

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 —

- sections 2.4 and 3.3 (which relate to State alternative provisions for the purposes of sections 43 and 43A of the NTA);
- section 4.1 (which relates to State provisions (b) supplementary to section 24MD(6B) of the NTA); and
- 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 —

- in right of Western Australia; and
- so far as the legislative power of the Parliament permits, (b) in all its other capacities.

1.5. Interpretation

- In this Act the Native Title Act 1993 of the Commonwealth is (1) 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.
- In this Act, unless the contrary intention appears (4)
 - "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
 - (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
 - the later day fixed under section 2.18(2), 3.17(2) or (b) 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 —

- 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" —

- 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
- 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.

- To avoid doubt it is declared that references in this Act to (5) "written law" are to a written law of the State.
- Notes in this Act are provided to assist understanding and do not (6) form part of the Act.

1.6. Performance of certain functions on behalf of Minister

Where a Government party is a Minister of the Crown the (1) 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.

Nothing in this Act is to be read as preventing the exercise by a (2) 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 registered native title claimant in relation to a (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

s. 2.1

Part 2 — Consultation procedures for alternative provision areas

Division 1 — Preliminary

2.1. **Definitions**

[to be inserted-2]

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 —

- the provisions of this Part comply with section 43A(4) and (6) of the NTA; and
- the requirements of section 43A(7) are complied with. (b)

2.3. **Transitional provisions**

[to be inserted-2]

2.4. **Object of this Part**

[to be inserted-2]

Division 2 — Relevant future acts and their validity

2.5. Acts to which this Part applies

[to be inserted- $\frac{2}{3}$]

Circumstances in which act is not valid 2.6.

[to be inserted- $\frac{2}{3}$]

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

2.8.	Other statutory requirements not affected [to be inserted-2]	
	Division 3 — Notices and objections	
2.9.	Proponent where act relates to mining	1
	[to be inserted= ²]	
2.10.	Identification of proponents in other cases	i
	[to be inserted- ²]	
2.11.	Closing day for objections	
	[to be inserted= ²]	
2.12.	Notification of acts	
	[to be inserted= ²]	
2.13.	Further provision as to notices	1
	[to be inserted= ²]	
2.14.	Who gives notice	
	[to be inserted= ²]	
2.15.	Prescribed provisions about notice	1
	[to be inserted= ²]	
2.16.	Right to object to doing of act	1
	[to be inserted- ²]	
2.17.	Requirements for objections	1
	[to be inserted= ²]	

Part 2 Consultation procedures for alternative provision areas

Division 4 Consultation and agreements

s. 2.15

2.18. Time limit

[to be inserted- $\frac{2}{3}$]

2.19. Government party to notify the Commission of objections

[to be inserted-2]

2.20. Withdrawal of request etc. by proponent

[to be inserted $\frac{2}{3}$]

2.21. Withdrawal of proposal by Government party

[to be inserted-²]

Division 4 — Consultation and agreements

2.22. Meaning of "consultation parties"

[to be inserted $\frac{2}{3}$]

2.23. Consultation

[to be inserted-2]

2.24. Involvement of Commission, including mediation

[to be inserted $\frac{2}{3}$]

2.25. Withdrawal of objection

[to be inserted-²]

2.26. Agreement made by parties

[to be inserted-2]

Division 5 — Recommendations of the Commission

2.27. Commission may notify intention to hear

2.28.	Consultations may continue
	[to be inserted- ²]
2.29.	Dismissal of objections
	[to be inserted- ²]
2.30.	Time for making recommendation
	[to be inserted- ²]
2.31.	No recommendation if agreement etc.
	[to be inserted- ²]
2.32.	Making of recommendation
	[to be inserted- ²]
2.33.	Criteria for making recommendations
	[to be inserted- ²]
2.34.	Issues on which parties agree
	[to be inserted- ²]
2.35.	Copy of recommendation to be given
	[to be inserted- ²]
2.36.	Effect of recommendation
	[to be inserted- ²]
2.37.	Effect of recommendation that specifies conditions
	[to be inserted- ²]

Part 2 Consultation procedures for alternative provision areas

Division 6 s. 2.15

Overruling of recommendations

Division 6 — Overruling of recommendations

2.38. Responsible Minister may overrule a recommendation

[to be inserted-2]

2.39. Determinations that responsible Minister may make

[to be inserted- $\frac{2}{3}$]

2.40. Consultation before making of determination

[to be inserted 2]

2.41. Ground on which determination may be made

[to be inserted $\frac{2}{3}$]

2.42. Conditions in determination

[to be inserted- $\frac{2}{3}$]

2.43. Copy of determination to be laid before Parliament

[to be inserted²]

2.44. Responsible Minister may declare intention not to overrule

[to be inserted-2]

Division 7 — Applications

2.45. Definition

[to be inserted $\frac{2}{3}$]

2.46. Form and contents of application

[to be inserted-²]

2.47. Material and fees to accompany applications

[to be inserted $-\frac{2}{3}$]

2.48.	Application fee may be waived	
	[to be inserted- ²]	
	Division 8 — Judicial review	
2.49.	Application for review	
	[to be inserted- ²]	
2.50.	Time limit for application	
	[to be inserted ²]	
2.51.	Procedure	
	[to be inserted ²]	
2.52.	Grounds on which application may be made	
	[to be inserted ⁻²]	
2.53.	Powers of Court	
	[to be inserted- ²]	
2.54.	Effect on other remedies	
	[to be inserted- ²]	

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

Division **Preliminary**

s. 3.1

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-2]

3.3. **Object of this Part**

[to be inserted-2]

Division 2 — Relevant future acts and their validity

3.4. Acts to which this Part applies

[to be inserted- $\frac{2}{3}$]

3.5. Circumstances in which act is not valid

[to be inserted-2]

Other statutory requirements not affected 3.6.

[to be inserted $\frac{2}{3}$]

Division 3 — Notices and objections

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

3.8.	Identification of proponents in other cases	
	[to be inserted- ²]	
3.9.	Closing day for objections	•
	[to be inserted- ²]	
3.10.	Notification of acts	1
	[to be inserted- ²]	
3.11.	Further provision as to notices	1
	[to be inserted- ²]	
3.12.	Notice may relate to 2 or more acts	i
	[to be inserted- ²]	
3.13.	Who gives notice	i
	[to be inserted- ²]	
3.14.	Prescribed provisions about notice	•
	[to be inserted- ²]	
3.15.	Right to object to doing of act	
	[to be inserted- ²]	
3.16.	Requirements for objections	
	[to be inserted- ²]	
3.17.	Time limit	i
	[to be inserted- ²]	
3.18.	Government party to notify the Commission of objections	i
	[to be inserted ⁻²]	

Part 3 Right to negotiate procedures for areas not covered by Part 2 **Division 4** and agreements

s. 3.19

3.19. Withdrawal of request etc. by proponent

[to be inserted-2]

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

[to be inserted-2]

Division 4 — Negotiations and agreements

3.21. Meaning of "negotiation parties"

[to be inserted-²]

Negotiations 3.22.

[to be inserted-2]

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

[to be inserted-²]

Withdrawal of objection 3.24.

[to be inserted-²]

3.25. Agreement made by parties

[to be inserted-2]

Commission's function in respect of an agreement **3.26.**

[to be inserted $\frac{2}{3}$]

3.27. Effect of conditional agreement

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-2]

3.29. Responsible Minister may make determination

[to be inserted-2]

3.30. Grounds for making determination

[to be inserted-2]

3.31. **Consultation with Commonwealth Minister**

[to be inserted-2]

3.32. Notice and submissions etc.

[to be inserted-2]

3.33. Material etc. taken into account

[to be inserted-2]

Minister's power not limited 3.34.

[to be inserted-²]

3.35. No duty to make determination

[to be inserted-2]

3.36. **Conditions to have contractual effect**

[to be inserted-²]

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

Division 5 Determinations

s. 3.37

3.37. Copy of determination to be given

[to be inserted $-\frac{2}{3}$]

3.38. Copy of determination to be laid before Parliament

[to be inserted-2]

Subdivision 2 — **Determination by Commission**

3.39. Commission may notify intention to hear

[to be inserted²]

3.40. Negotiations may continue

[to be inserted $\frac{2}{3}$]

3.41. Dismissal of objections

[to be inserted $\frac{2}{3}$]

3.42. Time for making determination

[to be inserted-2]

3.43. No determination if agreement etc.

[to be inserted- 2]

3.44. Making of determination

[to be inserted-2]

3.45. Criteria for making determinations

[to be inserted-2]

3.46. Issues on which parties agree

3.47.	Determination may provide for issues to be resolved later
	[to be inserted- ²]
3.48.	No reopening of certain issues previously decided
	[to be inserted- ²]
3.49	Copy of determination to be given
	[to be inserted- ²]
3.50.	Effect of conditional determination
	[to be inserted- ²]
Di	vision 6 — Overruling of Commission's determination
3.51.	Responsible Minister may overrule
	[to be inserted- ²]
3.52.	Declarations that responsible Minister may make
	[to be inserted- ²]
3.53.	Grounds on which declaration may be made
	[to be inserted- ²]
3.54.	Conditions in declaration
	[to be inserted- ²]
3.55.	Copy of declaration to be laid before Parliament
	[to be inserted- ²]
3.56.	Responsible Minister may declare intention not to overrule
	[to be inserted- ²]

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

Division 7

Applications

s. 3.57

Division 7 — Applications

Definition 3.57.

[to be inserted-2]

Form and contents of application 3.58.

[to be inserted-2]

Material and fees to accompany applications 3.59.

[to be inserted 2]

Application fee may be waived 3.60.

[to be inserted-²]

Division 1

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

Division 1 — Preliminary

4.4	01.	641 · D
4.1.	Object (of this Part

[to be inserted-2]

4.2. Acts to which this Part applies

[to be inserted- $\frac{2}{3}$]

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

[to be inserted-2]

4.4. Other statutory requirements not affected

[to be inserted-2]

Division 2 — Notices and objections

4.5. Proponent where act relates to mining

[to be inserted-2]

4.6. Identification of proponents in other cases

[to be inserted-2]

4.7. Closing day for objections

[to be inserted²]

4.8. Notification of acts by Government party

[to be inserted-²]

4.9. Further provision as to notices

[to be inserted- $\frac{2}{3}$]

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Native Title (State Provisions) Act 1999			
Part 4	Consultation procedures for acts to which section 24MD(6B) of the NTA applies		
Divisio	• •		
s. 4.10	•		
4.10.	Prescribed provisions about notice		
	[to be inserted- ²]		
4.11.	Right to object to doing of act		
	[to be inserted- ²]		
4.12.	Requirements for objections		
	[to be inserted- ²]		
4.13.	Time limit		
	[to be inserted- ²]		
4.14.	Government party to notify the Commission of objections		
	[to be inserted- ²]		
4.15.	Withdrawal of request etc. by proponent		
	[to be inserted- ²]		
4.16.	Withdrawal of proposal by Government party		
	[to be inserted ²]		
	Division 3 — Consultation and agreements		
4.17.	Meaning of "consultation parties"		
	[to be inserted- ²]		
4.18.	Consultation		
	[to be inserted- ²]		

4.19. Involvement of Commission, including mediation

[to be inserted²]

Dismissal of objections 4.24.

[to be inserted-²]

4.25. Time for making recommendation

[to be inserted-²]

4.26. No recommendation if agreement etc.

[to be inserted-2]

4.27. Making of recommendation

[to be inserted $\frac{2}{3}$]

4.28. Criteria for making recommendations

[to be inserted-2]

4.29. Issues on which parties agree

[to be inserted-²]

Part 4	Consultation procedures for acts to which section 24MD(6B) the NTA applies
Divisions. 4.30	• •
4.30.	Copy of recommendation to be given
	[to be inserted- ²]
4.31.	Effect of recommendation
	[to be inserted- ²]
4.32.	Effect of recommendation that specifies conditions
	[to be inserted- ²]
	Division 5 — Overruling of recommendations
4.33.	Responsible Minister may overrule a recommendation
	[to be inserted ⁻²]
4.34.	Determinations that responsible Minister may make
	[to be inserted- ²]
4.35.	Consultation before making of determination [to be inserted-2]
4.36.	Ground on which determination may be made
1.50.	[to be inserted- ²]
4.37.	Conditions in determination
	[to be inserted- ²]
4.38.	Copy of determination to be laid before Parliament
	[to be inserted- ²]
4.39.	Responsible Minister may declare intention not to overrule

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

[to be inserted-²]

Part 4

s. 4.40

Division 6

Division 6 — Applications

4.40. Definition
[to be inserted-²]
4.41. Form and contents of application
[to be inserted-²]
4.42. Material and fees to accompany applications
[to be inserted-²]
4.43. Application fee may be waived

Part 5 Provisions relating to compensation

Division 1 Preliminary

s. 5.1

Part 5 — Provisions relating to compensation

Division 1 — Preliminary

5.1. Definition

[to be inserted-2]

Division 2 — **Determination of compensation**

5.2. Commission to determine compensation for certain acts

[to be inserted- $\frac{2}{3}$]

5.3. Parties may agree on compensation

[to be inserted- $\frac{2}{3}$]

5.4. Enforcement of order for compensation

[to be inserted- $\frac{2}{3}$]

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

5.5. No multiple compensation for essentially same act

[to be inserted- 2]

5.6. Compensation principles to be as for ordinary title

[to be inserted-2]

5.7. Compensation to be monetary

[to be inserted $\frac{2}{3}$]

5.8. Requests for non-monetary compensation

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-2]

5.10. How amounts held in trust to be dealt with

[to be inserted-²]

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

[to be inserted- $\frac{2}{3}$]

5.12. Section 5.10(c) cases [to be inserted $^{-2}$]

5.13. Section 5.10(d) cases where monetary compensation [to be inserted-²]

5.14. Section 5.10(d) cases where non-monetary compensation [to be inserted- $\frac{2}{3}$]

5.15. Section 5.10(d) cases where no compensation

[to be inserted-2]

5.16. Section 5.10(e) cases [to be inserted- 2]

5.17. Jurisdiction of the Commission under this Division

Native Title Commission Commission established

s. 6.1

Part 6 — Native Title Commission

Division 1 — Commission established

6.1. **Establishment of Commission**

[to be inserted $\frac{2}{3}$]

Functions of Commission 6.2.

[to be inserted $\frac{2}{3}$]

6.3. Requirements for fairness etc. to be observed

[to be inserted-2]

6.4. Membership of the Commission

[to be inserted $\frac{2}{3}$]

6.5. Eligibility for appointment as Chief Commissioner

[to be inserted-2]

Appointment of member of NNTT 6.6.

[to be inserted-2]

6.7. Qualifications for appointment

[to be inserted-²]

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

[to be inserted-²]

Administrative functions of Chief Commissioner 6.9.

[to be inserted-²]

6.10.	Authorization of Chief Commissioner for purposes of section 199F of the NTA	•
	[to be inserted ⁻²]	
6.11.	Delegation to members	ſ
	[to be inserted ²]	
6.12.	Other provisions relating to members	ı
	[to be inserted ⁻²]	
	Division 2 — Staff of the Commission	
6.13.	Use of government staff etc.	i
	[to be inserted- ²]	
6.14.	Consultants	ı
	[to be inserted- ²]	
	Division 3 — Operation of Commission	
	Subdivision 1 — How Commission to be constituted	
6.15.	General position	I
	[to be inserted- ²]	

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

[to be inserted- $\frac{2}{3}$]

6.17. Concurrent operations

[to be inserted- $\frac{2}{3}$]

s. 6.18

Subdivision 2 — Arrangement of business

6.18. **Arrangement of business of the Commission**

[to be inserted-2]

Unavailability of member 6.19.

[to be inserted-2]

6.20. Completion of part-heard proceedings

[to be inserted-²]

Subdivision 3 — Hearings

6.21. Commission to hold hearings

[to be inserted-2]

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

[to be inserted-2]

Opportunity to make submissions 6.23.

[to be inserted-2]

6.24. Questions to be decided by majority

[to be inserted-2]

Representation before Commission 6.25.

[to be inserted-2]

6.26. Participation by telephone, etc.

[to be inserted-2]

Hearings normally to be public 6.27.

Subdivision 4 — Evidence and information

6.28.	Evidence and findings of other bodies [to be inserted-2]
6.29.	Commission may prohibit disclosure of evidence [to be inserted-2]
6.30.	Power of Commission to summon [to be inserted-2]
6.31.	Power of Commission to take evidence [to be inserted-2]
6.32.	Power of the Commission to require answers [to be inserted-2]
6.33.	Commission may authorize another person to take evidence [to be inserted-2]
6.34.	Interpreters [to be inserted-2]
6.35.	Retention and copying of documents [to be inserted-2]
	Subdivision 5 — Recommendations and determinations
6.36.	Recommendations and determinations [to be inserted- ²]

Native Title Commission Financial provisions

s. 6.37

Division 4 — Financial provisions

6.37. Funds for carrying out this Act

[to be inserted- $\frac{2}{3}$]

6.38. Native Title Commission Account

[to be inserted-2]

6.39. Application of Financial Administration and Audit Act 1985

[to be inserted-2]

Division 5 — General

6.40. Communication of information in certain cases

[to be inserted $-\frac{2}{3}$]

6.41. Reference of question of law to the Supreme Court

[to be inserted-2]

6.42. Offences

[to be inserted-2]

6.43. Disclosure of interests

[to be inserted $\frac{2}{3}$]

6.44. Protection of members and persons appearing before the

Commission

[to be inserted-2]

6.45. Confidentiality

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-^{1a}.]

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.

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Extract from www.slp.wa.gov.au, see that website for further information

- (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

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 —

- for a Part 2 act or a Part 3 act to be done that would
 - create or vary a right to mine; or
 - renew, re-grant, remake or extend the term of an (ii) instrument creating a right to mine; and
- (b) that
 - was made before the commencement of Part 2 or Part (i) 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.
- The purpose of the programme is to enable the processes in Parts 2 (2) and 3 to be applied to the acts concerned in an orderly and effective manner.
- 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

Schedule 3 Transitional provisions

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
 - the State meeting its obligations; or
 - a person exercising rights or performing functions, under subsection (6B) of section 24MD of the NTA, or otherwise for the purposes of that subsection.
- The definition in subclause (1) includes notices given, time that has (2) elapsed or commenced to run, objections made, requests for a hearing and, subject to subclause (3), proceedings commenced.
- (3) The definition does not include
 - 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
 - determinations or recommendations made. (b)

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

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- 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. The following For provisions that have come into operation see the compilation table contains information about that Act ^{1a}. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation Table <u>table</u>

Short title	Number and Year year	Assent	Commencement
Native Title (State Provisions) Act 1999 Pt1 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))

Notes

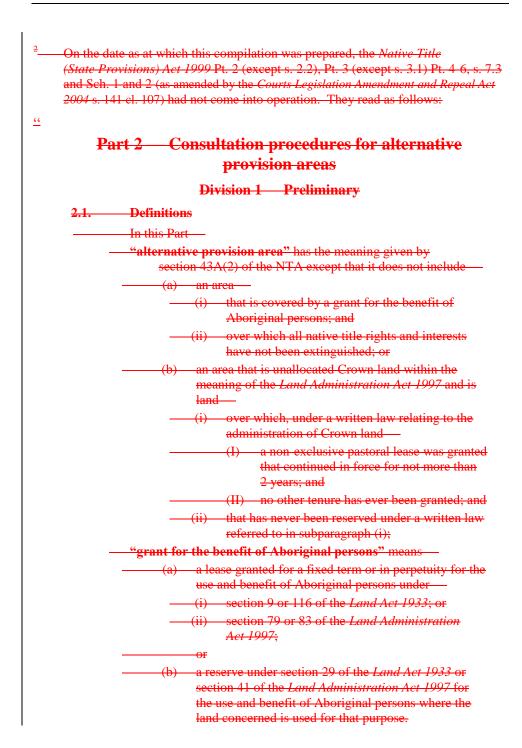
On the date as at which this compilation was 1a prepared, Uncommenced provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For

On the date as at which this compilation was prepared, Uncommenced provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For

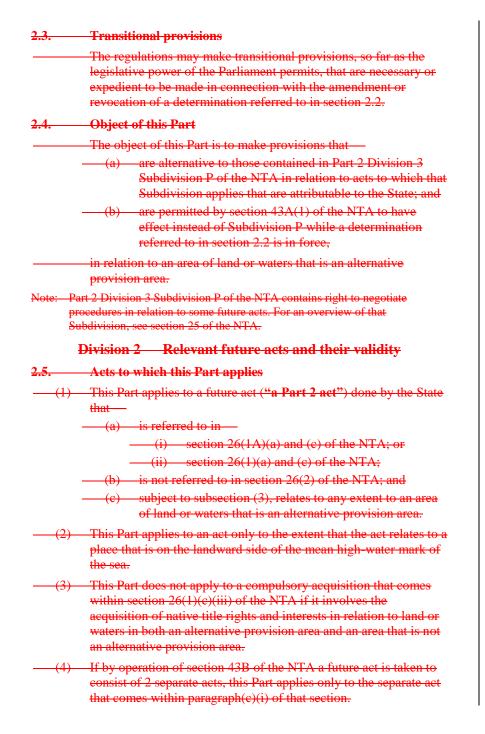
To view the text of the uncommenced provisions see the endnote referred to in the table Acts as passed on the WA Legislation website.

Provisions that have not come into operation

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), Pt4- _6-, s. 7.3 and Sch. 1 and 2- 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 <i>Native Title Act 1993</i> , 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); section 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))



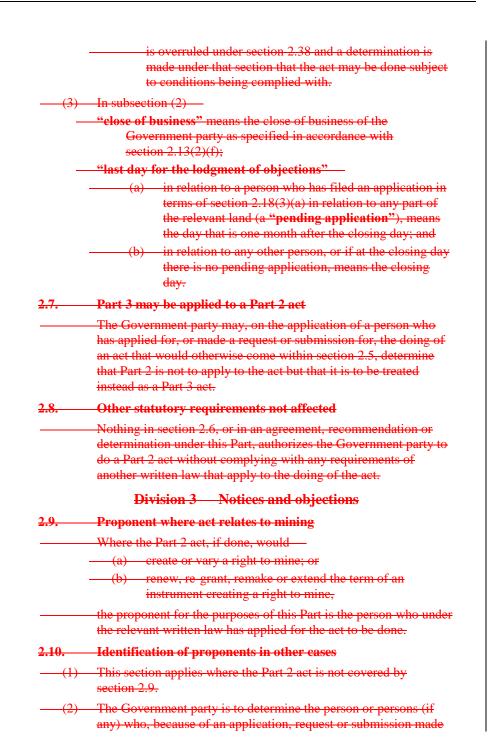
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 42 Extract from www.slp.wa.gov.au, see that website for further information

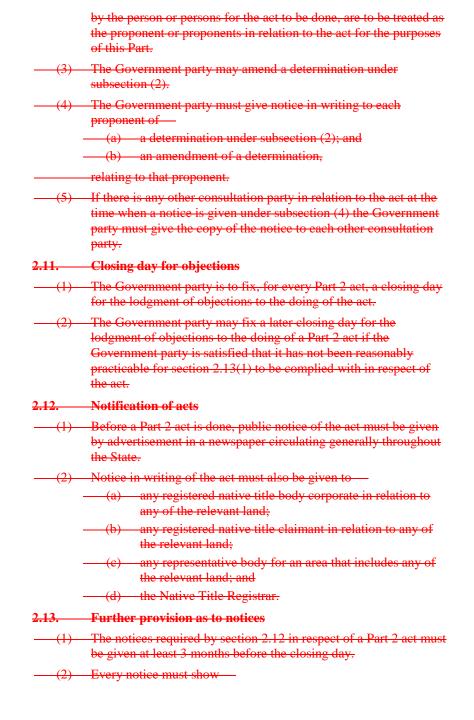


Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 43 Extract from www.slp.wa.gov.au, see that website for further information

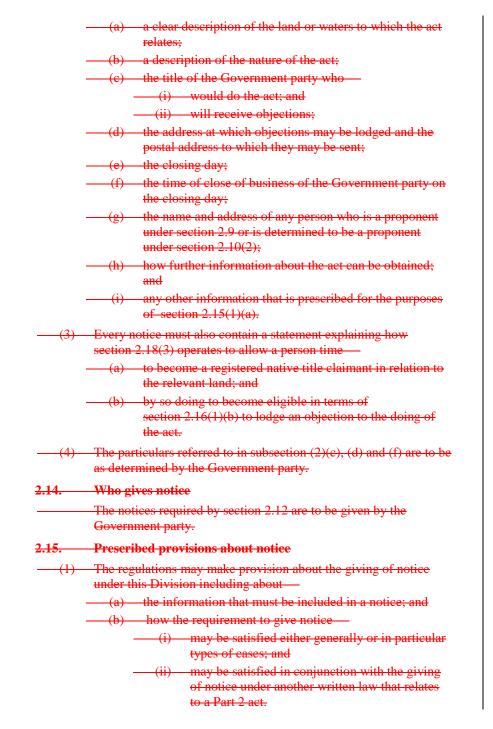
(5)	This Part does not apply to an act in respect of which a determination is made under section 2.7.
2.6.	Circumstances in which act is not valid
	A Part 2 act is not valid to the extent that it affects native title unless, before it is done, the requirements of one of the paragraphs of subsection (2) are satisfied in respect of the act.
(2)	The requirements are
	(a) no objection is lodged under section 2.16 before the close of business on the last day for the lodgment of objections;
	(b) after the last day for the lodgment of objections, but
	immediately before the act is done, there is no
	 (i) registered native title body corporate; or (ii) registered native title claimant,
	in relation to any part of the relevant land;
	— (c) all objections lodged under section 2.16 before the close
	of business on the last day for the lodgment of objections
	— (i) withdrawn under section 2.25; or
	— (ii) dismissed under section 2.29;
	— (d) an agreement of the kind described in section 2.26 is
	made by the consultation parties and given to the Commission under that section;
	(e) a recommendation is made that the act be done, or be
	done subject to conditions being complied with, and the recommendation
	(i) has not been overruled under section 2.38; and
	— (ii) is no longer capable of being overruled—
	(I) because of section 2.38(2); or
	(II) because the responsible Minister has given an instrument to the Commission under section 2.44;
	(f) a recommendation that the act not be done is overruled under section 2.38; or
	— (g) a recommendation
	— (i) that the act be done; or
	that the act be done subject to conditions being complied with,

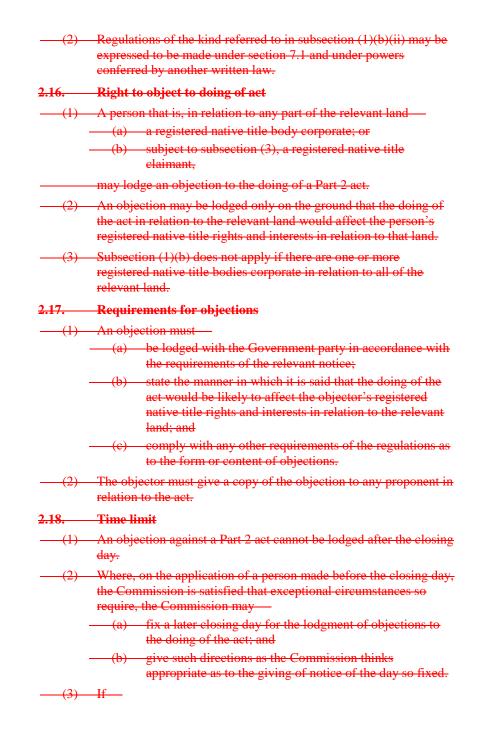
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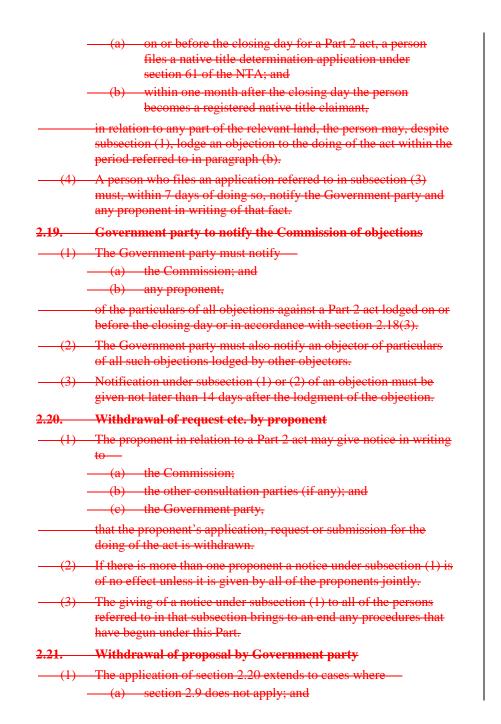


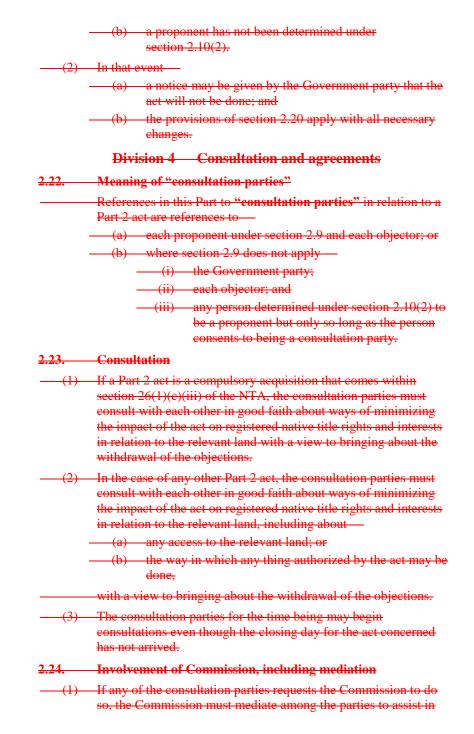


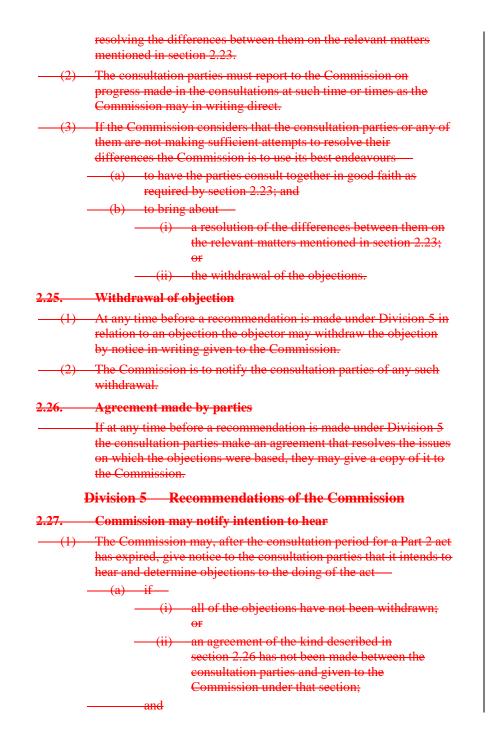
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 46 Extract from www.slp.wa.gov.au, see that website for further information

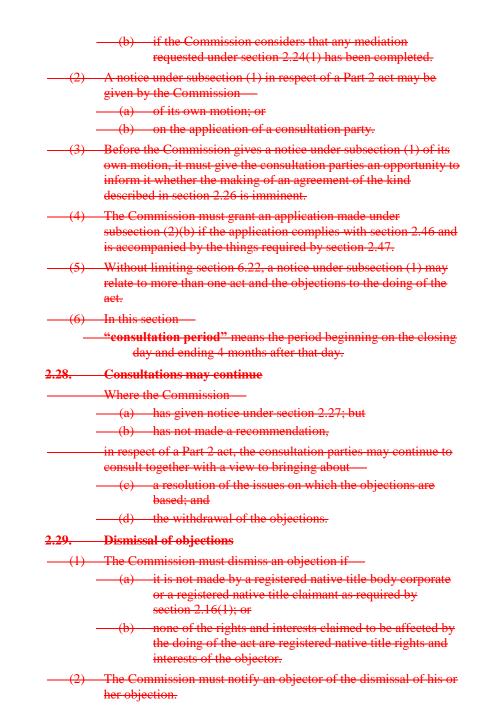


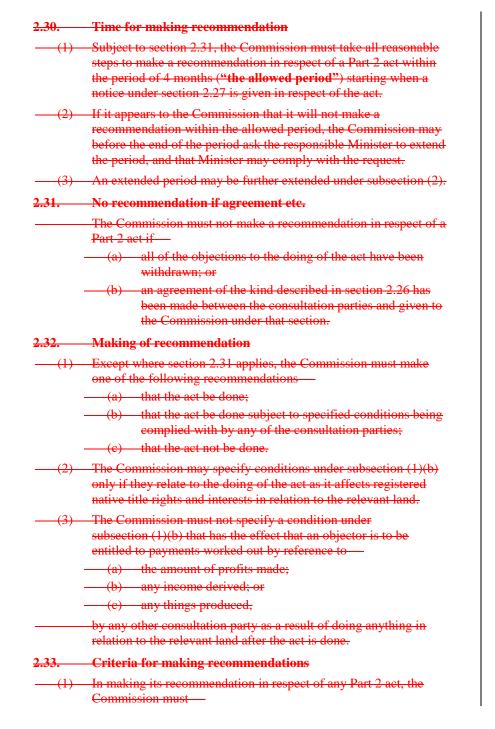


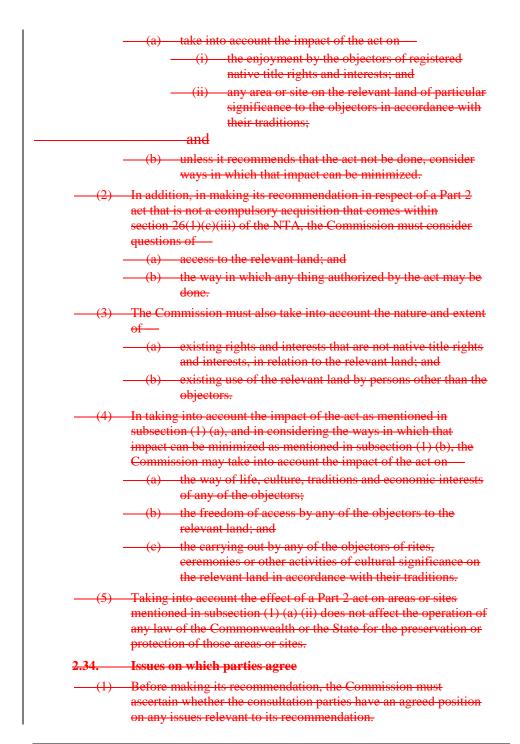


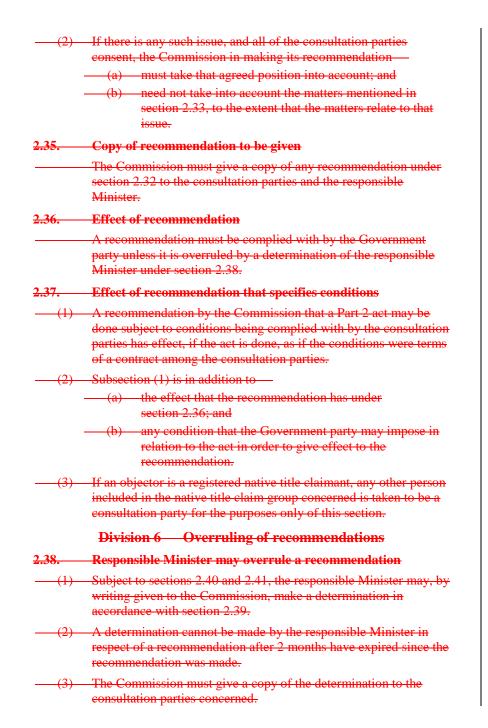




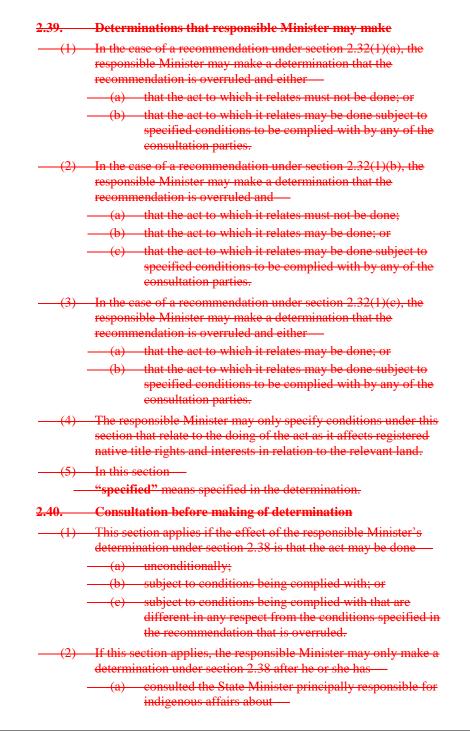




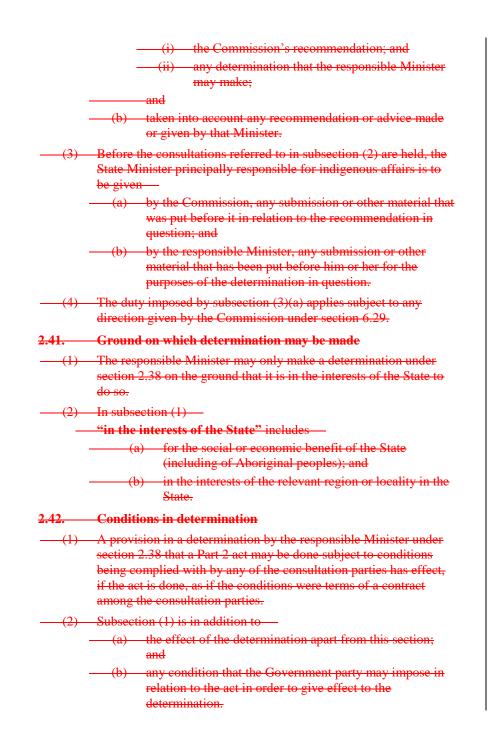




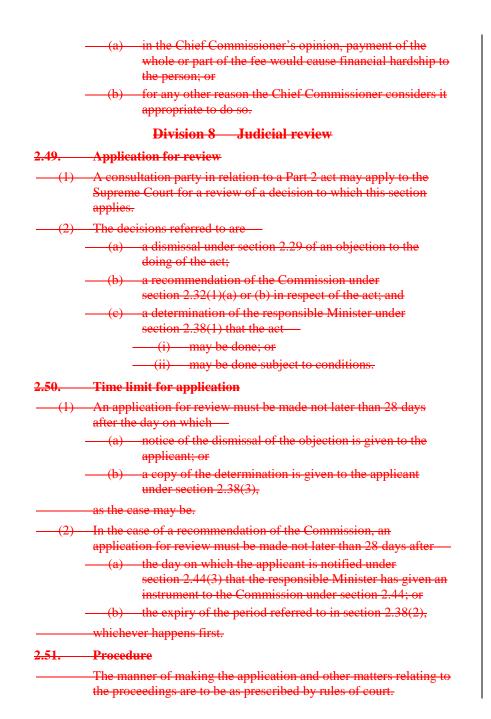
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 55 Extract from www.slp.wa.gov.au, see that website for further information

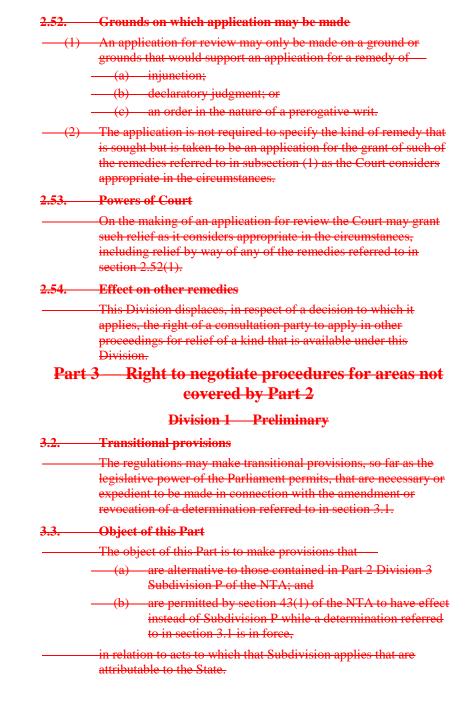


page 56 Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information



(3)	If an objector is a registered native title claimant, any other person included in the native title claim group concerned is taken to be a consultation party for the purposes only of this section.
2.43.	Copy of determination to be laid before Parliament
(1)	The responsible Minister must cause a copy of a determination under section 2.38, together with reasons for the determination, to be laid before each House of Parliament.
(2)	Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.
2.44.	Responsible Minister may declare intention not to overrule
(1)	The responsible Minister may by instrument given to the Commission declare that he or she does not intend to exercise any power conferred by section 2.38 in respect of a particular recommendation.
(2)	If an instrument is given to the Commission under subsection (1) the responsible Minister—
	 (a) cannot revoke the instrument; and (b) cannot exercise any power conferred by section 2.38 in respect of the recommendation concerned.
(3)	The Commission is to notify the consultation parties of the giving of an instrument to it under subsection (1).
	Division 7 Applications
2.45.	— Definition
	In this Division—
	"application" means an application under section 2.27(2)(b).
	Form and contents of application
	An application must
	(a) be made in accordance with the regulations; and
	(b) comply with the requirements of the regulations as to the form or content of applications.
2.47.	Material and fees to accompany applications
	An application must be accompanied by any prescribed documents and any prescribed fee.
2.48.	Application fee may be waived
	The Chief Commissioner may waive payment of the whole or part of a fee payable by a person under section 2.47 where





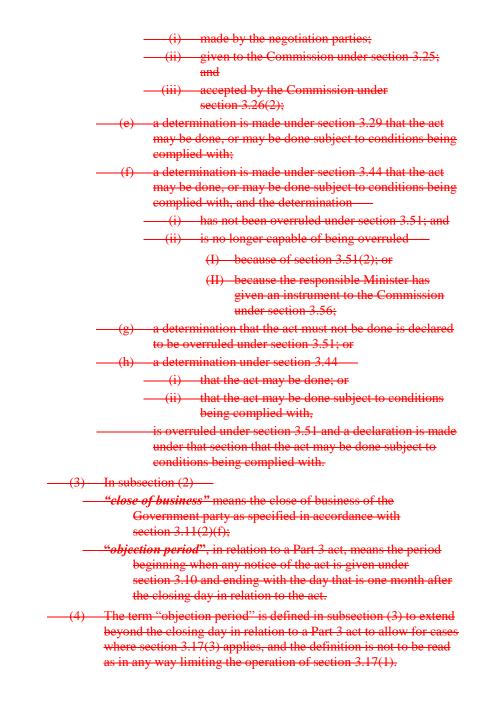
Note: Part 2 Division 3 Subdivision P of the NTA contains right to negotiate procedures in relation to some future acts. For an overview of that Subdivision, see section 25 of the NTA.

Division 2 Relevant future acts and their validity Acts to which this Part applies (1) This Part applies to a future act ("a Part 3 act") done by the State thatis referred to in (i) section 26(1A)(a) and (c) of the NTA; or (ii) section 26(1)(a) and (c) of the NTA; (b) is not referred to in section 26(2) of the NTA; and (c) subject to section 2.7, is not a Part 2 act. This Part applies to an act only to the extent that the act relates to a place that is on the landward side of the mean high water mark of the sea. If by operation of section 43B of the NTA a future act is taken to consist of 2 separate acts (a) this Part applies only to the separate act that comes within paragraph (c)(ii) of that section; and for the purposes of this Part that act is taken to be done at the time provided for by paragraph (d) of that section. 3.5. Circumstances in which act is not valid (1) A Part 3 act is not valid to the extent that it affects native title unless, before it is done, the requirements of one of the paragraphs of subsection (2) are satisfied in respect of the act. The requirements are no objection is lodged under section 3.15 before the close of business on the last day of the objection period; (b) after the objection period, but immediately before the act is done, there is no (i) registered native title body corporate; or (ii) registered native title claimant, in relation to any part of the relevant land; (e) all objections lodged under section 3.15 before the close of business on the last day of the objection period are (i) withdrawn under section 3.24; or (ii) dismissed under section 3.41;

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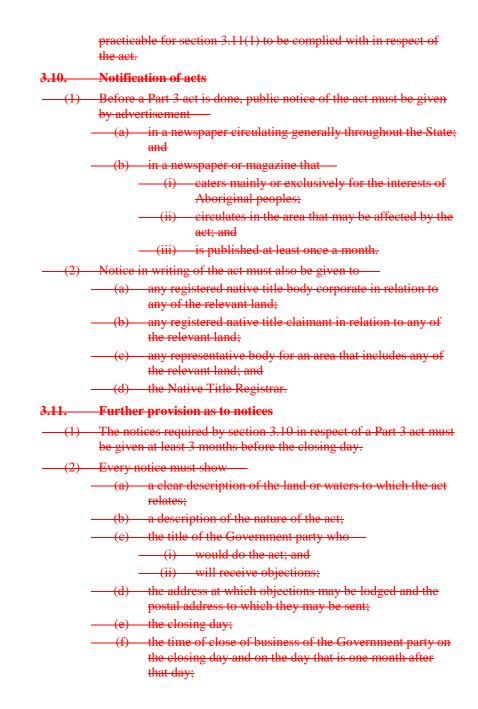
is

an agreement of the kind mentioned in section 3.22(1)



Other statutory requirements not affected Nothing in section 2.7 or 3.5, or in an agreement, determination or declaration under this Part, authorizes the Government party to do a Part 3 act without complying with any requirements of another written law that apply to the doing of the act. **Division 3** Notices and objections Proponent where act relates to mining Where the Part 3 act, if done, would (a) create or vary a right to mine; or renew, re-grant, remake or extend the term of an instrument creating a right to mine, the proponent for the purposes of this Part is the person who under the relevant written law has applied for the act to be done. **Identification of proponents in other cases** This section applies where the Part 3 act is not covered by section 3.7. The Government party is to determine the person or persons (if any) who, because of an application, request or submission made by the person or persons for the act to be done, are to be treated as the proponent or proponents in relation to the act for the purposes of this Part. The Government party may amend a determination under subsection (2). The Government party must give notice in writing to each proponent of (a) a determination under subsection (2); and (b) any amendment of a determination, relating to that proponent. (5) If there is any other negotiation party in relation to the act at the time when a notice is given under subsection (4) the Government party must give the copy of the notice to each other negotiation party. Closing day for objections (1) The Government party is to fix, for every Part 3 act, a closing day for the lodgment of objections to the doing of the act. The Government party may fix a later closing day for the lodgment of objections to the doing of a Part 3 act if the Government party is satisfied that it has not been reasonably

Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 63 Extract from www.slp.wa.gov.au, see that website for further information

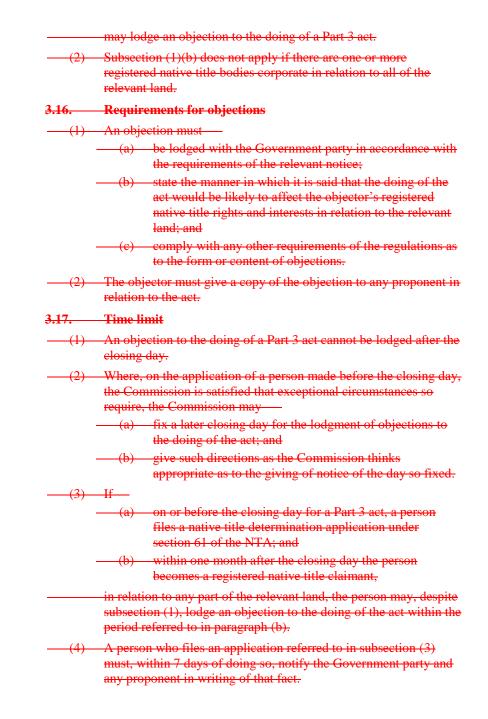


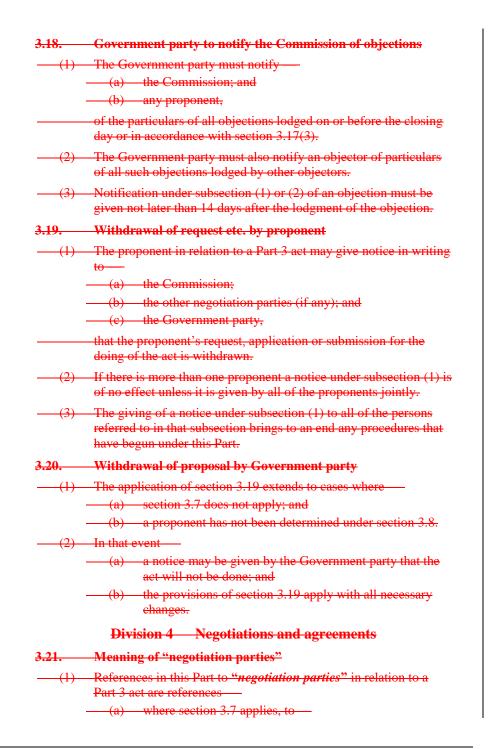
page 64 Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15]

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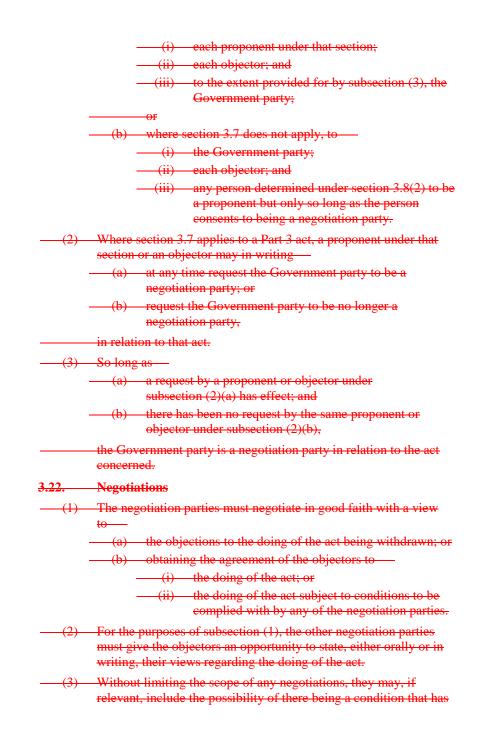
	(g) the name and address of any person who is a proponent under section 3.7 or is determined to be a proponent
	under section 3.8(2);
	— (h) how further information about the act can be obtained; and
	— (i) any other information that is prescribed for the purposes of section 3.14(1)(a).
(3)	Every notice must also contain a statement explaining how section 3.17(3) operates to allow a person time—
	(a) to become a registered native title claimant in relation to the relevant land; and
	(b) by so doing to become eligible in terms of section 3.15(1)(b) to lodge an objection to the doing of the act.
(4)	The particulars referred to in subsection (2)(c), (d) and (f) are to be as determined by the Government party.
3.12.	Notice may relate to 2 or more acts
	One notice may relate to the doing of 2 or more Part 3 acts.
3.13.	- Who gives notice
	The notices required by section 3.10 are to be given by the Government party.
3.14.	Prescribed provisions about notice
	The regulations may make provision about the giving of notice under this Division including about—
	(a) the information that must be included in a notice; and
	— (b) how the requirement to give notice—
	 (i) may be satisfied either generally or in particular types of cases; and
	— (ii) may be satisfied in conjunction with the giving of notice under another written law that relates to a Part 3 act.
(2)	Regulations of the kind referred to in subsection (1)(b)(ii) may be expressed to be made under section 7.1 and under powers conferred by another written law.
3.15.	Right to object to doing of act
	A person that is, in relation to any part of the relevant land
. ,	(a) a registered native title body corporate; or
	— (b) subject to subsection (2), a registered native title elaimant,

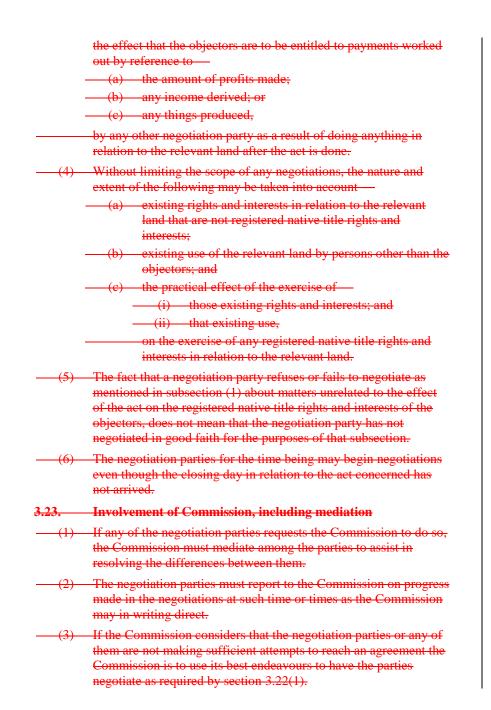
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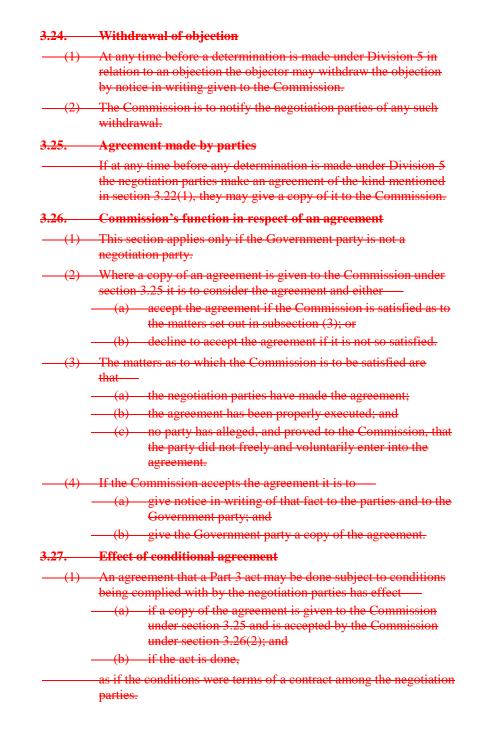


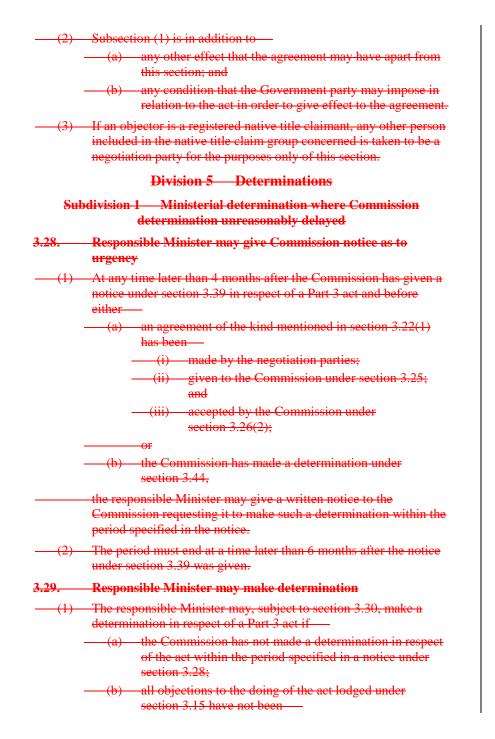
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 67 Extract from www.slp.wa.gov.au, see that website for further information



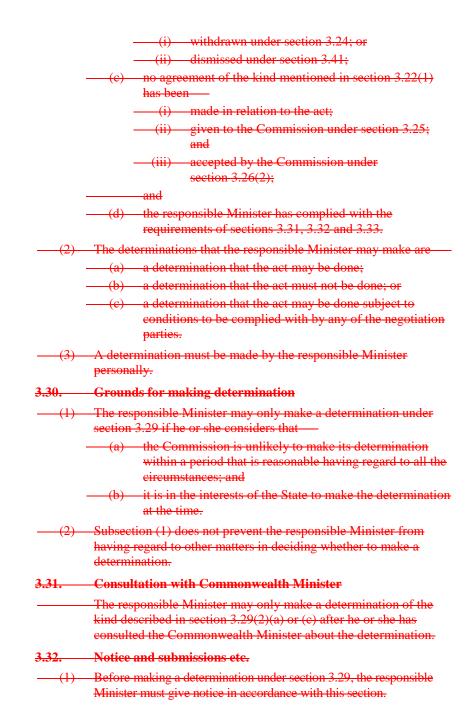


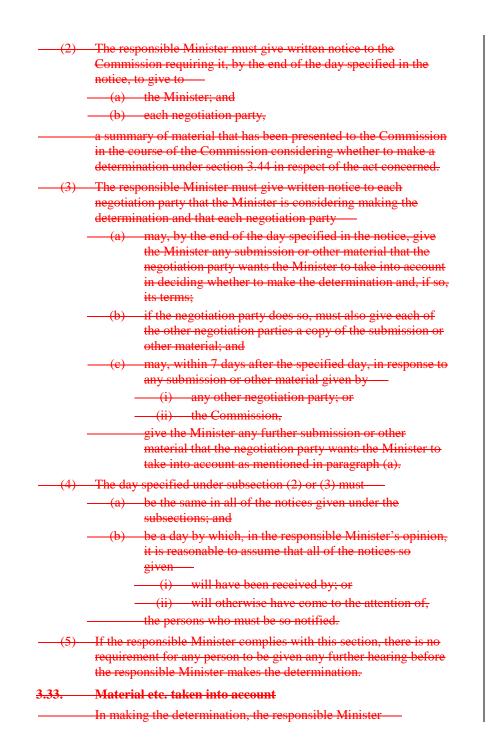
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 69 Extract from www.slp.wa.gov.au, see that website for further information



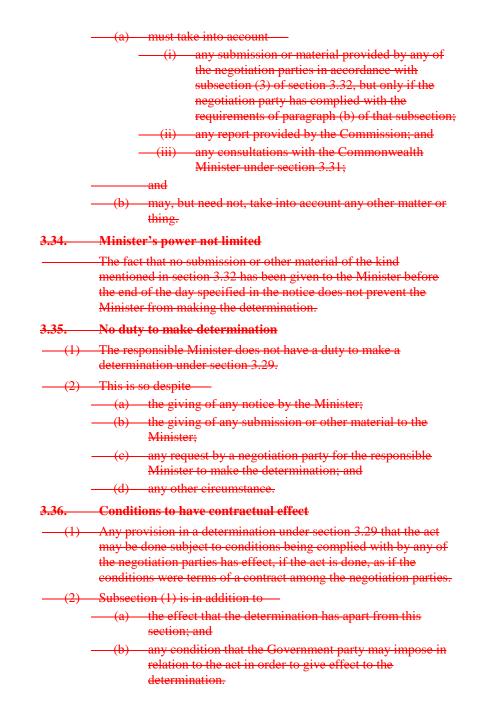


Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 71 Extract from www.slp.wa.gov.au, see that website for further information



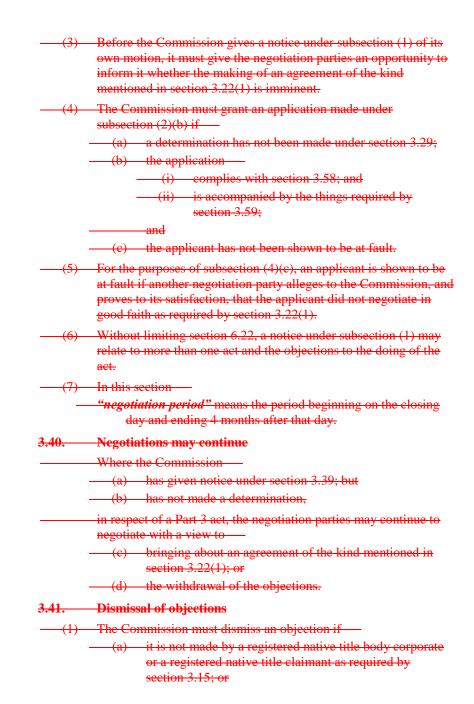


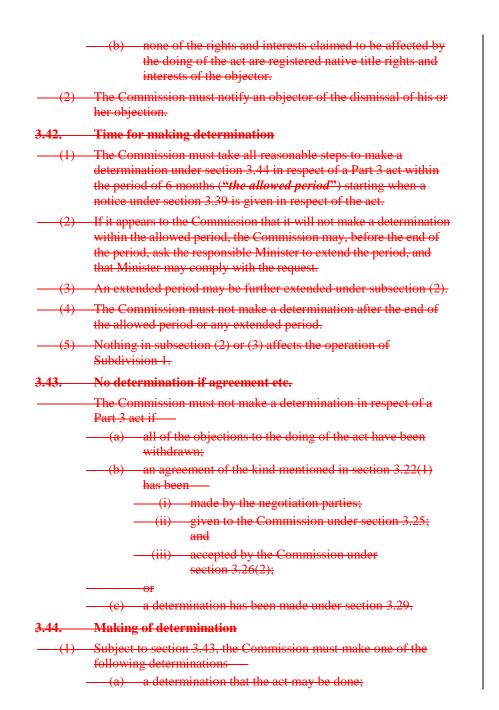
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 73 Extract from www.slp.wa.gov.au, see that website for further information



` '	If an objector is a registered native title claimant, any other person included in the native title claim group concerned is taken to be a
2.25	negotiation party for the purposes only of this section.
3.37.	Copy of determination to be given
-	The responsible Minister must give a copy of any determination under section 3.29 to the negotiation parties and the Commission.
3.38.	Copy of determination to be laid before Parliament
(1)	The responsible Minister must cause a copy of a determination under section 3.29, together with reasons for the determination, to be laid before each House of Parliament.
(2)	Subsection (1) is to be complied with as soon as is practicable after the determination is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the determination is made.
	Subdivision 2 Determination by Commission
3.39.	Commission may notify intention to hear
(1)	The Commission may give notice to the negotiation parties that it intends to hear and determine objections to the doing of a Part 3 act
	(a) if
	(a) if (i) an agreement of the kind mentioned in section 3.22(1) has not been
	(i) an agreement of the kind mentioned in
	— (i) an agreement of the kind mentioned in section 3.22(1) has not been—
	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under
	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under section 3.25; and (III) accepted by the Commission under
	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under section 3.25; and (III) accepted by the Commission under section 3.26(2); or (ii) all objections to the doing of the act have not
	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under section 3.25; and (III) accepted by the Commission under section 3.26(2); or (ii) all objections to the doing of the act have not been withdrawn;
—(2)	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under section 3.25; and (III) accepted by the Commission under section 3.26(2); or (ii) all objections to the doing of the act have not been withdrawn; and (b) if the Commission considers that any mediation
(2)	(i) an agreement of the kind mentioned in section 3.22(1) has not been (I) made by the negotiation parties; (II) given to the Commission under section 3.25; and (III) accepted by the Commission under section 3.26(2); ———————————————————————————————————

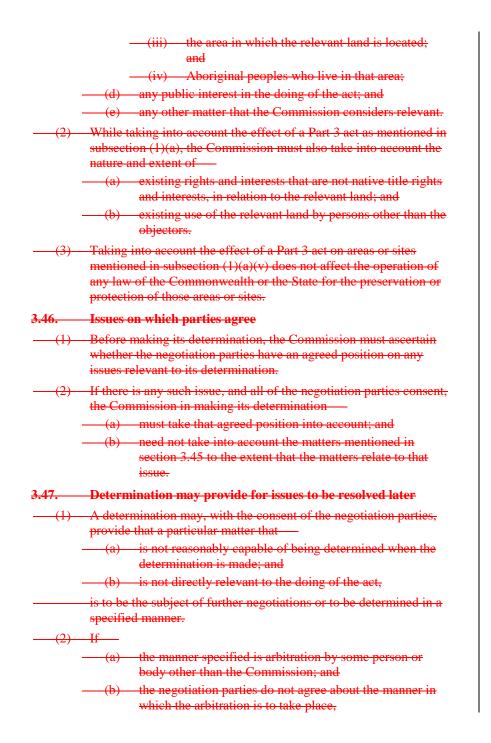
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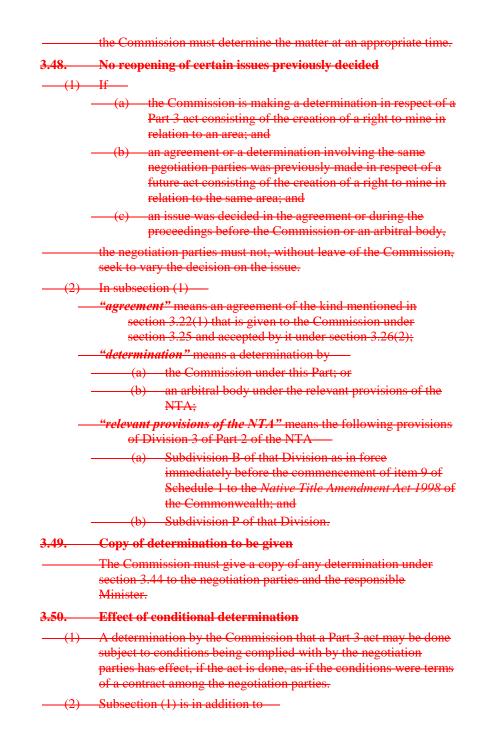


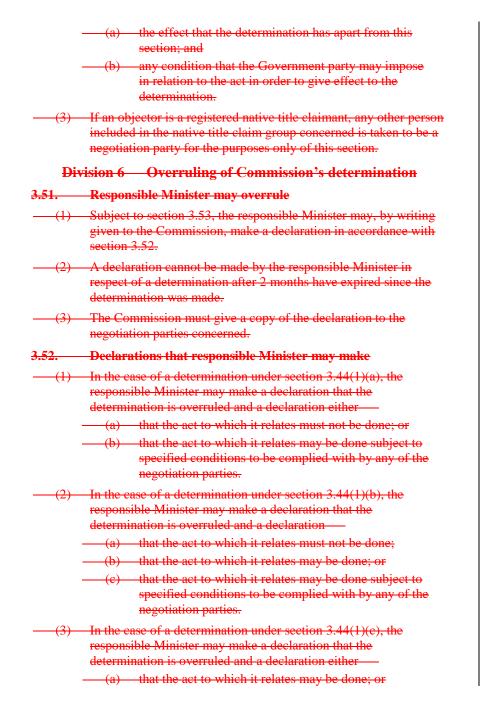


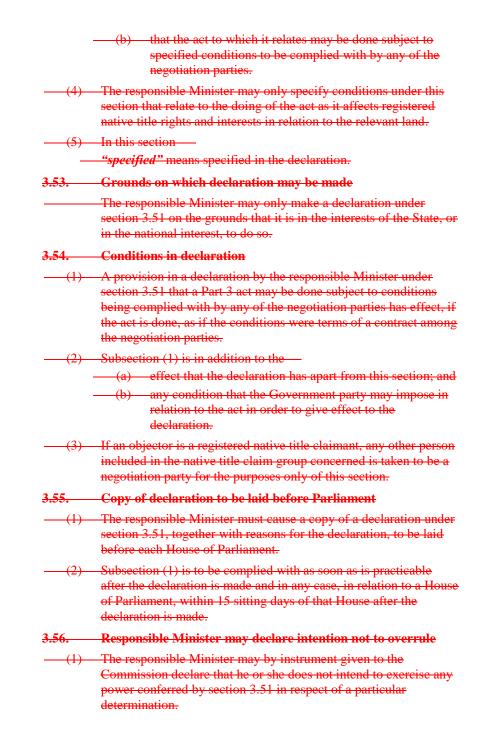
	(b) a determination that the act may be done subject to conditions specified in the determination to be complied with by any of the negotiation parties;
	— (c) a determination that the act must not be done.
(2)	The Commission may specify conditions under subsection (1)(b) only if they relate to the doing of the act as it affects registered native title rights and interests in relation to the relevant land.
(3)	The Commission must not determine a condition under subsection (1)(b) that has the effect that an objector is to be entitled to payments worked out by reference to
	— (a) the amount of profits made;
	(b) any income derived; or
	(c) any things produced,
	by any other negotiation party as a result of doing anything in relation to the relevant land after the act is done.
3.45.	-Criteria for making determinations
(1)	In making its determination in respect of a Part 3 act, the Commission must take into account the following
	— (a) the effect of the act on —
	— (i) the enjoyment by the objectors of their
	registered native title rights and interests;
	— (ii) the way of life, culture and traditions of any of the objectors;
	 (iii) the development of the social, cultural and economic structures of any of the objectors;
	the freedom of access by any of the objectors to the relevant land and their freedom to carry out rites, ceremonies or other activities of cultural significance on the relevant land in accordance with their traditions; and
	 (v) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions;
	(b) the interests, proposals, opinions or wishes of the objectors in relation to the management, use or control of the relevant land in relation to which there are registered native title rights and interests of the objectors that will be affected by the act;
	(c) the economic or other significance of the act to (i) Australia; (ii) this State:

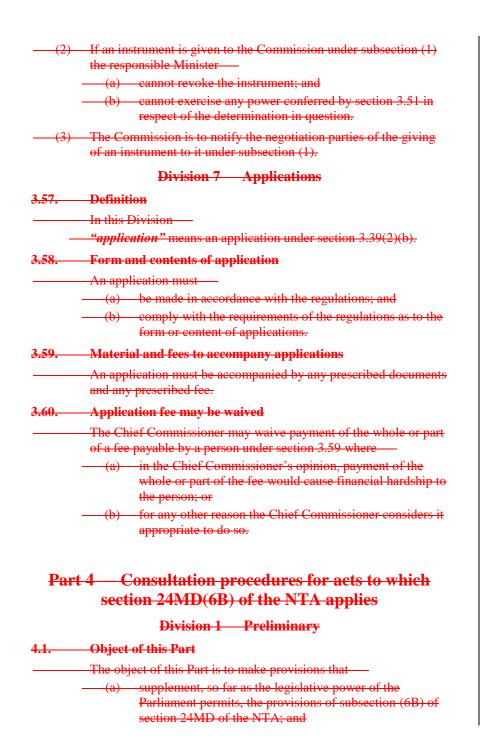
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information page 78





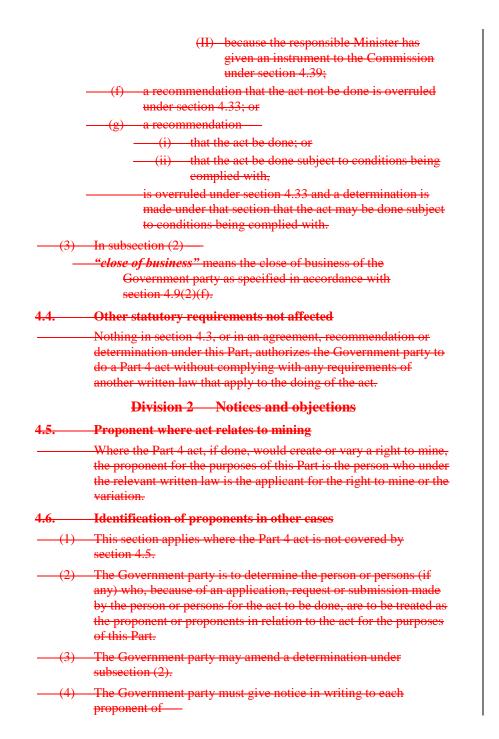


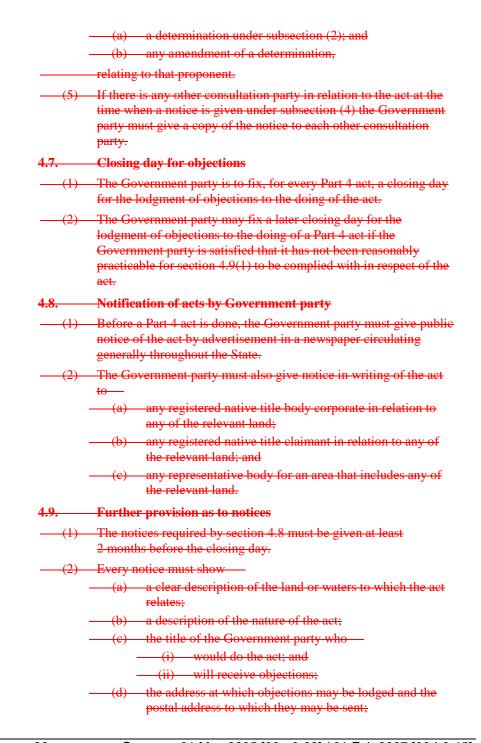




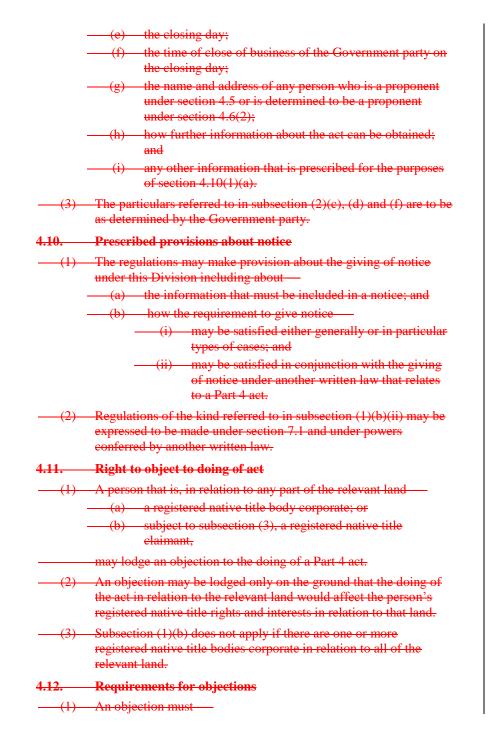
	(b) meet the State's obligation under paragraph (f) of that subsection to ensure that objections to which that subsection applies are heard by an independent person or body.
4.2.	Acts to which this Part applies
	This Part applies to a future act ("a Part 4 act") done by the State that consists of
	(a) a permissible lease etc. renewal that comes within section 24ID(4)(a) and (b) of the NTA;
	(b) a compulsory acquisition to which section 24MD(6B)(a) of the NTA applies; or
	(c) the creation or variation of a right to mine that is referred to in section 24MD(6B)(b) of the NTA.
4.3.	Requirements to be satisfied before a Part 4 act is done
(1)	Before a Part 4 act is done the requirements of one of the paragraphs of subsection (2) must be satisfied in respect of the act.
(2)	The requirements are
	 (a) no objection is lodged under section 4.11 before the close of business on the closing day;
	(b) after the closing day, but immediately before the act is
	done, there is no
	— (i) registered native title body corporate; or
	— (ii) registered native title claimant,
	in relation to any part of the relevant land;
	(c) all objections lodged under section 4.11 before the close of business on the closing day are
	— (i) withdrawn under section 4.20; or
	— (ii) — dismissed under section 4.24;
	 (d) an agreement of the kind described in section 4.21 is made by the consultation parties and given to the Commission under that section;
	(e) a recommendation is made that the act be done, or be done subject to conditions being complied with, and the recommendation
	— (i) has not been overruled under section 4.33; and
	— (ii) is no longer capable of being overruled
	(I) because of section 4.33(2); or

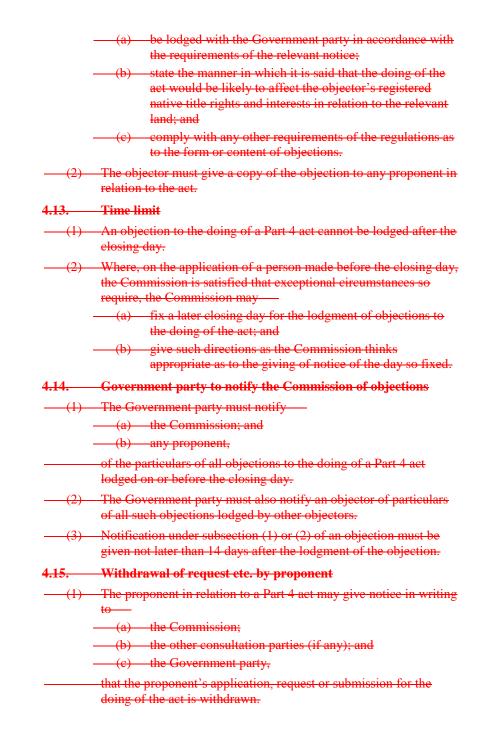
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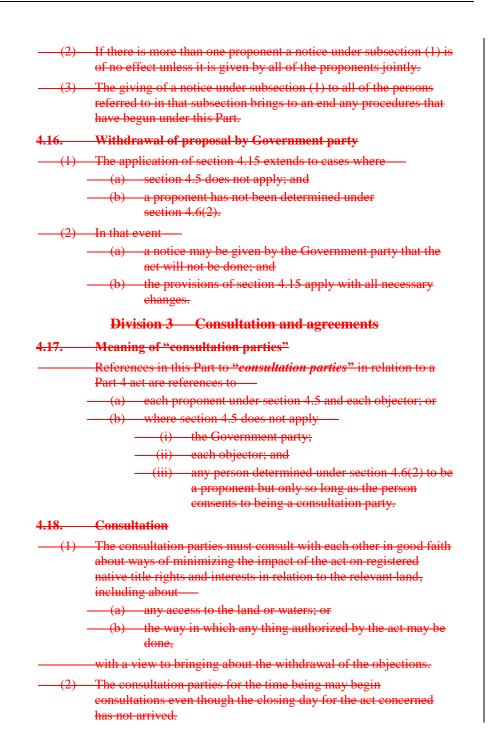


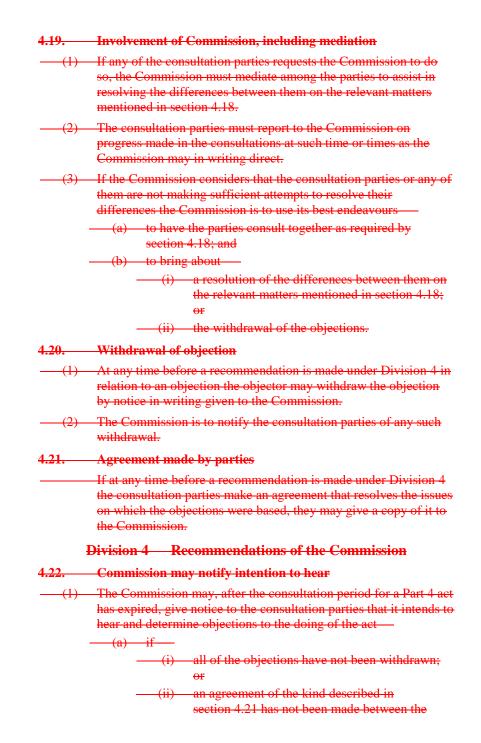


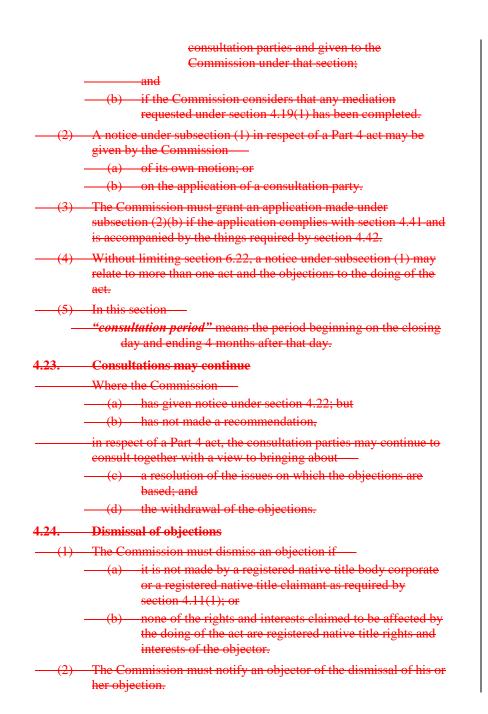
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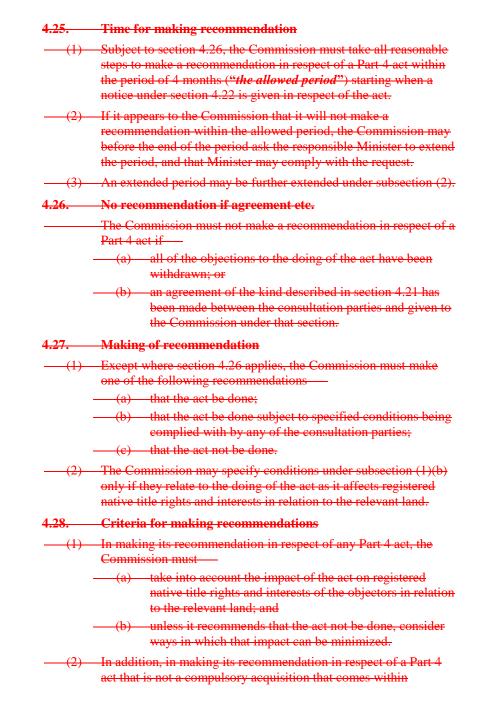


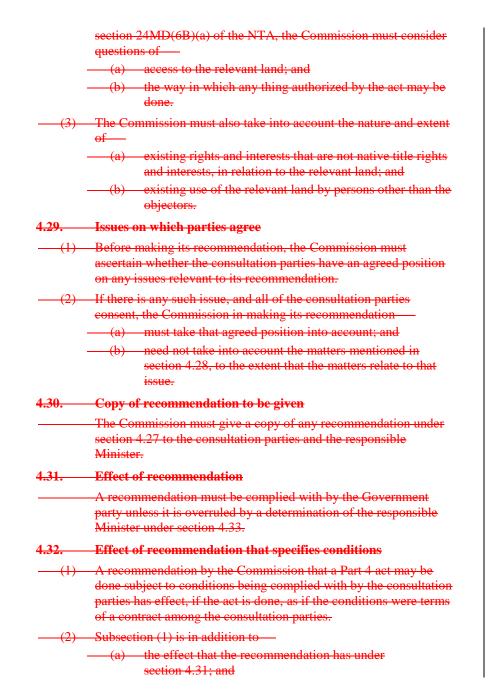


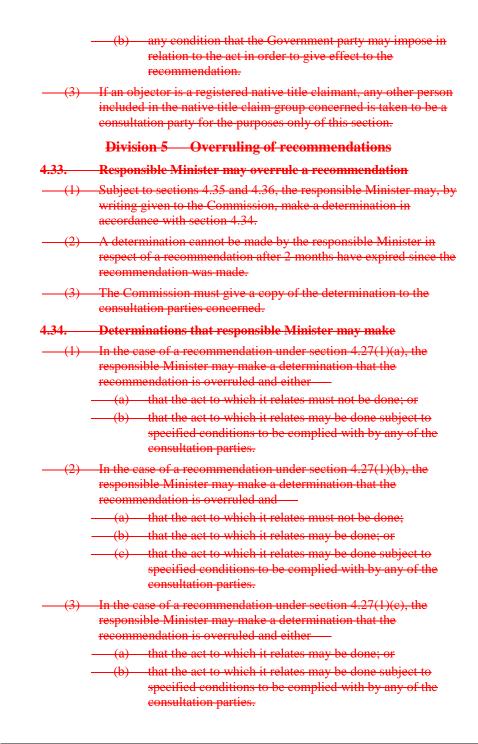




Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 91 Extract from www.slp.wa.gov.au, see that website for further information

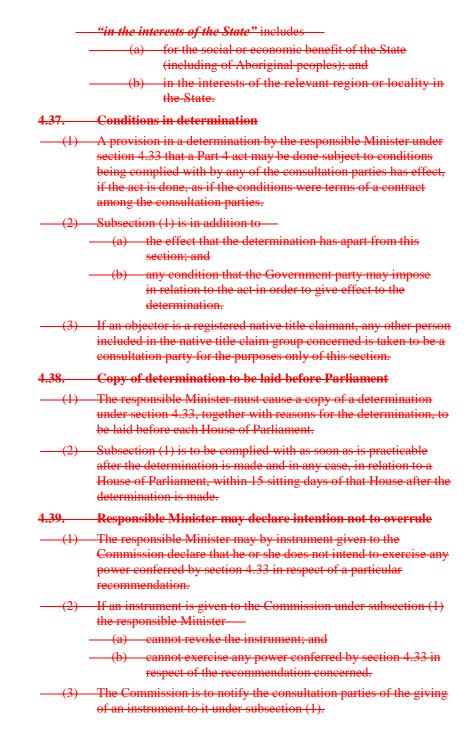


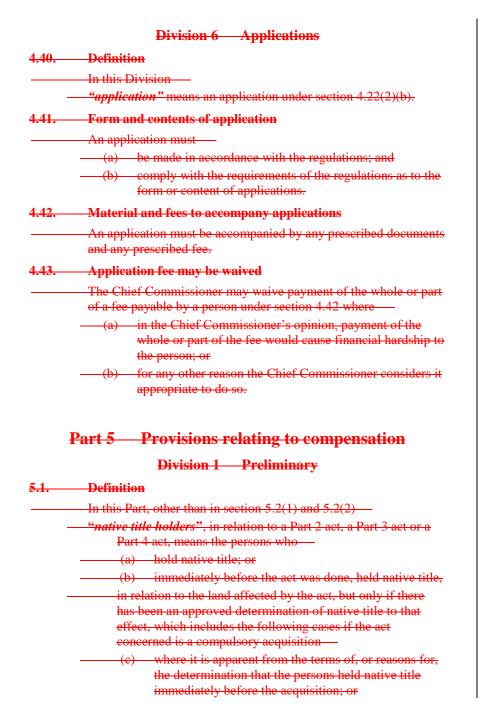




(4)	The responsible Minister may only specify conditions under this section that relate to the doing of the act as it affects registered native title rights and interests in relation to the relevant land.
(5)	In this section— "specified" means specified in the determination.
l.35.	Consultation before making of determination
	This section applies if the effect of the responsible Minister's determination under section 4.33 is that the act may be done— (a) unconditionally;
	 (b) subject to conditions being complied with; or (c) subject to conditions being complied with that are different in any respect from the conditions specified in the recommendation that is overruled.
(2)	If this section applies, the responsible Minister may only make a determination under section 4.33 after he or she has
	(a) consulted the State Minister principally responsible for indigenous affairs about
	(i) the Commission's recommendation; and (ii) any determination that the responsible Minister may make;
	— and (b) taken into account any recommendation or advice made or given by that Minister.
(3)	Before the consultations referred to in subsection (2) are held, the State Minister principally responsible for indigenous affairs is to be given— (a) by the Commission, any submission or other material that was put before it in relation to the recommendation in question; and
	— (b) by the responsible Minister, any submission or other material that has been put before him or her for the purposes of the determination in question.
(4)	The duty imposed by subsection (3)(b) applies subject to any direction given by the Commission under section 6.29.
1.36.	Ground on which determination may be made
(1)	The responsible Minister may only make a determination under section 4.33 on the ground that it is in the interests of the State to do so.
(2)	In subsection (1)

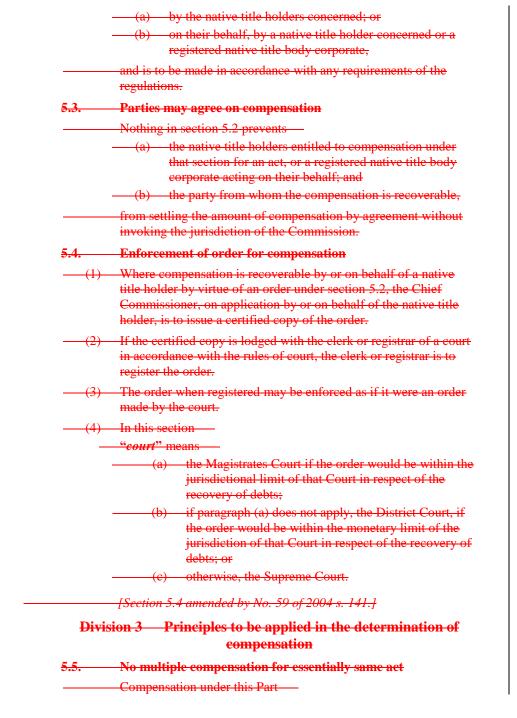
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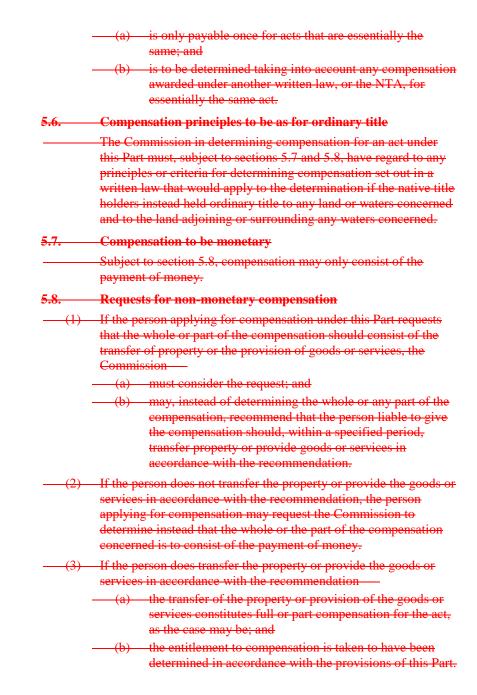




Division 2 Determination of compensation Commission to determine compensation for certain acts (1) This section applies where a Part 2 act, a Part 3 act or a Part 4 is done, other than an act that is a compulsory acquisition of not title rights and interests for which the native title holders in relation to the relevant land are entitled to compensation under Land Administration Act 1997. (2) The native title holders are entitled to compensation on just ter under this section for any loss, diminution or impairment of, or other effect of the act on, their native title rights and interests. (3) The principles set out in Division 3 apply to a determination of compensation under this section. (4) The Commission, on application made (a) is to determine the amount of any such compensation the native title holders entitled to receive it; and (b) may make such orders as it considers appropriate, including orders as to costs and other ancillary matter (5) The compensation is recoverable (a) from any person who is made liable for the compensation written law; or (b) to the extent that (i) no such liability is provided for; or (ii) an order under subsection (6) so provides, from the Crown. (6) If, on application made, the Commission is satisfied that (a) a person who is made liable as mentioned in subsection (5)(a) no longer exists; or (b) there is no reasonable prospect of the compensation, part of it, being recovered from that person,		for, the determination that native title did not exist immediately before the acquisition.	;
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part of it, being recovered from that person,	_	· · · · · · · · · · · · · · · · · · ·	
the Commission may order that the compensation, or the part i	-		or
question, is recoverable from the Crown.		the Commission may order that the compensation, or the part i question, is recoverable from the Crown.	n
(7) If compensation is recovered from the Crown because of an or under subsection (6), the Crown is subrogated to the rights that native title holders concerned had against the person referred to that subsection in relation to the recovery of the amount paid.	(7)	under subsection (6), the Crown is subrogated to the rights that native title holders concerned had against the person referred to	t th
(8) An application under subsection (4) or (6) is to be made	(8)		

Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information page 98

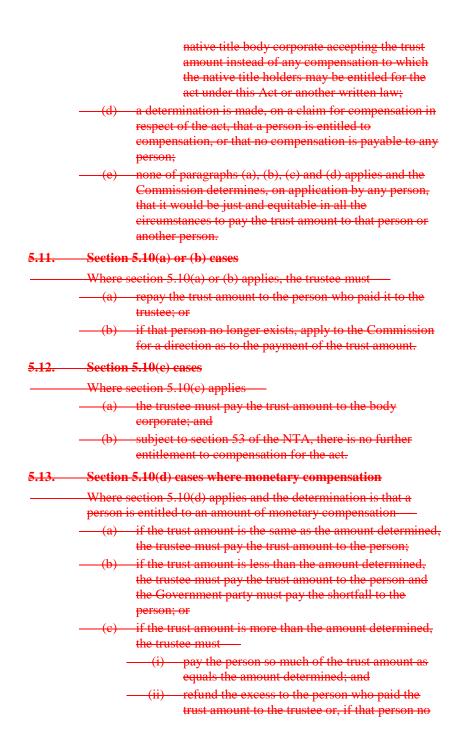


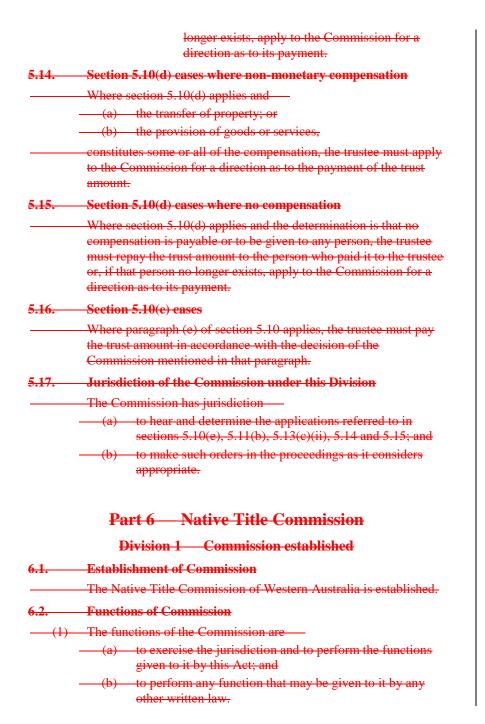


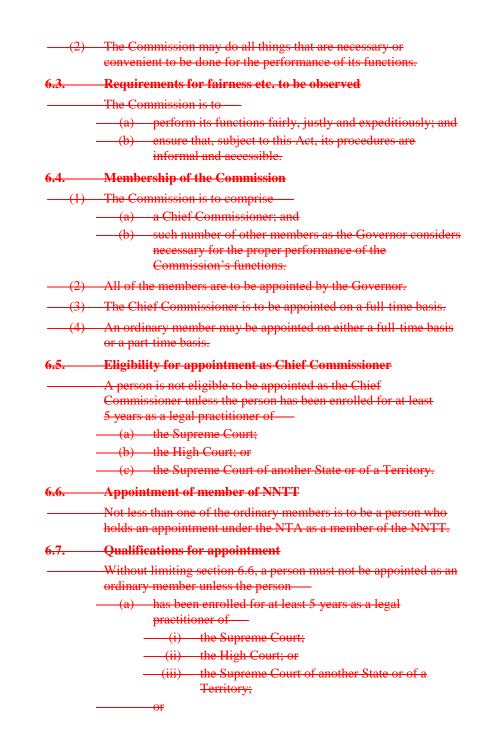
Division 4 Determination of amounts to be held in trust and payment of those amounts -Conditions for payment of amounts to be held in trust (1) This section applies to a condition in one of the following instruments-(a) a determination by the responsible Minister under section 3.29; a determination by the Commission under section 3.44; and a declaration by the responsible Minister under section 3.51. If a condition is that an amount is to be paid and held in trust until it is dealt with in accordance with section 5.10 (a) the Commission must determine the amount; and (b) the amount, when paid, must be held in trust in accordance with the regulations until it is dealt with in accordance with that section. How amounts held in trust to be dealt with The relevant provisions of sections 5.11 to 5.16 apply if an amount ("the trust amount") in respect of an act is being held in trust in accordance with a condition referred to in section 5.9(2) and any of the following happens an approved determination of native title is made to the effect that there is no native title in relation to the area concerned immediately before the act takes place; the Government party informs the trustee in writing that it is not going to do the act; the following requirements are satisfied an approved determination of native title is made to the effect that the persons concerned are (disregarding any holding of the native title in trust under Part 2 Division 6 of the NTA) the native title holders in relation to the area affected by the act; the registered native title body corporate advises the trustee that it wishes to accept the trust amount instead of any compensation to which the native title holders may be entitled for the act under this Act or another written law; and the person who paid the trust amount advises the

Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 101 Extract from www.slp.wa.gov.au, see that website for further information

trustee that the person agrees to the registered







	— (b) has, in the opinion of the Governor, expertise in one or
	more of the following
	— (i) matters relating to Aboriginal peoples;
	— (ii) land and resource management;
	— (iii) — dispute resolution;
	(iv) any other class of matter considered by the
	Governor to be substantially relevant to the
	duties of a member.
6.8.	Ordinary members, notice of proposed appointment
(1)	Where it is proposed to appoint any person as an ordinary
· · · · · · · · · · · · · · · · · · ·	member, the Minister must give notice of the proposal in
	— (a) the Gazette; and
	(b) a daily newspaper circulating generally throughout the
	State,
	and may give notice in such other newspapers, journals or
	electronic media as the Minister considers appropriate.
(2)	A notice referred to in subsection (1) must
. ,	(a) set out the qualifications required by section 6.7 for
	appointment as an ordinary member;
	— (b) invite persons or organizations who wish to do so to
	nominate, in the manner specified in the notice, persons
	for consideration as appointees; and
	(c) invite persons who wish to do so to inform the Minister,
	in the manner specified in the notice, that they are
	interested in becoming an ordinary member.
(3)	This section does not apply to an appointment for the purposes of section 6.6.
6.9.	Administrative functions of Chief Commissioner
	In addition to the functions given to the Chief Commissioner by
	particular provisions of this Act, he or she
	(a) is responsible for managing the administrative affairs of the Commission; and
	(b) may do all things necessary or convenient to be done for
	that purpose.
6.10.	Authorization of Chief Commissioner for purposes of
	section 199F of the NTA
(1)	The object of this section is to make provision for delegation to the
` /	Chief Commissioner by the Native Title Registrar under the power
	conferred by section 199F of the NTA.

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(2)	The State Minister may on behalf of the State agree to any delegation referred to in subsection (1) and the Chief
	Commissioner may exercise powers in accordance with the delegation.
6.11.	Delegation to members
(1)	The Chief Commissioner may, by signed instrument, delegate to one or more of the ordinary members all or any of the Chief Commissioner's functions under this Act.
(2)	Subsection (1) does not apply to
	— (a) the power of delegation conferred by that subsection; o
	(b) any function that may be delegated to the Chief Commissioner under section 199F of the NTA as provided for by section 6.10.
6.12.	Other provisions relating to members
	Schedule 1 has effect in relation to members.
	Division 2 Staff of the Commission
6.13.	Use of government staff etc.
	Arrangements may be made under this section to enable the
(1)	Commission and the Chief Commissioner to perform their respective functions.
(2)	An arrangement may be made with the relevant employer for the use, either full time or part time, of the services of any officer or employee—
	— (a) in the Public Service;
	(b) in a State agency or instrumentality; or
	(c) otherwise in the service of the Crown in right of the State.
(3)	An arrangement may be made with
	— (a) a department of the Public Service; or
	— (b) a State agency or instrumentality,
	for the use of any facilities of the department, agency or instrumentality.
(4)	Arrangements under this section—
	— (a) may be made by the Chief Commissioner acting under section 6.9; and
	— (b)— are to be made on such terms as are agreed to by the parties.

Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information page 106

6.14. **Consultants** The Chief Commissioner may, acting under section 6.9, engage a

person under a contract for services to provide professional, technical or other assistance to the Commission or the Chief Commissioner.

Division 3 Operation of Commission

Subdivision 1 How Commission to be constituted

6.15. General position

- (1) For the performance of its functions in respect of a particular matter the Commission consists of the member or members specified by the Chief Commissioner under section 6.18(2) for that matter.
- In exercising the power referred to in subsection (1) in respect of a matter to which subsection (1) or (2) of section 6.16 applies, the Chief Commissioner is to ensure that the constitution of the Commission satisfies that subsection.

Constitution of Commission for the performance of certain **functions**

- For the performance of its functions under Part 3, other than its mediation function under section 3.23(1), the Commission must include-
 - (a) at least one member who is qualified as mentioned in section 6.7(a); and
 - at least one member who holds an appointment under the NTA as a member of the NNTT.
- (2) The Commission when performing any function in relation to a matter that involves the determination of an issue cannot be constituted by, or include, a member who has taken part in mediation in relation to that matter, unless each party consents to the Commission being constituted by or including that member.

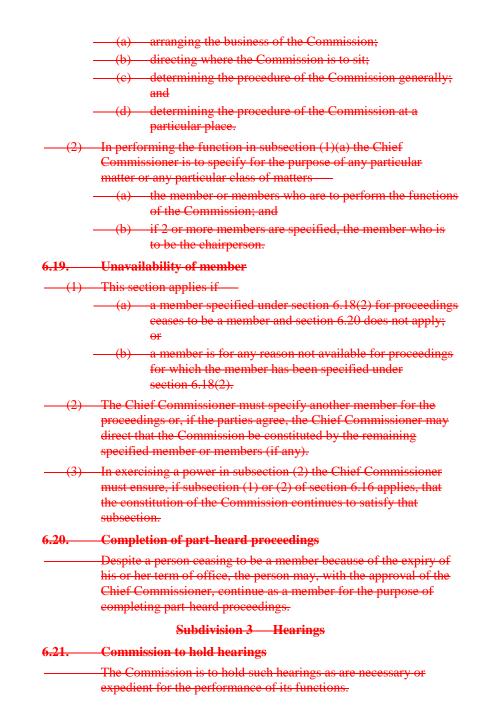
6.17. Concurrent operations

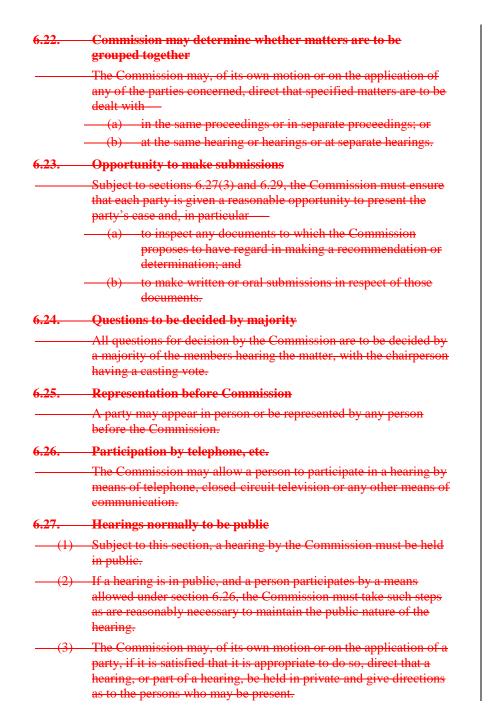
The Commission constituted in accordance with this Division may perform the functions of the Commission in respect of a particular matter, even though the Commission differently constituted in accordance with this Division is at the same time performing the functions of the Commission in respect of some other matter.

Subdivision 2 Arrangement of business

Arrangement of business of the Commission

(1) The Chief Commissioner is responsible for

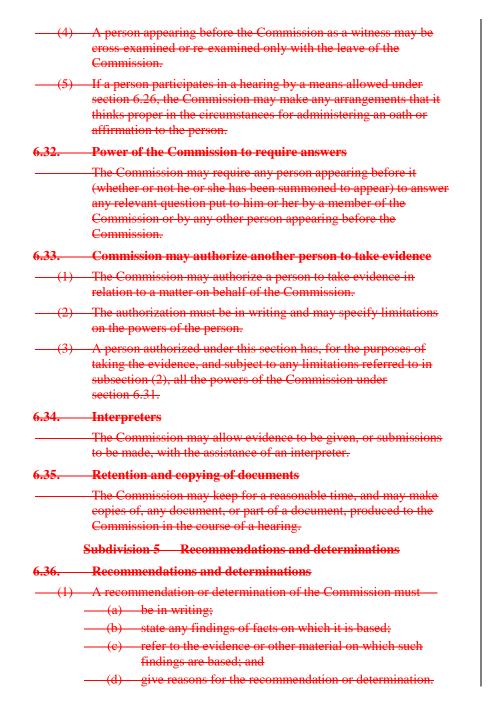




Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] page 109 Extract from www.slp.wa.gov.au, see that website for further information

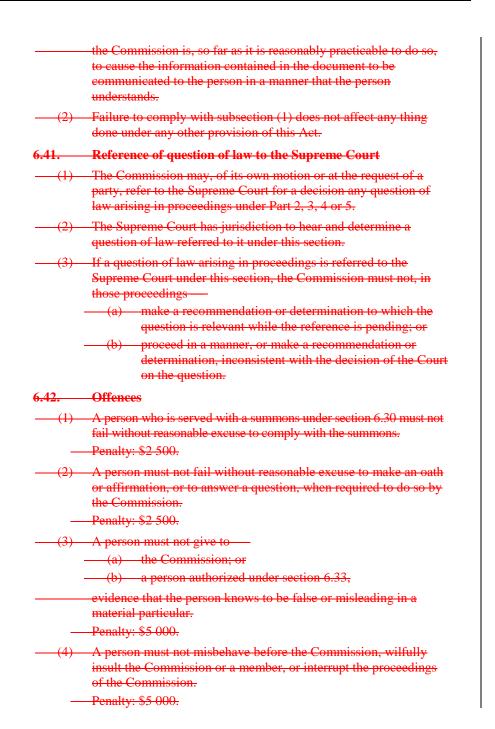
· · /	In determining whether a hearing or part of a hearing is to be in private, the Commission must have due regard to the cultural are customary concerns of Aboriginal peoples.
	Subdivision 4 Evidence and information
6.28.	Evidence and findings of other bodies
	In any proceedings, the Commission may, at its discretion
	(a) receive in evidence the transcript of evidence in any of proceedings before the Commission, any court or any other person or body;
	(b) receive in evidence any report, findings, decision, determination or judgment of a person or body referred in paragraph (a); or
	 (c) adopt any report, findings, decision, determination or judgment of a person or body referred to in paragraph
	that it considers may be relevant to the proceedings.
6.29.	Commission may prohibit disclosure of evidence
-	The Commission may direct that
	— (a) any evidence given before it; or
	(b) the contents of any document produced to it,
	must not be disclosed, or must not be disclosed except in the waand to the persons, specified in the direction.
6.30.	Power of Commission to summon
	The Commission may, by summons signed on behalf of the Commission by the Chief Commissioner, require any person
	(a) to appear before the Commission, or before a person authorized under section 6.33; or
	(b) to produce any documents specified in the summons to the Commission or to a person authorized under section 6.33,
	or to do both of those things.
6.31.	Power of Commission to take evidence
(1)	The Commission may take evidence on oath or affirmation, and for that purpose a member of the Commission may administer a oath or affirmation.
(2)	A party may call witnesses.
(3)	A person appearing before the Commission as a witness may be examined.

Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information page 110



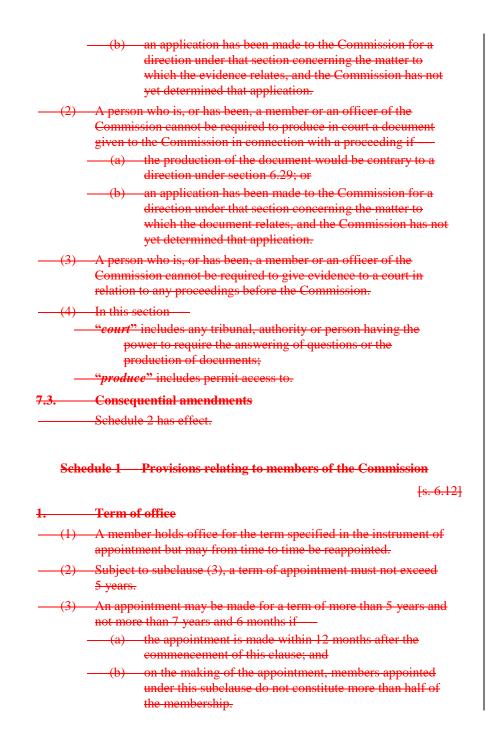
(2)	A copy of a recommendation or determination must be given to
	(a) each of the parties in the proceeding; and (b) the responsible Minister.
	Division 4 Financial provisions
6.37.	Funds for carrying out this Act
	The funds available for the purposes of this Act consist of
	(a) moneys from time to time appropriated by Parliament; and
	(b) other moneys lawfully received by, made available to or payable to the Commission for the purposes of this Act.
6.38.	Native Title Commission Account
(1)	The funds referred to in section 6.37 are to be credited to an account called the "Native Title Commission Account"
	— (a) at the Treasury; or
	(b) with the approval of the Treasurer, at a bank,
	and if paragraph (a) applies the Account is to form part of the Trust Fund constituted under section 9 of the Financial Administration and Audit Act 1985.
(2)	The Account is to be charged with
	(a) the remuneration and allowances payable under this Act; and
	(b) all other expenditure lawfully incurred in carrying out this Act.
6.39.	Application of Financial Administration and Audit Act 1985
	The provisions of the <i>Financial Administration and Audit Act 1985</i> regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and things done in the performance of functions under this Act.
	Division 5 — General
6.40.	Communication of information in certain cases
(1)	Where
	the Commission is required by or under this Act to cause a document to be served on or given to any person; and
	(b) it appears to the Commission that the person is blind or illiterate or is not literate in the English language,

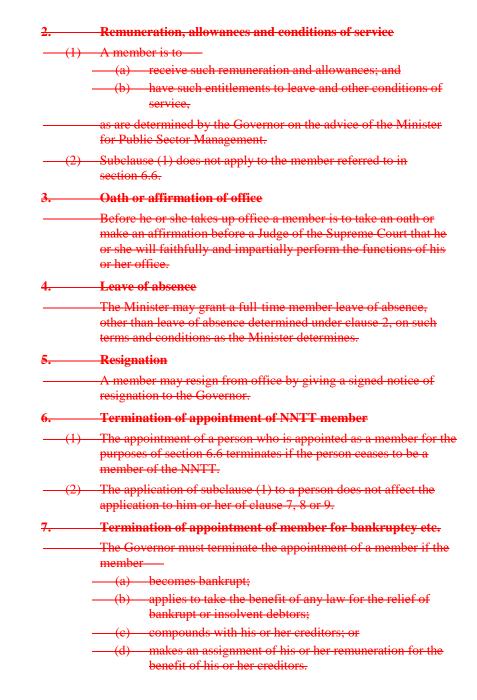
Compare 01 May 2005 [00-a0-03] / 01 Feb 2007 [00-b0-15] Extract from www.slp.wa.gov.au, see that website for further information page 112

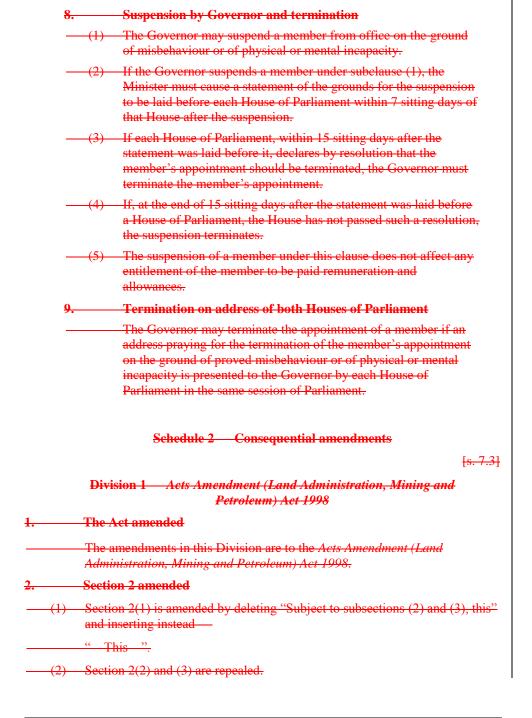


(5)	A person must not disclose any material in contravention of a direction given under section 6.27(3) or 6.29.
_	Penalty: \$5 000.
6.43.	Disclosure of interests
(1)	A member who has a conflict of interest in relation to any proceedings must disclose the matters giving rise to that conflict—
	(a) in the case of the Chief Commissioner, to the Minister and to each party; or
	(b) in any other case, to the Chief Commissioner and to each party.
(2)	The member must not take part in, or exercise any powers in relation to, the proceedings unless
	(a) in the case of the Chief Commissioner, the Minister and each party consents; or
	(b) in any other case, the Chief Commissioner and each party consents.
(3)	For the purposes of this section, a member has a conflict of interest in relation to proceedings if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to those proceedings.
6.44.	Protection of members and persons appearing before the Commission
(1)	A member has, in the performance of his or her functions, the same protection and immunity as a Judge of the Supreme Court.
(2)	A person appearing before the Commission on behalf of a party has the same protection and immunity as a barrister has in appearing on behalf of a party before the Supreme Court.
(3)	Subject to this Act, a person appearing before the Commission to give evidence (whether or not in response to a summons) has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities as a witness in proceedings in the Supreme Court.
6.45.	- Confidentiality
(1)	A person who is, or has been, a member or officer of the Commission is not competent, and cannot be required, to give evidence to a court relating to a matter if (a) the giving of the evidence would be contrary to a
	direction under section 6.29; or

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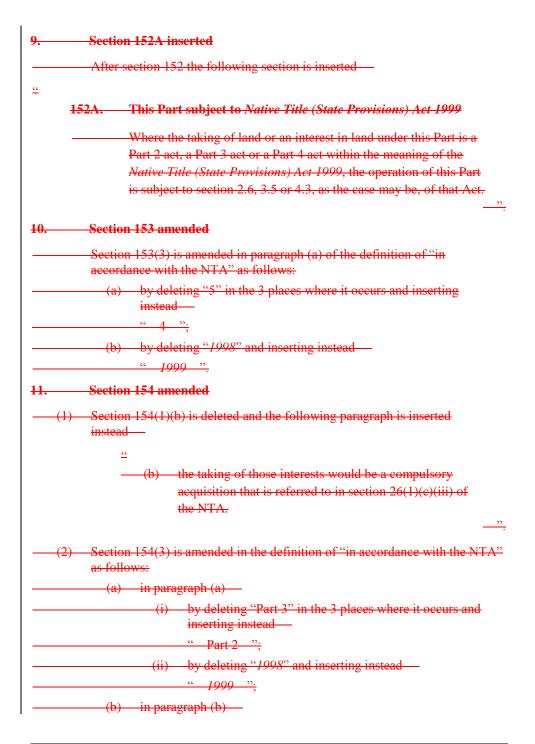


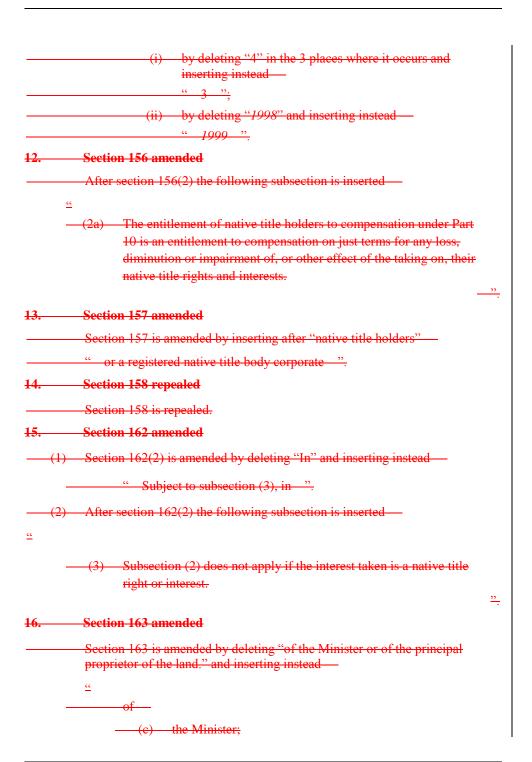
3.	Sections 4 and 7 repealed
	Sections 4 and 7 are repealed.
	Division 2 Constitution Acts Amendment Act 1899
4.	Schedule V amended
	Schedule V Part 1 Division 1 to the Constitution Acts Amendment Act 1899 is amended by inserting after the item relating to the Western Australian Gas Disputes Arbitrator
<u></u>	
	Member of the Native Title Commission established by the Native Title (State Provisions) Act 1999.
	Division 3 Financial Administration and Audit Act 1985
5.	Schedule 1 amended
	Schedule 1 to the <i>Financial Administration and Audit Act 1985</i> is amended by inserting in the appropriate alphabetical position the following—
	" Native Title Commission ".
	Division 4 Land Administration Act 1997
6.	The Act amended
	The amendments in this Division are to the Land Administration Act 1997.
7.	Section 6A inserted
	After section 6 the following section is inserted in Part 1
<u>«</u>	6A. Renewal etc. of certain tenures subject to Native Title (State Provisions) Act 1999
	(1) Where the exercise of a power under this Act to renew, re-grant or extend a non-exclusive tenure of land is a Part 4 act within the meaning of the Native Title (State Provisions) Act 1999, the exercise of the power is subject to section 4.3 of that Act.
	— (2) In subsection (1)
	"non-exclusive tenure of land" means an interest under
	(a) a lease;
	(b) a licence; or
	(c) other authority,

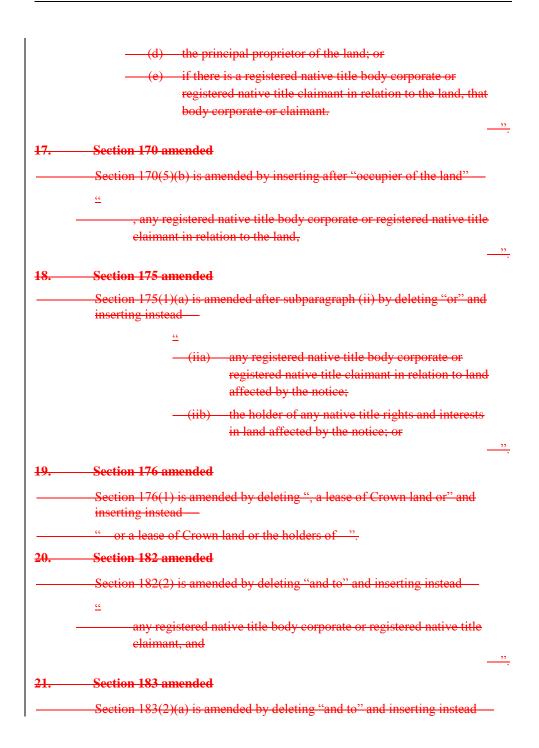
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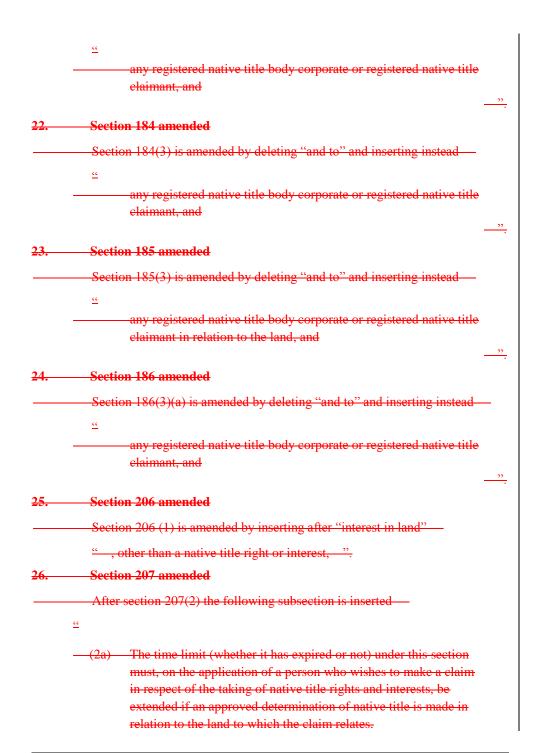
	that permits the use of the land but does not confer a
	right of exclusive possession.
8.	Section 151 amended
	Section 151(1) is amended as follows:
	(a) by inserting in the appropriate alphabetical positions the following definitions—
	<u>"</u>
	"approved determination of native title" means an approved
	determination of native title under the NTA where
	(a) the effect of the determination is that the person concerned
	(i) holds native title; or
	(ii) immediately before the taking, held native title,
	in relation to the land affected by the taking;
	(b) it is apparent from the terms of, or reasons for, the
	determination that the person concerned held native title
	in relation to the land affected by the taking immediately before the taking; or
	(c) it is not apparent from the terms of, or reasons for, the
	determination that native title did not exist in relation to
	the land affected by the taking immediately before the taking;
	"registered native title body corporate" and "registered native
	title claimant" have the same meaning as they have in the NTA;
	(b) in the definition of "proprietor" in paragraph (b) by inserting after "registered"
	<u>«</u>
	, or a registered native title body corporate or registered
	native title claimant in relation to the land
	

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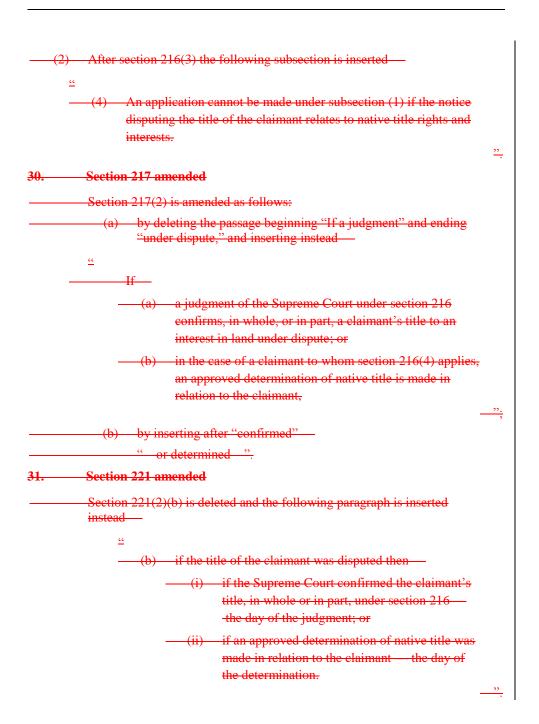


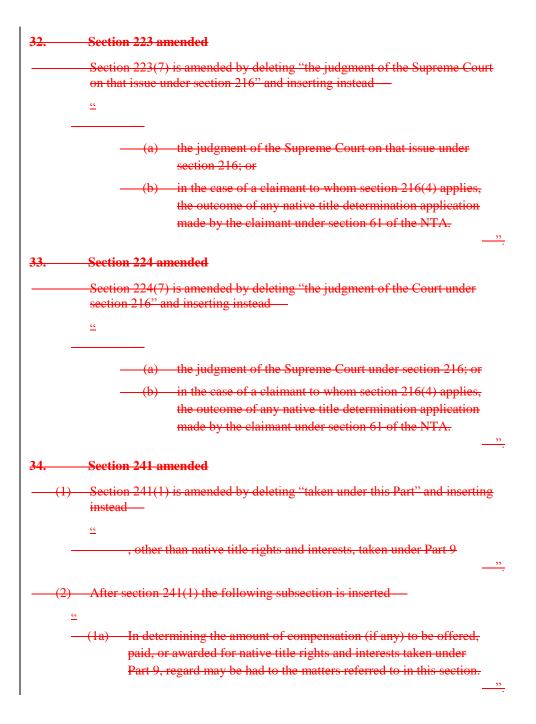


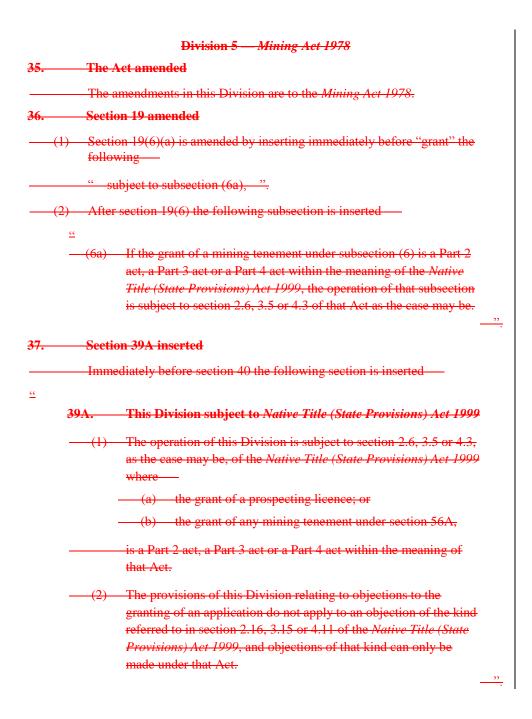


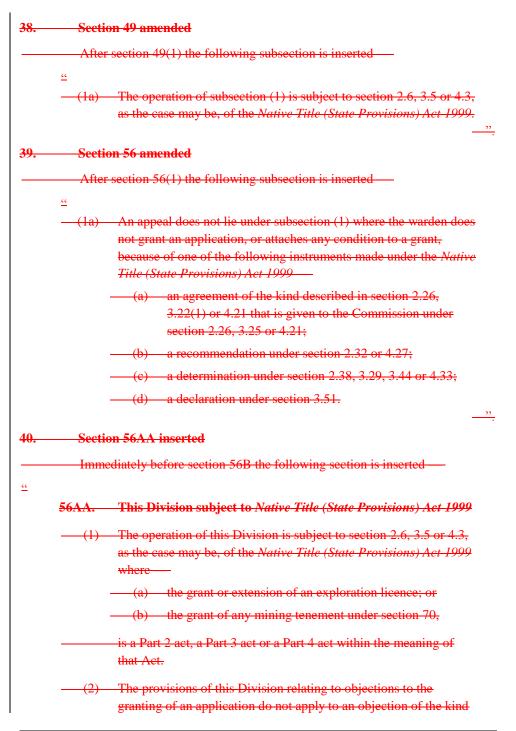
	<u>"</u>
27.	Section 212 amended
	After section 212(2) the following subsection is inserted—
<u></u>	
_	(3) If the acquiring authority does transfer property, provide goods and services or provide another form of compensation in accordance with a request—
	— (a) the transfer of property, provision of goods and services
	or provision of another form of compensation constitutes full or part compensation under this Part, as the case may be; and
	— (b) the entitlement to compensation is taken to have been
	determined in accordance with the provisions of this Part.
28.	Section 214 amended
(1)	Section 214(2) is amended by deleting "If" and inserting instead
	"Subject to subsection (3), if ".
(2)	After section 214(2) the following subsection is inserted
_	(3) Subsection (2) does not operate to bar a claim in respect of native title rights and interests if—
	— (a) during or after the 60 day period, or any extended time, referred to in that subsection an approved determination of native title is made in relation to the land to which the claim relates; and
	— (b)—the particulars required under this section are furnished within 60 days after that determination is made.
29.	Section 216 amended
(1)	Section 216(1) is amended by inserting after "A claimant may,"
	" subject to subsection (4) "

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referred to in section 2.16, 3.15 or 4.11 of the Native Title (State Provisions) Act 1999, and objections of that kind can only be made under that Act. 41. Section 67 amended After section 67(1) the following subsection is inserted The operation of subsection (1) is subject to section 2.6, 3.5 or 4.3, as the case may be, of the Native Title (State Provisions) Act 1999. Section 70AA inserted After section 70A the following section is inserted cc 70AA. This Division subject to Native Title (State Provisions) Act 1999 (1) The operation of this Division is subject to section 2.6, 3.5 or 4.3, as the case may be, of the Native Title (State Provisions) Act 1999 where the grant or renewal of a retention licence is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act. The provisions of this Division relating to objections to the granting of an application do not apply to an objection of the kind referred to in section 2.16, 3.15 or 4.11 of the Native Title (State Provisions) Act 1999, and objections of that kind can only be made under that Act. Section 70L amended After section 70L(1) the following subsection is inserted (1a) The operation of subsection (1) is subject to section 2.6, 3.5 or 4.3, as the case may be, of the Native Title (State Provisions) Act 1999.

