

Queensland



**NATIVE TITLE
(QUEENSLAND) STATE
PROVISIONS AMENDMENT
ACT 1999**

Act No. 35 of 1999

Queensland



NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT ACT 1999

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Queensland



Native Title (Queensland) State Provisions Amendment Act 1999

Act No. 35 of 1999

An Act to amend the *Fossicking Act 1994*, the *Land and Resources Tribunal Act 1999*, the *Mineral Resources Act 1989*, and the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998*

[Assented to 29 July 1999]

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 1999*.

Commencement

2. Parts 3 to 6 commence on a day to 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 11 (Act's application if approved determination of native title)

4. Section 11(2)(b)—

omit, insert—

‘(b) the agreement includes statements to the effect that—

- (i) the parties to the agreement consent, with or without stated conditions, to fossicking over the land or waters; and
- (ii) the *Native Title Act 1993* (Cwlth), part 2, division 3, subdivision P, is not intended to apply to fossicking over the land or waters.’

PART 3—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

Act amended in pt 3

5. This part amends the *Land and Resources Tribunal Act 1999*.

Amendment of s 26 (Limitation on ownership of mining tenures)

6.(1) Section 26, heading, ‘tenures’—

omit, insert—

‘tenements’.

(2) Section 26(1) and (2), ‘tenure’

omit, insert—

‘tenement’.

Amendment of s 41 (Way in which questions are to be decided)

7. Section 41—

insert—

‘(5) Subsections (2) to (4) have effect subject to any requirement in section 42 for the presiding member or presiding members included in an NNTT panel to allow the NNTT member to participate in the making of a decision.’.

Insertion of new s 51A

8. After section 51—

insert—

‘Jurisdiction under Commonwealth Native Title Act

‘51A.(1) This section applies if, under the Commonwealth Native Title Act—

- (a) a claimant or body corporate objects to the doing of an act; and
- (b) the State is required to ensure that the objection to the doing of the act is heard by an independent person or body.

‘(2) The tribunal has jurisdiction to hear the objection.’.

Amendment of sch 1 (Requirements for constituting tribunal)

9.(1) Schedule 1, ‘452’—

omit, insert—

‘454’.

(2) Schedule 1, ‘497’—

omit, insert—

‘512’.

(3) Schedule 1, ‘544’—

omit, insert—

‘568’.

(4) Schedule 1, ‘578’—

omit, insert—

‘609’.

(5) Schedule 1, table appearing under the heading ‘**MINERAL RESOURCES ACT 1989**’, section of table headed ‘**Compensation**’—

omit, insert—

‘Mining leases under part 17, division 3 or 4 and other mining tenements to which part 17, division 3 or 4 is applied

634	native title issues panel decision
669	native title issues panel decision

-
- an agreement about payment of compensation mentioned in part 18 (Compensation provisions).
2. A reference in item 1 to a provision of the *Mineral Resources Act 1989* includes a reference to the provision as applied by another provision, or other provisions, of the native title (mining) provisions.’.

Amendment of sch 4 (Dictionary)

11.(1) Schedule 4, definition “**mining tenure**”, ‘tenure’—

omit, insert—

‘tenement’.

(2) Schedule 4, definition “**native title (mining) provisions**”, after ‘18’—

omit, insert—

‘and part 19, division 2’.

(3) Schedule 4, definition “**native title notification party**”, ‘section 421’—

omit, insert—

‘section 422’.

(4) Schedule 4, definition “**non-native title (mining) provisions**”, after ‘18’—

omit, insert—

‘and part 19, division 2’.

PART 4—AMENDMENT OF MINERAL RESOURCES ACT 1989

Act amended in pt 4

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

Amendment of s 5 (Definitions)

13.(1) Section 5, definition “**prospect**”—
omit.

(2) Section 5—
insert—

‘**“approved form”** see section 416A.

“prospect” see section 6B.’.

Insertion of new s 6B

14. After section 6A—
insert—

‘**Meaning of “prospect”**

‘**6B.(1) “Prospect”** means take action to find out about the existence, quality or quantity of minerals on, in or under land by—

- (a) using a metal detector or a similar hand held instrument; or
- (b) sampling using only hand held implements, including, for example, hammers, hand augers, panning dishes, picks, shakers, shovels and sieves.

‘(2) However, “prospect” does not include taking action that is—

- (a) hand mining; or
- (b) the removal of minerals for their sale.’.

Insertion of new s 10A**15. Part 1—***insert—***‘Extension of certain entitlements to registered native title bodies corporate and registered native title claimants**

‘10A.(1) To the extent that a provision of part 3, other than section 19(1) or 34, applies to a prospecting permit granted only for pegging purposes, a reference in the provision to the owner of land is taken to include a reference to any registered native title body corporate under the Commonwealth Native Title Act in relation to any of the land.

‘(2) To the extent that section 31 applies to a prospecting permit granted other than only for pegging purposes, a reference in the section to the owner of land is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act in relation to any of the land.

‘(3) In sections 34, 96(10), 125, 169, 198(9), 217, 231(6), 300(11) and 317, a reference to the owner of land is taken to include a reference to any registered native title body corporate or registered native title claimant under the Commonwealth Native Title Act in relation to any of the land.

‘(4) In this section—

“pegging purposes”, in relation to a prospecting permit, means purposes necessary to enable the holder of the permit to apply for a mining claim or mining lease over the land for which the permit is granted.’.

Amendment of s 24 (Grant of prospecting permit)**16. Section 24(1)(a), after ‘part’—***insert—*

‘, and otherwise complied with the requirements of this Act’.

Amendment of s 25 (Conditions of prospecting permit)**17. Section 25—**

insert—

‘(6) If a prospecting permit is subject to a condition imposed under section 433,¹ the condition is taken to be a condition of the permit of which notice has been served on the holder.’.

Insertion of new s 25A

18. After section 25—

insert—

‘Indigenous land use agreement conditions

‘25A.(1) This section applies if—

- (a) an indigenous land use agreement under the Commonwealth Native Title Act provides for the granting of a prospecting permit; and
- (b) the State is a party to the agreement; and
- (c) the agreement includes a requirement that, if the prospecting permit is granted, it must be granted subject to conditions stated in the agreement (the “**stated conditions**”); and
- (d) the prospecting permit is granted.

‘(2) The prospecting permit is subject to the stated conditions.

‘(3) The stated conditions are taken to be conditions of the permit of which notice has been served on the holder of the prospecting permit.’.

Amendment of s 74 (Grant of mining claim to which no objection is lodged)

19. Section 74(2)(a), after ‘part’—

insert—

‘and the requirements of this Act have otherwise been complied with’.

¹ Section 433 (Requirement to consult)

Insertion of new ss 81A and 81B

20. After section 81—

insert—

‘Consultation and negotiated agreement conditions

‘81A.(1) This section applies if—

- (a) a consultation agreement under part 14, division 2, or a negotiated agreement under part 17, division 3 or 4, provides for the grant, renewal or variation of, or another act concerning, a mining claim; and
- (b) the agreement includes conditions to be complied with by 1 or more of the parties to the agreement; and
- (c) the mining registrar consents to the mining claim being subject to 1 or more of the conditions (the “**consent conditions**”); and
- (d) the act is done.

‘(2) The mining claim is subject to the consent conditions.

‘Other agreement conditions

‘81B.(1) This section applies if—

- (a) an indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mining claim; and
- (b) the State is a party to the agreement; and
- (c) the agreement includes a requirement that, if the act is done, the mining claim must be subject to conditions stated in the agreement (the “**stated conditions**”); and
- (d) the act is done.

‘(2) The mining claim is subject to the stated conditions.’.

Amendment of s 82 (Variation of conditions of mining claim)

21.(1) Section 82—

insert—

‘(2) However, the mining registrar must not vary a condition of a mining claim if—

- (a) the condition was decided or recommended by the tribunal under the native title provisions; or
- (b) the mining claim is a surface alluvium (gold or tin) mining claim under part 14, division 2, but after the variation, the mining claim would no longer be a surface alluvium (gold or tin) mining claim.’.

(2) Section 82(2) and (3)—

renumber as section 82 (3) and (4).

Amendment of s 91 (Initial term of mining claim)

22. Section 91(1), ‘5 years’—

omit, insert—

‘10 years’.

Amendment of s 93 (Renewal of mining claim)

23.(1) Section 93(3), ‘shall grant’—

omit, insert—

‘must, subject to part 14, division 5, grant’.

(2) Section 93(3), ‘5 years’—

omit, insert—

‘10 years’.

Amendment of s 132 (Exclusion of land from exploration permit if subject to other authority under Act)

24. Section 132—

insert—

‘(3) Land (the “**relevant land**”) does not, under subsection (2), become part of the land in respect of which an exploration permit is granted if—

- (a) the relevant land is non-exclusive land under the native title provisions; and
- (b) the exploration permit was granted after 23 December 1996.’.

Amendment of s 137 (Grant of exploration permit)

25. Section 137(1)(a), after ‘with’—

insert—

‘and that the requirements of this Act have otherwise been complied with’.

Insertion of new ss 141A–141C

26. After section 141—

insert—

‘Consultation and negotiated agreement conditions

‘**141A.(1)** This section applies if—

- (a) an agreement under section 510 or 511,² or a negotiated agreement under part 17, division 4,³ provides for the grant, renewal or variation of, or another act concerning, an exploration permit; and

² Section 510 (Agreement with or without conditions) or 511 (Agreement with conditions)

³ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)

- (b) the agreement includes conditions to be complied with by 1 or more of the parties to the agreement; and
- (c) the Minister consents to the exploration permit being subject to 1 or more of the conditions (the “**consent conditions**”); and
- (d) the act is done.

‘(2) The exploration permit is subject to the consent conditions.

‘Other agreement conditions

‘**141B.(1)** This section applies if—

- (a) an indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, an exploration permit; and
- (b) the State is a party to the agreement; and
- (c) the agreement includes a requirement that, if the act is done, the exploration permit must be subject to conditions stated in the agreement (the “**stated conditions**”); and
- (d) the act is done.

‘(2) The exploration permit is subject to the stated conditions.

‘Application to vary conditions of existing permit

‘**141C.(1)** The holder of an exploration permit (the “**existing permit**”) may apply to the Minister for a variation of the conditions of the existing permit.

‘(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 133.⁴

‘(3) Without limiting subsection (2), in deciding the application, the

⁴ Section 133 (Application for exploration permit)

Minister may—

- (a) vary the conditions of the existing permit by imposing conditions under section 141(1)(k)⁵ in addition to any conditions that apply under the existing permit; and
- (b) fix an amount of security to be deposited under section 144⁶ in addition to any security for the existing permit.

‘(4) On the granting of the application, the varied conditions, including imposed conditions mentioned in subsection (3)(a), are included in the existing permit.’.

Amendment of s 144 (Provision of security)

27.(1) Section 144(1), after ‘renewed’—

insert—

‘or a condition of the permit is varied’.

(2) Section 144(4)—

omit, insert—

‘(4) An exploration permit must not be granted or renewed, and a condition of an exploration permit must not be varied, until the applicant for the grant, renewal or variation deposits the security decided under this section.’.

Amendment of s 147 (Renewal of exploration permit)

28. Section 147(1), from ‘such that’ to ‘subsequent terms’—

omit, insert—

‘that’.

⁵ Section 141 (Conditions of exploration permit)

⁶ Section 144 (Provision of security)

Insertion of new s 176A

29. After section 176—

insert—

‘Application to add excluded land to existing permit

‘176A.(1) The holder of an exploration permit (the **“existing permit”**) may apply to the Minister to add excluded land to the existing permit.

‘(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 133.⁷

‘(3) Without limiting subsection (2), in deciding the application, the Minister may—

- (a) impose conditions under section 141(1)(k)⁸ in addition to any conditions that apply under the existing permit; and
- (b) fix an amount of security to be deposited under section 144⁹ in addition to any security for the existing permit.

‘(4) On the granting of the application, the excluded land is included in the existing permit.

‘(5) In this section—

“excluded land” means land that was the subject of a specific exclusion when the existing permit was granted or that was taken to be excluded under section 132.’.

Amendment of s 182 (Land is excluded from mineral development licence if covered by other authority under Act)

30.(1) Section 182(1)(a), ‘chief executive’—

omit, insert—

‘mining registrar’.

⁷ Section 133 (Application for exploration permit)

⁸ Section 141 (Conditions of exploration permit)

⁹ Section 144 (Provision of security)

(2) Section 182(4), after ‘licence’ (second mention)—

insert—

‘unless the mineral development licence provides otherwise’.

(3) Section 182—

insert—

‘(5) Subsections (3) and (4) do not apply to land that is non-exclusive land under the native title provisions if the mineral development licence was granted after 23 December 1996.’.

Amendment of s 183 (Application for mineral development licence)

31.(1) Section 183(h) and (i), ‘chief executive’—

omit, insert—

‘mining registrar’.

(2) Section 183(1)—

omit, insert—

‘(1) be lodged with the mining registrar; and’.

Amendment of s 184 (Description of mineral development licence)

32. Section 184, ‘chief executive’—

omit, insert—

‘mining registrar’.

Amendment of s 189 (Abandonment of application for mineral development licence)

33. Section 189(1) and (2), ‘chief executive’—

omit, insert—

‘mining registrar’.

Amendment of s 190 (Provision of security)

34.(1) Section 190(1), after ‘renewed’—

insert—

‘or a condition of the licence is varied or approval is given to add stated minerals to the licence,’.

(2) Section 190(2)—

omit, insert—

‘**(2)** A mineral development licence must not be granted or renewed, a condition of a mineral development licence must not be varied, and an approval must not be given to add stated minerals to a mineral development licence, until the applicant for the grant, renewal, variation or approval deposits the security decided under this section.’.

(3) Section 190(7), ‘chief executive’—

omit, insert—

‘mining registrar’.

Amendment of s 192 (Initial term of mineral development licence)

35. Section 192(1), ‘in exceptional circumstances’—

omit.

Insertion of new ss 194AA—194AC

36. After section 194—

insert—

‘Consultation and negotiated agreement conditions

‘194AA.(1) This section applies if—

- (a) an agreement under section 566 or 567,¹⁰ or a negotiated

¹⁰ Section 566 (Agreement with or without conditions) or 567 (Agreement with conditions)

agreement under part 17, division 4,¹¹ provides for the grant, renewal or variation of, or another act concerning, a mineral development licence; and

- (b) the agreement includes conditions to be complied with by 1 or more of the parties to the agreement; and
- (c) the Minister consents to the mineral development licence being subject to 1 or more of the conditions (the “**consent conditions**”); and
- (d) the act is done.

‘(2) The mineral development licence is subject to the consent conditions.

‘Other agreement conditions

‘**194AB.(1)** This section applies if—

- (a) an indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mineral development licence; and
- (b) the State is a party to the agreement; and
- (c) the agreement includes a requirement that, if the act is done, the mineral development licence must be subject to conditions stated in the agreement (the “**stated conditions**”); and
- (d) the act is done.

‘(2) The mineral development licence is subject to the stated conditions.

‘Application to vary conditions of existing licence

‘**194AC.(1)** The holder of a mineral development licence (the “**existing licence**”) may apply to the Minister for a variation of the conditions of the existing licence.

¹¹ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)

‘(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 183.¹²

‘(3) Without limiting subsection (2), in deciding the application, the Minister may—

- (a) vary the conditions of the existing licence by imposing conditions under section 194(1)(k)¹³ in addition to any conditions that apply under the existing licence; and
- (b) fix an amount of security to be deposited under section 190¹⁴ in addition to any security for the existing licence.

‘(4) On the granting of the application, the varied conditions, including imposed conditions mentioned in subsection (3)(a), are included in the existing licence.’.

Amendment of s 197 (Renewal of mineral development licence)

37. Section 197(3), ‘in exceptional circumstances’—

omit.

Amendment of s 208 (Adding other minerals to licence)

38.(1) Section 208(1), ‘chief executive’—

omit, insert—

‘mining registrar’.

(2) Section 208(5)—

omit, insert—

‘(5) If the Minister approves the application, the mineral development licence is taken to include the stated minerals from the day the Minister approves the application.’.

¹² Section 183 (Application for mineral development licence)

¹³ Section 194 (Conditions of mineral development licence)

¹⁴ Section 190 (Provision of security)

Insertion of new s 226AA

39. After section 226—

insert—

‘Application to add excluded land to existing licence

‘226AA.(1) The holder of a mineral development licence (the **“existing licence”**) may apply to the Minister to add excluded land to the existing licence.

‘(2) The provisions of this part apply, with necessary changes, to an application under subsection (1) as if it were an application under section 183.¹⁵

‘(3) Without limiting subsection (2), in deciding the application, the Minister may—

- (a) impose conditions under section 194(1)(k)¹⁶ in addition to any conditions that apply under the existing licence; and
- (b) fix an amount of security to be deposited under section 190¹⁷ in addition to any security for the existing licence.

‘(4) On the granting of the application, the excluded land is included in the existing licence.

‘(5) In this section—

“excluded land” means land that was the subject of a specific exclusion when the existing licence was granted or that was taken to be excluded under section 182.’.

Amendment of s 230 (Plant remaining on former mineral development licence may be sold etc.)

40. Section 230(1), ‘chief executive’—

¹⁵ Section 133 (Application for mineral development licence)

¹⁶ Section 141 (Conditions of mineral development licence)

¹⁷ Section 190 (Provision of security)

omit, insert—

‘mining registrar’.

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

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

insert—

‘, 610, any native title issues decision of the tribunal under part 17, division 3 or 4 or any substituted decision made by the Minister under part 17, division 3 or 4 in overruling the tribunal’s native title issues decision.’.

Insertion of new ss 276A and 276B

42. After section 276—

insert—

‘Consultation and negotiated agreement conditions

‘276A.(1) This section applies if—

- (a) a consultation agreement under part 17, division 2, or a negotiated agreement under part 17, division 3 or 4,¹⁸ provides for the grant, renewal or variation of, or another act concerning, a mining lease; and
- (b) the agreement includes conditions to be complied with by 1 or more of the parties to the agreement; and
- (c) the Minister consents to the mining lease being subject to 1 or more of the conditions (the “**consent conditions**”); and
- (d) the act is done.

‘(2) The mining lease is subject to the consent conditions.

¹⁸ Part 17 (Native title provisions for mining leases), divisions 3 (Other mining leases on alternative provision areas) and 4 (Other mining leases not on alternative provision areas)

‘Other agreement conditions

‘276B.(1) This section applies if—

- (a) an indigenous land use agreement under the Commonwealth Native Title Act, or an agreement mentioned in section 31(1)(b) of the Commonwealth Native Title Act, provides for the grant, renewal or variation of, or another act concerning, a mining lease; and
- (b) the State is a party to the agreement; and
- (c) the agreement includes a requirement that, if the act is done, the mining lease must be subject to conditions stated in the agreement (the “**stated conditions**”); and
- (d) the act is done.

‘(2) The mining lease is subject to the stated conditions.’.

Amendment of s 286 (Renewal of mining lease)

43. Section 286(3), ‘shall recommend’—

omit, insert—

‘must, subject to part 17, division 5, recommend’.

Amendment of s 294 (Variation of conditions of mining lease)

44.(1) Section 294—

insert—

‘(2) However, the Governor in Council must not vary a condition of a mining lease if—

- (a) the mining lease is a surface alluvium (gold or tin) mining lease under part 17, division 2;¹⁹ and
- (b) the variation were to be made, the mining lease would no longer

¹⁹ Part 17 (Native title provisions for mining leases), division 2 (Surface alluvium (gold or tin) mining leases)

be a surface alluvium (gold or tin) mining lease.’.

(2) Section 294(2) and (3)—

renumber as section 294 (3) and (4).

Amendment of s 315 (Approval of additional activities upon mining lease application)

45.(1) Section 315(9), ‘subsection (1)’—

omit, insert—

‘subsection (2)’.

(2) Section 315—

insert—

‘(11) The Minister must not grant an approval under this section for the entry of non-exclusive land under the native title provisions.’.

Amendment of s 412 (Offences and recovery of penalties etc.)

46. Section 412(1), after ‘this Act’, first mention—

insert—

‘, other than a provision of the native title provisions,’.

Insertion of new s 416A

47. After section 416—

insert—

‘Approval of forms

‘416A. The chief executive may approve forms for use under this Act.’.

PART 5—AMENDMENT OF NATIVE TITLE (QUEENSLAND) ACT 1993

Act amended in pt 5

48. This part amends the *Native Title (Queensland) Act 1993*.

Amendment of s 7 (Object of part)

49. Section 7—

insert—

‘(2) The object of this part is also to validate, under section 24EBA(3)²⁰ of the Commonwealth Native Title Act, certain future acts.’.

Amendment of s 9 (Application of remaining provisions of part)

50. Section 9, after ‘of this part’—

insert—

‘, other than division 4,’.

Insertion of new div 4

51. Part 2, after section 15—

insert—

‘Division 4—Validation of certain future acts

‘Effect of registration on previous acts covered by indigenous land use agreements (NTA, s 24EBA(1) and (3))

‘15A.(1) This section applies if—

(a) details are on the Register of Indigenous Land Use Agreements of

²⁰ Section 24EBA (Effect of registration on previous acts covered by indigenous land use agreements) of the Commonwealth Native Title Act

an agreement that includes a statement to the effect that the parties agree to—

- (i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or
 - (ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or of future acts (other than intermediate period acts) included in classes, that have already been done invalidly; and
- (b) the future act or class of acts is attributable to the State; and
 - (c) the State is a party to the agreement; and
 - (d) if, under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the act or class of acts—that person is a party to the agreement.

‘(2) If this section applies in relation to a future act, the act is valid, and is taken always to have been valid.

‘(3) If this section applies in relation to a class of future acts, all acts included in the class are valid, and are taken always to have been valid.’

PART 6—AMENDMENT OF NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT ACT (No. 2) 1998

Act amended in pt 6

52. This part amends the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998*.

Amendment of s 2 (Commencement)

53. Section 2—

insert—

‘(2) The *Acts Interpretation Act 1954*, section 15DA²¹ does not apply to this Act.’.

Amendment of s 7 (Amendment of s 5 (Definitions))

54. Section 7, inserted definition “**native title provisions**”—

insert—

- part 19, division 2.’.

Replacement of ss 9–12

55. Sections 9 to 12—

omit, insert—

‘Insertion of new pts 12–18

‘9. After section 418—

insert—

**‘PART 12—INTRODUCTION TO NATIVE TITLE
PROVISIONS****‘Application of native title provisions**

‘419.(1) The native title provisions state additional requirements that apply for certain grants, renewals and variations of, and certain other acts concerning, mining tenements, including requirements for compensation, if the grants, renewals, variations and other acts concern non-exclusive land.

‘(2) Whether or not the additional requirements apply for particular acts

²¹ *Acts Interpretation Act 1954*, section 15DA (Automatic commencement of postponed law)

concerning mining tenements, and the extent to which the additional requirements apply, may be determined from individual application provisions located in parts 13 to 18, and part 19, division 2.

‘(3) However, no additional requirements under parts 13 to 18, and part 19, division 2 apply to an act if a notice under section 29²² of the Commonwealth Native Title Act in relation to the act, required to be given as part of complying with the right to negotiate provisions, was given before the commencement of this section.

‘(4) Parts 12 to 17 do not apply to an act that is excluded from the operation of the right to negotiate provisions under section 26D of the Commonwealth Native Title Act.

‘Exclusion of certain agreed acts from pts 13 to 17

‘420. Parts 13 to 17 do not apply to an act that is the grant of a prospecting permit, or the grant, renewal or variation of, or another act concerning, a mining claim, exploration permit, mineral development licence or mining lease if—

- (a) there is an indigenous land use agreement registered on the register of indigenous land use agreements; and
- (b) the agreement includes statements to the effect that—
 - (i) the parties to the agreement consent, with or without stated conditions, to the doing of the act; and
 - (ii) the right to negotiate provisions are not intended to apply to the act.

‘Effect of failure to comply with native title provisions

‘421. An act to which the native title provisions apply is invalid to the extent that it affects native title unless—

- (a) the procedures of the native title provisions that are required to be complied with by the State before the act is done are complied

²² Section 29 (Notification of parties affected) of the Commonwealth Native Title Act

with by the State, to the extent that the State is a party to any consultation or negotiation about the doing of the act; and

- (b) the procedures of the native title provisions that are required to be complied with by the applicant for the doing of the act before the act is done are complied with by the applicant.

‘Definitions for native title provisions

‘422. In the native title provisions—

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

“applicant”, for a proposed mining tenement, includes a person who intends to apply for the proposed mining tenement.

“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 26C²³ of the Commonwealth Native Title Act; and
- (b) prescribed under a regulation.

“decision” includes the following—

- (a) a determination;
- (b) a recommendation made by the Minister or the tribunal and any thing done by the Minister or the tribunal for the making of a recommendation.

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

“native title notification party”, for land, means an entity that is—

- (a) a registered native title body corporate in relation to any of the land; or
- (b) a registered native title claimant in relation to any of the land; or

²³ Section 26C (Excluded opal or gem mining) of the Commonwealth Native Title Act

- (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)²⁴ of the Commonwealth Native Title Act.

“registered native title rights and interests” means—

- (a) in relation to a registered native title claimant—the native title rights and interests described in the relevant entry on the Register of Native Title Claims; and
- (b) in relation to a registered native title body corporate—the native title rights and interests described in the relevant entry on the National Native Title Register established and maintained under part 8 of the Commonwealth Native Title Act.

“relevant special interest publication”, for a proposed mining tenement, 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 tenement 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 P²⁵ of the Commonwealth Native Title Act.

‘Other provisions for interpretation of native title provisions

‘423.(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.

²⁴ Section 26(3) (When Subdivision applies - *Seas and intertidal zone excluded*) of the Commonwealth Native Title Act

²⁵ Part 2 (Native Title), division 3 (Future acts etc. and native title), subdivision P (Right to negotiate) of 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 5.²⁶

‘(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.

‘Application of Judicial Review Act

‘424.(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 a determination of the Commonwealth Minister made under section 43A of the Commonwealth Native Title Act, have effect instead of the right to negotiate provisions.

²⁶ Section 5 (Definitions)

‘PART 13—NATIVE TITLE PROVISIONS FOR PROSPECTING PERMITS

‘Division 1—Preliminary

‘Purpose of pt 13

‘425. 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 26A²⁷ of the Commonwealth Native Title Act.

‘Application of pt 13

‘426.(1) This part applies to the granting of a prospecting permit if—

- (a) the permit is a low impact prospecting permit; and
- (b) the granting of the permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act.

²⁷ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

‘(2) However, this part applies to the granting of the prospecting permit—

- (a) only to the extent that the prospecting permit relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the permit is non-exclusive land, whether or not an alternative provision area.

‘(3) The requirements of this part are additional to the requirements of part 3.

‘Exclusion of certain prospecting permits from pt 13

‘427. This part does not apply to a prospecting permit if the permit is solely for purposes necessary to enable the permit holder to apply for the granting of a mining claim or mining lease.

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

‘428. This part does not apply to an act relating to a prospecting permit in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under section 26(2)(d)²⁸ of the Commonwealth Native Title Act.

‘Definitions for pt 13

‘429. In this part—

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

“**application notice**” see section 431(1).

“**consultation period**” see section 435.

“**low impact prospecting permit**” see section 430.

²⁸ Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

‘Meaning of “low impact prospecting permit” for pt 13

‘430. 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**‘Requirement to notify**

‘431.(1) The applicant must give written notice (the **“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, and no later than—

- (a) the lodgement; or
- (b) if, under section 432, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(3) The notice must state the following—

- (a) the name and postal address of the applicant;
- (b) whether or not the application has been lodged;
- (c) a clear description of the land, and its location;
- (d) details of the activities proposed for the land;
- (e) an outline of the expected impact on the land of the proposed activities;
- (f) 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 under 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.

'Failure to notify correctly

'432.(1) If the mining registrar is satisfied that a written notice given, or purportedly given, under section 431 has not been given in accordance with the requirements of section 431(1) and (2) or does not comply with the requirements of section 431(3) to (5), the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under section 431; and
- (b) in the direction, nominate a period within which the direction must be complied with.

'(2) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

'Division 3—Consultation requirements before entry

'Requirement to consult

'433.(1) It is a condition of a low impact prospecting permit that the permit holder must not act under the permit to enter, for the first time, 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 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

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

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)²⁹ 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 permit;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the permit and affects native title rights and interests, is to be done.

‘Consultation period

‘435.(1) The **“consultation period”** for the permit—

- (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 holder; and
- (b) ends 14 days after the consultation start day, or if a later or earlier time is agreed under subsection (3) or (4), the later or earlier time.

²⁹ 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 14 days before the consultation start day.

‘(3) The consultation period may be extended if, within 14 days after the consultation start day—

- (a) the holder and the native title notification parties agree to the extension; and
- (b) the mining registrar is notified of the extension.

‘(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

‘436.(1) In the consultation period, a native title notification party may ask the mining registrar to hold a conference for mediation about the impact of the permit.

‘(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

‘437.(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) if the notice is given by the permit holder, the day the holder proposes first to enter the land to which the native title rights and interests relate.

‘(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) The copy of the notice by the holder must be given before the holder first enters the land.

‘(5) If the permit holder does not comply with a requirement of this section about the giving of a notice or a copy of a notice, the permit holder commits an offence.

Maximum penalty for subsection (5)—100 penalty units.

‘(6) In this section—

“party” means—

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

‘Mining registrar may take action

‘438. The mining registrar may, by notice in writing to the permit holder, impose conditions on the permit under section 25³⁰ 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

‘439.(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

³⁰ Section 25 (Conditions of prospecting permit)

part 4 if the mining claim is a surface alluvium (gold or tin) mining claim over non-exclusive land; and

- (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26B³¹ 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 43A³² of the Commonwealth Native Title Act.

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

‘440. This part does not apply to an act relating to a mining claim in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under section 26(2)(d)³³ of the Commonwealth Native Title Act.

‘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 land that is, or includes, non-exclusive land; and

³¹ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

³² 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

³³ Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

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- (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.(1) This division applies to the granting of a proposed mining claim if—

- (a) the mining claim is a surface alluvium (gold or tin) mining claim; and
- (b) the granting of the mining claim is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the granting of the proposed mining claim—

- (a) only to the extent that the mining claim relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mining claim is

non-exclusive land, whether or not an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 4.

‘Definitions for div 2

‘443. In this division—

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

“**consultation agreement**” see section 451(4)(b).

“**consultation matters**” includes the purpose of consultation stated in section 449(1) and the matters that consultation must be about under section 449(2).

“**consultation parties**” see section 446.

“**consultation period**” see section 448.

“**consultation result notice**” see section 451(1).

“**consultation start day**” see section 444(3).

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

‘*Subdivision 2—Notification requirements*

‘Requirement to notify

‘444.(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 the subject of the proposed mining claim; and
- (b) the Native Title 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);³⁴ or
 - (ii) if the mining registrar decides a longer period under section 64(6), the end of the longer period; or
 - (iii) if, under section 445, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(3) The notice must state the following—

- (a) the name and postal address of the applicant;
- (b) whether or not the application has been lodged;
- (c) a clear description of the land, and its location;
- (d) details of the activities proposed for the land;
- (e) an outline of the expected impact on the land of the proposed activities;
- (f) 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;
- (g) 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;
- (h) 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.

³⁴ Section 64 (Certificate of application etc.)

‘Notification of mining registrar

‘**445.(1)** Within 2 days after the applicant has complied, or purportedly complied, with the requirements of section 444, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with section 444.

‘**(2)** A copy of the written notice given under section 444(1) must be attached to the approved form.

‘**(3)** If the mining registrar is satisfied a written notice given, or purportedly given, under section 444 has not been given in accordance with the requirements of section 444(1) and (2), or does not comply with the requirements of section 444(3), the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under section 444; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘**(4)** The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Subdivision 3—Consultation requirements**‘Consultation parties**

‘**446.** 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 the subject of the proposed mining claim; and
- (c) each registered native title claimant for the land.

‘Requirement to consult

‘447.(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

‘448.(1) The “consultation period” for the application—

- (a) starts on the consultation start day; and
- (b) ends 2 months after the consultation start day, or if a later or earlier time is agreed under subsection (2) or (3), the later or earlier time.

‘(2) The consultation period may be extended to an agreed later time if, within 2 months after the consultation start day—

- (a) the consultation parties agree to the extension; and
- (b) the mining registrar is notified in writing of the extension.

‘(3) If at any time the consultation parties agree there has been enough consultation, the consultation period is taken to end.

‘Consultation matters

‘449.(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)³⁵ 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

³⁵ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

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

‘450.(1) In the consultation period, a consultation party 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 made under section 65(1)(a) by an owner of land affected by the application.

‘(3) Despite section 66(3),³⁶ a consultation party may be represented at the conference by a lawyer.

‘(4) Subject to any order made under section 70,³⁷ a party to the conference must pay the party’s own costs for the conference.

‘Notice of result of consultation

‘451.(1) The applicant must, and a consultation party, other than the applicant, may, as soon as practicable after the consultation period ends, give a written notice (a **“consultation result notice”**) to the mining registrar.

‘(2) The applicant must, as soon as practicable after giving a consultation

³⁶ Section 66 (Who may attend conference)

³⁷ Section 70 (Tribunal may award costs)

result notice, give a copy of it to each other consultation party.

‘(3) If a consultation party, other than the applicant, gives a consultation result notice, the party must, as soon as practicable after giving the notice, give a copy of it to each other consultation party.

‘(4) A consultation result 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 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.

‘(5) If a consultation agreement has been reached, a copy of the consultation agreement, signed by all consultation parties, must be given to the mining registrar with the consultation result notice.

‘(6) The consultation agreement has effect, if the proposed mining claim is granted, as if—

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

‘(7) Subsection (6) has effect in addition to any other effect that the agreement may have apart from under subsection (6).

‘(8) 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 have waived their rights to be heard.

‘Subdivision 4—Hearing requirements**‘Application of sdiv 4**

‘452. 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) the applicant has not given a consultation result notice within 7 days after the end of the consultation period;
 - (iii) at least 1 of the native title notification parties for the land the subject of the proposed mining claim has not waived the party’s right to be heard.

‘Native title notification parties’ right to be heard

‘453.(1) Each native title notification party for the land 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 at any time, by a notice in writing to the mining registrar, waive the party’s right to be heard.

‘Fixing of combined hearing day

‘454.(1) The mining registrar must, within 14 days after the consultation period ends, fix a day for the tribunal to hear the application under section 72,³⁸ as if an objection had been lodged under section 71.³⁹

³⁸ Section 72 (Mining registrar to fix hearing date)

³⁹ Section 71 (Objection to application for grant of mining claim)

‘(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 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.

‘(4) The mining registrar must not, under section 74,⁴⁰ grant the application without a hearing.

‘Tribunal must consider consultation matters and agreed issues

‘455. In hearing the application under section 77⁴¹ and in making a decision under section 78,⁴² 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.

‘Decision about compensation to be made at hearing

‘456. If, at the end of the hearing for the application, the consultation parties have not reached an agreement about compensation, the tribunal, whether or not an application has been made to the tribunal about compensation, must also make any compensation decision or compensation

⁴⁰ Section 74 (Grant of mining claim to which no objection lodged)

⁴¹ Section 77 (Tribunal hearing)

⁴² Section 78 (Tribunal’s determination on hearing)

trust decision that is required to be made under part 18⁴³ before the surface alluvium (gold or tin) mining claim is granted.

‘General time requirement for hearing

‘457.(1) The tribunal must take all reasonable steps to ensure the hearing for the application is finished within 3 months after the day the consultation parties were notified of the hearing.

‘(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 of grant to other consultation parties

‘458.(1) If the mining registrar grants the surface alluvium (gold or tin) mining claim, the holder of the mining claim must, within 28 days after the holder receives notice of the grant, give a written notice complying with subsection (2) to the following—

- (a) each other consultation party;
- (b) each representative Aboriginal/Torres Strait Islander body heard by the tribunal in any hearing for the grant of the surface alluvium (gold or tin) mining claim.

Maximum penalty—100 penalty units.

‘(2) The written notice must—

- (a) advise the granting of the surface alluvium (gold or tin) mining claim; and

⁴³ Part 18 (Compensation provisions)

-
- (b) state the conditions of the surface alluvium (gold or tin) mining claim.

‘Division 3—Other mining claims on alternative provision areas

‘Application of div 3

‘459.(1) This division applies to the granting of a proposed mining claim if—

- (a) the mining claim is other than a surface alluvium (gold or tin) mining claim; and
- (b) the granting of the mining claim is an act—
- (i) that affects native title rights and interests; and
- (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mining claim—

- (a) only to the extent that the mining claim relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mining claim is non-exclusive land that is an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 4.

‘(4) Despite subsections (1) to (3), this division does not apply to the granting of the mining claim if the applicant elects that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Requirement for grant

‘**460.(1)** The additional requirements applying under part 17, division 3⁴⁴ for the granting of a proposed mining lease also apply for the granting of the proposed mining claim.

‘(2) The requirements apply with necessary changes.

‘(3) However, for applying section 622⁴⁵ and other provisions about consultation and negotiation parties, the State is not a consultation and negotiation party, and section 622(2) and (3) does not apply.

‘Applying pt 17, div 3 for grant

‘**461.(1)** This section—

- (a) applies for applying the provisions of part 17, division 3; and
- (b) does not limit section 460.

‘(2) References to the Governor in Council or the Minister are taken to be references to the mining registrar.

‘(3) Sections 623(3), 637(2) to (4), 641, 643, 646 and 647 do not apply.

‘(4) Section 636(3) 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.

‘(5) Section 645 does not apply, but the native title issues decision must be complied with by the mining registrar.

‘(6) A reference in part 17, division 3 to a provision of part 7 is taken to be a reference to a corresponding provision of part 4.

⁴⁴ Part 17 (Native title provisions for mining leases), division 3 (Other mining leases on alternative provision areas)

⁴⁵ Section 622 (Parties to consultation and negotiation)

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

‘Application of div 4

‘462.(1) This division applies to the granting of a proposed mining claim if—

- (a) the mining claim is other than a surface alluvium (gold or tin) mining claim; and
- (b) the granting of the mining claim is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mining claim—

- (a) only to the extent that the mining claim relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mining claim is non-exclusive land other than an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 4.

‘(4) Despite subsections (1) to (3), this division also applies to the granting of a mining claim to the extent that the land the subject of the proposed mining claim is non-exclusive land that is an alternative provision area, if the applicant elects under division 3 that the additional requirements stated in this division apply instead of the additional requirements stated in division 3.

‘Requirement for grant

‘**463.(1)** The additional requirements applying under part 17, division 4⁴⁶ for the granting of a proposed mining lease also apply for the granting of the proposed mining claim.

‘(2) The requirements apply with necessary changes.

‘Applying pt 17, div 4 for grant

‘**464.(1)** This section—

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 463.

‘(2) References to the Governor in Council or the Minister are taken to be references to the mining registrar.

‘(3) For applying section 669, the pre-referral period is—

- (a) the period of 6 months starting on the notification day (native title issues); or
- (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—the period ending at the agreed later time.

‘(4) Section 671(3) is taken to require that the mining registrar must not act under section 74 to grant the mining claim unless a negotiated agreement has been reached.

‘(5) Sections 672(2) to (4), 676, 678 and subdivisions 6 and 7 do not apply.

‘(6) Section 680 does not apply, but the native title issues decision must be complied with by the mining registrar.

‘(7) A reference in part 17, division 4 to a provision of part 7 is taken to be a reference to a corresponding provision of part 4.

⁴⁶ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)

Division 5—Renewals of mining claims**Application of div 5**

465.(1) This division applies to the renewal of a mining claim if—

- (a) the mining claim is a surface alluvium (gold or tin) mining claim; and
- (b) the renewal of the mining claim is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

(2) However, this division applies to the renewal of a mining claim mentioned in subsection (1) only to the extent that the land the subject of the mining claim is non-exclusive land, whether or not an alternative provision area.

(3) This division also applies to the renewal of a mining claim if—

- (a) the mining claim is other than a surface alluvium (gold or tin) mining claim; and
- (b) the renewal of the mining claim is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

(4) However, this division applies to the renewal of a mining claim mentioned in subsection (3) only to the extent that the land the subject of the mining claim is non-exclusive land that is an alternative provision area.

(5) This division also applies to the renewal of a mining claim if—

-
- (a) the mining claim is other than a surface alluvium (gold or tin) mining claim; and
 - (b) the renewal of the mining claim is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
 - (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the renewal of a mining claim mentioned in subsection (5) only to the extent that the land the subject of the mining claim is non-exclusive land other than an alternative provision area.

‘(7) This division applies to the renewal of a mining claim mentioned in subsection (1), (3) or (5) only to the extent that the mining claim relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 4.

‘(9) In this section—

“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—applying div 2

‘466.(1) If this division applies to the renewal of a mining claim because of section 465(1), the additional requirements applying under division 2⁴⁷ for the granting of a surface alluvium (gold or tin) mining claim also apply for the renewal.

‘(2) The requirements apply with necessary changes.

⁴⁷ Division 2 (Surface alluvium (gold or tin) mining claims)

‘Applying div 2 for renewal

‘**467.(1)** This section—

- (a) applies for applying the provisions of division 2; and
- (b) does not limit section 466.

‘**(2)** For applying section 444(2), the following period is substituted for the periods mentioned in section 444(2)(b)(i) and (ii), that is the end of the period of 7 days after lodgement of the application for the renewal.

‘**(3)** Section 454(1) and (4) does not apply, but—

- (a) the mining registrar must within 14 days after the consultation period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) the tribunal must hear the application for the renewal as if the application for renewal were the application for a grant of a mining claim heard under section 77; and
- (c) the tribunal must ask the mining registrar about the extent to which the mining registrar is satisfied about the matters stated in section 93(3).

‘**(4)** For applying section 455, the tribunal must also take into account information received from the mining registrar under subsection (3)(c).

‘Requirements for renewal—applying div 3

‘**468.(1)** If this division applies to the renewal of a mining claim because of section 465(3), the additional requirements applying under division 3⁴⁸ for the granting of a mining claim other than a surface alluvium (gold or tin) mining claim on an alternative provision area also apply for the renewal.

‘**(2)** The requirements apply with necessary changes.

‘**(3)** If, in applying division 3, an election is made under section 459(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the

⁴⁸ Division 3 (Other mining claims on alternative provision areas)

granting of a mining claim other than a surface alluvium (gold or tin) mining claim on non-exclusive land other than an alternative provision area also apply for the renewal; and

- (b) the requirements apply with necessary changes; and
- (c) section 471(2) to (7) applies instead of section 469(2) to (8).

‘Applying div 3 for renewal

‘469.(1) This section—

- (a) applies for applying the provisions of division 3; and
- (b) does not limit section 468.

‘(2) Section 461(4) does not apply.

‘(3) For applying section 461, subsections (4) to (8) of this section are taken to be included in section 461.

‘(4) For applying section 616(3), the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the renewal.

‘(5) Section 623(1) and (3) does not apply, but the consultation and negotiation period for the proposed renewal starts on the day immediately after the closing day (native title issues) for the proposed renewal.

‘(6) For applying part 17, division 3, subdivisions 4 and 5,⁴⁹ if the proposed renewal is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 633.

‘(7) Sections 636 and 637 do not apply, but—

- (a) the mining registrar must within 14 days after the consultation and negotiation period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) all consultation and negotiation parties have the right to be heard at

⁴⁹ Part 17 (Native title provisions for mining leases), division 3 (Other mining leases on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

the hearing; and

- (c) the tribunal must hear the application for the renewal and make a native title issues decision; and
- (d) before making its native title issues decision, the tribunal must ask the mining registrar about the extent to which the mining registrar is satisfied about the matters stated in section 93(3).

‘(8) For applying section 642, the tribunal must also take into account information received from the mining registrar under subsection (7)(d).

‘Requirements for renewal—applying div 4

‘470.(1) If this division applies to the renewal of a mining claim because of section 465(5), the additional requirements applying under division 4⁵⁰ for the granting of a mining claim other than a surface alluvium (gold or tin) mining claim on non-exclusive land other than an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for renewal

‘471.(1) This section—

- (a) applies for applying the provisions of division 4; and
- (b) does not limit section 470.

‘(2) Section 464(4) does not apply.

‘(3) For applying section 464, subsections (4) to (7) of this section are taken to be included in section 464.

‘(4) For applying section 652(3), the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the renewal.

⁵⁰ Division 4 (Other mining claims not on alternative provision areas)

‘(5) For applying part 17, division 4, subdivisions 4 and 5,⁵¹ if the proposed renewal is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 668.

‘(6) Sections 671 and 672 do not apply, but—

- (a) the mining registrar must within 14 days after the pre-referral period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the renewal and make a native title issues decision; and
- (d) before making its native title issues decision, the tribunal must ask the mining registrar about the extent to which the mining registrar is satisfied about the matters stated in section 93(3).

‘(7) For applying section 677, the tribunal must also take into account information received from the mining registrar under subsection (6)(d).

‘Division 6—Requirements for subsidiary approvals

‘Application of div 6

‘472.(1) This division applies to the addition, under section 105, of specified minerals to a mining claim if—

- (a) were the mining claim to be granted again, but only for the stated minerals, the granting would be an act affecting native title rights and interests; and
- (b) the addition is an act to which the right to negotiate provisions would have otherwise applied; and

⁵¹ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

-
- (c) after the addition takes effect, the mining claim will be a surface alluvium (gold or tin) mining claim; and
 - (d) the addition is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the addition mentioned in subsection (1) only to the extent that the addition relates to non-exclusive land, whether or not an alternative provision area.

‘(3) This division also applies to the addition, under section 105, of specified minerals to a mining claim if—

- (a) were the mining claim to be granted again, but only for the stated minerals, the granting would be an act affecting native title rights and interests; and
- (b) the addition is an act in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) after the addition takes effect, the mining claim will be a mining claim other than a surface alluvium (gold or tin) mining claim; and
- (d) the addition relates to an alternative provision area; and
- (e) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(4) However, this division applies to the addition mentioned in subsection (3) only to the extent that the addition relates to an alternative provision area.

‘(5) This division also applies to the addition, under section 105, of specified minerals to a mining claim if—

- (a) were the mining claim to be granted again, but only for the stated minerals, the granting would be an act affecting native title rights and interests; and
- (b) the addition is an act in respect of which the right to negotiate provisions would have otherwise had effect; and

- (c) after the addition takes effect, the mining claim will be a mining claim other than a surface alluvium (gold or tin) mining claim; and
- (d) the addition relates to non-exclusive land other than an alternative provision area; and
- (e) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the addition mentioned in subsection (5) only to the extent that the addition relates to non-exclusive land other than an alternative provision area.

‘(7) This division applies to an addition mentioned in subsection (1), (3) or (5) only to the extent that the addition relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 4.

‘Requirements for addition—applying div 2

‘473.(1) If this division applies to the addition of minerals to a mining claim because of section 472(1), the additional requirements applying under division 2⁵² for the granting of a surface alluvium (gold or tin) mining claim also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 2 for addition

‘474.(1) This section—

- (a) applies for applying the provisions of division 2; and
- (b) does not limit section 473.

‘(2) For applying section 444(2), the following period is substituted for the periods mentioned in section 444(2)(b)(i) and (ii), that is the end of the

⁵² Division 2 (Surface alluvium (gold or tin) mining claims)

period of 7 days after lodgement of the application for the addition.

‘(3) Section 454(1) and (4) does not apply, but—

- (a) the mining registrar must within 14 days after the consultation period ends, fix a day for the tribunal to hear the application for the addition; and
- (b) the tribunal must hear the application for the addition as if the application for the addition were the application for a grant of a mining claim heard under section 77.

‘Requirements for addition—applying div 3

‘475.(1) If this division applies to the addition of minerals to a mining claim because of section 472(3), the additional requirements applying under division 3⁵³ for the granting of a mining claim other than a surface alluvium (gold or tin) mining claim on an alternative provision area also apply for the addition.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 459(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a mining claim other than a surface alluvium (gold or tin) mining claim on non-exclusive land other than an alternative provision area also apply for the addition; and
- (b) the requirements apply with necessary changes; and
- (c) section 478(2) to (6) applies instead of section 476(2) to (7).

‘Applying div 3 for addition

‘476.(1) This section—

- (a) applies for applying the provisions of division 3; and
- (b) does not limit section 475.

⁵³ Division 3 (Other mining claims on alternative provision areas)

‘(2) Section 461(4) does not apply.

‘(3) For applying section 461, subsections (4) to (7) of this section are taken to be included in section 461.

‘(4) For applying section 616(3), the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the addition.

‘(5) Section 623(1) and (3) does not apply, but the consultation and negotiation period for the proposed addition starts on the day immediately after the closing day (native title issues) for the proposed addition.

‘(6) For applying part 17, division 3, subdivisions 4 and 5,⁵⁴ if the proposed addition is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 633.

‘(7) Sections 636 and 637 do not apply, but—

- (a) the mining registrar must within 14 days after the consultation and negotiation period ends, fix a day for the tribunal to hear the application for the addition; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the addition and make a native title issues decision.

‘Requirements for addition—applying div 4

‘**477.(1)** If this division applies to the addition of minerals to a mining claim because of section 472(5), the additional requirements applying under division 4⁵⁵ for the granting of a mining claim other than a surface alluvium (gold or tin) mining claim on non-exclusive land other than an alternative

⁵⁴ Part 17 (Native title provisions for mining leases), division 3 (Other mining leases on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

⁵⁵ Division 4 (Other mining claims not on alternative provision areas)

provision area also apply for the addition.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for addition

‘478.(1) This section—

- (a) applies for applying the provisions of division 4; and
- (b) does not limit section 477.

‘(2) Section 464(4) does not apply.

‘(3) For applying section 464, subsections (4) to (6) of this section are taken to be included in section 464.

‘(4) For applying section 652(3), the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the addition.

‘(5) For applying part 17, division 4, subdivisions 4 and 5,⁵⁶ if the proposed addition is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 668.

‘(6) Sections 671 and 672 do not apply, but—

- (a) the mining registrar must within 14 days after the pre-referral period ends, fix a day for the tribunal to hear the application for the addition; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the addition and make a native title issues decision.

⁵⁶ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

‘PART 15—NATIVE TITLE PROVISIONS FOR EXPLORATION PERMITS

‘Division 1—Preliminary

‘Purpose of pt 15

‘479.(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 26A⁵⁷ 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
- (b) in stating the additional requirements, to provide alternative

⁵⁷ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

provisions under sections 43 and 43A of the Commonwealth Native Title Act.⁵⁸

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

‘480. This part does not apply to an act relating to an exploration permit in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under section 26(2)(d)⁵⁹ of the Commonwealth Native Title Act.

‘Meaning of “low impact exploration permit”

‘481. 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, to the extent that the land the subject of the permit is non-exclusive land, only low impact activities may be carried out.

‘Meaning of “low impact activity”

‘482. 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;

⁵⁸ 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

⁵⁹ Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

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—

- (i) do not include clearing or site excavation, other than the minimum necessary to establish a drill pad for a mobile rig; and
- (ii) do not include clearing for a road or track;

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”

‘483. 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) allows activities to be carried out that are not limited to low impact activities.

‘Division 2—Low impact exploration permits

‘Subdivision 1—Preliminary

‘Application of div 2

‘484.(1) This division applies to the granting of a proposed exploration permit if—

- (a) the exploration permit is a low impact exploration permit; and
- (b) the granting of the exploration permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the granting of the proposed exploration permit—

- (a) only to the extent that the exploration permit relates to a place that

is on the landward side of the mean high-water mark of the sea;
and

- (b) only to the extent that the land the subject of the exploration permit is non-exclusive land, whether or not an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 5.

‘Definitions for div 2

‘485. In this division—

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

“**application notice**” see section 486(1).

“**consultation period**” see section 490(1).

‘Subdivision 2—Notification requirements

‘Requirement to notify

‘486.(1) The applicant must give written notice (the “**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 the subject of the proposed exploration permit; and
(b) the Native Title Registrar.

‘(2) The notice must be given no earlier than 1 month before the lodgement, and no later than—

- (a) 7 days after the lodgement; or
(b) if, under section 487, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(3) The notice must state the following—

- (a) the name and postal address of the applicant;
- (b) whether or not the application has been lodged;
- (c) a clear description of the land, and its location;
- (d) details of the activities proposed for the land under a program of work;
- (e) an outline of the expected impact on the land of the proposed activities;
- (f) 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.

‘Notification of mining registrar

‘487.(1) Within 2 days after the applicant has complied, or purportedly complied, with the requirements of section 486, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with section 486.

‘(2) A copy of the written notice given under section 486(1) must be attached to the approved form.

‘(3) If the mining registrar is satisfied that a written notice given, or purportedly given, under section 486 has not been given in accordance with the requirements of section 486(1) and (2), or does not comply with the requirements of section 486(3), the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under section 486; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘(4) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Subdivision 3—Consultation requirements before entry

‘Requirement to consult

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

‘(2) However, the condition does not require consultation with a native title notification party 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

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

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)⁶⁰ 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 permit;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the permit and affects native title rights and interests, is to be done.

⁶⁰ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

‘Consultation period

‘490.(1) The “**consultation period**”, for an entry to an area—

- (a) starts on a day that must be—
 - (i) not earlier than when the applicant is advised of the amount of security decided by the Minister under section 144; and
 - (ii) at least 1 month after the notice of the day on which the consultation period starts is given under subsection (2); and
- (b) ends—
 - (i) if subparagraph (ii) does not apply—2 months after the consultation period starts; or
 - (ii) if, within 2 months after the consultation period starts, the holder and the native title notification parties agree on a time, which must be later than the time that would otherwise apply under subparagraph (i), and advise the mining registrar in writing of the agreed later time—at the agreed later time.

‘(2) Notice of the day on which the consultation period starts, and the area to which the consultation relates, must be given to each of the native title notification parties for the area and to the mining registrar by—

- (a) if the permit has not been granted when the notice is given—the applicant; or
- (b) otherwise—by the holder of the granted exploration permit.

‘(3) 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

‘491.(1) In the consultation period for the entry to the area, a native title notification party for the area may ask the mining registrar to hold a conference for mediation about the impact of the permit.

‘(2) Sections 169 to 174 apply to the conference as if the request were a request made under section 169(1)(a) by an owner of land mentioned in section 169(1)(a).

‘(3) Despite section 170(3),⁶¹ 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 174,⁶² a party to the conference must pay the party’s own costs for the conference.

‘**Notice of result of consultation**

‘**492.(1)** The permit holder must, as soon as practicable after the consultation period ends, but in any event before the holder first enters the area—

- (a) give a written notice complying with subsection (2) to the mining registrar about the consultation; and
- (b) give a copy of the notice to each native title notification party for the area.

Maximum penalty—100 penalty units.

‘(2) The written 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 holder proposes to first enter the area.

‘(3) A native title notification party for the area may also give a written notice about the consultation to the mining registrar if—

- (a) the written notice states—
 - (i) details of the consultation undertaken in the consultation period; and
 - (ii) any outcome of the consultation; and
- (b) the written notice is also given to the permit holder and each other native title notification party for the area.

⁶¹ Section 170 (Who may attend conference)

⁶² Section 174 (Tribunal may award costs)

‘Mining registrar may recommend action

‘**493.(1)** The mining registrar may recommend action to the Minister to address any matter raised by a native title notification party in the consultation.

‘(2) The Minister may give the exploration permit holder the directions the Minister considers appropriate about the recommended action.

‘(3) A failure by the holder to comply with the Minister’s directions is taken to be a breach of the conditions of the exploration permit.

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

‘Subdivision 1—Preliminary

‘Application of div 3

‘**494.(1)** This division applies to the granting of a proposed exploration permit if—

- (a) the exploration permit is a high impact exploration permit; and
- (b) the granting of the exploration permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed exploration permit—

- (a) only to the extent that the exploration permit relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the exploration

permit is non-exclusive land that is an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 5.

‘(4) Despite subsections (1) to (3), this division does not apply to the granting of the exploration permit if the applicant elects that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

Definitions for div 3

‘495. In this division—

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

“**application notice**” see section 497(1).

“**closing day (native title issues)**”, for the proposed high impact exploration permit, see section 498(3).

“**consultation period**”, for the proposed high impact exploration permit, see section 507.

“**consultation start day**” see section 506(1).

“**contract conditions**” see section 517.

“**hearing day**” means—

- (a) if a day has been fixed under section 507(4) for the tribunal to hear objections, the day fixed; or
- (b) otherwise, the day fixed under section 506(2) for the tribunal to hear objections.

“**native title issues decision**” see section 517.

“**notification day (native title issues)**”, for the proposed high impact exploration permit, see section 498(2).

“**objector**” see section 509(3).

“**registered native title party**” see section 496.

‘Meaning of “registered native title party” for div 3

‘496.(1) A **“registered native title party”** is a person who, at the time the issue arises of whether or not the person is a registered native title party, is a registered native title claimant or a registered native title body corporate in relation to the land, or part of the land, the subject of the proposed high impact exploration permit.

‘(2) If a person (the **“first person”**) becomes a registered native title claimant because the first person replaces another person as the applicant in relation to a claimant application, and the other person is a registered native title party, the first person also replaces the other person as the registered native title party.

‘Subdivision 2—Notification requirements and right to object**‘Requirement to notify**

‘497.(1) The applicant must give a written notice (the **“application notice”**) about the proposed high impact exploration permit to—

- (a) all native title notification parties for the land the subject of the proposed permit; and
- (b) the Native Title Registrar.

‘(2) The notice must be given—

- (a) within 14 days of the applicant being notified of the Minister’s decision, under section 144(1) or (3),⁶³ of the amount of security to be deposited if the permit is granted; or
- (b) if, under section 499, the mining registrar has given a direction for the giving of a new written notice—within the period nominated in the direction.

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

⁶³ Section 144 (Provision of security)

‘Content of notice

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

- (a) the name and postal address of the applicant;
- (b) the following days for the proposed high impact exploration permit—
 - (i) the notification day (native title issues);
 - (ii) the closing day (native title issues);
- (c) a clear description of the land, and its location;
- (d) a description of the nature of the proposed permit;
- (e) that the proposed permit, if granted, will be granted by the Minister;
- (f) how further information about the proposed permit can be obtained from the applicant or the mining registrar;
- (g) 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;
- (h) that an objection must—
 - (i) be in the approved form; and
 - (ii) state the grounds for objection; and
 - (iii) be lodged with the mining registrar on or before the closing day (native title issues);
- (i) 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 each person 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).

‘Notification of mining registrar

‘499.(1) Within 2 days after the applicant has complied, or purportedly complied, with the requirements of sections 497 and 498, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with sections 497 and 498.

‘(2) A copy of the written notice given under section 497 must be attached to the approved form.

‘(3) If the mining registrar is satisfied a written notice given, or purportedly given, under section 497 has not been given under section 497, or does not comply with the requirements of section 498, the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under sections 497 and 498; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘(4) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Right to object

‘500.(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 is likely to affect 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
- (c) be lodged with the mining registrar on or before the closing day (native title issues).

‘(3) If at any time a person who has lodged an objection under this section stops being a registered native title party, the objection is taken never to have been lodged.

‘(4) However, an objection continues to have effect as an objection if the person who lodged the objection stops being a registered native title party because—

- (a) the person is replaced by another person (the “**replacing person**”) under section 66B⁶⁴ of the Commonwealth Native Title Act; or
- (b) an approved determination of native title that native title exists is made, and immediately before the determination is made, the person is a registered native title claimant.

‘(5) If an objection continues to have effect as an objection because of subsection (4)(a), the objection is taken to have been lodged by the replacing person.

‘(6) If an objection continues to have effect as an objection because of subsection (4)(b), the objection is taken to have been lodged by the relevant registered native title body corporate.

‘Ending of additional requirements if no objection lodged

‘501. 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

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

‘Notice of objections by mining registrar

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

⁶⁴ Section 66B (Replacing the applicant) of the Commonwealth Native Title Act

-
- (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

‘504.(1) The applicant must consult with each objector under this subdivision.

‘(2) Nothing in this subdivision stops the applicant and an objector discussing consultation matters outside the consultation period.

‘Consultation matters

‘505. 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 of the objectors 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

‘506.(1) The applicant must—

- (a) fix a day for the consultation to start (the **“consultation start day”**), which must be within 2 months after the closing day (native title issues), but not earlier than 14 days after the closing day (native title issues); and
- (b) give written notice of the consultation start day to each objector and the mining registrar at least 7 days before the consultation start day.

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

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

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

‘**Consultation period**

‘**507.(1)** The “**consultation period**” for the proposed high impact exploration permit—

- (a) starts on the consultation start day; and
- (b) ends 2 months after the consultation start day, or if a later time is agreed under subsection (2), at the agreed later time.

‘(2) The consultation period may be extended to an agreed later time if, within 2 months after the consultation start day—

- (a) the applicant and objectors agree to the extension; and
- (b) the applicant notifies the mining registrar in writing of the extension.

‘(3) The agreed later time under subsection (2) must not be later than the end of 4 months after the consultation start day.

‘(4) If the mining registrar is notified under subsection (2)(b) of an extension that will cause the consultation period to end after the day fixed under section 506(2), the mining registrar must—

- (a) fix another day, which must be a day after the consultation period ends, for the tribunal to hear objections; and
- (b) notify the applicant and each objector of the day fixed under this subsection.

‘**Request for mediation**

‘**508.(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

‘**509.(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 who objects under section 500 (“**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 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) at 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 attended 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 proposed high impact exploration permit.

‘Agreement with or without conditions

‘510.(1) This section applies if an agreement for the grant of the proposed high impact exploration permit is reached between the applicant and each objector, 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 must give a written notice to the mining registrar stating that an agreement has been reached, and must include with the notice a copy of the agreement signed by the applicant and each objector.

‘(3) When the notice is given—

- (a) the additional requirements provided for under subdivision 4 stop applying; and
- (b) the mining registrar must notify the tribunal that the agreement has been reached.

‘Agreement with conditions

‘511.(1) This section applies if an agreement for the grant of the proposed high impact exploration permit is reached between the applicant and each objector, 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

‘512.(1) If the consultation period has ended and an agreement between the applicant and each objector for the grant of the proposed high impact exploration permit has not been reached, the tribunal must—

- (a) starting on the hearing day, hear all the objections; and
- (b) make a native title issues decision.

‘(2) However, the applicant and the objectors may continue to consult to reach an agreement for the grant of the high impact exploration permit.

‘(3) If an agreement is reached, the tribunal may not make a native title issues decision under this subdivision.

‘Directions for hearing

‘513. 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 grant 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.

‘Identifying agreed issues

‘514. Before making a native title issues decision the tribunal must establish whether there are any issues relevant to its decision on which the applicant and any objector are currently in agreement.

‘Matters tribunal must consider

‘515. In making a native title issues decision, the tribunal must consider—

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

‘General time requirement for hearing

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

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

‘Meaning of “native title issues decision”

‘517. A “native title issues decision” is 1 of the following—

- (a) that the proposed high impact exploration permit may be granted;
- (b) that the proposed high impact exploration permit 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 permit;
- (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 applicant and the objectors (even though the conditions are not included in the permit);
- (c) that the proposed high impact exploration permit should not be granted.

‘Advice of native title issues decision to Minister

‘518. The tribunal must give the Minister a copy of the native title issues decision.

‘Effect of native title issues decision

‘519. The native title issues decision must be complied with by the Minister unless the Minister overrules the native title issues decision under section 521.

‘Contract conditions

‘520.(1) If the Minister grants the proposed high impact exploration permit, 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 between the holder and each objector.

‘(2) 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.

‘Overruling of native title issues decision

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

- (a) the Minister principally responsible for indigenous affairs has been given a copy of the native title issues decision and is

consulted about—

- (i) the native title issues decision; and
 - (ii) the Minister's proposed substituted decision under subsection (2); and
- (b) the consultation is taken into account; and
- (c) it is in the interests of Queensland to overrule the native title issues decision.⁶⁵

‘(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, 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

‘522.(1) This division applies to the granting of a proposed exploration permit if—

- (a) the exploration permit is a high impact exploration permit; and
- (b) the granting of the exploration permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would

⁶⁵ See also section 383 (Appeals from tribunal)

have otherwise had effect; and

- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed exploration permit—

- (a) only to the extent that the exploration permit relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the exploration permit is non-exclusive land other than an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 5.

‘(4) Despite subsections (1) to (3), this division also applies to the granting of a high impact exploration permit to the extent that the land the subject of the proposed exploration permit is non-exclusive land that is an alternative provision area, if the applicant elects under division 3 that the additional requirements stated in this division apply instead of the additional requirements stated in division 3.

‘Requirements for grant

‘523.(1) The additional requirements applying under part 17, division 4⁶⁶ for the granting of a proposed mining lease also apply for the granting of the proposed high impact exploration permit.

‘(2) The requirements apply with necessary changes.

‘Applying pt 17, div 4 for grant

‘524.(1) This section—

⁶⁶ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 523.

‘(2) References to the Governor in Council are taken to be references to the Minister.

‘(3) For applying section 652, section 652(3)(a) does not apply, and the following period is substituted for the periods mentioned in section 652(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)⁶⁷ or (3) of the amount of security to be deposited if the permit is granted.

‘(4) For applying section 669, the pre-referral period is—

- (a) the period of 6 months starting on the notification day (native title issues); or
- (b) if the registered native title parties 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—the period ending at the agreed later time.

‘(5) For applying part 17, division 4, subdivisions 4 and 5,⁶⁸ if the proposed exploration permit is referred to the tribunal for a native title issues decision, sections 671 and 672 do not apply, but the mining registrar must fix a date for a hearing for the native title issues decision, including the hearing of any objections lodged under section 668 as applied under this section.

‘(6) Sections 675(2), 681(4) and (5), 682 and 688 and part 17, division 4, subdivision 7⁶⁹ do not apply.

⁶⁷ Section 144 (Provision of security)

⁶⁸ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

⁶⁹ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivision 7 (Special provisions about completion of combined hearing and making of native titles issues decision)

‘(7) Section 676 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(8) Section 680 does not apply, but the native title issues decision must be complied with by the Minister unless it is overruled under part 17, division 4, subdivision 6.⁷⁰

‘(9) A reference in part 17, division 4 to a provision of part 7 is taken to be a reference to a corresponding provision of part 5.

Division 5—Renewals of exploration permits

‘Application of div 5

‘525.(1) This division applies to the renewal of an exploration permit if—

- (a) the exploration permit is a low impact exploration permit; and
- (b) the renewal of the exploration permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the renewal of an exploration permit mentioned in subsection (1) only to the extent that the land the subject of the exploration permit is non-exclusive land, whether or not an alternative provision area.

‘(3) This division also applies to the renewal of an exploration permit if—

- (a) the exploration permit is a high impact exploration permit; and
- (b) the renewal of the exploration permit is an act—

⁷⁰ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivision 6 (Overruling of native title issues decision)

-
- (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(4) However, this division applies to the renewal of an exploration permit mentioned in subsection (3) only to the extent that the land the subject of the exploration permit is non-exclusive land that is an alternative provision area.

‘(5) This division also applies to the renewal of an exploration permit if—

- (a) the exploration permit is a high impact exploration permit; and
- (b) the renewal of the exploration permit is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the renewal of an exploration permit mentioned in subsection (5) only to the extent that the land the subject of the exploration permit is non-exclusive land other than an alternative provision area.

‘(7) This division applies to the renewal of an exploration permit mentioned in subsection (1), (3) or (5) only to the extent that the exploration permit relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 5.

‘(9) In this section—

“**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—applying div 2

‘526.(1) If this division applies to the renewal of an exploration permit because of section 525(1), the additional requirements applying under division 2⁷¹ for the granting of a low impact exploration permit also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Requirements for renewal—applying div 3

‘527.(1) If this division applies to the renewal of an exploration permit because of section 525(3), the additional requirements applying under division 3⁷² for the granting of a high impact exploration permit on an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 494(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact exploration permit on non-exclusive land other than an alternative provision area also apply for the renewal; and
- (b) the requirements apply with necessary changes; and
- (c) section 530(2) to (4) applies instead of section 528(2) and (3).

⁷¹ Division 2 (Low impact exploration permits)

⁷² Division 3 (High impact exploration permits on alternative provision areas)

‘Applying div 3 for renewal

‘528.(1) This section—

- (a) applies for applying the provisions of division 3; and
- (b) does not limit section 527.

‘(2) For applying section 514, the tribunal must also, before making its native title issues decision, ask the Minister about the extent to which the Minister is satisfied that the holder of the exploration permit proposed to be renewed has complied with the conditions of the exploration permit.

‘(3) For applying section 515, the tribunal must also consider information received from the Minister under subsection (2).

‘Requirements for renewal—applying div 4

‘529.(1) If this division applies to the renewal of an exploration permit because of section 525(5), the additional requirements applying under division 4⁷³ for the granting of a high impact exploration permit on non-exclusive land other than an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for renewal

‘530.(1) This section—

- (a) applies for applying the provisions of division 4; and
- (b) does not limit section 529.

‘(2) For applying section 524, subsections (3) and (4) of this section are taken to be included in section 524.

‘(3) The tribunal must, before making its native title issues decision, ask the Minister about the extent to which the Minister is satisfied that the holder of the exploration permit proposed to be renewed has complied with the conditions of the exploration permit.

⁷³ Division 4 (High impact exploration permits not on alternative provision areas)

‘(4) For applying section 677, the tribunal must also consider information received from the Minister under subsection (3).

‘Division 6—Requirements for subsidiary approvals

‘Application of div 6

‘531.(1) This division applies to the following—

- (a) the variation of the conditions of a low impact exploration permit over non-exclusive land to allow for activities not limited to low impact activities;
- (b) the variation of the conditions of a high impact exploration permit on an alternative provision area to allow for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area;
- (c) the variation of the conditions of an exploration permit granted on land where native title has been extinguished to include non-exclusive land;
- (d) the addition, under section 176A,⁷⁴ of land to an exploration permit granted over land where native title has been extinguished to include non-exclusive land.

‘(2) However, this division applies to the variation or addition only if—

- (a) either of the following applies—
 - (i) for the variation of conditions—were the exploration permit to be granted again, but containing only the varied conditions, the granting would be an act affecting native title rights and interests;
 - (ii) for the addition of land—were the exploration permit to be granted again, but only for the added land, the granting would be an act affecting native title rights and interests; and
- (b) either of the following applies—

⁷⁴ Section 176A (Application to add excluded land to existing permit)

-
- (i) the variation or addition is an act to which the right to negotiate provisions would have otherwise applied, and the variation or addition is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act;
 - (ii) the variation or addition is an act in respect of which the right to negotiate provisions would have otherwise had effect, and both of the following apply—
 - (A) a determination is in force under section 43(1) or 43A(1) of the Commonwealth Native Title Act about alternative provisions applying to the variation or addition;
 - (B) this division is included in the alternative provisions.

‘(3) This division applies to the variation or addition only to the extent that the variation or addition relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(4) The requirements of this division are additional to the requirements of part 5.

‘Requirements for variation—low impact exploration permit

‘532.(1) For the variation of the conditions of a low impact exploration permit to allow for activities not limited to low impact activities on an alternative provision area, division 3⁷⁵ applies, with necessary changes, as if the variation were the granting of a high impact exploration permit.

‘(2) If, in applying division 3, an election is made under section 494(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact exploration permit on non-exclusive land other than an alternative provision area also apply for the variation; and
- (b) the requirements apply with necessary changes.

⁷⁵ Division 3 (High impact exploration permits on alternative provision areas)

‘(3) For the variation of the conditions of a low impact exploration permit to allow for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area, division 4 applies, with necessary changes, as if the variation were the granting of a high impact exploration permit.

‘Requirements for variation—high impact exploration permit

‘533. For the variation of the conditions of a high impact exploration permit for an alternative provision area to allow for activities not limited to low impact activities on non-exclusive land other than an alternative provision area, division 4⁷⁶ applies, with necessary changes, as if the variation were the granting of the high impact exploration permit.

‘Requirements for variation or addition—other exploration permits

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

‘(2) This section also applies to the addition, under section 176A, of land to an exploration permit granted only over land where native title has been extinguished to include non-exclusive land.

‘(3) If the variation or addition is only for low impact activities, division 2⁷⁷ applies, with necessary changes, as if the variation or addition were the granting of the exploration permit.

‘(4) If the variation or addition is for activities not limited to low impact activities on an alternative provision area, division 3⁷⁸ applies, with necessary changes, as if the variation or addition were the granting of the exploration permit.

‘(5) If, in applying division 3, an election is made under section 494(4) to instead apply division 4—

⁷⁶ Division 4 (High impact exploration permits not on alternative provision areas)

⁷⁷ Division 2 (Low impact exploration permits)

⁷⁸ Division 3 (High impact exploration permits on alternative provision areas)

- (a) the additional requirements applying under division 4 for the granting of a high impact exploration permit on non-exclusive land other than an alternative provision area also apply for the variation or addition; and
- (b) the requirements apply with necessary changes.

‘(6) If the variation or addition is for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area, division 4⁷⁹ applies, with necessary changes, as if the variation or addition were the granting of the exploration permit.

‘PART 16—NATIVE TITLE PROVISIONS FOR MINERAL DEVELOPMENT LICENCES

‘Division 1—Preliminary

‘Purpose of pt 16

‘535.(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

⁷⁹ Division 4 (High impact exploration permits not on alternative provision areas)

section 26A⁸⁰ 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 43A⁸¹ of the Commonwealth Native Title Act.

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

‘536. This part does not apply to an act relating to a mineral development licence in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under section 26(2)(d)⁸² of the Commonwealth Native Title Act.

‘Meaning of “low impact mineral development licence”

‘537. 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, to the extent that the land the subject of the

⁸⁰ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

⁸¹ 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

⁸² Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

licence is non-exclusive land, only low impact activities may be carried out.

‘Meaning of “low impact activity”

‘538. 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—
- (i) do not include clearing or site excavation, other than the minimum necessary to establish a drill pad for a mobile rig; and
 - (ii) do not include clearing for a road or track;

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”

539. 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) allows activities to be carried out that are not limited to low impact activities.

‘Division 2—Low impact mineral development licences

‘Subdivision 1—Preliminary

‘Application of div 2

‘540.(1) This division applies to the granting of a proposed mineral development licence if—

- (a) the mineral development licence is a low impact mineral development licence; and
- (b) the granting of the mineral development licence is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the granting of the proposed mineral development licence—

- (a) only to the extent that the mineral development licence relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mineral development licence is non-exclusive land, whether or not an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 6.

‘Definitions for div 2

‘541. In this division—

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

“**application notice**” see section 542(1).

“**consultation period**” see section 546.

“**consultation start day**”, for a mineral development licence, see section 546(1)(a).

‘Subdivision 2—Notification requirements

‘Requirement to notify

‘**542.(1)** The applicant must give written notice (the “**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 the subject of the proposed mineral development licence; and
- (b) the Native Title Registrar.

‘**(2)** The notice must be given no earlier than 1 month before the lodgement, and no later than—

- (a) 7 days after the lodgement; or
- (b) if, under section 543, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘**(3)** The notice must state the following—

- (a) the name and postal address of the applicant;
- (b) whether or not the application has been lodged;
- (c) a clear description of the land, and its location;
- (d) details of the activities proposed for the land;
- (e) an outline of the expected impact on the land of the proposed activities;
- (f) 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.

‘**Notification of mining registrar**

‘**543.(1)** Within 2 days after the applicant has complied, or purportedly complied, with the requirements of section 542, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with section 542.

‘(2) A copy of the written notice given under section 542(1) must be attached to the approved form.

‘(3) If the mining registrar is satisfied that a written notice given, or purportedly given, under section 542 has not been given in accordance with the requirements of section 542(1) and (2), or does not comply with the requirements of section 542(3) to (5), the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under section 542; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘(4) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘*Subdivision 3—Consultation requirements before entry*

‘**Requirement to consult**

‘**544.(1)** It is a condition of a low impact mineral development licence that the licence holder must not act under the licence to enter, for the first time, 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 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

‘545.(1) The purpose of the consultation is to minimise the impact of the low impact mineral development licence on the exercise of native title rights and interests in relation to the land that will be affected under the licence.

‘(2) In particular, the consultation must be about the matters mentioned in section 26A(7)⁸³ 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 licence;
- (c) the way in which any other thing that is authorised because of, results from, or otherwise relates to, the licence and affects native title rights and interests, is to be done.

‘Consultation period

‘546.(1) The “consultation period” for the licence—

- (a) starts on the day (the “consultation start day”)—
 - (i) stated for that purpose in the application notice for the

⁸³ Section 26A (Approved exploration etc. acts) of the Commonwealth Native Title Act

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 and the mining registrar by the licence holder; and

(b) ends—

(i) if subparagraph (ii) does not apply—2 months after the consultation start day; or

(ii) if, within 2 months after the consultation start day, the holder and the native title notification parties agree on a time, which must be later than the time that would otherwise apply under subparagraph (i), and advise the mining registrar in writing of the agreed later time—at the agreed later time.

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

‘(3) 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

‘547.(1) In the consultation period, a native title notification party may ask the mining registrar to hold a conference for mediation about the impact of the licence.

‘(2) Sections 217 to 222 apply to the conference as if the request were a request made under section 217(1)(a)⁸⁴ by an owner of land mentioned in section 217(1)(a).

‘(3) Despite section 218(3),⁸⁵ 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 222,⁸⁶ a consultation party must pay the party’s own costs for the conference.

⁸⁴ Section 217 (Mining registrar may call conference in some cases)

⁸⁵ Section 218 (Who may attend conference)

⁸⁶ Section 222 (Tribunal may award costs)

‘Notice of result of consultation

‘548.(1) The licence holder must, as soon as practicable after the consultation period ends, but in any event before the holder first enters the land to which the native title rights and interests relate—

- (a) give a written notice complying with subsection (2) to the mining registrar about the consultation; and
- (b) give a copy of the notice to each native title notification party for the land.

Maximum penalty—100 penalty units.

‘(2) The written 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 holder proposes to first enter the land.

‘(3) A native title notification party for the land may also give a written notice about the consultation to the mining registrar if—

- (a) the written notice states—
 - (i) details of the consultation undertaken in the consultation period; and
 - (ii) any outcome of the consultation; and
- (b) the written notice is also given to the licence holder and each other native title notification party for the land.

‘Mining registrar may recommend action

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

‘(2) The Minister may give the mineral development licence holder the directions the Minister considers appropriate about the recommended action.

‘(3) A failure by the holder to comply with the Minister’s directions is taken to be a breach of the conditions of the mineral development licence.

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

Subdivision 1—Preliminary

‘Application of div 3

‘550.(1) This division applies to the granting of a proposed mineral development licence if—

- (a) the mineral development licence is a high impact mineral development licence; and
- (b) the granting of the mineral development licence is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mineral development licence—

- (a) only to the extent that the mineral development licence relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mineral development licence is non-exclusive land that is an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 6.

‘(4) Despite subsections (1) to (3), this division does not apply to the

granting of the mineral development licence if the applicant elects that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Definitions for div 3

‘551. In this division—

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

“application notice” see section 553(1).

“closing day (native title issues)”, for the proposed high impact mineral development licence, see section 554(3).

“consultation period”, for the proposed high impact mineral development licence, means the period described in section 563.

“consultation start day” see section 562(1).

“contract conditions” see section 573.

“hearing day” means—

- (a) if a day has been fixed under section 563(4) for the tribunal to hear objections, the day fixed; or
- (b) otherwise, the day fixed under section 562(2) for the tribunal to hear objections.

“native title issues decision” see section 573.

“notification day (native title issues)”, for the proposed high impact mineral development licence, see section 554(2).

“objector” see section 565(3).

“registered native title party” see section 552.

‘Meaning of “registered native title party”

‘552.(1) A **“registered native title party”** is a person who, at the time when the issue arises of whether or not the person is a registered native title party, is a registered native title claimant or a registered native title body

corporate in relation to the land, or part of the land, the subject of the proposed high impact mineral development licence.

‘(2) If a person (the “**first person**”) becomes a registered native title claimant because the first person replaces another person as the applicant in relation to a claimant application, and the other person is a registered native title party, the first person also replaces the other person as the registered native title party.

‘Subdivision 2—Notification requirements and right to object

‘Requirement to notify

‘553.(1) The applicant must give a written notice (the “**application notice**”) about the proposed high impact mineral development licence to—

- (a) all native title notification parties for the land the subject of the proposed licence; and
- (b) the Native Title Registrar.

‘(2) The notice must be given—

- (a) within 14 days of the applicant being notified of the Minister’s decision, under section 190(1),⁸⁷ of the amount of security to be deposited if the licence is granted; or
- (b) if, under section 555, the mining registrar has given a direction for the giving of a new written notice—before the end of the period nominated in the direction.

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

‘Content of notice

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

- (a) the name and postal address of the applicant;
- (b) the following days for the proposed high impact mineral

⁸⁷ Section 190 (Provision of security)

development licence—

- (i) the notification day (native title issues);
- (ii) the closing day (native title issues);
- (c) a clear description of the land, and its location;
- (d) a description of the nature of the proposed licence;
- (e) that the proposed licence, if granted, will be granted by the Minister;
- (f) how further information about the proposed licence can be obtained from the applicant or the mining registrar;
- (g) 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;
- (h) that an objection must—
 - (i) be in the approved form; and
 - (ii) state the grounds for objection; and
 - (iii) be lodged with the mining registrar on or before the closing day (native title issues);
- (i) 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 each person 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).

‘Notification of mining registrar

‘555.(1) Within 2 days after the applicant has complied, or purportedly complied, with the requirements of sections 553 and 554, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with sections 553 and 554.

‘(2) A copy of the written notice given under section 553 must be attached to the approved form.

‘(3) If the mining registrar is satisfied that a written notice given, or purportedly given, under sections 553 and 554 has not been given in accordance with the requirements of section 553, or does not comply with the requirements of section 554, the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under sections 553 and 554; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘(4) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Right to object

‘556.(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 is likely to affect 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
- (c) be lodged with the mining registrar on or before the closing day (native title issues).

‘(3) If at any time a person who has lodged an objection under this section stops being a registered native title party, the objection is taken never to have been lodged.

‘(4) However, an objection continues to have effect as an objection if the person who lodged the objection stops being a registered native title party because—

- (a) the person is replaced by another person (the “**replacing**

person”) under section 66B⁸⁸ of the Commonwealth Native Title Act; or

- (b) an approved determination of native title that native title exists is made, and immediately before the determination is made, the person is a registered native title claimant.

‘**(5)** If an objection continues to have effect as an objection because of subsection (4)(a), the objection is taken to have been lodged by the replacing person.

‘**(6)** If an objection continues to have effect as an objection because of subsection (4)(b), the objection is taken to have been lodged by the relevant registered native title body corporate.

‘Ending of additional requirements if no objection lodged

‘**557.** 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

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

‘Notice of objections by mining registrar

‘**559.** 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

⁸⁸ Section 66B (Replacing the applicant) of the Commonwealth Native Title Act

- (ii) fix the consultation start day; and
- (iii) give written notice of the day to each objector and the mining registrar.

‘Requirement to consult

‘560.(1) The applicant must consult with each objector under this subdivision.

‘(2) Nothing in this subdivision stops the applicant and an objector discussing consultation matters outside the consultation period.

‘Consultation matters

‘561. 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 of the objectors 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

‘562.(1) The applicant must—

- (a) fix a day for the consultation to start (the **“consultation start day”**), which must be within 2 months after the closing day (native title issues), but not earlier than 14 days after the closing day (native title issues); and
- (b) give written notice of the consultation start day to each objector and the mining registrar at least 7 days before the consultation start day.

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

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

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

‘Consultation period

‘563.(1) The “**consultation period**” for the proposed high impact mineral development licence—

- (a) starts on the consultation start day; and
- (b) ends 2 months after the consultation start day, or if a later time is agreed under subsection (2), at the agreed later time.

‘(2) The consultation period may be extended to an agreed later time if, within 2 months after the consultation start day—

- (a) the applicant and objectors agree to the extension; and
- (b) the applicant notifies the mining registrar in writing of the extension.

‘(3) The agreed later time under subsection (2) must not be later than the end of 4 months after the consultation start day.

‘(4) If the mining registrar is notified under subsection (2)(b) of an extension that will cause the consultation period to end after the day fixed under section 562(2), the mining registrar must—

- (a) fix another day, which must be a day after the consultation period ends, for the tribunal to hear objections; and
- (b) notify the applicant and each objector of the day fixed under this subsection.

‘Request for mediation

‘564.(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

‘**565.(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 who objects under section 556⁸⁹ (“**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 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) at 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 attended the meeting.

‘**(7)** The presentation mentioned in subsection (3)(b) should be directed at providing objectors with an understanding of the anticipated nature, extent

⁸⁹ Section 556 (Right to object)

and impact of the project authorised by the grant of the high impact mineral development licence applied for.

‘Agreement with or without conditions

‘566.(1) This section applies if an agreement for the grant of the proposed high impact mineral development licence is reached between the applicant and each objector, 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 must give a written notice to the mining registrar stating that an agreement has been reached, and must include with the notice a copy of the agreement signed by the applicant and each objector.

‘(3) When the notice is given—

- (a) the additional requirements provided for under subdivision 4 stop applying; and
- (b) the mining registrar must notify the tribunal that the agreement has been reached.

‘Agreement with conditions

‘567.(1) This section applies if an agreement for the grant of the proposed high impact mineral development licence is reached between the applicant and each objector, 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

‘568.(1) If the consultation period has ended and an agreement between the applicant and each objector for the grant of the proposed high impact mineral development licence has not been reached, the tribunal must—

- (a) starting on the hearing day, hear all the objections; and
- (b) make a native title issues decision.

‘(2) However, the applicant and the objectors may continue to consult to reach an agreement for the grant of the proposed high impact mineral development licence.

‘(3) If an agreement is reached, the tribunal may not make a native title issues decision under this subdivision.

‘Directions for hearing

‘569. 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 grant 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.

‘Identifying agreed issues

‘570. Before making a native title issues decision the tribunal must establish whether there are any issues relevant to its decision on which the applicant and any objector are currently in agreement.

‘Matters tribunal must consider

‘571. In making a native title issues decision, the tribunal must consider—

- (a) the content of all objections lodged and submissions made; and
- (b) the effect of the grant 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 impact of the grant of the proposed licence on the registered native title rights and interests of the objectors, including in relation to—
 - (i) any access to the land the subject of the proposed licence; and
 - (ii) the way in which anything authorised under the proposed licence might be done; and
- (d) any issues agreed between the applicant and an objector.

‘General time requirement for hearing

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

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

‘Meaning of “native title issues decision”

‘573. A **“native title issues decision”** is 1 of the following—

- (a) that the proposed high impact mineral development licence may be granted;

- (b) that the proposed high impact mineral development licence 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 licence;
 - (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 applicant and the objectors (even though the conditions are not included in the licence);
- (c) that the proposed high impact mineral development licence should not be granted.

‘Advice of native title issues decision to Minister

‘574. The tribunal must give the Minister a copy of the native title issues decision.

‘Effect of native title issues decision

‘575. The native title issues decision must be complied with by the Minister unless the Minister overrules the native title issues decision under section 577.

‘Contract conditions

‘576.(1) If the Minister grants the proposed high impact mineral development licence, 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 between the holder and each objector.

‘(2) 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.

‘Overruling of native title issues decision

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

- (a) the Minister principally responsible for indigenous affairs has been given a copy of the native title issues decision and is consulted about—
 - (i) the native title issues decision; and
 - (ii) the Minister’s proposed substituted decision under subsection (2); and
- (b) the consultation is taken into account; and
- (c) it is in the interests of Queensland to overrule the native title issues decision.

‘(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, 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.

‘Subdivision 5—Notice of grant

‘Notice of grant to other consultation parties

‘578.(1) If the Minister grants the high impact mineral development licence, the holder of the mineral development licence must, within 28 days after the holder receives notice of the grant, give a written notice complying with subsection (2) to each registered native title party.

Maximum penalty—100 penalty units.

‘(2) The written notice must—

- (a) advise the granting of the high impact mineral development licence; and

-
- (b) state the conditions of the high impact mineral development licence.

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

‘Application of div 4

‘579.(1) This division applies to the granting of a proposed mineral development licence if—

- (a) the mineral development licence is a high impact mineral development licence; and
- (b) the granting of the mineral development licence is an act—
- (i) that affects native title rights and interests; and
- (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mineral development licence—

- (a) only to the extent that the mineral development licence relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mineral development licence is non-exclusive land other than an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 6.

‘(4) Despite subsections (1) to (3), this division also applies to the granting of a high impact mineral development licence to the extent that the land the subject of the mineral development licence is non-exclusive land that is an alternative provision area, if the applicant elects under division 3

that the additional requirements stated in this division apply instead of the additional requirements stated in division 3.

‘Requirements for grant

‘580.(1) The additional requirements applying under part 17, division 4⁹⁰ 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 with necessary changes.

‘Applying pt 17, div 4 for grant

‘581.(1) This section—

- (a) applies for applying the provisions of part 17, division 4; and
- (b) does not limit section 580.

‘(2) References to the Governor in Council are taken to be references to the Minister.

‘(3) For applying section 652, section 652(3)(a) does not apply, and the following period is substituted for the periods mentioned in section 652(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)⁹¹ and (2) of the amount of security to be deposited if the permit is granted.

‘(4) For applying section 669, the pre-referral period is—

- (a) the period of 6 months starting on the notification day (native title issues); or
- (b) if the registered native title parties 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—the period ending at the agreed later time.

⁹⁰ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas)

⁹¹ Section 190 (Provision of security)

‘(5) For applying part 17, division 4, subdivisions 4 and 5,⁹² if the proposed exploration permit is referred to the tribunal for a native title issues decision, sections 671 and 672 do not apply, but the mining registrar must fix a date for a hearing for the native title issues decision, including the hearing of any objections lodged under section 668 as applied under this section.

‘(6) Sections 675(2), 681(4) and (5) and 682 and part 17, division 4, subdivision 7⁹³ do not apply.

‘(7) Section 676 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(8) Section 680 does not apply, but the native title issues decision must be complied with by the Minister unless it is overruled under part 17, division 4, subdivision 6.⁹⁴

‘(9) A reference in part 17, division 4 to a provision of part 7 is taken to be a reference to a corresponding provision of part 6.

‘Division 5—Renewals of mineral development licences

‘Application of div 5

‘**582.(1)** This division applies to the renewal of a mineral development licence if—

- (a) the mineral development licence is a low impact mineral development licence; and

⁹² 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)

⁹³ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivision 7 (Special provisions about completion of combined hearing and making of native titles issues decision)

⁹⁴ Part 17 (Native title provisions for mining leases), division 4 (Other mining leases not on alternative provision areas), subdivision 6 (Overruling of native title issues decision)

-
- (b) the renewal of the mineral development licence is an act—
- (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the renewal of a mineral development licence mentioned in subsection (1) only to the extent that the land the subject of the mineral development licence is non-exclusive land, whether or not an alternative provision area.

‘(3) This division also applies to the renewal of a mineral development licence if—

- (a) the mineral development licence is a high impact mineral development licence; and
- (b) the renewal of the mineral development licence is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(4) However, this division applies to the renewal of a mineral development licence mentioned in subsection (3) only to the extent that the land the subject of the mineral development licence is non-exclusive land that is an alternative provision area.

‘(5) This division also applies to the renewal of a mineral development licence if—

- (a) the mineral development licence is a high impact mineral development licence; and
- (b) the renewal of the mineral development licence is an act—
 - (i) that affects native title rights and interests; and

- (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the renewal of a mineral development licence mentioned in subsection (5) only to the extent that the land the subject of the mineral development licence is non-exclusive land other than an alternative provision area.

‘(7) This division applies to the renewal of a mineral development licence mentioned in subsection (1), (3) or (5) only to the extent that the mineral development licence relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 6.

‘(9) In this section—

“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—applying div 2

‘583.(1) If this division applies to the renewal of a mineral development licence because of section 582(1), the additional requirements applying under division 2⁹⁵ for the granting of a low impact mineral development licence also apply for the renewal.

‘(2) The requirements apply with necessary changes.

⁹⁵ Division 2 (Low impact mineral development licences)

‘Requirements for renewal—applying div 3

‘584.(1) If this division applies to the renewal of a mineral development licence because of section 582(3), the additional requirements applying under division 3⁹⁶ for the granting of a high impact mineral development licence on an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 550(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact mineral development licence on non-exclusive land other than an alternative provision area also apply for the renewal; and
- (b) the requirements apply with necessary changes; and
- (c) section 587(2) to (4) applies instead of section 585(2) and (3).

‘Applying div 3 for renewal

‘585.(1) This section—

- (a) applies for applying the provisions of division 3; and
- (b) does not limit section 584.

‘(2) For applying section 570, the tribunal must also, before making its native title issues decision, ask the Minister about the extent to which the Minister is satisfied that the holder of the mineral development licence proposed to be renewed has complied with the conditions of the mineral development licence.

‘(3) For applying section 571, the tribunal must also consider information received from the Minister under subsection (2).

⁹⁶ Division 3 (High impact mineral development licences on alternative provision areas)

‘Requirements for renewal—applying div 4

‘586.(1) If this division applies to the renewal of a mineral development licence because of section 582(5), the additional requirements applying under division 4⁹⁷ for the granting of a high impact mineral development licence on non-exclusive land other than an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for renewal

‘587.(1) This section—

- (a) applies for applying the provisions of division 4; and
- (b) does not limit section 586.

‘(2) For applying section 581, subsections (3) and (4) of this section are taken to be included in section 581.

‘(3) The tribunal must, before making its native title issues decision, ask the Minister about the extent to which the Minister is satisfied that the holder of the mineral development licence proposed to be renewed has complied with the conditions of the mineral development licence.

‘(4) For applying section 677, the tribunal must also consider information received from the Minister under subsection (3).

‘Division 6—Requirements for subsidiary approvals**‘Application of div 6**

‘588.(1) This division applies to the following—

- (a) the variation of the conditions of—
 - (i) a low impact mineral development licence to allow for activities not limited to low impact activities; or

⁹⁷ Division 4 (High impact mineral development licences not on alternative provision areas)

- (ii) a high impact mineral development licence on an alternative provision area to allow for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area; or
 - (iii) a mineral development licence granted on land where native title has been extinguished to include non-exclusive land;
 - (b) the addition, under section 208,⁹⁸ of stated minerals to a mineral development licence;
 - (c) the addition, under section 226AA,⁹⁹ of land to a mineral development licence granted over land where native title has been extinguished to include non-exclusive land.
- ‘(2) However, this division applies to the variation or addition only if—
- (a) either of the following applies—
 - (i) for the variation of conditions—were the mineral development licence to be granted again, but containing only the varied conditions, the granting would be an act affecting native title rights and interests;
 - (ii) for the addition of minerals or land—were the mineral development licence to be granted again, but only for the added minerals or the added land, the granting would be an act affecting native title rights and interests; and
 - (b) either of the following applies—
 - (i) the variation or addition is an act to which the right to negotiate provisions would have otherwise applied, and the variation or addition is an approved exploration etc. act under a determination in force under section 26A(1) of the Commonwealth Native Title Act;
 - (ii) the variation or addition is an act in respect of which the right to negotiate provisions would have otherwise had effect, and both of the following apply—

⁹⁸ Section 208 (Adding other minerals to licence)

⁹⁹ Section 226AA (Application to add excluded land to existing licence)

- (A) a determination is in force under section 43(1) or 43A(1) of the Commonwealth Native Title Act about alternative provisions applying to the variation or addition;
- (B) this division is included in the alternative provisions.

‘(3) This division applies to the variation or addition only to the extent that the variation or addition relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(4) The requirements of this division are additional to the requirements of part 6.

‘Requirements for variation—low impact mineral development licence

‘589.(1) For the variation of the conditions of a low impact mineral development licence to allow for activities not limited to low impact activities on an alternative provision area, division 3¹⁰⁰ applies, with necessary changes, as if the variation were the granting of a high impact mineral development licence.

‘(2) If, in applying division 3, an election is made under section 550(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact mineral development licence on non-exclusive land other than an alternative provision area also apply for the variation; and
- (b) the requirements apply with necessary changes.

‘(3) For the variation of the conditions of a low impact mineral development licence to allow for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area, division 4¹⁰¹ applies, with necessary changes, as if the variation were the granting of a high impact mineral development licence.

¹⁰⁰ Division 3 (High impact mineral development licences on alternative provision areas)

¹⁰¹ Division 4 (High impact mineral development licences not on alternative provision areas)

‘Requirements for variation—high impact mineral development licences

‘590. For the variation of the conditions of a high impact mineral development licence for an alternative provision area to allow for activities not limited to low impact activities on non-exclusive land other than an alternative provision area, division 4 applies, with necessary changes, as if the variation were the granting of a high impact mineral development licence.

‘Requirements for variation or addition—other mineral development licences

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

‘(2) This section also applies to the addition, under section 226AA of land to a mineral development licence granted over land where native title has been extinguished to include non-exclusive land.

‘(3) If the variation or addition is only for low impact activities, division 2¹⁰² applies, with necessary changes, as if the variation or addition were the granting of the mineral development licence.

‘(4) If the variation or addition is for activities not limited to low impact activities on an alternative provision area, division 3 applies, with necessary changes, as if the variation or addition were the granting of the mineral development licence.

‘(5) If, in applying division 3, an election is made under section 550(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact mineral development licence on non-exclusive land other than an alternative provision area also apply for the variation or addition; and
- (b) the requirements apply with necessary changes.

¹⁰² Division 2 (Low impact mineral development licences)

‘(6) If the variation or addition is for activities not limited to low impact activities on non-exclusive land, other than an alternative provision area, division 4 applies, with necessary changes, as if the variation or addition were the granting of the mineral development licence.

‘Requirements for approval—adding minerals to mineral development licence

‘592.(1) For the addition, under section 208, of stated minerals to a low impact mineral development licence, division 2 applies, with necessary changes, as if the addition were the granting of the mineral development licence.

‘(2) For the addition, under section 208, of stated minerals to a high impact mineral development licence on an alternative provision area, division 3 applies, with necessary changes, as if the addition were the granting of the mineral development licence.

‘(3) If, in applying division 3, an election is made under section 550(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a high impact mineral development licence on non-exclusive land other than an alternative provision area also apply for the addition; and
- (b) the requirements apply with necessary changes.

‘(4) For the addition, under section 208, of stated minerals to a high impact mineral development licence on non-exclusive land, other than an alternative provision area, division 4 applies, with necessary changes, as if the addition were the granting of the mineral development licence.

‘PART 17—NATIVE TITLE PROVISIONS FOR MINING LEASES

‘Division 1—Preliminary

‘Purpose of pt 17

‘593.(1) The purpose of this part is—

- (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 a surface alluvium (gold or tin) mining lease over non-exclusive land; and
- (b) in stating the additional requirements, to provide a basis for a determination by the Commonwealth Minister under section 26B¹⁰³ 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 43A¹⁰⁴ of the Commonwealth Native Title Act.

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

‘594. This part does not apply to an act relating to a mining lease in an approved opal or gem mining area to the extent that the act is excluded from

¹⁰³ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

¹⁰⁴ 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

the application of the right to negotiate provisions under section 26(2)(d)¹⁰⁵ of the Commonwealth Native Title Act.

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

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

- (a) that is granted over land that is, or includes, 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.

‘No re-opening of issues previously decided

‘596.(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

¹⁰⁵ Section 26 (When Subdivision applies) of the Commonwealth Native Title Act

permit or mineral development licence for the land the subject of the mining lease.

“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 the subject of the proposed mining lease.

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

‘Subdivision 1—Preliminary

‘Application of div 2

‘597.(1) This division applies to the granting of a proposed mining lease if—

- (a) the mining lease is a surface alluvium (gold or tin) mining lease; and
- (b) the granting of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the granting of the proposed mining lease—

- (a) only to the extent that the mining lease relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land the subject of the mining lease is non-exclusive land, whether or not an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 7.

‘Definitions for div 2

‘598. In this division—

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

“consultation agreement” see section 606(4)(b).

“consultation matters” includes the purpose of consultation stated in section 604(1) and the matters that consultation must be about under section 604(2).

“consultation parties” see section 601.

“consultation result notice” see section 606(1).

“consultation start day” see section 599(3)(g).

“consultation period” see section 603.

‘Subdivision 2—Notification requirements**‘Requirement to notify**

‘599.(1) The applicant must give written notice of the applicant’s intention to lodge an application for the grant of 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 the subject of the proposed mining lease; and
- (b) the Native Title 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);¹⁰⁶ or

¹⁰⁶ Section 252 (Certificate of application etc.)

- (ii) if the mining registrar decides a longer period under section 252(7)—the end of the longer period; or
- (iii) if, under section 600, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(3) The notice must state the following—

- (a) the name and postal address of the applicant;
- (b) whether or not the application has been lodged;
- (c) a clear description of the land, and its location;
- (d) details of the activities proposed for the land;
- (e) an outline of the expected impact on the land of the proposed activities;
- (f) that the applicant must consult with—
 - (i) each registered native title body corporate for the land; and
 - (ii) each registered native title claimant for the land;
- (g) 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;
- (h) 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.

‘Notification of mining registrar

‘600.(1) Within 2 days after the applicant has complied, or purportedly complied, with the requirements of section 599, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with section 599.

‘(2) A copy of the written notice given under section 599(1) must be attached to the approved form.

‘(3) If the mining registrar is satisfied that a written notice given, or purportedly given, under section 599 has not been given in accordance with

the requirements of section 599(1) and (2), or does not comply with the requirements of section 599(3), the mining registrar must—

- (a) give the applicant a written direction to give a new written notice under section 599; and
- (b) in the direction, nominate a period within which the direction must be complied with.

‘(4) The new notice, when given, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Subdivision 3—Consultation requirements

‘Consultation parties

‘601. 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 the subject of the proposed mining lease; and
- (c) each registered native title claimant for the land.

‘Requirement to consult

‘602.(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

‘603.(1) The “**consultation period**” for the application—

- (a) starts on the consultation start day; and

- (b) ends 2 months after the consultation start day, or if a later or earlier time is agreed under subsection (2) or (3), the later or earlier time.

‘(2) The consultation period may be extended to an agreed later time if, within 2 months after the consultation start day—

- (a) the consultation parties agree to the extension; and
- (b) the mining registrar is notified in writing of the extension.

‘(3) If at any time the consultation parties agree that there has been enough consultation, the consultation period is taken to end.

‘Consultation matters

‘604.(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)¹⁰⁷ 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

¹⁰⁷ Section 26B (Approved gold or tin mining acts) of the Commonwealth Native Title Act

authorised because of, results from, or otherwise relates to, the mining lease applied for, is to be done.

‘Consultation parties may seek mediation

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

‘**(2)** Sections 254 to 259 apply to the conference as if the request were a request made under section 254(1)(a)¹⁰⁸ by an owner of land affected by the application.

‘**(3)** Despite section 255(3),¹⁰⁹ a consultation party may be represented at the conference by a lawyer.

‘**(4)** Subject to any order made under section 259,¹¹⁰ a party to the conference must pay the party’s own costs for the conference.

‘Notice of result of consultation

‘**606.(1)** The applicant must, and a consultation party, other than the applicant, may, as soon as practicable after the consultation period ends, give a written notice (a “**consultation result notice**”) to the mining registrar.

‘**(2)** The applicant must, as soon as practicable after giving a consultation result notice, give a copy of it to each other consultation party.

‘**(3)** If a consultation party, other than the applicant, gives a consultation result notice, the party must, as soon as practicable after giving the notice, give a copy of it to each other consultation party.

‘**(4)** A consultation result 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

¹⁰⁸ Section 254 (Mining registrar may call conference in some cases)

¹⁰⁹ Section 255 (Who may attend conference)

¹¹⁰ Section 259 (Tribunal may award costs)

for (a “**consultation agreement**”);

- (c) 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.

‘(5) If a consultation agreement has been reached, a copy of the consultation agreement, signed by all consultation parties, must be given to the mining registrar with the consultation result notice.

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

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

‘(7) Subsection (6) has effect in addition to any other effect that the agreement may have apart from under subsection (6).

‘(8) 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 have waived their rights to be heard.

‘Subdivision 4—Hearing requirements

‘Application of sdiv 4

‘607. 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) the applicant has not given a consultation result notice within 7 days after the end of the consultation period;
 - (iii) at least 1 of the native title notification parties for the land the subject of the proposed mining lease has not waived the party's right to be heard.

'Native title notification parties' right to be heard

'608.(1) Each native title notification party for the land 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 at any time, by a notice in writing to the mining registrar, waive the party's right to be heard.

'Fixing of combined hearing day

'609.(1) The mining registrar must, within 14 days after the consultation period ends, fix a day for the tribunal to hear the application under section 265¹¹¹, as if an objection had been lodged under section 260.¹¹²

'(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 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—

¹¹¹ Section 265 (Mining registrar to fix hearing date)

¹¹² Section 260 (Objection to application for grant of mining lease)

-
- (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.

‘(4) The tribunal must not, under section 270,¹¹³ dispense with a hearing.

‘Tribunal must consider consultation matters and agreed issues

‘610. In making its recommendation to the Minister under section 269,¹¹⁴ 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.

‘Decision about compensation to be made at hearing

‘611. If, at the end of the hearing for the application, the consultation parties have not reached an agreement about compensation, the tribunal, whether or not an application has been made to the tribunal about compensation, must also make any compensation decision or compensation trust decision that is required to be made under part 18¹¹⁵ before the surface alluvium (gold or tin) mining claim is granted.

‘General time requirement for hearing

‘612.(1) The tribunal must take all reasonable steps to ensure the hearing for the application is finished within 3 months after the day the consultation parties were notified of the hearing.

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

¹¹³ Section 270 (Procedure where no objections lodged)

¹¹⁴ Section 269 (Tribunal’s recommendation on hearing)

¹¹⁵ Part 18 (Compensation provisions)

-
- (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.

‘Subdivision 5—Notice of grant

‘Notice of grant to other consultation parties

‘613.(1) If the Governor in Council grants the surface alluvium (gold or tin) mining lease, the holder of the mining lease must, within 28 days after the holder receives notice of the grant, give a written notice complying with subsection (2) to the following—

- (a) each other consultation party;
- (b) each representative Aboriginal/Torres Strait Islander body heard by the tribunal in any hearing for the grant of the surface alluvium (gold or tin) mining lease.

Maximum penalty—100 penalty units.

‘(2) The written notice must—

- (a) advise the granting of the surface alluvium (gold or tin) mining lease; and
- (b) state the conditions of the surface alluvium (gold or tin) mining lease.

‘Division 3—Other mining leases on alternative provision areas

‘Subdivision 1—Preliminary

‘Application of div 3

‘614.(1) This division applies to the granting of a proposed mining lease if—

-
- (a) the mining lease is other than a surface alluvium (gold or tin) mining lease; and
 - (b) the granting of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
 - (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mining lease—

- (a) only to the extent that the mining lease relates to a place that is on the landward side of the mean high-water mark of the sea; and
- (b) only to the extent that the land is non-exclusive land that is an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 7.

‘(4) Despite subsections (1) to (3), this division does not apply to the granting of the proposed mining lease if the applicant elects that the additional requirements stated in division 4 apply instead of the additional requirements stated in this division.

‘Definitions for div 3

‘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).

“**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,

see section 623.

“**contract conditions**” see section 640(1).

“**land**” means the land the subject of the proposed mining lease.

“**native title issues decision**” see section 634(1).

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

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

“**registered native title party**” see section 619.

‘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 land; and
- (b) the Native Title Registrar

‘(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; 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;¹¹⁶ 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 618, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘(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 name and postal address of the applicant;
- (b) the following days for the proposed mining lease—
 - (i) the notification day (native title issues);
 - (ii) the closing day (native title issues);
- (c) how a person may become a registered native title party;
- (d) 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;
- (e) that an objection must—
 - (i) be made in writing in the approved form; and
 - (ii) be lodged with the mining registrar during the consultation and negotiation period; and
 - (iii) state the facts and circumstances relied on by the registered native title party in support of the ground of objection;

¹¹⁶ Section 252 (Certificate of application etc.), section 253 (Reissue of certificate of application)

-
- (f) a clear description of the land, and its location;
 - (g) a description of the nature of the proposed mining lease;
 - (h) that the proposed mining lease, if granted, will be granted by the Governor in Council;
 - (i) how further information about the proposed mining lease, and about the matters mentioned in paragraph (d), 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 each person to whom it is to be given, and
- (b) the public notice will have come to the attention of each person 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).

‘**Notification of mining registrar**

‘**618.(1)** Within 2 days after the applicant has complied, or purportedly complied, with the requirements of sections 616 and 617, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with sections 616 and 617.

‘(2) The following must be attached to the approved form—

- (a) a copy of the written notice given under section 616(1);
- (b) the page, or a copy of the page, of the newspaper mentioned in section 616(2)(a) that contained the public notice mentioned in section 616(2);
- (c) the page, or a copy of the page, of the relevant special interest publication mentioned in section 616(2)(b) that contained the public notice mentioned in section 616(2).

‘(3) The mining registrar must give the applicant a written direction to give a new written notice, and publish a new public notice, under sections 616 and 617 if the mining registrar is satisfied that 1 or more of the

following applies—

- (a) the giving of the written notice was not in accordance with the requirements of section 616(1) and (3);
- (b) the content of the written notice was not in accordance with the requirements of section 617;
- (c) the publication of the public notice was not in accordance with the requirements of section 616(2) and (3).

‘(4) The written direction must nominate a period within which the direction must be complied with.

‘(5) The new written notice, when given, and the new public notice, when published, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Registered native title parties

‘**619.(1)** An entity is a “**registered native title party**” depending on when the issue has to be considered.

‘(2) On the closing day (native title issues), and at any time before it, each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land;
- (b) a registered native title claimant in relation to the land.

‘(3) At any time in the 1 month immediately following the closing day (native title issues), each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land, if the body corporate was a registered native title body corporate in relation to the land on or before the closing day (native title issues);
- (b) a registered native title body corporate in relation to the land, if the body corporate became a registered native title body corporate in relation to the land—

-
- (i) after the closing day (native title issues); and
 - (ii) as a result of a native title determination application containing a claim that was filed on or before the closing day (native title issues) and was entered on the register of native title claims in the 1 month immediately following the closing day (native title issues);
- (c) an entity that filed a native title determination application in the Federal Court in relation to the land on or before the closing day (native title issues).

‘(4) At any time after the 1 month immediately following the closing day (native title issues), each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land, if the body corporate was a registered native title body corporate in relation to the land on or before the closing day (native title issues);
- (b) a registered native title body corporate in relation to the land, if the body corporate became a registered native title body corporate in relation to the land as a result of a native title determination application containing a claim that was filed on or before the closing day (native title issues) and was entered on the register of native title claims as at the end of the 1 month immediately following the closing day (native title issues);
- (c) an entity that is a registered native title claimant in relation to the land, if the entity—
 - (i) filed a native title determination application in the Federal Court on or before the closing day (native title issues); and
 - (ii) was a registered native title claimant in relation to the land as at 1 month after the closing day (native title issues).

‘(5) If a person (the “**first person**”) becomes a registered native title claimant because the first person replaces another person as the applicant in relation to a claimant application, and the other person is a registered native title party, the first person also replaces the other person as the registered native title party.

‘Advice to mining registrar

‘620.(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 list, in the approved form, of the names and addresses of—

- (a) all registered native title parties as at the closing day (native title issues); and
- (b) all entities that may become registered native title parties.

‘(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 a list in the approved form of the names and addresses of all entities that have become registered native title parties in the month.

‘(3) Subsection (2) does not apply if at the closing day (native title issues), there were no entities that might have become registered native title parties.

‘Ending of additional requirements

‘621. 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, and no entities who may become registered native title parties; or
- (b) the following entities 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;
 - (ii) if 1 month after the closing day (native title issues) has not expired, all entities who may become registered native title parties.

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;
- (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 is taken to stop being a consultation and negotiation party if the party lodges an approved form under section 621(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 day immediately after 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).¹¹⁷

¹¹⁷ 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, within 3 months after the period starts, 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);¹¹⁸
- (b) if the registered native title parties 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

‘624.(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 (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—

¹¹⁸ 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 grant of the proposed mining lease on their registered native title rights and interests in relation to the 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 grant 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

‘**625.(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 grant of the proposed mining lease on the registered native title rights and interests of registered native title parties.

‘Failure to negotiate

‘626. 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

‘627.(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

‘628.(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 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 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 consultation and negotiation period starts.

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

‘**629.(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 should advise the other consultation and negotiation parties about the impact the party considers the grant of 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

‘630. 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 land;
- (b) existing use of the land by persons, other than the registered native title parties;
- (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 land.

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

‘631.(1) This section applies if a negotiated agreement is reached, 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) give the mining registrar—
 - (i) a written notice in the approved form stating that a negotiated agreement has been reached for the proposed mining lease; and
 - (ii) a copy of the signed negotiated agreement; and
- (b) give a copy of the notice to the tribunal.

‘(3) When the approved form has been lodged under subsection (2), the additional requirements provided for under this division, other than section 632, stop applying to the proposed mining lease.

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

‘632.(1) This section applies if a negotiated agreement is reached, 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

‘633.(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 the consultation and negotiation period has ended, 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 reached.

‘(8) The registered native title party may object about the effect of the grant of the proposed mining lease on its registered native title rights and interests under this section only, and may not object under section 260¹¹⁹ about the effect of the grant of the proposed mining lease on its registered native title rights and interests.

‘(9) If at any time a person who has lodged an objection under this section stops being a registered native title party, the objection is taken to have been withdrawn.

‘(10) However, an objection continues to have effect as an objection if the person who lodged the objection stops being a registered native title party because—

- (a) the person is replaced by another person (the “**replacing person**”) under section 66B¹²⁰ of the Commonwealth Native Title Act; or

¹¹⁹ Section 260 (Objection to application for grant of mining lease)

¹²⁰ Section 66B (Replacing the applicant) of the Commonwealth Native Title Act

- (b) an approved determination of native title that native title exists is made, and immediately before the determination is made, the person is a registered native title claimant.

‘(11) If an objection continues to have effect as an objection because of subsection (10)(a), the objection is taken to have been lodged by the replacing person.

‘(12) If an objection continues to have effect as an objection because of subsection (10)(b), the objection is taken to have been lodged by the relevant registered native title body corporate.

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

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

‘Subdivision 4—Referral and native title issues decision

‘Referral of proposed mining lease to tribunal

‘634.(1) If the consultation and negotiation period has ended, but a negotiated agreement has not been reached, a consultation and negotiation party for the proposed mining lease may refer the proposed mining lease to the tribunal for a decision under this division (a “**native title issues decision**”).

‘(2) The referral must be—

- (a) lodged with the mining registrar; and
- (b) made in the approved form.

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

‘(4) If there has been no referral within 3 months after the end of the consultation and negotiation period, the Minister may reject the application for the proposed mining lease.

‘(5) If the consultation and negotiation period has ended, and a registered native title party who lodged an objection under section 633 has not withdrawn the objection, the proposed mining lease is taken to have been referred to the tribunal under subsection (1).

‘Continuing negotiation

‘635.(1) After the referral of the proposed mining lease to the tribunal, the consultation and negotiation parties for the proposed mining lease may continue to negotiate to reach a negotiated agreement before the native title issues decision is made.

‘(2) If a negotiated agreement is reached, all referrals of the proposed mining lease to the tribunal are taken to be withdrawn, and the tribunal must not make a native title issues decision.

‘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);¹²¹
- (b) the hearing for a native title issues decision, including the hearing of any objections lodged under section 633.

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

‘(3) The tribunal must not act under section 270¹²² 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.

¹²¹ Section 268 (Hearing of application for grant of mining lease)

¹²² Section 270 (Procedure where no objections lodged)

‘Fixing of date for combined hearing

‘**637.(1)** Subsections (2) to (5) apply if the mining registrar is required to fix under section 265¹²³ 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

‘**(4)** However, as soon as practicable after a negotiated agreement is reached or the proposed mining lease is referred to the tribunal for a native title issues decision, the tribunal must reconvene the combined hearing.

‘**(5)** 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.

‘**(6)** 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

¹²³ Section 265 (Mining registrar to fix hearing date)

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 grant of 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

‘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, 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 a consultation and negotiation party to comply with subdivision 3 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 under section 622(2) 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) If, at the end of the combined hearing, the consultation and negotiation parties have not reached an agreement about compensation, the tribunal, whether or not an application has been made to the tribunal about compensation, must also make any compensation decision or compensation trust decision that is required to be made under part 18 before the mining lease is granted.

'(3) The tribunal must 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 1 or more of the following—

- (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.

‘Timing of tribunal’s recommendation and native title issues decision

‘641. The tribunal must advise the Minister of its native title issues decision when the tribunal forwards its recommendation to the Minister under section 269(1).¹²⁴

‘Tribunal’s native title issues decision

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

- (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 grant 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 is located.

(2) In taking into account the matters mentioned in subsection (1), the tribunal may also consider the effect of the grant 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 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 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 land; and

¹²⁴ Section 269 (Tribunal recommendation on hearing)

(e) any other matter the tribunal considers relevant.

‘(3) In deciding the effect of the grant 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 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

(b) the practical effect on the exercise of native title rights and interests in relation to the 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 grant 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 establish whether there are any issues relevant to its decision on which the consultation and negotiation parties are currently in agreement; 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 are the subject of the agreed issues.

‘Deferred matters

‘643.(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
- (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 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

‘644.(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.

‘Effect of native title issues decision

‘645.(1) The native title issues decision must be complied with by the Minister, including in any recommendation of the Minister to the Governor in Council under section 271,¹²⁵ unless the Minister overrules the native title issues decision under subdivision 6.

‘(2) If the native title issues decision is that the proposed mining lease should not be granted, the tribunal may nevertheless recommend under section 269¹²⁶ that the application for the proposed mining lease should be granted.

‘(3) However if subsection (2) applies, the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted unless the Minister overrules the native title issues decision under section 646.

‘Subdivision 6—Overruling of native title issues decision

‘Minister may overrule native title issues decision

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

- (a) the Minister principally responsible for indigenous affairs has been given a copy of the native title issues decision and is consulted about—

¹²⁵ Section 271 (Minister to consider recommendations made in respect of application for grant of mining lease)

¹²⁶ Section 269 (Tribunal’s recommendation on hearing)

-
- (i) the native title issues decision; and
 - (ii) the Minister's proposed substituted decision under subsection (2); 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.

‘(3) The substituted decision—

- (a) must comply with the requirements of section 640(1) and (3) for a native title issues decision; and
- (b) when made, takes the place of the native title issues decision.

‘(4) The substituted decision can not overrule a compensation decision or compensation trust decision, for the granting of the proposed mining lease, already made by the tribunal under part 18.

‘(5) If the substituted decision is that the proposed mining lease may be granted with or without conditions, the Minister must refer the matter to the tribunal for—

- (a) if a compensation decision or compensation trust decision has already been made under part 18 for the granting of the proposed mining lease—a new compensation decision or compensation trust decision; or
- (b) otherwise—a compensation decision or compensation trust decision under part 18 for the granting of the proposed mining lease.

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

‘(7) 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 overruling

‘**647.(1)** This section applies if the Minister makes a substituted decision under section 646.

‘**(2)** If the substituted decision is that the proposed mining lease may be granted, but subject to conditions to be included in the mining lease, any recommendation of the Minister to the Governor in Council under section 271¹²⁷ that the proposed mining lease be granted, must include a recommendation that the proposed mining lease be granted subject to the conditions.

‘**(3)** If the substituted decision is that the proposed mining lease should not be granted, the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted.

‘Subdivision 7—Miscellaneous matters about grant**‘Contract conditions**

‘**648.(1)** If the Governor in Council grants the proposed mining lease, 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 between the consultation and negotiation parties.

‘**(2)** 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.

¹²⁷ Section 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

‘Notice of grant to registered native title parties

‘649.(1) If the Governor in Council grants the proposed mining lease, the holder of the mining lease must, within 28 days after the holder receives notice of the grant, give a written notice complying with subsection (2) to each registered native title party.

Maximum penalty—100 penalty units.

‘(2) The written notice must—

- (a) advise the granting of the mining lease; and
- (b) state—
 - (i) any contract conditions; and
 - (ii) the conditions of the mining lease.

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

‘Subdivision 1—Preliminary

‘Application of div 4

‘650.(1) This division applies to the granting of a proposed mining lease if—

- (a) the mining lease is other than a surface alluvium (gold or tin) mining lease; and
- (b) the granting of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(2) However, this division applies to the granting of the proposed mining lease—

-
- (a) only to the extent that the mining lease relates to a place that is on the landward side of the mean high-water mark of the sea; and
 - (b) only to the extent that the land is non-exclusive land other than an alternative provision area.

‘(3) The requirements of this division are additional to the requirements of part 7.

‘(4) Despite subsections (1) to (3), this division also applies to the granting of the proposed mining lease to the extent that the land is non-exclusive land that is an alternative provision area, if the applicant elects under division 3 that the additional requirements stated in this division apply instead of the additional requirements stated in division 3.

‘Definitions for div 4

‘651. In this division—

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

“**closing day (native title issues)**”, for the proposed mining lease, see section 653(3).

“**combined hearing**”, for the proposed mining lease, see section 671.

“**consultation and negotiation parties**”, for the proposed mining lease, see section 658(1).

“**contract conditions**” see section 675(1).

“**land**” means the land the subject of the proposed mining lease.

“**Minister’s decision**” see section 684.

“**native title issues decision**” see section 669(1).

“**negotiated agreement**”, for the proposed mining lease, see section 659(1).

“**notification day (native title issues)**”, for the proposed mining lease, see section 653(2).

“**registered native title party**” see section 655.

“**urgency notice**” see section 683.

‘Subdivision 2—Notification and registration requirements**‘Requirement to notify**

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

- (a) all native title notification parties for the land; and
- (b) the Native Title Registrar

‘(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; 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;¹²⁸ 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 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

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

¹²⁸ Section 252 (Certificate of application etc.), section 253 (Reissue of certificate of application)

‘Content of written notice

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

- (a) the name and postal address of the applicant;
- (b) the following days for the proposed mining lease—
 - (i) the notification day (native title issues);
 - (ii) the closing day (native title issues);
- (c) how a person may become a registered native title party;
- (d) that registered native title parties have a right—
 - (i) to be consulted about the proposed mining lease;¹²⁹ and
 - (ii) to object to the granting of the proposed mining lease¹³⁰; and
 - (iii) to negotiate with a view to reaching agreement about the granting of the proposed mining lease;¹³¹
- (e) that an objection must—
 - (i) be made in writing in the approved form; and
 - (ii) be lodged with the mining registrar at any time before a negotiated agreement is reached or the proposed mining lease is referred to the tribunal for a native title issues decision; and
 - (iii) state the facts and circumstances relied on by the registered native title party in support of the ground of objection;
- (f) a clear description of the land, and its location;
- (g) a description of the nature of the proposed mining lease;
- (h) whether an election has been made to apply this division to an alternative provision area;
- (i) that the proposed mining lease, if granted, will be granted by the

¹²⁹ See sections 658 (Parties to consultation and negotiation) and 659 (Requirement for consultation and for negotiation in good faith)

¹³⁰ See section 668 (Objections)

¹³¹ See section 659 (Requirement for consultation and negotiation in good faith)

Governor in Council;

- (j) how further information about the proposed mining lease, and about the matters mentioned in paragraph (d), 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 each person to whom it is to be given, and
- (b) the public notice will have come to the attention of each person 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).

‘**Notification of mining registrar**

‘**654.(1)** Within 2 days after the applicant has complied, or purportedly complied, with the requirements of sections 652 and 653, the applicant must give the mining registrar information in the approved form about the applicant’s compliance with sections 652 and 653.

‘(2) The following must be attached to the approved form—

- (a) a copy of the written notice given under section 652 and 653(1);
- (b) the page, or a copy of the page, of the newspaper mentioned in section 652(2)(a) that contained the public notice mentioned in section 652(2);
- (c) the page, or a copy of the page, of the relevant special interest publication mentioned in section 652(2)(b) that contained the public notice mentioned in section 652(2).

‘(3) The mining registrar must give the applicant a written direction to give a new written notice, and publish a new public notice, under sections 652 and 653 if the mining registrar is satisfied that 1 or more of the following applies—

- (a) the giving of the written notice was not in accordance with the requirements of section 652(1) and (3);

- (b) the content of the written notice was not in accordance with the requirements of section 653;
- (c) the publication of the public notice was not in accordance with the requirements of section 652(2) and (3).

‘(4) The written direction must nominate a period within which the direction must be complied with.

‘(5) The new written notice, when given, and the new public notice, when published, must—

- (a) state that it is a replacement notice; and
- (b) identify the previous notice.

‘Registered native title parties

‘**655.(1)** An entity is a “**registered native title party**” depending on when the issue has to be considered.

‘(2) On the closing day (native title issues), and at any time before it, each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land;
- (b) a registered native title claimant in relation to the land.

‘(3) At any time in the 1 month immediately following the closing day (native title issues), each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land, if the body corporate was a registered native title body corporate in relation to the land on or before the closing day (native title issues);
- (b) a registered native title body corporate in relation to the land, if the body corporate became a registered native title body corporate in relation to the land—
 - (i) after the closing day (native title issues); and
 - (ii) as a result of a native title determination application containing a claim that was filed on or before the closing day

(native title issues) and was entered on the register of native title claims in the 1 month immediately following the closing day (native title issues);

- (c) an entity that filed a native title determination application in the Federal Court in relation to the land on or before the closing day (native title issues).

‘(4) At any time after the 1 month immediately following the closing day (native title issues), each of the following entities is a “registered native title party”—

- (a) a registered native title body corporate in relation to the land, if the body corporate was a registered native title body corporate in relation to the land on or before the closing day (native title issues);
- (b) a registered native title body corporate in relation to the land, if the body corporate became a registered native title body corporate in relation to the land as a result of a native title determination application containing a claim that was filed on or before the closing day (native title issues) and was entered on the register of native title claims as at the end of the 1 month immediately following the closing day (native title issues);
- (c) an entity that is a registered native title claimant in relation to the land, if the entity—
- (i) filed a native title determination application in the Federal Court on or before the closing day (native title issues); and
- (ii) was a registered native title claimant in relation to the land as at 1 month after the closing day (native title issues).

‘(5) If a person (the “**first person**”) becomes a registered native title claimant because the first person replaces another person as the applicant in relation to a claimant application, and the other person is a registered native title party, the first person also replaces the other person as the registered native title party.

‘Advice to mining registrar

‘656.(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 list, in the approved form, of the names and addresses of—

- (a) all registered native title parties as at the closing day (native title issues); and
- (b) all entities that may become registered native title parties.

‘(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 a list in the approved form of the names and addresses of all entities that have become registered native title parties in the month.

‘(3) Subsection (2) does not apply if at the closing day (native title issues), there were no entities that might have become registered native title parties.

‘Ending of additional requirements

‘657. The additional requirements provided for under this division stop applying for the proposed mining lease if, after 1 month after the closing day (native title issues)—

- (a) there are no registered native title parties; or
- (b) all registered native title parties 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.

‘Subdivision 3—Consultation and negotiation**‘Parties to consultation and negotiation**

‘658.(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;
- (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 is taken to stop being a consultation and negotiation party if the party lodges an approved form under section 657(b).

‘Requirement for consultation and negotiation in good faith

‘659.(1) 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 (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—

- (a) the applicant—
 - (i) must consult the registered native title parties about ways of minimising the impact of the grant of the proposed mining lease on their registered native title rights and interests in relation to the 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

‘660.(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 must 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 grant of the proposed mining lease on the registered native title rights and interests of registered native title parties.

‘Failure to negotiate

‘661. 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

‘**662.(1)** At any time before a negotiated agreement is reached or the proposed mining lease is referred to the tribunal, by action taken under section 669, for a native title issues decision, 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 period that must elapse before the proposed mining lease may be referred to the tribunal, by action taken under section 669, for a native title issues decision; and
- (c) may continue after the period mentioned in paragraph (b) has elapsed 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

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

‘**(2)** Within 4 months after the notification day (native title issues), the applicant should—

- (a) give each registered native title party 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.

‘(3) 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 land; or
- (c) at another place agreed between the consultation and negotiation parties.

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

‘(5) If the applicant has convened a consultation meeting under subsection (2)(b), the meeting is taken to have happened even though not all, or none, of the registered native title parties attended the meeting.

‘(6) The presentation mentioned in subsection (2)(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.

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

‘**664.(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 should advise the other consultation and negotiation parties about the impact the party considers the grant of 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

‘665. 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 land;
- (b) existing use of the land by persons other than registered native title parties;
- (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 land.

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

‘666.(1) This section applies if a negotiated agreement is reached, 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) give the mining registrar—
 - (i) a written notice in the approved form stating that a negotiated agreement has been reached for the proposed mining lease; and
 - (ii) a copy of the signed negotiated agreement; and
- (b) give a copy of the notice to the tribunal.

‘(3) When the approved form has been lodged under subsection (2), the additional requirements provided for under this division, other than section 667, stop applying to the proposed mining lease.

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

‘667.(1) This section applies if a negotiated agreement is reached, 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).

‘Objections

‘668.(1) At any time before a negotiated agreement is reached or the proposed mining lease is referred to the tribunal, by action taken under section 669, for a native title issues decision, 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 negotiated agreement is reached or the proposed mining lease is referred to the tribunal, by action taken under section 669, for a native title issues decision, 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 reached.

‘(8) The registered native title party may object about the effect of the grant of the proposed mining lease on its registered native title rights and interests under this section only, and may not object under section 260¹³² about the effect of the grant of the proposed mining lease on its registered native title rights and interests.

‘(9) If at any time a person who has lodged an objection under this section stops being a registered native title party, the objection is taken to have been withdrawn.

‘(10) However, an objection continues to have effect as an objection if the person who lodged the objection stops being a registered native title party because—

- (a) the person is replaced by another person (the “**replacing person**”) under section 66B¹³³ of the Commonwealth Native Title Act; or
- (b) an approved determination of native title that native title exists is made, and immediately before the determination is made, the person is a registered native title claimant.

‘(11) If an objection continues to have effect as an objection because of

¹³² Section 260 (Objection to application for grant of mining lease)

¹³³ Section 66B (Replacing the applicant) of the Commonwealth Native Title Act

subsection (10)(a), the objection is taken to have been lodged by the replacing person.

‘(12) If an objection continues to have effect as an objection because of subsection (10)(b), the objection is taken to have been lodged by the relevant registered native title body corporate.

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

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

‘Subdivision 4—Referral and native title issues decision

‘Referral of proposed mining lease to tribunal

‘669.(1) If the pre-referral period has ended, but a negotiated agreement has not been reached, a consultation and negotiation party for the proposed mining lease may refer the proposed mining lease to the tribunal for a decision under this division (a “**native title issues decision**”).

‘(2) The referral must be—

- (a) lodged with the mining registrar; and
- (b) made in the approved form.

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

‘(4) If there has been no referral within 3 months after the end of the pre-referral period, the Minister may reject the application for the proposed mining lease.

‘(5) If the pre-referral period has ended, and a registered native title party who lodged an objection under section 668 has not withdrawn the objection, the proposed mining lease is taken to have been referred to the tribunal under subsection (1).

‘(6) In this section—

“pre-referral period” means—

- (a) if an environmental impact statement is not required to be completed under part 7 for the proposed mining lease—
 - (i) the period of 6 months starting on the notification day (native title issues); or
 - (ii) if the registered native title parties and the applicant agree on a time, which must be later than the time that would otherwise apply under subparagraph (i), and advise the mining registrar in writing of the agreed later time—the period ending at the agreed later time; or
- (b) otherwise—the period which, out of the following periods, ends latest—
 - (i) the period of 3 months starting on the day the mining registrar displays the notice about the environmental impact statement at the mining registrar’s office under section 264(3);¹³⁴
 - (ii) 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—the period ending at the agreed later time;
 - (iii) the period of 6 months starting on the notification day (native title issues).

‘Continuing negotiation

‘670.(1) After the referral of the proposed mining lease to the tribunal, the consultation and negotiation parties for the proposed mining lease may continue to negotiate to reach a negotiated agreement before the native title issues decision is made.

‘(2) If a negotiated agreement is reached, all referrals of the proposed

¹³⁴ Section 264 (What happens after environmental impact statement is prepared?)

mining lease to the tribunal are taken to be withdrawn, and the tribunal must not make a native title issues decision.

‘Combined hearing

‘671.(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);¹³⁵
- (b) the hearing for a native title issues decision, including the hearing of any objections lodged under section 668.

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

‘(3) The tribunal must not act under section 270¹³⁶ 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

‘672.(1) Subsections (2) to (5) apply if the mining registrar is required to fix under section 265¹³⁷ 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

¹³⁵ Section 268 (Hearing of application for grant of mining lease)

¹³⁶ Section 270 (Procedure where no objections lodged)

¹³⁷ Section 265 (Mining registrar to fix hearing date)

hearing were not a combined hearing; and

(b) at an appropriate time adjourn the hearing.

‘(4) However, as soon as practicable after a negotiated agreement is reached or the proposed mining lease is referred to the tribunal for a native title issues decision, the tribunal must reconvene the combined hearing.

‘(5) 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.

‘(6) 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

‘673. 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 grant of 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

‘674.(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.

‘(5) However, the tribunal may take the failure of a consultation and negotiation party to comply with subdivision 3 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 in good faith, on the ground that the State stopped being a consultation and negotiation party under section 658(2) or took a particular role under section 658(3).

‘Nature of native title issues decision

‘675.(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) If, at the end of the combined hearing, the consultation and negotiation parties have not reached an agreement about compensation, the tribunal, whether or not an application has been made to the tribunal about compensation, must also make any compensation decision or compensation trust decision that is required to be made under part 18 before the mining lease is granted.

‘(3) The tribunal must 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 1 or more of the following—

- (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.

‘**Timing of tribunal’s recommendation and native title issues decision**

‘676. The tribunal must advise the Minister of its native title issues decision when the tribunal forwards its recommendation to the Minister under section 269(1).¹³⁸

‘**Tribunal’s native title issues decision**

‘677.(1) In making its native title issues decision, the tribunal must take into account the following—

¹³⁸ Section 269 (Tribunal’s recommendation on hearing)

- (a) the effect of the grant of the proposed mining lease on—
 - (i) the enjoyment by the registered native title parties of their registered native title rights and interests; and
 - (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 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 land in accordance with their traditions; and
 - (vi) any area or site on the 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 grant of the proposed mining lease;
- (c) the economic or other significance of the grant of the proposed mining lease to Australia, Queensland, the area in which the 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 grant 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 land; and

- (b) existing use of the land or waters by persons other than the 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 grant of the proposed mining lease on an area or site mentioned in subsection (1)(a)(vi) 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 establish whether there are any issues relevant to its decision on which the consultation and negotiation parties are currently in agreement; 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 are the subject of the agreed issues.

‘Deferred matters

‘678.(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 between the consultation and negotiation parties; 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

‘679.(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.

‘Effect of native title issues decision

‘680.(1) The native title issues decision must be complied with by the Minister, including in any recommendation of the Minister to the Governor in Council under section 271,¹³⁹ unless the Minister overrules the native title issues decision under subdivision 6.

¹³⁹ Section 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

‘(2) If the native title issues decision is that the proposed mining lease should not be granted, the tribunal may nevertheless recommend under section 269¹⁴⁰ that the application for the proposed mining lease should be granted.

‘(3) However if subsection (2) applies, the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted unless the Minister overrules the native title issues decision under section 681.

‘Subdivision 6—Overruling of native title issues decision

‘Minister may overrule native title issues decision

‘**681.(1)** The Minister may overrule the native title issues decision, but 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.

‘(3) The substituted decision—

- (a) must comply with the requirements of section 675(1) and (3) for a native title issues decision; and
- (b) when made, takes the place of the native title issues decision.

‘(4) The substituted decision can not overrule a compensation decision or compensation trust decision, for the granting of the proposed mining lease, already made by the tribunal under part 18.

‘(5) If the substituted decision is that the proposed mining lease may be granted with or without conditions, the Minister must refer the matter to the tribunal for—

¹⁴⁰ Section 269 (Tribunal’s recommendation on hearing)

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- (a) if a compensation decision or compensation trust decision has already been made under part 18 for the granting of the proposed mining lease—a new compensation decision or compensation trust decision; or
 - (b) otherwise—a compensation decision or compensation trust decision under part 18 for the granting of the proposed mining lease.

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

‘Effect of overruling

‘682.(1) This section applies if the Minister makes a substituted decision under section 681.

‘(2) If the substituted decision is that the proposed mining lease may be granted, but subject to conditions to be included in the mining lease, any recommendation of the Minister to the Governor in Council under section 271¹⁴¹ that the proposed mining lease be granted, must include a recommendation that the proposed mining lease be granted subject to the conditions.

‘(3) If the substituted decision is that the proposed mining lease should not be granted, the Minister must not recommend to the Governor in Council under section 271 that the proposed mining lease be granted.

‘Subdivision 7—Special provisions about completion of combined hearing and making of native titles issues decision

‘Giving of urgency notice

‘683.(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

¹⁴¹ Section 271 (Minister to consider recommendation made in respect of application for grant of mining lease)

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.

‘**Minister’s decision if tribunal recommendation delayed**

‘**684.(1)** This section applies if—

- (a) the Minister has given the tribunal an urgency notice under section 683 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 making of the native title issues decision is 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**

‘**685.(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—

- (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

‘686.(1) The Minister's decision has effect as a native title issues decision.

‘(2) The Minister’s decision must, as for a native title issues decision for section 675, 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) If the Minister’s decision is a decision mentioned in subsection (2)(a) or (b), the Minister must refer the matter to the tribunal for a compensation decision or compensation trust decision under part 18.

‘(4) 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.

‘(5) The Minister’s decision must be made by the Minister personally.

‘(6) 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.

‘Subdivision 8—Miscellaneous matters about grant

‘Contract conditions

‘687.(1) If the Governor in Council grants the proposed mining lease, 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 between the consultation and negotiation parties.

‘(2) 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.

‘**Notice of grant to registered native title parties**

‘**688.(1)** If the Governor in Council grants the proposed mining lease, the holder of the mining lease must, within 28 days after the holder receives notice of the grant, give a written notice complying with subsection (2) to each registered native title party.

Maximum penalty—100 penalty units.

‘(2) The written notice must—

- (a) advise the granting of the mining lease; and
- (b) state—
 - (i) any contract conditions; and
 - (ii) the conditions of the mining lease.

‘*Division 5—Renewals of mining leases*

‘**Application of div 5**

‘**689.(1)** This division applies to the renewal of a mining lease if—

- (a) the mining lease is a surface alluvium (gold or tin) mining lease; and
- (b) the renewal of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) to which the right to negotiate provisions would have otherwise applied; and
 - (iii) that is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the renewal of a mining lease

mentioned in subsection (1) only to the extent that the land the subject of the mining lease is non-exclusive land, whether or not an alternative provision area.

‘(3) This division also applies to the renewal of a mining lease if—

- (a) the mining lease is other than a surface alluvium (gold or tin) mining lease; and
- (b) the renewal of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(4) However, this division applies to the renewal of a mining lease mentioned in subsection (3) only to the extent that the land the subject of the mining lease is non-exclusive land that is an alternative provision area.

‘(5) This division also applies to the renewal of a mining lease if—

- (a) the mining lease is other than a surface alluvium (gold or tin) mining lease; and
- (b) the renewal of the mining lease is an act—
 - (i) that affects native title rights and interests; and
 - (ii) in respect of which the right to negotiate provisions would have otherwise had effect; and
- (c) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the renewal of a mining lease mentioned in subsection (5) only to the extent that the land the subject of the mining lease is non-exclusive land other than an alternative provision area.

‘(7) This division applies to the renewal of a mining lease mentioned in subsection (1), (3) or (5) only to the extent that the mining lease relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 7.

‘(9) In this section—

“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—applying div 2

‘690.(1) If this division applies to the renewal of a mining lease because of section 689(1), the additional requirements applying under division 2¹⁴² for the granting of a surface alluvium (gold or tin) mining lease also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 2 for renewal

‘691.(1) This section—

- (a) applies for applying the provisions of division 2; and
- (b) does not limit section 690.

‘(2) For applying section 599(2), the following period is substituted for the periods mentioned in section 599(2)(b)(i) and (ii), that is the end of the period of 7 days after lodgement of the application for the renewal.

‘(3) Section 609(1) and (4) does not apply, but—

- (a) the mining registrar must within 14 days after the consultation period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) the tribunal must hear the application for the renewal as if the application for renewal were the application for a grant of a

¹⁴² Division 2 (Surface alluvium (gold or tin) mining leases)

mining lease heard under section 268;¹⁴³ and

- (c) the tribunal must ask the Minister about the extent to which the Minister is satisfied about the matters stated in section 286(3).¹⁴⁴

‘(4) For applying section 610, the tribunal must also take into account information received from the Minister under subsection (3)(c).

‘Requirements for renewal—applying div 3

‘692.(1) If this division applies to the renewal of a mining lease because of section 689(3), the additional requirements applying under division 3¹⁴⁵ for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 614(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on non-exclusive land other than an alternative provision area also apply for the renewal; and
- (b) the requirements apply with necessary changes; and
- (c) section 695(2) to (9) applies instead of section 693(2) to (8).

‘Applying div 3 for renewal

‘693.(1) This section—

- (a) applies for applying the provisions of division 3; and
- (b) does not limit section 692.

‘(2) For applying section 616(3), the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the end of the

¹⁴³ Section 268 (Hearing of application for grant of mining lease)

¹⁴⁴ Section 286 (Renewal of mining lease)

¹⁴⁵ Division 3 (Other mining leases on alternative provision areas)

period of 28 days after lodgement of the application for the renewal.

‘(3) Section 623(1) and (3) does not apply, but the consultation and negotiation period for the proposed renewal starts on the day immediately after the closing day (native title issues) for the proposed renewal.

‘(4) For applying division 3, subdivisions 4 and 5,¹⁴⁶ if the proposed renewal is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 633.¹⁴⁷

‘(5) Sections 636 and 637 do not apply, but—

- (a) the mining registrar must within 14 days after the consultation and negotiation period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the renewal and make a native title issues decision; and
- (d) before making its native title issues decision, the tribunal must ask the Minister about the extent to which the Minister is satisfied about the matters stated in section 286(3).

‘(6) Section 641 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(7) For applying section 642, the tribunal must also take into account information received from the Minister under subsection (5)(d).

‘(8) Section 645(2) and (3) does not apply.

¹⁴⁶ Division 3 (Other mining leases on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

¹⁴⁷ Section 633 (Objection during consultation and negotiation period)

‘Requirements for renewal—applying div 4

‘**694.(1)** If this division applies to the renewal of a mining lease because of section 689(5), the additional requirements applying under division 4 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on non-exclusive land other than an alternative provision area also apply for the renewal.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for renewal

‘**695.(1)** This section—

- (a) applies for applying the provisions of division 4; and
- (b) does not limit section 694.

‘(2) For applying section 652(3), the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the renewal.

‘(3) For applying section 669, the pre-referral period is—

- (a) the period of 6 months starting on the notification day (native title issues); or
- (b) if the registered native title parties 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—the period ending at the agreed later time.

‘(4) For applying division 4, subdivisions 4 and 5,¹⁴⁸ if the proposed renewal is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 668.¹⁴⁹

¹⁴⁸ Division 4 (Other mining leases not on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

¹⁴⁹ Section 668 (Objections)

‘(5) Sections 671 and 672 do not apply, but—

- (a) the mining registrar must within 14 days after the pre-referral period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the renewal and make a native title issues decision; and
- (d) before making its native title issues decision, the tribunal must ask the Minister about the extent to which the Minister is satisfied about the matters stated in section 286(3).¹⁵⁰

‘(6) Section 676 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(7) For applying section 677, the tribunal must also take into account information received from the Minister under subsection (4)(d).

‘(8) Division 4, subdivision 7¹⁵¹ does not apply.

‘(9) Section 680(2) and (3) does not apply.

‘Division 6—Requirements for subsidiary approvals

‘Meaning of “approval” in div 6

‘696. In this division—

“approval” means—

- (a) the approval, under section 237,¹⁵² to conduct drilling and other activities on land not included in the surface area covered under a mining lease; or

¹⁵⁰ Section 286 (Renewal of mining lease)

¹⁵¹ Division 4 (Other mining leases not on alternative provision areas), subdivision 7 (Special provisions about completion of combined hearing and making of native titles issues decision)

¹⁵² Section 237 (Drilling and other activities on land not included in surface area)

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- (b) the grant, on an application under section 275,¹⁵³ of an additional area of surface of land to be included in a mining lease; or
 - (c) the approval, under section 298,¹⁵⁴ for the holder of a mining lease to mine specified minerals, or for the addition of another purpose to a mining lease.

‘Application of div 6

‘697.(1) This division applies to an approval if—

- (a) were the mining lease to which the approval relates to be granted again, the granting of the mining lease would be an act affecting native title rights and interests if the mining lease were to provide only for the mining of the specified minerals mentioned in section 696, definition “approval”, paragraph (c); and
- (b) the approval is an act to which the right to negotiate provisions would have otherwise applied; and
- (c) after the approval takes effect, the mining lease will be a surface alluvium (gold or tin) mining lease; and
- (d) the approval is an approved gold or tin mining act under a determination in force under section 26B(1) of the Commonwealth Native Title Act.

‘(2) However, this division applies to the approval mentioned in subsection (1) only to the extent that the approval relates to non-exclusive land, whether or not an alternative provision area.

‘(3) This division also applies to an approval if—

- (a) were the mining lease to which the approval relates to be granted again, the granting of the mining lease would be an act affecting native title rights and interests if the mining lease were to provide only for—
 - (i) the drilling and other activities mentioned in section 696,

¹⁵³ Section 275 (Application for inclusion of surface of land in mining lease)

¹⁵⁴ Section 298 (Mining other minerals or use for other purposes)

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- definition “approval”, paragraph (a); or
- (ii) the additional area of surface mentioned in section 696, definition “approval”, paragraph (b); or
 - (iii) the mining of the specified minerals, or the added purpose, mentioned in section 696, definition “approval”, paragraph (c); and
- (b) the approval is an act in respect of which the right to negotiate provisions would have otherwise had effect; and
 - (c) after the approval takes effect, the mining lease will be a mining lease other than a surface alluvium (gold or tin) mining lease; and
 - (d) the approval relates to an alternative provision area; and
 - (e) a determination is in force under section 43A(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(4) However, this division applies to the approval mentioned in subsection (3) only to the extent that the approval relates to an alternative provision area.

‘(5) This division also applies to an approval if—

- (a) were the mining lease to which the approval relates to be granted again, the granting of the mining lease would be an act affecting native title rights and interests if the mining lease were to provide only for—
 - (i) the drilling and other activities mentioned in section 696, definition “approval”, paragraph (a); or
 - (ii) the additional area of surface mentioned in section 696, definition “approval”, paragraph (b); or
 - (iii) the mining of the specified minerals, or the added purpose, mentioned in section 696, definition “approval”, paragraph (c); and
- (b) the approval is an act in respect of which the right to negotiate provisions would have otherwise have effect; and
- (c) after the approval takes effect, the mining lease will be a mining

- lease other than a surface alluvium (gold or tin) mining lease; and
- (d) the approval relates to non-exclusive land other than an alternative provision area; and
 - (e) a determination is in force under section 43(1) of the Commonwealth Native Title Act and this division is included in the alternative provisions the subject of the determination.

‘(6) However, this division applies to the approval mentioned in subsection (5) only to the extent that the approval relates to non-exclusive land other than an alternative provision area.

‘(7) This division applies to an approval mentioned in subsection (1), (3) or (5) only to the extent that the approval relates to a place that is on the landward side of the mean high-water mark of the sea.

‘(8) The requirements of this division are additional to the requirements of part 7.

‘Requirements for approval (additional area)—applying div 3

‘698.(1) If this division applies to an approval because of section 697(3), and the approval is the grant of an additional area of surface of land to be included in a mining lease, the additional requirements applying under division 3¹⁵⁵ for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on an alternative provision area also apply for the approval.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 614(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on non-exclusive land other than an alternative provision area also apply for the approval; and
- (b) the requirements apply with necessary changes.

¹⁵⁵ Division 3 (Other mining leases on alternative provision areas)

‘Requirements for approval (additional area)—applying div 4

‘699.(1) If this division applies to an approval because of section 697(5), and the approval is the grant of an additional area of surface of land to be included in a mining lease, the additional requirements applying under division 4¹⁵⁶ for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease not on an alternative provision area also apply for the approval.

‘(2) The requirements apply with necessary changes.

‘Requirements for approval (other changes)—applying div 2

‘700.(1) If this division applies to an approval because of section 697(1), the additional requirements applying under division 2¹⁵⁷ for the granting of a surface alluvium (gold or tin) mining lease also apply for the approval.

‘(2) The requirements apply with necessary changes.

‘Applying div 2 for approval

‘701.(1) This section—

- (a) applies for applying the provisions of division 2; and
- (b) does not limit section 700.

‘(2) For applying section 599(2), the following period is substituted for the periods mentioned in section 599(2)(b)(i) and (ii), that is the end of the period of 7 days after lodgement of the application for the approval.

‘(3) Section 609(1) and (4) does not apply, but—

- (a) the mining registrar must within 14 days after the consultation period ends, fix a day for the tribunal to hear the application for the approval; and
- (b) the tribunal must hear the application for the approval as if the

¹⁵⁶ Division 4 (Other mining leases not on alternative provision areas)

¹⁵⁷ Division 2 (Surface alluvium (gold or tin) mining leases)

application for the approval were the application for a grant of a mining lease heard under section 268.¹⁵⁸

‘Requirements for approval (other changes)—applying div 3

‘702.(1) If this division applies to an approval because of section 697(3), and the approval is other than the grant of an additional area of surface land, the additional requirements applying under division 3 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on an alternative provision area also apply for the approval.

‘(2) The requirements apply with necessary changes.

‘(3) If, in applying division 3, an election is made under section 614(4) to instead apply division 4—

- (a) the additional requirements applying under division 4 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease on non-exclusive land other than an alternative provision area also apply for the approval; and
- (b) the requirements apply with necessary changes; and
- (c) section 705(2) to (10) applies instead of section 703(2) to (9).

‘Applying div 3 for approval

‘703.(1) This section—

- (a) applies for applying the provisions of division 3 (because of section 702); and
- (b) does not limit section 702.

‘(2) For applying section 616(3), the following period is substituted for the periods mentioned in section 616(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the approval.

‘(3) Section 623(1) and (3) does not apply, but the consultation and negotiation period for the proposed approval starts on the day immediately after the closing day (native title issues) for the proposed approval.

¹⁵⁸ Section 268 (Hearing of application for grant of mining lease)

‘(4) For applying division 3, subdivisions 4 and 5,¹⁵⁹ if the proposed approval is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 633.¹⁶⁰

‘(5) Sections 636 and 637 do not apply, but—

- (a) the mining registrar must within 14 days after the consultation and negotiation period ends, fix a day for the tribunal to hear the application for the renewal; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the renewal and make a native title issues decision.

‘(6) Section 641 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(7) Section 645 does not apply, but the native title issues decision must be complied with by the Minister unless the Minister overrules the native title issues decision under division 3, subdivision 6.

‘(8) Section 647 does not apply.

‘(9) In sections 648 and 649, a reference to the Governor in Council is a reference to the Minister.

‘Requirements for approval (other changes)—applying div 4

‘704.(1) If this division applies to an approval because of section 697(5), and the approval is other than the grant of an additional area of surface land, the additional requirements applying under division 4 for the granting of a mining lease other than a surface alluvium (gold or tin) mining lease not on

¹⁵⁹ Division 3 (Other mining leases on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

¹⁶⁰ Section 633 (Objection during consultation and negotiation period)

an alternative provision area also apply for the approval.

‘(2) The requirements apply with necessary changes.

‘Applying div 4 for approval

‘705.(1) This section—

- (a) applies for applying the provisions of division 4 (because of section 704); and
- (b) does not limit section 704.

‘(2) For applying section 652(3), the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the end of the period of 28 days after lodgement of the application for the approval.

‘(3) For applying section 669, the pre-referral period is—

- (a) the period of 6 months starting on the notification day (native title issues); or
- (b) if the registered native title parties 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—the period ending at the agreed later time.

‘(4) For applying division 4, subdivisions 4 and 5,¹⁶¹ if the proposed approval is referred to the tribunal for a native title issues decision, there is not a combined hearing, but there is a hearing for a native title issues decision, including the hearing of any objections lodged under section 668.¹⁶²

‘(5) Sections 671 and 672 do not apply, but—

- (a) the mining registrar must within 14 days after the pre-referral period ends, fix a day for the tribunal to hear the application for

¹⁶¹ Division 4 (Other mining leases not on alternative provision areas), subdivisions 4 (Referral and native title issues decision) and 5 (Requirements for combined hearing)

¹⁶² Section 668 (Objections)

the approval; and

- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application for the approval and make a native title issues decision.

‘(6) Section 676 does not apply, but the tribunal must advise the Minister of its native title issues decision.

‘(7) Section 680 does not apply, but the native title issues decision must be complied with by the Minister unless the Minister overrules the native title issues decision under division 4, subdivision 6.¹⁶³

‘(8) Section 682 does not apply.

‘(9) Division 4, subdivision 7¹⁶⁴ does not apply.

‘(10) In sections 687 and 688, a reference to the Governor in Council is a reference to the Minister.

‘PART 18—COMPENSATION PROVISIONS

‘Division 1—Preliminary

‘Definitions for pt 18

‘706. In this part—

“**compensation decision**”, for a relevant act, means a decision of the tribunal, other than a compensation trust decision, that provides for—

- (a) whether compensation is to be paid to a registered native title

¹⁶³ Division 4 (Other mining leases not on alternative provision areas), subdivision 6 (Overruling of native title issues decision)

¹⁶⁴ Division 4 (Other mining leases not on alternative provision areas), subdivision 7 (Special provisions about completion of combined hearing and making of native titles issues decision)

body corporate in relation to the relevant act; and

(b) if compensation is to be paid—the amount of money to be paid.

“compensation trust decision”, for a relevant act, means a decision of the tribunal about the payment of an amount to be held in trust for any entitlement to compensation for the doing of the relevant act.

“relevant act” means the grant, renewal or variation of, or another act concerning, a mining tenement, if the act happens after the commencement of this section, and is an act—

(a) to which—

(i) part 13 applies; or

(ii) part 14, 15, 16, or 17, division 2, 3, 4, 5 or 6 applies; or

(b) to which part 13 would apply, or part 14, 15, 16, or 17, division 2, 3, 4, 5 or 6 would apply, were it not that—

(i) the act relates to a mining tenement in an approved opal or gem mining area, and is excluded from the application of the right to negotiate provisions under section 26(2)(d) of the Commonwealth Native Title Act; or

(ii) the mining tenement relates to a place that is on the seaward side of the mean high-water mark of the sea; or

(iii) the act relates to a mining lease for the sole purpose of the construction of an infrastructure facility associated with mining, and is an act mentioned in section 24MD(6B)(b) of the Commonwealth Native Title Act; or

(c) that is a renewal to which part 14, 15, 16 or 17, division 5 would apply, were it not that the renewal is an act—

(i) to which the right to negotiate provisions do not apply because of section 26D(1) of the Commonwealth Native Title Act; and

(ii) in relation to which the earlier right to mine mentioned in section 26D(1)(a) is an earlier right mentioned in section 26D(1)(b)(ii); and

(iii) for which compensation has not previously been agreed.

‘Division 2—General principles**‘Native title compensation**

‘707.(1) An entity is entitled to compensation for the effect of a relevant act on the entity’s native title rights and interests, including for activities carried out under the mining tenement the subject of the relevant act as a result of the relevant act.

‘(2) However, the entity may receive compensation only in a way provided for in this part.

‘(3) Nothing in subsections (1) and (2) stops—

- (a) compensation from being agreed to before a relevant act is done, based on the expected effect of the relevant act on an entity’s native title rights and interests; or
- (b) a compensation decision or compensation trust decision being made, in accordance with the requirements of the native title provisions, including this part, before a relevant act is done, having regard to the expected effect of the relevant act on an entity’s native title rights and interests.

‘(4) Subject to the provisions of this part under which the tribunal may require the State to pay an amount of compensation in relation to a relevant act, the tribunal may order only the following to pay an amount under a compensation decision or compensation trust decision for a relevant act—

- (a) the applicant for, or the holder for the time being of, the mining tenement the subject of the relevant act;
- (b) another entity, if the tribunal considers that it would be just and equitable that the entity should be ordered to pay the amount, having regard to the circumstances of the entity’s past or present, direct or indirect, financial or other connection with—
 - (i) the relevant act, including the activities carried out under the mining tenement the subject of the relevant act; or
 - (ii) an entity that is or was the holder of the mining tenement the subject of the relevant act.

‘(5) There is no entitlement to be compensated more than once for the

effect on native title rights and interests of an act if compensation has already been provided under this part for what is essentially the same effect of the same act.

‘(6) The tribunal must not, in relation to any part of the land the subject of a relevant act relating to a mining claim or mining lease, make more than 1 compensation trust decision for the relevant act.

‘Agreement for compensation

‘708.(1) The applicant for the doing of a relevant act, or the holder of a mining tenement the subject of a relevant act, may enter into an agreement with an entity about compensation for the effect of the relevant act on—

- (a) if the entity is a registered native title body corporate that holds native title rights and interests in trust for common law holders—the native title rights and interests that the body corporate holds in trust; or
- (b) if the entity is a registered native title body corporate that acts as an agent or representative for common law holders—the native title rights and interests of the common law holders; or
- (c) if the entity is a registered native title claimant—the native title rights and interests of the native title claim group; or
- (d) otherwise—the entity’s native title rights and interests.

‘(2) An agreement about compensation is not effective as an agreement under this part unless the agreement—

- (a) is in writing, and signed by or on behalf of the parties to it; and
- (b) has been filed in the office of the mining registrar.

‘(3) If a registered native title body corporate is a party to an agreement about compensation, each common law holder for whom the body corporate holds native title rights and interests in trust or acts as an agent or representative is a party to the agreement.

‘(4) If a registered native title claimant is a party to an agreement about compensation, each individual included in the native title claim group concerned is a party to the agreement.

‘Application for compensation

‘709.(1) An entity may apply to the tribunal for a compensation decision or a compensation trust decision for a relevant act if the entity is not a party to an agreement about compensation for the relevant act, but is—

- (a) for a compensation decision—
 - (i) a registered native title body corporate claiming compensation for the effect of the relevant act on the native title rights and interests that the body corporate holds in trust for common law holders; or
 - (ii) a registered native title body corporate claiming compensation for the effect of the relevant act on the native title rights and interests of the common law holders for whom the body corporate acts as an agent or representative; or
- (b) for a compensation trust decision—a registered native title claimant claiming compensation for the effect of the relevant act on the native title rights and interests of the native title claim group.

‘(2) Also, an entity may apply to the tribunal for a compensation decision or a compensation trust decision for a relevant act if the entity is the applicant for the doing of the relevant act, or the holder of the mining tenement the subject of the relevant act.

‘(3) An entity can not apply to the tribunal for a compensation decision or compensation trust decision for a relevant act if it is not an entity that may apply under subsection (1) or (2).

‘Compensation provided in non-monetary form

‘710.(1) This section applies if the tribunal makes a compensation decision for a relevant act and the decision is that compensation is payable.

‘(2) If the registered native title body corporate asks the tribunal to make a recommendation that the whole or part of the amount of the compensation should instead take the form of non-monetary compensation, the tribunal—

- (a) must consider the request; and

- (b) may recommend that the person required under the compensation decision to pay the compensation should, within the period specified in the tribunal's recommendation, provide non-monetary compensation in accordance with the recommendation.

‘(3) If the tribunal makes the recommendation, the person required to pay the compensation under the compensation decision may provide non-monetary compensation in accordance with the recommendation.

‘(4) If the person does provide non-monetary compensation in accordance with the recommendation, the non-monetary compensation is full compensation for the relevant act to the extent of the compensation that was the subject of the recommendation.

‘(5) If the non-monetary compensation is not provided in the way recommended by the tribunal, the registered native title body corporate entitled to receive compensation under the compensation decision may ask the tribunal to vary the compensation decision.

‘(6) The variation of the compensation decision may take into account the extent to which non-monetary compensation has been provided under the recommendation.

‘(7) In this section—

“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.

‘Conditions of agreement or compensation decision

‘711. If there is an agreement about compensation under this part, or a compensation decision, for a relevant act relating to a mining claim or mining lease, it is a condition of the mining claim or mining lease that the holder of the claim or lease must comply with the terms of the agreement or decision that apply to the holder.

‘Compensation trust decisions

‘712.(1) If the tribunal makes a compensation trust decision for a relevant act, any amount required to be paid into trust under the decision—

- (a) must be paid to the tribunal; and
- (b) must be held in the way prescribed under a regulation until it is paid to an entity in a way provided for in this part.

‘(2) The applicant for, or holder of, a mining tenement the subject of a relevant act can not be required to pay an amount under a compensation decision for the relevant act to the extent that the land the subject of the relevant act is the subject of a compensation trust decision for the relevant act.

‘State’s right to be heard

‘713. The State has the right to be heard at any proceeding before the tribunal under this part.

‘Division 3—Payment of compensation in particular circumstances**‘Compensation before relevant act relating to mining claim or mining lease if registered native title body corporate**

‘714.(1) This section applies to a relevant act relating to a mining claim or mining lease if there is a registered native title body corporate in relation to any part (the **“identified part”**) of the land the subject of the relevant act.

‘(2) The relevant act may be done only if—

- (a) for the identified part, compensation has been decided by—
 - (i) agreement between the applicant for the doing of the relevant act and the registered native title body corporate; or
 - (ii) a compensation decision; and
- (b) the conditions of the agreement or decision, required under the agreement or decision to be complied with by the applicant before the relevant act is done, have been complied with by the applicant.

‘(3) If the relevant act can not be done because of the operation of subsection (2)(a), the mining registrar must ask the tribunal to make a compensation decision for the relevant act if—

- (a) either of the following applies—
 - (i) an agreement for the doing of the act has been made, but the agreement did not include agreement about compensation, and 3 months have passed since the agreement was entered into;
 - (ii) the tribunal has decided in favour of the doing of the relevant act, and 3 months have passed since the making of the tribunal’s decision; and
- (b) neither the applicant for the doing of the relevant act nor the registered native title body corporate has applied to the tribunal for a compensation decision for the relevant act.

‘(4) If the mining registrar asks the tribunal under subsection (3) to make a compensation decision, the tribunal must—

- (a) fix a day for a hearing for the compensation decision; and
- (b) notify the applicant for the doing of the relevant act and the registered native title body corporate—
 - (i) of the mining registrar’s action under subsection (3); and
 - (ii) of the day fixed for the hearing; and
 - (iii) that the applicant and the registered native title body corporate have a right to be heard at the hearing; and
- (c) on or after the hearing day, make a compensation decision.

‘Compensation before relevant act relating to mining claim or mining lease if registered native title claimant

‘715.(1) This section applies to a relevant act relating to a mining claim or mining lease if there is a registered native title claimant in relation to any part (the “**identified part**”) of the land the subject of the relevant act.

‘(2) The relevant act may be done only if—

-
- (a) for the identified part, either of the following applies—
- (i) an agreement about compensation has been reached between the applicant for the doing of the relevant act and the registered native title claimant;
 - (ii) the tribunal has made a compensation trust decision for the relevant act; and
- (b) either of the following applies—
- (i) if paragraph (a)(i) applies—the conditions of the agreement, required under the agreement to be complied with by the applicant before the relevant act is done, have been complied with by the applicant;
 - (ii) if paragraph (a)(ii) applies—the amount ordered by the tribunal under the compensation trust decision to be paid to the tribunal to be held in trust has been paid to the tribunal.

‘(3) If the relevant act can not be done because of the operation of subsection (2)(a), the mining registrar must ask the tribunal to make a compensation trust decision for the relevant act if—

- (a) either of the following applies—
- (i) an agreement for the doing of the act has been made, but the agreement did not include agreement about compensation, and 3 months have passed since the agreement was entered into;
 - (ii) the tribunal has decided in favour of the doing of the relevant act, and 3 months have passed since the making of the tribunal’s decision; and
- (b) neither the applicant for the doing of the relevant act nor the registered native title claimant has applied to the tribunal for a compensation trust decision for the relevant act.

‘(4) If the mining registrar asks the tribunal under subsection (3) to make a compensation trust decision, the tribunal must—

- (a) fix a day for a hearing for the compensation trust decision; and
- (b) notify the applicant for the doing of the relevant act and the

registered native title claimant—

- (i) of the mining registrar’s action under subsection (3); and
 - (ii) of the day fixed for the hearing; and
 - (iii) that the applicant and the registered native title claimant have a right to be heard at the hearing; and
- (c) on or after the hearing day, make a compensation trust decision.

‘Compensation after relevant act relating to mining claim or mining lease

‘716.(1) This section applies if—

- (a) when a relevant act relating to a mining claim or mining lease is done, there is no registered native title body corporate or registered native title claimant in relation to land the subject of the relevant act; and
- (b) after the doing of the relevant act an entity becomes a registered native title body corporate or registered native title claimant in relation to the land.

‘(2) If the entity becomes a registered native title body corporate, the entity may, at any time after the relevant act is done—

- (a) recover compensation under an agreement about compensation between the holder of the mining claim or mining lease and the registered native title body corporate; or
- (b) apply to the tribunal for a compensation decision for the relevant act.

‘(3) If the entity becomes a registered native title claimant, the entity may at any time after the relevant act is done—

- (a) recover compensation for the relevant act under an agreement about compensation between the holder of the mining claim or mining lease and the registered native title claimant; or
- (b) apply to the tribunal for a compensation trust decision for the relevant act.

‘Compensation after relevant act relating to other mining tenement if registered native title body corporate

‘717.(1) This section applies to a relevant act relating to a prospecting permit, exploration permit or mineral development licence if there is a registered native title body corporate in relation to land the subject of the relevant act.

‘(2) Without limiting section 707, the registered native title body corporate may, at any time after the relevant act is done—

- (a) recover compensation under an agreement about compensation between the holder of the prospecting permit, exploration permit or mineral development licence and the registered native title body corporate; or
- (b) apply to the tribunal for a compensation decision for the relevant act.

‘Compensation after relevant act relating to other mining tenement if registered native title claimant

‘718.(1) This section applies to a relevant act relating to a prospecting permit, exploration permit or mineral development licence if there is a registered native title claimant in relation to land the subject of the relevant act.

‘(2) Without limiting section 707, a registered native title claimant may at any time after the relevant act is done—

- (a) recover compensation for the relevant act under an agreement about compensation between the holder of the prospecting permit, exploration permit or mineral development licence and the registered native title claimant; or
- (b) apply to the tribunal for a compensation trust decision for the relevant act.

‘State liable to pay compensation in particular circumstances

‘719.(1) This section applies if, in relation to any part of the land the subject of a relevant act—

-
- (a) there is an agreement under this part about compensation for the doing of the relevant act; and
 - (b) an entity obtains an approved determination of native title that native title exists; and
 - (c) the entity was not a party to the agreement about compensation; and
 - (d) the agreement does not provide for compensation for the entity or successor of the entity, including for example, a registered native title body corporate holding the native title rights and interests claimed by the entity; and
 - (e) the registered native title body corporate for the native title the subject of the approved determination applies to the tribunal for a compensation decision for the relevant act; and
 - (f) the tribunal makes a compensation decision for the relevant act.

‘(2) This section also applies if, in relation to any part of the land the subject of a relevant act—

- (a) a registered native title body corporate applies to the tribunal for a compensation decision for the relevant act; and
- (b) no amount is held in trust under a compensation trust decision for the relevant act; and
- (c) the tribunal makes a compensation decision for the relevant act; and
- (d) the tribunal is satisfied that—
 - (i) there is no longer in existence an entity of a type mentioned in section 707(4)(a) or (b) that can be ordered to pay compensation; or
 - (ii) there is in existence an entity of a type mentioned in section 707(4)(a) or (b) that can be ordered to pay compensation, and the entity is unable to pay the whole or a part of the amount of compensation decided by the tribunal under the compensation decision.

‘(3) If this section applies because of subsection (1) or (2)(a), (b), (c) and

(d)(i), the State must pay the amount of compensation decided by the tribunal under the compensation decision.

‘(4) If this section applies because of subsection (2)(a), (b), (c) and (d)(ii), the State must pay the amount of compensation decided by the tribunal under the compensation decision, except to the extent that the tribunal orders the entity mentioned in subsection (2)(d)(ii) to pay part of the amount.

‘Division 4—Amounts held in trust

‘Repayment of amount held in trust for compensation

‘720.(1) This section applies if—

- (a) an amount is held in trust under a compensation trust decision for a relevant act; and
- (b) either of the following happens—
 - (i) the application for the doing of the relevant act is not granted and is no longer a current application;
 - (ii) the relevant act is done, but an approved determination of native title is made and it is apparent, from the terms of the determination, that immediately before the relevant act was done, native title did not exist in relation to land the subject of the relevant act.

‘(2) A person who claims to have an interest in the amount paid into trust, or the State, may apply to the tribunal for an order about the payment of the amount.

‘(3) The tribunal may—

- (a) order the payment of some or all of the amount to the person who paid the amount; or
- (b) if the person no longer exists, make an appropriate order about the payment of some or all of the amount.

‘(4) If subsection (1)(b)(ii) applies, the tribunal, in making its order under

subsection (3), must have regard to the extent to which the approved determination relates to the land the subject of the relevant act.

‘Dealing with amount held in trust for compensation—determination of native title

‘721.(1) This section applies if—

- (a) an amount is held in trust under a compensation trust decision for a relevant act; and
- (b) the relevant act is done; and
- (c) an approved determination of native title is made that native title exists in relation to land the subject of the relevant act.

‘(2) The registered native title body corporate for the native title the subject of the approved determination may apply to the tribunal for a compensation decision for the relevant act.

‘(3) As well as making the compensation decision, the tribunal must also, having regard to the extent to which the approved determination relates to the land the subject of the relevant act, order how much (the **“trust amount”**) of the amount held in trust under the compensation trust decision must be paid to the registered native title body corporate.

‘(4) If the amount payable under the compensation decision is more than the trust amount, the difference must be paid by the State to the registered native title body corporate.

‘Dealing with amount held in trust for compensation—no applicable provision

‘722.(1) This section applies if—

- (a) an amount is held in trust under a compensation trust decision for a relevant act; and
- (b) no other provision of this part provides for the disposal of the amount; and
- (c) the tribunal decides, on an application by a person, that it would be just and equitable in all the circumstances to pay some or all of

the amount held in trust to a person.

‘(2) The tribunal must order the payment of some or all of the amount held in trust in the way the tribunal considers appropriate.’

‘Replacement of pt 12 hdg

‘10. Part 12, heading—

omit, insert—

‘PART 19—TRANSITIONAL PROVISIONS

‘Division 1—Transitional provisions for Act No. 27 of 1998’.

‘Renumbering of ss 419 and 420

‘11. Sections 419 and 420—

renumber as sections 723 and 724.

‘Insertion of new pt 19, div 2

‘12. After section 724 as renumbered—

insert—

‘Division 2—Transitional provisions for Act No. 38 of 1998

‘Application of div 2

‘725.(1) This division applies to an application if—

- (a) it is an application for—
 - (i) the granting of a mining tenement; or
 - (ii) an approval relating to a mining lease; and
- (b) the application was lodged before the commencement of this section; and
- (c) the application is still current; and

- (d) immediately before the commencement of this section—
- (i) if paragraph (a)(i) applies—the granting of the mining tenement would have been an act to which the right to negotiate provisions applied; or
 - (ii) if paragraph (a)(ii) applies—the approval would have been an act to which the right to negotiate provisions applied.

‘(2) However, this division does not apply to an application relating to a mining tenement if a notice under section 29¹⁶⁵ of the Commonwealth Native Title Act in relation to the act the subject of the application, required to be given as part of complying with the right to negotiate provisions, was given before the commencement of this section.

‘Definitions for div 2

‘726. In this division—

“**approval**” has the meaning given in section 696.¹⁶⁶

“**notification commencement day**”, for an application, means the notification commencement day advised for the application under section 727.

‘Giving advice of notification commencement day

‘727.(1) The mining registrar must give a notice to—

- (a) the applicant under each application for the granting of a mining claim or mining lease, advising the applicant of the notification commencement day for the application; and
- (b) the applicant under each application for an approval relating to a mining lease, advising the applicant of the notification commencement day for the application.

‘(2) The chief executive must give a notice to the applicant under each

¹⁶⁵ Section 29 (Notification of parties affected) of the Commonwealth Native Title Act

¹⁶⁶ Section 696 (Meaning of “approval” in div 6)

application for the granting of an exploration permit or mineral development licence, advising the applicant of the notification commencement day for the application.

‘Existing prospecting permit applications

‘728.(1) This section applies to an application if—

- (a) the application is for the granting of a prospecting permit; and
- (b) the granting of the prospecting permit is an act to which part 13 applies.

‘(2) Subsection (3) applies to the giving of the application notice under section 431, instead of section 431(2).

‘(3) The notice must be given no later than—

- (a) 2 months after the commencement of this section; or
- (b) if, under section 432, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘Existing mining claim applications

‘729.(1) This section applies to an application for the granting of a mining claim.

‘(2) The mining registrar must ask the applicant to nominate which of the following the applicant now seeks to be granted—

- (a) a surface alluvium (gold or tin) mining claim under part 14;
- (b) a mining claim other than a surface alluvium (gold or tin) mining lease under part 14.

‘(3) If the applicant nominates a surface alluvium (gold or tin) mining claim, subsection (4) applies to the giving of the written notice under section 444, instead of 444(2).

‘(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the

application; or

- (b) if, under section 445, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(5) If the applicant nominates a mining claim other than a surface alluvium (gold or tin) mining claim, and part 17, division 3 is to be applied to the granting of the mining claim, subsection (6) applies to the giving and publication of notice under section 616, instead of section 616(3).

‘(6) The written notice must be given under section 616(1), and the public notice must be published under section 616(2), no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 618, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘(7) If the applicant nominates of a mining claim other than a surface alluvium (gold or tin) mining claim, and part 17, division 4 is to be applied to the granting of the mining claim, subsection (8) applies to the giving and publication of notice under section 652, instead of section 652(3).

‘(8) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘Existing exploration permit applications

‘730.(1) This section applies to an application for the granting of an exploration permit.

- ‘(2) The chief executive must ask the applicant to nominate which of the

following the applicant now seeks to be granted—

- (a) a low impact exploration permit under part 15;
- (b) a high impact exploration permit under part 15, for the granting of which part 15, division 3 applies;
- (c) a high impact exploration permit under part 15, for the granting of which part 15, division 4 applies.

‘(3) If the applicant nominates a low impact exploration permit, subsection (4) applies to the giving of the application notice under section 486, instead of 486(2).

‘(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) two months after the notification commencement day for the application; or
- (b) if, under section 487, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(5) If the applicant nominates a high impact exploration permit, and part 15, division 3 is to be applied to the granting of the permit, subsection (6) applies to the giving of the application notice under section 497, instead of section 497(2).

‘(6) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 499, the mining registrar has given a direction for the giving of a new written notice—before the end of the period nominated in the direction.

‘(7) If the applicant nominates a high impact exploration permit, and part 17, division 4 is to be applied to the granting of the permit, subsection (8) applies, instead of section 524(2).

‘(8) For applying section 652, the written notice must be given under section 652(1), and the public notice must be published under

section 652(2), no earlier than the notification commencement day, and the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the period of 4 months after the notification commencement day.

‘Existing mineral development licence applications

‘731.(1) This section applies to an application for the granting of a mineral development licence.

‘(2) The chief executive must ask the applicant to nominate which of the following the applicant now seeks to be granted—

- (a) a low impact mineral development licence under part 16;
- (b) a high impact mineral development licence under part 16 for the granting of which part 16, division 3 applies;
- (c) a high impact mineral development licence under part 16 for the granting of which part 16, division 4 applies.

‘(3) If the applicant nominates a low impact mineral development licence, subsection (4) applies to the giving of the application notice under section 542, instead of 542(2).

‘(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) two months after the notification commencement day for the application; or
- (b) if, under section 543, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(5) If the applicant nominates a high impact mineral development licence, and part 16, division 3 is to be applied to the granting of the licence, subsection (6) applies to the giving of the application notice under section 553, instead of section 553(2).

‘(6) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the

application; or

- (b) if, under section 555, the mining registrar has given a direction for the giving of a new written notice—before the end of the period nominated in the direction.

‘(7) If the applicant nominates a high impact mineral development licence, and part 17, division 4 is to be applied to the granting of the licence, subsection (8) applies, instead of section 581(3).

‘(8) For applying section 652, the written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day, and the following period is substituted for the periods mentioned in section 652(3)(b)(i) and (ii), that is, the period of 4 months after the notification commencement day.

‘Existing mining lease applications

‘**732.(1)** This section applies to an application for the granting of a mining lease.

‘(2) The mining registrar must ask the applicant to nominate which of the following the applicant now seeks to be granted—

- (a) a surface alluvium (gold or tin) mining lease under part 17;
- (b) a mining lease other than a surface alluvium (gold or tin) mining lease under part 17.

‘(3) If the applicant nominates a surface alluvium (gold or tin) mining lease, subsection (4) applies to the giving of the written notice under section 599, instead of 599(2).

‘(4) The notice must be given no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 600, the mining registrar has given a direction for the giving of a new written notice—the end of the period nominated in the direction.

‘(5) If the applicant nominates a mining lease other than a surface alluvium (gold or tin) mining lease, and part 17, division 3 is to be applied to the granting of the mining lease, subsection (6) applies to the giving and publication of notice under section 616, instead of section 616(3).

‘(6) The written notice must be given under section 616(1), and the public notice must be published under section 616(2), no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 618, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘(7) If the applicant nominates a mining lease other than a surface alluvium (gold or tin) mining lease, and part 17, division 4 is to be applied to the granting of the mining lease, subsection (8) applies to the giving and publication of notice under section 652, instead of section 652(3).

‘(8) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (d) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘Existing applications for certain approvals

‘**733.(1)** This section applies to an application for an approval relating to a mining lease.

‘(2) If part 17, division 3 is to be applied to the approval, subsection (3) applies to the giving and publication of notice under section 616 instead of section 616(3).

‘(3) The written notice must be given under section 616(1), and the public notice must be published under section 616(2), no earlier than the

notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 618, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘(4) If part 17, division 4 is to be applied to the approval, subsection (5) applies to the giving and publication of notice under section 652 instead of section 652(3).

‘(5) The written notice must be given under section 652(1), and the public notice must be published under section 652(2), no earlier than the notification commencement day for the application, and no later than—

- (a) four months after the notification commencement day for the application; or
- (b) if, under section 654, the mining registrar has given a direction for the giving of a new written notice and the publication of a new public notice—the end of the period nominated in the direction.

‘Separate hearings

‘734.(1) This section applies if, for an application for the granting of a mining claim or mining lease—

- (a) the provisions of this Act, other than the native title provisions, have been complied with, wholly or partly; and
- (b) part 14, division 2 or part 17, division 2, 3 or 4 is to be applied to the granting; and
- (c) a hearing (the “**earlier hearing**”) has already been held under part 4 or 7 for the granting of the mining claim or mining lease.

‘(2) The tribunal is not required, at a hearing under part 14, division 2 or part 17, division 2, 3 or 4, to consider any issue dealt with at the earlier hearing.

‘(3) If a hearing is required under part 17, division 3, sections 636 and 637 do not apply, but—

- (a) the mining registrar must, within 14 days after the consultation and negotiation period ends, fix a day for the hearing; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application and make a native title issues decision.

‘(4) If a hearing is required under part 17, division 4, sections 671 and 672 do not apply, but—

- (a) the mining registrar must, within 14 days after the pre-referral period ends, fix a day for the hearing; and
- (b) all consultation and negotiation parties have the right to be heard at the hearing; and
- (c) the tribunal must hear the application and make a native title issues decision.’.