

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

EXPLANATORY NOTES

Title of the Bill

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

Policy Objectives of the Bill

The policy objectives of the Bill are:

- To implement stage two of the Premier's Native Title Strategy by providing for the establishment of a simple, straight forward and workable mechanism to deal with future acts which might affect native title with respect to mining.
- To take advantage of sections 43A and 43 of the *Native Title Act 1993* (Cwlth) to provide for Alternative State Provisions to the right to negotiate under the *Native Title Act 1993* (Cwlth).
- To take advantage of the provisions of sections 26A and 26B of the *Native Title Act 1993* (Cwlth) so that certain acts, approved by the Commonwealth Minister may be exempted from the right to negotiate and to make provisions for the established of approved opal and gem mining areas.
- To make minor amendments to the *Native Title (Queensland) Act 1993* to reflect the *Native Title Act 1993* (Cwlth).

Achieving the Policy Objectives of the Legislation

The proposed legislation achieves these policy objectives by:

- Amending the *Mineral Resources Act 1989* to insert new Parts 12 to 18 which insert native title provisions that must be complied with, before the grant of tenure can be issued or exercised, where native title may exist. These new Parts take advantage of sections 43A and 43 of the *Native Title Act 1993* (Cwlth) and when approved by the Commonwealth will provide the Alternative

State Provisions to the Right to Negotiate under the *Native Title Act 1993* (Cwlth).

- Amending the *Mineral Resources Act 1989* to provide that the Commonwealth Minister could make a determination under section 26A that certain acts (the creation or variation of a right to mine, where the right created or varied is a right to explore or a right to prospect) can be approved exploration acts and not attract the Right to Negotiate under the *Native Title Act 1993* (Cwlth).
- Amending the *Mineral Resources Act 1989* to provide that the Commonwealth Minister could make a determination under section 26B that certain acts (the creation or variation of rights to mine, where the rights as so created or varied are rights to mine gold or tin in surface alluvium) can be an approved gold or tin mining acts and not attract the Right to Negotiate under the *Native Title Act 1993* (Cwlth).
- Amending the *Mineral Resources Act 1989* to enable areas approved by the Commonwealth Minister as approved opal or gem mining areas to be prescribed under the *Mineral Resources Act 1989*. This will ensure that mining tenures with certain conditions created within these approved areas will be exempt from the Right to Negotiate.
- Amending the *Fossicking Act 1994* to provide that fossicking permits cannot be granted on land in which there is an approved determination of native title. This allows fossicking permits to be issued as a low impact future act under the *Native Title Act 1993* (Cwlth). However, provision is made to enable fossicking acts to be subject to indigenous land use agreements where there has been an approved determination of native title.
- Amending the *Native Title (Queensland) Act 1993* to reflect that a law of the State may confirm any existing public access to and enjoyment of stock routes (*Native Title Act 1993* (Cwlth) s.212(2)(da)) and to remove one of the stated objects of the *Native Title (Queensland) Act 1993* in light of the repeal of the provisions that allowed the creation of a Queensland Native Title Tribunal and to remove the onerous requirement that the Commonwealth Native Title Act be attached to the *Native Title Act 1993* (Cwlth) when that Act is reprinted.

Administrative Cost

The administrative cost to Government, as a result of the Bill, will be those costs associated with the tribunal undertaking its activities with respect to native title issues in accordance with the new procedures provided by the amendments. There will also be costs to Government as it is required to participate in some of the consultation and negotiation provisions of the Bill. These short term costs will be offset in the medium to long term by the revenues which will flow to the State from the resulting resource development and associated employment opportunities.

Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*. Section 4 requires that legislation has sufficient regard to:

- (a) rights and liberties of individuals; and
- (b) the institution of Parliament.

With respect to the rights and liberties of individuals, section 4(3)(a) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation makes rights and liberties, or obligation, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The Bill clearly and in detail sets out the procedures that must be complied with and the factors that the tribunal must take into account when considering objections and determining compensation in respect to the new provisions.

Further, section 4(3)(i) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation provides for the compulsory acquisition of property only with fair compensation. The Bill does not provide for compulsory acquisitions. In any event the Bill is consistent with this principle as it ensures that compensation is payable on just terms to native title holders to the extent that their native title has been affected.

Lastly, section 4(3)(j) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation has sufficient regard to Aboriginal tradition and Island custom. The Bill reflects the provisions of the scheme provided by the *Native Title Act 1993* (Cwlth) for the recognition and protection of native title rights and interests ensuring

that native title claimants have the right to be notified, consulted and object to certain impacts on native title on land where native title may exist consistent with the Commonwealth requirements.

With respect to whether the legislation has sufficient regard to the institution of Parliament, the Bill is consistent with fundamental legislative principles as the Bill does not allow for the delegation of legislative power, does not authorise the amendment of the Act other than by an Act and does not restrict, in any way, the scrutiny of any delegated legislative power by the Legislative Assembly.

Consultation

Consultation has occurred with Commonwealth officers and the following State Departments:

- the Department of the Premier and Cabinet;
- the Department of State Development;
- the Department of Mines and Energy; and
- the Department of Natural Resources.

Consultation has also occurred with representatives from indigenous, pastoral, agricultural and mining interests through the Native Title Working Group.

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill provides that the Act will commence on a day to be fixed by proclamation.

Part 2—Amendment of *Fossicking Act 1994*

Clause 3 of the Bill provides that part 2 will amend the *Fossicking Act 1994*. The amendments of the *Fossicking Act 1994* provide that the Act does not apply to land over which there is an approved determination of native title unless there is an indigenous land use agreement registered which allows for fossicking over that land or waters. The purpose of this amendment is to allow fossicking permits under the *Fossicking Act 1994* to meet the definition of low impact future act under the *Native Title Act 1993* (Cwlth).

Clause 4 of the Bill removes a footnote in relation to the definition of owner which is no longer appropriate in light of the amendment.

Clause 5 of the Bill replaces section 11 and provides that fossicking interests cannot be granted over an area subject to an approved determination unless the fossicking interest is subject to an indigenous land use agreement.

Part 3—Amendment of the *Mineral Resources Act 1989*

Clause 6 of the Bill provides that Part 3 amends the *Mineral Resources Act 1989*.

Clause 7 of the Bill inserts into existing section 5 of the *Mineral Resources Act 1989* additional definitions.

Clause 8 of the Bill inserts into existing section 25 of the *Mineral Resources Act 1989* new subsection 5.

Clause 9 of the Bill inserts new Parts 12 through to 18 inclusive into the *Mineral Resources Act 1989*.

Part 12—Introduction to Native Title Provisions

Part 12 inserts definitions for the native title provisions contained in new Parts 12 to 18. In particular it provides that words and expressions that are

used in the *Native Title Act 1993* (Cwlth) and in Parts 12 to 18 have the same meaning as they have in the *Native Title Act 1993* (Cwlth).

Part 12 also confirms that certain decisions made in relation to acts to which the native title provisions apply are judicially reviewable under the *Judicial Review Act 1991* to ensure compliance with section 43A(4)(f) of the *Native Title Act 1993* (Cwlth).

Part 12 explains that the native title provisions state additional requirements that apply for the granting, variation or renewal of various mining tenures on land which native title has not been extinguished. Those additional requirements only apply if the right to negotiate would be triggered under the *Native Title Act 1993* (Cwlth), and the mining tenure is not an act excluded from the right to negotiate under section 26(2) of the *Native Title Act 1993* (Cwlth).

Part 13—Native Title Provisions for Prospecting Permits

Division 1—Preliminary

The purpose of Part 13 is to state the additional requirements that apply for the granting of a low impact prospecting permit and the exercise of the entitlement under a low impact prospecting permit to enter non-exclusive land.

Part 13 does not apply to a prospecting permit if there is a registered indigenous land use agreement in relation to the area which meets the specified requirements.

This Part also applies to a prospecting permit in an approved opal or gem mining area where the proposed prospecting permit is not an act excluded from the right to negotiate provisions because it is located within an approved opal or gem mining area.

Division 2—Notification requirements

Division 2 outlines the notification requirements which must be observed including time constraints and the contents of the notice. Notice must be given at least 14 days before consultation.

Division 3—Consultation requirements before entry

This Division provides that a permit holder must consult with each native title notification party. Such consultation is not required if the native title notification party has provided the holder with a written notice that the party does not wish to be consulted. The Division outlines the mandatory consultation requirements between the permit holder and native title notification parties.

The consultation period is for a maximum period of 14 days but the parties may mutually agree to extend or reduce the consultation period. The parties can, during this period, seek assistance in mediation through the mining registrar.

The permit holder must, as soon as possible, give written notice to the mining registrar as to the content and outcome of the consultation process. Upon the holder giving notice to the mining registrar, the holders obligations for consultation will be taken to have been complied with.

NB: Refer to flow chart A.

Part 14—Native Title Provisions for Mining Claims***Division 1—Preliminary***

The purpose of Part 14 is:

- to state additional requirements applying for the granting or variation of a mining claim to mine gold or tin in surface alluvium in order to provide a basis for a determination by the Commonwealth Minister under section 26B of the *Native Title Act 1993* (Cwlth).
- to state additional requirements applying for the granting of other mining claims to provide alternative provisions in order to provide a basis for a determination by the Commonwealth Minister under sections 43 and 43A of the Commonwealth Native Title Act.
- to provide for renewals of mining claims.

Division 2—Surface Alluvium (gold or tin) mining claims***Subdivision 1—Preliminary***

This Division states additional requirements that apply for the granting of a proposed surface alluvium (gold or tin) mining claim over non-exclusive land under Part 2.

Subdivision 2—Notification requirements and right to be heard

Subdivision 2 sets out the requirements for the written notice.

Subdivision 3—Consultation requirements

Subdivision 3 provides that:

- the applicant must consult with the other consultation parties unless the other party gives written notice that the party does not wish to be consulted.
- the purpose of the consultation is to minimise the impact of the mining claim in relation to the land and waters and to acknowledge areas of particular significance to native title holders.

Provision is made in the Subdivision for mediation during the consultation period. Mediation may be sought by the parties on request to the mining registrar.

Written notice must be given to the mining registrar regarding the outcome of the consultation process and details of any agreement reached.

Subdivision 4—Hearing requirements

Subdivision 4 provides for hearing requirements if a consultation agreement has not been reached or a native title notification party has not waived their right to be heard. The mining registrar must fix a day for the tribunal to hear any objections to the application and must not grant an application for a mining claim without a hearing.

The tribunal must take all reasonable steps to ensure the hearing of the application is finished within 3 months or as soon as practicable. If the consultation parties seek mediation the tribunal may provide mediation or order further consultation.

Subdivision 5—Notice of grant

The holder of the mining claim must give notice of the grant to each other consultation party within 28 days after the holder receives notice of the grant.

NB: See flow chart B.

Division 3—Other mining claims on alternative provision areas

Division 3 states additional requirements that apply for the granting of mining claims on alternative provision areas if the grant is an act to which the right to negotiate provisions apply and the grant is not excluded from the right to negotiate provisions under section 26(2) of the *Native Title Act 1993* (Cwlth).

If the proposed mining claim is over land that includes both alternative provision area land and non-exclusive land other than land within an alternative provision area the applicant may follow the procedures in Division 4 for the entire mining claim, rather than invoke the provisions of both Division 3 and Division 4 on the respective areas.

The Division explains that for mining claims on alternative provision areas, the process contained in Part 17 Division 3 applies as adapted for mining claims under Part 4.

Division 4—Other mining claims not on alternative provision areas

Division 4 states additional requirements that apply for the granting of mining claims on non exclusive land other than land within an alternative provision area. If the grant is an act to which the right to negotiate provisions apply and the grant is not excluded from the right to negotiate provisions under section 26(2) of the *Native Title Act 1993* (Cwlth).

The Division explains that the process contained in Part 17 Division 4 applies. This process applies as adapted for mining claims under Part 4.

Division 5—Renewals of mining claims

This Division provides for renewals of mining claims.

Division 6—Requirements for subsidiary approvals

Division 6 outlines the Divisions that must be complied with for subsidiary approvals.

Part 15—Native Title Provisions for Exploration Permits

Division 1—Preliminary

The purpose of Part 15 is to state additional requirements that apply for:

- the granting of a low impact exploration permit and the exercise of the entitlement to enter non-exclusive land.
- the granting or variation of a high impact exploration permit over non-exclusive land.
- the variation of an exploration permit granted over exclusive tenure to include non- exclusive land.
- the renewal of exploration permits.

This Part applies to the grant of the exploration permit in an approved opal or gem mining area only if under section 26C(1A) of the *Native Title Act 1993* (Cwlth) the grant is not an act excluded from the application of the right to negotiate provisions. This Division defines low and high impact exploration activity.

Division 2—Low impact exploration permits

Subdivision 1—Preliminary

The Division states additional requirements for the granting of a proposed low impact exploration permit for non-exclusive land.

Subdivision 2—Notification requirements

Subdivision 2 prescribes notification requirements in respect to applications for low impact exploration permits.

The applicant must give written notice of an intention to lodge an application to each native title notification party and the mining registrar. Clear time limits for provision of the notice and the requisite contents are provided in Subdivision 2.

Subdivision 3—Consultation requirements before entry

The Subdivision provides that the permit holder must consult with each native title notification party prior to entry on the land except where that party has provided written notice that further consultation is not required.

The purpose of consultation is to minimise the impact of the permit holders entry onto the land and to comply with section 26A(7) of the *Native Title Act 1993* (Cwlth). A written notice must be provided by the permit holder to the mining registrar in respect to the content and the outcome of the consultation.

The Subdivision provides for a consultation period. Mediation can be sought by the parties to the consultation from the mining registrar.

NB: Refer to flow chart A.

Division 3—High impact exploration permits on alternative provision areas***Subdivision 1—Preliminary***

This Subdivision states how Division 3 relates to the additional requirements that apply to the granting of a high impact exploration permit for an alternative provision area and provides definitions for the Division.

Subdivision 2—Notification requirements and right to be heard

There is a requirement that the applicant must notify all native title notification parties about the proposed high impact exploration permit. The

application notice must be in writing and must be given within 14 days of the applicant being notified of the Minister's decision of the amount of security to be deposited if the permit is granted.

The application notice requirements provide that native title parties have a right to object to the granting of the proposed permit so far as it affects their native title rights and interests.

The applicant must, within 1 month of being notified of the Minister's decision, give the mining registrar a statutory declaration declaring that the applicant has given an application notice. The mining registrar may fix a further period for giving notice if it is considered an application notice has not been given in accordance with the Subdivision.

NB: Refer to flow chart C.

Subdivision 3—Consultation and mediation

Subdivision 3 sets out the consultation requirements with the aim of achieving an agreement. Mediation may be requested.

Subdivision 4—Hearing of objections and tribunal's decision

Subdivision 4 provides that where agreement has not been obtained through consultation and mediation, objections must be heard by the tribunal. The Subdivision also outlines what the tribunal must do in considering the objections and prescribes when the Minister may overrule the tribunal's decision.

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

Division 4 outlines the requirements for an application for the granting of a high impact exploration permit not on alternative provision areas. It provides that Part 17 Division 4 applies as adapted for Part 5.

Division 5—Renewals of exploration permits

This Division sets out the additional requirements for an application to renew an exploration permit.

Division 6—Requirements for subsidiary approvals

This Division allows the variation of the conditions for high impact exploration activities and to vary the conditions of exploration permits to allow further exploration on non-exclusive land.

Part 16—Native Title Provisions for Mineral Development Licences***Division 1—Preliminary***

The purpose of Part 16 is to state additional requirements that apply for:

- the granting of a low impact mineral development licence and the exercise of the entitlement to enter non-exclusive land.
- the granting or variation of a high impact exploration permit over non exclusive land.
- the variation of the conditions that allow for high impact exploration activity on a low impact mineral development licence in a section 43 or 43A area.
- the renewal of mineral development licences.

Division 2—Low impact mineral development licences***Subdivision 1—Preliminary***

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

Subdivision 2—Notification requirements

Subdivision 2 prescribes notification requirements in respect to application for low impact mineral development licences.

The applicant must give written notice of an intention to lodge an application to each native title notification party and the mining registrar. Clear time limits for provision of the notice and the requisite contents of the notice are provided.

Subdivision 3—Consultation requirements before entry

The Subdivision provides that the licence holder must consult with each native title notification party except where that party has provided written notice that further consultation is not required.

The purpose of consultation is to minimise the impact of the licence holders entry onto the land and to comply with section 26A(7) of the *Native Title Act 1993* (Cwlth). A written notice must be provided by the licence holder to the mining registrar in respect to the content and the outcome of the consultation.

The Subdivision provides for a consultation period. Parties to the consultation may request mediation from the mining registrar.

NB: Refer to flow chart A.

Division 3—High impact mineral development licences on alternative provision areas***Subdivision 1—Preliminary***

This Subdivision states how Division 3 relates to the additional requirements that apply for the granting of a high impact mineral development licence for an alternative provision area and provides definitions for the Division.

Subdivision 2—Notification requirements

There is a mandatory requirement that the applicant must notify all native title notification parties about the proposed high impact mineral development licence. The notice must be in writing and must be given within 14 days of the applicant being notified of the Minister's decision of the amount of security to be deposited if the permit is granted.

The application notice requirements are set out clearly in the Subdivision and provide for the native title parties to have a right to object to the granting of the proposed high impact mineral development licence so far as it affects their native title rights and interests.

The applicant must, within 1 month of being notified of the Minister's decision, give the mining registrar a statutory declaration declaring that the applicant has given an application notice. The mining registrar may fix a further period for giving notice if it is considered an application notice has not been given in accordance with the Subdivision.

Subdivision 3—Consultation and mediation

Subdivision 3 sets out the consultation requirements with the aim of achieving an agreement.

NB: Refer to flow chart C.

Subdivision 4—Hearing of objections and tribunal's decision

Subdivision 4 provides that where agreement has not been obtained through consultation, objections must be heard by the tribunal. The Subdivision also outlines what the tribunal must do in considering the objections and prescribes when the Minister may overrule the tribunal's decision.

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

Division 4 provides that the applicant for the granting of a high impact mineral development licence for non-exclusive land which is not an alternative provision area must comply with Part 17 Division 4 of the *Mineral Resources Act 1989* to the greatest practicable extent.

Division 5—Renewals for mineral development licences

This Division provides for the additional requirements that apply for a renewal of a mineral development licence.

Division 6—Requirements of subsidiary approvals

Division 6 provides the requirements for subsidiary approvals. The Division sets out those Divisions with which the application must comply for variations of the mineral development licences.

Part 17—Native Title Provisions for Mining Leases***Division 1—Preliminary***

The purpose of Part 17 is:

- to state additional requirements to provide the basis for a determination of the Commonwealth Minister under section 26B of the *Native Title Act 1993* (Cwlth) that mining leases for surface alluvium (gold or tin) are excluded from the right to negotiate.
- to state additional requirements relating to other mining leases, which are intended as alternative provisions under sections 43A and 43 of the *Native Title Act 1993* (Cwlth).
- to provide for renewals of mining leases and subsidiary approvals.

Division 2—Surface alluvium (gold or tin) mining leases***Subdivision 1—Preliminary***

Subdivision 1 provides the definitions for this Division.

Subdivision 2—Notification requirements and right to be heard

Subdivision 2 provides that the applicant must give written notice of an intention to lodge an application for a surface alluvium (gold and tin) mining lease to each native title notification party and to the mining registrar. The notice provides a time frame for the giving of the notice and it specifies the contents of that notice. Each native title notification party has a right to be heard by the tribunal.

Subdivision 3—Consultation requirements

This Subdivision provides for:

- consultation between the applicant and each other consultation party, but the applicant is not required to consult if the other party gives written notice that the party does not wish to be consulted.
- the purpose of the consultation is to minimise the impact of the mining leases in relation to the land and waters and in relation to site protection and avoidance, access to land and rehabilitation.

The parties may ask the mining registrar to hold a conference for mediation about the application.

The applicant must provide a consultation result notice.

Subdivision 4—Hearing requirements

This Subdivision provides for hearing requirements if agreement has not been reached or the native title notification parties have not waived their right to be heard.

The mining registrar must fix a day for the tribunal to hear the application.

The tribunal may, on request from the consultation parties, provide mediation about issues in dispute or order further consultation on conditions it sees fit.

In making its recommendations to the Minister the tribunal must take into account the consultation matters and any issues agreed between the consultation parties.

The Subdivision requires the tribunal to take all reasonable steps to ensure that the hearing for the application is finished within 3 months from when consultation parties were notified of the hearing or as soon as practicable under this Act.

NB: Refer to flow chart B.

Subdivision 5—Notice of Grant

If the Governor in Council grants a surface alluvium (gold or tin) mining lease over non-exclusive land the holder of the lease must give written notice of the grant to each other consultation party for the application. The notice must be given within 28 days after the applicant receives notice of the grant.

Division 3—Other mining leases on alternative provision areas

Subdivision 1—Preliminary

The purpose of Division 3 is to provide additional requirements that apply for the granting of a proposed mining lease under Part 7 if the proposed mining lease is over land that is an alternative provisions area.

Notwithstanding the above, an applicant may elect to comply with the requirements of Division 4 for a mining lease on an alternative provision area. If the applicant chooses to do so, Division 4 will then apply and the applicant must explain in the notice given under Subdivision 2 of Division 4 that the applicant has made this election.

The Subdivision provides definitions for the Division and registration.

Subdivision 2—Notification and registration requirements

The applicant must give written notice and public notice about the proposed mining lease to all native title notification parties 3 months before the mining lease application is made, or within 28 days after the certificate of application is endorsed by the mining registrar. The applicant must give a statutory declaration proving compliance with the notice requirements.

Registered native title parties are existing registered native title bodies corporate and registered native title claimants, and persons who become registered native title parties by filing a native title determination application in the Federal Court within 3 months of the notice and have that claim registered within a further month.

The Subdivision provides for an ending of additional requirements if either

- there are no registered native title parties for the non-exclusive land.
- registered native title parties certify that they do not object to the grant and do not wish to be consulted about it.

Subdivision 3—Consultation and negotiation

The parties to the consultation and negotiation required under this Subdivision are the applicant, the registered native title parties and the State. If the State and all other consultation and negotiation parties agree, the State may cease to be a consultation and negotiation party or take a particular role in the process.

The consultation and negotiation period is 3 months.

The consultation and negotiation parties must consult and negotiate with a view to obtaining the agreement of each of the registered native title parties to the granting of the proposed mining lease and any conditions to be complied with by the parties if the lease is granted. Further, the applicant must consult the registered native title parties about ways of minimising the impact of the proposed lease on registered native title rights and interests. The registered native title parties must also consult the other parties about the impact of the project on registered native title rights and interests. There are guidelines for both registered native title party and applicant consultation.

An objection to the proposed mining lease may be lodged at any time during the consultation and negotiation period by a registered native title party.

Any consultation and negotiation party may ask for mediation.

If a negotiated agreement is obtained, the parties must lodge a certificate with the mining registrar and must give a copy of the certificate to the tribunal.

Subdivision 4—Referral and native title issues decision

If the consultation and negotiation period has ended and a negotiated agreement has not been obtained a party may refer the native title issues to the tribunal. The parties may continue to negotiate or to mediate to achieve a negotiated agreement before the native title issues decision is made by the tribunal.

The hearing will be combined with the ordinary hearing under Part 7 of the application and objections from ordinary title holders.

Subdivision 5—Requirements for combined hearing

Subdivision 5 outlines the requirements for a combined hearing and sets out the consequences of consultation and of failure to comply with Subdivision 3.

The native title issues decision is either that the proposed mining lease may be granted, granted subject to certain conditions, or that it should not be granted. It may include conditions that an amount is to be held in trust for compensation, but may not include a condition that has the effect that a registered native title party is entitled to payments worked out by reference to profits etc.

The Minister may overrule a native title issues decision only in certain circumstances, including that it is in the interests of Queensland.

The native title issues decision must be followed in the overall recommendation to the Minister.

The Subdivision sets out the matters that must be taken into account by the tribunal in making its decision on native title issues.

The tribunal must take all reasonable steps to ensure that its decision on native title issues is made within 4 months.

NB: Refer to flow chart D.

Division 4—Other mining leases not on alternative provision areas

Subdivision 1—Preliminary

The purpose of Division 4 is to provide additional requirements that apply for the granting of a proposed mining lease under Part 7.

The additional requirements do not apply to the extent that the non-exclusive land is an alternative provision area, unless the applicant has chosen to carry out the requirements of this Division on land that is an alternative provision area.

Subdivision 2—Notification and registration requirements

The applicant must give written notice and public notice about the proposed mining lease to all native title notification parties 3 months before the mining lease application is made, or 28 days after the certificate of application is endorsed by the mining registrar. The applicant must give a statutory declaration proving compliance with the notice requirements.

Registered native title parties are existing registered native title bodies corporate and registered native title claimants, and persons who become registered native title parties by filing a native title determination application in the Federal Court within 3 months of the notice and have that claim registered within a further month.

The Subdivision provides for an ending of additional requirements if either:

there are no registered native title parties for the non-exclusive land.

registered native title parties certify that they do not object to the grant and do not wish to be consulted about it.

Subdivision 3—Consultation and negotiation

The parties to the consultation and negotiation required under this Subdivision are the applicant, the registered native title parties and the State. If the State and all other consultation and negotiation parties agree, the State may cease to be a consultation and negotiation party or take a particular role in the process.

The consultation and negotiation period is 3 months. The consultation and negotiation parties must consult and negotiate in good faith with a view to obtaining the agreement of each of the registered native title parties to the granting of the proposed mining lease and any conditions to be complied with by the parties if the lease is granted. Further, the applicant must consult the registered native title parties about ways of minimising the impact of the proposed lease on registered native title rights and interests. The registered native title parties must also consult the other parties about the impact of the project on registered native title rights and interests. There are guidelines for both registered native title party and applicant consultation.

Any consultation and negotiation party may ask for mediation.

If a negotiated agreement is obtained, the parties must lodge a certificate with the mining registrar and must give a copy of the certificate to the tribunal.

An objection to the proposed mining lease may be lodged at any time during the consultation and negotiation period by a registered native title party.

NB: Refer to flow chart E.

Subdivision 4—Referral and native title issue decision

If the consultation and negotiation period has ended and a negotiated agreement has not been obtained a party may refer the native title issues to

the tribunal. The parties may continue to negotiate or to mediate to achieve a negotiated agreement before the native title issues decision is made by the tribunal.

The hearing will be combined with the ordinary hearing under Part 7 of the application and objections from ordinary title holders.

Subdivision 5—Requirements for combined hearing

Subdivision 5 outlines the requirements for a combined hearing and sets out the consequences of consultation and of the failure to comply with Subdivision 3.

The native title issues decision is either that the proposed mining lease may be granted, granted subject to certain conditions, or that it should not be granted. It may include conditions that an amount is to be held in trust for compensation, but may not include a condition that has the effect that a registered native title party is entitled to payments worked out by reference to profits etc.

The Minister may overrule a native title issues decision only in certain circumstances, including that it is in the interests of Queensland. The native title issues decision must be followed in the overall recommendation to the Minister.

The Subdivision sets out the matters that must be taken into account by the tribunal in making its native title issues decisions. These matters are to the same effect as section 39 of the *Native Title Act 1993* (Cwlth).

The tribunal must take all reasonable steps to ensure that a decision is made within 6 months.

Subdivision 6—Special provisions about completion of combined hearing and making of native title issues decision

Subdivision 6 provides that the Minister may give the tribunal a written urgency notice in relation to a proposed mining lease where there has not been a native title issues determination within 4 months. The Subdivision lists the conditions under which the Minister may make a determination if the tribunal's recommendation is delayed. The Subdivision outlines the consultation requirements to be observed by the Minister prior to making a determination.

Division 5—Renewal of mining leases

Division 5 states additional requirements that apply for the renewal of a mining lease under Part 7.

Division 6—Requirements for subsidiary approvals

Division 6 provides the requirements for subsidiary approvals.

Part 18—Compensation Provisions

The Bill provides that native title holders are entitled to compensation for the effect of all mining tenures on native title rights and interests. This addresses the requirements of sections 43A and 43 of the *Native Title Act 1993* (Cwlth). This allows native title holders to obtain compensation in the same way as ordinary title holders, using the provisions of the *Mineral Resources Act 1989*.

The tribunal will decide any disputes about either the actual payment or the amount of compensation.

If a registered native title body corporate is entitled to recover compensation the mining claim or mining lease must not be granted until there is an agreement or a decision of the tribunal about compensation.

If a registered native title body corporate is entitled to compensation in relation to a prospecting permit, exploration permit or mineral development licence, the compensation is payable from time to time after the grant of the permit or licence for the effect of activities carried out under it. This is the same right that ordinary title holders have under the *Mineral Resources Act 1989*.

Where a native title holder other than the registered native title body corporate is entitled to compensation a decision regarding the compensation is not necessary before the mining tenure is granted or activities are commenced under the tenure.

Compensation is not payable to a native title holder until the holder is a registered native title body corporate. However, the tribunal can decide that money should be held in trust for compensation until a determination of native title is made.

The remaining provisions of the Part outline how the amount held in trust for compensation is to be dealt with. These provisions reflect the effect of section 52 of the *Native Title Act 1993* (Cwlth).

Clause 10 of the Bill omits the existing heading to Part 12 of the *Mineral Resources Act 1989* and inserts a new Part heading, Part 19.

Clause 11 of the Bill renumbers existing sections 419 and 420 of the *Mineral Resources Act 1989*.

Part 4—Amendment of Native Title (Queensland) Act 1993

Clause 12 of the Bill provides that Part 4 of the Bill amends the *Native Title (Queensland) Act 1993*.

Clause 13 of the Bill omits the Objective described by section 3(2)(c) of the *Native Title (Queensland) Act 1993* because the scheme will not include the establishment of the Queensland Native Title Tribunal.

Clause 14 of the Bill inserts into existing section 18 of the *Native Title (Queensland) Act 1993* new sub-section (da). This reflects the amendment made to section 212 of the *Native Title Act 1993* (Cwlth) by the *Native Title Amendment Act 1998* (Cwlth).

Clause 15 of the Bill firstly omits the requirement that any reprint of the *Native Title (Queensland) Act 1993* must also contain a copy of the *Native Title Act 1993* (Cwlth). The requirement to attach the Commonwealth Act is onerous and costly as the requirement adds over 800 pages (the reformatting of the Commonwealth legislation to be consistent with Queensland's legislative format causes the legislation to extend to over 800 pages) to an Act which is itself only 44 pages long.

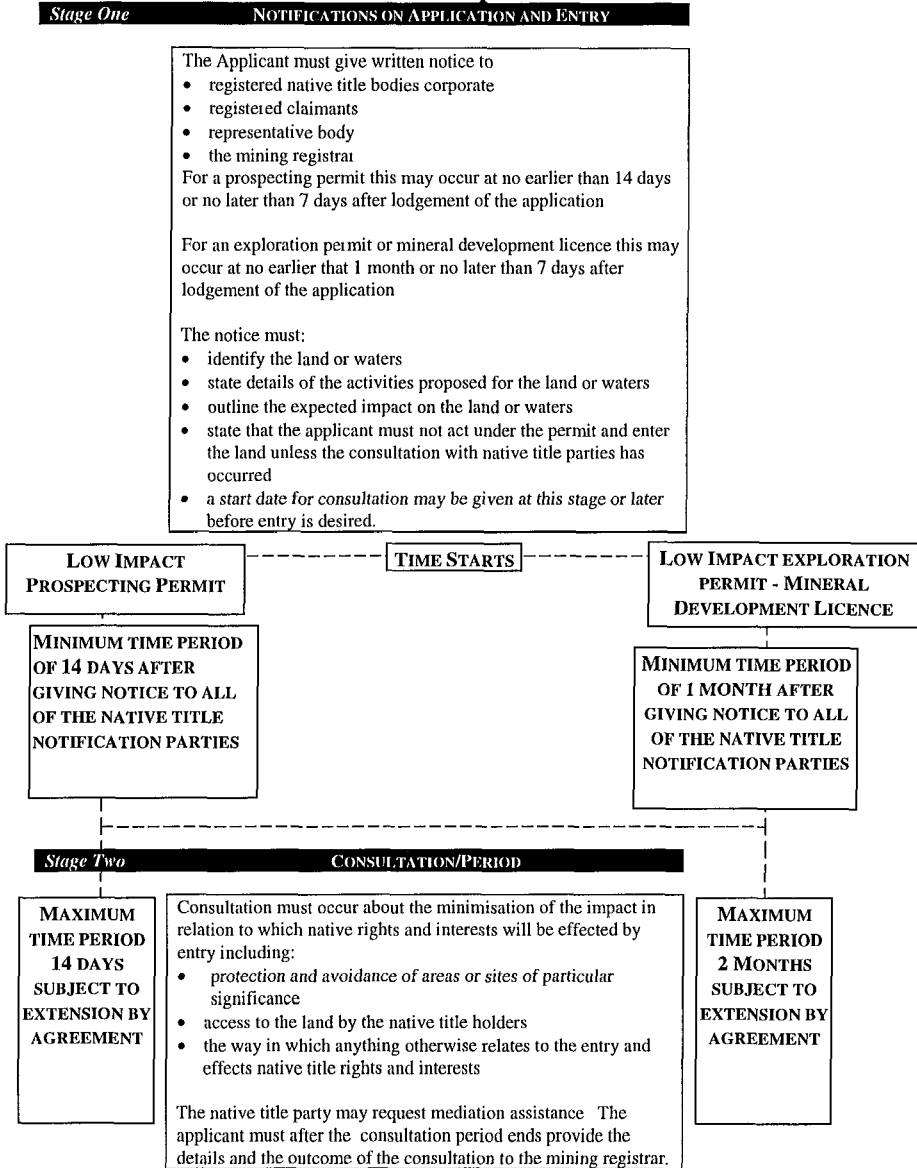
Secondly the clause inserts new section 164A into the *Native Title (Queensland) Act 1993* which reflects the effect of section 43B of the *Native Title Act 1993* (Cwlth). This clause is relevant to the situation where a mining project covers land that is an alternative provision area and land that is not an alternative provision area (eg a pastoral lease and unallocated State land) . If the applicant does not need to go on to the unallocated State land, for example, this section operates as follows:

- the mining tenure application is treated like 2 separate mining tenure applications and the applicant need only go through the requirements for mining tenures on alternative provision areas; but
- the mining tenure will be granted over all the land of the proposed mining tenure (including the unallocated State land, for example).

However, the tenure holder must go through the requirements for mining tenures on land that is not an alternative provision area before it actually enters that unallocated State land.

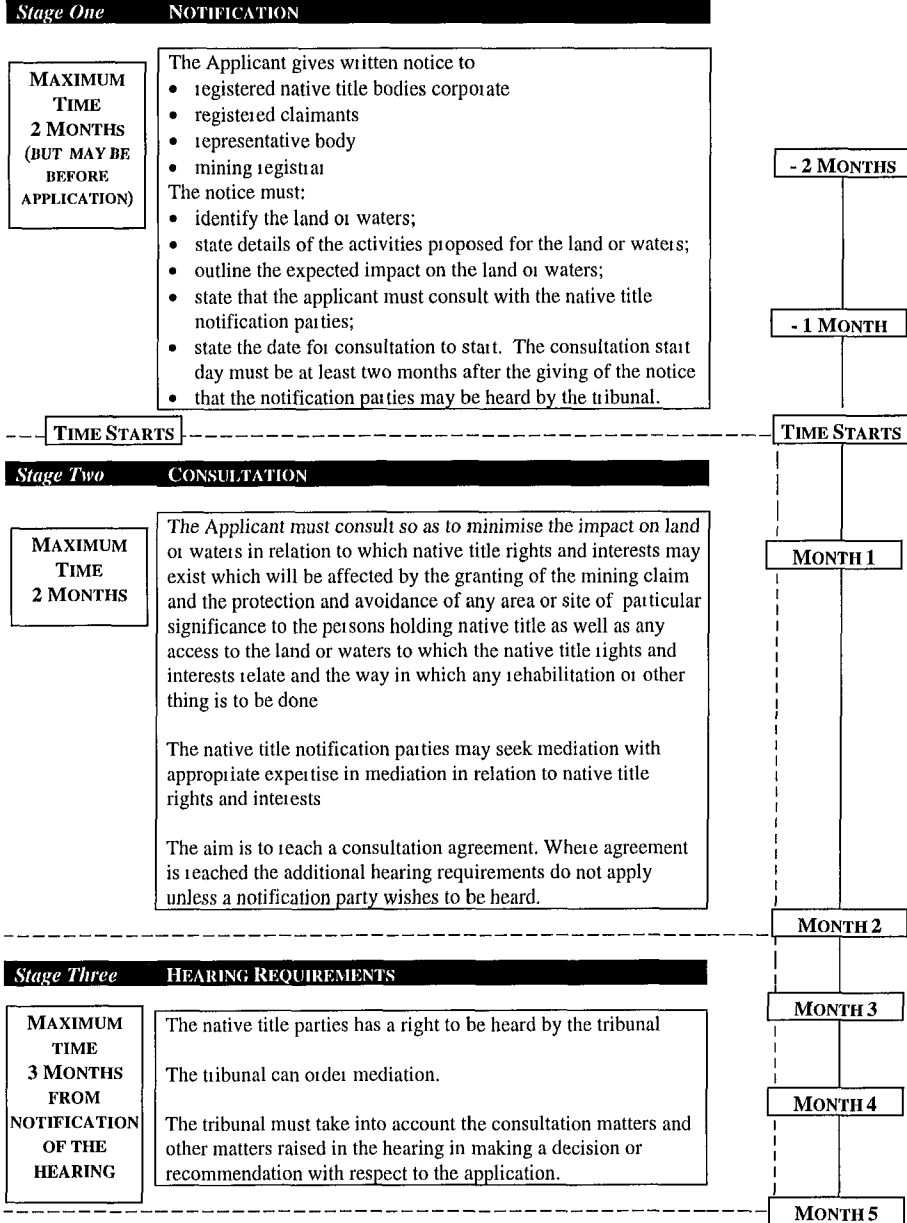
Flow Chart A

Low Impact Prospecting Permits/Exploration Permits and Mineral Development Licences



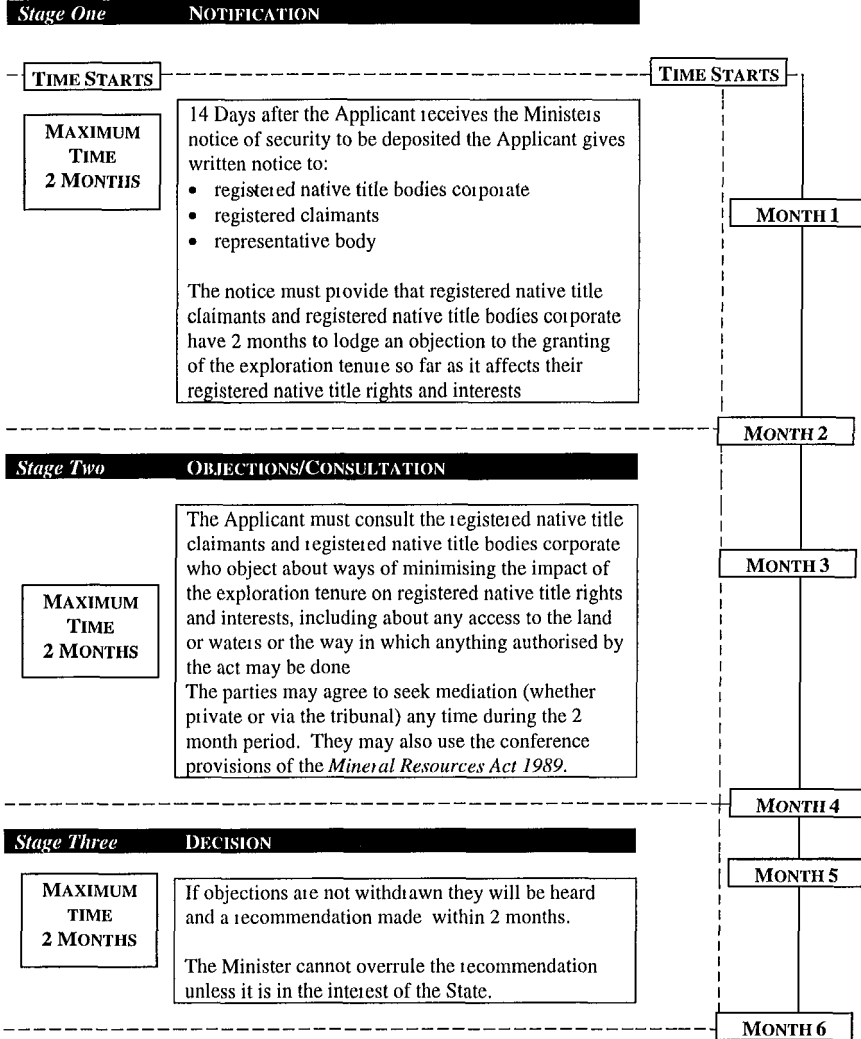
Flow Chart B

Alluvial Gold and Tin Mining Leases and Mining Claims



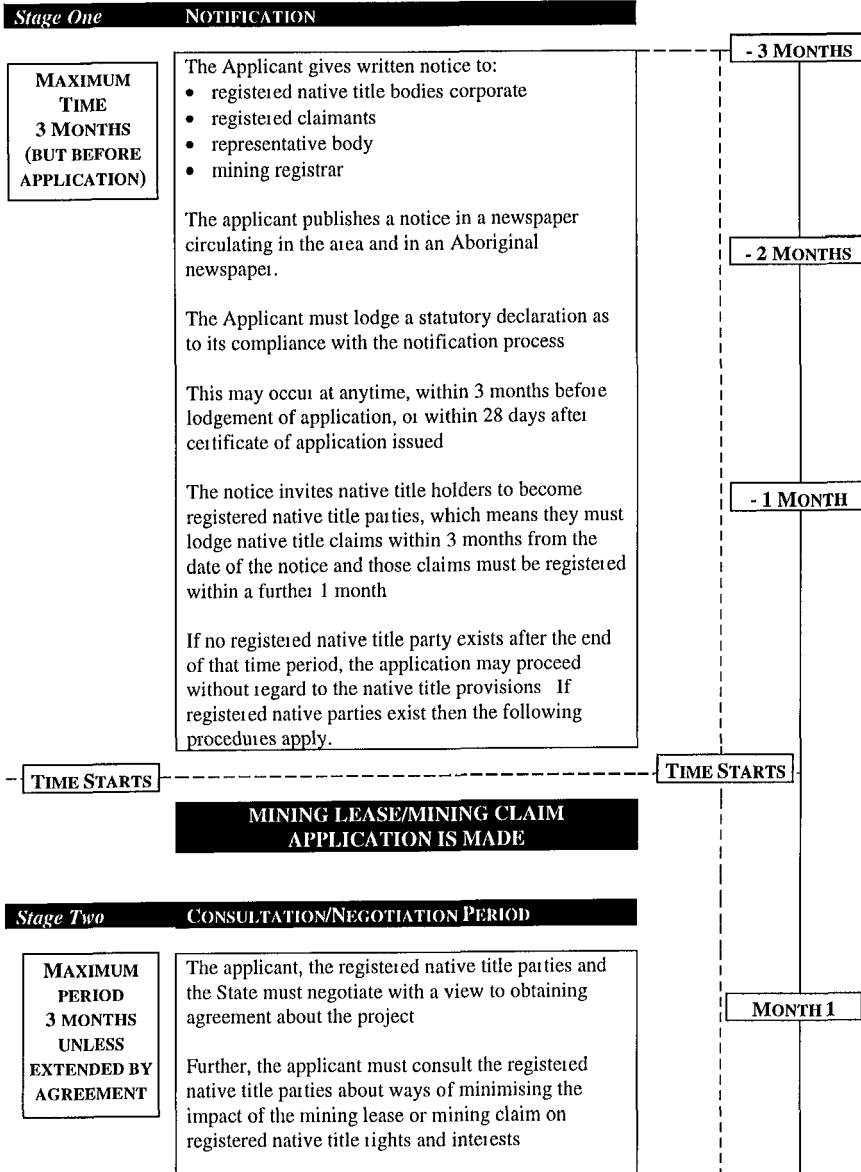
Flow Chart C

High Impact Exploration Permit or Mineral Development Licences on Alternative Provision Areas



NB: High Impact Exploration Permit or Mineral Development Licences not on alternative provision areas see Mining Leases and Mining Claims not on alternative provision areas.

Flow Chart D Mining Leases and Mining Claims on Alternative Provision Areas other than Alluvial Tin and Gold



Each registered native title party must consult the other consultation and negotiation parties about the impact the project will have on their registered native title rights and interests

There are guidelines for carrying out this consultation

At any time during this period a registered native title party may lodge an objection

Mediation may commence at any time in the period to promote agreement between the parties

If agreement is reached, the process proceeds without regard to the additional requirements

MONTH 2

MONTH 3

Stage Three DECISION

**MAXIMUM TIME PERIOD
4 MONTHS**

If agreement is not reached within the consultation and negotiation period, any party can refer it to the tribunal for a decision on native title issues

The tribunal hears the native title issues, and any objections from registered native title parties, in a combined hearing with the ordinary issues.

The tribunal must decide whether, on native title grounds, the mining lease or mining claim may be granted, whether it may be granted subject to conditions or whether it must not be granted. This forms part of the tribunal's overall decision in relation to the mining lease or mining claim

The Minister cannot overrule the decision on native title issues unless it is in the interests of the State

The decision on native title issues must be made within four months of the referral.

MONTH 4

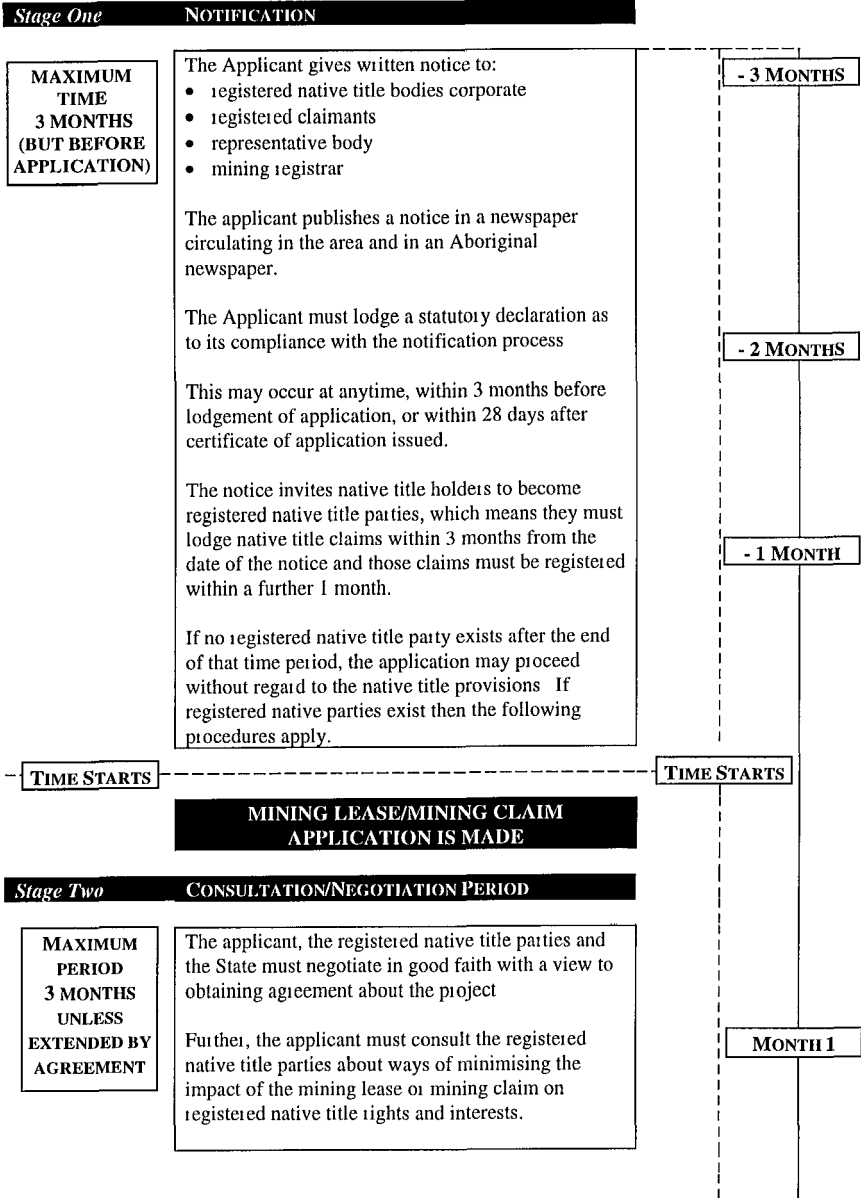
MONTH 5

MONTH 6

MONTH 7

Flow Chart E

Mining Leases and Mining Claims not on Alternate Provision Areas other than for Alluvial Tin and Gold



- 3 MONTHS

- 2 MONTHS

- 1 MONTH

Each registered native title party must consult the other consultation and negotiation parties about the impact the project will have on their registered native title rights and interests

There are guidelines for carrying out this consultation.
At any time during this period a registered native title party may lodge an objection

Mediation may commence at any time in the period to promote agreement between the parties

If agreement is reached, the process proceeds without regard to the additional requirements..

Stage Three DECISION

**MAXIMUM
TIME PERIOD
6 MONTHS**

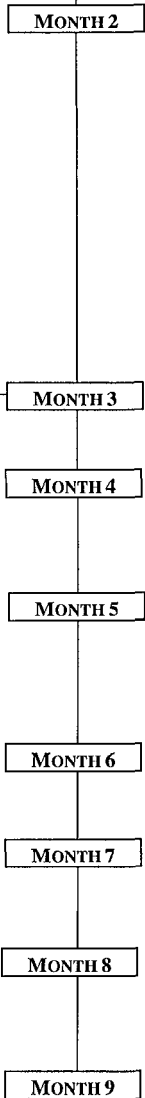
If agreement is not reached within the consultation and negotiation period, any party can refer it to the tribunal for a decision on native title issues

The tribunal hears the native title issues, and any objections from registered native title parties, in a combined hearing with the ordinary issues. The tribunal must take into account the “section 39 criteria” from the Commonwealth Native Title Act

The tribunal must decide whether, on native title grounds, the mining lease or mining claim may be granted, whether it may be granted subject to conditions or whether it must not be granted. This forms part of the tribunal’s overall decision in relation to the mining lease or mining claim

The Minister cannot overrule the decision on native title issues unless it is in the interests of the State

The decision on native title issues must be made within 6 months of the referral. The Minister may intervene and take over making the decision on native title issues if the tribunal does not make the decision within the required time.



Selected definitions and provisions extracted from the
Native Title Act 1993 (Cwlth)

26 When Subdivision applies

Subdivision applies to certain permissible lease etc. renewals

- (1A) This Subdivision applies to a future act if:
- (a) section 24IC (which deals with permissible lease etc. renewals) applies to the act; and
 - (b) the act is done by the Commonwealth, a State or a Territory (the **Government party**); and
 - (c) the renewal, regrant, remaking or extension of the term of the lease, licence, permit or authority concerned creates a right to mine.

Subdivision also applies to certain future acts

- (1) This Subdivision also applies to a future act if:
- (a) Subdivision M (which deals with acts that pass the freehold test) applies to the act; and

Note: That Subdivision only applies to an act to the extent that the act relates to an onshore place: see section 24MC.

- (b) the act is done by the Commonwealth, a State or a Territory (the **Government party**); and
- (c) subject to this section, the act is:
 - (i) the creation of a right to mine, whether by the grant of a mining lease or otherwise, except one created for the sole purpose of the construction of an infrastructure facility (see section 253) associated with mining; or

Note: Rights to mine created for the sole purpose of the construction of an infrastructure facility associated with mining are dealt with in subsection 24MD(6B).

- (ii) the variation of such a right, to extend the area to which it relates; or
- (iii) the compulsory acquisition of native title rights and interests, unless:

- (A) the purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on the Government party and the Government party makes a statement in writing to that effect before the acquisition takes place; or
- (B) the purpose of the acquisition is to provide an infrastructure facility; or

Note: Certain compulsory acquisitions covered by subparagraphs (iii)(A) and (B) are dealt with in subsection 24MD(6B).

- (iv) any other act approved by the Commonwealth Minister, in writing, for the purposes of this paragraph, where, if the act is attributable to a State or Territory, the Commonwealth Minister consulted the State Minister or the Territory Minister about the approval before giving it.

Exclusions

- (2) This Subdivision does not apply to the extent that the act is:
 - (a) an act covered by section 24EB (which deals with the effects of indigenous land use agreements) or by any of the sections listed in paragraphs 24AA(4)(a) to (i); or
 - (b) an act determined in writing by the Commonwealth Minister to be an approved exploration etc. act (see section 26A); or
 - (c) an act determined in writing by the Commonwealth Minister to be an approved gold or tin mining act (see section 26B); or
 - (d) an act excluded by section 26C (which deals with opal or gem mining) from the coverage of this Subdivision; or
 - (e) an act excluded by section 26D (which deals with renewals of valid mining leases etc.) from the coverage of this Subdivision; or
 - (f) an act that is the compulsory acquisition of native title rights and interests and that relates solely to land or waters wholly within a town or city (see section 251C).

Note: Under sections 43 and 43A, a State or Territory may, in certain circumstances, make alternative provisions to the regime provided for by this Subdivision.

Sea and intertidal zone excluded

- (3) This Subdivision only applies to the act to the extent that the act relates to a place that is on the landward side of the mean highwater mark of the sea. A reference to an act to which this Subdivision applies is to be read as referring to the act to that extent only.

26A Approved exploration etc. acts

- (1) If the conditions in this section are satisfied, the Commonwealth Minister may determine in writing that an act, or that each act included in a class of acts, is an approved exploration etc. act.

First condition

- (2) The first condition is that the act, or acts included in the class, consist of the creation or variation of a right to mine, where the right as so created or varied is a right to explore, a right to prospect or a right to fossick.

Second condition

- (3) The second condition is that the Minister is satisfied that the act or acts are unlikely to have a significant impact on the particular land or waters concerned.

Drilling and second condition

- (4) If the act or acts authorise drilling, this does not mean that the second condition cannot be satisfied.

Third condition

- (5) The third condition is that the Minister has:
- (a) notified any relevant representative Aboriginal/Torres Strait Islander bodies, and notified the public in the determined way, of the proposed determination; and
 - (b) invited submissions from them about the proposed determination; and
 - (c) considered any submissions made in response to the invitation.

Fourth condition

- (6) The fourth condition is that the Minister is satisfied that, if the determination is made:
- (a) all:
 - (i) registered native title bodies corporate; and
 - (ii) registered native title claimants; and
 - (iii) representative Aboriginal/Torres Strait Islander bodies; in relation to any of the land or waters that will be affected by the act or acts will have a right to be notified that the act or each act included in the class is to be done; and
 - (b) any such persons or bodies will have a right to be heard by an independent person or body about:
 - (i) whether the act is to be done; and
 - (ii) any matter relating to the doing of the act;

unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters;
and

- (c) either:
- (i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body indicates that the person or body does not wish to be so consulted; or
 - (ii) procedures will be in place under which such consultation will be required;

for the purpose of minimising the impact of the act on the exercise of native title rights and interests in relation to land or waters that will be affected by the act, and in particular about the matters set out in subsection (7).

Matters relevant to fourth condition

- (7) The matters are:
- (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; and
 - (b) any access to the land or waters to which the native title rights and interests relate by:
 - (i) those persons; or
 - (ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and
 - (c) the way in which any other thing that:
 - (i) is authorised because of, results from, or otherwise relates to, the doing of the act; and
 - (ii) affects the native title rights and interests;
 is to be done.

Revocation of determination

- (8) If, at any time after making the determination, the Commonwealth Minister considers that circumstances have changed to the extent that the conditions in this section would not be satisfied if he or she were making the determination at that time, the Commonwealth Minister must:

- (a) if the act or acts are done by a State or Territory:
 - (i) advise the State Minister or the Territory Minister concerned in writing of the fact; and
 - (ii) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfied in writing, revoke the determination; or
- (b) if the act or acts are done by the Commonwealth in writing, revoke the determination.

26B Approved gold or tin mining acts

- (1) If the conditions in this section are satisfied, the Commonwealth Minister may determine in writing that each act included in a class of acts done by a State or Territory is an approved gold or tin mining act.

First condition

- (2) The first condition is that the relevant State Minister or Territory Minister has requested the Commonwealth Minister in writing to make such a determination in relation to acts in the class.

Second condition

- (3) The second condition is that acts included in the class consist of the creation or variation of rights to mine, where the rights as so created or varied are rights to mine gold, or tin, in surface alluvium.

Third condition

- (4) The third condition is that, by or under a law of the State or Territory, the only way in which the gold or tin may be recovered from the material that is mined is by a washing or an aeration process.

Fourth condition

- (5) The fourth condition is that, by or under a law of the State or Territory, the persons given the rights to mine will be required to 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.

Fifth condition

- (6) The fifth condition is that the Commonwealth Minister has:
 - (a) notified any relevant representative Aboriginal/Torres Strait Islander bodies, and notified the public in the determined way, of the proposed determination; and

- (b) invited submissions from them about the proposed determination; and
- (c) considered any submissions made in response to the invitation.

Sixth condition

- (7) The sixth condition is that the Commonwealth Minister is satisfied that, if the determination is made:

- (a) all:
 - (i) registered native title bodies corporate; and
 - (ii) registered native title claimants; and
 - (iii) representative Aboriginal/Torres Strait Islander bodies;

in relation to any land or waters that will be affected by the acts will have a right to be notified that each act included in the class is to be done; and
- (b) any such persons or bodies will have a right to be heard by an independent person or body about:
 - (i) whether the act is to be done; and
 - (ii) any matter relating to the doing of the act;

unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters; and
- (c) either:
 - (i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body indicates that the person or body does not wish to be so consulted; or
 - (ii) procedures will be in place under which such consultation will be required;

for the purpose of minimising the impact of the act on land or waters, in relation to which native title rights and interests may exist, that will be affected by the act, and in particular about the matters set out in subsection (8).

Matters relevant to sixth condition

- (8) The matters are:
- (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; and

- (b) any access to the land or waters to which the native title rights and interests relate by:
 - (i) those persons; or
 - (ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and
- (c) the way in which any rehabilitation or other thing that is authorised because of, results from, or otherwise relates to, the doing of the act is to be done.

Revocation of determination

- (9) If, at any time after making the determination, the Commonwealth Minister considers that circumstances have changed to the extent that the conditions in this section would not be satisfied if he or she were making the determination at that time, the Commonwealth Minister must:
 - (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and
 - (b) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfied, in writing, revoke the determination.

26C Excluded opal or gem mining*Mining other than exploring or prospecting*

- (1) This Subdivision does not apply to an act consisting of the creation or variation of a right to mine, if the right, as so created or varied:
 - (a) is not a right to explore or prospect; and
 - (b) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and
 - (c) allows:
 - (i) mining (other than puddling) only for opals or gems; or
 - (ii) mining consisting of puddling in respect of opals or gems; and
 - (d) allows that mining only in an area no larger than 5 hectares; and
 - (e) is conferred for a period of no more than 5 years; and
 - (f) if the right is able to be renewed one or more times is able to be renewed for no more than 5 years each time.

Exploring or prospecting

- (1A) This Subdivision also does not apply to an act consisting of the creation or variation of a right to mine that is a right to explore or prospect, if the right, as so created or varied:
- (a) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and
 - (b) allows exploration or prospecting only for opals or gems; and
 - (c) allows that exploration or prospecting in an area no larger than 500 hectares; and
 - (d) is conferred for a period of no more than 5 years; and
 - (e) if the right is able to be renewed one or more times is able to be renewed for no more than 5 years each time.

Approved opal or gem mining area

- (2) If the conditions in subsections (3) to (5A) are satisfied, the Commonwealth Minister may determine in writing that a specified area of land or waters within a particular State or Territory is an approved opal or gem mining area for the purposes of this section.

First condition

- (3) The first condition is that the relevant State Minister or Territory Minister has requested the Commonwealth Minister in writing to make such a determination in relation to the area.

Second condition

- (4) The second condition is that the Commonwealth Minister is satisfied, having regard to:

- (a) any mining rights conferred in the past in the area; and
- (b) any other relevant matter;

that in the future at least some rights will be conferred to mine in the area that will:

- (c) allow:
 - (i) mining for opals or gems (other than mining consisting of exploring, prospecting or puddling) only in an area no larger than 5 hectares; or
 - (ii) mining consisting of puddling in respect of opals or gems only in an area no larger than 5 hectares; or
 - (iii) mining consisting of exploration or prospecting for opals or gems in an area no larger than 500 hectares; and

- (d) be conferred for a period of no more than 5 years; and
- (e) if the rights are renewed one or more timesóbe renewed for a period of no more than 5 years each time.

Third condition

- (5) The third condition is that, before making the request, the State Minister or Territory Minister:
 - (a) notified the public, and notified any registered native title bodies corporate, registered native title claimants and representative Aboriginal/Torres Strait Islander bodies in relation to any of the area, that he or she was intending to make the request in relation to the area; and
 - (b) invited submissions about the request, and in particular about the area covered by the request and about processes for the identification and protection of any area or site within that area of particular significance to native title holders in accordance with their traditional laws and customs; and
 - (c) considered any such submissions that were made.

Fourth condition

- (5A) The fourth condition is that the Commonwealth Minister is satisfied, immediately before the determination is made, that mining for opals or gems is being carried on in the whole or a substantial part of:
 - (a) if paragraph (b) does not applyóthe area; or
 - (b) if, immediately before the determination is made, any part of the area is an approved opal or gem mining areaóso much of the area as is not already an approved opal or gem mining area.

Revocation of determination

- (6) If, at any time after making the determination, the Commonwealth Minister considers that circumstances have changed to the extent that the conditions in subsections (3) to (5A) would not be satisfied if he or she were making the determination at that time, the Commonwealth Minister must:
 - (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and
 - (b) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfiedóin writing, revoke the determination.

26D Excluded mining acts: earlier valid acts*Renewal of valid mining lease etc.*

- (1) This Subdivision does not apply to an act consisting of the creation of a right to mine if:
- (a) the creation of the right is done by:
 - (i) the renewal; or
 - (ii) the regrant or remaking; or
 - (iii) the extension of the term;
 - of an earlier right to mine; and
 - (b) the earlier right:
 - (i) was created on or before 23 December 1996 by an act that is valid (including because of Division 2 or 2A); or
 - (ii) was created by an act to which this Subdivision applied that was not invalid to any extent under section 28; and
 - (c) the area to which the earlier right relates is not extended; and
 - (d) the term of the right is not longer than the term of the earlier right; and
 - (e) no rights are created in connection with the right that were not created in connection with the earlier right.

Act contemplated by exploration or prospecting agreement etc.

- (2) This Subdivision does not apply to an act (the later act) consisting of the creation of a right to mine if:
- (a) before the later act takes place, an act (the earlier act) consisting of the creation of a right to explore or prospect took place; and
 - (aa) the earlier act took place after the commencement of this section; and
 - (b) this Subdivision applied to the earlier act and, because:
 - (i) an agreement of the kind mentioned in paragraph 31(1)(b) was made in relation to the earlier act; or
 - (ii) a determination was made under section 38 that the earlier act might be done, or might be done subject to conditions being complied with;
 - the earlier act was not invalid to any extent under section 28; and
 - (c) the agreement or determination:

- (i) included a statement to the effect that, if the later act were done, this Subdivision would not apply to the later act; and
- (ii) provided that, if the later act were done, certain conditions would be complied with by parties other than native title parties (whether before or after the act was done); and
- (d) any such conditions that were required to be complied with before the later act is done are complied with before the later act is done.

30 Other native title parties etc.

- (1) Each of the following is also a native title party:
 - (a) any person who, 4 months after the notification day (see subsection 29(4)), is a registered native title claimant in relation to any of the land or waters that will be affected by the act, so long as:
 - (i) the application containing the claim was filed in the Federal Court, or given to the recognised State/Territory body, before the end of 3 months after the notification day; and
 - (ii) the claim related to any of the land or waters that will be affected by the act;

Note: The note to subparagraph 29(2)(b)(i) explains who can be a registered native title claimant.

- (b) any body corporate that, 3 months after the notification day, is a registered native title body corporate in relation to any of the land or waters that will be affected by the act;
- (c) any body corporate that becomes a registered native title body corporate in relation to any of the land or waters that will be affected by the act:
 - (i) after the end of that period of 3 months; and
 - (ii) as a result of a claim whose details were entered on the Register of Native Title Claims before the end of that period of 3 months.

Ceasing to be a native title party

- (2) A person ceases to be a native title party if the person ceases to be a registered native title claimant.

Note: If a native title claim is successful, the registered native title claimant will be succeeded as a native title party by the registered native title body corporate.

Registered native title rights and interests

- (3) For the purposes of this Subdivision, the registered native title rights and interests of a native title party are:
- (a) if the native title party is such because an entry has been made on the National Native Title Register^othe native title rights and interests described in that entry; or
 - (b) if the native title party is such because an entry has been made on the Register of Native Title Claims^othe native title rights and interests described in that entry.

Replacing a native title party

- (4) If:
- (a) a person becomes a registered native title claimant because the person replaces another person as the applicant in relation to a claimant application; and
 - (b) the other person is a native title party;
- the first-mentioned person also replaces the other person as the native title party.

Sections 43 & 43A**43 Modification of Subdivision if satisfactory alternative State or Territory provisions***Determination about alternative provisions*

- (1) If:
- (a) a law of a State or Territory provides for alternative provisions to those contained in this Subdivision in relation to some or all acts to which this Subdivision applies that are attributable to the State or Territory; and
 - (b) the Commonwealth Minister determines in writing that the alternative provisions comply with subsection (2);

then, while the determination is in force, the alternative provisions have effect instead of this Subdivision.

Requirement to be satisfied

- (2) The alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:
- (a) contain appropriate procedures for notifying registered native title bodies corporate, representative bodies, registered native title claimants and potential native title claimants of the act; and

- (b) require negotiation in good faith among the persons concerned; and
- (c) provide for mediation by a person or body to assist in settling any dispute among the persons concerned regarding the act; and
- (d) give registered native title bodies corporate and registered native title claimants the right to object against the act; and
- (e) make provision on similar terms to section 30 and contain time limits similar to those applicable under this Subdivision; and
- (f) provide that the body determining the objection consists of, or includes, persons enrolled for at least 5 years as legal practitioners of:
 - (i) the High Court; or
 - (ii) another federal court; or
 - (iii) the Supreme Court of a State or Territory; and
- (g) make provision to the same effect as section 39 in relation to matters that are required to be taken into account by the body determining the objection; and
- (h) if the alternative provisions involve the hearing and determination of the objection by a person or body other than the NNTT or a recognised State/Territory body for the State or Territory—provide for a member of the recognised State/Territory body (if any) or of the NNTT to participate in the determination; and
 - (i) provide that any decision of the body determining the objection may only be overruled on grounds of State or Territory interest or of national interest; and
- (j) make appropriate provision for compensation for the act, including provision for trusts on similar terms to those in subsections 36C(5), 41(3) and 42(5); and
- (k) if the alternative provisions allow a Minister to make a determination in relation to the act in circumstances other than those covered in paragraph (i)—provide for those circumstances to be similar to those set out in section 36A and for requirements similar to those in sections 36B and 36C to apply.

Revocation of determination

- (3) If at any time the alternative provisions are amended so that they no longer comply with subsection (2), the Commonwealth Minister must:
 - (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

- (b) if, at the end of 180 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply in writing, revoke the determination made under paragraph (1)(b); and
- (c) if:
 - (i) at the end of 180 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and
 - (ii) before the end of the 180 days, the Commonwealth Minister determined in writing that a further period should apply for the purposes of this paragraph; and
 - (iii) at the end of the further period, the alternative provisions still do not comply;
 in writing, revoke the determination made under paragraph (1)(b).

Note: A determination mentioned in subparagraph (c)(ii) is a disallowable instrument: see section 214.

Regulations to make transitional provisions

- (4) The regulations may prescribe any modifications of this Act that are necessary to deal with transitional matters arising from the making, amendment or revocation of determinations under this section.

43A Exception to right to negotiate: satisfactory State/Territory provisions

Determination about alternative provisions

- (1) If:
 - (a) a law or laws of a State or Territory provide for alternative provisions to those contained in this Subdivision in relation to some or all acts to which this Subdivision applies that:
 - (i) are attributable to the State or Territory; and
 - (ii) relate, to any extent, to an area of land or waters that is an alternative provision area (see subsection (2)); and
 - (b) the Commonwealth Minister determines in writing that the provisions comply with subsections (4) and (6) and that the requirements of subsection (7) are complied with;

then, subject to subsection (10), while the determination is in force, the alternative provisions have effect instead of this Subdivision.

Meaning of alternative provision area

(2) An **alternative provision area** is:

- (a) an area:
 - (i) that is, or was (whether before or after this Act commenced), covered by a freehold estate in fee simple or by a lease (other than a mining lease); and
 - (ii) over which all native title rights and interests have not been extinguished; or

Example 1: An example of such an area is an area covered by a nonexclusive agricultural lease or a nonexclusive pastoral lease (including one subject to section 47).

Example 2: An example of a freehold estate in fee simple over which all native title rights and interests may not have been extinguished is one whose grant or vesting is covered by subsection 23B(9), (9A), (9B) or (9C).

- (b) an area that is, or was (whether before or after this Act commenced):
 - (i) covered by a reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Crown in right of the State or Territory or by the making, amendment or repeal of legislation of the State or Territory, under which the whole or a part of the land or waters in the area was to be used for public purposes generally or for a particular purpose; and
 - (ii) in use for public purposes, for the particular purpose or for a similar purpose; or

Example: An example of an area covered by paragraph (b) is an area containing a national park.

- (c) an area that, when the act is done, is wholly within a town or city (see section 251C).

Notification of proposed determination

- (3) Before making the determination, the Commonwealth Minister must:
- (a) notify all representative Aboriginal/Torres Strait Islander bodies for the land or waters concerned of the proposed determination; and
 - (b) invite submissions from them about the proposed determination; and

- (c) consider any submissions made in response to the invitation.

Requirement to be satisfied: procedures etc.

- (4) For the purposes of paragraph (1)(b), the alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:

- (a) contain appropriate procedures for notifying each of the following that an act to which the provisions apply is to be done:

- (i) any registered native title claimant (a claimant) in relation to any of the land or waters to which the act relates;
- (ii) any registered native title body corporate (a **body corporate**) in relation to any of that land or waters;
- (iii) any representative Aboriginal/Torres Strait Islander body in relation to any of that land or waters; and

- (b) give any claimant or body corporate the right to object, within a specified period after the notification, to the doing of the act so far as it affects their registered native title rights and interests; and

- (c) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions) provide for consultation (including provide in relation to mediation) between:

- (i) any claimants, and bodies corporate, who object; and
- (ii) the State or Territory;

about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned; and

- (d) in any other case provide for consultation (including provide in relation to mediation) between:

- (i) any claimants, and bodies corporate, who object; and
- (ii) the person who requested or applied for the doing of the act;

about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned, including about any access to the land or waters or the way in which any thing authorised by the act might be done; and

- (e) if any person objects as mentioned in paragraph (b), provide for the objection to be heard by an independent person or body; and

Example: The independent person or body could be a State or Territory tribunal which deals with acts of the kind concerned, for example, a mining warden where the act is the grant of a mining lease.

- (f) provide for judicial review of the decision to do the act; and
Example: The judicial review could be by the Supreme Court of the State or Territory.
- (g) provide that, if the independent person or body hearing any objection as mentioned in paragraph (e) makes a determination upholding the objection, or that contains conditions about the doing of the act that relate to registered native title rights and interests, the determination must be complied with unless:
 - (i) the Minister of the State or the Territory responsible for indigenous affairs is consulted; and
 - (ii) the consultation is taken into account; and
 - (iii) it is in the interests of the State or the Territory not to comply with the determination; and
- (h) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions) confer on each claimant and body corporate procedural rights that are not less favourable than those they would have on the assumption that they instead held ordinary title to any land concerned and to the land adjoining, or surrounding, any waters concerned.

*Meaning of **determination***

- (5) In paragraph (4)(g):

determination includes recommendation.

in the interests of the State or the Territory includes:

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

Requirement to be satisfied: compensation

- (6) For the purposes of paragraph (1)(b), the alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they provide for compensation for the effect of the act on native title to be payable and for any dispute about the compensation to be determined by an independent person or body.

Requirement to be satisfied: preservation of areas of significance

- (7) For the purposes of paragraph (1)(b), the requirements of this subsection are complied with if, in the opinion of the Commonwealth Minister, a law of the Commonwealth, the State or the Territory provides, for the whole of the land or waters to which the alternative

provisions relate, in relation to the preservation or protection of areas, or sites, that may be of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Different provisions for different kinds of land or waters

- (8) Laws of a State or Territory may make different provision under subsection (1) in relation to different kinds of land or waters.

Note: In such a case, the Commonwealth Minister would need to make separate determinations under that subsection.

Revocation of determination

- (9) If at any time the alternative provisions are amended so that they no longer comply as mentioned in paragraph (1)(b), the Commonwealth Minister must:

- (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and
- (b) if, at the end of 90 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply in writing, revoke the determination made under paragraph (1)(b); and
- (c) if:
 - (i) at the end of 90 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and
 - (ii) before the end of the 90 days, the Commonwealth Minister determined in writing that a further period should apply for the purposes of this paragraph; and
 - (iii) at the end of the further period, the alternative provisions still do not comply;

in writing, revoke the determination made under paragraph (1)(b).

Note: A determination mentioned in subparagraph (c)(ii) is a disallowable instrument: see section 214.

Exclusion of certain compulsory acquisitions

- (10) The alternative provisions do not apply to an act of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions) if the act involves the acquisition of native title rights and

interests in relation to land or waters in both an alternative provision area and an area that is not an alternative provision area.

Regulations to make transitional provisions

- (11) The regulations may prescribe any modifications of this Act that are necessary to deal with transitional matters arising from the making, amendment or revocation of determinations under this section.

Sections 222—253

Division 1—List of definitions

222 List of definitions

The following table lists the definitions in this Part and shows their location:

List of Definitions

Expression	Section
Aboriginal peoples	253
Aboriginal/Torres Strait Islander land or waters	253
act	226
act attracting the expedited procedure	237
affect	227
agricultural lease	247
applicant	253
approved determination of native title	253
arbitral body	253
assessor	253
attributable	239
authorise	253
category A intermediate period act	232B
category A past act	229c
category B intermediate period act	232C
category B past act	230
category C intermediate period act	232D
category C past act	231
category D intermediate period act	232E
category D past act	232
Chief Justice	253
claimant application	253
coastal sea	253
commercial lease	246
common law holders	253
Commonwealth Minister	253
community purposes lease	249A
determination of native title	225
exclusive agricultural lease	247A

List of Definitions

exclusive pastoral lease		248A
explore		253
extinguish	237A	
Federal Court		253
forest operations		253
former judge		253
future act		233
Government party		253
grantee party		253
horticulture		253
indigenous land use agreement		253
infrastructure facility		253
interest		253
intermediate period act		232A
Judge		253
jurisdictional limits	253	
land		253
land or waters on which a public work is constructed, established or situated	251D	
lease	242	
lessee		243
major earthworks		253
member		253
mine	253	
mining lease		245
National Native Title Register		253
National Native Title Tribunal		253
native title	223	
native title claim group		253
native title group		24CD, 24DE
native title holder		224
native title party		253
Native Title Registrar		253
native title rights and interests		223
negotiation party		253
NNTT		253
non-claimant application		253
non-exclusive agricultural lease		247B
non-exclusive pastoral lease		248B
non-extinguishment principle		238
non-presidential member		253
notify the public in the determined way	252	
offshore place		253
onshore place		253
ordinary title		253
paragraph 51(xxxi) acquisition of property		253
paragraph 51(xxxi) just terms		253

List of Definitions

past act		228
pastoral lease		248
permit		244
perpetual lease	249B	
prescribed		253
President		253
presidential member		253
previous exclusive possession act		23B
previous non-exclusive possession act	23F	
primary production activity		24GA
procedural right		253
public work		253
recognised State/Territory body		253
Register of Indigenous Land Use Agreements	253	
Register of Native Title Claims		253
registered native title body corporate	253	
registered native title claimant		253
Registrar		253
representative Aboriginal/Torres Strait Islander body	253	
representative body		253
residential lease		249
right to negotiate application		253
Scheduled interest		249C
similar compensable interest test		240
special matter		253
State Minister		253
statutory authority		253
subject to section		24FA
protection	253	
Territory Minister		253
Torres Strait Islander		253
town or city		251C
traditional activity		44A
Tribunal		253
valid	253	
waters		253

Division 2—Key concepts: Native title and acts of various kinds etc.**223 Native title***Common law rights and interests*

- (1) The expression *native title* or *native title rights and interests* means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:
 - (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

- (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia.

Hunting, gathering and fishing covered

- (2) Without limiting subsection (1), **rights and interests** in that subsection includes hunting, gathering, or fishing, rights and interests.

Statutory rights and interests

- (3) Subject to subsections (3A) and (4), if native title rights and interests as defined by subsection (1) are, or have been at any time in the past, compulsorily converted into, or replaced by, statutory rights and interests in relation to the same land or waters that are held by or on behalf of Aboriginal peoples or Torres Strait Islanders, those statutory rights and interests are also covered by the expression **native title** or **native title rights and interests**.

Note: Subsection (3) cannot have any operation resulting from a future act that purports to convert or replace native title rights and interests unless the act is a permissible future act.

Subsection (3) does not apply to statutory access rights

- (3A) Subsection (3) does not apply to rights and interests conferred by Subdivision Q of Division 3 of Part 2 of this Act (which deals with statutory access rights for native title claimants).

Case not covered by subsection (3)

- (4) To avoid any doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title rights and interests):
 - (a) in a pastoral lease granted before 1 January 1994; or
 - (b) in legislation made before 1 July 1993, where the reservation or condition applies because of the grant of a pastoral lease before 1 January 1994.

224 Native title holder

The expression **native title holder**, in relation to native title, means:

- (a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust of the prescribed body corporate; or
- (b) in any other case of the person or persons who hold the native title.

225 Determination of native title

A **determination of native title** is a determination whether or not native title exists in relation to a particular area (the **determination area**) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a nonexclusive agricultural lease or a nonexclusive pastoral lease—whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of nonnative title interests.

226 Act

Section affects meaning of act in references relating to native title

- (1) This section affects the meaning of act in references to an act affecting native title and in other references in relation to native title.

Certain acts included

- (2) An **act** includes any of the following acts:
 - (a) the making, amendment or repeal of any legislation;
 - (b) the grant, issue, variation, extension, renewal, revocation or suspension of a licence, permit, authority or instrument;
 - (c) the creation, variation, extension, renewal or extinguishment of any interest in relation to land or waters;
 - (d) the creation, variation, extension, renewal or extinguishment of any legal or equitable right, whether under legislation, a contract, a trust or otherwise;
 - (e) the exercise of any executive power of the Crown in any of its capacities, whether or not under legislation;

(f) an act having any effect at common law or in equity.

Acts by any person

(3) An act may be done by the Crown in any of its capacities or by any other person.

227 Act affecting native title

An act *affects* native title if it extinguishes the native title rights and interests or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

228 Past act

Definition

(1) This section defines *past act*.

Acts before 1 July 1993 or 1 January 1994

(2) Subject to subsection (10), if:

(a) either:

(i) at any time before 1 July 1993 when native title existed in relation to particular land or waters, an act consisting of the making, amendment or repeal of legislation took place; or

(ii) at any time before 1 January 1994 when native title existed in relation to particular land or waters, any other act took place; and

(b) apart from this Act, the act was invalid to any extent, but it would have been valid to that extent if the native title did not exist;

the act is a *past act* in relation to the land or waters.

Options exercised on or after 1 January 1994 etc.

(3) Subject to subsection (10), an act that takes place on or after 1 January 1994 is a *past act* if:

- (a) it would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and
- (b) it takes place:
 - (i) in exercise of a legally enforceable right created by the making, amendment or repeal of legislation before 1 July 1993 or by any other act done before 1 January 1994; or

- (ii) in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith before 1 July 1993, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made; and
- (c) the act is not the making, amendment or repeal of legislation.

Extensions, renewals etc.

- (4) Subject to subsections (6) and (10), an act (the *later act*) that takes place on or after 1 January 1994 is a *past act* if:
 - (a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and
 - (b) an act (the *earlier act*) that is a past act because of any subsection of this section (including because of another application of this subsection) took place before the later act; and
 - (c) the earlier act created interests in a person and the later act creates interests in:
 - (i) the same person; or
 - (ii) another person who has acquired the interests of the first person (by assignment, succession or otherwise);

in relation to the whole or part of the land or waters to which the earlier act relates; and
 - (d) the interests created by the later act take effect before or immediately after the interests created by the earlier act cease to have effect; and
 - (e) the interests created by the later act permit activities of a similar kind to those permitted by the earlier act.

Examples of similar and dissimilar acts for the purposes of paragraph (4)(e)

- (5) The following are examples for the purposes of paragraph (4)(e):
 - (a) the grant of a lease that permits mining only for a particular mineral followed by the grant of a lease that permits similar

mining for another mineral is an example of a case where interests created by an earlier act permit activities that are of a similar kind to those permitted by a later act;

- (b) the grant of a lease that permits only grazing followed by the grant of a lease that permits mining is an example of a case where interests created by an earlier act permit activities that are not of a similar kind to those permitted by a later act.

Cases excluded from subsection (4)

- (6) Subsection (4) does not apply if:
 - (a) the earlier act was the creation of a non-proprietary interest in relation to land or waters and the later act is the creation of a proprietary interest in land or waters; or
 - (b) the earlier act was the creation of a proprietary interest in land or waters and the later act is the creation of a larger proprietary interest in land or waters; or
 - (c) if the earlier act contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders the later act does not contain the same reservation or condition; or
 - (d) the earlier act or the later act is the making, amendment or repeal of legislation.

Example of earlier and later acts for the purposes of paragraph (6)(a)

- (7) For the purposes of paragraph (6)(a), the issue of a licence followed by the grant of a lease is an example of an earlier act that is the creation of a non-proprietary interest in relation to land and a later act that is the creation of a proprietary interest in land.

Example of earlier and later acts for the purposes of paragraph (6)(b)

- (8) For the purposes of paragraph (6)(b), the grant of a lease followed by the grant of a freehold estate is an example of an earlier act that is the creation of a proprietary interest in land and a later act that is the creation of a larger proprietary interest in land.

Other extensions, and developments, of earlier acts

- (9) Subject to subsection (10), an act (the *later act*) that takes place on or after 1 January 1994 is a *past act* if:
- (a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and
 - (b) an act (the *earlier act*) that is a past act because of any subsection of this section took place before the later act; and
 - (c) the earlier act contained or conferred a reservation, condition, permission or authority under which the whole or part of the land or waters to which the earlier act related was to be used at a later time for a particular purpose (for example, a reservation for forestry purposes); and

- (d) the later act is done in good faith under or in accordance with the reservation, condition, permission or authority (for example, the issue in good faith of a licence to take timber under a reservation for forestry purposes); and
- (e) the later act is not the making, amendment or repeal of legislation.

Excluded acts

- (10) An act is not a *past act* if it is:
 - (a) the *Queensland Coast Islands Declaratory Act 1985* of Queensland; or
 - (b) any other act declared by the regulations to be an excluded act for the purposes of this paragraph.

229 Category A past act*Section defines expression*

- (1) This section defines the expression ***category A past act***.

Grant of certain freehold estates

- (2) A past act consisting of the grant of a freehold estate is a ***category A past act*** if:
 - (a) either:
 - (i) the grant was made before 1 January 1994 and the estate existed on 1 January 1994; or
 - (ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or 228(9) (which deals with other extensions etc. of earlier acts) applies; and
 - (b) the grant is not:
 - (i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
 - (ii) a grant made by or under legislation that grants freehold estates only to or for the benefit of Aboriginal peoples or

Torres Strait Islanders; or

- (iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

Grant of certain leases

- (3) A past act consisting of the grant of:
- (a) a commercial lease, an agricultural lease, a pastoral lease or a residential lease; or
 - (b) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection;

is a **category A past act** if:

- (c) either:
 - (i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or
 - (ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) or (9) applies; and
- (d) the grant is not:
 - (i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
 - (ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

Construction of public works

- (4) A past act consisting of the construction or establishment of any public work is a **category A past act** if:
- (a) the work commenced to be constructed or established before 1 January 1994 and the construction or establishment had not been completed by that day; or
 - (b) the work was constructed or established before 1 January 1994 and still existed on that day; or
 - (c) the work was constructed or established on or after 1 January 1994 and the construction or establishment is a past act because subsection 228(9) applies.

230 Category B past act

A **category B past act** is a past act consisting of the grant of a lease where:

- (a) the grant is not a category A past act; and

- (b) the lease is not a mining lease; and
- (c) either:
 - (i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or
 - (ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or (9) (which deals with other extensions etc. of earlier acts) applies; and
- (d) the grant is not:
 - (i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
 - (ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

231 Category C past act

A *category C past act* is a past act consisting of the grant of a mining lease.

232 Category D past act

A *category D past act* is any past act that is not a category A past act, a category B past act or a category C past act.

232A Intermediate period act

- (1) This section defines *intermediate period act*.

Note: Intermediate period acts may be validated under Division 2A of Part 2.

Acts between 1.1.94 and 23.12.96

- (2) Subject to subsection (3), an act is an *intermediate period act* if:
- (a) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996 when native title existed in relation to particular land or waters; and
 - (b) the act did not consist of the making, amendment or repeal of legislation, other than legislation that affects the native title by:

- (i) creating a freehold estate, lease or licence over the land or waters; or
- (ii) containing, making or conferring a reservation, proclamation or dedication under which the whole or part of the land or waters is to be used for a particular purpose; and

Note: An intermediate period act, such as the grant of a lease, may be validated under Division 2A of Part 2 even if the legislation under which the act was done is not so validated.

- (c) the act was invalid to any extent because of Division 3 of Part 2 (disregarding section 24EBA) or for any other reason, but it would have been valid to that extent if the native title did not exist; and
- (d) the act was not a past act (see section 228); and
- (e) at any time before the act was done, either:
 - (i) a grant of a freehold estate or a lease (other than a mining lease) was made covering any of the land or waters affected by the act; or
 - (ii) a public work was constructed or established on any of the land or waters affected by the act; and
- (f) the grant, or the construction or establishment, mentioned in paragraph (e) was valid (including because of any provision of this Act).

Exclusion by regulation

- (3) The regulations may provide that an act is not an *intermediate period act*.

232B Category A intermediate period act

- (1) This section defines the expression *category A intermediate period act*.

Grant of freehold estates

- (2) An intermediate period act consisting of the grant or vesting of a freehold estate is a *category A intermediate period act*.

Grant of certain leases etc.

- (3) An intermediate period act consisting of the grant or vesting of:
 - (a) a Scheduled interest (see section 249C); or
 - (b) a commercial lease that is neither an agricultural lease nor a pastoral lease; or
 - (c) an exclusive agricultural lease (see section 247A) or an exclusive pastoral lease (see section 248A); or

- (d) a residential lease; or
- (e) a community purposes lease (see section 249A); or
- (f) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to '1 January 1994' were instead a reference to '24 December 1996'; or
- (g) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters;

is a ***category A intermediate period act***.

Vesting of certain land or waters

- (4) If:
 - (a) an intermediate period act is done by or under legislation of a State or a Territory; and
 - (b) the intermediate period act consists of the vesting of particular land or waters in any person; and
 - (c) a right of exclusive possession of the land or waters is expressly or impliedly conferred on the person by or under the legislation;

the intermediate period act is a ***category A intermediate period act***.

Construction of public works

- (7) An intermediate period act consisting of the construction or establishment of any public work is a ***category A intermediate period act***.
- (8) An intermediate period act is not a ***category A intermediate period act*** if it is:
 - (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
 - (b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
 - (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

Exclusion by regulation

- (9) The regulations may provide that an act is not a ***category A intermediate period act***.

232C Category B intermediate period act

A ***category B intermediate period act*** is an intermediate period act consisting of the grant of a lease if:

- (a) the grant is not a category A intermediate period act; and
- (b) the lease is not:
 - (i) a mining lease; or
 - (ii) a lease granted by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (iii) a lease granted expressly for the benefit of, or to a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
 - (iv) any other lease granted over particular land or waters, if at the time a lease covered by subparagraph (ii) or (iii) is in force over the land or waters.

232D Category C intermediate period act

A ***category C intermediate period act*** is an intermediate period act consisting of the grant of a mining lease.

232E Category D intermediate period act

A ***category D intermediate period act*** is any intermediate period act that is not a category A intermediate period act, a category B intermediate period act or a category C intermediate period act.

233 Future act

Definition

- (1) Subject to this section, an act is a ***future act*** in relation to land or waters if:
- (a) either:
 - (i) it consists of the making, amendment or repeal of legislation and takes place on or after 1 July 1993; or
 - (ii) it is any other act that takes place on or after 1 January 1994; and
 - (b) it is not a past act; and

- (c) apart from this Act, either:
 - (i) it validly affects native title in relation to the land or waters to any extent; or
 - (ii) the following apply:
 - (A) it is to any extent invalid; and
 - (B) it would be valid to that extent if any native title in relation to the land or waters did not exist; and
 - (C) if it were valid to that extent, it would affect the native title.

Validation and extinguishment legislation excluded

- (2) If:
 - (a) the act consists of the making, amendment or repeal of legislation; and
 - (b) the act purports to:
 - (i) validate any past act or intermediate period act; or
 - (ii) extinguish native title, or extinguish native title rights and interests to an extent; and
 - (c) the act is done or permitted to be done by Division 2, 2A or 2B of Part 2;

subsection (1) does not apply to the extent that the act purports to validate the act, or to extinguish the native title or the native title rights and interests.

Acts creating or affecting Aboriginal/Torres Strait Islander land or waters excluded

- (3) Subsection (1) does not apply to any of the following acts:
 - (a) an act that causes land or waters to be held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under a law mentioned in the definition of ***Aboriginal/Torres Strait Islander land or waters*** in section 253;
 - (b) any act affecting Aboriginal/Torres Strait Islander land or waters.

237 Act attracting the expedited procedure

A future act is an ***act attracting the expedited procedure*** if:

- (a) the act is not likely to interfere directly with the carrying on of the community or social activities of the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of native title in relation to the land or waters concerned; and

- (b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of the native title in relation to the land or waters concerned; and
- (c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

237A Extinguish

The word *extinguish*, in relation to native title, means permanently extinguish the native title. To avoid any doubt, this means that after the extinguishment the native title rights and interests cannot revive, even if the act that caused the extinguishment ceases to have effect.

238 Non-extinguishment principle

Effect of references

- (1) This section sets out the effect of a reference to the non-extinguishment principle applying to an act.

Native title not extinguished

- (2) If the act affects any native title in relation to the land or waters concerned, the native title is nevertheless not extinguished, either wholly or partly.

Rights and interests wholly ineffective

- (3) In such a case, if the act is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act.

Rights and interests partly ineffective

- (4) If the act is partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but the rights and interests have no effect in relation to the act to the extent of the inconsistency.

Who the native title holders are

- (5) Despite the fact that the native title rights and interests have no effect (as mentioned in subsection (3)) or have only limited effect (as mentioned in subsection (4)) in relation to the act, the persons who are entitled in accordance with the traditional laws and customs, as applying from time to time, to possess those rights and interests continue to be the native title holders, subject to Division 6 of Part 2 (which deals with the holding of native title on trust).

Complete removal of act or its effects

- (6) If the act or its effects are later wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect.

Partial removal of act or its effects

- (7) If the act or its effects are later removed only to an extent, or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

Example of operation of section

- (8) An example of the operation of this section is its application to a category C past act consisting of the grant of a mining lease that confers exclusive possession over an area of land or waters in relation to which native title exists. In such a case the native title rights and interests will continue to exist but will have no effect in relation to the lease while it is in force. However, after the lease concerned expires (or after any extension, renewal or re-grant of it to which subsection 228(3), (4) or (9) applies expires), the rights and interests again have full effect.

239 Act attributable to the Commonwealth, a State or a Territory

An act is *attributable* to the Commonwealth, a State or a Territory if the act is done by:

- (a) the Crown in right of the Commonwealth, the State or the Territory; or
- (b) the Parliament or Legislative Assembly of the Commonwealth, the State or the Territory; or
- (c) any person under a law of the Commonwealth, the State or the Territory.

240 Similar compensable interest test

The *similar compensable interest test* is satisfied in relation to a past act, an intermediate period act or a future act if:

- (a) the native title concerned relates to an onshore place; and
- (b) the compensation would, apart from this Act, be payable under any law for the act on the assumption that the native title holders instead held ordinary title to any land or waters concerned and to the land adjoining, or surrounding, any waters concerned.

Division 3—Leases

241 Coverage of Division

This Division contains definitions relating to leases.

242 Lease

- (1) The expression *lease* includes:
 - (a) a lease enforceable in equity; or
 - (b) a contract that contains a statement to the effect that it is a lease; or
 - (c) anything that, at or before the time of its creation, is, for any purpose, by a law of the Commonwealth, a State or a Territory, declared to be or described as a lease.

References to mining lease

- (2) In the case only of references to a mining lease, the expression *lease* also includes a licence issued, or an authority given, by or under a law of the Commonwealth, a State or a Territory.

243 Lessee

- (1) Subject to subsection (2), the expression lessee includes any person who, by assignment, succession, sub-lease or otherwise, acquires, enjoys or is entitled to exercise any of the interests under the lease of a lessee (including of a person who is a lessee because of another application or applications of this section).

Lessee of certain mining leases

- (2) In the case of a lease that is a mining lease because of subsection 242(2) (which covers licences and authorities given by or under laws), the expression lessee means:
 - (a) the person to whom the licence mentioned in that subsection was issued, or the authority so mentioned was given; or
 - (b) any person who, by assignment, succession or otherwise, acquires or enjoys the licence or authority or is entitled to exercise rights under the licence or the authority.

244 Permit

Definition

- (1) The expression *permit*, in a reference to a lease permitting a thing, means permit:
 - (a) expressly by the terms of the lease; or

- (b) by implication from the terms of the lease; or
- (c) otherwise (including expressly, or by implication, from the operation of legislation).

Example of implication from legislation

- (2) An example of a thing permitted by implication from the operation of legislation is where the legislation states that, if a lease is not renewed, compensation is payable for any building constructed on the land subject to the lease. The construction of the building is permitted by implication from the statement.

245 Mining lease

Definition

- (1) A mining lease is a lease (other than an agricultural lease, a pastoral lease or a residential lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for mining.

Mining leases to which subsection (3) applies

- (2) Subject to subsection (4), subsection (3) applies to a mining lease if the lease was in force at the beginning of 1 January 1994 (the test time) and either or both of the following paragraphs apply:
 - (a) the following conditions are satisfied:
 - (i) a city, town or private residences had been wholly or partly constructed at the test time on a part of the land or waters covered by the lease;
 - (ii) the construction was permitted by the lease;
 - (iii) in the case of any private residences they had been, or were being, constructed as fixtures and it was reasonably likely at the test time that, if mining under the lease were to cease at any later time, they would continue to be used as private residences;
 - (b) the following conditions are satisfied:
 - (i) other buildings or works had been wholly or partly constructed as fixtures at the test time, on a part of the land or waters covered by the lease, for carrying on an activity in connection with any city, town or private residences covered by paragraph (a);

- (ii) the construction was permitted by the lease;

- (iii) it was reasonably likely at the test time that, if mining under the lease were to cease at any later time, the buildings or works would continue to be used to carry on the same activity, or a similar activity, in connection with any city, town or private residences mentioned in paragraph (a).

Dissection of mining lease

- (3) If this subsection applies to a mining lease, the lease is taken instead to consist of separate leases in respect of:
 - (a) the part of the land or waters in respect of which paragraph (2)(a) or (b), or both paragraphs, are satisfied; and
 - (b) the remainder of the land or waters.

Exclusion of certain cities, towns etc.

- (4) The Commonwealth Minister may, in writing, determine that a specified city, town, private residence, building or works is not to be taken into account for the purposes of subsection (3).

246 Commercial lease

Definition

- (1) A **commercial lease** is a lease (other than a mining lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for business or commercial purposes. The defining of **agricultural lease**, **pastoral lease** and **residential lease** in sections 247, 248 and 249 is not intended to limit the coverage of **commercial lease**.

Examples of a commercial lease

- (2) For the purposes of subsection (1):
 - (a) construction on land of a building to be used for business or commercial purposes, or of a hotel, motel or tourist resort, is an example of use of the land for business or commercial purposes; and
 - (b) use of a building on land for business or commercial purposes, or operation of a hotel, motel or tourist resort on land, is an example of use of the land for business or commercial purposes.

247 Agricultural lease

An *agricultural lease* is a lease that:

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural purposes (which includes the planting and growing in the land of trees, vines or vegetables); or
- (b) contains a statement to the effect that it is solely or primarily an agricultural lease or that it is granted solely or primarily for agricultural purposes.

Aquaculture

- (2) Except in so far as the expression is used in or in relation to Division 2 of Part 2, *agricultural lease* also includes a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for aquacultural purposes.

247A Exclusive agricultural lease

An *exclusive agricultural lease* is an agricultural lease that:

- (a) confers a right of exclusive possession over the land or waters covered by the lease; or
- (b) is a Scheduled interest.

247B Nonexclusive agricultural lease

A *nonexclusive agricultural lease* is an agricultural lease that is not an exclusive agricultural lease.

Note: In practice, there might be few, or no, nonexclusive agricultural leases.

248 Pastoral lease

A *pastoral lease* is a lease that:

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for:
 - (i) maintaining or breeding sheep, cattle or other animals; or
 - (ii) any other pastoral purpose; or
- (b) contains a statement to the effect that it is solely or primarily a

pastoral lease or that it is granted solely or primarily for pastoral purposes.

248A Exclusive pastoral lease

An *exclusive pastoral lease* is a pastoral lease that:

- (a) confers a right of exclusive possession over the land or waters covered by the lease; or
- (b) is a Scheduled interest.

248B Nonexclusive pastoral lease

A *non-exclusive pastoral lease* is a pastoral lease that is not an exclusive pastoral lease.

249 Residential lease

Definition

- (1) A residential lease is a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for constructing or occupying a private residence.

Examples of residential lease

- (2) For the purposes of subsection (1):
 - (a) construction of a house or unit on land for a person to live in is an example of use of the land for constructing a private residence; and
 - (b) use of a house or unit on land that is leased out to a person to live in is an example of use of the land for occupying a private residence; and
 - (c) use of a hotel, motel, caravan or tent on land is an example of something that is not use of the land for occupying a private residence.

249A Community purposes lease

A *community purposes lease* is a lease that:

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for community, religious, educational, charitable or sporting purposes; or
- (b) contains a statement to the effect that it is solely or primarily a community purposes lease or that it is granted solely or primarily for community, religious, educational, charitable or sporting

purposes.

249B Perpetual lease

A *perpetual lease* is a lease with the following features:

- (a) the lease is in perpetuity;
- (b) the lease may be forfeited, cancelled or otherwise cease to have effect for failure to pay rent or for contravention of a condition or conditions.

249C Scheduled interest

(1) A *Scheduled interest* is:

- (a) anything set out in Schedule 1, other than a mining lease or anything whose grant or vesting is covered by subsection 23B(9), (9A), (9B), (9C) or (10) (which provide that certain acts are not previous exclusive possession acts); or
- (b) an interest, in relation to land or waters, of a type declared by a regulation for the purposes of this paragraph to be a Scheduled interest.

Regulations to cover single type of interest only

(2) A particular regulation only has effect for the purposes of paragraph (1)(b) if it covers a single type of interest.

Regulations to cover exclusive possession interests only

(3) Before the Governor-General makes a regulation for the purposes of paragraph (1)(b) declaring a particular interest to be a Scheduled interest, the Minister must be satisfied that the interest confers a right of exclusive possession that extinguishes all native title rights and interests over the land or waters concerned.

Division 4—Sundry definitions etc.

250 Application to things happening before commencement

The use of the present tense in any provision of this Act does not imply that the provision does not apply to things happening before the commencement of the provision.

Section 251 has been amended and moved to new Part 12A and re-numbered section 207A

251A Authorising the making of indigenous land use agreements

For the purposes of this Act, persons holding native title in relation to land or waters in the area covered by an indigenous land use agreement *authorise* the making of the agreement if:

- (a) where there is a process of decisionmaking that, under the traditional laws and customs of the persons who hold or may hold the common or group rights comprising the native title, must be complied with in relation to authorising things of that kindóthe persons authorise the making of the agreement in accordance with that process; or
- (b) where there is no such processóthe persons authorise the making of the agreement in accordance with a process of decisionmaking agreed to and adopted, by the persons who hold or may hold the common or group rights comprising the native title, in relation to authorising the making of the agreement or of things of that kind.

251B Authorising the making of applications

For the purposes of this Act, all the persons in a native title claim group or compensation claim group **authorise** a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, if:

- (a) where there is a process of decisionmaking that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kindóthe persons in the native title claim group or compensation claim group authorise the person or persons to make the application and to deal with the matters in accordance with that process; or
- (b) where there is no such processóthe persons in the native title claim group or compensation claim group authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decisionmaking agreed to and adopted, by the persons in the native title claim group or compensation claim group, in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

251C Towns and cities

Areas in Western Australia

- (1) Subject to subsection (4), a particular area in Western Australia is a **town or city** if, as at 23 December 1996, it was gazetted as a townsite or as suburban lands under section 10 of the *Land Act 1933* of Western Australia.

Areas in South Australia

- (2) Subject to subsection (4), a particular area in South Australia is a **town or city** if, as at 23 December 1996, it was:

- (a) within the boundaries of a town constituted under section 5(g) of the *Crown Lands Act 1929* of South Australia; or
- (b) set apart as town lands, or suburban lands, by notice under section 5(h) of that Act; or
- (c) town lands, park lands, or suburban lands, within the meaning of section 4 of that Act; or
- (d) gazetted in the South Australian Government Gazette, or proclaimed by the Governor of South Australia, as suburban lands, where the gazettal took place, or the proclamation was made, before the enactment of the *Crown Lands Act 1929* of South Australia; or
- (e) a township within the meaning of section 5(1) of the Local Government Act, 1934 of South Australia; or
- (f) park land, within the meaning of section 5(1) of that Act, that was within or adjacent to a township within the meaning of that section; or
- (g) the area in relation to which a municipal council was constituted under section 6 of that Act; or
- (h) a township within the meaning of section 319 of that Act; or
- (i) a township allotment within the meaning of section 5 of the *Renmark Irrigation Trust Act 1936* of South Australia; or
- (j) town lands within the meaning of section 5 of the *Water Conservation Act 1936* of South Australia.

Areas in the Northern Territory

- (3) Subject to subsection (4), a particular area in the Northern Territory is a **town or city** if, as at 23 December 1996, it was:
 - (a) gazetted as a town (other than the town of Darwin, Hatches Creek, Brocks Creek, Burrundie or Urapunga) under subsection 95(1) of the Crown Lands Act of the Northern Territory; or
 - (b) the area in the Schedule to the *Darwin Lands Acquisition Act 1945* of the Commonwealth; or
 - (c) within a municipality constituted under section 29 of the Local Government Act of the Northern Territory.

Exclusion of areas in Western Australia, South Australia or Northern Territory

- (4) A particular area is not a **town or city** under subsection (1), (2) or (3) if the Commonwealth Minister makes a written determination to that effect.

Other areas

- (5) A particular area in any State or Territory is a ***town or city*** if the Commonwealth Minister makes a written determination stating that, in his or her opinion, the area was a town or a city as at 23 December 1996.

Exclusion of ordinary meaning

- (6) Except as mentioned in this section, an area is not a ***town or city***.

251D Land or waters on which a public work is constructed, established or situated

In this Act, a reference to land or waters on which a public work is constructed, established or situated includes a reference to any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

252 Notify the public in the determined way*Definition*

- (1) The expression ***notify the public in the determined way*** means give notice in the way determined by the Commonwealth Minister for the purposes of the provision in which the expression is used.

Examples of ways that may be determined

- (2) Without limiting the ways that the Commonwealth Minister may determine, he or she may determine that the notice may be given:
- (a) in newspapers (including newspapers catering mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders); or
 - (b) by radio broadcasts or television transmissions.

253 Other definitions

Unless the contrary intention appears:

Aboriginal peoples means peoples of the Aboriginal race of Australia.

Aboriginal/Torres Strait Islander land or waters means land or waters held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under:

- (a) any of the following laws of the Commonwealth:
 - (i) the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*;
 - (ii) the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*;
 - (iii) the *Aboriginal Land Rights (Northern Territory) Act 1976*;

or

- (b) any of the following laws of South Australia:
 - (i) the *Aboriginal Lands Trust Act 1966*;
 - (ii) the *Maralinga Tjarutja Land Rights Act 1984*;
 - (iii) the *Pitjantjatjara Land Rights Act 1981*; or
- (c) any other law, or part of a law, prescribed for the purposes of the provision in which the expression is used.

applicant has a meaning affected by subsection 61(2).

approved determination of native title has the meaning given by subsections 13(3), (4) and (7).

arbitral body has the meaning given by section 27.

assessor means an assessor appointed under Part VA of the *Federal Court of Australia Act 1976*.

authorise:

- (a) in relation to the making of indigenous land area agreementsóhas the meaning given by section 251A; and
- (b) in relation to the making of native title determination applications or compensation applications, and dealing with matters arising in relation to such applicationsóhas the meaning given by section 251B.

Chief Justice means the Chief Justice of the Federal Court of Australia.

claimant application means a native title determination application that a native title claim group has authorised to be made, and, unless the contrary intention appears, includes such an application that has been amended.

coastal sea has the meaning given by subsection 15B(4) of the *Acts Interpretation Act 1901*.

common law holders has the meaning given by section 56.

Commonwealth Minister means the Minister applicable, in relation to the provision in which the expression is used, under section 19A of the *Acts Interpretation Act 1901*.

explore includes:

- (a) conduct a geological, geophysical or geochemical survey; or
- (b) take samples for the purpose of analysis.

Federal Court means the Federal Court of Australia.

forest operations means:

- (a) the planting or tending, in a plantation or forest, of trees intended

for felling; or

- (b) the felling of such trees.

former judge means a person who has been a Justice of the High Court or a judge of another federal court or of the Supreme Court of a State or Territory.

Government party has the meaning given by subsection 26(1).

grantee party has the meaning given by paragraph 29(2)(c).

horticulture includes:

- (a) propagation or maintenance, as well as cultivation; or
- (b) propagation, maintenance or cultivation of seeds, bulbs, spores or similar things; or
- (c) propagation, maintenance or cultivation of fungi; or
- (d) propagation, maintenance or cultivation in environments other than soil, whether natural or artificial.

indigenous land use agreement has the meaning given by sections 24BA, 24CA and 24DA.

infrastructure facility includes any of the following:

- (a) a road, railway, bridge or other transport facility;
- (b) a jetty or port;
- (c) an airport or landing strip;
- (d) an electricity generation, transmission or distribution facility;
- (e) a storage, distribution or gathering or other transmission facility for:
 - (i) oil or gas; or
 - (ii) derivatives of oil or gas;
- (f) a storage or transportation facility for coal, any other mineral or any mineral concentrate;
- (g) a dam, pipeline, channel or other water management, distribution or reticulation facility;
- (h) a cable, antenna, tower or other communication facility;
- (i) any other thing that is similar to any or all of the things mentioned in paragraphs (a) to (h) and that the Commonwealth Minister determines in writing to be an infrastructure facility for the purposes of this paragraph.

interest, in relation to land or waters, means:

- (a) a legal or equitable estate or interest in the land or waters; or
- (b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:

- (i) the land or waters; or
- (ii) an estate or interest in the land or waters; or
- (c) a restriction on the use of the land or waters, whether or not annexed to other land or waters.

Judge means a Judge of the Federal Court.

jurisdictional limits means:

- (a) in relation to a State the area within:
 - (i) the limits of the State; or
 - (ii) the coastal waters of the State (within the meaning of the *Coastal Waters (State Powers) Act 1980*); or
- (b) in relation to the Northern Territory the area within:
 - (i) the limits of the Territory; or
 - (ii) the coastal waters of the Territory (within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980*); or
- (c) in relation to any other Territory the area within the limits of the Territory.

land includes the airspace over, or subsoil under, land, but does not include waters.

Note: Because of the definition of **waters**, not only rivers and lakes etc., but also such things as the bed or subsoil under, and airspace over, rivers and lakes etc. will not be included in **land**.

Note 2: Because of the definition of **waters**, the area between high water and low water will not be included in **land**.

major earthworks means earthworks (other than in the course of mining) whose construction causes major disturbance to the land, or to the bed or subsoil under waters.

member means a member of the Tribunal.

mine includes:

- (a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c)); or
- (b) extract petroleum or gas from land or from the bed or subsoil under waters; or
- (c) quarry;

but does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, for a purpose other than:

- (d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- (e) processing the sand, gravel, rocks or soil by nonmechanical means.

National Native Title Register means the register established and maintained under Part 8.

National Native Title Tribunal or NNTT means the National Native Title Tribunal established under Part 6.

native title claim group means:

- (a) in relation to a claim in an application for a determination of native title made to the Federal Court to the native title claim group mentioned in relation to the application in the table in subsection 61(1); or
- (b) in relation to a claim in an application for an approved determination of native title made to a recognised State/Territory body to the person or persons making the claim, or on whose behalf the claim is made.

native title party has the meaning given by paragraphs 29(2)(a) and (b) and section 30.

Native Title Registrar means the Native Title Registrar appointed under Part 5.

negotiation party has the meaning given by section 30A.

non-claimant application means a native title determination application that is not a claimant application.

non-presidential member means a member who, in accordance with the table in subsection 110(1), is of the non-presidential class.

offshore place means any land or waters to which this Act extends, other than land or waters in an onshore place.

onshore place means land or waters within the limits of a State or Territory to which this Act extends.

ordinary title, in relation to an onshore place that is land, means:

- (a) if the land is not in the Australian Capital Territory or the Jervis Bay Territory a freehold estate in fee simple in the land other than such an estate granted by or under a law that grants such estates only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) if the land is in the Australian Capital Territory or the Jervis Bay Territory a lease over the land granted by or on behalf of the Commonwealth under a law of the Commonwealth or of the Territory, other than a lease granted by or under a law that grants such leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

paragraph 51(xxxi) acquisition of property means an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution.

paragraph 51(xxxi) just terms means just terms within the meaning of paragraph 51(xxxi) of the Constitution.

prescribed means prescribed by the regulations.

President means the President of the Tribunal.

presidential member means a member who, in accordance with the table in section 110, is of the presidential class.

procedural right, in relation to an act, means:

- (a) a right to be notified of the act; or
- (b) a right to object to the act; or
- (c) any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.

public work means:

- (a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
 - (i) a building, or other structure (including a memorial), that is a fixture; or
 - (ii) a road, railway or bridge; or
 - (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 26a stock-route; or
 - (iii) a well, or bore, for obtaining water; or
 - (iv) any major earthworks; or
- (b) a building that is constructed with the authority of the Crown, other than on a lease.

Note: In addition, section 251D deals with land or waters relating to public works.

recognised State/Territory body means a court, office, tribunal or body in relation to which a determination under section 207A is in force.

Register of Indigenous Land Use Agreements means the register established and maintained under Part 8A.

Register of Native Title Claims means the Register established and maintained in accordance with Part 7.

registered native title body corporate means:

- (a) a prescribed body corporate whose name and address are registered on the National Native Title Register under subparagraph 193(2)(d)(iii); or

- (b) a body corporate whose name and address are registered on the National Native Title Register under subparagraph 193(2)(d)(iv).

registered native title claimant, in relation to land or waters, means a person or persons whose name or names appear in an entry on the Register of Native Title Claims as the applicant in relation to a claim to hold native title in relation to the land or waters.

Registrar means the Native Title Registrar.

representative Aboriginal/Torres Strait Islander body means a body that is the subject of a determination under subsection 202(1) or that is recognised under section 203AD.

representative body means a representative Aboriginal/Torres Strait Islander body.

right to negotiate application has the meaning given by paragraph 139(1)(b).

special matter has the meaning given by paragraph 139(1)(c).

State Minister, in relation to a State, means:

- (a) if there is no nomination under paragraph (b) of the Premier of the State; or
- (b) a Minister of the Crown of the State nominated in writing given to the Commonwealth Minister by the Premier for the purposes of this definition.

statutory authority, in relation to the Crown in right of the Commonwealth, a State or a Territory, means any authority or body (including a corporation sole) established by a law of the Commonwealth, the State or Territory other than a general law allowing incorporation as a company or body corporate.

subject to section 24FA protection has the meaning given by Subdivision F of Division 3 of Part 2.

Territory Minister, in relation to a Territory, means:

- (a) if there is no nomination under paragraph (b) of the Chief Minister of the Territory; or
- (b) a Minister of the Territory nominated in writing given to the Commonwealth Minister by the Chief Minister for the purposes of this definition.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

Tribunal means the National Native Title Tribunal.

valid includes having full force and effect.

waters includes:

- (a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or
- (b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph (a)) ; or the shore, or subsoil under or airspace over the shore, between high water and low water.