Western Australia

Native Title (State Provisions) Act 1999

Compare between:

[01 May 2005, 00-a0-03] and [01 Feb 2007, 00-b0-15]

Western Australia

Native Title (State Provisions) Act 1999

An Act to make —

* alternative provisions to those contained in Part 2 Division 3 Subdivision P of the *Native Title Act 1993* of the Commonwealth, in accordance with sections 43 and 43A of that Act;
* provisions that are supplementary to those in section 24MD(6B) of that Act; and
* provision for delegations in respect of the State under section 199F of that Act,

to consequentially amend certain Acts, and for related purposes.

## Part 1 — Preliminary

##### 1.1. Short title

This Act may be cited as the *Native Title (State Provisions) Act 1999.*

##### 1.2. Commencement

(1) Subject to this section, this Act comes into operation on the day on which it receives the Royal Assent.

(2) The provisions of Part 4, Divisions 1, 2 and 3 of Part 5, and Part 6 come into operation —

(a) on such day as is fixed by proclamation; or

(b) on such days as are respectively so fixed.

(3) Part 2, other than section 2.2, comes into operation on the day (**“the Part 2 commencement day”**) on which a determination under section 43A of the NTA in relation to that Part comes into force.

(4) Part 3, other than section 3.1, comes into operation on the day (**“the Part 3 commencement day”**) on which a determination under section 43 of the NTA in relation to that Part comes into force.

(5) Division 4 of Part 5 comes into operation on the Part 3 commencement day.

(6) Section 7.3 comes into operation on —

(a) the Part 2 commencement day;

(b) the Part 3 commencement day; or

(c) the day on which Part 4 commences,

whichever is the earliest or, if those days are the same day, on that day.

(7) The Minister is to cause notice of each of the Part 2 commencement day and the Part 3 commencement day to be published in the *Gazette* as soon as it is reasonably practicable for the Minister to do so.

##### 1.3. Objects

The objects of this Act are those set out in —

(a) sections 2.4 and 3.3 (which relate to State alternative provisions for the purposes of sections 43 and 43A of the NTA);

(b) section 4.1 (which relates to State provisions supplementary to section 24MD(6B) of the NTA); and

(c) section 6.10 (which relates to the delegation of powers to the Chief Commissioner under section 199F of the NTA).

##### 1.4. Act binds the Crown

This Act binds the Crown —

(a) in right of Western Australia; and

(b) so far as the legislative power of the Parliament permits, in all its other capacities.

##### 1.5. Interpretation

(1) In this Act the *Native Title Act 1993* of the Commonwealth is referred to as the NTA.

(2) A word or expression used in this Act has the same meaning as it has in the NTA unless —

(a) this Act gives it another meaning; or

(b) the contrary intention appears in some other way.

Note:

A list of words and expressions used in this Act and defined in the NTA is attached to this Act. The list shows where in the NTA each definition can be found.

(3) The expression Commonwealth Minister when used in this Act in relation to a provision of the NTA has the same meaning as it has in that provision.

(4) In this Act, unless the contrary intention appears —

Chief Commissioner means the person appointed as such under section 6.4(2);

closing day, in relation to a Part 2 act, a Part 3 act or a Part 4 act, means —

(a) the day fixed under section 2.11, 3.9 or 4.7 for the lodgment of objections to the doing of the act; or

(b) the later day fixed under section 2.18(2), 3.17(2) or 4.13(2) for that purpose,

as the case may require;

Commission means the body established by section 6.1;

consultation parties has the meaning given by section 2.22 or 4.17, as the case may require;

Government party means the person who has power to do, on behalf of the State, an act of the kind referred to in section 2.5, 3.4 or 4.2, as the case may require;

member means a member of the Commission and includes the Chief Commissioner;

negotiation parties has the meaning given by section 3.21;

objector means a person who has made an objection under section 2.16, 3.15 or 4.11, as the case may require, that has not been withdrawn or dismissed;

ordinary member means a member of the Commission other than the Chief Commissioner;

Part 2 act has the meaning given by section 2.5;

Part 3 act has the meaning given by section 3.4 and includes an act to which section 2.7 applies;

Part 4 act has the meaning given by section 4.2;

proponent means a person who is a proponent under section 2.9, 2.10, 3.7, 3.8, 4.5 or 4.6, as the case may require;

recommendation means a recommendation of the Commission under section 2.32 or 4.27, as the case may require;

registered native title rights and interests means —

(a) where the person to whom the expression refers is a registered native title claimant, the native title rights and interests described in the relevant entry on the Register of Native Title Claims; and

(b) where the person to whom the expression refers is a registered native title body corporate, the native title rights and interests described in the relevant entry on the National Native Title Register;

relevant land —

(a) in Parts 2 and 4, means the land or waters to which the Part 2 act or the Part 4 act concerned relates;

(b) in Part 3, means the land or waters that would be affected by the Part 3 act concerned if it were done; and

(c) in section 5.2(1), has the meaning specified in paragraph (a) or (b) that is appropriate to the act concerned;

responsible Minister, in relation to a Part 2 act, a Part 3 act or a Part 4 act, means the Minister responsible for the administration of the Act under which the act would be done.

(5) To avoid doubt it is declared that references in this Act to written law are to a written law of the State.

(6) Notes in this Act are provided to assist understanding and do not form part of the Act.

##### 1.6. Performance of certain functions on behalf of Minister

(1) Where a Government party is a Minister of the Crown the consultation or negotiation functions of the Government party under Part 2, 3, or 4 may be performed on behalf of the Government party by any official authorized by the Government party for that purpose, whether generally or for any particular case.

(2) Nothing in this Act is to be read as preventing the exercise by a Government party of a power of delegation conferred by a written law.

##### 1.7. Replacement of person as objector etc.

(1) If —

(a) a person becomes a registered native title claimant because the person replaces another person as the applicant in relation to a native title determination application under section 61 of the NTA; and

(b) the other person is an objector, a consultation party or a negotiation party,

the first‑mentioned person also replaces the other person in his or her capacity referred to in paragraph (b).

(2) If —

(a) a registered native title claimant in relation to a determination application under section 61 of the NTA is an objector, a consultation party or a negotiation party in relation to an act; and

(b) as a result of a determination of an application under that section a body corporate becomes a registered native title body corporate in relation to the relevant land,

the registered native title body corporate replaces the registered native title claimant as the objector, consultation party or negotiation party in relation to the act.

##### 1.8. Objector ceasing to be a registered native title claimant

If a person who has lodged an objection under section 2.16(1)(b), 3.15(1)(b) or 4.11(1)(b) ceases to be a registered native title claimant, the person also ceases to be an objector, a consultation party or a negotiation party, as the case may be.

## Part 2 — Consultation procedures for alternative provision areas

### Division 1 — Preliminary

##### 2.1. Definitions

*[to be inserted]*

##### 2.2. Request for determination under section 43A of the NTA

The State Minister may, on behalf of the State, request the Commonwealth Minister to make a determination under section 43A of the NTA that —

(a) the provisions of this Part comply with section 43A(4) and (6) of the NTA; and

(b) the requirements of section 43A(7) are complied with.

##### 2.3. Transitional provisions

*[to be inserted]*

##### 2.4. Object of this Part

*[to be inserted]*

### Division 2 — Relevant future acts and their validity

##### 2.5. Acts to which this Part applies

*[to be inserted]*

##### 2.6. Circumstances in which act is not valid

*[to be inserted]*

##### 2.7. Part 3 may be applied to a Part 2 act

*[to be inserted]*

##### 2.8. Other statutory requirements not affected

*[to be inserted]*

### Division 3 — Notices and objections

##### 2.9. Proponent where act relates to mining

*[to be inserted]*

##### 2.10. Identification of proponents in other cases

*[to be inserted]*

##### 2.11. Closing day for objections

*[to be inserted]*

##### 2.12. Notification of acts

*[to be inserted]*

##### 2.13. Further provision as to notices

*[to be inserted]*

##### 2.14. Who gives notice

*[to be inserted]*

##### 2.15. Prescribed provisions about notice

*[to be inserted]*

##### 2.16. Right to object to doing of act

*[to be inserted]*

##### 2.17. Requirements for objections

*[to be inserted]*

##### 2.18. Time limit

*[to be inserted]*

##### 2.19. Government party to notify the Commission of objections

*[to be inserted]*

##### 2.20. Withdrawal of request etc. by proponent

*[to be inserted]*

##### 2.21. Withdrawal of proposal by Government party

*[to be inserted]*

### Division 4 — Consultation and agreements

##### 2.22. Meaning of “consultation parties”

*[to be inserted]*

##### 2.23. Consultation

*[to be inserted]*

##### 2.24. Involvement of Commission, including mediation

*[to be inserted]*

##### 2.25. Withdrawal of objection

*[to be inserted]*

##### 2.26. Agreement made by parties

*[to be inserted]*

### Division 5 — Recommendations of the Commission

##### 2.27. Commission may notify intention to hear

*[to be inserted]*

##### 2.28. Consultations may continue

*[to be inserted]*

##### 2.29. Dismissal of objections

*[to be inserted]*

##### 2.30. Time for making recommendation

*[to be inserted]*

##### 2.31. No recommendation if agreement etc.

*[to be inserted]*

##### 2.32. Making of recommendation

*[to be inserted]*

##### 2.33. Criteria for making recommendations

*[to be inserted]*

##### 2.34. Issues on which parties agree

*[to be inserted]*

##### 2.35. Copy of recommendation to be given

*[to be inserted]*

##### 2.36. Effect of recommendation

*[to be inserted]*

##### 2.37. Effect of recommendation that specifies conditions

*[to be inserted]*

### Division 6 — Overruling of recommendations

##### 2.38. Responsible Minister may overrule a recommendation

*[to be inserted]*

##### 2.39. Determinations that responsible Minister may make

*[to be inserted]*

##### 2.40. Consultation before making of determination

*[to be inserted]*

##### 2.41. Ground on which determination may be made

*[to be inserted]*

##### 2.42. Conditions in determination

*[to be inserted]*

##### 2.43. Copy of determination to be laid before Parliament

*[to be inserted]*

##### 2.44. Responsible Minister may declare intention not to overrule

*[to be inserted]*

### Division 7 — Applications

##### 2.45. Definition

*[to be inserted]*

##### 2.46. Form and contents of application

*[to be inserted]*

##### 2.47. Material and fees to accompany applications

*[to be inserted]*

##### 2.48. Application fee may be waived

*[to be inserted]*

### Division 8 — Judicial review

##### 2.49. Application for review

*[to be inserted]*

##### 2.50. Time limit for application

*[to be inserted]*

##### 2.51. Procedure

*[to be inserted]*

##### 2.52. Grounds on which application may be made

*[to be inserted]*

##### 2.53. Powers of Court

*[to be inserted]*

##### 2.54. Effect on other remedies

*[to be inserted]*

## Part 3 — Right to negotiate procedures for areas not covered by Part 2

### Division 1 — Preliminary

##### 3.1. Request for determination under section 43(1)(b) of the NTA

The State Minister may, on behalf of the State, request the Commonwealth Minister to make a determination under section 43(1)(b) of the NTA that the provisions of this Part comply with section 43(2) of the NTA.

##### 3.2. Transitional provisions

*[to be inserted]*

##### 3.3. Object of this Part

*[to be inserted]*

### Division 2 — Relevant future acts and their validity

##### 3.4. Acts to which this Part applies

*[to be inserted]*

##### 3.5. Circumstances in which act is not valid

*[to be inserted]*

##### 3.6. Other statutory requirements not affected

*[to be inserted]*

### Division 3 — Notices and objections

##### 3.7. Proponent where act relates to mining

*[to be inserted]*

##### 3.8. Identification of proponents in other cases

*[to be inserted]*

##### 3.9. Closing day for objections

*[to be inserted]*

##### 3.10. Notification of acts

*[to be inserted]*

##### 3.11. Further provision as to notices

*[to be inserted]*

##### 3.12. Notice may relate to 2 or more acts

*[to be inserted]*

##### 3.13. Who gives notice

*[to be inserted]*

##### 3.14. Prescribed provisions about notice

*[to be inserted]*

##### 3.15. Right to object to doing of act

*[to be inserted]*

##### 3.16. Requirements for objections

*[to be inserted]*

##### 3.17. Time limit

*[to be inserted]*

##### 3.18. Government party to notify the Commission of objections

*[to be inserted]*

##### 3.19. Withdrawal of request etc. by proponent

*[to be inserted]*

##### 3.20. Withdrawal of proposal by Government party

*[to be inserted]*

### Division 4 — Negotiations and agreements

##### 3.21. Meaning of “negotiation parties”

*[to be inserted]*

##### 3.22. Negotiations

*[to be inserted]*

##### 3.23. Involvement of Commission, including mediation

*[to be inserted]*

##### 3.24. Withdrawal of objection

*[to be inserted]*

##### 3.25. Agreement made by parties

*[to be inserted]*

##### 3.26. Commission’s function in respect of an agreement

*[to be inserted]*

##### 3.27. Effect of conditional agreement

*[to be inserted]*

### Division 5 — Determinations

#### Subdivision 1 — Ministerial determination where Commission determination unreasonably delayed

##### 3.28. Responsible Minister may give Commission notice as to urgency

*[to be inserted]*

##### 3.29. Responsible Minister may make determination

*[to be inserted]*

##### 3.30. Grounds for making determination

*[to be inserted]*

##### 3.31. Consultation with Commonwealth Minister

*[to be inserted]*

##### 3.32. Notice and submissions etc.

*[to be inserted]*

##### 3.33. Material etc. taken into account

*[to be inserted]*

##### 3.34. Minister’s power not limited

*[to be inserted]*

##### 3.35. No duty to make determination

*[to be inserted]*

##### 3.36. Conditions to have contractual effect

*[to be inserted]*

##### 3.37. Copy of determination to be given

*[to be inserted]*

##### 3.38. Copy of determination to be laid before Parliament

*[to be inserted]*

#### Subdivision 2 — Determination by Commission

##### 3.39. Commission may notify intention to hear

*[to be inserted]*

##### 3.40. Negotiations may continue

*[to be inserted]*

##### 3.41. Dismissal of objections

*[to be inserted]*

##### 3.42. Time for making determination

*[to be inserted]*

##### 3.43. No determination if agreement etc.

*[to be inserted]*

##### 3.44. Making of determination

*[to be inserted]*

##### 3.45. Criteria for making determinations

*[to be inserted]*

##### 3.46. Issues on which parties agree

*[to be inserted]*

##### 3.47. Determination may provide for issues to be resolved later

*[to be inserted]*

##### 3.48. No reopening of certain issues previously decided

*[to be inserted]*

##### 3.49 Copy of determination to be given

*[to be inserted]*

##### 3.50. Effect of conditional determination

*[to be inserted]*

### Division 6 — Overruling of Commission’s determination

##### 3.51. Responsible Minister may overrule

*[to be inserted]*

##### 3.52. Declarations that responsible Minister may make

*[to be inserted]*

##### 3.53. Grounds on which declaration may be made

*[to be inserted]*

##### 3.54. Conditions in declaration

*[to be inserted]*

##### 3.55. Copy of declaration to be laid before Parliament

*[to be inserted]*

##### 3.56. Responsible Minister may declare intention not to overrule

*[to be inserted]*

### Division 7 — Applications

##### 3.57. Definition

*[to be inserted]*

##### 3.58. Form and contents of application

*[to be inserted]*

##### 3.59. Material and fees to accompany applications

*[to be inserted]*

##### 3.60. Application fee may be waived

*[to be inserted]*

## Part 4 — Consultation procedures for acts to which section 24MD(6B) of the NTA applies

### Division 1 — Preliminary

##### 4.1. Object of this Part

*[to be inserted]*

##### 4.2. Acts to which this Part applies

*[to be inserted]*

##### 4.3. Requirements to be satisfied before a Part 4 act is done

*[to be inserted]*

##### 4.4. Other statutory requirements not affected

*[to be inserted]*

### Division 2 — Notices and objections

##### 4.5. Proponent where act relates to mining

*[to be inserted]*

##### 4.6. Identification of proponents in other cases

*[to be inserted]*

##### 4.7. Closing day for objections

*[to be inserted]*

##### 4.8. Notification of acts by Government party

*[to be inserted]*

##### 4.9. Further provision as to notices

*[to be inserted]*

##### 4.10. Prescribed provisions about notice

*[to be inserted]*

##### 4.11. Right to object to doing of act

*[to be inserted]*

##### 4.12. Requirements for objections

*[to be inserted]*

##### 4.13. Time limit

*[to be inserted]*

##### 4.14. Government party to notify the Commission of objections

*[to be inserted]*

##### 4.15. Withdrawal of request etc. by proponent

*[to be inserted]*

##### 4.16. Withdrawal of proposal by Government party

*[to be inserted]*

### Division 3 — Consultation and agreements

##### 4.17. Meaning of “consultation parties”

*[to be inserted]*

##### 4.18. Consultation

*[to be inserted]*

##### 4.19. Involvement of Commission, including mediation

*[to be inserted]*

##### 4.20. Withdrawal of objection

*[to be inserted]*

##### 4.21. Agreement made by parties

*[to be inserted]*

### Division 4 — Recommendations of the Commission

##### 4.22. Commission may notify intention to hear

*[to be inserted]*

##### 4.23. Consultations may continue

*[to be inserted]*

##### 4.24. Dismissal of objections

*[to be inserted]*

##### 4.25. Time for making recommendation

*[to be inserted]*

##### 4.26. No recommendation if agreement etc.

*[to be inserted]*

##### 4.27. Making of recommendation

*[to be inserted]*

##### 4.28. Criteria for making recommendations

*[to be inserted]*

##### 4.29. Issues on which parties agree

*[to be inserted]*

##### 4.30. Copy of recommendation to be given

*[to be inserted]*

##### 4.31. Effect of recommendation

*[to be inserted]*

##### 4.32. Effect of recommendation that specifies conditions

*[to be inserted]*

### Division 5 — Overruling of recommendations

##### 4.33. Responsible Minister may overrule a recommendation

*[to be inserted]*

##### 4.34. Determinations that responsible Minister may make

*[to be inserted]*

##### 4.35. Consultation before making of determination

*[to be inserted]*

##### 4.36. Ground on which determination may be made

*[to be inserted]*

##### 4.37. Conditions in determination

*[to be inserted]*

##### 4.38. Copy of determination to be laid before Parliament

*[to be inserted]*

##### 4.39. Responsible Minister may declare intention not to overrule

*[to be inserted]*

### Division 6 — Applications

##### 4.40. Definition

*[to be inserted]*

##### 4.41. Form and contents of application

*[to be inserted]*

##### 4.42. Material and fees to accompany applications

*[to be inserted]*

##### 4.43. Application fee may be waived

*[to be inserted]*

## Part 5 — Provisions relating to compensation

### Division 1 — Preliminary

##### 5.1. Definition

*[to be inserted]*

### Division 2 — Determination of compensation

##### 5.2. Commission to determine compensation for certain acts

*[to be inserted]*

##### 5.3. Parties may agree on compensation

*[to be inserted]*

##### 5.4. Enforcement of order for compensation

*[to be inserted]*

### Division 3 — Principles to be applied in the determination of compensation

##### 5.5. No multiple compensation for essentially same act

*[to be inserted]*

##### 5.6. Compensation principles to be as for ordinary title

*[to be inserted]*

##### 5.7. Compensation to be monetary

*[to be inserted]*

##### 5.8. Requests for non‑monetary compensation

*[to be inserted]*

### Division 4 — Determination of amounts to be held in trust and payment of those amounts

##### 5.9. Conditions for payment of amounts to be held in trust

*[to be inserted]*

##### 5.10. How amounts held in trust to be dealt with

*[to be inserted]*

##### 5.11. Section 5.10(a) or (b) cases

*[to be inserted]*

##### 5.12. Section 5.10(c) cases

*[to be inserted]*

##### 5.13. Section 5.10(d) cases where monetary compensation

*[to be inserted]*

##### 5.14. Section 5.10(d) cases where non‑monetary compensation

*[to be inserted]*

##### 5.15. Section 5.10(d) cases where no compensation

*[to be inserted]*

##### 5.16. Section 5.10(e) cases

*[to be inserted]*

##### 5.17. Jurisdiction of the Commission under this Division

*[to be inserted]*

## Part 6 — Native Title Commission

### Division 1 — Commission established

##### 6.1. Establishment of Commission

*[to be inserted]*

##### 6.2. Functions of Commission

*[to be inserted]*

##### 6.3. Requirements for fairness etc. to be observed

*[to be inserted]*

##### 6.4. Membership of the Commission

*[to be inserted]*

##### 6.5. Eligibility for appointment as Chief Commissioner

*[to be inserted]*

##### 6.6. Appointment of member of NNTT

*[to be inserted]*

##### 6.7. Qualifications for appointment

*[to be inserted]*

##### 6.8. Ordinary members, notice of proposed appointment

*[to be inserted]*

##### 6.9. Administrative functions of Chief Commissioner

*[to be inserted]*

##### 6.10. Authorization of Chief Commissioner for purposes of section 199F of the NTA

*[to be inserted]*

##### 6.11. Delegation to members

*[to be inserted]*

##### 6.12. Other provisions relating to members

*[to be inserted]*

### Division 2 — Staff of the Commission

##### 6.13. Use of government staff etc.

*[to be inserted]*

##### 6.14. Consultants

*[to be inserted]*

### Division 3 — Operation of Commission

#### Subdivision 1 — How Commission to be constituted

##### 6.15. General position

*[to be inserted]*

##### 6.16. Constitution of Commission for the performance of certain functions

*[to be inserted]*

##### 6.17. Concurrent operations

*[to be inserted]*

#### Subdivision 2 — Arrangement of business

##### 6.18. Arrangement of business of the Commission

*[to be inserted]*

##### 6.19. Unavailability of member

*[to be inserted]*

##### 6.20. Completion of part‑heard proceedings

*[to be inserted]*

#### Subdivision 3 — Hearings

##### 6.21. Commission to hold hearings

*[to be inserted]*

##### 6.22. Commission may determine whether matters are to be grouped together

*[to be inserted]*

##### 6.23. Opportunity to make submissions

*[to be inserted]*

##### 6.24. Questions to be decided by majority

*[to be inserted]*

##### 6.25. Representation before Commission

*[to be inserted]*

##### 6.26. Participation by telephone, etc.

*[to be inserted]*

##### 6.27. Hearings normally to be public

*[to be inserted]*

#### Subdivision 4 — Evidence and information

##### 6.28. Evidence and findings of other bodies

*[to be inserted]*

##### 6.29. Commission may prohibit disclosure of evidence

*[to be inserted]*

##### 6.30. Power of Commission to summon

*[to be inserted]*

##### 6.31. Power of Commission to take evidence

*[to be inserted]*

##### 6.32. Power of the Commission to require answers

*[to be inserted]*

##### 6.33. Commission may authorize another person to take evidence

*[to be inserted]*

##### 6.34. Interpreters

*[to be inserted]*

##### 6.35. Retention and copying of documents

*[to be inserted]*

#### Subdivision 5 — Recommendations and determinations

##### 6.36. Recommendations and determinations

*[to be inserted]*

### Division 4 — Financial provisions

##### 6.37. Funds for carrying out this Act

*[to be inserted]*

##### 6.38. Native Title Commission Account

*[to be inserted]*

##### 6.39. Application of *Financial Administration and Audit Act 1985*

*[to be inserted]*

### Division 5 — General

##### 6.40. Communication of information in certain cases

*[to be inserted]*

##### 6.41. Reference of question of law to the Supreme Court

*[to be inserted]*

##### 6.42. Offences

*[to be inserted]*

##### 6.43. Disclosure of interests

*[to be inserted]*

##### 6.44. Protection of members and persons appearing before the Commission

*[to be inserted]*

##### 6.45. Confidentiality

*[to be inserted]*

## Part 7 — Miscellaneous

##### 7.1. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted to be prescribed or are necessary or convenient to be prescribed for the purposes of this Act.

(2) Without limiting subsection (1), the regulations may prescribe fees that are to be paid in connection with applications to, and proceedings in, the Commission.

##### 7.2. Review of Act

(1) The Minister is to carry out and complete a review of the operation and effectiveness of this Act within 12 months after the 5th anniversary of the commencement of any provision of Part 6.

(2) In carrying out the review the Minister is to have particular regard to whether the public policy objectives of this Act remain valid and whether its provisions remain appropriate for achieving those objectives.

(3) The Minister is to prepare a report based on the review and cause the report to be laid before each House of Parliament as soon as is practicable after it is completed.

##### 7.3. Consequential amendments

[To be inserted.]

##### 7.4. Transitional provisions

(1) Despite anything in Part 2 or Part 3, that Part does not apply to an act that would, apart from this subsection, be a Part 2 act or a Part 3 act if, before the commencement of that Part, all notices provided for by section 29 of the NTA have been given in relation to the act.

(2) Division 1 of Schedule 3 has effect to enable regulations of a transitional nature to be made as to certain matters in progress at the commencement of Part 2 and Part 3.

(3) Division 2 of Schedule 3 has effect to enable regulations of a transitional nature to be made as to matters in progress under section 24MD(6B) of the NTA at the commencement of Part 4.

Schedule 1 — Provisions relating to members of the Commission

[See section 6.12.]

Schedule 2 — Consequential amendments

[See section 7.3.]

Schedule 3 — Transitional provisions

[s. 7.4]

Division 1 — Existing applications for mining tenements

1. Definition

In this Division —

existing mining application means an application —

(a) for a Part 2 act or a Part 3 act to be done that would —

(i) create or vary a right to mine; or

(ii) renew, re‑grant, remake or extend the term of an instrument creating a right to mine; and

(b) that —

(i) was made before the commencement of Part 2 or Part 3, as the case may be; but

(ii) was not granted before that commencement.

2. Regulations may modify certain provisions

The regulations may make provisions by which sections 2.14 and 3.13 are modified in their application to Part 2 acts and Part 3 acts to which existing mining applications relate to provide that all notices of those acts under sections 2.12 and 3.10 are to be given by the Government party.

3. Programme for dealing with existing mining applications

(1) The regulations may make provisions that establish a programme by which the giving of notices under sections 2.12 and 3.10 of Part 2 acts and Part 3 acts to which existing mining applications relate are to be spread over a period of time.

(2) The purpose of the programme is to enable the processes in Parts 2 and 3 to be applied to the acts concerned in an orderly and effective manner.

(3) In particular, the regulations may provide, as part of the programme, for the giving of notices of acts relating to areas of the State specified in the regulations to be limited to a certain number of acts during a period so specified.

Division 2 — Matters in progress under section 24MD(6B) of the NTA

4. Definition

(1) In this Division —

section 24MD(6B) matter means, subject to this clause, an act, matter or circumstance that has occurred or come into existence before the commencement of Part 4 for the purpose of —

(a) the State meeting its obligations; or

(b) a person exercising rights or performing functions,

under subsection (6B) of section 24MD of the NTA, or otherwise for the purposes of that subsection.

(2) The definition in subclause (1) includes notices given, time that has elapsed or commenced to run, objections made, requests for a hearing and, subject to subclause (3), proceedings commenced.

(3) The definition does not include —

(a) proceedings commenced if the independent person referred to in section 24MD(6B) has entered upon the proceedings to the extent of holding a hearing; or

(b) determinations or recommendations made.

5. Regulations may make transitional provisions

(1) The regulations may make any provision of a transitional nature that is necessary or expedient to be made to ensure that, after the commencement of Part 4 —

(a) all section 24MD(6B) matters are dealt with under that Part; and

(b) there is an effective transition from the provisions of section 24MD(6B) of the NTA to the provisions of that Part.

(2) Without limiting subclause (1), the regulations may make provision for the continuing effect of section 24MD(6B) matters, whether with or without modification, and for those matters to be treated as if they had occurred or come into existence for the purposes of Part 4.

(3) Provision may be made as mentioned in subclause (2) despite the fact that a section 24MD(6B) matter does not fully comply with a requirement of Part 4.



Notes

This is a compilation of the *Native Title (State Provisions) Act 1999*. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

| **Short title** | **Number and year** | **Assent** | **Commencement** |
| --- | --- | --- | --- |
| *Native Title (State Provisions) Act 1999*  Pt. 1 and s. 2.2, 3.1, 7.1, 7.2 and 7.4 | 60 of 1999 | 10 Jan 2000 | 10 Jan 2000 (see s. 2(1)) |

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

| **Short title** | **Number and year** | **Assent** | **Commencement** |
| --- | --- | --- | --- |
| *Native Title (State Provisions) Act 1999* Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1), Pt. 4‑6, s. 7.3 and  Sch. 1 and 2 | 60 of 1999 (as amended by No. 59 of 2004 s. 141 cl. 107; No. 77 of 2006 s. 17) | 10 Jan 2000 | Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 5 Div. 4 operative day to be determined under Commonwealth *Native Title Act 1993*, s. 43A (see s. 1.2(3)-(5)); Pt. 4 to be proclaimed (see s. 1.2(2)); Pt. 5 Div. 1-3 and Pt. 6 operative on the earlier of the commencement of Pt. 2 (except s. 2.2) or Pt. 4 (see s. 1.2(2) and Gazette 22 Aug 2000 p. 4845); s. 7.3 operative on earliest of commencement of Pt. 2 (except s. 2.2), Pt. 3 (except s. 3.1) and Pt. 4 (see s. 2(6)) |