

Queensland



NATIVE TITLE RESOLUTION ACT 2000

Act No. 36 of 2000

Queensland



NATIVE TITLE RESOLUTION ACT 2000

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Queensland



Native Title Resolution Act 2000

Act No. 36 of 2000

An Act to amend the *Mineral Resources Act 1989* and other Acts for purposes related to native title

[Assented to 13 September 2000]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Native Title Resolution Act 2000*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF LAND AND RESOURCES TRIBUNAL ACT 1999

Act amended in pt 2

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

Amendment of pt 4, div 2, hdg

4. Part 4, division 2, heading—
omit, insert—

‘Division 2—Proceedings’.

Amendment of s 49 (Conduct of proceeding)

- 5.(1) Section 49(1), ‘tribunal hearing’—

omit, insert—

‘proceeding’.

- (2) Section 49(2), ‘In conducting the hearing’—

omit, insert—

‘For the proceeding’.

Insertion of new s 51B

6. After section 51A—

insert—

‘Jurisdiction of tribunal for registered indigenous land use agreements

‘51B.(1) This section applies if—

- (a) there is a registered indigenous land use agreement under the Commonwealth Native Title Act; and
- (b) the State is a party to the agreement; and
- (c) the agreement provides for a matter arising under the agreement to be referred to the tribunal for—
 - (i) mediation of the matter; or
 - (ii) the making of a recommendation about the matter; or
 - (iii) the making of a decision about the matter.

‘(2) The tribunal has jurisdiction—

- (a) if subsection (1)(c)(i) applies—to mediate the matter under part 4, division 5; or
- (b) if subsection (1)(c)(ii) applies—to make a recommendation about the matter; or
- (c) if subsection (1)(c)(iii) applies—to make a decision about the matter.’.

Amendment of s 83 (Proceeding not finished before commencement)

7. Section 83(1)(a)—

omit, insert—

- ‘(a) the proceeding was a proceeding under the *Fossicking Act 1994*, the *Mineral Resources Act 1989* or the *Petroleum Act 1923*; and’.

PART 3—AMENDMENT OF MINERAL RESOURCES ACT 1989

Act amended in pt 3

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

Amendment of s 657 (Ending of additional requirements)

9. Section 657—

insert—

‘(2) However, if the Governor in Council grants the proposed mining lease, and there are 1 or more registered native title parties, 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 (3) to each registered native title party.

Maximum penalty—100 penalty units.

‘(3) The written notice must advise the granting of the mining lease and state any conditions of the mining lease.’.

Amendment of s 666 (Process for consultation and negotiation—negotiated agreement with or without conditions attached)

10. Section 666—

insert—

‘(4) However, 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 (5) to each registered native title party.

Maximum penalty—100 penalty units.

‘(5) The written notice must advise the granting of the mining lease and state any conditions of the mining lease.’.

Amendment of s 707 (Native title compensation)**11. Section 707—***insert—*

‘**(5A)** Without limiting subsection (1), the tribunal, in arriving at a compensation decision or compensation trust decision, must apply all relevant principles applicable under this Act for deciding amounts of compensation.’.

Amendment of s 725 (Application of div 2)**12.(1) Section 725, ‘commencement of this section’—***omit, insert—*

‘native title provisions start day for the application’.

(2) Section 725—*insert—*

‘**(3)** The Minister may by gazette notice notify, in relation to an application, a native title provisions start day.

‘**(4)** The Minister, in notifying the native title provisions start day—

- (a) must have regard to when the native title provisions relevant to the application start to have application; and
- (b) accordingly, is not stopped from notifying as the native title provisions start day a day that is earlier than the day the gazette notice is published.’.

Amendment of s 726 (Definitions for div 2)**13. Section 726—***insert—*

‘**“native title provisions start day”**, for an application, means the native title provisions start day notified in relation to the application under section 725(3) and (4).’.

Amendment of s 728 (Existing prospecting permit applications)

14. Section 728(3)(a), ‘commencement of this section’—

omit, insert—

‘native title provisions start day for the application’.

**PART 4—AMENDMENT OF NATIVE TITLE
(QUEENSLAND) ACT 1993****Act amended in pt 4**

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

Amendment of s 144 (Declaration about compulsory acquisitions)

16.(1) Section 144(2), definition “**compulsory acquisition Act**”, ‘means each of the following Acts—’—

omit, insert—

‘means an Act providing for compulsory acquisition in relation to land or waters, including, for example, any of the following—’.

(2) Section 144(2), definition “**compulsory acquisition Act**”—

insert—

- *Petroleum Act 1923*’.

Omission of pt 12 (Interim provisions)

17. Part 12—

omit.

PART 5—OTHER AMENDMENTS

Amendments related to outcome of Commonwealth Native Title Act determinations and minor amendments—schedule 1

18. Schedule 1 amends the Acts it mentions.

Amendments related to enhancement of low impact provisions—schedule 2

19. Schedule 2 amends the Acts it mentions.

SCHEDULE 1**AMENDMENTS RELATED TO OUTCOME OF
COMMONWEALTH NATIVE TITLE ACT
DETERMINATIONS AND MINOR AMENDMENTS**

section 18

LAND AND RESOURCES TRIBUNAL ACT 1999**1. Section 52(1)(b), ‘dispute’—***omit, insert—*

‘matter’.

2. Schedule 1, entries for *Mineral Resources Act 1989*, entries for sections 454, 512, 568 and 609—*omit.***3. Schedule 1, entries for *Mineral Resources Act 1989*, heading ‘Mining leases under part 17, division 3 or 4 and other mining tenements to which part 17, division 3 or 4 is applied’—***omit, insert—***‘Mining leases under part 17, division 4 and other mining tenements to which part 17, division 4 is applied’.****4. Schedule 1, entries for *Mineral Resources Act 1989*, entry for section 634—***omit.*

SCHEDULE 1 (continued)

5. Schedule 1, entries for *Mineral Resources Act 1989*, section of entries headed ‘General’, section 1(3)—

omit, insert—

‘(3) However, the panel must be an NNTT panel if the proceeding includes the hearing of an objection of a native title notification party for land the subject of the proceeding.’.

6. Schedule 2, item 1, all material included in the first to fifth dot points—

omit.

7. Schedule 2, item 1, sixth dot point, ‘(Other mining leases not on alternative provision areas)’—

omit, insert—

‘(Mining leases)’.

MINERAL RESOURCES ACT 1989**1. Section 25A(1)(a), ‘an indigenous’—**

omit, insert—

‘a registered indigenous’.

2. Section 81A(1)(a), ‘a consultation agreement under part 14, division 2, or’—

omit.

SCHEDULE 1 (continued)

3. Section 81A(1)(a), ‘3 or’—

omit.

4. Section 81B(1)(a), ‘an indigenous’—

omit, insert—

‘a registered indigenous’.

5. Section 82(2), from ‘if—’—

omit, insert—

‘if the condition was decided or recommended by the tribunal under the native title provisions.’.

6. Section 141A(1)(a), ‘an agreement under section 510 or 511, or’—

omit.

7. Section 141B(1)(a), ‘an indigenous’—

omit, insert—

‘a registered indigenous’.

8. Section 194AA(1)(a), ‘an agreement under section 566 or 567, or’—

omit.

9. Section 194AB(1)(a), ‘an indigenous’—

omit, insert—

‘a registered indigenous’.

SCHEDULE 1 (continued)

10. Section 271(1), ‘610,’—

omit.

11. Section 271, ‘3 or’—

omit.

12. Section 276A(1)(a), ‘a consultation agreement under part 17, division 2, or’—

omit.

13. Section 276A(1)(a), ‘3 or’—

omit.

14. Section 276B(1)(a), ‘an indigenous’—

omit, insert—

‘a registered indigenous’.

15. Section 294(2)—

omit.

16. Section 294(3) and (4)—

renumber as section 294(2) and (3).

17. Section 422, definition “alternative provision area”—

omit.

SCHEDULE 1 (continued)

17A. Section 422—*insert—*

‘**“registered indigenous land use agreement”** means an indigenous land use agreement registered on the register of indigenous land use agreements.’.

18. Section 424—*omit.***19. Section 426(2)(b), ‘, whether or not an alternative provision area’—***omit.***20. Section 439(1)—***omit.***21. Section 439(2), ‘also’—***omit.***22. Section 439(2)(a), ‘if the mining claim is other than a surface alluvium (gold or tin) mining claim’—***omit.***23. Section 439(2)(b), ‘sections 43 and 43A’—***omit, insert—*

‘section 43’.

SCHEDULE 1 (continued)

24. Section 441—*omit.***25. Part 14, divisions 2 and 3—***omit.***26. Part 14, division 4, heading—***omit, insert—**‘Division 4—Mining claims’.***27. Section 462(1)(a)—***omit.***28. Section 462(2)(b), ‘other than an alternative provision area’—***omit.***29. Section 462(4)—***omit.***30. Section 465(1) to (4)—***omit.***31. Section 465(5), ‘also’—***omit.*

SCHEDULE 1 (continued)

32. Section 465(5)(a)—

omit.

33. Section 465(5)(c), ‘division’—

omit, insert—

‘subsection’.

34. Section 465(6), ‘other than an alternative provision area’—

omit.

35. Section 465(7), ‘(1), (3) or’—

omit.

36. Sections 466 to 469—

omit.

37. Section 470(1), ‘other than a surface alluvium (gold or tin) mining claim’—

omit.

38. Section 470(1), ‘other than an alternative provision area’—

omit.

39. Section 472(1) to (4)—

omit.

SCHEDULE 1 (continued)

39A. Section 472(5), ‘also’—

omit.

40. Section 472(5)(a), ‘stated’—

omit, insert—

‘specified’.

41. Section 472(5)(c)—

omit.

42. Section 472(5)(d), ‘other than an alternative provision area’—

omit.

43. Section 472(5)(e), ‘division’—

omit, insert—

‘subsection’.

44. Section 472(6)—

omit.

45. Section 472(7), ‘(1), (3) or’—

omit.

46. Sections 473 to 476—

omit.

SCHEDULE 1 (continued)

47. Section 477(1), ‘other than a surface alluvium (gold or tin) mining claim’—

omit.

48. Section 477(1), ‘other than an alternative provision area’—

omit.

49. Section 479(2)(a), from ‘over—’—

omit, insert—

‘over non-exclusive land; and’.

50. Section 479(2)(b), ‘sections 43 and 43A’—

omit, insert—

‘section 43’.

51. Section 484(2)(b), ‘, whether or not an alternative provision area’—

omit.

52. Part 15, division 3—

omit.

53. Part 15, division 4, heading, ‘not on alternative provision areas’—

omit.

54. Section 522(2)(b), ‘other than an alternative provision area’—

omit.

SCHEDULE 1 (continued)

55. Section 522(4)—*omit.***56. Section 525(2), ‘, whether or not an alternative provision area’—***omit.***57. Section 525(3) and (4)—***omit.***58. Section 525(5)(c), ‘division’—***omit, insert—**‘subsection’.***59. Section 525(6), ‘other than an alternative provision area’—***omit.***60. Section 525(7), ‘, (3)’—***omit.***61. Sections 527 and 528—***omit.***62. Section 529(1), ‘other than an alternative provision area’—***omit.*

SCHEDULE 1 (continued)

63. Section 531(1)(b)—*omit.***64. Section 531(2)(b)(ii)(A), ‘or 43A(1)’—***omit.***65. Section 531(2)(b)(ii)(B), ‘division’—***omit, insert—**‘subparagraph’.***66. Section 532(1) and (2)—***omit.***67. Section 532(3), ‘other than an alternative provision area,’—***omit.***68. Section 533—***omit.***69. Section 534(4) and (5)—***omit.***70. Section 534(6), ‘other than an alternative provision area,’—***omit.*

SCHEDULE 1 (continued)

71. Section 535(2)(a), from ‘over—’—

omit, insert—

‘over non-exclusive land; and’.

72. Section 535(2)(b), ‘sections 43 and 43A’—

omit, insert—

‘section 43’.

73. Section 540(2)(b), ‘, whether or not an alternative provision area’—

omit.

74. Part 16, division 3—

omit.

75. Part 16, division 4, heading, ‘not on alternative provision areas’—

omit.

76. Section 579(2)(b), ‘other than an alternative provision area’—

omit.

77. Section 579(4)—

omit.

78. Section 581(3), ‘permit’—

omit, insert—

‘licence’.

SCHEDULE 1 (continued)

79. Section 581(5), ‘exploration permit’—*omit, insert—*

‘mineral development licence’.

80. Section 582(2), ‘, whether or not an alternative provision area’—*omit.***81. Section 582(3) and (4)—***omit.***82. Section 582(5)(c), ‘division’—***omit, insert—*

‘subsection’.

83. Section 582(6), ‘other than an alternative provision area’—*omit.***84. Section 582(7), ‘, (3)’—***omit.***85. Sections 584 and 585—***omit.***86. Section 586(1), ‘other than an alternative provision area’—***omit.*

SCHEDULE 1 (continued)

87. Section 588(1)(a)(ii)—

omit.

88. Section 588(2)(b)(ii)(A), ‘or 43A(1)’—

omit.

89. Section 588(2)(b)(ii)(B), ‘division’—

omit, insert—

‘subparagraph’.

90. Section 589(1) and (2)—

omit.

91. Section 589(3), ‘other than an alternative provision area,’—

omit.

92. Section 590—

omit.

93. Section 591(4) and (5)—

omit.

94. Section 591(6), ‘other than an alternative provision area,’—

omit.

SCHEDULE 1 (continued)

95. Section 592(2) and (3)—*omit.***96. Section 592(4), ‘other than an alternative provision area,’—***omit.***97. Section 593(1)—***omit.***98. Section 593(2), ‘also’—***omit.***99. Section 593(2), ‘if the mining lease is other than a surface alluvium (gold or tin) mining lease’—***omit.***100. Section 593(2)(b), ‘sections 43 and 43A’—***omit, insert—**‘section 43’.***101. Section 595—***omit.***102. Part 17, divisions 2 and 3—***omit.*

SCHEDULE 1 (continued)

103. Part 17, division 4, heading—

omit, insert—

‘Division 4—Mining leases’.

104. Section 650(1)(a)—

omit.

105. Section 650(2)(b), ‘other than an alternative provision area’—

omit.

106. Section 650(4)—

omit.

107. Section 689(1) to (4)—

omit.

108. Section 689(5), ‘also’—

omit.

109. Section 689(5)(a)—

omit.

110. Section 689(5)(c), ‘division’—

omit, insert—

‘subsection’.

SCHEDULE 1 (continued)

111. Section 689(6), ‘other than an alternative provision area’—*omit.***112. Section 689(7), ‘(1), (3) or’—***omit.***113. Sections 690 to 693—***omit.***114. Section 694(1), ‘other than a surface alluvium (gold or tin) mining lease’—***omit.***115. Section 694(1), ‘other than an alternative provision area’—***omit.***116. Section 697(1) to (4)—***omit.***117. Section 697(5), ‘also’—***omit.***118. Section 697(5)(c)—***omit.*

SCHEDULE 1 (continued)

119. Section 697(5)(d), ‘other than an alternative provision area’—

omit.

120. Section 697(5)(e), ‘division’—

omit, insert—

‘subsection’.

121. Section 697(6), ‘other than an alternative provision area’—

omit.

122. Section 697(7), ‘(1), (3) or’—

omit.

123. Section 698—

omit.

124. Section 699(1), ‘other than a surface alluvium (gold or tin) mining lease not on an alternative provision area’—

omit.

125. Sections 700 to 703—

omit.

126. Section 704(1), ‘other than a surface alluvium (gold or tin) mining lease not on an alternative provision area’—

omit.

SCHEDULE 1 (continued)

127. Section 706, definition “relevant act”, paragraph (a)(ii)—

omit, insert—

‘(ii) part 14 or 17, division 4, 5 or 6 applies; or

(iii) part 15 or 16, division 2, 4, 5 or 6 applies; or’.

128. Section 706, definition “relevant act”, paragraph (b), ‘or part 14, 15, 16 or 17, division 2, 3, 4, 5 or 6 would apply’—

omit, insert—

‘or part 14 or 17, division 4, 5 or 6 would apply, or part 15 or 16, division 2, 4, 5 or 6 would apply’.

129. Section 729(2) to (6)—

omit.

130. Section 729(7), from ‘the applicant nominates’ to ‘mining claim, and’—

omit.

131. Section 730(2)(b)—

omit.

132. Section 730(5) and (6)—

omit.

133. Section 731(2)(b)—

omit.

SCHEDULE 1 (continued)

134. Section 731(5) and (6)—*omit.***135. Section 732(2) to (6)—***omit.***136. Section 732(7), from ‘the applicant nominates’ to ‘mining lease, and’—***omit.***137. Section 733(2) and (3)—***omit.***138. Section 734(1)(b), ‘part 14, division 2 or’—***omit.***139. Section 734(1)(b), ‘2, 3 or’—***omit.***140. Section 734(2), ‘part 14, division 2 or’—***omit.***141. Section 734(2), ‘2, 3 or’—***omit.*

SCHEDULE 1 (continued)

142. Section 734(3)—*omit.***NATIVE TITLE (QUEENSLAND) ACT 1993****1. Section 146A—***omit.*

SCHEDULE 2**AMENDMENTS RELATED TO ENHANCEMENT OF
LOW IMPACT PROVISIONS**

section 19

LAND AND RESOURCES TRIBUNAL ACT 1999**1. Schedule 2, item 1, after ‘are negotiated agreements—’—***insert—*

- an access agreement under part 13 (Native title provisions for prospecting permits), part 15 (Native title provisions for exploration permits), division 2 (Low impact exploration permits), or part 16 (Native title provisions for mineral development licences), division 2 (Low impact mineral development licences)’.

MINERAL RESOURCES ACT 1989**1. Section 429, definition “consultation period”—***omit.***2. Section 429—***insert—*

- **“access agreement”**, for entry to an area under a low impact prospecting permit, means an agreement between the permit holder and a registered native title party for the area concerning the holder’s access to the area.

“consultation period” see section 435(1).

SCHEDULE 2 (continued)

“consultation period advice day” see section 435(2).

“registered native title party”, for an area the subject of a low impact prospecting permit, means—

- (a) from the start of the consultation period advice day for entry to the area until immediately before the start of the consultation period for entry to the area—an entity that is, on the consultation period advice day, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant; and
- (b) from the start of the consultation period—an entity that is, on the first day of the consultation period, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant.’.

3. Part 13, division 1—

insert—

‘Delayed start for prospecting permit if access agreement required

‘430A.(1) This section applies if, before entry to an area under a low impact prospecting permit or proposed low impact prospecting permit it is necessary for—

- (a) there to be an access agreement for entry to the area; or
- (b) a registered native title party for the area to have given the permit holder a written notice under section 433(4) that the party does not wish to be consulted about an access agreement for the entry.

‘(2) Despite anything in section 29,¹ the term of the permit must not start before the first of the following to happen—

¹ Section 29 (Term of prospecting permit)

SCHEDULE 2 (continued)

- (a) the mining registrar receives a copy of the access agreement under section 437;
- (b) the mining registrar receives from the permit holder a copy of the written notice mentioned in subsection (1)(b).’.

4. Section 431(3)(f), from ‘complied with’—

omit, insert—

‘an access agreement for entry to the land.’.

5. Section 431(4) and (5)—

omit.

6. Section 432(1), ‘to (5)’—

omit.

7. Part 13, division 3, heading—

omit, insert—

‘Division 3—Consultation and access agreement requirements before entry’.

8. Section 433, heading—

omit, insert—

‘Requirement for consultation and access agreement’.

9. Section 433(1), after ‘for the first time,’—

insert—

‘any area of’.

SCHEDULE 2 (continued)

10. Section 433(1), from ‘native title notification party’—

omit, insert—

‘registered native title party for the area.’.

11. Section 433(2)—

omit, insert—

‘(2) However, the condition does not require consultation with a registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the permit holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

‘(3) 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, any area of non-exclusive land unless the holder has an access agreement for entry to the area with each registered native title party for the area, obtained after the start of the consultation period for entry to the area.

‘(4) However, the condition does not require an access agreement for entry to the area with a particular registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the permit holder a written notice that the party does not wish to be consulted about an access agreement for the entry.’.

12. After section 433—

insert—

‘Prospecting activities to be carried out in accordance with access agreement

‘**433A.(1)** This section applies to the holder of a low impact prospecting permit if—

- (a) the holder is carrying out activities in an area under, or purportedly under, the permit; and

SCHEDULE 2 (continued)

(b) there is an access agreement for entry to the area under the permit.

‘(2) The holder must not carry out the activities in a way that is inconsistent with the requirements of the access agreement.’

13. Section 434(1), ‘land that will be affected under the permit’—

omit, insert—

‘land that will be affected under the permit, and to obtain any necessary access agreement for entry’.

14. Section 435—

omit, insert—

‘Access agreements

‘**434A.(1)** An access agreement for entry to an area under a low impact prospecting permit may include provisions about any of the following—

- (a) the periods during which the permit holder is to be permitted access to the area;
- (b) the parts of the area the permit holder may access and the means by which access may be gained;
- (c) the kinds of low impact activities that may be carried out on the area;
- (d) the requirements to be observed by the permit holder when on the area;
- (e) the things the permit holder needs to do to protect the environment in carrying out low impact activities on the area;
- (f) compensation to be paid under part 18;
- (g) how disputes arising in connection with the agreement are to be resolved;
- (h) the way the agreement may be changed;

SCHEDULE 2 (continued)

- (i) other matters the parties to the agreement agree to provide for in the agreement.

‘(2) Subsection (3) applies if there is an inconsistency between—

- (a) a provision of an access agreement; and
- (b) either of the following—
 - (i) a provision of this Act;
 - (ii) a condition of a low impact prospecting permit.

‘(3) The provision of the Act or condition of the prospecting permit prevails.

‘Consultation period and consultation period advice day

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

- (a) starts 1 month after the consultation period advice day for entry to the area; and
- (b) ends 2 months after it starts.

‘(2) The “**consultation period advice day**”, for entry to an area, is the day the notice is given under subsection (4).

‘(3) The consultation period advice day must not be less than 3 months after the application notice relating to the low impact prospecting permit was given, or, if a replacement notice was given under section 432, the day the replacement notice was given.

‘(4) The permit holder must give notice of the day on which the consultation period for entry to the area is to start, and the area to which the consultation in the consultation period is to relate, to—

- (a) each entity that is a registered native title party for land included in the area; and
- (b) the mining registrar.

SCHEDULE 2 (continued)

‘(5) The notice given under subsection (4) must contain a clear description of the area to be entered and its location, and a description of the nature of the low impact activities proposed for the area.’.

15. Section 436, heading—

omit, insert—

‘Parties may seek mediation’.

16. Section 436(1)—

omit, insert—

‘**436.(1)** If, at the end of the consultation period for entry to an area, an access agreement for entry to the area has not been obtained between the permit holder and a registered native title party for the area, either party may ask the mining registrar to hold a conference for mediation about the access agreement.’.

17. Section 436(2), ‘A native title notification party’—

omit, insert—

‘The registered native title party’.

18. Section 437—

omit, insert—

‘Decision by tribunal

‘**436A.(1)** If an access agreement for entry to an area is not obtained within 1 month after the mining registrar has been asked to hold a conference for mediation about the agreement, the permit holder or the registered native title party may ask the mining registrar to refer the matter to the tribunal for a decision.

‘(2) If the mining registrar is asked to refer the matter to the tribunal for a

SCHEDULE 2 (continued)

decision—

- (a) the mining registrar must refer the matter; and
- (b) the tribunal must decide the terms of the access agreement.

‘(3) When the tribunal decides the terms of the access agreement—

- (a) subject to any order made by the tribunal in the matter, the access agreement decided by the tribunal has effect as an access agreement as if the registered native title party and the permit holder had executed it; and
- (b) the tribunal must also make a compensation decision or compensation trust decision for the registered native title party under part 18.

‘Notice of access agreement

‘437. The permit holder must, as soon as practicable after an access agreement for entry to an area is obtained, but in any event before the holder first enters the area, give a copy of the access agreement to the mining registrar.’.

19. Section 438, ‘native title notification party in the consultation’—

omit, insert—

‘registered native title party in relation to an access agreement’.

20. Section 482(e)(i), ‘site’—

omit.

22. Section 482(e)(ii), ‘for a road or track’—

omit, insert—

‘or excavation for access to a drill site’.

SCHEDULE 2 (continued)

23. Section 482(e), examples—

omit.

24. Section 482(e)—

insert—

- ‘(iii) do not include side hill excavation for access or drill pads as would be necessary on steep slopes; and
- (iv) do not include drilling in a watercourse or stream diversion; and
- (v) do not include clearing in densely vegetated areas;’.

25. Section 482—

insert—

‘(2) In this section—

“clearing” means—

- (a) in relation to grass, scrub or bush—the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include—
 - (i) the flattening or compaction of vegetation by vehicles if the vegetation remains living; or
 - (ii) the slashing or mowing of vegetation to facilitate access tracks; or
 - (iii) the clearing of noxious or introduced plant species; and
- (b) in relation to trees—cutting down, ringbarking or pushing over.

“excavation” means the use of machinery to dig below the topsoil horizon, but does not include—

- (a) minor levelling of a site to allow a drill rig to operate on a level surface for safety reasons; or

SCHEDULE 2 (continued)

(b) the construction of a small sump for operational purposes.

“top soil horizon” means the top level or layer of soil that is generally less than 30 cm thick.’.

26. Section 485—

insert—

‘ **“access agreement”**, for entry to an area under a low impact exploration permit, means an agreement between the permit holder and a registered native title party for the area concerning the holder’s access to the area.

“consultation period advice day” see section 490(2).

“registered native title party”, for an area the subject of a low impact exploration permit, means—

- (a) from the start of the consultation period advice day for entry to the area until immediately before the start of the consultation period for entry to the area—an entity that is, on the consultation period advice day, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant; and
- (b) from the start of the consultation period—an entity that is, on the first day of the consultation period, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant.’.

27. Section 486(3)(f), from ‘complied with’—

omit, insert—

‘an access agreement for entry to the land.’.

SCHEDULE 2 (continued)

28. Part 15, division 2, subdivision 3, heading—

omit, insert—

‘Subdivision 3—Consultation and access agreement requirements before entry’.

29. Section 488, heading—

omit, insert—

‘Requirement for consultation and access agreement’.

30. Section 488(1), ‘native title notification party’—

omit, insert—

‘registered native title party’.

31. Section 488(2)—

omit, insert—

‘(2) However, the condition does not require consultation with a registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the permit holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

‘(3) 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 an access agreement for entry to the area with each registered native title party for the area, obtained after the start of the consultation period for entry to the area.

‘(4) However, the condition does not require an access agreement for entry to the area with a particular registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the permit holder a written notice that the party does not wish to be consulted about an access agreement for the entry.’.

SCHEDULE 2 (continued)

32. After section 488—

insert—

‘Exploration activities to be carried out in accordance with access agreement

‘488A.(1) This section applies to the holder of an exploration permit if—

- (a) the holder is carrying out activities in an area under, or purportedly under, the permit; and
- (b) there is an access agreement for entry to the area under the permit.

‘(2) The holder must not carry out the activities in a way that is inconsistent with the requirements of the access agreement.’.

33. Section 489(1), ‘land that will be affected under the permit’—

omit, insert—

‘land that will be affected under the permit, and to obtain any necessary access agreement for entry’.

34. Section 490—

omit, insert—

‘Access agreements

‘489A.(1) An access agreement for entry to an area under a low impact exploration permit may include provisions about any of the following—

- (a) the periods during which the permit holder is to be permitted access to the area;
- (b) the parts of the area the permit holder may access and the means by which access may be gained;
- (c) the kinds of low impact activities that may be carried out on the area;
- (d) the requirements to be observed by the permit holder when on the

SCHEDULE 2 (continued)

area;

- (e) the things the permit holder needs to do to protect the environment in carrying out low impact activities on the area;
- (f) compensation to be paid under part 18;
- (g) how disputes arising in connection with the agreement are to be resolved;
- (h) the way the agreement may be changed;
- (i) other matters the parties to the agreement agree to provide for in the agreement.

‘(2) Subsection (3) applies if there is an inconsistency between—

- (a) a provision of an access agreement; and
- (b) either of the following—
 - (i) a provision of this Act;
 - (ii) a condition of an exploration permit.

‘(3) The provision of the Act or condition of the exploration permit prevails.

‘Consultation period and consultation period advice day

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

- (a) starts 1 month after the consultation period advice day for entry to the area; and
- (b) ends 2 months after it starts.

‘(2) The “**consultation period advice day**”, for entry to an area, is the day the notice is given under subsection (4).

‘(3) The consultation period advice day—

- (a) must not be before the permit holder was advised of the amount

SCHEDULE 2 (continued)

of security decided by the Minister under section 144;² and

- (b) must not be less than 3 months after the application notice relating to the low impact exploration permit was given, or, if a replacement notice was given under section 487, the day the replacement notice was given.

‘(4) The permit holder must give notice of the day on which the consultation period for entry to the area is to start, and the area to which the consultation in the consultation period is to relate, to—

- (a) each entity that is a registered native title party for land included in the area; and
- (b) the mining registrar.

‘(5) The notice given under subsection (4) must contain a clear description of the area to be entered and its location, and a description of the nature of the low impact activities proposed for the area.’.

35. Section 491, heading—

omit, insert—

‘Parties may seek mediation’.

36. Section 491(1)—

omit, insert—

‘**491.(1)** If, at the end of the consultation period for entry to an area, an access agreement for entry to the area has not been obtained between the permit holder and a registered native title party for the area, either party may ask the mining registrar to hold a conference for mediation about the access agreement.’.

² Section 144 (Provision of security)

SCHEDULE 2 (continued)

37. Section 491(3), ‘a native title notification party’—

omit, insert—

‘the registered native title party’.

38. Section 492—

omit, insert—

‘Decision by tribunal

‘491A.(1) If an access agreement for entry to an area is not obtained within 1 month after the mining registrar has been asked to hold a conference for mediation about the agreement, the permit holder or the registered native title party may ask the mining registrar to refer the matter to the tribunal for a decision.

‘(2) If the mining registrar is asked to refer the matter to the tribunal for a decision—

- (a) the mining registrar must refer the matter; and
- (b) the tribunal must decide the terms of the access agreement.

‘(3) When the tribunal decides the terms of the access agreement—

- (a) subject to any order made by the tribunal in the matter, the access agreement decided by the tribunal has effect as an access agreement as if the registered native title party and the permit holder had executed it; and
- (b) the tribunal must also make a compensation decision or compensation trust decision for the registered native title party under part 18.

‘Notice of access agreement

‘492. The permit holder must, as soon as practicable after an access agreement for entry to an area is obtained, but in any event before the holder first enters the area, give a copy of the access agreement to the mining registrar.’.

SCHEDULE 2 (continued)

39. Section 493(1), ‘native title notification party in the consultation’—

omit, insert—

‘registered native title party in relation to an access agreement’.

40. Section 538(e)(i), ‘site’—

omit.

42. Section 538(e)(ii), ‘for a road or track’—

omit, insert—

‘or excavation for access to a drill site’.

43. Section 538(e), examples—

omit.

44. Section 538(e)—

insert—

‘(iii) do not include side hill excavation for access or drill pads as would be necessary on steep slopes; and

(iv) do not include drilling in a watercourse or stream diversion; and

(v) do not include clearing in densely vegetated areas;’.

45. Section 538—

insert—

‘(2) In this section—

“clearing” means—

(a) in relation to grass, scrub or bush—the removal of vegetation by

SCHEDULE 2 (continued)

disturbing root systems and exposing underlying soil, but does not include—

- (i) the flattening or compaction of vegetation by vehicles if the vegetation remains living; or
 - (ii) the slashing or mowing of vegetation to facilitate access tracks; or
 - (iii) the clearing of noxious or introduced plant species; and
- (b) in relation to trees—cutting down, ringbarking or pushing over.

“excavation” means the use of machinery to dig below the topsoil horizon, but does not include—

- (a) minor levelling of a site to allow a drill rig to operate on a level surface for safety reasons; or
- (b) the construction of a small sump for operational purposes.

“top soil horizon” means the top level or layer of soil that is generally less than 30 cm thick.’.

46. Section 541, definitions “consultation period” and “consultation start day”—

omit.

47. Section 541—

insert—

- ‘ **“access agreement”**, for entry to an area under a low impact mineral development licence, means an agreement between the licence holder and a registered native title party for the area concerning the holder’s access to the area.

“consultation period” see section 546(1).

“consultation period advice day” see section 546(2).

“registered native title party”, for an area the subject of a low impact

SCHEDULE 2 (continued)

mineral development licence, means—

- (a) from the start of the consultation period advice day for entry to the area until immediately before the start of the consultation period for entry to the area—an entity that is, on the consultation period advice day, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant; and
- (b) from the start of the consultation period—an entity that is, on the first day of the consultation period, in relation to land included in the area—
 - (i) a registered native title body corporate; or
 - (ii) a registered native title claimant.’.

48. Section 542(3)(f), from ‘complied with’—

omit, insert—

‘an access agreement for entry to the land.’.

49. Section 542(4) and (5)—

omit.

50. Section 543(3), ‘to (5)’—

omit.

51. Part 16, division 2, subdivision 3, heading—

omit, insert—

‘Subdivision 3—Consultation and access agreement requirements before entry’.

SCHEDULE 2 (continued)

52. Section 544, heading—

omit, insert—

‘Requirement for consultation and access agreement’.

53. Section 544(1), after ‘for the first time,’—

insert—

‘any area of’.

54. Section 544(1), from ‘native title notification party’—

omit, insert—

‘registered native title party for the area.’.

55. Section 544(2)—

omit, insert—

‘(2) However, the condition does not require consultation with a registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the licence holder a written notice that the party does not wish to be consulted about the proposed activities stated in the application notice.

‘(3) 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, any area of non-exclusive land unless the holder has an access agreement for entry to the area with each registered native title party for the area, obtained after the start of the consultation period for entry to the area.

‘(4) However, the condition does not require an access agreement for entry to the area with a particular registered native title party if, at any time after the start of the consultation period for entry to the area, the registered native title party gives the licence holder a written notice that the party does not wish to be consulted about an access agreement for the entry.’.

SCHEDULE 2 (continued)

56. After section 544—

insert—

‘Mineral development activities to be carried out in accordance with access agreement

‘544A.(1) This section applies to the holder of a mineral development licence if—

- (a) the holder is carrying out activities in an area under, or purportedly under, the licence; and
- (b) there is an access agreement for entry to the area under the licence.

‘(2) The holder must not carry out the activities in a way that is inconsistent with the requirements of the access agreement.’.

57. Section 545(1), ‘land that will be affected under the licence’—

omit, insert—

‘land that will be affected under the licence, and to obtain any necessary access agreement for entry’.

58. Section 546—

omit, insert—

‘Access agreements

‘545A.(1) An access agreement for entry to an area under a low impact mineral development licence may include provisions about any of the following—

- (a) the periods during which the licence holder is to be permitted access to the area;
- (b) the parts of the area the licence holder may access and the means by which access may be gained;
- (c) the kinds of low impact activities that may be carried out on the area;

SCHEDULE 2 (continued)

- (d) the requirements to be observed by the licence holder when on the area;
- (e) the things the licence holder needs to do to protect the environment in carrying out low impact activities on the area;
- (f) compensation to be paid under part 18;
- (g) how disputes arising in connection with the agreement are to be resolved;
- (h) the way the agreement may be changed;
- (i) other matters the parties to the agreement agree to provide for in the agreement.

‘(2) Subsection (3) applies if there is an inconsistency between—

- (a) a provision of an access agreement; and
- (b) either of the following—
 - (i) a provision of this Act;
 - (ii) a condition of a mineral development licence.

‘(3) The provision of the Act or condition of the mineral development licence prevails.

‘Consultation period and consultation period advice day

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

- (a) starts 1 month after the consultation period advice day for entry to the area; and
- (b) ends 2 months after it starts.

‘(2) The “**consultation period advice day**”, for entry to an area, is the day the notice is given under subsection (4).

‘(3) The consultation period advice day must not be less than 3 months after the application notice relating to the low impact mineral development licence was given, or, if a replacement notice was given under section 543, the day the replacement notice was given.

SCHEDULE 2 (continued)

‘(4) The licence holder must give notice of the day on which the consultation period for entry to the area is to start, and the area to which the consultation in the consultation period is to relate, to—

- (a) each entity that is a registered native title party for land included in the area; and
- (b) the mining registrar.

‘(5) The notice given under subsection (4) must contain a clear description of the area to be entered and its location, and a description of the nature of the low impact activities proposed for the area.’.

59. Section 547, heading—

omit, insert—

‘Parties may seek mediation’.

60. Section 547(1)—

omit, insert—

‘**547.(1)** If, at the end of the consultation period for entry to an area, an access agreement for entry to the area has not been obtained between the licence holder and a registered native title party for the area, either party may ask the mining registrar to hold a conference for mediation about the access agreement.’.

61. Section 547(3), ‘a native title notification party’—

omit, insert—

‘the registered native title party’.

62. Section 548—

omit, insert—

SCHEDULE 2 (continued)

‘Decision by tribunal

‘547A.(1) If an access agreement for entry to an area is not obtained within 1 month after the mining registrar has been asked to hold a conference for mediation about the agreement, the licence holder or the registered native title party may ask the mining registrar to refer the matter to the tribunal for a decision.

‘(2) If the mining registrar is asked to refer the matter to the tribunal for a decision—

- (a) the mining registrar must refer the matter; and
- (b) the tribunal must decide the terms of the access agreement.

‘(3) When the tribunal decides the terms of the access agreement—

- (a) subject to any order made by the tribunal in the matter, the access agreement decided by the tribunal has effect as an access agreement as if the registered native title party and the licence holder had executed it; and
- (b) the tribunal must also make a compensation decision or compensation trust decision for the registered native title party under part 18.

‘Notice of access agreement

‘548. The licence holder must, as soon as practicable after an access agreement for entry to an area is obtained, but in any event before the holder first enters the area, give a copy of the access agreement to the mining registrar.’.

63. Section 549(1), ‘native title notification party in the consultation’—

omit, insert—

‘registered native title party in relation to an access agreement’.

