notification parties agree there has been enough consultation, the consultation period is taken to end.

‘Native title notification parties may seek mediation

‘**434.(1)** In the consultation period, the native title notification parties may ask the mining registrar to hold a conference for mediation about the permit holder’s entry.

‘(2) A native title notification party or the permit holder may be represented at the conference by a lawyer.

‘(3) A party to the conference must pay the party’s own costs for the conference.

‘Notice of result of consultation

‘**435.(1)** The permit holder must, and any native title notification party may, as soon as practicable after the consultation period ends, give a written notice to the mining registrar about the consultation.

‘(2) The notice must state—

- (a) details of the consultation undertaken in the consultation period; and
- (b) any outcome of the consultation; and

- (c) the day the permit holder entered the land to which the native title rights and interests relate or, if the holder has not entered the land, the day the holder proposes to enter.

‘(3) A party who gives a notice to the mining registrar under this section must also give a copy of the notice to each other party.

‘(4) In this section—

“party” means—

- (a) a permit holder; or
(b) a native title notification party.

‘Mining registrar may recommend action

‘436. The mining registrar may recommend action to the Minister to address any matter raised by a native title notification party in the consultation.

‘PART 14—NATIVE TITLE PROVISIONS FOR MINING CLAIMS

‘Division 1—Preliminary

‘Purpose of pt 14

‘437.(1) The purpose of this part is—

- (a) to state additional requirements that apply for the granting of a mining claim, or the variation or renewal of a mining claim, under part 4 if the mining claim is to mine gold or tin in surface alluvium over non-exclusive land; and

- (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26B¹⁰ of the Commonwealth Native Title Act.

‘(2) The purpose of this part is also—

- (a) to state additional requirements that apply for the granting of a proposed mining claim, or variation or renewal of a mining claim, under part 4 over non-exclusive land if the mining claim is other than a surface alluvium (gold or tin) mining claim; and
- (b) in stating the additional requirements, to provide alternative provisions under sections 43 and 43A of the Commonwealth Native Title Act.¹¹

‘**Exclusion of certain agreed mining claims from pt 14**

‘**438.** This part does not apply to a mining claim—

- (a) if—
- (i) there is an indigenous land use agreement for an area registered on the register of indigenous land use agreements; and
- (ii) the agreement provides that a mining claim, that must include conditions stated or described in the agreement, may be granted over land included in the area other than in compliance with the right to negotiate provisions; and
- (iii) the agreement also provides that this part does not apply to land included in the area; and
- (iv) the mining claim includes the conditions mentioned in subparagraph (ii); and
- (v) the mining claim is granted over land included in the area; or

¹⁰ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act.

¹¹ Sections 43 (Modification of Subdivision if satisfactory alternative State or Territory provisions) and 43A (Exception to right to negotiate: satisfactory State/Territory provisions) of the Commonwealth Native Title Act.

-
- (b) if the mining claim—
- (i) was the subject of negotiation under the right to negotiate provisions; and
 - (ii) the negotiation resulted in an agreement that included an entitlement for the applicant for the mining claim to apply for and be granted the mining claim without further consultation or negotiation.

‘Limited application of pt 14 to mining claim in approved opal or gem mining area

‘439. This part applies to a proposed mining claim on an approved opal or gem mining area only if under section 26C(1) of the Commonwealth Native Title Act the grant of the claim is not an act excluded from the application of the right to negotiate provisions.

‘Definitions for pt 14

‘440. In this part—

“applicant” means—

- (a) for division 2—the applicant for a proposed surface alluvium (gold or tin) mining claim; or
- (b) for division 3—the applicant for a proposed mining claim, other than a surface alluvium (gold or tin) mining claim.

“consultation agreement” see section 450(2).

“consultation parties” see section 445.

“consultation matters” includes the purpose of consultation stated in section 448(1) and the matters that consultation must be about under section 448(2).

“consultation period” see section 447.

“consultation result notice” see section 450(1).

“consultation start day” see section 443(3).

“surface alluvium (gold or tin) mining claim” see section 441.

‘Meaning of “surface alluvium (gold or tin) mining claim”

‘441. For this part, a “**surface alluvium (gold or tin) mining claim**” is a mining claim—

- (a) that is granted over non-exclusive land; and
- (b) under which the only right to mine is the right to mine gold or tin in surface alluvium; and
- (c) under which the only way gold or tin may be recovered from the material that is mined is by a washing or an aeration process; and
- (d) under which the person given the right to mine must rehabilitate any area of land or waters, in which the mining takes place and in relation to which native title rights and interests may exist, for the purpose of minimising the impact of the mining on the land or waters.

‘Division 2—Surface alluvium (gold or tin) mining claims

‘Subdivision 1—Preliminary

‘Application of div 2

‘442. This division states additional requirements that apply for the granting of a proposed surface alluvium (gold or tin) mining claim over non-exclusive land under part 4.

‘Subdivision 2—Notification requirements and right to be heard

‘Requirement to notify

‘443.(1) The applicant must give written notice of the applicant’s intention to lodge an application for a surface alluvium (gold or tin) mining claim, or of the lodgement of the application, to—

- (a) each native title notification party for the land to which the application relates; and

(b) the mining registrar.

‘(2) The notice must be given—

(a) no earlier than 2 months before the lodgement; and

(b) no later than—

(i) the end of the period of 7 days after the certificate of application for the proposed mining claim is endorsed by the mining registrar under section 64(2);¹² or

(ii) if the mining registrar decides a longer period under section 64(6), the end of the longer period.

‘(3) The notice must state the following—

(a) whether or not the application has been lodged;

(b) a description of the land;

(c) details of the activities proposed for the land;

(d) an outline of the expected impact on the land of the proposed activities;

(e) that the applicant must consult with—

(i) each registered native title body corporate for the land to which the application relates; and

(ii) each registered native title claimant for the land;

(f) a day (the “**consultation start day**”) for consultation to start under subdivision 3 that is at least 2 months after the giving of the notice to all of the native title notification parties;

(g) that the native title notification parties have a right to be heard by the tribunal about whether the claim should be granted and other matters relating to the grant.

‘Native title notification parties’ right to be heard

‘444.(1) Each native title notification party for the land to which the

¹² Section 64 (Certificate of application etc.)

application relates has a right to be heard by the tribunal about—

- (a) whether the surface alluvium (gold or tin) mining claim applied for is to be granted; and
- (b) any other matter relating to the grant.

‘(2) A native title notification party may, by a notice in writing to the mining registrar, waive the party’s right to be heard.

‘Subdivision 3—Consultation requirements

‘Consultation parties

‘445. The “**consultation parties**”, for a surface alluvium (gold or tin) mining claim application, are—

- (a) the applicant; and
- (b) each registered native title body corporate for the land to which the application relates; and
- (c) each registered native title claimant for the land.

‘Requirement to consult

‘446.(1) The applicant must consult with each other consultation party.

‘(2) However, the applicant is not required to consult with another consultation party if the other party has given the applicant a written notice stating that the party does not wish to be consulted about the application.

‘Consultation period

‘447.(1) The “**consultation period**” for the application is the period that starts on the consultation start day and ends 2 months after that day.

‘(2) However, if at any time all the consultation parties agree, whether or not in writing, there has been enough consultation, the consultation period is taken to end.

‘(3) The consultation parties may agree to extend the consultation period beyond the time for it to end under subsection (1).

‘Consultation matters

‘448.(1) The purpose of the consultation is to minimise the impact of the granting of the surface alluvium (gold or tin) mining claim applied for on land or waters in relation to which native title rights and interests may exist and that will be affected by the granting of the mining claim.

‘(2) In particular, the consultation must be about the matters mentioned in section 26B(8)¹³ of the Commonwealth Native Title Act, as follows—

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;
- (b) any access to the land or waters to which the native title rights and interests relate by—
 - (i) the persons mentioned in paragraph (a); or
 - (ii) any person who will do anything that is authorised because of, or results from, or otherwise relates to, the mining claim applied for;
- (c) the way in which any rehabilitation or other thing that is authorised because of, results from, or otherwise relates to, the mining claim applied for, is to be done.

‘Consultation parties may seek mediation

‘449.(1) In the consultation period, the consultation parties may ask the mining registrar to hold a conference for mediation about the application.

‘(2) Sections 65 to 70 apply to the conference as if the request were a request by an owner of land affected by the application.

¹³ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

‘(3) Despite section 66(3),¹⁴ a consultation party may be represented at the conference by a lawyer.

‘(4) Subject to any order made under section 70, a party to the conference must pay the party’s own costs for the conference.

‘Notice of result of consultation

‘450.(1) The applicant must, after the consultation period ends, give a written notice (a “**consultation result notice**”) to the mining registrar.

‘(2) The notice must state the following—

- (a) any outcome of the consultation;
- (b) whether the consultation parties have reached an agreement for the granting of the surface alluvium (gold or tin) mining claim applied for (a “**consultation agreement**”);
- (c) if a consultation agreement has been reached, details of the agreement, including any agreed conditions for the grant;
- (d) if a consultation agreement has not been reached, but the consultation parties have agreed in part about the granting of the surface alluvium (gold or tin) mining claim applied for, details of the partial agreement.

‘(3) The additional requirements provided for in subdivision 4 stop applying to the application if—

- (a) a consultation result notice has been given; and
- (b) a consultation agreement has been reached; and
- (c) all other native title notification parties for the land to which the application relates have waived their rights to be heard.

¹⁴ Section 66 (Who may attend conference)

‘Subdivision 4—Hearing requirements

‘Application of sdiv 4

‘451. This subdivision applies only if—

- (a) the consultation period for an application for the granting of the surface alluvium (gold or tin) mining claim has ended; and
- (b) any of the following applies—
 - (i) a consultation agreement has not been reached about the application;
 - (ii) a consultation result notice has not been given for the application within 7 days after the end of the period;
 - (iii) all other native title notification parties for the land to which the application relates have not waived their rights to be heard.

‘Fixing of combined hearing day

‘452.(1) The mining registrar must fix a day for the tribunal to hear the application under section 72.¹⁵

‘(2) The mining registrar must give written notice of the day to—

- (a) each consultation party for the application; and
- (b) all other native title notification parties for the land to which the application relates who have not waived their rights to be heard.

‘(3) The notice must state that, at the hearing, each of the native title notification parties has a right to be heard by the tribunal about—

- (a) whether the surface alluvium (gold or tin) mining claim applied for is to be granted; and
- (b) any other matter relating to the grant.

¹⁵ Section 72 (Mining regulation to fix hearing date)

‘(4) The mining registrar must not, under section 74,¹⁶ grant the application without a hearing.

‘Tribunal must consider consultation matters and agreed issues

‘453. In hearing the application under section 77 and in making a decision under section 78, the tribunal must take into account—

- (a) the consultation matters; and
- (b) any issue agreed between the consultation parties; and
- (c) any other matter raised before the tribunal by a native title notification party relating to the grant of the surface alluvium (gold or tin) mining claim.

‘General time requirement for hearing

‘454.(1) The tribunal must take all reasonable steps to ensure the hearing for the application is finished—

- (a) within 3 months after the day the consultation parties were notified of the hearing; or
- (b) as soon as practicable.

‘(2) However, if the consultation parties ask, the tribunal may—

- (a) provide mediation about the issues in dispute to the extent that it considers referral of the parties to mediation will be consistent with finishing the combined hearing as soon as practicable; or
- (b) order further consultation on conditions it considers appropriate.

‘Subdivision 5—Notice of grant

‘Notice to other consultation parties

‘455.(1) This section applies if the mining registrar grants a surface

¹⁶ Section 74 (Grant of mining claim to which no objection lodged)

alluvium (gold or tin) mining claim over non-exclusive land.

‘(2) The holder of the mining claim must give written notice of the grant to each other consultation party for the application for the mining claim.

‘(3) The notice must be given within 28 days after the holder receives notice of the grant.

‘Division 3—Other mining claims on alternative provision areas

‘Application of div 3

‘456.(1) This division states additional requirements that apply for the granting of a proposed mining claim over non-exclusive land under part 4, other than a surface alluvium (gold or tin) mining claim.

‘(2) The additional requirements apply to a grant of a type mentioned in subsection (1) over non-exclusive land that is all or part of an alternative provision area, unless an election is made under subsection (3).

‘(3) The applicant may elect that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Requirement for grant

‘457.(1) The additional requirements applying under part 17, division 3¹⁷ for the granting of a proposed mining lease also apply for the granting of the proposed mining claim.

‘(2) The requirements apply—

- (a) in addition to the requirements of part 4;¹⁸ and
- (b) with necessary changes.

¹⁷ Part 17 (Native title provisions for mining leases), division 3 (Other mining leases on alternative provision areas)

¹⁸ Part 4 (Mining claims)

‘(3) However, for applying section 590¹⁹ and other provisions about consultation and negotiation parties, the State is not a consultation and negotiation party.

‘Applying pt 17, div 3 for grant

‘458.(1) This section—

- (a) applies for applying the provisions of part 17, division 3; and
- (b) does not limit section 457(1).

(2) Section 604(3)²⁰ is taken to require that the mining registrar may not act under section 74 to grant the mining claim unless a negotiated agreement has been reached.

(3) Sections 605(2) and (3), 609 and 612²¹ do not apply.

(4) For applying section 610²²—

- (a) if the native title issues decision is that the proposed mining claim may be granted—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim; and
- (b) if the native title issues decision is that the proposed mining claim may be granted subject to conditions to be included in the mining claim—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim subject to the conditions; and
- (c) if the native title issues decision is that the proposed mining claim may be granted subject to contract conditions—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim; and

¹⁹ Section 590 (Parties to consultation and negotiation)

²⁰ Section 604 (Combined hearing)

²¹ Sections 605 (Fixing of date for combined hearing), 609 (Overruling of native title issues decision) and 612 (Deferred matters)

²² Section 610 (Effect of native title issues decision)

- (d) if the native title issues decision is that the proposed mining claim should not be granted—the tribunal must instruct the mining registrar not to grant the application.

‘Division 4—Other mining claims not on alternative provision areas

‘Application of div 4

‘459.(1) This division states additional requirements that apply for the granting of a proposed mining claim over non-exclusive land under part 4, other than a surface alluvium (gold or tin) mining claim.

‘(2) The additional requirements do not apply for non-exclusive land that is an alternative provision area unless, under section 456, the additional requirements in this division are applied instead of the additional requirements in division 3.

‘Requirement for grant

‘460.(1) The additional requirements applying under part 17, division 4²³ for the granting of a proposed mining lease also apply for the granting of the proposed mining claim.

‘(2) The requirements apply—

- (a) in addition to the requirements of part 4;²⁴ and
- (b) with necessary changes.

‘Applying pt 17, div 4 for grant

‘461.(1) This section—

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 460(1).

²³ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases on non-alternative provision areas)

²⁴ Part 4 (Mining claims)

‘(2) Section 636(3)²⁵ is taken to require that the mining registrar may not act under section 74 to grant the mining claim unless a negotiated agreement has been reached.

‘(3) Sections 637(2) and (3), 641 and 644²⁶ do not apply.

‘(4) For applying section 642²⁷—

- (a) if the native title issues decision is that the proposed mining claim may be granted—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim; and
- (b) if the native title issues decision is that the proposed mining claim may be granted subject to conditions to be included in the mining claim—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim subject to the conditions; and
- (c) if the native title issues decision is that the proposed mining claim may be granted subject to contract conditions—the tribunal is not stopped from instructing the mining registrar to grant the proposed mining claim; and
- (d) if the native title issues decision is that the proposed mining claim should not be granted—the tribunal must instruct the mining registrar not to grant the application.

‘Division 5—Renewals of mining claims

‘Application of div 5

‘**462.(1)** This division states additional requirements that apply for the renewal of a mining claim over non-exclusive land under part 4.

‘(2) In subsection (1)—

²⁵ Section 636 (Combined hearing)

²⁶ Sections 637 (Fixing of date for combined hearing), 641 (Overruling of native title issues decision) and 644 (Deferred matters)

²⁷ Section 642 (Effect of native title issues decision)

“renewal”, of a mining claim, includes—

- (a) the re-grant of the mining claim; and
- (b) the re-making of the mining claim; and
- (c) the extension of the term of the mining claim.

‘Requirements for renewal

‘463.(1) If the mining claim is a surface alluvium (gold or tin) mining claim, division 2 applies, with necessary changes, to the renewal of the mining claim as if the renewal were the granting of the mining claim.

‘(2) If the mining claim is not a surface alluvium (gold or tin) mining claim, divisions 3 and 4 apply, with necessary changes, to the renewal of the mining claim as if the renewal were the granting of the mining claim.

‘Division 6—Requirements for subsidiary approvals

‘Requirements for approval—adding minerals to mining claim

‘464.(1) This division applies to an application, under section 105,²⁸ for approval to add stated minerals to a mining claim over non-exclusive land.

‘(2) Divisions 3 and 4 apply, with necessary changes, to the application as if the approval were the granting of a mining claim.

²⁸ Section 105 (Mining other minerals)

PART 15—NATIVE TITLE PROVISIONS FOR EXPLORATION PERMITS

Division 1—Preliminary

Purpose of pt 15

465.(1) The purpose of this part is—

- (a) to state additional requirements that apply for—
 - (i) the granting of a proposed exploration permit, or the variation or renewal of an exploration permit, under part 5 if the permit is a low impact exploration permit over non-exclusive land; and
 - (ii) the exercise of the entitlement, under a low impact exploration permit, to enter non-exclusive land; and
- (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26A²⁹ of the Commonwealth Native Title Act.

(2) The purpose of this part is also—

- (a) to state additional requirements that apply for the granting of a proposed exploration permit, or the variation or renewal of an exploration permit, under part 5 if the permit is a high impact exploration permit over—
 - (i) an alternative provision area; or
 - (ii) non-exclusive land other than land that includes all or part of an alternative provision area; and

²⁹ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

-
- (b) in stating the additional requirements, to provide alternative provisions under sections 43 and 43A of the Commonwealth Native Title Act.³⁰

‘Exclusion of certain agreed exploration permits from pt 15

‘466.This part does not apply to an exploration permit—

- (a) if—
- (i) there is an indigenous land use agreement for an area registered on the register of indigenous land use agreements; and
 - (ii) the agreement provides that an exploration permit, that must include conditions stated or described in the agreement, may be granted over land included in the area other than in compliance with the right to negotiate provisions; and
 - (iii) the agreement also provides that this part does not apply to land included in the area; and
 - (iv) the exploration permit includes the conditions mentioned in subparagraph (ii); and
 - (v) the exploration permit is granted over land included in the area; or
- (b) if the exploration permit—
- (i) was the subject of negotiation under the right to negotiate provisions; and
 - (ii) the negotiation resulted in an agreement that included an entitlement for the applicant for the exploration permit to apply for and be granted the exploration permit without further consultation, or negotiation.

³⁰ Sections 43 (Modification of Subdivision if satisfactory alternative State or Territory provisions) and 43A (Exception to right to negotiate: satisfactory State/Territory provisions) of the Commonwealth Native Title Act.

‘Limitation of application of pt 15 to exploration permit in approved opal or gem mining area

‘467. This part applies to a proposed exploration permit in an approved opal or gem mining area only if under section 26C(1A) of the Commonwealth Native Title Act the grant of the permit is not an act excluded from the application of the right to negotiate provisions.

‘Meaning of “low impact exploration permit”

‘468. For this part, a **“low impact exploration permit”** is an exploration permit that—

- (a) is granted over land that is, or that includes, non-exclusive land; and
- (b) has a condition that only low impact activities may be carried out under the permit.

‘Meaning of “low impact activity”

‘469. For this part, a **“low impact activity”**, for an exploration permit, means the following activities—

- (a) aerial surveys;

Examples—

geological, geophysical, photogrammetric and topographic aerial surveys.

- (b) geological and surveying field work that does not involve clearing;

Examples—

- flagging of sites and sample locations
- geological reconnaissance and field mapping
- surveying that does not involve clearing.

- (c) sampling by hand methods;

Examples—

- grab sampling
- mine tailings and mine mullock sampling

- panning and sieving
- rock chip sampling
- stream sediment sampling (disturbed and undisturbed samples)
- soil sampling (disturbed and undisturbed samples)
- water sampling.

(d) ground-based geophysical surveys that do not involve clearing;

Examples—

- potential-field methods of surveying, including, for example, gravity, magnetic and radiometric surveys
- electrical methods of surveying, including, for example, electromagnetic, ground penetrating radar, induced polarisation and resistivity surveys
- seismic methods of surveying, including, for example, ‘hammer’, refraction and vibration-sourced surveys.

(e) drilling and activities associated with drilling that does not involve clearing or site excavation, other than clearing or site excavation that is the minimum necessary to establish a drill pad;

Examples—

- auger drilling
- downhole geophysical logging
- mechanical drilling.

(f) environmental field work that does not involve clearing.

Examples—

- cultural heritage, environmental and geobotanical surveys
- environmental monitoring.

‘Meaning of “high impact exploration permit”

‘470. For this part, a **“high impact exploration permit”** is an exploration permit that—

- (a) is granted over land that is, or includes, non-exclusive land; and

-
- (b) has a condition that activities may be carried out under the permit, whether or not the activities are low impact activities.

‘Division 2—Low impact exploration permits

‘Subdivision 1—Preliminary

‘Application of div 2

‘471. This division states additional requirements for the granting of a proposed low impact exploration permit over non-exclusive land.

‘Definitions for div 2

‘472. In this division—

“applicant” means the applicant for the proposed low impact exploration permit.

“application notice” see section 473(1).

“consultation period” see section 476(1).

“consultation start day”, for an exploration permit, see section 476(1)(a).

‘Subdivision 2—Notification requirements

‘Requirement to notify

‘473.(1) The applicant must give written notice (**“application notice”**) of the applicant’s intention to lodge an application for a low impact exploration permit, or of the lodgement of the application, to—

- (a) each native title notification party for the land to which the application relates; and
- (b) the mining registrar.

‘(2) The notice must be given no earlier than 1 month before the lodgement and no later than 7 days after the lodgement.

‘(3) The notice must state the following—

- (a) whether or not the application has been lodged;
- (b) a description of the land;
- (c) details of the activities proposed for the land under a program of work;
- (d) an outline of the expected impact on the land of the proposed activities;
- (e) that the applicant must not act under the permit applied for to enter non-exclusive land unless the applicant has complied with all the applicant’s obligations for consultation with the native title notification parties provided for in subdivision 3.

‘(4) The notice may also state a day for consultation to start under subdivision 3.

‘(5) The day must be at least 1 month after the giving of the notice to all of the native title notification parties.

‘Subdivision 3—Consultation requirements before entry

‘Requirement to consult

‘474.(1) It is a condition of a low impact exploration permit that the permit holder must not act under the permit to enter non-exclusive land unless the holder has consulted with each native title notification party for the land to which the permit relates.

‘(2) However, the condition does not require consultation with a native title notification party about an entry if the party has given the permit holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

‘Consultation matters

‘475.(1) The purpose of the consultation is to minimise the impact of the entry or activities authorised under the low impact exploration permit on the exercise of native title rights and interests in relation to the land that will be affected by the entry or activities.

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)³¹ of the Commonwealth Native Title Act, as follows—

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;
- (b) any access to the land or waters to which the native title rights and interests relate by—
 - (i) the persons mentioned in paragraph (a); or
 - (ii) any person who will do anything that is authorised because of, or results from, or otherwise relates to, the entry;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the entry and affects native title rights and interests, is to be done.

‘Consultation period

‘476.(1) The **“consultation period”** for the entry—

- (a) starts on the day (the **“consultation start day”**)—
 - (i) stated for that purpose in the application notice for the permit; or
 - (ii) if the day was not stated in the application notice, stated in a written notice given to each of the native title notification parties by the permit holder; and
- (b) ends 2 months after the start day.

³¹ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

‘(2) A notice under subsection (1)(a)(ii) must be given at least 1 month before the start day.

‘(3) The holder and the native title notification parties may agree to extend the consultation period.

‘(4) If at any time the holder and the native title notification parties agree there has been enough consultation, the consultation period is taken to be ended.

‘Native title notification parties may seek mediation

‘477.(1) In the consultation period, the native title notification parties may ask the mining registrar to hold a conference for mediation about the application.

‘(2) Sections 169 to 174 apply to the conference as if the request were a request by an owner of land affected by the application.

‘(3) Despite section 170(3),³² a native title notification party or the permit holder may be represented at the conference by a lawyer.

‘(4) Subject to any order made under section 174, a party to the conference must pay the party’s own costs for the conference.

‘Notice of result of consultation

‘478.(1) The permit holder must, and any native title notification party may, as soon as practicable after the consultation period ends, give a written notice to the mining registrar about the consultation.

‘(2) The notice must state—

- (a) details of the consultation undertaken in the consultation period; and
- (b) any outcome of the consultation; and
- (c) the day the permit holder entered the land to which the native title rights and interests relate or, if the holder has not entered the land, the day the holder proposes to enter.

³² Section 170 (Who may attend conference)

‘(3) A party who gives a notice to the mining registrar under this section must also give a copy of the notice to each other party.

‘(4) In this section—

“party” means—

- (a) a permit holder; or
- (b) a native title notification party.

‘Mining registrar may recommend action

‘479. The mining registrar may recommend action to the Minister to address any matter raised by a native title notification party in the consultation.

‘Division 3—High impact exploration permits on alternative provision areas

‘Subdivision 1—Preliminary

‘Application of div 3

‘480.(1) This division states additional requirements that apply for the granting of a proposed high impact exploration permit over non-exclusive land.

‘(2) The additional requirements apply to the extent the non-exclusive land includes all or part of an alternative provision area, unless an election is made under subsection (3).

‘(3) The applicant may elect that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Definitions for div 3

‘481. In this division—

“**applicant**” means the applicant for the proposed high impact exploration permit.

“**application notice**” see section 482(1).

“**closing day (native title issues)**”, for the proposed high impact exploration permit, see section 483(3).

“**consultation period**”, for the proposed high impact exploration permit, means the period described in section 492.

“**consultation start day**” see section 491(1).

“**hearing day**” see section 491(2).

“**notification day (native title issues)**”, for the proposed high impact exploration permit, see section 483(2).

“**objector**” see section 494(3).

“**registered native title party**”, for the proposed high impact exploration permit, means a person who is a registered native title claimant or a registered native title body corporate.

‘Subdivision 2—Notification requirements and right to object

‘Requirement to notify

‘**482.(1)** The applicant must give a written notice (“**application notice**”) about the proposed high impact exploration permit to all native title notification parties for the alternative provision area over which the proposed permit is to be granted.

‘**(2)** The notice must be given within 14 days of the applicant being notified of the Minister’s decision, under section 144(1) or (3),³³ of the amount of security to be deposited if the permit is granted.

‘**(3)** The notice may be about more than 1 proposed permit.

³³ Section 144 (Provision of security)

‘Content of notice

‘483.(1) The application notice must state the following—

- (a) the following days for the proposed high impact exploration permit—
 - (i) the notification day (native title issues);
 - (ii) the closing day (native title issues);
- (b) a clear description of the alternative provision area;
- (c) a description of the nature of the proposed permit;
- (d) that the proposed permit, if granted, will be granted by the Minister;
- (e) how further information about the proposed permit can be obtained from the applicant or the mining registrar;
- (f) that registered native title parties have a right to object to the granting of the proposed permit so far as it affects their registered native title rights and interests;
- (g) that an objection must—
 - (i) be in the approved form; and
 - (ii) state the grounds for objection and the facts and circumstances relied on in support of the grounds; and
 - (iii) be lodged with the mining registrar on or before the closing day (native title issues);
- (h) that if a registered native title party objects, the applicant must consult with the party.

‘(2) The **“notification day (native title issues)”** must be a day that may reasonably be assumed to be a day by which the written notice will have been received by the persons to whom it is to be given.

‘(3) The **“closing day (native title issues)”** must be a day at least 2 months after the notification day (native title issues).

‘Advice to mining registrar

‘484.(1) Within 1 month of being notified of the Minister’s decision, under section 144(1) or (3), the applicant must give the mining registrar a statutory declaration declaring that the applicant has given an application notice under this subdivision.

‘(2) If the mining registrar considers an application notice has not been given under this subdivision, the mining registrar may fix a further period for the giving of the notice.

‘Right to object

‘485.(1) Each registered native title party has a right to object to the granting of the proposed high impact exploration permit so far as it affects their registered native title rights and interests.

‘(2) An objection must—

- (a) be in the approved form; and
- (b) state the grounds for objection and the facts and circumstances relied on in support of the grounds; and
- (c) be lodged with the mining registrar on or before the closing day (native title issues).

‘Ending of additional requirements if no objection lodged

‘486. If no objection is lodged by the closing day (native title issues), the additional requirements under subdivisions 3 and 4 stop applying for the proposed high impact exploration permit.

‘Subdivision 3—Consultation and mediation

‘Application of sdiv 3

‘487. This subdivision applies only if an objection is lodged by the closing day (native title issues).

‘Notice of objections by mining registrar

‘488. The mining registrar, must as soon as practicable after the closing day (native title issues) give the applicant—

- (a) a copy of each objection; and
- (b) a written notice that the applicant must—
 - (i) consult with all objectors; and
 - (ii) fix the consultation start day; and
 - (iii) give written notice of the day to each objector and the mining registrar.

‘Requirement to consult

‘489. The applicant must consult with each objector under this subdivision.

‘Consultation matters

‘490. The consultation must be about ways of minimising the effect of the grant of the proposed high impact exploration permit on registered native title rights and interests in relation to the land or waters concerned, including any access to the land or waters or the way in which anything authorised by the permit may be done.

‘Fixing of consultation start day and hearing day

‘491.(1) The applicant must—

- (a) fix a day (the **“consultation start day”**) for the consultation to start; and
- (b) give written notice of the day to each objector and the mining registrar.

‘(2) The mining registrar must, as soon as practicable after receiving the notice, fix a day (the **“hearing day”**) for the tribunal to hear the objections.

‘(3) The hearing day must be after the consultation period ends.

‘(4) After fixing the hearing day, the mining registrar must notify the applicant and each objector of the day.

‘Consultation period

‘492. The “consultation period” for the proposed high impact exploration permit starts on the consultation start day and ends—

- (a) if paragraph (b) does not apply—2 months after the consultation start day; or
- (b) if the applicant and objectors agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing of the agreed later time—at the agreed later time.

‘Request for mediation

‘493.(1) At any time in the consultation period, the applicant or an objector may ask for mediation to help in resolving issues relevant to the consultation.

‘(2) If a request for mediation is made, mediation must be carried out in the consultation period by—

- (a) a mediator chosen by the applicant and the objectors; or
- (b) if the applicant and the objectors are not able to agree on a mediator and the applicant or an objector asks the tribunal to provide the mediation—the tribunal, or a mediator chosen by the tribunal.

‘Process for consultation—guidelines for applicant

‘494.(1) This section sets out guidelines for the applicant to consult under this subdivision.

‘(2) The consultation should start as soon as practicable after the consultation period starts.

‘(3) The applicant should—

-
- (a) give each registered native title party for the alternative provision area who objects under section 485 (“**objector**”) information about the activities under the application; and
 - (b) convene at least 1 meeting (“**consultation meeting**”) to provide a reasonable opportunity for all objectors to be given a presentation about the activities proposed under the high impact exploration permit.

‘(4) A consultation meeting may be—

- (a) in the town or city where the mining registrar’s office is located; or
- (b) in a town or city in which there is an office of the representative Aboriginal/Torres Strait Islander body for the area that includes the alternative provision area; or
- (c) another place agreed between the applicant and the objectors.

‘(5) A consultation meeting should be convened at a time and place suitable for maximising attendance.

‘(6) If the applicant has convened a consultation meeting under subsection (3)(b), the meeting is taken to have happened even though not all, or none, of the objectors attend the meeting.

‘(7) The presentation mentioned in subsection (3)(b) should be directed at providing objectors with an understanding of the anticipated nature, extent and impact of the project authorised by the grant of the high impact exploration permit applied for.

‘**Process for consultation—agreement with or without conditions**

‘**495.(1)** This section applies if an agreement is obtained, whether or not the agreement includes conditions to be complied with by the applicant or an objector if the proposed high impact exploration permit is granted.

‘(2) The applicant and the objectors must give a written notice to the mining registrar stating that an agreement has been obtained for the grant of the permit.

‘(3) When the notice is given, the additional requirements provided for under subdivision 4 stop applying to the proposed permit.

‘Process for consultation—agreement with conditions

‘**496.(1)** This section applies if an agreement is obtained, and the agreement includes conditions to be complied with by the applicant or an objector if the proposed high impact exploration permit is granted.

‘(2) The agreement has effect, if the proposed permit is granted, as if—

- (a) the conditions included in the agreement are the terms of a contract; and
- (b) the applicant and the objector are parties to the contract; and
- (c) if an objector is a registered native title claimant—any individual included in the native title claim group concerned is a party to the contract.

‘(3) Subsection (2) has effect in addition to any other effect that the agreement may have apart from under subsection (2).

‘Subdivision 4—Hearing of objections and tribunal’s decision**‘Hearing of objections by tribunal**

‘**497.** If the consultation period has ended and agreement has not been obtained, the tribunal must hear the objections on the hearing day.

‘Directions for hearing

‘**498.** The tribunal may give directions to the applicant and the objectors, including directions about the filing and serving of—

- (a) a statement by each objector, stating the effect of the proposed high impact exploration permit on the objector’s registered native title rights and interests; or
- (b) submissions by the applicant or any objector on the matters the tribunal must consider at the hearing.

‘Matters tribunal must consider

‘499. In making a decision, the tribunal must consider—

- (a) the content of all objections lodged and submissions made; and
- (b) the effect of the proposed high impact exploration permit on each objector’s registered native title rights and interests; and
- (c) any way to minimise the proposed permit’s impact on the registered native title rights and interests of the objectors, including in relation to—
 - (i) any access to the land over which the proposed permit is to be granted; and
 - (ii) the way in which anything authorised under the proposed permit might be done.

‘General time requirement for hearing

‘500.(1) The tribunal must take all reasonable steps to ensure the decision is made within 2 months after the hearing day.

‘(2) If the decision is not made within the 2 months, the tribunal must, as soon as practicable after the 2 months ends, give a written notice to the Minister—

- (a) advising why the decision has not yet been made; and
- (b) giving an estimate of when the decision is likely to be made.

‘Nature of tribunal’s decision

‘501. The tribunal’s decision must be that—

- (a) the objections be overruled; or
- (b) the objections be upheld; or
- (c) the proposed high impact exploration permit, if granted, contain conditions relating to an objector’s registered native title rights and interests.

‘Overruling of tribunal’s decision

‘502.(1) The Minister may overrule the decision only if—

- (a) the Minister principally responsible for indigenous affairs is consulted; and
- (b) the consultation is taken into account; and
- (c) it is in the interests of Queensland to overrule the decision.³⁴

‘(2) If the Minister overrules the decision, the Minister must make a substituted decision, and the substituted decision has effect as the decision.

‘(3) The Minister must give a copy of the substituted decision to the tribunal, the applicant and each objector.

‘(4) In this section—

“in the interests of Queensland” includes—

- (a) for the social or economic benefit of Queensland, including of Aboriginal peoples and Torres Strait Islanders; and
- (b) in the interests of the relevant region or locality in Queensland.

‘Division 4—High impact exploration permits not on alternative provision areas

‘Application of div 4

‘503.(1) This division states additional requirements that apply for the granting of a proposed high impact exploration permit over non-exclusive land.

‘(2) The additional requirements do not apply for non-exclusive land that is an alternative provision area, unless, under section 480 the additional requirements in this division are applied instead of the additional requirements in division 3.

³⁴ See also section 383 (Appeals from tribunal)

‘Requirements for grant

‘504.(1) The additional requirements applying under part 17, division 4 for the granting of a proposed mining lease also apply for the granting of the proposed high impact exploration permit.

‘(2) The requirements apply—

- (a) in addition to the requirements of part 5; and
- (b) with necessary changes.

‘Applying pt 17, div 4 for grant

‘505.(1) This section—

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 504(1).

(2) For applying section 616,³⁵ the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the period of 14 days after the applicant is notified of the Minister’s decision under section 144(1)³⁶ or (3) of the amount of security to be deposited if the permit is granted.

(3) For applying section 623,³⁷ the following day is substituted for the day mentioned in 623(1)(b), that is, the day the applicant is notified of the Minister’s decision under section 144(1) or (3) of the amount of security to be deposited if the permit is granted.

(4) For applying part 17, division 4, subdivisions 4 and 5,³⁸ if the proposed exploration permit is referred to the tribunal for a native title issues decision, there is not a combined hearing, but a hearing is held for the

³⁵ Section 616 (Requirement to notify)

³⁶ Section 144 (Provision of security)

³⁷ Section 623 (Consultation and negotiation period)

³⁸ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision area), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

native title issues decision, including the hearing of any objections lodged under section 632³⁹ as applied under this section.

(5) The Minister must not grant the exploration permit under section 137⁴⁰ unless—

- (a) the additional requirements provided for under part 17, division 4, as applied under this section, have stopped applying to the proposed exploration permit; or
- (b) a native title issues decision has been made for the proposed exploration permit.

Division 5—Renewals of exploration permits

‘Application of div 5

‘506.(1) This division states additional requirements that apply for the renewal of an exploration permit over non-exclusive land under part 5.

‘(2) In subsection (1)—

“renewal”, of an exploration permit, includes—

- (a) the re-grant of the exploration permit; and
- (b) the re-making of the exploration permit; and
- (c) the extension of the term of the exploration permit.

‘Requirements for renewal

‘507.(1) If the exploration permit is a low impact exploration permit, division 2 applies, with the necessary changes, to the renewal of the exploration permit as if the renewal were the granting of the exploration permit.

³⁹ Section 632 (Objection during consultation and negotiation period)

⁴⁰ Section 137 (Grant of exploration permit)

‘(2) If the exploration permit is a high impact exploration permit, divisions 3 and 4 apply, with the necessary changes, to the renewal of the exploration permit as if the renewal were the granting of the exploration permit.

‘Division 6—Requirements for subsidiary approvals

‘Application of div 6

‘508. This division applies to the following applications—

- (a) an application to vary the conditions of a low impact exploration permit over non-exclusive land to allow for high impact exploration activities;
- (b) an application to vary the conditions of a high impact exploration permit on an alternative provision area to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area;
- (c) an application to vary the conditions of an exploration permit granted on land where native title has been extinguished to include non-exclusive land.

‘Requirements for variation—low impact exploration permit

‘509.(1) If the application is to vary the conditions of a low impact exploration permit to allow for high impact exploration activities on an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under the division.

‘(2) If the application is to vary the conditions of a low impact exploration permit to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under the division.

‘Requirements for variation—high impact exploration permit

‘510.(1) This section applies if the application is to vary the conditions of a high impact exploration permit for an alternative provision area to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area.

‘(2) Division 4 applies, with necessary changes, as if the application were an application under that division.

‘Requirements for variation—other exploration permits

‘511.(1) This section applies to an application to vary the conditions of an exploration permit granted only over land where native title has been extinguished to include non exclusive land.

‘(2) If the application is for low impact activities, division 2 applies, with necessary changes, as if the application were an application under that division.

‘(3) If the application is for high impact exploration activities on an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under that division.

‘(4) If the application is for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under that division.

**‘PART 16—NATIVE TITLE PROVISIONS FOR
MINERAL DEVELOPMENT LICENCES**

‘Division 1—Preliminary

‘Purpose of pt 16

‘512.(1) The purpose of this part is—

-
- (a) to state additional requirements that apply for—
- (i) the granting of a proposed mineral development licence, or the variation or renewal of a mineral development licence, under part 6 if the licence is a low impact mineral development licence over non-exclusive land; and
 - (ii) the exercise of the entitlement, under a low impact mineral development licence, to enter non-exclusive land; and
- (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26A⁴¹ of the Commonwealth Native Title Act.

‘(2) The purpose of this part is also—

- (a) to state additional requirements that apply for the granting of a proposed mineral development licence, or the variation or renewal of a mineral development licence, under part 6 if the licence is a high impact mineral development licence over—
 - (i) an alternative provision area; or
 - (ii) non-exclusive land other than land that includes all or part of an alternative provision area; and
- (b) in stating the additional requirements, to provide alternative provisions under sections 43 and 43A of the Commonwealth Native Title Act.⁴²

‘Exclusion of certain agreed mineral development licences from pt 16

‘513.This part does not apply to a mineral development licence—

- (a) if—

⁴¹ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

⁴² Sections 43 (Modification of Subdivision if satisfactory alternative State or Territory provisions) and 43A (Exception to right to negotiate: satisfactory State/Territory provisions) of the Commonwealth Native Title Act.

-
- (i) there is an indigenous land use agreement for an area registered on the register of indigenous land use agreements; and
 - (ii) the agreement provides that a mineral development licence, that must include conditions stated or described in the agreement, may be granted over land included in the area other than in compliance with the right to negotiate provisions; and
 - (iii) the agreement also provides that this part does not apply to land included in the area; and
 - (iv) the mineral development licence includes the conditions mentioned in subparagraph (ii); and
 - (v) the mineral development licence is granted over land included in the area; or
- (b) if the mineral development licence—
- (i) was the subject of negotiation under the right to negotiate provisions; and
 - (ii) the negotiation resulted in an agreement that included an entitlement for the applicant for the mineral development licence to apply for and be granted the mineral development licence without further consultation, or negotiation.

‘Limited application of pt 16 to mineral development licence in approved opal or gem mining area

‘514. This part applies to a proposed mineral development licence in an approved opal or gem mining area only if under section 26C(1A) of the Commonwealth Native Title Act the grant of the licence is not an act excluded from the application of the right to negotiate provisions.

‘Meaning of “low impact mineral development licence”

‘515. For this part, a “low impact mineral development licence” is a mineral development licence that—

-
- (a) is granted over land that is, or includes, non-exclusive land; and
- (b) has a condition that only low impact activities may be carried out under the licence.

‘Meaning of “low impact activity”

‘516. For this part, a **“low impact activity”**, for a mineral development licence, means the following activities—

- (a) aerial surveys;

Examples—

geological, geophysical, photogrammetric and topographic aerial surveys.

- (b) geological and surveying field work that does not involve clearing;

Examples—

- flagging of sites and sample locations
- geological reconnaissance and field mapping
- surveying that does not involve clearing.

- (c) sampling by hand methods;

Examples—

- grab sampling
- mine tailings and mine mullock sampling
- panning and sieving
- rock chip sampling
- stream sediment sampling (disturbed and undisturbed samples)
- soil sampling (disturbed and undisturbed samples)
- water sampling.

- (d) ground-based geophysical surveys that do not involve clearing;

Examples—

- potential-field methods of surveying, including, for example, gravity, magnetic and radiometric surveys

- electrical methods of surveying, including, for example, electromagnetic, ground penetrating radar, induced polarisation and resistivity surveys
 - seismic methods of surveying, including, for example, ‘hammer’, refraction and vibration-sourced surveys.
- (e) drilling and activities associated with drilling that does not involve clearing or site excavation, other than clearing or site excavation that is the minimum necessary to establish a drill pad;

Examples—

- auger drilling
 - downhole geophysical logging.
 - mechanical drilling.
- (f) environmental field work that does not involve clearing;
- Examples—*
- cultural heritage, environmental and geobotanical surveys
 - environmental monitoring.
- (g) investigations associated with mine feasibility and development.

Examples—

- engineering and design studies
- environmental studies and monitoring.

‘Meaning of “high impact mineral development licence”

‘517. For this part, a **“high impact mineral development licence”** is a mineral development licence that—

- (a) is granted over land that is, or includes, non-exclusive land; and
- (b) has a condition that activities may be carried out under the licence, whether or not the activities are low impact activities.

‘Division 2—Low impact mineral development licences

‘Subdivision 1—Preliminary

‘Application of div 2

‘518. This division states additional requirements that apply for the granting of a proposed low impact mineral development licence over non-exclusive land.

‘Definitions for div 2

‘519. In this division—

“applicant” means the applicant for the proposed low impact mineral development licence.

“application notice” see section 520(1).

“consultation period” see section 523.

“consultation start day”, for a mineral development licence, see section 523(1)(a).

‘Subdivision 2—Notification requirements

‘Requirement to notify

‘520.(1) The applicant must give written notice (**“application notice”**) of the applicant’s intention to lodge an application for a low impact mineral development licence, or of the lodgement of the application, to—

- (a) each native title notification party for the land to which the application relates; and
- (b) the mining registrar.

‘(2) The notice must be given no earlier than 1 month before the lodgement and no later than 7 days after the lodgement.

‘(3) The notice must state the following—

-
- (a) whether or not the application has been lodged;
 - (b) a description of the land;
 - (c) details of the activities proposed for the land;
 - (d) an outline of the expected impact on the land of the proposed activities;
 - (e) that the applicant must not act under the licence applied for to enter non-exclusive land unless the applicant has complied with all the applicant's obligations for consultation with the native title notification parties provided for in subdivision 3.

'(4) The notice may also state a day for consultation to start under subdivision 3.

'(5) The day must be at least 1 month after the giving of the notice to all of the native title notification parties.

'Subdivision 3—Consultation requirements before entry

'Requirement to consult

'521.(1) It is a condition of a low impact mineral development licence that the licence holder must not act under the licence to enter non-exclusive land unless the holder has consulted with each native title notification party for the land to which the licence relates.

'(2) However, the condition does not require consultation with a native title notification party about an entry if the party has given the licence holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

'Consultation matters

'522.(1) The purpose of the consultation is to minimise the impact of the entry or activities authorised under the low impact mineral development licence on the exercise of native title rights and interests in relation to the land that will be affected by the entry or activities.

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)⁴³ of the Commonwealth Native Title Act, as follows—

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;
- (b) any access to the land or waters to which the native title rights and interests relate by—
 - (i) the persons mentioned in paragraph (a); or
 - (ii) any person who will do anything that is authorised because of, or results from, or otherwise relates to, the entry;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the entry and affects native title rights and interests, is to be done.

‘Consultation period

‘523.(1) The “consultation period” for the entry—

- (a) starts on the day (the “consultation start day”)—
 - (i) stated for that purpose in the application notice for the licence; or
 - (ii) if the day was not stated in the application notice—stated in a written notice given to each of the native title notification parties by the licence holder; and
- (b) ends 2 months after the start day.

‘(2) A notice under subsection (1)(a)(ii) must be given at least 1 month before the start day.

‘(3) The holder and the native title notification parties may agree to extend the consultation period.

⁴³ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

‘(4) If at any time the holder and the native title notification parties agree there has been enough consultation, the consultation period is taken to end.

‘Native title notification parties may seek mediation

‘524.(1) In the consultation period, the native title notification parties may ask the mining registrar to hold a conference for mediation about the application.

‘(2) Sections 217 to 222 apply to the conference as if the request were a request by an owner of land affected by the application.

‘(3) Despite section 218(3),⁴⁴ a native title notification party or the licence holder may be represented at the conference by a lawyer.

‘(4) Subject to any order made under section 222, a consultation party must pay the party’s own costs for the conference.’.

‘Notice of result of consultation

‘525.(1) The licence holder must, and any native title notification party may, as soon as practicable after the consultation period ends, give a written notice to the mining registrar about the consultation.

‘(2) The notice must state—

- (a) details of the consultation undertaken in the consultation period; and
- (b) any outcome of the consultation; and
- (c) the day the licence holder entered the land to which the native title rights and interests relate or, if the licence holder has not entered the land, the day the holder proposes to enter.

‘(3) A party who gives a notice to the mining registrar under this section must also give a copy of the notice to each other party.

‘(4) In this section—

“party” means—

⁴⁴ Section 218 (Who may attend conference)

-
- (a) a licence holder; or
 - (b) a native title notification party.

‘Mining registrar may recommend action

‘526. The mining registrar may recommend action to the Minister to address any matter raised by a native title notification party in the consultation.

‘Division 3—High impact mineral development licences on alternative provision areas

‘Subdivision 1—Preliminary

‘Application of div 3

‘527.(1) This division states additional requirements that apply for the granting of a proposed high impact mineral development licence over non-exclusive land for an alternative provision area.

‘(2) The additional requirements apply only to the extent the non-exclusive land includes all or part of an alternative provision area, unless an election is made under subsection (3).

‘(3) The applicant may elect that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Definitions for div 3

‘528. In this division—

“**applicant**” means the applicant for the proposed high impact mineral development licence.

“**application notice**” see section 529(1).

“**closing day (native title issues)**”, for the proposed high impact mineral development licence, see section 530(3).

“consultation period”, for the proposed high impact mineral development licence, means the period described in section 539.

“consultation start day” see section 538(1).

“hearing day” see section 538(2).

“notification day (native title issues)”, for the proposed high impact mineral development licence, see section 530(2).

“objector” see section 541(3).

“registered native title party”, for the proposed high impact mineral development licence, means a person who is a registered native title claimant or a registered native title body corporate.

‘Subdivision 2—Notification requirements and right to object

‘Requirement to notify

‘529.(1) The applicant must give a written notice (**“application notice”**) about the proposed high impact mineral development licence to all native title notification parties for the alternative provision area over which the proposed licence is to be granted.

‘(2) The notice must be given within 14 days of the applicant being notified of the Minister’s decision, under section 190(1),⁴⁵ of the amount of security to be deposited if the licence is granted.

‘(3) The notice may be about more than 1 proposed licence.

‘Content of notice

‘530.(1) The application notice must state the following—

- (a) the following days for the proposed high impact mineral development licence—
 - (i) the notification day (native title issues);

⁴⁵ Section 190 (Provision of security)

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- (ii) the closing day (native title issues);
 - (b) a clear description of the alternative provision area;
 - (c) a description of the nature of the proposed licence;
 - (d) that the proposed licence, if granted, will be granted by the Minister;
 - (e) how further information about the proposed licence can be obtained from the applicant or the mining registrar;
 - (f) that registered native title parties have a right to object to the granting of the proposed licence so far as it affects their registered native title rights and interests;
 - (g) that an objection must—
 - (i) be in the approved form; and
 - (ii) state the grounds for objection and the facts and circumstances relied on in support of the grounds; and
 - (iii) be lodged with the mining registrar on or before the closing day (native title issues);
 - (h) that if a registered native title party objects, the applicant must consult with the party.

‘(2) The “**notification day (native title issues)**” must be a day that may reasonably be assumed to be a day by which the written notice will have been received by the persons to whom it is to be given.

‘(3) The “**closing day (native title issues)**” must be a day at least 2 months after the notification day (native title issues).

‘Advice to mining registrar

‘**531.(1)** Within 1 month of being notified of the Minister’s decision, under section 190(1), the applicant must give the mining registrar a statutory declaration declaring that the applicant has given an application notice under this subdivision.

‘(2) If the mining registrar considers an application notice has not been given under this subdivision, the mining registrar may fix a further period for the giving of the notice.

‘Right to object

‘532.(1) Each registered native title party has a right to object to the granting of the proposed high impact mineral development licence so far as it affects their registered native title rights and interests.

‘(2) An objection must—

- (a) be in the approved form; and
- (b) state the grounds for objection and the facts and circumstances relied on in support of the grounds; and
- (c) be lodged with the mining registrar on or before the closing day (native title issues).

‘Ending of additional requirements if no objection lodged

‘533. If no objection is lodged by the closing day (native title issues), the additional requirements under subdivisions 3 and 4 stop applying for the proposed high impact mineral development licence.

‘Subdivision 3—Consultation and mediation

‘Application of sdiv 3

‘534. This subdivision applies if an objection is lodged by the closing day (native title issues).

‘Notice of objections by mining registrar

‘535. The mining registrar, must as soon as practicable after the closing day (native title issues), give the applicant—

- (a) a copy of each objection; and

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- (b) a written notice that the applicant must—
- (i) consult with all objectors; and
 - (ii) fix the consultation start day; and
 - (iii) give written notice of the day to each objector and the mining registrar.

‘Requirement to consult

‘536. The applicant must consult with each objector under this subdivision.

‘Consultation matters

‘537. The consultation must be about ways of minimising the effect of the grant of the proposed high impact mineral development licence on registered native title rights and interests in relation to the land or waters concerned, including any access to the land or waters or the way in which anything authorised by the licence may be done.

‘Fixing of consultation start day and hearing day

‘538.(1) The applicant must—

- (a) fix a day (the “**consultation start day**”) for the consultation to start ; and
- (b) give written notice of the day to each objector and the mining registrar.

‘(2) The mining registrar must, as soon as practicable after receiving the notice, fix a day (the “**hearing day**”) for the tribunal to hear the objections.

‘(3) The hearing day must be after the consultation period ends.

‘(4) After fixing the hearing day, the mining registrar must notify the applicant and each objector of the day.

‘Consultation period

‘539. The “**consultation period**” for the proposed high impact mineral development licence starts on the consultation start day and ends—

- (a) if paragraph (b) does not apply—2 months after the consultation start day; or
- (b) if the applicant and objectors agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing of the agreed later time—at the agreed later time.

‘Request for mediation

‘540.(1) At any time in the consultation period, the applicant or an objector may ask for mediation to help in resolving issues relevant to the consultation.

‘(2) If a request for mediation is made, mediation must be carried out in the consultation period by—

- (a) a mediator chosen by the applicant and the objectors; or
- (b) if the applicant and the objectors are not able to agree on a mediator and the applicant or an objector asks the tribunal to provide the mediation—the tribunal, or a mediator chosen by the tribunal.

‘Process for consultation—guidelines for applicant

‘541.(1) This section states guidelines for the applicant to consult under this subdivision.

‘(2) The consultation should start as soon as practicable after the consultation period starts.

‘(3) The applicant should—

- (a) give each registered native title party for the alternative provision area who objects under section 532 (“**objector**”) information about the activities under the application; and

- (b) convene at least 1 meeting (“**consultation meeting**”) to provide a reasonable opportunity for all objectors to be given a presentation about the activities proposed under the high impact mineral development licence.

‘(4) A consultation meeting may be—

- (a) in the town or city where the mining registrar’s office is located; or
- (b) in a town or city in which there is an office of the representative Aboriginal/Torres Strait Islander body for the area that includes the alternative provision area; or
- (c) another place agreed between the applicant and the objectors.

‘(5) A consultation meeting should be convened at a time and place suitable for maximising attendance.

‘(6) If the applicant has convened a consultation meeting under subsection (3)(b), the meeting is taken to have happened even though not all, or none, of the objectors attend the meeting.

‘(7) The presentation mentioned in subsection (3)(b) should be directed at providing objectors with an understanding of the anticipated nature, extent and impact of the project authorised by the grant of the high impact mineral development licence applied for.

‘**Process for consultation—agreement with or without conditions**

‘**542.(1)** This section applies if an agreement is obtained, whether or not the agreement includes conditions to be complied with by the applicant or an objector if the proposed high impact mineral development licence is granted.

‘(2) The applicant and the objectors must give a written notice to the mining registrar stating that an agreement has been obtained for the grant of the licence.

‘(3) When the notice is given, the additional requirements provided for under subdivision 4 stop applying to the proposed licence.

‘Process for consultation—agreement with conditions

‘543.(1) This section applies if an agreement is obtained, and the agreement includes conditions to be complied with by the applicant or an objector if the proposed high impact mineral development licence is granted.

‘(2) The agreement has effect, if the proposed licence is granted, as if—

- (a) the conditions included in the agreement were the terms of a contract; and
- (b) the applicant and the objector were parties to the contract; and
- (c) if an objector is a registered native title claimant—any individual included in the native title claim group concerned were a party to the contract.

‘(3) Subsection (2) has effect in addition to any other effect that the agreement may have apart from under subsection (2).

‘Subdivision 4—Hearing of objections and tribunal’s decision**‘Hearing of objections by tribunal**

‘544. If the consultation period has ended and agreement has not been obtained, the tribunal must hear the objections on the hearing day.

‘Directions for hearing

‘545. The tribunal may give directions to the applicant and the objectors, including directions about the filing and serving of—

- (a) a statement by each objector, stating the effect of the proposed high impact mineral development licence on the objector’s registered native title rights and interests; or
- (b) submissions by the applicant or any objector on the matters the tribunal must consider at the hearing.

‘Matters tribunal must consider

‘546. In making a decision, the tribunal must consider—

- (a) the content of all objections lodged and submissions made; and
- (b) the effect of the proposed high impact mineral development licence on each objector’s registered native title rights and interests; and
- (c) any way to minimise the proposed licence’s impact on the registered native title rights and interests of the objectors, including in relation to—
 - (i) any access to the land over which the proposed licence is to be granted; and
 - (ii) the way in which anything authorised under the proposed licence might be done.

‘General time requirement for hearing

‘547.(1) The tribunal must take all reasonable steps to ensure the decision is made within 2 months after the hearing day.

‘(2) If the decision is not made within the 2 months, the tribunal must, as soon as practicable after the 2 months ends, give a written notice to the Minister—

- (a) advising why the decision has not yet been made; and
- (b) giving an estimate of when the decision is likely to be made.

‘Nature of tribunal’s decision

‘548. The tribunal’s decision must be that—

- (a) the objections be overruled; or
- (b) the objections be upheld; or
- (c) the proposed high impact mineral development licence, if granted, contain conditions relating to an objector’s registered native title rights and interests.

‘Overruling of tribunal’s decision

‘549.(1) The Minister may overrule the decision only if—

- (a) the Minister principally responsible for indigenous affairs is consulted; and
- (b) the consultation is taken into account; and
- (c) it is in the interests of Queensland to overrule the decision.

‘(2) If the Minister overrules the decision, the Minister must make a substituted decision, and the substituted decision has effect as the decision.

‘(3) The Minister must give a copy of the substituted decision to the tribunal, the applicant and each objector.

‘(4) In this section—

“in the interests of Queensland” includes—

- (a) for the social or economic benefit of Queensland, including of Aboriginal peoples and Torres Strait Islanders; and
- (b) in the interests of the relevant region or locality in Queensland.

‘Division 4—High impact mineral development licences not on alternative provision areas

‘Application of div 4

‘550.(1) This division states additional requirements that apply for the granting of a proposed high impact mineral development licence over non-exclusive land.

‘(2) The additional requirements do not apply for non-exclusive land that is an alternative provision area unless, under section 527 the additional requirements in this division are applied instead of the additional requirements in division 3.

‘Requirements for grant

‘551.(1) The additional requirements applying under part 17, division 4

for the granting of a proposed mining lease also apply for the granting of the proposed high impact mineral development licence.

‘(2) The requirements apply—

- (a) in addition to the requirements of part 6; and
- (b) with necessary changes.

‘Applying pt 17, div 4 to grant

‘552.(1) This section—

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 551(1).

‘(2) For applying section 616,⁴⁶ the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the period of 14 days after the applicant is notified of the Minister’s decision under section 190(1)⁴⁷ and (2) of the amount of security to be deposited if the licence is granted.

‘(3) For applying section 623,⁴⁸ the following day is substituted for the day mentioned in 623(1)(b), that is, the day the applicant is notified of the Minister’s decision under section 190(1) and (2) of the amount of security to be deposited if the licence is granted.

‘(4) For applying part 17, division 4, subdivisions 4 and 5,⁴⁹ if the proposed mineral development licence is referred to the tribunal for a native title issues decision, there is not a combined hearing, but a hearing is held for the native title issues decision, including the hearing of any objections lodged under section 632 as applied under this section.

⁴⁶ Section 616 (Requirement to notify)

⁴⁷ Section 190 (Provision of security)

⁴⁸ Section 623 (Consultation and negotiation period)

⁴⁹ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision area), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

‘(5) The Minister must not grant the mineral development licence under section 186⁵⁰ unless—

- (a) the additional requirements provided for under part 17, division 4, as applied under this section, have stopped applying to the proposed mineral development licence; or
- (b) a native title issues decision has been made for the proposed mineral development licence.

Division 5—Renewals of mineral development licences

‘Application of div 5

‘553.(1) This division states additional requirements that apply for the renewal of a mineral development licence over non-exclusive land under part 6.

‘(2) In subsection (1)—

“renewal”, of a mineral development licence, includes—

- (a) the re-grant of the mineral development licence; and
- (b) the re-making of the mineral development licence; and
- (c) the extension of the term of the mineral development licence.

‘Requirements for renewal

‘554.(1) If the mineral development licence is a low impact mineral development licence, division 2 applies, with necessary changes, to the renewal of the mineral development licence as if the renewal were the granting of the mineral development licence.

‘(2) If the mineral development licence is a high impact mineral development licence, divisions 3 and 4 apply, with necessary changes, to

⁵⁰ Section 186 (Minister may grant or reject application for mineral development licence)

the renewal of the mineral development licence as if the renewal were the granting of the mineral development licence.

‘Division 6—Requirements for subsidiary approvals

‘Application of div 6

‘555. This division applies to an application—

- (a) to vary the conditions of—
 - (i) a low impact mineral development licence to allow for high impact exploration activities; or
 - (ii) a high impact mineral development licence on an alternative provision area to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area; or
 - (iii) a mineral development licence granted on land where native title has been extinguished to include non-exclusive land; or
- (b) for approval—
 - (i) under section 231,⁵¹ for the variation of the land used, or proposed to be used, as access to the land the subject of a high impact mineral development licence; or
 - (ii) under section 208,⁵² to add stated minerals to a high impact mineral development licence.

‘Requirements for variation—low impact mineral development licence

‘556.(1) If the application is to vary the conditions of a low impact mineral development licence to allow for high impact exploration activities on an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under the division.

⁵¹ Section 231 (Variation of access to mineral development licence land)

⁵² Section 208 (adding other minerals to licence)

‘(2) If the application is to vary the conditions of a low impact mineral development licence to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under the division.

‘Requirements for variation—high impact mineral development licences

‘557.(1) This section applies if the application is to vary the conditions of a high impact mineral development licences for an alternative provision area to allow for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area.

‘(2) Division 4, applies, with necessary changes, as if the application were an application under the division.

‘Requirements for variation—other mineral development licences

‘558.(1) This section applies if the application is to vary the conditions of a mineral development licence granted only over land where native title has been extinguished to include non-exclusive land.

‘(2) If the application is for low impact activities, division 2 applies, with necessary changes, as if the application were an application under the division.

‘(3) If the application is for high impact exploration activities on an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under the division.

‘(4) If the application is for high impact exploration activities on non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under the division.

‘Requirements for approval—variation of access for high impact mineral development licence

‘559.(1) This section applies if the application is an application under

section 231 for approval to vary access for the land used, or proposed to be used under a under a high impact mineral development licence.

‘(2) If the application is for an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under the division.

‘(3) If the application is for non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under the division.

‘Requirements for approval—adding minerals to high impact mineral development licence

‘560.(1) If the application is an application under section 208 for approval to add stated minerals to a high impact mineral development licence on an alternative provision area, division 3 applies, with necessary changes, as if the application were an application under the division.

‘(2) If the application is an application under section 208 for approval to add stated minerals to a high impact mineral development licence on non-exclusive land, other than land that includes all or part of an alternative provision area, division 4 applies, with necessary changes, as if the application were an application under the division.

‘PART 17—NATIVE TITLE PROVISIONS FOR MINING LEASES

‘Division 1—Preliminary

‘Purpose of pt 17

‘561.(1) The purpose of this part is—

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- (a) to state the additional requirements that apply for the granting of a proposed mining lease or the variation or renewal of a mining lease, under part 7 if the lease is to mine gold or tin in surface alluvium over non-exclusive land; and
 - (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26B⁵³ of the Commonwealth Native Title Act.

‘(2) The purpose of this part is also—

- (a) to state additional requirements that apply for the granting of a proposed mining lease, or variation or renewal of a mining lease under part 7 over non-exclusive land if the mining lease is other than a surface alluvium (gold or tin) mining lease; and
- (b) in stating the additional requirements, to provide alternative provisions under sections 43 and 43A of the Commonwealth Native Title Act.⁵⁴

‘Exclusion of certain agreed mining leases from pt 17

‘562. This part does not apply to a mining lease—

- (a) if—
 - (i) there is an indigenous land use agreement in relation to an area registered on the register of indigenous land use agreements; and
 - (ii) the agreement provides that a mining lease, that must include conditions stated or described in the agreement, may be granted over land included in the area other than in compliance with the right to negotiate provisions; and
 - (iii) the agreement also provides that this part does not apply to land included in the area; and

⁵³ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act.

⁵⁴ Sections 43 (Modification of Subdivision if satisfactory alternative State or Territory provisions) and 43A (Exception to right to negotiate: satisfactory State/Territory provisions) of the Commonwealth Native Title Act.

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- (iv) the mining lease includes the conditions mentioned in subparagraph (ii) and is granted over land included in the area; or
 - (b) if the mining lease—
 - (i) was the subject of negotiation under the right to negotiate provisions; and
 - (ii) the negotiation resulted in an agreement that included an entitlement for the applicant for the mining lease to apply for and be granted the mining lease without further consultation, or negotiation.

‘Limited application of pt 17 to mining lease in approved opal or gem mining area

‘563. This part applies to a proposed mining lease in an approved opal or gem mining area only if under section 26C(1) of the Commonwealth Native Title Act the grant of the lease is not an act excluded from the application of the right to negotiate provisions.

‘Meaning of “surface alluvium (gold or tin) mining lease”

‘564. In this part, a “surface alluvium (gold or tin) mining lease” is a mining lease—

- (a) that is granted over non-exclusive land; and
- (b) under which the only right to mine is the right to mine gold or tin in surface alluvium;
- (c) under which the only way gold or tin may be recovered from the material that is mined is by a washing or an aeration process; and
- (d) under which a person given the right to mine must, to minimise the impact of mining, rehabilitate any area of land or waters—
 - (i) in which mining takes place; and
 - (ii) over which native title rights and interests may exist.

‘No re-opening of issues previously decided

‘565.(1) This section applies if—

- (a) the parties to a hearing under this part about the grant of a proposed mining lease (the **“mining lease hearing”**) are identical to the parties to an earlier relevant agreement or hearing; and
- (b) an issue was decided in the relevant agreement or at the relevant hearing.

‘(2) A party to the mining lease hearing must not, without the leave of the tribunal, seek to vary the decision on the issue.

‘(3) In this section—

“relevant agreement” means an agreement under part 15 or 16, or under the right to negotiate provisions, about the grant of the exploration permit or mineral development licence for the land for which the mining lease is proposed to be granted.

“relevant hearing” means a hearing under part 15 or 16, or under the right to negotiate provisions, about the grant of the exploration permit or mineral development licence for the land for which the mining lease is proposed to be granted.

‘Division 2—Surface alluvium (gold or tin) mining leases

‘Subdivision 1—Preliminary

‘Application of div 2

‘566. This division states additional requirements that apply for the granting of a proposed surface alluvium (gold or tin) mining lease over non-exclusive land under part 7.

‘Definitions for div 2

‘567. In this division—

“applicant” means the applicant for the proposed surface alluvium (gold or tin) mining lease.

“consultation agreement” see section 576(2)(b).

“consultation parties” see section 571.

“consultation matters” includes the purpose of consultation stated in section 574(1) and the matters that consultation must be about under section 574(2).

“consultation result notice” see section 576(1).

“consultation start day” see section 569(3)(f).

“consultation period” see section 573.

‘Meaning of “surface alluvium (gold or tin) mining lease”

‘568. For this division, a **“surface alluvium (gold or tin) mining lease”** is a mining lease—

- (a) that is granted over non-exclusive land; and
- (b) under which the only right to mine is the right to mine gold or tin in surface alluvium; and
- (c) under which the only way gold or tin may be recovered from the material that is mined is by a washing or an aeration process; and
- (d) under which the person given the right to mine must rehabilitate any area of land or waters, in which the mining takes place and in relation to which native title rights and interests may exist, for the purpose of minimising the impact of the mining on the land or waters.

‘Subdivision 2—Notification requirements and right to be heard

‘Requirement to notify

‘569.(1) The applicant must give written notice of the applicant’s intention to lodge an application for a surface alluvium (gold or tin) mining lease, or of the lodgement of the application, to—

- (a) each native title notification party for the land to which the application relates; and
- (b) the mining registrar.

‘(2) The notice must be given—

- (a) no earlier than 2 months before the proposed lodgement; and
- (b) no later than—
 - (i) the end of the period of 7 days after the certificate of application for the proposed mining lease is endorsed by the mining registrar under section 252(2);⁵⁵ or
 - (ii) if the mining registrar decides a longer period under section 252(7)—the end of the longer period.

‘(3) The notice must state the following—

- (a) whether or not the application has been lodged;
- (b) a description of the land;
- (c) details of the activities proposed for the land;
- (d) an outline of the expected impact on the land of the proposed activities;
- (e) that the applicant must consult with—
 - (i) each registered native title body corporate for the land to which the application relates; and
 - (ii) each registered native title claimant for the land;
- (f) a day (the “**consultation start day**”) for consultation to start under subdivision 3 that is at least 2 months after the giving of the notice to all of the native title notification parties;
- (g) that the native title notification parties have a right to be heard by the tribunal about whether the lease should be granted and about other matters relating to the grant.

⁵⁵ Section 252 (Certificate of application etc.)

‘Native title notification parties’ right to be heard

‘570.(1) Each native title notification party for the land to which the application relates has a right to be heard by the tribunal about—

- (a) whether the surface alluvium (gold or tin) mining lease applied for is to be granted; and
- (b) any other matter relating to the grant.

‘(2) A native title notification party may, by a notice in writing to the mining registrar, waive the party’s right to be heard.

‘Subdivision 3—Consultation requirements

‘Consultation parties

‘571. The **“consultation parties”**, for a surface alluvium (gold or tin) mining lease application, are—

- (a) the applicant; and
- (b) each registered native title body corporate for the land to which the application relates; and
- (c) each registered native title claimant for the land.

‘Requirement to consult

‘572.(1) The applicant must consult with each other consultation party.

‘(2) However, the applicant is not required to consult with another consultation party if the other party has given the applicant a written notice stating that the party does not wish to be consulted about the application.

‘Consultation period

‘573.(1) The **“consultation period”** for the application is the period that starts on the consultation start day and ends 2 months after that day.

‘(2) However, if at any time all the consultation parties agree, whether or not in writing, there has been enough consultation, the consultation period is taken to end.

‘(3) The consultation parties may agree to extend the consultation period beyond the time for it to end under subsection (1).

‘Consultation matters

‘574.(1) The purpose of the consultation is to minimise the impact of the granting of the surface alluvium (gold or tin) mining lease applied for on land in relation to which native title rights and interests may exist and that will be affected by the granting of the mining lease.

‘(2) In particular, the consultation must be about the matters mentioned in section 26B(8)⁵⁶ of the Commonwealth Native Title Act, as follows—

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;
- (b) any access to the land or waters to which the native title rights and interests relate by—
 - (i) the persons mentioned in paragraph (a); or
 - (ii) any person who will do anything that is authorised because of, or results from, or otherwise relates to, the mining lease applied for;
- (c) the way in which any rehabilitation or other thing that is authorised because of, results from, or otherwise relates to, the mining lease applied for, is to be done.

‘Consultation parties may seek mediation

‘575.(1) In the consultation period, the consultation parties may ask the mining registrar to hold a conference for mediation about the application.

⁵⁶ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

‘(2) Sections 254 to 259 apply to the conference as if the request were a request by an owner of land affected by the application.

‘(3) Despite section 255(3),⁵⁷ a consultation party may be represented at the conference by a lawyer.

‘(4) Subject to any order made under section 259, a party to the conference must pay the party’s own costs for the conference.

‘**Notice of result of consultation**

‘**576.(1)** The applicant must, after the consultation period ends, give a written notice (a “**consultation result notice**”) to the mining registrar.

‘(2) The notice must state the following—

- (a) any outcome of the consultation;
- (b) whether the consultation parties have reached an agreement for the granting of the surface alluvium (gold or tin) mining lease applied for (a “**consultation agreement**”);
- (c) if a consultation agreement has been reached, details of the agreement, including any agreed conditions for the grant;
- (d) if a consultation agreement has not been reached, but the consultation parties have agreed in part about the granting of the surface alluvium (gold or tin) mining lease applied for, details of the partial agreement.

‘(3) The additional requirements provided for in subdivision 4 stop applying to the application if—

- (a) a consultation result notice has been given; and
- (b) a consultation agreement has been reached; and
- (c) all other native title notification parties for the land to which the application relates have waived their rights to be heard.

⁵⁷ Section 255 (Who may attend conference)

‘Subdivision 4—Hearing requirements

‘Application of sdiv 4

‘577. This subdivision applies only if—

- (a) the consultation period for an application for the granting of the surface alluvium (gold or tin) mining lease has ended; and
- (b) any of the following applies—
 - (i) a consultation agreement has not been reached about the application;
 - (ii) a consultation result notice has not been given for the application within 7 days after the end of the period;
 - (iii) all other native title notification parties for the land to which the application relates have not waived their rights to be heard.

‘Fixing of combined hearing day

‘578.(1) The mining registrar must fix a day for the tribunal to hear the application under section 265.⁵⁸

‘(2) The mining registrar must give written notice of the day to—

- (a) each consultation party for the application; and
- (b) all other native title notification parties for the land to which the application relates who have not waived their rights to be heard.

‘(3) The notice must state that, at the hearing, each of the native title notification parties has a right to be heard by the tribunal about—

- (a) whether the surface alluvium (gold or tin) mining lease applied for is to be granted; and

⁵⁸ Section 265 (Mining registrar to fix hearing date)

(b) any other matter relating to the grant.

‘(4) The tribunal must not, under section 270,⁵⁹ dispense with a hearing.

‘Tribunal must consider consultation matters and agreed issues

‘579. In making its recommendation to the Minister under section 269,⁶⁰ the tribunal must take into account—

- (a) the consultation matters; and
- (b) any issue agreed between the consultation parties; and
- (c) any other matter raised before the tribunal by a native title notification party relating to the grant of the surface alluvium (gold or tin) mining lease.

‘General time requirement for hearing

‘580.(1) The tribunal must take all reasonable steps to ensure the hearing for the application is finished—

- (a) within 3 months from when the consultation parties were notified of the hearing; or
- (b) as soon as practicable.

‘(2) However, if the consultation parties ask, the tribunal may—

- (a) provide mediation about the issues in dispute to the extent that, it considers, referral of the parties to mediation will be consistent with finishing the combined hearing as soon as practicable; or
- (b) order further consultation on conditions it sees fit.

⁵⁹ Section 270 (Procedure where no objection lodged)

⁶⁰ Section 269 (Tribunal’s recommendation on hearing)

‘Subdivision 5—Notice of grant

‘Notice to other consultation parties

‘581.(1) This section applies if the Governor in Council grants a surface alluvium (gold or tin) mining lease over non-exclusive land.

‘(2) The holder of the mining lease must give written notice of the grant to each other consultation party for the application for the mining lease.

‘(3) The notice must be given within 28 days after the holder receives notice of the grant.

‘Division 3—Other mining leases on alternative provision areas

‘Subdivision 1—Preliminary

‘Application of div 3

‘582.(1) This division states additional requirements that apply for the granting of a proposed mining lease over non-exclusive land under part 7, other than a surface alluvium (gold or tin) mining lease.

‘(2) The additional requirements apply to a grant of a type mentioned in subsection (1) over non-exclusive land that is all or part of an alternative provision area, unless an election is made under subsection (3).

‘(3) The applicant may elect that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Definitions for div 3

‘583. In this division—

“applicant” means the applicant for the proposed mining lease.

“closing day (native title issues)”, for the proposed mining lease, see section 585(3).

“**combined hearing**”, for the proposed mining lease, see section 604.

“**consultation and negotiation parties**”, for the proposed mining lease, see section 590(1).

“**consultation and negotiation period**”, for the proposed mining lease, see section 591.

“**contract condition**” see section 608(1).

“**negotiated agreement**”, for the proposed mining lease, see section 592(1).

“**native title issues decision**” see section 601(1).

“**notification day (native title issues)**”, for the proposed mining lease, see section 585(2).

“**registered native title party**”, for the proposed mining lease, see section 586.

‘Subdivision 2—Notification and registration requirements

‘Requirement to notify

‘**584.(1)** The applicant must give a written notice about the proposed mining lease to—

- (a) all native title notification parties for the non-exclusive land; and
- (b) the mining registrar for the land the subject of the proposed mining lease.

‘**(2)** The applicant must also make sure that a public notice, containing the information contained in the written notice mentioned in subsection (1), is published in—

- (a) a newspaper circulating generally in the area of the land the subject of the proposed mining lease; and
- (b) a relevant special interest publication.

‘**(3)** The written notice must be given under subsection (1), and the public notice must be published under subsection (2)—

- (a) not earlier than 3 months before the application for the proposed mining lease is lodged; and
- (b) not later than—
 - (i) the end of the period of 28 days after the certificate of application for the proposed mining lease is endorsed by the mining registrar under section 252(2) or reissued under section 253;⁶¹ or
 - (ii) if the mining registrar decides a longer period under section 252(7)—the end of the longer period; or
 - (iii) if, under section 587(3), the mining registrar decides that the written notice has not been given as required under this subdivision, and decides a further period for the giving of the written notice—the further period.

‘(4) The written notice may be about more than 1 proposed mining lease.

‘Content of written notice

‘585.(1) The written notice must state the following—

- (a) the following days for the proposed mining lease—
 - (i) the notification day (native title issues);
 - (ii) the closing day (native title issues);
- (b) how a person may become a registered native title party for the proposed mining lease;
- (c) that registered native title parties have a right—
 - (i) to be consulted about the proposed mining lease; and
 - (ii) to object to the granting of the proposed mining lease; and
 - (iii) to negotiate with a view to reaching agreement about the granting of the proposed mining lease;
- (d) a clear description of the relevant non-exclusive land;

⁶¹ Section 252 (Certificate of application etc.), section 253 (Reissue of certificate of application)

-
- (e) a description of the nature of the proposed mining lease;
 - (f) that the proposed mining lease, if granted, will be granted by the Governor in Council;
 - (g) how further information about the proposed mining lease, and about the matters mentioned in paragraph (c), can be obtained from the applicant and from the mining registrar.

‘(2) The “**notification day (native title issues)**” must be a day that may reasonably be assumed to be a day by which—

- (a) the written notice will have been received by the persons to whom it is to be given, and
- (b) the public notice will have come to the attention of the persons to whom the public notice is directed.

‘(3) The “**closing day (native title issues)**” must be a day at least 3 months after the notification day (native title issues).

‘Registered native title parties

‘586. Each of the following is a “**registered native title party**” for the proposed mining lease—

- (a) a body or body corporate that, on or before the closing day (native title issues), is a registered native title body corporate in relation to the land affected by the proposed mining lease;
- (b) a body corporate that becomes a registered native title body corporate in relation to the land affected by the proposed mining lease—
 - (i) after the closing day (native title issues); and
 - (ii) as a result of a claim that was entered on the register of native title claims on or before the closing day (native title issues);
- (c) a person who—

- (i) files a native title determination application in the Federal Court on or before the closing day (native title issues) for the proposed mining lease;⁶² and
- (ii) is a registered native title claimant in relation to the land affected by the proposed mining lease 1 month after the closing day (native title issues) for the proposed mining lease;
- (d) a person who is a registered native title claimant in relation to the land affected by the proposed mining lease on or before the closing day (native title issues).

‘Advice to mining registrar

‘587.(1) As soon as practicable after the closing day (native title issues) for the proposed mining lease, the applicant must give the mining registrar—

- (a) a statutory declaration—
 - (i) declaring as to the applicant’s compliance with the requirements of sections 584 and 585; and
 - (ii) attaching copies of the written notice given, and the public notice published, under section 584; and
- (b) the names and addresses of—
 - (i) all registered native title parties for the non-exclusive land as at the closing day (native title issues); and
 - (ii) all native title claimants who may become registered native title parties for the non-exclusive land.

(2) As soon as practicable after the end of 1 month after the closing day (native title issues) for the proposed mining lease, the applicant must give the mining registrar the names and addresses of all persons who have become registered native title parties for the non-exclusive land in the month.

⁶² Section 61 of the Commonwealth Native Title Act sets out details about native title determination applications.

(3) If the mining registrar decides that the written notice has not been given as required under sections 584 and 585, the mining registrar may decide a further period for the giving of the written notice.⁶³

‘Ending of additional requirements if notice of non-objection lodged

‘588. The additional requirements provided for under this division stop applying for the proposed mining lease if after the closing day (native title issues)—

- (a) there are no registered native title parties for the non-exclusive land, and no native title claimants who may become registered native title parties for the non-exclusive land; or
- (b) the following persons certify in the approved form lodged with the mining registrar that they do not object to the grant of the proposed mining lease and do not wish to be consulted about it—
 - (i) all registered native title parties for the non-exclusive land;
 - (ii) if 1 month after the closing day (native title issues) has not expired, all native title claimants who may become registered native title parties for the non-exclusive land.

‘Participation in consultation and negotiation of potential registered native title party

‘589. For applying the additional requirements provided for in this division in the first month after the closing day (native title issues) for the proposed mining lease, a reference to a registered native title party includes a native title claimant who may become a registered native title party for the non-exclusive land.

⁶³ Section 266 (Mining registrar may recommend rejection of application for noncompliance) provides for recommending rejection of an application for noncompliance with requirements placed on the applicant by this Act, and section 267 (Minister may reject application at any time) allows the Minister to reject an application, including for noncompliance.

‘Subdivision 3—Consultation and negotiation

‘Parties to consultation and negotiation

‘590.(1) The parties to the consultation and negotiation required under this subdivision about the granting of the proposed mining lease are the following (the **“consultation and negotiation parties”** for the proposed mining lease)—

- (a) the applicant;
- (b) the registered native title parties for the non-exclusive land;
- (c) the State.

‘(2) However, the State stops being a consultation and negotiation party for the proposed mining lease if the State and the other consultation and negotiation parties for the proposed mining lease at any time agree, in the approved form lodged with the mining registrar, that the State is not to be a consultation and negotiation party.

‘(3) Also, if the consultation and negotiation parties at any time agree, in the approved form lodged with the mining registrar, that the State is to take a particular role in the consultation and negotiation, stated in the lodged approved form, the State may adopt the stated role, even though it is no longer a consultation and negotiation party.

‘(4) A registered native title party for the non-exclusive land is taken to stop being a consultation and negotiation party if the party lodges an approved form under section 588(b).

‘Consultation and negotiation period

‘591.(1) The **“consultation and negotiation period”** for the proposed mining lease starts on the later of the following—

- (a) the closing day (native title issues) for the proposed mining lease;
- (b) the day the mining registrar endorses the certificate of application under section 252(2).⁶⁴

⁶⁴ Section 252 (Certificate of application etc.)

‘(2) The **“consultation and negotiation period”** for the proposed mining lease ends—

- (a) if paragraph (b) does not apply—3 months after the period starts; or
- (b) if the consultation and negotiation parties agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing of the agreed later time—at the agreed later time.

‘(3) However, if an environmental impact statement is completed under part 7 for the proposed mining lease, the consultation and negotiation period for the proposed mining lease ends on the later of the following—

- (a) 3 months after the day the mining registrar displays the notice about the environmental impact statement at the mining registrar’s office under section 264(3);⁶⁵
- (b) if the registered native title parties for the non-exclusive land and the applicant agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing of the agreed later time—at the agreed later time;
- (c) the time that would otherwise apply under subsection (2).

‘Requirement for consultation and negotiation

‘**592.(1)** In the consultation and negotiation period, the consultation and negotiation parties for the proposed mining lease must consult and negotiate with a view to obtaining the agreement of each of the registered native title parties for the non-exclusive land (a **“negotiated agreement”**) to—

- (a) the granting of the proposed mining lease; and
- (b) any conditions to be complied with by the consultation and negotiation parties if the proposed mining lease is granted.

‘(2) Also, as part of the consultation and negotiation—

⁶⁵ Section 264 (What happens after environmental impact statement is prepared?)

-
- (a) the applicant—
- (i) must consult the registered native title parties about ways of minimising the impact of the proposed mining lease on registered native title rights and interests in relation to the non-exclusive land, including about—
 - (A) any access to the land; and
 - (B) the way in which anything authorised by the proposed mining lease might be done; and
 - (ii) for the consultation, must have regard to the guidelines set out in this subdivision for applicant consultation; and
- (b) the registered native title parties—
- (i) must consult the other consultation and negotiation parties about the effect of the proposed mining lease on their registered native title rights and interests; and
 - (ii) for the consultation, must have regard to the guidelines stated in this subdivision for registered native title party consultation.

‘Content of negotiation

‘**593.(1)** Subsections (3) to (5) apply for the requirement under this subdivision to negotiate.

‘**(2)** However, subject to those subsections, this subdivision does not limit the requirements that apply for negotiation.

‘**(3)** A consultation and negotiation party must make every reasonable effort to reach agreement.

‘**(4)** A consultation and negotiation party is not required to negotiate about issues unrelated or unconnected to the proposed mining lease.

‘**(5)** A consultation and negotiation party is not required to negotiate about matters unrelated to the impact of the proposed mining lease on the registered native title rights and interests of registered native title parties.

‘**(6)** The failure of 1 consultation and negotiation party to negotiate as required under this subdivision can not be used to establish that another

consultation and negotiation party has not negotiated as required under this subdivision.

‘Request for mediation

‘594.(1) At any time during the consultation and negotiation period, a consultation and negotiation party may ask for mediation to help in resolving issues relevant to the consultation and negotiation.

‘(2) If a consultation and negotiation party asks for mediation under subsection (1), mediation—

- (a) must be conducted by—
 - (i) a mediator chosen by the consultation and negotiation parties; or
 - (ii) if the consultation and negotiation parties are not able to agree on a mediator and the party asks the tribunal to provide the mediation—the tribunal, or a mediator chosen by the tribunal; and
- (b) does not extend the consultation and negotiation period; and
- (c) may continue after the consultation and negotiation period has ended if the consultation and negotiation parties agree; and
- (d) may end at any time—
 - (i) by decision of the mediator; or
 - (ii) by agreement of the consultation and negotiation parties.

‘Process for consultation and negotiation—applicant consultation

‘595.(1) This section states guidelines for applicant consultation under this subdivision.

‘(2) The consultation should start as soon as practicable after the consultation and negotiation period starts.

‘(3) The applicant should—

- (a) give each registered native title party for the non-exclusive land a true copy of the application for the proposed mining lease (but not

the statement detailing the applicant's financial and technical resources) and the endorsed certificate of application; and

- (b) convene at least 1 meeting (“**consultation meeting**”) to provide a reasonable opportunity for all registered native title parties to be given a presentation about the proposed mining lease.

‘(4) A consultation meeting may be—

- (a) in the town or city where the mining registrar is located; or
- (b) in a town or city in which there is an office of the representative Aboriginal/Torres Strait Islander body for the area that includes the non-exclusive land; or
- (c) at another place agreed between the consultation and negotiation parties.

‘(5) A consultation meeting should be convened at a time and place suitable for maximising attendance.

‘(6) If the applicant has convened a consultation meeting under subsection (3)(b), the meeting is taken to have happened even though not all, or none, of the registered native title parties attended the meeting.

‘(7) The presentation mentioned in subsection (3)(b) should be directed at providing registered native title parties with an understanding of the anticipated nature, extent and impact of the project authorised by the grant of the proposed mining lease.

‘(8) Consultation under this section should be completed within 1 month after the closing day (native title issues) for the proposed mining lease.

‘Process for consultation and negotiation—registered native title parties consultation

‘596.(1) This section states the guidelines for registered native title party consultation under this subdivision.

‘(2) The consultation should be carried out as soon as practicable after the applicant consultation has been completed.

‘(3) Each registered native title party for the non-exclusive land should advise the other consultation and negotiation parties about the impact the

party considers the proposed mining lease will have on the party's registered native title rights and interests.

‘Process for consultation and negotiation—taking account of existing rights, interests and use

‘597. Without limiting the scope of consultation and negotiation under this subdivision, the nature and extent of the following may be taken into account—

- (a) existing non-native title rights and interests in relation to the non-exclusive land of persons, other than registered native title parties for the non-exclusive land;
- (b) existing use of the non-exclusive land by persons, other than the registered native title parties for the non-exclusive land;
- (c) the practical effect of the exercise of any existing non-native title rights and interests mentioned in paragraph (a), and of the existing use mentioned in paragraph (b), on the exercise of native title rights and interests in relation to the non-exclusive land.

‘Process for consultation and negotiation—negotiated agreement with or without conditions attached

‘598.(1) This section applies if a negotiated agreement is obtained, whether or not the negotiated agreement includes conditions to be complied with by the consultation and negotiation parties for the proposed mining lease if the proposed mining lease is granted.

‘(2) The consultation and negotiation parties must—

- (a) lodge a certificate in the approved form with the mining registrar stating that a negotiated agreement has been obtained for the proposed mining lease; and
- (b) give a copy of the certificate to the tribunal.

‘(3) When the approved form has been lodged under subsection (2), the additional requirements provided for under this division stop applying to the proposed mining lease.

‘Process for consultation and negotiation—negotiated agreement with conditions attached

‘599.(1) This section applies if a negotiated agreement is obtained, and the negotiated agreement includes conditions to be complied with by the consultation and negotiation parties for the proposed mining lease if the proposed mining lease is granted.

‘(2) The negotiated agreement has effect, if the proposed mining lease is granted, as if—

- (a) the conditions included in the agreement were the terms of a contract; and
- (b) all the consultation and negotiation parties were parties to the contract; and
- (c) if a registered native title party is a registered native title claimant—any individual included in the native title claim group concerned were a party to the contract.

‘(3) Subsection (2) has effect in addition to any other effect that the negotiated agreement may have apart from under subsection (2).

‘Objection during consultation and negotiation period

‘600.(1) At any time during the consultation and negotiation period, a registered native title party may lodge an objection to the proposed mining lease on the ground that the granting of the proposed mining lease would affect the party’s registered native title rights and interests or on any other matter relating to the grant.

‘(2) The objection—

- (a) must be made in writing in the approved form; and
- (b) must be lodged with the mining registrar; and
- (c) must state the facts and circumstances relied on by the registered native title party in support of the ground of objection.

‘(3) Anything about the amount or payment of compensation is not a ground for objection.

‘(4) The registered native title party must also give a copy of the objection, and all material accompanying the objection, to the other consultation and negotiation parties and the tribunal as soon as practicable after the objection is lodged with the mining registrar.

‘(5) At any time before a combined hearing is held for the proposed mining lease, the registered native title party may withdraw the objection by lodging with the mining registrar a written notice withdrawing the objection.

‘(6) The registered native title party must also give a copy of the written notice withdrawing the objection to the other consultation and negotiation parties and the tribunal as soon as practicable after the withdrawal of the objection is lodged with the mining registrar.

‘(7) The registered native title party must withdraw the objection under this section if at any time a negotiated agreement is obtained.

‘(8) The registered native title party for the non-exclusive land may object about the effect of the proposed mining lease on its registered native title rights and interests only under this section, and may not object under section 260⁶⁶ about the effect of the proposed mining lease on its registered native title rights and interests.

‘(9) An objection lodged under this section, if it is not withdrawn, must be heard by the tribunal in a combined hearing under subdivision 4.

‘(10) However, the tribunal must not hear an objection if the objection has not been made in compliance with this section.

‘Subdivision 4—Referral and native title issues decision

‘Referral of proposed mining lease to tribunal

‘601.(1) If the consultation and negotiation period has ended, but a negotiated agreement has not been obtained, a consultation and negotiation party for the proposed mining lease may, in the approved form lodged with the mining registrar, refer the proposed mining lease to the tribunal for a decision under this division (a “**native title issues decision**”).

⁶⁶ Section 260 (Objection to grant of application for grant of mining lease)

‘(2) A copy of the approved form must also be given to the other consultation and negotiation parties for the proposed mining lease.

‘Continuing negotiation and mediation

‘602.(1) After the lodging of the approved form for a referral, the consultation and negotiation parties for the proposed mining lease may continue to negotiate, including through mediation, to achieve a negotiated agreement before the native title issues decision is made.

‘(2) If a negotiated agreement is achieved, the tribunal may not make a native title issues decision.

‘Withdrawal of referral

‘603.(1) A consultation and negotiation party may at any time before the native title issues decision is made withdraw its referral of the proposed mining lease to the tribunal by—

- (a) giving a withdrawal of referral in the approved form to the mining registrar; and
- (b) giving each other consultation and negotiation party a copy of the withdrawal of referral.

‘(2) Nothing in subsection (1) stops the consultation and negotiation party who withdrew the referral, or any other consultation and negotiation party, making another referral under this subdivision.

‘Combined hearing

‘604.(1) The hearing under part 7 of the application for the grant of the proposed mining lease must include the following—

- (a) the hearing of the objections and other matters mentioned in section 268(1);⁶⁷
- (b) the hearing for a native title issues decision, including the hearing of any objections lodged under section 600.

⁶⁷ Section 268 (Hearing of application for grant of mining lease)

‘(2) The hearing mentioned in subsection (1) is a **“combined hearing”**’.

‘(3) The tribunal must not act under section 270⁶⁸ to dispense with a hearing, unless a negotiated agreement has been reached.

‘(4) All consultation and negotiation parties have the right to be heard at the combined hearing.

‘Fixing of date for combined hearing

‘**605.(1)** This section applies if the mining registrar is required to fix under section 265 a hearing date for the combined hearing, but there has not yet been a referral (other than a referral that has been withdrawn) of the mining lease for a native title issues decision.

‘(2) The mining registrar may, if the applicant agrees, fix a hearing date for the application for the proposed mining lease, and any objections to the application, under section 265 as if the hearing were not a combined hearing.

‘(3) At the hearing, the tribunal may—

- (a) proceed with the hearing of the application for the proposed mining lease, and any objections to the application, as if the hearing were not a combined hearing; and
- (b) at an appropriate time adjourn the hearing; and
- (c) as soon as practicable after the proposed mining lease is referred to the tribunal for a native title issues decision, reconvene the combined hearing.

‘(4) The mining registrar may defer fixing a date for the combined hearing until the proposed mining lease is referred to the tribunal for a native title issues decision.

‘(5) If the proposed mining lease has been referred to the tribunal for a native title issues decision, but the mining registrar is not yet required under section 265 to fix a hearing date for the combined hearing, the mining registrar must fix a date for the combined hearing when the mining registrar is able to fix a date under section 265.

⁶⁸ Section 270 (Procedure where no objections lodged)

‘Subdivision 5—Requirements for combined hearing**‘Directions about conduct of combined hearing**

‘606. At any time after the referral of the proposed mining lease for a native title issues decision, the tribunal may give directions to the consultation and negotiation parties, including directions about the filing and serving of the following—

- (a) a statement by the applicant that includes a copy of the material provided to the registered native title parties under subdivision 3;
- (b) a statement of impact by each registered native title party, stating the effect the party considers the proposed mining lease will have on the party’s registered native title rights and interests;
- (c) submissions by any of the consultation and negotiation parties on the matters the tribunal will be required to take into account for making its native title issues decision.

‘Issue of compliance with sdiv 3

‘607.(1) If a consultation and negotiation party raises the issue of whether another consultation and negotiation party has complied with subdivision 3, including with the requirement for negotiation, the issue must be dealt with as a part of the combined hearing for the application for the grant of the proposed mining lease.

‘(2) If at the combined hearing the tribunal is not satisfied that the applicant or the State has complied with subdivision 3, including with the requirement for negotiation, it may adjourn the combined hearing to allow for the subdivision to be complied with by all the consultation and negotiation parties.

‘(3) An adjournment under subsection (2) may only be for a maximum period of 3 months.

‘(4) If the tribunal is satisfied that a registered native title party did not comply with subdivision 3, including with the requirement for negotiation, the tribunal may not adjourn the combined hearing on that ground alone.

‘(5) However, the tribunal may take the failure of the registered native

title party to comply into account in making its native title issues decision.

‘(6) A consultation and negotiation party can not raise the issue of the State’s compliance with subdivision 3, including the requirement for negotiation, on the ground that the State stopped being a consultation and negotiation party or took a particular role under section 590(3).

‘Nature of native title issues decision

‘608.(1) The native title issues decision must be 1 of the following—

- (a) that the proposed mining lease may be granted;
- (b) that the proposed mining lease may be granted, but subject to either or both of the following—
 - (i) that conditions, described or identified in the native title issues decision, are to be included in the mining lease;
 - (ii) that conditions (“**contract conditions**”), described or identified in the native title issues decision, are required to be complied with by 1 or more of the consultation and negotiation parties (even though the conditions are not included in the mining lease);
- (c) that the proposed mining lease should not be granted.

‘(2) A native title issues decision must include a condition, whether or not a contract condition, that an amount is to be held in trust for compensation until it is dealt with under part 18.⁶⁹

‘(3) A native title issues decision may not include a condition, whether or not a contract condition, that has the effect that a registered native title party is entitled to payments from the applicant worked out by reference to—

- (a) the amount of profits to be made under the proposed mining lease;
- (b) the amount of any income to be derived under the proposed mining lease;
- (c) anything to be produced under the proposed mining lease.

⁶⁹ Part 18 (Compensation)

‘Overruling of native title issues decision

‘609.(1) The Minister may overrule the native title issues decision only if—

- (a) the Minister principally responsible for indigenous affairs is consulted; and
- (b) the consultation is taken into account; and
- (c) it is in the interests of Queensland to overrule the native title issues decision; and
- (d) the Minister overrules the decision within 2 months after the native titles issues decision is made.

‘(2) If the Minister overrules the native title issues decision, the Minister must make a substituted decision, and the substituted decision has effect as the native title issues decision.

‘(3) The Minister must give a copy of the substituted decision to the tribunal and the consultation and negotiation parties.

‘(4) In this section—

“in the interests of Queensland” includes—

- (a) for the social or economic benefit of Queensland (including of Aboriginal peoples and Torres Strait Islanders); and
- (b) in the interests of the relevant region or locality in Queensland.

‘Effect of native title issues decision

‘610.(1) If the native title issues decision is that the proposed mining lease may be granted, the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be granted.

‘(2) If the native title issues decision is that the proposed mining lease may be granted, but subject to conditions to be included in the mining lease—

- (a) the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be

granted, if the recommendation includes a recommendation that the proposed mining lease be granted subject to the conditions; and

- (b) the Minister is not stopped from recommending to the Governor in Council under section 271⁷⁰ that the proposed mining lease be granted, if the recommendation includes a recommendation that the proposed mining lease be granted subject to the conditions.

‘(3) If the native title issues decision is that the proposed mining lease may be granted subject to contract conditions, the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be granted.

‘(4) If the native title issues decision⁷¹ is that the proposed mining lease should not be granted—

- (a) the tribunal must not recommend under section 269 that the application for the proposed mining lease should be granted; and
- (b) the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted.

‘(5) If the grant is made, a contract condition has effect, in addition to any effect that it may have other than under this subsection, as if it were included in the terms of a contract among the consultation and negotiation parties.

‘(6) If a consultation and negotiation party is a registered native title claimant, any individual included in the native title claim group concerned is a party to the contract.

‘Tribunal’s native title issues decision

‘611.(1) In making its native title issues decision, the tribunal must take into account the effect of the proposed mining lease on—

⁷⁰ Section 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

⁷¹ The native title issues decision could be the decision of the tribunal, or it could be the substituted decision of the Minister after an overruling of the tribunal’s decision.

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- (a) the enjoyment by the registered native title parties of their registered native title rights and interests; and
 - (b) the economic or other significance of the proposed mining lease to the following—
 - (i) Australia;
 - (ii) Queensland;
 - (iii) the region;
 - (iv) the inhabitants of the area in which the land the subject of the proposed mining lease is located.

(2) In taking into account the matters mentioned in subsection (1), the tribunal may also consider the effect of the proposed mining lease on—

- (a) the way of life, culture, traditions and economic interests of any of the registered native title parties; and
- (b) the freedom of access by any of the registered native title parties to the non-exclusive land; and
- (c) the carrying out, by any of the registered native title parties, of rites, ceremonies or other activities of cultural significance, on the non-exclusive land, in accordance with their traditions; and
- (d) any area or site of particular significance to the registered native title parties in accordance with their traditions, that is located on the non-exclusive land; and
- (e) any other matter the tribunal considers relevant.

(3) In deciding the effect of the proposed mining lease on the matter mentioned in subsection (1)(a), the tribunal must also take into account—

- (a) the nature and extent of—
 - (i) existing non-native title rights and interests in relation to the non-exclusive land of persons other than the registered native title parties; and
 - (ii) existing use of the land by persons other than the registered native title parties; and

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- (b) the practical effect on the exercise of native title rights and interests in relation to the non-exclusive land of—
- (i) the exercise of any existing non-native title rights and interests mentioned in paragraph (a)(i); and
 - (ii) the existing use mentioned in paragraph (a)(ii).

‘(4) In complying with subsections (1) to (3), the tribunal must take into account the content of all objections lodged under this division to the granting of the proposed mining lease, and any other documents lodged or filed under this division.

‘(5) Taking into account the effect of the proposed mining lease on an area or site mentioned in subsection (2)(d) does not affect the operation of any law of the State for the preservation or protection of those areas or sites.

‘(6) Before making the native title issues decision—

- (a) the tribunal must find out whether there are any issues relevant to its decision on which the consultation and negotiation parties agree; and
- (b) if there are agreed issues under paragraph (a), and all the consultation and negotiation parties consent—the tribunal, in making its native title issues decision—
 - (i) must take the agreed issues into account; and
 - (ii) need not take into account the matters mentioned in subsection (1), and need not consider the matters mentioned in subsection (2), to the extent the matters relate to the agreed issues.

‘Deferred matters

‘612.(1) As well as making the native title issues decision, the tribunal may make a decision about matters (the “**deferred matters**”) that—

- (a) were the subject of consultation and negotiation in the consultation and negotiation period for the proposed mining lease; and

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- (b) under an agreement that includes all the consultation and negotiation parties, are to be the subject of further consultation and negotiation, or are to be decided in a way stated in the decision under this section; and
 - (c) are not reasonably capable of being decided when the native title issues decision is made; and
 - (d) are not directly relevant to the native title issues decision.

‘(2) The tribunal must give a copy of its decision under this section to—

- (a) the consultation and negotiation parties; and
- (b) if the State is not a consultation and negotiation party, the mining registrar.

‘(3) The tribunal’s decision under this section about the deferred matters is binding on all the consultation and negotiation parties.

‘(4) If—

- (a) the decision under this section is that the deferred matters are to be decided by arbitration; and
- (b) after the decision is made, the consultation and negotiation parties can not agree on the way the arbitration is to take place;

the tribunal, on the application of a consultation and negotiation party, has jurisdiction to decide the deferred matters.

‘General time requirement for making native title issues decision

‘613.(1) The tribunal must take all reasonable steps to make sure that the native title issues decision is made within 4 months after the proposed mining lease is referred to the tribunal for the decision.

‘(2) If the native title issues decision is not made within the 4 months, the tribunal must, as soon as practicable after the 4 months ends, give a written notice to the Minister—

- (a) advising why the native title issues decision has not yet been made; and
- (b) giving an estimate of when the decision is likely to be made.

Division 4—Other mining leases not on alternative provision areas

Subdivision 1—Preliminary

Application of div 4

614.(1) This division states additional requirements that apply for the granting of a proposed mining lease over non-exclusive land under part 7, other than a surface alluvium (gold or tin) mining lease.

(2) The additional requirements do not apply for the non-exclusive land that is an alternative provision area unless, under section 582(3), the additional requirements in this division are applied instead of the additional requirements in division 3.

Definitions for div 4

615. In this division—

“applicant” means the applicant for the proposed mining lease.

“closing day (native title issues)”, for the proposed mining lease, see section 617(3).

“compensation provisions” see part 18.

“combined hearing”, for the proposed mining lease, see section 636.

“consultation and negotiation parties”, for the proposed mining lease, see section 622(1).

“consultation and negotiation period”, for the proposed mining lease, means the period described in section 623.

“contract condition” see section 640(1).

“Minister’s decision” see section 647.

“notification day (native title issues)”, for the proposed mining lease, see section 617(2).

“negotiated agreement”, for the proposed mining lease, see section 624(1).

“**native title issues decision**” see section 633(1).

“**registered native title party**”, for the proposed mining lease, see section 618.

“**urgency notice**” see section 646.

‘Subdivision 2—Notification and registration requirements

‘Requirement to notify

‘616.(1) The applicant must give a written notice about the proposed mining lease to—

- (a) all native title notification parties for the non-exclusive land; and
- (b) the mining registrar for the land the subject of the proposed mining lease.

‘(2) The applicant must also make sure that a public notice, containing the information contained in the written notice mentioned in subsection (1), is published in—

- (a) a newspaper circulating generally in the area of the land the subject of the proposed mining lease; and
- (b) a relevant special interest publication.

‘(3) The written notice must be given under subsection (1), and the public notice must be published under subsection (2)—

- (a) not earlier than 3 months before the application for the proposed mining lease is lodged; and
- (b) not later than—
 - (i) the end of the period of 28 days after the certificate of application for the proposed mining lease is endorsed by the mining registrar under section 252(2) or reissued under section 253;⁷²

⁷² Section 252 (Certificate of application etc.), section 253 (Reissue of certificate of application)

- (ii) if the mining registrar decides a longer period under section 252(7)—the end of the longer period;
- (iii) if, under section 619(3), the mining registrar decides that the written notice has not been given as required under this subdivision, and decides a further period for the giving of the written notice—the end of the further period.

‘(4) The written notice may be about more than 1 proposed mining lease.

‘Content of written notice

‘617.(1) The written notice must state the following—

- (a) the following days for the proposed mining lease—
 - (i) the notification day (native title issues)
 - (ii) the closing day (native title issues);
- (b) how a person may become a registered native title party for the proposed mining lease;
- (c) that registered native title parties have a right—
 - (i) to be consulted about the proposed mining lease⁷³; and
 - (ii) to object to the granting of the proposed mining lease⁷⁴; and
 - (iii) to negotiate with a view to reaching agreement about the granting of the proposed mining lease;⁷⁵
- (d) a clear description of the relevant non-exclusive land;
- (e) a description of the nature of the proposed mining lease;
- (f) whether an election has been made to apply this division to an alternative provision area;

⁷³ See sections 622 (Parties to consultation and negotiation) and 624 (Requirement for consultation and for negotiation in good faith)

⁷⁴ See section 632 (Objection during consultation and negotiation period)

⁷⁵ See section 624 (Requirement for consultation and for negotiation in good faith)

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- (g) that the proposed mining lease, if granted, will be granted by the Governor in Council;
 - (h) how further information about the proposed mining lease, and about the matters mentioned in paragraph (c), can be obtained from the applicant and from the mining registrar.

‘(2) The “notification day (native title issues)” must be a day that may reasonably be assumed to be a day by which—

- (a) the written notice will have been received by the persons to whom it is to be given, and
- (b) the public notice will have come to the attention of the persons to whom the public notice is directed.

‘(3) The “closing day (native title issues)” must be a day at least 3 months after the notification day (native title issues).

‘Registered native title parties

‘618. Each of the following is a **“registered native title party”** for the proposed mining lease—

- (a) a body or body corporate that, on or before the closing day (native title issues), is a registered native title body corporate in relation to the land affected by the proposed mining lease;
- (b) a body corporate that becomes a registered native title body corporate in relation to the land affected by the proposed mining lease—
 - (i) after the closing day (native title issues); and
 - (ii) as a result of a claim that was entered on the register of native title claims on or before the closing day (native title issues);
- (c) a person who—

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- (i) files a native title determination application in the Federal Court on or before the closing day (native title issues) for the proposed mining lease;⁷⁶ and
 - (ii) is a registered native title claimant in relation to the land affected by the proposed mining lease 1 month after the closing day (native title issues) for the proposed mining lease;
 - (d) a person who is a registered native title claimant in relation to the land affected by the proposed mining lease on or before the closing day (native title issues).

‘Advice to mining registrar

‘619.(1) As soon as practicable after the closing day (native title issues) for the proposed mining lease, the applicant must give the mining registrar—

- (a) a statutory declaration in the approved form—
 - (i) declaring as to the applicant’s compliance with the requirements of sections 616 and 617; and
 - (ii) attaching copies of the written notice given, and the public notice published, under section 616; and
- (b) the names and addresses of—
 - (i) all registered native title parties for the non-exclusive land as at the closing day (native title issues); and
 - (ii) all native title claimants who may become registered native title parties for the non-exclusive land.

‘(2) As soon as practicable after the end of 1 month after the closing day (native title issues) for the proposed mining lease, the applicant must give the mining registrar the names and addresses of all persons who have become registered native title parties for the non-exclusive land in the month.

⁷⁶ Section 61 of the Commonwealth Native Title Act sets out details about native title determination applications.

‘(3) If the mining registrar decides that the written notice has not been given as required under sections 616 and 617, the mining registrar may decide a further period for the giving of the written notice.⁷⁷

‘Ending of additional requirements if notice of non-objection lodged

‘620. The additional requirements provided for under this division stop applying for the proposed mining lease if after the closing day (native title issues)—

- (a) there are no registered native title parties for the non-exclusive land, and no native title claimants who may become registered native title parties for the non-exclusive land; or
- (b) the following persons certify in the approved form lodged with the mining registrar that they do not object to the grant of the proposed mining lease and do not wish to be consulted about it—
 - (i) all registered native title parties for the non-exclusive land;
 - (ii) if 1 month after the closing day (native title issues) has not expired, all native title claimants who may become registered native title parties for the non-exclusive land.

‘Participation in consultation and negotiation of potential registered native title party

‘621. For applying the additional requirements provided for in this division in the first month after the closing day (native title issues) for the proposed mining lease, a reference to a registered native title party includes a native title claimant who may become a registered native title party for the non-exclusive land.

⁷⁷ Section 266 (Mining registrar may recommend rejection of application for noncompliance) provides for recommending rejection of an application for noncompliance with requirements placed on the applicant by this Act, and section 267 (Minister may reject application at any time) allows the Minister to reject an application, including for noncompliance.

‘Subdivision 3—Consultation and negotiation

‘Parties to consultation and negotiation

‘622.(1) The parties to the consultation and negotiation required under this subdivision about the granting of the proposed mining lease are the following (the “**consultation and negotiation parties**” for the proposed mining lease)—

- (a) the applicant;
- (b) the registered native title parties for the non-exclusive land;
- (c) the State.

‘(2) However, the State stops being a consultation and negotiation party for the proposed mining lease if the State and all the other consultation and negotiation parties for the proposed mining lease at any time agree, in the approved form lodged with the mining registrar, that the State is not to be a consultation and negotiation party.

‘(3) Also, if all the consultation and negotiation parties at any time agree, in the approved form lodged with the mining registrar, that the State is to take a particular role in the consultation and negotiation, stated in the lodged approved form, the State may adopt the stated role, even though it is no longer a consultation and negotiation party.

‘(4) A registered native title party for the non-exclusive land is taken to stop being a consultation and negotiation party if the party lodges an approved form under section 620(b).

‘Consultation and negotiation period

‘623.(1) The “**consultation and negotiation period**” for the proposed mining lease starts on the later of the following—

- (a) the closing day (native title issues) for the proposed mining lease;
- (b) the day the mining registrar endorses the certificate of application under section 252(2).⁷⁸

⁷⁸ Section 252 (Certificate of application etc.)

‘(2) The “**consultation and negotiation period**” for the proposed mining lease ends—

- (a) if paragraph (b) does not apply—3 months after the period starts; or
- (b) if the consultation and negotiation parties agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing before the time that would otherwise apply under paragraph (a) of the agreed later time—at the agreed later time.

‘(3) However, if an environmental impact statement is completed under part 7 for the proposed mining lease, the consultation and negotiation period for the proposed mining lease ends on the later of the following—

- (a) 3 months after the day the mining registrar displays the notice about the environmental impact statement at the mining registrar’s office under section 264(3);⁷⁹
- (b) if the registered native title parties for the non-exclusive land and the applicant agree on a time, which must be later than the time that would otherwise apply under paragraph (a), and advise the mining registrar in writing of the agreed later time—at the agreed later time;
- (c) the time that would otherwise apply under subsection (2).

‘**Requirement for consultation and negotiation in good faith**

‘**624.(1)** In the consultation and negotiation period, the consultation and negotiation parties for the proposed mining lease must consult and negotiate in good faith with a view to obtaining the agreement of each of the registered native title parties for the non-exclusive land (a “**negotiated agreement**”) to—

- (a) the granting of the proposed mining lease; and
- (b) any conditions to be complied with by the consultation and negotiation parties if the proposed mining lease is granted.

⁷⁹ Section 264 (What happens after environmental impact statement is prepared?)

‘(2) Also, as part of the consultation and negotiation—

(a) the applicant—

(i) must consult the registered native title parties about ways of minimising the impact of the proposed mining lease on registered native title rights and interests in relation to the non-exclusive land, including about—

(A) any access to the land; and

(B) the way in which anything authorised by the proposed mining lease might be done; and

(ii) for the consultation, must have regard to the guidelines set out in this subdivision for applicant consultation; and

(b) the registered native title parties—

(i) must consult the other consultation and negotiation parties about the effect of the proposed mining lease on their registered native title rights and interests; and

(ii) for the consultation, must have regard to the guidelines set out in this subdivision for registered native title party consultation.

‘Content of negotiation in good faith

‘625.(1) Subsections (3) to (5) apply for the requirement under this subdivision to negotiate in good faith.

‘(2) However, subject to those subsections, this subdivision does not limit the requirements that apply for negotiation in good faith.

‘(3) A consultation and negotiation party does not negotiate in good faith if the party does not make every reasonable effort to reach agreement.

‘(4) To negotiate in good faith, a consultation and negotiation party is not required to negotiate about issues unrelated or unconnected to the proposed mining lease.

‘(5) A consultation and negotiation party is not required to negotiate about matters unrelated to the impact of the proposed mining lease on the registered native title rights and interests of registered native title parties.

‘(6) The failure of 1 consultation and negotiation party to negotiate in good faith can not be used to establish that another consultation and negotiation party has not negotiated in good faith.

‘Request for mediation

‘626.(1) At any time during the consultation and negotiation period, a consultation and negotiation party may ask for mediation to help in resolving issues relevant to the consultation and negotiation.

‘(2) If a consultation and negotiation party asks for mediation under subsection (1), mediation—

- (a) must be conducted by—
 - (i) a mediator chosen by the consultation and negotiation parties; or
 - (ii) if the consultation and negotiation parties are not able to agree on a mediator and the party asks the tribunal to provide the mediation—the tribunal, or a mediator chosen by the tribunal; and
- (b) does not extend the consultation and negotiation period; and
- (c) may continue after the consultation and negotiation period has ended if the consultation and negotiation parties agree; and
- (d) may end at any time—
 - (i) by decision of the mediator; or
 - (ii) by agreement of the consultation and negotiation parties.

‘Process for consultation and negotiation—applicant consultation

‘627.(1) This section states guidelines for applicant consultation under this subdivision.

‘(2) The consultation should start as soon as practicable after the consultation and negotiation period starts.

‘(3) The applicant should—

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- (a) give each registered native title party for the non-exclusive land a true copy of the application for the proposed mining lease (but not the statement detailing the applicant's financial and technical resources) and the endorsed certificate of application; and
 - (b) convene at least 1 meeting (“**consultation meeting**”) to provide a reasonable opportunity for all registered native title parties to be given a presentation about the proposed mining lease.

‘(4) A consultation meeting may be—

- (a) in the town or city where the mining registrar is located; or
- (b) in a town or city in which there is an office of the representative Aboriginal/Torres Strait Islander body for the area that includes the non-exclusive land; or
- (c) at another place agreed between the consultation and negotiation parties.

‘(5) A consultation meeting should be convened at a time and place suitable for maximising attendance.

‘(6) If the applicant has convened a consultation meeting under subsection (3)(b), the meeting is taken to have happened even though not all, or none, of the registered native title parties attended the meeting.

‘(7) The presentation mentioned in subsection (3)(b) should be directed at providing registered native title parties with an understanding of the anticipated nature, extent and impact of the project authorised by the grant of the proposed mining lease.

‘(8) Consultation under this section should be completed within 1 month after the closing day (native title issues) for the proposed mining lease.

‘Process for consultation and negotiation—registered native title parties consultation

‘**628.(1)** This section states the guidelines for registered native title party consultation under this subdivision.

‘(2) The consultation should be carried out as soon as practicable after the applicant consultation has been completed.

‘(3) Each registered native title party for the non-exclusive land should advise the other consultation and negotiation parties about the impact the party considers the proposed mining lease will have on the party’s registered native title rights and interests.

‘Process for consultation and negotiation—taking account of existing rights, interests and use

‘629. Without limiting the scope of consultation and negotiation under this subdivision, the nature and extent of the following may be taken into account—

- (a) existing non-native title rights and interests in relation to the non-exclusive land of persons other than registered native title parties for the non-exclusive land;
- (b) existing use of the non-exclusive land by persons other than registered native title parties for the non-exclusive land;
- (c) the practical effect of the exercise of any existing non-native title rights and interests mentioned in paragraph (a), and of the existing use mentioned in paragraph (b), on the exercise of native title rights and interests in relation to the non-exclusive land.

‘Process for consultation and negotiation—negotiated agreement with or without conditions attached

‘630.(1) This section applies if a negotiated agreement is obtained, whether or not the negotiated agreement includes conditions to be complied with by the consultation and negotiation parties for the proposed mining lease if the proposed mining lease is granted.

‘(2) The consultation and negotiation parties must—

- (a) lodge a certificate in the approved form with the mining registrar stating that a negotiated agreement has been obtained for the proposed mining lease; and
- (b) give a copy of the certificate to the tribunal.

‘(3) When the approved form has been lodged under subsection (2), the additional requirements provided for under this division stop applying to the proposed mining lease.

‘Process for consultation and negotiation—negotiated agreement with conditions attached

‘631.(1) This section applies if a negotiated agreement is obtained, and the negotiated agreement includes conditions to be complied with by the consultation and negotiation parties for the proposed mining lease if the proposed mining lease is granted.

‘(2) The negotiated agreement has effect, if the proposed mining lease is granted, as if—

- (a) the conditions included in the agreement were the terms of a contract; and
- (b) all the consultation and negotiation parties were parties to the contract; and
- (c) if a registered native title party is a registered native title claimant—any individual included in the native title claim group concerned were a party to the contract.

‘(3) Subsection (2) has effect in addition to any other effect that the negotiated agreement may have apart from under subsection (2).

‘Objection during consultation and negotiation period

‘632.(1) At any time during the consultation and negotiation period, a registered native title party may lodge an objection to the proposed mining lease.

‘(2) The objection—

- (a) must be made in writing in the approved form; and
- (b) must be lodged with the mining registrar; and
- (c) must state the facts and circumstances relied on by the registered native title party in support of the ground of objection.

‘(3) Anything about the amount or payment of compensation is not a ground for objection.

‘(4) The registered native title party must also give a copy of the objection, and all material accompanying the objection, to the other consultation and negotiation parties and the tribunal as soon as practicable after the objection is lodged with the mining registrar.

‘(5) At any time before a combined hearing is held for the proposed mining lease, the registered native title party may withdraw the objection by lodging with the mining registrar a written notice withdrawing the objection.

‘(6) The registered native title party must also give a copy of the written notice withdrawing the objection to the other consultation and negotiation parties and the tribunal as soon as practicable after the withdrawal of the objection is lodged with the mining registrar.

‘(7) The registered native title party must withdraw the objection under this section if at any time a negotiated agreement is obtained.

‘(8) The registered native title party for the non-exclusive land may object about the effect of the proposed mining lease on its registered native title rights and interests only under this section, and may not object under section 260⁸⁰ about the effect of the proposed mining lease on its registered native title rights and interests.

‘(9) An objection lodged under this section, if it is not withdrawn, must be heard by the tribunal in a combined hearing under subdivision 4.

‘(10) However, the tribunal must not hear an objection if the objection has not been made in compliance with this section.

‘Subdivision 4—Referral and native title issues decision

‘Referral of proposed mining lease to tribunal

‘**633.(1)** If the consultation and negotiation period has ended, but a negotiated agreement has not been obtained, a consultation and negotiation party for the proposed mining lease may, in the approved form lodged with

⁸⁰ Section 260 (Objection to grant of application for grant of mining lease)

the mining registrar, refer the proposed mining lease to the tribunal for a decision under this division (a **“native title issues decision”**).

‘(2) A copy of the approved form must also be given to the other consultation and negotiation parties for the proposed mining lease.

‘Continuing negotiation and mediation

‘**634.(1)** After the lodging of the approved form for a referral, the consultation and negotiation parties for the proposed mining lease may continue to negotiate, including through mediation, to achieve a negotiated agreement before the native title issues decision is made.

‘(2) If a negotiated agreement is achieved, the tribunal may not make a native title issues decision.

‘Withdrawal of referral

‘**635.(1)** A consultation and negotiation party may at any time before the native title issues decision is made withdraw its referral of the proposed mining lease to the tribunal by—

- (a) giving a withdrawal of referral in the approved form to the mining registrar; and
- (b) giving each other consultation and negotiation party a copy of the withdrawal of referral.

‘(2) Nothing in subsection (1) stops the consultation and negotiation party who withdrew the referral, or any other consultation and negotiation party, making another referral under this subdivision.

‘Combined hearing

‘**636.(1)** The hearing under part 7 of the application for the grant of the proposed mining lease must include the following—

- (a) the hearing of the objections and other matters mentioned in section 268(1);⁸¹

⁸¹ Section 268 (Hearing of application for grant of mining lease)

(b) the hearing for a native title issues decision, including the hearing of any objections lodged under section 632.

‘(2) The hearing mentioned in subsection (1) is a “**combined hearing**”.

‘(3) The tribunal must not act under section 270⁸² to dispense with a hearing, unless a negotiated agreement has been reached.

‘(4) All consultation and negotiation parties have the right to be heard at the combined hearing.

‘**Fixing of date for combined hearing**

‘**637.(1)** This section applies if the mining registrar is required to fix under section 265 a hearing date for the combined hearing, but there has not yet been a referral (other than a referral that has been withdrawn) of the mining lease for a native title issues decision.

‘(2) The mining registrar may, if the applicant agrees, fix a hearing date for the application for the proposed mining lease, and any objections to the application, under section 265 as if the hearing were not a combined hearing.

‘(3) At the hearing, the tribunal may—

- (a) proceed with the hearing of the application for the proposed mining lease, and any objections to the application, as if the hearing were not a combined hearing; and
- (b) at an appropriate time adjourn the hearing; and
- (c) as soon as practicable after the proposed mining lease is referred to the tribunal for a native title issues decision, reconvene the combined hearing.

‘(4) The mining registrar may defer fixing a date for the combined hearing until the proposed mining lease is referred to the tribunal for a native title issues decision.

⁸² Section 270 (Procedure where no objections lodged)

‘(5) If the proposed mining lease has been referred to the tribunal for a native title issues decision, but the mining registrar is not yet required under section 265 to fix a hearing date for the combined hearing, the mining registrar must fix a date for the combined hearing when the mining registrar is able to fix a date under section 265.

‘Subdivision 5—Requirements for combined hearing

‘Directions about conduct of combined hearing

‘638. At any time after the referral of the proposed mining lease for a native title issues decision, the tribunal may give directions to the consultation and negotiation parties, including directions about the filing and serving of the following—

- (a) a statement by the applicant that includes a copy of the material provided to the registered native title parties under subdivision 3;
- (b) a statement of impact by each registered native title party, setting out the effect the party considers the proposed mining lease will have on the party’s registered native title rights and interests;
- (c) submissions by any of the consultation and negotiation parties on the matters the tribunal will be required to take into account for making its native title issues decision.

‘Issue of negotiation in good faith

‘639.(1) If a consultation and negotiation party raises the issue of whether another consultation and negotiation party has complied with subdivision 3, including with the requirement for negotiation in good faith, the issue must be dealt with as a part of the combined hearing for the application for the grant of the proposed mining lease.

‘(2) If at the combined hearing the tribunal is not satisfied that the applicant or the State has complied with subdivision 3, including with the requirement for negotiation in good faith, it may adjourn the combined hearing to allow for the subdivision to be complied with by all the consultation and negotiation parties.

‘(3) An adjournment under subsection (2) may only be for a maximum period of 3 months.

‘(4) If the tribunal is satisfied that a registered native title party did not comply with subdivision 3, including with the requirement for negotiation in good faith, the tribunal may not adjourn the combined hearing on that ground alone, but it may take the failure to comply into account in making its native title issues decision.

‘(5) A consultation and negotiation party can not raise the issue of the State’s compliance with subdivision 3, including the requirement for negotiation in good faith, on the ground that the State stopped being a consultation and negotiation party or took a particular role under section 622(3).

‘Nature of native title issues decision

‘640.(1) The native title issues decision must be 1 of the following—

- (a) that the proposed mining lease may be granted;
- (b) that the proposed mining lease may be granted, but subject to either or both of the following—
 - (i) that conditions, described or identified in the native title issues decision, are to be included in the mining lease;
 - (ii) that conditions (“**contract conditions**”), described or identified in the native title issues decision, are required to be complied with by 1 or more of the consultation and negotiation parties (even though the conditions are not included in the mining lease);
- (c) that the proposed mining lease should not be granted.

‘(2) A native title issues decision may include a condition, whether or not a contract condition, that an amount is to be held in trust for compensation until it is dealt with under part 18.

‘(3) A native title issues decision may not include a condition, whether or not a contract condition, that has the effect that a registered native title party is entitled to payments from the applicant worked out by reference to—

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- (a) the amount of profits to be made under the proposed mining lease;
 - (b) the amount of any income to be derived under the proposed mining lease;
 - (c) anything to be produced under the proposed mining lease.

‘Overruling of native title issues decision

‘641.(1) The Minister may overrule the native title issues decision only if—

- (a) it is in the interests of Queensland or in the national interest to overrule the native title issues decision; and
- (b) the Minister overrules the decision within 2 months after the native titles issues decision is made.

‘(2) If the Minister overrules the native title issues decision, the Minister must make a substituted decision, and the substituted decision has effect as the native title issues decision.

‘(3) The Minister must give a copy of the substituted decision to the tribunal and the consultation and negotiation parties.

‘Effect of native title issues decision

‘642.(1) If the native title issues decision is that the proposed mining lease may be granted, the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be granted.

‘(2) If the native title issues decision is that the proposed mining lease may be granted, but subject to conditions to be included in the mining lease—

- (a) the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be granted, if the recommendation includes a recommendation that the proposed mining lease be granted subject to the conditions; and

- (b) the Minister is not stopped from recommending to the Governor in Council under section 271⁸³ that the proposed mining lease be granted, if the recommendation includes a recommendation that the proposed mining lease be granted subject to the conditions.

(3) If the native title issues decision is that the proposed mining lease may be granted subject to contract conditions, the tribunal is not stopped from recommending under section 269 that the application for the proposed mining lease should be granted.

‘(4) If the native title issues decision⁸⁴ is that the proposed mining lease should not be granted—

- (a) the tribunal must not recommend under section 269 that the application for the proposed mining lease should be granted; and
- (b) the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted.

‘(5) If the grant is made, a contract condition has effect, in addition to any effect that it may have other than under this subsection, as if it were included in the terms of a contract among the consultation and negotiation parties.

‘(6) If a consultation and negotiation party is a registered native title claimant, any individual included in the native title claim group concerned is a party to the contract.

‘Tribunal’s native title issues decision

‘643.(1) In making its native title issues decision, the tribunal must take into account the following—

- (a) the effect of the proposed mining lease on—
- (i) the enjoyment by the registered native title parties of their registered native title rights and interests; and

⁸³ Section 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

⁸⁴ The native title issues decision could be the decision of the tribunal, or it could be the substituted decision of the Minister after an overruling of the tribunal’s decision.

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- (ii) the way of life, culture and traditions of any of the registered native title parties; and
 - (iii) the development of social, cultural and economic structures of any of the registered native title parties; and
 - (iv) the freedom of access by any of the registered native title parties to the non-exclusive land; and
 - (v) the freedom of any of the registered native title parties to carry out rites, ceremonies or other activities of cultural significance on the non-exclusive land in accordance with their traditions; and
 - (vi) any area or site on the non-exclusive land of particular significance to the registered native title parties in accordance with their traditions;
- (b) the interests, proposals, opinions or wishes of the registered native title parties in relation to the management, use or control of land in relation to which there are registered native title rights and interests of the registered native title parties that will be affected by the proposed mining lease;
 - (c) the economic or other significance of the proposed mining lease to Australia, Queensland, the area in which the non-exclusive land is located and Aboriginal peoples and Torres Strait Islanders who live in the area;
 - (d) any public interest in the granting of the proposed mining lease;
 - (e) any other matter the tribunal considers relevant.

‘(2) In deciding the effect of the proposed mining on the matters mentioned in subsection (1)(a), the tribunal must also take into account the nature and extent of—

- (a) existing non-native title rights and interests in relation to the non-exclusive land; and
- (b) existing use of the land or waters by persons other than registered native title parties.

‘(3) In complying with subsections (1) and (2) the tribunal must take into account all objections lodged under this division to the granting of the proposed mining lease, and any other documents lodged or filed under this division.

‘(4) Taking into account the effect of the proposed mining lease on an area or site mentioned in subsection (1)(a)(v) does not affect the operation of any law of the State for the preservation or protection of those areas or sites.

‘(5) Before making the native title issues decision—

- (a) the tribunal must find out whether there are any issues relevant to its decision on which the consultation and negotiation parties agree; and
- (b) if there are agreed issues under paragraph (a), and all the consultation and negotiation parties consent—the tribunal, in making its native title issues decision—
 - (i) must take the agreed issues into account; and
 - (ii) need not take into account the matters mentioned in subsection (1)(a) to (e) to the extent the matters relate to the agreed issues.

‘Deferred matters

‘644.(1) As well as making the native title issues decision, the tribunal may make a decision about matters (the “**deferred matters**”) that—

- (a) were the subject of negotiation in the consultation and negotiation period for the proposed mining lease; and
- (b) under an agreement that includes all the consultation and negotiation parties, are to be the subject of further negotiation, or are to be decided in a way stated in the decision under this section; and
- (c) are not reasonably capable of being decided when the native title issues decision is made; and
- (d) are not directly relevant to the native title issues decision.

‘(2) The tribunal must give a copy of its decision under this section to—

- (a) the consultation and negotiation parties; and
- (b) if the State is not a consultation and negotiation party—the mining registrar.

‘(3) The tribunal’s decision under this section about the deferred matters is binding on all the consultation and negotiation parties.

‘(4) If the decision under this section is that the deferred matters are to be decided by arbitration, and, after the decision is made, the consultation and negotiation parties can not agree on the way the arbitration is to take place, the tribunal, on the application of a consultation and negotiation party, has jurisdiction to decide the deferred matters.

‘General time requirement for making native title issues decision

‘645.(1) The tribunal must take all reasonable steps to make sure that the native title issues decision is made within 6 months after the proposed mining lease is referred to the tribunal for the decision.

‘(2) If the native title issues decision is not made within the 6 months, the tribunal must, as soon as practicable after the 6 months ends, give a written notice to the Minister—

- (a) advising why the native title issues decision has not yet been made; and
- (b) giving an estimate of when the decision is likely to be made.

‘Subdivision 6—Special provisions about completion of combined hearing and making of native titles issues decision

‘Giving of urgency notice

‘646.(1) This section applies if the tribunal’s native titles issues decision has not been made, and a negotiated agreement has not been reached, 4 months after the proposed mining lease was referred to the tribunal for a native title issues decision, other than under a referral that was later withdrawn.

‘(2) The Minister may give the tribunal a written notice (an “**urgency notice**”) asking the tribunal to complete its combined hearing and make its native title issues decision within the period stated in the written notice.

‘(3) The period stated under subsection (2) must be a period ending after the end of the period of 6 months after the proposed mining lease was referred to the tribunal for a native title issues decision, other than under a referral that was later withdrawn.

‘**Minister’s decision if tribunal recommendation delayed**

‘**647.(1)** This section applies if—

- (a) the Minister has given the tribunal an urgency notice under section 646 in relation to the proposed mining lease; and
- (b) the period stated in the urgency notice for the tribunal to complete its combined hearing and make its native title issues decision has ended; and
- (c) the tribunal has not made its native title issues decision; and
- (d) the consultation required under this subdivision (including under this section) for the making of a decision by the Minister has happened.

‘(2) The Minister may make a decision (the “**Minister’s decision**”) under this section about the native title issues decision.

‘(3) The Minister may make a decision under this section that has the effect of a native title issues decision that the proposed mining lease may be granted, with or without conditions and whether or not contract conditions, only if the Minister has first consulted with the Commonwealth Minister about the making of the decision.

‘(4) The Minister may make a decision under this section only if—

- (a) the tribunal’s completion of the combined hearing, and the making of the native title issues decision, are unlikely to happen within a period that is reasonable, taking into account all the circumstances; and
- (b) it is in the interests of Queensland to make the decision at the time it is made.

‘(5) Subsection (4)(a) and (b) does not stop the Minister from taking into account other matters in deciding whether to make a decision under this section.

‘Consultation before Minister’s decision

‘648.(1) Before making the Minister’s decision, the Minister must give a written notice under subsections (2) and (3).

‘(2) The Minister must give written notice to the tribunal requiring it, by the end of the day stated in the notice, to give the Minister and each consultation and negotiation party a summary of the material presented to the tribunal in the course of the tribunal considering what the native title issues decision should be.

‘(3) The Minister must give a written notice to each consultation and negotiation party stating the following—

- (a) that the Minister is considering making the decision;
- (b) that each consultation and negotiation party—
 - (i) may, by the end of the day stated in the written notice, give the Minister any submission or other material that the consultation and negotiation party wants the Minister to take into account in deciding whether to make the decision and, if so, its terms; and
 - (ii) if the consultation and negotiation party gives the Minister a submission or other material, must also give each of the other consultation and negotiation parties a copy of the submission or other material; and
 - (iii) may, within 7 days after the day stated in the written notice, in response to any submission or other material given by any other consultation and negotiation party or the tribunal, give the Minister any further submission or other material that the consultation and negotiation party wants the Minister to take into account.

‘(4) The day stated in the written notices given under subsections (2) and (3) must be—

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- (a) the same day in all of the written notices given under the subsections; and
 - (b) a day by which, in the Minister's opinion, it is reasonable to assume that all of the written notices given will have been received by, or will otherwise have come to the attention of, the persons who must be notified under this section.

‘(5) If the Minister complies with subsection (1), there is no requirement for any person to be given any further hearing before the Minister makes the decision.

‘(6) In making the decision, the Minister—

- (a) must take into account—
 - (i) any submission or material provided by a consultation and negotiation party under subsection (3), but only if the consultation and negotiation party has complied with the Minister's written notice in the way mentioned in subsection (3)(b)(ii); and
 - (ii) any report provided by the tribunal; and
 - (iii) the Minister's consultation with the Commonwealth Minister under this subdivision; and
 - (iv) any issues about which the consultation and negotiation parties have agreed in writing and advised to the Minister; and
- (b) may, but need not, take into account any other matter or thing.

‘(7) The fact that no submission or other material of the kind mentioned in subsection (3) has been given to the Minister before the end of the day stated in the written notices does not stop the Minister from making the decision.

‘Minister's decisions generally

‘649.(1) The Minister's decision is a native title issues decision.

‘(2) The Minister's decision must, as for a native title issues decision for section 640, be 1 of the following—

- (a) that the proposed mining lease may be granted;
- (b) that the proposed mining lease may be granted, but subject to either or both of the following—
 - (i) that conditions, described or identified in the Minister's decision, are to be included in the mining lease;
 - (ii) contract conditions;
- (c) that the proposed mining lease should not be granted.

‘(3) The Minister's decision may include a condition, whether or not a contract condition, that an amount is to be held in trust for compensation until it is dealt with under part 18.

‘(4) However, if the Minister's decision includes a condition under subsection (3)—

- (a) the tribunal must decide the amount; and
- (b) the amount, when paid, must be held in trust in a way prescribed under a regulation until it is dealt with under part 18.

‘(5) The Minister does not have a duty to make a Minister's decision, despite the following—

- (a) the giving of any notice by the Minister;
- (b) the giving of any submission or other material to the Minister;
- (c) any request by a consultation and negotiation party for the Minister to make the decision;
- (d) any other circumstance.

‘(6) The Minister's decision must be made by the Minister personally.

‘(7) The Minister must table in the Legislative Assembly a report containing the Minister's decision, and the reasons for the decision, within 15 sitting days after making the decision.

Division 5—Renewals of mining leases

‘Application of div 5

‘650.(1) This division states additional requirements that apply for the renewal of a mining lease over non-exclusive land under part 7.

‘(2) In subsection (1)—

“renewal”, of a mining lease, includes—

- (a) the re-grant of the mining lease; and
- (b) the re-making of the mining lease; and
- (c) the extension of the term of the mining lease.

‘Requirements for renewal

‘651.(1) If the mining lease is a surface alluvium (gold or tin) mining lease, division 2 applies, with necessary changes, to the renewal of the mining lease as if the renewal were the granting of the mining lease.

‘(2) If the mining lease is not a surface alluvium (gold or tin) mining lease, divisions 3 and 4 apply, with necessary changes, to the renewal of the mining lease as if the renewal were the granting of the mining lease.

Division 6—Requirements for subsidiary approvals

‘Requirements for approval—variations and additions

‘652.(1) This division applies to the granting to the holder of a mining lease over non-exclusive land of a variation or addition to the rights to mine given by the mining lease.

‘(2) Divisions 3 and 4 apply, with necessary changes, to the variation or addition of the mining lease as if the variation or addition were the granting of the mining lease.

‘PART 18—COMPENSATION PROVISIONS

‘Native title holders compensation

‘**653.(1)** Native title holders are entitled to recover, from the holder of a mining tenure granted after the commencement of this section, compensation for the effect of the mining tenure, or the activities carried out under the mining tenure, on native title rights and interests.

‘**(2)** If agreement can not be reached about the payment of compensation under subsection (1), any dispute about the payment of, or amount of, compensation is to be decided by the tribunal.

‘**(3)** If a registered native title body corporate is entitled to compensation under subsection (1) in relation to the grant of a mining claim or mining lease, the mining claim or mining lease must not be granted unless—

- (a) compensation has been decided, whether by agreement or by a decision of the tribunal, between the applicant and the registered native title body corporate; and
- (b) the conditions of the agreement or decision have been or are being complied with by the applicant.

‘**(4)** If a registered native title body corporate is entitled to compensation under subsection (1) in relation to a prospecting permit, exploration permit or mineral development licence, the registered native title body corporate may recover the compensation from time to time after the grant of the permit or licence for the effect of activities carried out under the permit or licence.

‘**(5)** If a native title holder other than a registered native title body corporate is entitled to compensation under subsection (1), it is not necessary for compensation to be decided, whether by agreement or by decision of the tribunal, before the mining tenure is granted or before activities are carried out under the tenure.

‘**(6)** Despite subsection (5), the tribunal must require an amount to be held in trust for compensation in relation to the grant of a mining claim or mining lease until an approved determination of native title is made.

‘(7) Also, the tribunal may require an amount to be held in trust for compensation in relation to the grant of a prospecting permit, exploration permit or mineral development licence until an approved determination of native title is made.

‘(8) If the tribunal requires an amount to be held in trust for compensation in relation to the grant of any mining tenure, the mining tenure must not be granted until the amount of compensation required to be held in trust is paid into trust.

‘(9) If the tribunal must decide compensation under subsection (2) or requires compensation to be paid under subsection (6) or (7), compensation under subsection (1) is not payable to a native title holder unless the native title holder becomes a registered native title body corporate.

‘(10) If a decision of the tribunal, whether a native title issues decision or a decision under this section, requires an amount to be held in trust for compensation until it is dealt with under this part—

- (a) the tribunal must decide the amount; and
- (b) the amount when paid must be held in trust, in the way prescribed under a regulation, until it is dealt with under this part.

‘(11) If a person claiming to be entitled to compensation under subsection (1) asks that the whole or part of the compensation should be in the form of non-monetary compensation, the applicant or the tribunal must consider the request.

‘(12) If the tribunal decides that compensation may be in the form of non-monetary compensation, but the non-monetary compensation is not provided in the way required under the decision, the person claiming to be entitled to the compensation may ask the tribunal to decide instead that the whole or part of the compensation must consist of the payment of money.

‘Compensation found to be payable after negotiated agreement concluded

‘654.(1) This section applies if—

- (a) there is a negotiated agreement about a proposed mining tenure; and

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- (b) the agreement includes provision for the payment of compensation; and
 - (c) there is an approved determination of native title to the effect that native title exists in relation to the non-exclusive land; and
 - (d) the native title holder was not a party to the negotiated agreement; and
 - (e) the negotiated agreement does not provide that any compensation payable under the negotiated agreement must be paid to the native title holder after an approved determination of native title; and
 - (f) the tribunal decides that the native title holder is entitled to recover, from the holder of the mining tenure, compensation under this part.

‘(2) The State must pay the compensation decided by the tribunal.

‘(3) In this section—

“negotiated agreement” means—

- (a) a consultation agreement under part 14; or
- (b) an agreement about an exploration permit under section 495 or 496; or
- (c) an agreement about a mineral development licence under section 542 or 543; or
- (d) a consultation agreement under part 17, division 2; or
- (e) a negotiated agreement under part 17, division 3; or
- (f) a negotiated agreement under part 17, division 4; or
- (g) an agreement about payment of compensation mentioned in section 653.

‘Dealing with amount held in trust for compensation—determination of no native title

‘655.(1) This section applies if—

- (a) an amount is held in trust for compensation; and

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- (b) either of the following happens—
- (i) the application for the proposed mining tenure is rejected under part 7;
 - (ii) the proposed mining tenure is granted under part 7, but an approved determination of native title is made to the effect that native title did not exist in relation to the non-exclusive land immediately before the mining tenure was granted.

‘(2) The trustee must—

- (a) repay the amount to the person who paid the amount; or
- (b) if the person no longer exists, apply to the tribunal for a direction about the payment of the amount.

‘Dealing with amount held in trust for compensation—determination of native title

‘656.(1) This section applies if—

- (a) an amount is held in trust for compensation; and
- (b) the proposed mining tenure is granted; and
- (c) an approved determination of native title is made to the effect that the parties for whom the amount is held in trust are, disregarding any holding of native title in trust under the Commonwealth Native Title Act, native title holders for the non-exclusive land; and
- (d) the registered native title body corporate advises the trustee that it wishes to accept the amount held in trust for compensation instead of any compensation to which the native title holders may be entitled under this part; and
- (e) the person who paid the amount to the trustee advises the trustee that the person agrees to the registered native title body corporate accepting the amount held in trust for compensation instead of any compensation to which the native title holders may be entitled under this part.

‘(2) The trustee must pay the amount to the registered native title body corporate, and there is no other entitlement to compensation under this part.

‘Dealing with amount held in trust for compensation—other determination about compensation

‘657.(1) This section applies if—

- (a) an amount is held in trust for compensation; and
- (b) an approved determination of native title is made and either of the following applies—
 - (i) the registered native title body corporate does not advise the trustee that it wishes to accept the amount held in trust for compensation instead of any compensation to which the native title holders may be entitled under this part;
 - (ii) the person who paid the amount to the trustee advises the trustee that the person does not agree to the registered native title body corporate accepting the amount held in trust for compensation instead of any compensation to which the native title holders may be entitled under this part.

‘(2) The tribunal must decide the compensation payable under this part.

‘(3) If the decision under subsection (2) is that compensation is payable to the registered native title body corporate—

- (a) if the amount held in trust is the same as the compensation decided by the tribunal—the trustee must pay the amount held in trust to the registered native title body corporate; and
- (b) if the amount held in trust is less than the compensation decided by the tribunal—the trustee must pay the amount held in trust to the registered native title body corporate, and the State must pay the difference in the 2 amounts to the registered native title body corporate; and
- (c) if the amount held in trust is more than the compensation decided by the tribunal—the trustee must—

- (i) from the amount held in trust, pay the registered native title body corporate an amount equal to the compensation decided by the tribunal; and
- (ii) pay the remainder of the amount to the person who paid the amount, or if the person no longer exists, apply to the tribunal for a direction about the payment of the remainder of the amount.

‘(4) If the decision under subsection (2) is that non-monetary compensation is to be provided to the registered native title body corporate, the trustee must apply to the tribunal for a direction about the payment of the amount held in trust.

‘(5) If the decision under subsection (2) is that no compensation is payable to the registered native title body corporate, the trustee must—

- (a) repay the amount to the person who paid the amount; or
- (b) if the person no longer exists, apply to the tribunal for a direction about the payment of the amount.

‘Dealing with amount held in trust for compensation—no applicable provision

‘658.(1) This section applies if—

- (a) an amount is held in trust for compensation; and
- (b) no other provision of this part provides for, or is reasonably likely to provide for, the disposal of the amount by the trustee; and
- (c) the tribunal decides, on an application by a person, that it would be just and equitable in all the circumstances to pay the whole or a part of the amount held in trust to the person who applied to the tribunal or to another person.

‘(2) The trustee must pay the amount held in trust in the way directed by the tribunal.’.

Replacement of pt 12 hdg

11. Part 12, heading—

omit, insert—

‘PART 19—TRANSITIONAL PROVISIONS’.

Renumbering of ss 419 and 420

12. Sections 419 and 420—

renumber as sections 659 and 660.

**PART 4—AMENDMENT OF NATIVE TITLE
(QUEENSLAND) ACT 1993**

Act amended in pt 4

13. This part amends the *Native Title (Queensland) Act 1993*.

Amendment of s 3 (Objects of Act)

14. Section 3(2)(c)—

omit.

**Amendment of s 18 (Confirmation of access to beaches etc. (NTA,
s 197(2) and (3))**

15. Section 18—

insert—

‘(da)stock routes;’.

Replacement of s 146 (Section headings and attachment—Commonwealth Native Title Act)

16. Section 146—

omit, insert—

‘Section headings—Commonwealth Native Title Act

‘146. A reference in a section heading to a provision of the Commonwealth Native Title Act does not form part of this Act.

‘Rights to mine covering both alternative provision areas and other areas

‘146A.(1) This section applies if—

- (a) a particular future act is the creation or variation of a right to mine in non-exclusive land that includes land in an alternative provision area and land that is not in an alternative provision area; and
- (b) alternative provisions applying for the land in the alternative provision area would, if this section had not been passed, have effect in relation to the act.

‘(2) For the alternative provisions, the future act is taken to consist of the following separate acts—

- (a) one act consisting of the creation or variation of the right to mine, but only in the alternative provision area;
- (b) another act consisting of the creation or variation of the right to mine, but only in the land not in the alternative provision area.

‘(3) The act mentioned in subsection (2)(b) is taken to be done only when the right concerned is first exercised in the land not in the alternative provision area.

‘(4) In this section—

“alternative provisions” means laws of Queensland that, under a determination in force under section 43 or 43A of the Commonwealth Native Title Act, have effect instead of the right to negotiate provisions.

“non-exclusive land” means land over which native title has not been extinguished.

“right to negotiate provisions” means part 2, division 3, subdivision P of the Commonwealth Native Title Act.’.