



Western Australia

## **Native Title (State Provisions) Act 1999**



## **Native Title (State Provisions) Act 1999**

### **Contents**

#### **Part 1 — Preliminary**

1.1.	Short title	2
1.2.	Commencement	2
1.3.	Objects	3
1.4.	Act binds the Crown	3
1.5.	Interpretation	3
1.6.	Performance of certain functions on behalf of Minister	5
1.7.	Replacement of person as objector etc.	6
1.8.	Objector ceasing to be a registered native title claimant	6

#### **Part 2 — Consultation procedures for alternative provision areas**

##### **Division 1 — Preliminary**

2.1.	Definitions	8
2.2.	Request for determination under section 43A of the NTA	8
2.3.	Transitional provisions	8
2.4.	Object of this Part	8

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

2.5.	Acts to which this Part applies	8
2.6.	Circumstances in which act is not valid	8
2.7.	Part 3 may be applied to a Part 2 act	8
2.8.	Other statutory requirements not affected	9

<b>Division 3 — Notices and objections</b>		
2.9.	Proponent where act relates to mining	9
2.10.	Identification of proponents in other cases	9
2.11.	Closing day for objections	9
2.12.	Notification of acts	9
2.13.	Further provision as to notices	9
2.14.	Who gives notice	9
2.15.	Prescribed provisions about notice	9
2.16.	Right to object to doing of act	9
2.17.	Requirements for objections	9
2.18.	Time limit	10
2.19.	Government party to notify the Commission of objections	10
2.20.	Withdrawal of request etc. by proponent	10
2.21.	Withdrawal of proposal by Government party	10
<b>Division 4 — Consultation and agreements</b>		
2.22.	Meaning of “consultation parties”	10
2.23.	Consultation	10
2.24.	Involvement of Commission, including mediation	10
2.25.	Withdrawal of objection	10
2.26.	Agreement made by parties	10
<b>Division 5 — Recommendations of the Commission</b>		
2.27.	Commission may notify intention to hear	10
2.28.	Consultations may continue	11
2.29.	Dismissal of objections	11
2.30.	Time for making recommendation	11
2.31.	No recommendation if agreement etc.	11
2.32.	Making of recommendation	11
2.33.	Criteria for making recommendations	11
2.34.	Issues on which parties agree	11
2.35.	Copy of recommendation to be given	11
2.36.	Effect of recommendation	11
2.37.	Effect of recommendation that specifies conditions	11
<b>Division 6 — Overruling of recommendations</b>		
2.38.	Responsible Minister may overrule a recommendation	12
2.39.	Determinations that responsible Minister may make	12

2.40.	Consultation before making of determination	12
2.41.	Ground on which determination may be made	12
2.42.	Conditions in determination	12
2.43.	Copy of determination to be laid before Parliament	12
2.44.	Responsible Minister may declare intention not to overrule	12
	<b>Division 7 — Applications</b>	
2.45.	Definition	12
2.46.	Form and contents of application	12
2.47.	Material and fees to accompany applications	12
2.48.	Application fee may be waived	13
	<b>Division 8 — Judicial review</b>	
2.49.	Application for review	13
2.50.	Time limit for application	13
2.51.	Procedure	13
2.52.	Grounds on which application may be made	13
2.53.	Powers of Court	13
2.54.	Effect on other remedies	13
	<b>Part 3 — Right to negotiate procedures for areas not covered by Part 2</b>	
	<b>Division 1 — Preliminary</b>	
3.1.	Request for determination under section 43(1)(b) of the NTA	14
3.2.	Transitional provisions	14
3.3.	Object of this Part	14
	<b>Division 2 — Relevant future acts and their validity</b>	
3.4.	Acts to which this Part applies	14
3.5.	Circumstances in which act is not valid	14
3.6.	Other statutory requirements not affected	14
	<b>Division 3 — Notices and objections</b>	
3.7.	Proponent where act relates to mining	14
3.8.	Identification of proponents in other cases	15
3.9.	Closing day for objections	15
3.10.	Notification of acts	15
3.11.	Further provision as to notices	15

Contents

---

3.12.	Notice may relate to 2 or more acts	15
3.13.	Who gives notice	15
3.14.	Prescribed provisions about notice	15
3.15.	Right to object to doing of act	15
3.16.	Requirements for objections	15
3.17.	Time limit	15
3.18.	Government party to notify the Commission of objections	15
3.19.	Withdrawal of request etc. by proponent	16
3.20.	Withdrawal of proposal by Government party	16
	<b>Division 4 — Negotiations and agreements</b>	
3.21.	Meaning of “negotiation parties”	16
3.22.	Negotiations	16
3.23.	Involvement of Commission, including mediation	16
3.24.	Withdrawal of objection	16
3.25.	Agreement made by parties	16
3.26.	Commission’s function in respect of an agreement	16
3.27.	Effect of conditional agreement	16
	<b>Division 5 — Determinations</b>	
	<b>Subdivision 1 — Ministerial determination where Commission determination unreasonably delayed</b>	
3.28.	Responsible Minister may give Commission notice as to urgency	17
3.29.	Responsible Minister may make determination	17
3.30.	Grounds for making determination	17
3.31.	Consultation with Commonwealth Minister	17
3.32.	Notice and submissions etc.	17
3.33.	Material etc. taken into account	17
3.34.	Minister’s power not limited	17
3.35.	No duty to make determination	17
3.36.	Conditions to have contractual effect	17
3.37.	Copy of determination to be given	18
3.38.	Copy of determination to be laid before Parliament	18
	<b>Subdivision 2 — Determination by Commission</b>	
3.39.	Commission may notify intention to hear	18
3.40.	Negotiations may continue	18
3.41.	Dismissal of objections	18
3.42.	Time for making determination	18

3.43.	No determination if agreement etc.	18
3.44.	Making of determination	18
3.45.	Criteria for making determinations	18
3.46.	Issues on which parties agree	18
3.47.	Determination may provide for issues to be resolved later	19
3.48.	No reopening of certain issues previously decided	19
3.49.	Copy of determination to be given	19
3.50.	Effect of conditional determination	19
	<b>Division 6 — Overruling of Commission’s determination</b>	
3.51.	Responsible Minister may overrule	19
3.52.	Declarations that responsible Minister may make	19
3.53.	Grounds on which declaration may be made	19
3.54.	Conditions in declaration	19
3.55.	Copy of declaration to be laid before Parliament	19
3.56.	Responsible Minister may declare intention not to overrule	19
	<b>Division 7 — Applications</b>	
3.57.	Definition	20
3.58.	Form and contents of application	20
3.59.	Material and fees to accompany applications	20
3.60.	Application fee may be waived	20
	<b>Part 4 — Consultation procedures for acts to which section 24MD(6B) of the NTA applies</b>	
	<b>Division 1 — Preliminary</b>	
4.1.	Object of this Part	21
4.2.	Acts to which this Part applies	21
4.3.	Requirements to be satisfied before a Part 4 act is done	21
4.4.	Other statutory requirements not affected	21
	<b>Division 2 — Notices and objections</b>	
4.5.	Proponent where act relates to mining	21
4.6.	Identification of proponents in other cases	21
4.7.	Closing day for objections	21
4.8.	Notification of acts by Government party	21

4.9.	Further provision as to notices	21
4.10.	Prescribed provisions about notice	22
4.11.	Right to object to doing of act	22
4.12.	Requirements for objections	22
4.13.	Time limit	22
4.14.	Government party to notify the Commission of objections	22
4.15.	Withdrawal of request etc. by proponent	22
4.16.	Withdrawal of proposal by Government party	22
	<b>Division 3 — Consultation and agreements</b>	
4.17.	Meaning of “consultation parties”	22
4.18.	Consultation	22
4.19.	Involvement of Commission, including mediation	22
4.20.	Withdrawal of objection	23
4.21.	Agreement made by parties	23
	<b>Division 4 — Recommendations of the Commission</b>	
4.22.	Commission may notify intention to hear	23
4.23.	Consultations may continue	23
4.24.	Dismissal of objections	23
4.25.	Time for making recommendation	23
4.26.	No recommendation if agreement etc.	23
4.27.	Making of recommendation	23
4.28.	Criteria for making recommendations	23
4.29.	Issues on which parties agree	23
4.30.	Copy of recommendation to be given	24
4.31.	Effect of recommendation	24
4.32.	Effect of recommendation that specifies conditions	24
	<b>Division 5 — Overruling of recommendations</b>	
4.33.	Responsible Minister may overrule a recommendation	24
4.34.	Determinations that responsible Minister may make	24
4.35.	Consultation before making of determination	24
4.36.	Ground on which determination may be made	24
4.37.	Conditions in determination	24
4.38.	Copy of determination to be laid before Parliament	24
4.39.	Responsible Minister may declare intention not to overrule	24



	<b>Division 6 — Applications</b>	
4.40.	Definition	25
4.41.	Form and contents of application	25
4.42.	Material and fees to accompany applications	25
4.43.	Application fee may be waived	25
	<b>Part 5 — Provisions relating to compensation</b>	
	<b>Division 1 — Preliminary</b>	
5.1.	Definition	26
	<b>Division 2 — Determination of compensation</b>	
5.2.	Commission to determine compensation for certain acts	26
5.3.	Parties may agree on compensation	26
5.4.	Enforcement of order for compensation	26
	<b>Division 3 — Principles to be applied in the determination of compensation</b>	
5.5.	No multiple compensation for essentially same act	26
5.6.	Compensation principles to be as for ordinary title	26
5.7.	Compensation to be monetary	26
5.8.	Requests for non-monetary compensation	26
	<b>Division 4 — Determination of amounts to be held in trust and payment of those amounts</b>	
5.9.	Conditions for payment of amounts to be held in trust	27
5.10.	How amounts held in trust to be dealt with	27
5.11.	Section 5.10(a) or (b) cases	27
5.12.	Section 5.10(c) cases	27
5.13.	Section 5.10(d) cases where monetary compensation	27
5.14.	Section 5.10(d) cases where non-monetary compensation	27
5.15.	Section 5.10(d) cases where no compensation	27
5.16.	Section 5.10(e) cases	27
5.17.	Jurisdiction of the Commission under this Division	27

**Part 6 — Native Title Commission**

**Division 1 — Commission established**

6.1.	Establishment of Commission	28
6.2.	Functions of Commission	28
6.3.	Requirements for fairness etc. to be observed	28
6.4.	Membership of the Commission	28
6.5.	Eligibility for appointment as Chief Commissioner	28
6.6.	Appointment of member of NNTT	28
6.7.	Qualifications for appointment	28
6.8.	Ordinary members, notice of proposed appointment	28
6.9.	Administrative functions of Chief Commissioner	28
6.10.	Authorization of Chief Commissioner for purposes of section 199F of the NTA	29
6.11.	Delegation to members	29
6.12.	Other provisions relating to members	29

**Division 2 — Staff of the Commission**

6.13.	Use of government staff etc.	29
6.14.	Consultants	29

**Division 3 — Operation of Commission**

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

6.15.	General position	29
6.16.	Constitution of Commission for the performance of certain functions	29
6.17.	Concurrent operations	29

**Subdivision 2 — Arrangement of business**

6.18.	Arrangement of business of the Commission	30
6.19.	Unavailability of member	30
6.20.	Completion of part-heard proceedings	30

**Subdivision 3 — Hearings**

6.21.	Commission to hold hearings	30
6.22.	Commission may determine whether matters are to be grouped together	30
6.23.	Opportunity to make submissions	30
6.24.	Questions to be decided by majority	30
6.25.	Representation before Commission	30
6.26.	Participation by telephone, etc.	30
6.27.	Hearings normally to be public	30

	<b>Subdivision 4 — Evidence and information</b>	
6.28.	Evidence and findings of other bodies	31
6.29.	Commission may prohibit disclosure of evidence	31
6.30.	Power of Commission to summon	31
6.31.	Power of Commission to take evidence	31
6.32.	Power of the Commission to require answers	31
6.33.	Commission may authorize another person to take evidence	31
6.34.	Interpreters	31
6.35.	Retention and copying of documents	31
	<b>Subdivision 5 — Recommendations and determinations</b>	
6.36.	Recommendations and determinations	31
	<b>Division 4 — Financial provisions</b>	
6.37.	Funds for carrying out this Act	32
6.38.	Native Title Commission Account	32
6.39.	Application of <i>Financial Administration and Audit Act 1985</i>	32
	<b>Division 5 — General</b>	
6.40.	Communication of information in certain cases	32
6.41.	Reference of question of law to the Supreme Court	32
6.42.	Offences	32
6.43.	Disclosure of interests	32
6.44.	Protection of members and persons appearing before the Commission	32
6.45.	Confidentiality	32
	<b>Part 7 — Miscellaneous</b>	
7.1.	Regulations	33
7.2.	Review of Act	33
7.3.	Consequential amendments	33
7.4.	Transitional provisions	33

**Schedule 1 — Provisions relating to  
members of the Commission**

**Schedule 2 — Consequential  
amendments**

**Schedule 3 — Transitional provisions**

**Division 1 — Existing applications for mining  
tenements**

- |    |   |    |
|----|---|----|
| 1. | Definition  | 37 |
| 2. | Regulations may modify certain provisions               | 37 |
| 3. | Programme for dealing with existing mining applications | 37 |

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

- |    |  |    |
|----|--|----|
| 4. | Definition                                   | 38 |
| 5. | Regulations may make transitional provisions | 38 |

**Notes**

- |  |                              |    |
|--|------------------------------|----|
|  | Compilation table            | 40 |
|  | Uncommenced provisions table | 40 |

**Defined terms**

## **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.

**s. 1.5**

---

(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

**s. 1.7**

---

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]*

**Native Title (State Provisions) Act 1999**

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

**Division 3** and objections

**s. 4.10**

---

**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]*

**Native Title (State Provisions) Act 1999**

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

**Division 5** Overruling of recommendations

**s. 4.30**

---

**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]*





**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]*



**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 5<sup>th</sup> 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.

**s. 7.4**

---

- (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
<i>Native Title (State Provisions) Act 1999</i> 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
<i>Native Title (State Provisions) Act 1999</i> 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 <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); 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))

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Chief Commissioner .....	1(4)
closing day .....	1(4)
Commission .....	1(4)
Commonwealth Minister .....	1(3)
consultation parties .....	1(4)
existing mining application.....	Sch. 3 cl. 1
Government party .....	1(4)
member .....	1(4)
negotiation parties.....	1(4)
objector .....	1(4)
ordinary member.....	1(4)
Part 2 act .....	1(4)
Part 3 act .....	1(4)
Part 4 act .....	1(4)
proponent .....	1(4)
recommendation.....	1(4)
registered native title rights and interests.....	1(4)
relevant land.....	1(4)
responsible Minister.....	1(4)
section 24MD(6B) matter .....	Sch. 3 cl. 4(1)
written law .....	1(5)