

Western Australia

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

(No. 60 of 1999)

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	<b>Defined terms in the NTA</b>	



Western Australia

## Native Title (State Provisions) Act 1999

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No. 60 of 1999

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**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.**

*[Assented to 10 January 2000]*

The Parliament of Western Australia enacts as follows:

## **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**

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(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.

**s. 1.6**

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

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

- (1) Where a Government party is a Minister of the Crown the consultation or negotiation functions of the Government party under Part 2, 3, or 4 may be performed on behalf of the Government party by any official authorized by the Government party for that purpose, whether generally or for any particular case.
- (2) Nothing in this Act is to be read as preventing the exercise by a Government party of a power of delegation conferred by a written law.

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

- (1) If—
- (a) a person becomes a registered native title claimant because the person replaces another person as the applicant in relation to a native title determination application under section 61 of the NTA; and
  - (b) the other person is an objector, a consultation party or a negotiation party,

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

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

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

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

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

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

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

### **Division 1 — Preliminary**

#### **2.1. Definitions**

In this Part —

**“alternative provision area”** has the meaning given by section 43A(2) of the NTA except that it does not include —

- (a) an area —
  - (i) that is covered by a grant for the benefit of Aboriginal persons; and
  - (ii) over which all native title rights and interests have not been extinguished; or
- (b) an area that is unallocated Crown land within the meaning of the *Land Administration Act 1997* and is land —
  - (i) over which, under a written law relating to the administration of Crown land —
    - (I) a non-exclusive pastoral lease was granted that continued in force for not more than 2 years; and
    - (II) no other tenure has ever been granted; and
  - (ii) that has never been reserved under a written law referred to in subparagraph (i);

**“grant for the benefit of Aboriginal persons”** means —

- (a) a lease granted for a fixed term or in perpetuity for the use and benefit of Aboriginal persons under —
  - (i) section 9 or 116 of the *Land Act 1933*; or
  - (ii) section 79 or 83 of the *Land Administration Act 1997*;

or

- (b) a reserve under section 29 of the *Land Act 1933* or section 41 of the *Land Administration Act 1997* for the use and benefit of Aboriginal persons where the land concerned is used for that purpose.

**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**

The regulations may make transitional provisions, so far as the legislative power of the Parliament permits, that are necessary or expedient to be made in connection with the amendment or revocation of a determination referred to in section 2.2.

**2.4. Object of this Part**

The object of this Part is to make provisions that —

- (a) are alternative to those contained in Part 2 Division 3 Subdivision P of the NTA in relation to acts to which

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

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

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

**s. 2.5**

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that Subdivision applies that are attributable to the State;  
and

- (b) are permitted by section 43A(1) of the NTA to have effect instead of Subdivision P while a determination referred to in section 2.2 is in force,

in relation to an area of land or waters that is an alternative provision area.

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**

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

- (1) This Part applies to a future act (“**a Part 2 act**”) done by the State that —
- (a) is 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 subsection (3), relates to any extent to an area of land or waters that is an alternative provision area.
- (2) 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.
- (3) This Part does not apply to a compulsory acquisition that comes within section 26(1)(c)(iii) of the NTA if it involves the acquisition of native title rights and interests in relation to land or waters in both an alternative provision area and an area that is not an alternative provision area.

- (4) If by operation of section 43B of the NTA a future act is taken to consist of 2 separate acts, this Part applies only to the separate act that comes within paragraph(c)(i) of that section.
- (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**

- (1) 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 are —
    - (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;

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- (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
    - (ii) that the act be done subject to conditions being complied with,is overruled under section 2.38 and a determination is made under that section that the act may be done subject to conditions being complied with.
- (3) In subsection (2) —
- “close of business”** means the close of business of the Government party as specified in accordance with section 2.13(2)(f);
- “last day for the lodgment of objections”** —
- (a) in relation to a person who has filed an application in terms of section 2.18(3)(a) in relation to any part of the relevant land (a **“pending application”**), means the day that is one month after the closing day; and
  - (b) in relation to any other person, or if at the closing day there is no pending application, means the closing day.



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

The Government party may, on the application of a person who has applied for, or made a request or submission for, the doing of an act that would otherwise come within section 2.5, determine that Part 2 is not to apply to the act but that it is to be treated instead as a Part 3 act.

**2.8. Other statutory requirements not affected**

Nothing in section 2.6, or in an agreement, recommendation or determination under this Part, authorizes the Government party to do a Part 2 act without complying with any requirements of another written law that apply to the doing of the act.

**Division 3 — Notices and objections**

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

Where the Part 2 act, if done, would —

- (a) create or vary a right to mine; or
- (b) 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.

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

- (1) This section applies where the Part 2 act is not covered by section 2.9.
- (2) 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.

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- (3) The Government party may amend a determination under subsection (2).
- (4) The Government party must give notice in writing to each proponent of—
  - (a) a determination under subsection (2); and
  - (b) an amendment of a determination,relating to that proponent.
- (5) If there is any other consultation 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 consultation party.

**2.11. Closing day for objections**

- (1) The Government party is to fix, for every Part 2 act, a closing day for the lodgment of objections to the doing of the act.
- (2) The Government party may fix a later closing day for the lodgment of objections to the doing of a Part 2 act if the Government party is satisfied that it has not been reasonably practicable for section 2.13(1) to be complied with in respect of the act.

**2.12. Notification of acts**

- (1) Before a Part 2 act is done, public notice of the act must be given by advertisement in a newspaper circulating generally throughout the State.
- (2) Notice in writing of the act must also be given to—
  - (a) any registered native title body corporate in relation to any of the relevant land;
  - (b) any registered native title claimant in relation to any of the relevant land;

- (c) any representative body for an area that includes any of the relevant land; and
- (d) the Native Title Registrar.

**2.13. Further provision as to notices**

- (1) The notices required by section 2.12 in respect of a Part 2 act must be given at least 3 months before the closing day.
- (2) Every notice must show —
  - (a) a clear description of the land or waters to which the act relates;
  - (b) a description of the nature of the act;
  - (c) the title of the Government party who —
    - (i) would do the act; and
    - (ii) will receive objections;
  - (d) the address at which objections may be lodged and the postal address to which they may be sent;
  - (e) the closing day;
  - (f) the time of close of business of the Government party on the closing day;
  - (g) the name and address of any person who is a proponent under section 2.9 or is determined to be a proponent under section 2.10(2);
  - (h) how further information about the act can be obtained; and
  - (i) any other information that is prescribed for the purposes of section 2.15(1)(a).

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- (3) Every notice must also contain a statement explaining how section 2.18(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 2.16(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.

**2.14. Who gives notice**

The notices required by section 2.12 are to be given by the Government party.

**2.15. Prescribed provisions about notice**

- (1) 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 2 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.

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

- (1) 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 (3), a registered native title claimant,may lodge an objection to the doing of a Part 2 act.
- (2) An objection may be lodged only on the ground that the doing of the act in relation to the relevant land would affect the person's registered native title rights and interests in relation to that land.
- (3) Subsection (1)(b) does not apply if there are one or more registered native title bodies corporate in relation to all of the relevant land.

**2.17. Requirements for objections**

- (1) An objection must —
  - (a) be lodged with the Government party in accordance with the requirements of the relevant notice;
  - (b) state the manner in which it is said that the doing of the act would be likely to affect the objector's registered native title rights and interests in relation to the relevant land; and
  - (c) comply with any other requirements of the regulations as to the form or content of objections.
- (2) The objector must give a copy of the objection to any proponent in relation to the act.

**2.18. Time limit**

- (1) An objection against a Part 2 act cannot be lodged after the closing day.
- (2) Where, on the application of a person made before the closing day, the Commission is satisfied that exceptional circumstances so require, the Commission may —
  - (a) fix a later closing day for the lodgment of objections to the doing of the act; and
  - (b) give such directions as the Commission thinks appropriate as to the giving of notice of the day so fixed.
- (3) If —
  - (a) on or before the closing day for a Part 2 act, a person files a native title determination application under section 61 of the NTA; and
  - (b) within one month after the closing day the person becomes a registered native title claimant,in relation to any part of the relevant land, the person may, despite subsection (1), lodge an objection to the doing of the act within the period referred to in paragraph (b).
- (4) A person who files an application referred to in subsection (3) must, within 7 days of doing so, notify the Government party and any proponent in writing of that fact.

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

- (1) The Government party must notify —
  - (a) the Commission; and
  - (b) any proponent,of the particulars of all objections against a Part 2 act lodged on or before the closing day or in accordance with section 2.18(3).

- (2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.
- (3) Notification under subsection (1) or (2) of an objection must be given not later than 14 days after the lodgment of the objection.

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

- (1) The proponent in relation to a Part 2 act may give notice in writing to —
  - (a) the Commission;
  - (b) the other consultation parties (if any); and
  - (c) the Government party,that the proponent's application, request or submission for the doing of the act is withdrawn.
- (2) If there is more than one proponent a notice under subsection (1) is of no effect unless it is given by all of the proponents jointly.
- (3) The giving of a notice under subsection (1) to all of the persons referred to in that subsection brings to an end any procedures that have begun under this Part.

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

- (1) The application of section 2.20 extends to cases where —
  - (a) section 2.9 does not apply; and
  - (b) a proponent has not been determined under section 2.10(2).
- (2) In that event —
  - (a) a notice may be given by the Government party that the act will not be done; and

- (b) the provisions of section 2.20 apply with all necessary changes.

#### **Division 4 — Consultation and agreements**

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

References in this Part to “**consultation parties**” in relation to a Part 2 act are references to —

- (a) each proponent under section 2.9 and each objector; or
- (b) where section 2.9 does not apply —
  - (i) the Government party;
  - (ii) each objector; and
  - (iii) any person determined under section 2.10(2) to be a proponent but only so long as the person consents to being a consultation party.

##### **2.23. Consultation**

- (1) If a Part 2 act is a compulsory acquisition that comes within section 26(1)(c)(iii) of the NTA, the consultation parties must consult with each other in good faith about ways of minimizing the impact of the act on registered native title rights and interests in relation to the relevant land with a view to bringing about the withdrawal of the objections.
- (2) In the case of any other Part 2 act, the consultation parties must consult with each other in good faith about ways of minimizing the impact of the act on registered native title rights and interests in relation to the relevant land, including about —
  - (a) any access to the relevant land; or



- (b) the way in which any thing authorized by the act may be done,

with a view to bringing about the withdrawal of the objections.

- (3) The consultation parties for the time being may begin consultations even though the closing day for the act concerned has not arrived.

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

- (1) If any of the consultation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them on the relevant matters mentioned in section 2.23.
- (2) The consultation parties must report to the Commission on progress made in the consultations at such time or times as the Commission may in writing direct.
- (3) If the Commission considers that the consultation parties or any of them are not making sufficient attempts to resolve their differences the Commission is to use its best endeavours —
  - (a) to have the parties consult together in good faith as required by section 2.23; and
  - (b) to bring about —
    - (i) a resolution of the differences between them on the relevant matters mentioned in section 2.23; or
    - (ii) the withdrawal of the objections.

**2.25. Withdrawal of objection**

- (1) At any time before a recommendation is made under Division 5 in relation to an objection the objector may withdraw the objection by notice in writing given to the Commission.

- (2) The Commission is to notify the consultation parties of any such withdrawal.

**2.26. Agreement made by parties**

If at any time before a recommendation is made under Division 5 the consultation parties make an agreement that resolves the issues on which the objections were based, they may give a copy of it to the Commission.

**Division 5 — Recommendations of the Commission**

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

- (1) The Commission may, after the consultation period for a Part 2 act has expired, give notice to the consultation parties that it intends to hear and determine objections to the doing of the act —
- (a) if —
- (i) all of the objections have not been withdrawn; or
- (ii) an agreement of the kind described in section 2.26 has not been made between the consultation parties and given to the Commission under that section;
- and
- (b) if the Commission considers that any mediation requested under section 2.24(1) has been completed.
- (2) A notice under subsection (1) in respect of a Part 2 act may be given by the Commission —
- (a) of its own motion; or
- (b) on the application of a consultation party.
- (3) Before the Commission gives a notice under subsection (1) of its own motion, it must give the consultation parties an

opportunity to inform it whether the making of an agreement of the kind described in section 2.26 is imminent.

- (4) The Commission must grant an application made under subsection (2)(b) if the application complies with section 2.46 and is accompanied by the things required by section 2.47.
- (5) Without limiting section 6.22, a notice under subsection (1) may relate to more than one act and the objections to the doing of the act.
- (6) In this section —  
**“consultation period”** means the period beginning on the closing day and ending 4 months after that day.

**2.28. Consultations may continue**

Where the Commission —

- (a) has given notice under section 2.27; but
- (b) has not made a recommendation,

in respect of a Part 2 act, the consultation parties may continue to consult together with a view to bringing about —

- (c) a resolution of the issues on which the objections are based; and
- (d) the withdrawal of the objections.

**2.29. Dismissal of objections**

- (1) The Commission must dismiss an objection if —
  - (a) it is not made by a registered native title body corporate or a registered native title claimant as required by section 2.16(1); or

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- (b) none of the rights and interests claimed to be affected by the doing of the act are registered native title rights and interests of the objector.
- (2) The Commission must notify an objector of the dismissal of his or her objection.

**2.30. Time for making recommendation**

- (1) Subject to section 2.31, the Commission must take all reasonable steps to make a recommendation in respect of a Part 2 act within the period of 4 months (“**the allowed period**”) starting when a notice under section 2.27 is given in respect of the act.
- (2) If it appears to the Commission that it will not make a recommendation within the allowed period, the Commission may before the end of the period ask the responsible Minister to extend the period, and that Minister may comply with the request.
- (3) An extended period may be further extended under subsection (2).

**2.31. No recommendation if agreement etc.**

The Commission must not make a recommendation in respect of a Part 2 act if —

- (a) all of the objections to the doing of the act have been withdrawn; or
- (b) an agreement of the kind described in section 2.26 has been made between the consultation parties and given to the Commission under that section.

**2.32. Making of recommendation**

- (1) Except where section 2.31 applies, the Commission must make one of the following recommendations —
  - (a) that the act be done;
  - (b) that the act be done subject to specified conditions being complied with by any of the consultation parties;
  - (c) that the act 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 specify 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 consultation party as a result of doing anything in relation to the relevant land after the act is done.

**2.33. Criteria for making recommendations**

- (1) In making its recommendation in respect of any Part 2 act, the Commission must —
  - (a) take into account the impact of the act on —
    - (i) the enjoyment by the objectors of registered native title rights and interests; and
    - (ii) any area or site on the relevant land of particular significance to the objectors in accordance with their traditions;and

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- (b) unless it recommends that the act not be done, consider ways in which that impact can be minimized.
- (2) In addition, in making its recommendation in respect of a Part 2 act that is not a compulsory acquisition that comes within section 26(1)(c)(iii) of the NTA, the Commission must consider questions of —
  - (a) access to the relevant land; and
  - (b) the way in which any thing authorized by the act may be done.
- (3) The Commission must also take into account the nature and extent of —
  - (a) existing rights and interests that are not native title rights and interests, in relation to the relevant land; and
  - (b) existing use of the relevant land by persons other than the objectors.
- (4) In taking into account the impact of the act as mentioned in subsection (1) (a), and in considering the ways in which that impact can be minimized as mentioned in subsection (1) (b), the Commission may take into account the impact of the act on —
  - (a) the way of life, culture, traditions and economic interests of any of the objectors;
  - (b) the freedom of access by any of the objectors to the relevant land; and
  - (c) the carrying out by any of the objectors of rites, ceremonies or other activities of cultural significance on the relevant land in accordance with their traditions.
- (5) Taking into account the effect of a Part 2 act on areas or sites mentioned in subsection (1) (a) (ii) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

**2.34. Issues on which parties agree**

- (1) Before making its recommendation, the Commission must ascertain whether the consultation parties have an agreed position on any issues relevant to its recommendation.
- (2) If there is any such issue, and all of the consultation parties consent, the Commission in making its recommendation —
  - (a) must take that agreed position into account; and
  - (b) need not take into account the matters mentioned in section 2.33, to the extent that the matters relate to that issue.

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

The Commission must give a copy of any recommendation under section 2.32 to the consultation parties and the responsible Minister.

**2.36. Effect of recommendation**

A recommendation must be complied with by the Government party unless it is overruled by a determination of the responsible Minister under section 2.38.

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

- (1) A recommendation by the Commission that a Part 2 act may be done subject to conditions being complied with by the consultation parties has effect, if the act is done, as if the conditions were terms of a contract among the consultation parties.
- (2) Subsection (1) is in addition to —
  - (a) the effect that the recommendation has under section 2.36; and

- (b) any condition that the Government party may impose in relation to the act in order to give effect to the recommendation.
- (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.

### **Division 6 — Overruling of recommendations**

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

- (1) Subject to sections 2.40 and 2.41, the responsible Minister may, by writing given to the Commission, make a determination in accordance with section 2.39.
- (2) A determination cannot be made by the responsible Minister in respect of a recommendation after 2 months have expired since the recommendation was made.
- (3) The Commission must give a copy of the determination to the consultation parties concerned.

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

- (1) In the case of a recommendation under section 2.32(1)(a), the responsible Minister may make a determination that the recommendation is overruled and either —
  - (a) that the act to which it relates must not be done; or
  - (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (2) In the case of a recommendation under section 2.32(1)(b), the responsible Minister may make a determination that the recommendation is overruled and —
  - (a) that the act to which it relates must not be done;



- (b) that the act to which it relates may be done; or
  - (c) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (3) In the case of a recommendation under section 2.32(1)(c), the responsible Minister may make a determination that the recommendation is overruled and either —
  - (a) that the act to which it relates may be done; or
  - (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (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.

**2.40. Consultation before making of determination**

- (1) This section applies if the effect of the responsible Minister’s determination under section 2.38 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.

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- (2) If this section applies, the responsible Minister may only make a determination under section 2.38 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)(a) applies subject to any direction given by the Commission under section 6.29.

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

- (1) The responsible Minister may only make a determination under section 2.38 on the ground that it is in the interests of the State to do so.
- (2) In subsection (1) —
- “in the interests of the State”** includes —
- (a) for the social or economic benefit of the State (including of Aboriginal peoples); and

- (b) in the interests of the relevant region or locality in the State.

**2.42. Conditions in determination**

- (1) A provision in a determination by the responsible Minister under section 2.38 that a Part 2 act may be done subject to conditions being complied with by any of the consultation parties has effect, if the act is done, as if the conditions were terms of a contract among the consultation parties.
- (2) Subsection (1) is in addition to —
  - (a) the effect of the determination apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the determination.
- (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).

**2.46. 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 —

- (a) in the Chief Commissioner’s opinion, payment of the whole or part of the fee would cause financial hardship to the person; or
- (b) for any other reason the Chief Commissioner considers it appropriate to do so.

**Division 8 — Judicial review**

**2.49. Application for review**

- (1) A consultation party in relation to a Part 2 act may apply to the Supreme Court for a review of a decision to which this section applies.
- (2) The decisions referred to are —
  - (a) a dismissal under section 2.29 of an objection to the doing of the act;
  - (b) a recommendation of the Commission under section 2.32(1)(a) or (b) in respect of the act; and
  - (c) a determination of the responsible Minister under section 2.38(1) that the act —
    - (i) may be done; or
    - (ii) may be done subject to conditions.

**2.50. Time limit for application**

- (1) An application for review must be made not later than 28 days after the day on which —
  - (a) notice of the dismissal of the objection is given to the applicant; or

- (b) a copy of the determination is given to the applicant under section 2.38(3),

as the case may be.

- (2) In the case of a recommendation of the Commission, an application for review must be made not later than 28 days after —
  - (a) the day on which the applicant is notified under section 2.44(3) that the responsible Minister has given an instrument to the Commission under section 2.44; or
  - (b) the expiry of the period referred to in section 2.38(2),whichever happens first.

**2.51. Procedure**

The manner of making the application and other matters relating to the proceedings are to be as prescribed by rules of court.

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

- (1) An application for review may only be made on a ground or grounds that would support an application for a remedy of —
  - (a) injunction;
  - (b) declaratory judgment; or
  - (c) an order in the nature of a prerogative writ.
- (2) The application is not required to specify the kind of remedy that is sought but is taken to be an application for the grant of such of the remedies referred to in subsection (1) as the Court considers appropriate in the circumstances.

**2.53. Powers of Court**

On the making of an application for review the Court may grant such relief as it considers appropriate in the circumstances, including relief by way of any of the remedies referred to in section 2.52(1).

**2.54. Effect on other remedies**

This Division displaces, in respect of a decision to which it applies, the right of a consultation party to apply in other proceedings for relief of a kind that is available under this Division.

## **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**

The regulations may make transitional provisions, so far as the legislative power of the Parliament permits, that are necessary or expedient to be made in connection with the amendment or revocation of a determination referred to in section 3.1.

#### **3.3. Object of this Part**

The object of this Part is to make provisions that —

- (a) are alternative to those contained in Part 2 Division 3 Subdivision P of the NTA; and
- (b) are permitted by section 43(1) of the NTA to have effect instead of Subdivision P while a determination referred to in section 3.1 is in force,

in relation to acts to which that Subdivision applies that are attributable to the State.

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**

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

- (1) This Part applies to a future act (“**a Part 3 act**”) done by the State that —
  - (a) is 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.
- (2) 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.
- (3) 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
  - (b) 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.
- (2) The requirements are —
  - (a) 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

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- (ii) registered native title claimant,  
in relation to any part of the relevant land;
- (c) 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;
- (d) an agreement of the kind mentioned in section 3.22(1) is —
  - (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);
- (e) a determination is made under section 3.29 that the act may be done, or may be done subject to conditions being complied with;
- (f) a determination is made under section 3.44 that the act may be done, or may be done subject to conditions being complied with, and the determination —
  - (i) has not been overruled under section 3.51; and
  - (ii) is no longer capable of being overruled —
    - (I) because of section 3.51(2); or
    - (II) because the responsible Minister has given an instrument to the Commission under section 3.56;
- (g) a determination that the act must not be done is declared to be overruled under section 3.51; or
- (h) a determination under section 3.44 —
  - (i) that the act may be done; or

- (ii) that the act may be done subject to conditions being complied with,  
is overruled under section 3.51 and a declaration is made under that section that the act may be done subject to conditions being complied with.
- (3) In subsection (2) —  
**“close of business”** means the close of business of the Government party as specified in accordance with section 3.11(2)(f);  
**“objection period”**, in relation to a Part 3 act, means the period beginning when any notice of the act is given under section 3.10 and ending with the day that is one month after the closing day in relation to the act.
- (4) The term “objection period” is defined in subsection (3) to extend beyond the closing day in relation to a Part 3 act to allow for cases where section 3.17(3) applies, and the definition is not to be read as in any way limiting the operation of section 3.17(1).

**3.6. 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**

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

Where the Part 3 act, if done, would —

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

- (b) 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.

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

- (1) This section applies where the Part 3 act is not covered by section 3.7.
- (2) 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.
- (3) The Government party may amend a determination under subsection (2).
- (4) 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.

**3.9. 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.

- (2) 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 practicable for section 3.11(1) to be complied with in respect of the act.

**3.10. Notification of acts**

- (1) Before a Part 3 act is done, public notice of the act must be given by advertisement —
- (a) in a newspaper circulating generally throughout the State; and
  - (b) in a newspaper or magazine that —
    - (i) caters mainly or exclusively for the interests of Aboriginal peoples;
    - (ii) circulates in the area that may be affected by the act; and
    - (iii) is published at least once a month.
- (2) Notice in writing of the act must also be given to —
- (a) any registered native title body corporate in relation to any of the relevant land;
  - (b) any registered native title claimant in relation to any of the relevant land;
  - (c) any representative body for an area that includes any of the relevant land; and
  - (d) the Native Title Registrar.

**3.11. Further provision as to notices**

- (1) The notices required by section 3.10 in respect of a Part 3 act must be given at least 3 months before the closing day.

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- (2) Every notice must show —
- (a) a clear description of the land or waters to which the act relates;
  - (b) a description of the nature of the act;
  - (c) the title of the Government party who —
    - (i) would do the act; and
    - (ii) will receive objections;
  - (d) the address at which objections may be lodged and the postal address to which they may be sent;
  - (e) the closing day;
  - (f) the time of close of business of the Government party on the closing day and on the day that is one month after that day;
  - (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**

- (1) 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**

- (1) 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 claimant,may lodge an objection to the doing of a Part 3 act.

- (2) Subsection (1)(b) does not apply if there are one or more registered native title bodies corporate in relation to all of the relevant land.

**3.16. Requirements for objections**

- (1) An objection must —
- (a) be lodged with the Government party in accordance with the requirements of the relevant notice;
  - (b) state the manner in which it is said that the doing of the act would be likely to affect the objector's registered native title rights and interests in relation to the relevant land; and
  - (c) comply with any other requirements of the regulations as to the form or content of objections.
- (2) The objector must give a copy of the objection to any proponent in relation to the act.

**3.17. Time limit**

- (1) An objection to the doing of a Part 3 act cannot be lodged after the closing day.
- (2) Where, on the application of a person made before the closing day, the Commission is satisfied that exceptional circumstances so require, the Commission may —
- (a) fix a later closing day for the lodgment of objections to the doing of the act; and
  - (b) give such directions as the Commission thinks appropriate as to the giving of notice of the day so fixed.



(3) If —

- (a) on or before the closing day for a Part 3 act, a person files a native title determination application under section 61 of the NTA; and
- (b) within one month after the closing day the person becomes a registered native title claimant,

in relation to any part of the relevant land, the person may, despite subsection (1), lodge an objection to the doing of the act within the period referred to in paragraph (b).

(4) A person who files an application referred to in subsection (3) must, within 7 days of doing so, notify the Government party and any proponent in writing of that fact.

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

(1) The Government party must notify —

- (a) the Commission; and
- (b) any proponent,

of the particulars of all objections lodged on or before the closing day or in accordance with section 3.17(3).

(2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.

(3) Notification under subsection (1) or (2) of an objection must be given not later than 14 days after the lodgment of the objection.

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

(1) The proponent in relation to a Part 3 act may give notice in writing to —

- (a) the Commission;
- (b) the other negotiation parties (if any); and

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- (c) the Government party,  
that the proponent's request, application or submission for the doing of the act is withdrawn.
- (2) If there is more than one proponent a notice under subsection (1) is of no effect unless it is given by all of the proponents jointly.
- (3) The giving of a notice under subsection (1) to all of the persons referred to in that subsection brings to an end any procedures that have begun under this Part.

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

- (1) The application of section 3.19 extends to cases where —
  - (a) section 3.7 does not apply; and
  - (b) a proponent has not been determined under section 3.8.
- (2) In that event —
  - (a) a notice may be given by the Government party that the act will not be done; and
  - (b) the provisions of section 3.19 apply with all necessary changes.

**Division 4 — Negotiations and agreements**

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

- (1) References in this Part to “**negotiation parties**” in relation to a Part 3 act are references —
  - (a) where section 3.7 applies, to —
    - (i) each proponent under that section;
    - (ii) each objector; and

- (iii) to the extent provided for by subsection (3), the Government party;
  - or
  - (b) where section 3.7 does not apply, to —
    - (i) the Government party;
    - (ii) each objector; and
    - (iii) any person determined under section 3.8(2) to be a proponent but only so long as the person consents to being a negotiation party.
- (2) Where section 3.7 applies to a Part 3 act, a proponent under that section or an objector may in writing —
- (a) at any time request the Government party to be a negotiation party; or
  - (b) request the Government party to be no longer a negotiation party,
- in relation to that act.
- (3) So long as —
- (a) a request by a proponent or objector under subsection (2)(a) has effect; and
  - (b) there has been no request by the same proponent or objector under subsection (2)(b),
- the Government party is a negotiation party in relation to the act concerned.

**3.22. Negotiations**

- (1) The negotiation parties must negotiate in good faith with a view to —
    - (a) the objections to the doing of the act being withdrawn;
- or

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- (b) obtaining the agreement of the objectors to —
  - (i) the doing of the act; or
  - (ii) the doing of the act subject to conditions to be complied with by any of the negotiation parties.
- (2) For the purposes of subsection (1), the other negotiation parties must give the objectors an opportunity to state, either orally or in writing, their views regarding the doing of the act.
- (3) Without limiting the scope of any negotiations, they may, if relevant, include the possibility of there being a condition that has the effect that the objectors are 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.
- (4) Without limiting the scope of any negotiations, the nature and extent of the following may be taken into account —
  - (a) existing rights and interests in relation to the relevant land that are not registered native title rights and interests;
  - (b) existing use of the relevant land by persons other than the objectors; and
  - (c) the practical effect of the exercise of —
    - (i) those existing rights and interests; and
    - (ii) that existing use,on the exercise of any registered native title rights and interests in relation to the relevant land.

- (5) The fact that a negotiation party refuses or fails to negotiate as mentioned in subsection (1) about matters unrelated to the effect of the act on the registered native title rights and interests of the objectors, does not mean that the negotiation party has not negotiated in good faith for the purposes of that subsection.
- (6) The negotiation parties for the time being may begin negotiations even though the closing day in relation to the act concerned has not arrived.

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

- (1) If any of the negotiation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them.
- (2) The negotiation parties must report to the Commission on progress made in the negotiations at such time or times as the Commission may in writing direct.
- (3) If the Commission considers that the negotiation parties or any of them are not making sufficient attempts to reach an agreement the Commission is to use its best endeavours to have the parties negotiate as required by section 3.22(1).

**3.24. Withdrawal of objection**

- (1) At any time before a determination is made under Division 5 in relation to an objection the objector may withdraw the objection by notice in writing given to the Commission.
- (2) The Commission is to notify the negotiation parties of any such withdrawal.

**3.25. Agreement made by parties**

If at any time before any determination is made under Division 5 the negotiation parties make an agreement of the

kind mentioned in section 3.22(1), they may give a copy of it to the Commission.

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

- (1) This section applies only if the Government party is not a negotiation party.
- (2) Where a copy of an agreement is given to the Commission under section 3.25 it is to consider the agreement and either —
  - (a) accept the agreement if the Commission is satisfied as to the matters set out in subsection (3); or
  - (b) decline to accept the agreement if it is not so satisfied.
- (3) The matters as to which the Commission is to be satisfied are that —
  - (a) the negotiation parties have made the agreement;
  - (b) the agreement has been properly executed; and
  - (c) no party has alleged, and proved to the Commission, that the party did not freely and voluntarily enter into the agreement.
- (4) If the Commission accepts the agreement it is to —
  - (a) give notice in writing of that fact to the parties and to the Government party; and
  - (b) give the Government party a copy of the agreement.

**3.27. Effect of conditional agreement**

- (1) An agreement that a Part 3 act may be done subject to conditions being complied with by the negotiation parties has effect —
  - (a) if a copy of the agreement is given to the Commission under section 3.25 and is accepted by the Commission under section 3.26(2); and

- (b) if the act is done,  
as if the conditions were terms of a contract among the negotiation parties.
- (2) Subsection (1) is in addition to —
  - (a) any other effect that the agreement may have apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the agreement.
- (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 negotiation party for the purposes only of this section.

### **Division 5 — Determinations**

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

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

- (1) At any time later than 4 months after the Commission has given a notice under section 3.39 in respect of a Part 3 act and before either —
    - (a) an agreement of the kind mentioned in section 3.22(1) has 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

- (b) the Commission has made a determination under section 3.44,

the responsible Minister may give a written notice to the Commission requesting it to make such a determination within the period specified in the notice.

- (2) The period must end at a time later than 6 months after the notice under section 3.39 was given.

**3.29. Responsible Minister may make determination**

- (1) The responsible Minister may, subject to section 3.30, make a determination in respect of a Part 3 act if —
  - (a) the Commission has not made a determination in respect of the act within the period specified in a notice under section 3.28;
  - (b) all objections to the doing of the act lodged under section 3.15 have not been —
    - (i) withdrawn under section 3.24; or
    - (ii) dismissed under section 3.41;
  - (c) no agreement of the kind mentioned in section 3.22(1) has been —
    - (i) made in relation to the act;
    - (ii) given to the Commission under section 3.25; and
    - (iii) accepted by the Commission under section 3.26(2);and
  - (d) the responsible Minister has complied with the requirements of sections 3.31, 3.32 and 3.33.
- (2) The determinations that the responsible Minister may make are —
  - (a) a determination that the act may be done;



- (b) a determination that the act must not be done; or
  - (c) a determination that the act may be done subject to conditions to be complied with by any of the negotiation parties.
- (3) A determination must be made by the responsible Minister personally.

**3.30. Grounds for making determination**

- (1) The responsible Minister may only make a determination under section 3.29 if he or she considers that —
- (a) the Commission is unlikely to make its determination within a period that is reasonable having regard to all the circumstances; and
  - (b) it is in the interests of the State to make the determination at the time.
- (2) Subsection (1) does not prevent the responsible Minister from having regard to other matters in deciding whether to make a determination.

**3.31. Consultation with Commonwealth Minister**

The responsible Minister may only make a determination of the kind described in section 3.29(2)(a) or (c) after he or she has consulted the Commonwealth Minister about the determination.

**3.32. Notice and submissions etc.**

- (1) Before making a determination under section 3.29, the responsible Minister must give notice in accordance with this section.
- (2) The responsible Minister must give written notice to the Commission requiring it, by the end of the day specified in the notice, to give to —
- (a) the Minister; and

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- (b) each negotiation party,
- a summary of material that has been presented to the Commission in the course of the Commission considering whether to make a determination under section 3.44 in respect of the act concerned.
- (3) The responsible Minister must give written notice to each negotiation party that the Minister is considering making the determination and that each negotiation party —
- (a) may, by the end of the day specified in the notice, give the Minister any submission or other material that the negotiation party wants the Minister to take into account in deciding whether to make the determination and, if so, its terms;
- (b) if the negotiation party does so, must also give each of the other negotiation parties a copy of the submission or other material; and
- (c) may, within 7 days after the specified day, in response to any submission or other material given by —
- (i) any other negotiation party; or
- (ii) the Commission,
- give the Minister any further submission or other material that the negotiation party wants the Minister to take into account as mentioned in paragraph (a).
- (4) The day specified under subsection (2) or (3) must —
- (a) be the same in all of the notices given under the subsections; and
- (b) be a day by which, in the responsible Minister's opinion, it is reasonable to assume that all of the notices so given —
- (i) will have been received by; or

(ii) will otherwise have come to the attention of,  
the persons who must be so notified.

- (5) If the responsible Minister complies with this section, there is no requirement for any person to be given any further hearing before the responsible Minister makes the determination.

**3.33. Material etc. taken into account**

In making the determination, the responsible Minister —

- (a) must take into account —
- (i) any submission or material provided by any of the negotiation parties in accordance with subsection (3) of section 3.32, but only if the negotiation party has complied with the requirements of paragraph (b) of that subsection;
  - (ii) any report provided by the Commission; and
  - (iii) any consultations with the Commonwealth Minister under section 3.31;
- and
- (b) may, but need not, take into account any other matter or thing.

**3.34. Minister's power not limited**

The fact that no submission or other material of the kind mentioned in section 3.32 has been given to the Minister before the end of the day specified in the notice does not prevent the Minister from making the determination.

**3.35. No duty to make determination**

- (1) The responsible Minister does not have a duty to make a determination under section 3.29.

- (2) This is so despite —
- (a) the giving of any notice by the Minister;
  - (b) the giving of any submission or other material to the Minister;
  - (c) any request by a negotiation party for the responsible Minister to make the determination; and
  - (d) any other circumstance.

**3.36. Conditions to have contractual effect**

- (1) Any provision in a determination under section 3.29 that the act may be done subject to conditions being complied with by any of the negotiation parties has effect, if the act is done, as if the conditions were terms of a contract among the negotiation parties.
- (2) Subsection (1) is in addition to —
- (a) the effect that the determination has apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the determination.
- (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 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 —
    - (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 requested under section 3.23(1) has been completed.

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- (2) A notice under subsection (1) in respect of a Part 3 act may be given by the Commission —
  - (a) of its own motion, but only after the expiry of the negotiation period; or
  - (b) on the application of a negotiation party made after the expiry of that period.
- (3) Before the Commission gives a notice under subsection (1) of its own motion, it must give the negotiation parties an opportunity to inform it whether the making of an agreement of the kind mentioned in section 3.22(1) is imminent.
- (4) The Commission must grant an application made under subsection (2)(b) if —
  - (a) a determination has not been made under section 3.29;
  - (b) the application —
    - (i) complies with section 3.58; and
    - (ii) is accompanied by the things required by section 3.59;and
  - (c) the applicant has not been shown to be at fault.
- (5) For the purposes of subsection (4)(c), an applicant is shown to be at fault if another negotiation party alleges to the Commission, and proves to its satisfaction, that the applicant did not negotiate in good faith as required by section 3.22(1).
- (6) Without limiting section 6.22, a notice under subsection (1) may relate to more than one act and the objections to the doing of the act.
- (7) In this section —

**“negotiation period”** means the period beginning on the closing day and ending 4 months after that day.

**3.40. Negotiations may continue**

Where the Commission —

- (a) has given notice under section 3.39; but
- (b) has not made a determination,

in respect of a Part 3 act, the negotiation parties may continue to negotiate with a view to —

- (c) bringing about an agreement of the kind mentioned in section 3.22(1); or
- (d) the withdrawal of the objections.

**3.41. Dismissal of objections**

(1) The Commission must dismiss an objection if —

- (a) it is not made by a registered native title body corporate or a registered native title claimant as required by section 3.15; or
- (b) none of the rights and interests claimed to be affected by the doing of the act are registered native title rights and interests of the objector.

(2) The Commission must notify an objector of the dismissal of his or her objection.

**3.42. Time for making determination**

(1) The Commission must take all reasonable steps to make a determination under section 3.44 in respect of a Part 3 act within the period of 6 months (“**the allowed period**”) starting when a notice under section 3.39 is given in respect of the act.

(2) If it appears to the Commission that it will not make a determination within the allowed period, the Commission may, before the end of the period, ask the responsible Minister to extend the period, and that Minister may comply with the request.

- (3) An extended period may be further extended under subsection (2).
- (4) The Commission must not make a determination after the end of the allowed period or any extended period.
- (5) Nothing in subsection (2) or (3) affects the operation of Subdivision 1.

**3.43. No determination if agreement etc.**

The Commission must not make a determination in respect of a Part 3 act if —

- (a) all of the objections to the doing of the act have been withdrawn;
  - (b) an agreement of the kind mentioned in section 3.22(1) has 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
- (c) a determination has been made under section 3.29.

**3.44. Making of determination**

- (1) Subject to section 3.43, the Commission must make one of the following determinations —
  - (a) a determination that the act may be done;
  - (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;
    - (iv) 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;

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- (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;
    - (iii) the area in which the relevant land is located; and
    - (iv) Aboriginal peoples who live in that area;
  - (d) any public interest in the doing of the act; and
  - (e) any other matter that the Commission considers relevant.
- (2) While taking into account the effect of a Part 3 act as mentioned in subsection (1)(a), the Commission must also take into account the nature and extent of —
- (a) existing rights and interests that are not native title rights and interests, in relation to the relevant land; and
  - (b) existing use of the relevant land by persons other than the objectors.
- (3) Taking into account the effect of a Part 3 act on areas or sites mentioned in subsection (1)(a)(v) does not affect the operation of any law of the Commonwealth or the State for the preservation or protection of those areas or sites.

**3.46. Issues on which parties agree**

- (1) Before making its determination, the Commission must ascertain whether the negotiation parties have an agreed position on any issues relevant to its determination.

- (2) If there is any such issue, and all of the negotiation parties consent, the Commission in making its determination —
  - (a) must take that agreed position into account; and
  - (b) need not take into account the matters mentioned in section 3.45 to the extent that the matters relate to that issue.

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

- (1) A determination may, with the consent of the negotiation parties, provide that a particular matter that —
  - (a) is not reasonably capable of being determined when the determination is made; and
  - (b) is not directly relevant to the doing of the act,is to be the subject of further negotiations or to be determined in a specified manner.
- (2) If —
  - (a) the manner specified is arbitration by some person or body other than the Commission; and
  - (b) the negotiation parties do not agree about the manner in which the arbitration is to take place,the Commission must determine the matter at an appropriate time.

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

- (1) If —
  - (a) the Commission is making a determination in respect of a Part 3 act consisting of the creation of a right to mine in relation to an area; and
  - (b) an agreement or a determination involving the same negotiation parties was previously made in respect of a

future act consisting of the creation of a right to mine in relation to the same area; and

- (c) an issue was decided in the agreement or during the proceedings before the Commission or an arbitral body,

the negotiation parties must not, without leave of the Commission, seek to vary the decision on the issue.

- (2) In subsection (1) —

**“agreement”** means an agreement of the kind mentioned in section 3.22(1) that is given to the Commission under section 3.25 and accepted by it under section 3.26(2);

**“determination”** means a determination by —

- (a) the Commission under this Part; or
- (b) an arbitral body under the relevant provisions of the NTA;

**“relevant provisions of the NTA”** means the following provisions of Division 3 of Part 2 of the NTA —

- (a) Subdivision B of that Division as in force immediately before the commencement of item 9 of Schedule 1 to the *Native Title Amendment Act 1998* of the Commonwealth; and
- (b) Subdivision P of that Division.

**3.49. Copy of determination to be given**

The Commission must give a copy of any determination under section 3.44 to the negotiation parties and the responsible Minister.

**3.50. Effect of conditional determination**

- (1) A determination by the Commission that a Part 3 act may be done subject to conditions being complied with by the

negotiation parties has effect, if the act is done, as if the conditions were terms of a contract among the negotiation parties.

- (2) Subsection (1) is in addition to —
  - (a) the effect that the determination has apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the determination.
- (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 negotiation party for the purposes only of this section.

#### **Division 6 — Overruling of Commission's determination**

##### **3.51. Responsible Minister may overrule**

- (1) Subject to section 3.53, the responsible Minister may, by writing given to the Commission, make a declaration in accordance with section 3.52.
- (2) A declaration cannot be made by the responsible Minister in respect of a determination after 2 months have expired since the determination was made.
- (3) The Commission must give a copy of the declaration to the negotiation parties concerned.

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

- (1) In the case of a determination under section 3.44(1)(a), the responsible Minister may make a declaration that the determination is overruled and a declaration either —
  - (a) that the act to which it relates must not be done; or

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- (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the negotiation parties.
- (2) In the case of a determination under section 3.44(1)(b), the responsible Minister may make a declaration that the determination is overruled and a declaration —
  - (a) that the act to which it relates must not be done;
  - (b) that the act to which it relates may be done; or
  - (c) that the act to which it relates may be done subject to specified conditions to be complied with by any of the negotiation parties.
- (3) In the case of a determination under section 3.44(1)(c), the responsible Minister may make a declaration that the determination is overruled and a declaration either —
  - (a) that the act to which it relates may be done; or
  - (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the negotiation parties.
- (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 declaration.

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

The responsible Minister may only make a declaration under section 3.51 on the grounds that it is in the interests of the State, or in the national interest, to do so.

**3.54. Conditions in declaration**

- (1) A provision in a declaration by the responsible Minister under section 3.51 that a Part 3 act may be done subject to conditions being complied with by any of the negotiation parties has effect, if the act is done, as if the conditions were terms of a contract among the negotiation parties.
- (2) Subsection (1) is in addition to the —
  - (a) effect that the declaration has apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the declaration.
- (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 negotiation party for the purposes only of this section.

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

- (1) The responsible Minister must cause a copy of a declaration under section 3.51, together with reasons for the declaration, to be laid before each House of Parliament.
- (2) Subsection (1) is to be complied with as soon as is practicable after the declaration is made and in any case, in relation to a House of Parliament, within 15 sitting days of that House after the declaration is made.

**3.56. 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 3.51 in respect of a particular determination.

- (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 3.51 in respect of the determination in question.
- (3) The Commission is to notify the negotiation parties of the giving of an instrument to it under subsection (1).

### **Division 7 — Applications**

#### **3.57. Definition**

In this Division —

“**application**” means an application under section 3.39(2)(b).

#### **3.58. 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.

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

An application must be accompanied by any prescribed documents and any prescribed fee.

#### **3.60. 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 3.59 where —

- (a) in the Chief Commissioner’s opinion, payment of the whole or part of the fee would cause financial hardship to the person; or



- (b) for any other reason the Chief Commissioner considers it appropriate to do so.

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

### **Division 1 — Preliminary**

#### **4.1. Object of this Part**

The object of this Part is to make provisions that —

- (a) supplement, so far as the legislative power of the Parliament permits, the provisions of subsection (6B) of section 24MD of the NTA; and
- (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
      - (II) because the responsible Minister has given an instrument to the Commission under section 4.39;
  - (f) a recommendation that the act not be done is overruled under section 4.33; or
  - (g) a recommendation —
    - (i) that the act be done; or

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(ii) that the act be done subject to conditions being complied with,

is overruled under section 4.33 and a determination is made under that section that the act may be done subject to conditions being complied with.

(3) In subsection (2) —

**“close of business”** means the close of business of the Government party as specified in accordance with section 4.9(2)(f).

**4.4. Other statutory requirements not affected**

Nothing in section 4.3, or in an agreement, recommendation or determination under this Part, authorizes the Government party to do a Part 4 act without complying with any requirements of another written law that apply to the doing of the act.

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

Where the Part 4 act, if done, would create or vary a right to mine, the proponent for the purposes of this Part is the person who under the relevant written law is the applicant for the right to mine or the variation.

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

(1) This section applies where the Part 4 act is not covered by section 4.5.

(2) 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.

- (3) The Government party may amend a determination under subsection (2).
- (4) 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 consultation party in relation to the act at the time when a notice is given under subsection (4) the Government party must give a copy of the notice to each other consultation party.

**4.7. Closing day for objections**

- (1) The Government party is to fix, for every Part 4 act, a closing day for the lodgment of objections to the doing of the act.
- (2) The Government party may fix a later closing day for the lodgment of objections to the doing of a Part 4 act if the Government party is satisfied that it has not been reasonably practicable for section 4.9(1) to be complied with in respect of the act.

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

- (1) Before a Part 4 act is done, the Government party must give public notice of the act by advertisement in a newspaper circulating generally throughout the State.
- (2) The Government party must also give notice in writing of the act to—
  - (a) any registered native title body corporate in relation to any of the relevant land;

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- (b) any registered native title claimant in relation to any of the relevant land; and
- (c) any representative body for an area that includes any of the relevant land.

**4.9. Further provision as to notices**

- (1) The notices required by section 4.8 must be given at least 2 months before the closing day.
- (2) Every notice must show —
  - (a) a clear description of the land or waters to which the act relates;
  - (b) a description of the nature of the act;
  - (c) the title of the Government party who —
    - (i) would do the act; and
    - (ii) will receive objections;
  - (d) the address at which objections may be lodged and the postal address to which they may be sent;
  - (e) the closing day;
  - (f) the time of close of business of the Government party on the closing day;
  - (g) the name and address of any person who is a proponent under section 4.5 or is determined to be a proponent under section 4.6(2);
  - (h) how further information about the act can be obtained; and
  - (i) any other information that is prescribed for the purposes of section 4.10(1)(a).
- (3) The particulars referred to in subsection (2)(c), (d) and (f) are to be as determined by the Government party.

**4.10. Prescribed provisions about notice**

- (1) 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 4 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.

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

- (1) 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 (3), a registered native title claimant,may lodge an objection to the doing of a Part 4 act.
- (2) An objection may be lodged only on the ground that the doing of the act in relation to the relevant land would affect the person's registered native title rights and interests in relation to that land.
- (3) Subsection (1)(b) does not apply if there are one or more registered native title bodies corporate in relation to all of the relevant land.

**4.12. Requirements for objections**

- (1) An objection must —
  - (a) be lodged with the Government party in accordance with the requirements of the relevant notice;
  - (b) state the manner in which it is said that the doing of the act would be likely to affect the objector's registered native title rights and interests in relation to the relevant land; and
  - (c) comply with any other requirements of the regulations as to the form or content of objections.
- (2) The objector must give a copy of the objection to any proponent in relation to the act.

**4.13. Time limit**

- (1) An objection to the doing of a Part 4 act cannot be lodged after the closing day.
- (2) Where, on the application of a person made before the closing day, the Commission is satisfied that exceptional circumstances so require, the Commission may —
  - (a) fix a later closing day for the lodgment of objections to the doing of the act; and
  - (b) give such directions as the Commission thinks appropriate as to the giving of notice of the day so fixed.

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

- (1) The Government party must notify —
  - (a) the Commission; and
  - (b) any proponent,of the particulars of all objections to the doing of a Part 4 act lodged on or before the closing day.



- (2) The Government party must also notify an objector of particulars of all such objections lodged by other objectors.
- (3) Notification under subsection (1) or (2) of an objection must be given not later than 14 days after the lodgment of the objection.

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

- (1) The proponent in relation to a Part 4 act may give notice in writing to —
  - (a) the Commission;
  - (b) the other consultation parties (if any); and
  - (c) the Government party,that the proponent's application, request or submission for the doing of the act is withdrawn.
- (2) If there is more than one proponent a notice under subsection (1) is of no effect unless it is given by all of the proponents jointly.
- (3) The giving of a notice under subsection (1) to all of the persons referred to in that subsection brings to an end any procedures that have begun under this Part.

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

- (1) The application of section 4.15 extends to cases where —
  - (a) section 4.5 does not apply; and
  - (b) a proponent has not been determined under section 4.6(2).
- (2) In that event —
  - (a) a notice may be given by the Government party that the act will not be done; and
  - (b) the provisions of section 4.15 apply with all necessary changes.

### **Division 3 — Consultation and agreements**

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

References in this Part to “**consultation parties**” in relation to a Part 4 act are references to —

- (a) each proponent under section 4.5 and each objector; or
- (b) where section 4.5 does not apply —
  - (i) the Government party;
  - (ii) each objector; and
  - (iii) any person determined under section 4.6(2) to be a proponent but only so long as the person consents to being a consultation party.

#### **4.18. Consultation**

- (1) The consultation parties must consult with each other in good faith about ways of minimizing the impact of the act on registered native title rights and interests in relation to the relevant land, including about —
  - (a) any access to the land or waters; or
  - (b) the way in which any thing authorized by the act may be done,with a view to bringing about the withdrawal of the objections.
- (2) The consultation parties for the time being may begin consultations even though the closing day for the act concerned has not arrived.

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

- (1) If any of the consultation parties requests the Commission to do so, the Commission must mediate among the parties to assist in resolving the differences between them on the relevant matters mentioned in section 4.18.

- (2) The consultation parties must report to the Commission on progress made in the consultations at such time or times as the Commission may in writing direct.
- (3) If the Commission considers that the consultation parties or any of them are not making sufficient attempts to resolve their differences the Commission is to use its best endeavours —
  - (a) to have the parties consult together as required by section 4.18; and
  - (b) to bring about —
    - (i) a resolution of the differences between them on the relevant matters mentioned in section 4.18; or
    - (ii) the withdrawal of the objections.

**4.20. Withdrawal of objection**

- (1) At any time before a recommendation is made under Division 4 in relation to an objection the objector may withdraw the objection by notice in writing given to the Commission.
- (2) The Commission is to notify the consultation parties of any such withdrawal.

**4.21. Agreement made by parties**

If at any time before a recommendation is made under Division 4 the consultation parties make an agreement that resolves the issues on which the objections were based, they may give a copy of it to the Commission.

**Division 4 — Recommendations of the Commission**

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

- (1) The Commission may, after the consultation period for a Part 4 act has expired, give notice to the consultation parties that it

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intends to hear and determine objections to the doing of the act —

(a) if —

- (i) all of the objections have not been withdrawn; or
- (ii) an agreement of the kind described in section 4.21 has not been made between the consultation parties and given to the Commission under that section;

and

(b) if the Commission considers that any mediation requested under section 4.19(1) has been completed.

(2) A notice under subsection (1) in respect of a Part 4 act may be given by the Commission —

(a) of its own motion; or

(b) on the application of a consultation party.

(3) The Commission must grant an application made under subsection (2)(b) if the application complies with section 4.41 and is accompanied by the things required by section 4.42.

(4) Without limiting section 6.22, a notice under subsection (1) may relate to more than one act and the objections to the doing of the act.

(5) In this section —

**“consultation period”** means the period beginning on the closing day and ending 4 months after that day.

**4.23. Consultations may continue**

Where the Commission —

(a) has given notice under section 4.22; but

(b) has not made a recommendation,

in respect of a Part 4 act, the consultation parties may continue to consult together with a view to bringing about —

- (c) a resolution of the issues on which the objections are based; and
- (d) the withdrawal of the objections.

**4.24. Dismissal of objections**

- (1) The Commission must dismiss an objection if —
  - (a) it is not made by a registered native title body corporate or a registered native title claimant as required by section 4.11(1); or
  - (b) none of the rights and interests claimed to be affected by the doing of the act are registered native title rights and interests of the objector.
- (2) The Commission must notify an objector of the dismissal of his or her objection.

**4.25. Time for making recommendation**

- (1) Subject to section 4.26, the Commission must take all reasonable steps to make a recommendation in respect of a Part 4 act within the period of 4 months (“**the allowed period**”) starting when a notice under section 4.22 is given in respect of the act.
- (2) If it appears to the Commission that it will not make a recommendation within the allowed period, the Commission may before the end of the period ask the responsible Minister to extend the period, and that Minister may comply with the request.
- (3) An extended period may be further extended under subsection (2).

**4.26. No recommendation if agreement etc.**

The Commission must not make a recommendation in respect of a Part 4 act if —

- (a) all of the objections to the doing of the act have been withdrawn; or
- (b) an agreement of the kind described in section 4.21 has been made between the consultation parties and given to the Commission under that section.

**4.27. Making of recommendation**

- (1) Except where section 4.26 applies, the Commission must make one of the following recommendations —
  - (a) that the act be done;
  - (b) that the act be done subject to specified conditions being complied with by any of the consultation parties;
  - (c) that the act 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.

**4.28. Criteria for making recommendations**

- (1) In making its recommendation in respect of any Part 4 act, the Commission must —
  - (a) take into account the impact of the act on registered native title rights and interests of the objectors in relation to the relevant land; and
  - (b) unless it recommends that the act not be done, consider ways in which that impact can be minimized.

- (2) In addition, in making its recommendation in respect of a Part 4 act that is not a compulsory acquisition that comes within section 24MD(6B)(a) of the NTA, the Commission must consider questions of —
  - (a) access to the relevant land; and
  - (b) the way in which any thing authorized by the act may be done.
- (3) The Commission must also take into account the nature and extent of —
  - (a) existing rights and interests that are not native title rights and interests, in relation to the relevant land; and
  - (b) existing use of the relevant land by persons other than the objectors.

**4.29. Issues on which parties agree**

- (1) Before making its recommendation, the Commission must ascertain whether the consultation parties have an agreed position on any issues relevant to its recommendation.
- (2) If there is any such issue, and all of the consultation parties consent, the Commission in making its recommendation —
  - (a) must take that agreed position into account; and
  - (b) need not take into account the matters mentioned in section 4.28, to the extent that the matters relate to that issue.

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

The Commission must give a copy of any recommendation under section 4.27 to the consultation parties and the responsible Minister.

**4.31. Effect of recommendation**

A recommendation must be complied with by the Government party unless it is overruled by a determination of the responsible Minister under section 4.33.

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

- (1) A recommendation by the Commission that a Part 4 act may be done subject to conditions being complied with by the consultation parties has effect, if the act is done, as if the conditions were terms of a contract among the consultation parties.
- (2) Subsection (1) is in addition to —
  - (a) the effect that the recommendation has under section 4.31; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the recommendation.
- (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.

**Division 5 — Overruling of recommendations**

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

- (1) Subject to sections 4.35 and 4.36, the responsible Minister may, by writing given to the Commission, make a determination in accordance with section 4.34.
- (2) A determination cannot be made by the responsible Minister in respect of a recommendation after 2 months have expired since the recommendation was made.



- (3) The Commission must give a copy of the determination to the consultation parties concerned.

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

- (1) In the case of a recommendation under section 4.27(1)(a), the responsible Minister may make a determination that the recommendation is overruled and either —
- (a) that the act to which it relates must not be done; or
  - (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (2) In the case of a recommendation under section 4.27(1)(b), the responsible Minister may make a determination that the recommendation is overruled and —
- (a) that the act to which it relates must not be done;
  - (b) that the act to which it relates may be done; or
  - (c) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (3) In the case of a recommendation under section 4.27(1)(c), the responsible Minister may make a determination that the recommendation is overruled and either —
- (a) that the act to which it relates may be done; or
  - (b) that the act to which it relates may be done subject to specified conditions to be complied with by any of the consultation parties.
- (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.

**4.35. Consultation before making of determination**

- (1) 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.

**4.36. 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) —
- “in the interests of the State”** includes —
- (a) for the social or economic benefit of the State (including of Aboriginal peoples); and
  - (b) in the interests of the relevant region or locality in the State.

**4.37. Conditions in determination**

- (1) A provision in a determination by the responsible Minister under section 4.33 that a Part 4 act may be done subject to conditions being complied with by any of the consultation parties has effect, if the act is done, as if the conditions were terms of a contract among the consultation parties.
- (2) Subsection (1) is in addition to —
- (a) the effect that the determination has apart from this section; and
  - (b) any condition that the Government party may impose in relation to the act in order to give effect to the determination.
- (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.

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

- (1) The responsible Minister must cause a copy of a determination under section 4.33, 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.

**4.39. 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 4.33 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 4.33 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 6 — Applications**

**4.40. Definition**

In this Division —

“**application**” means an application under section 4.22(2)(b).

**4.41. 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.

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

An application must be accompanied by any prescribed documents and any prescribed fee.

**4.43. 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 4.42 where —

- (a) in the Chief Commissioner's opinion, payment of the whole or part of the fee would cause financial hardship to the person; or
- (b) for any other reason the Chief Commissioner considers it appropriate to do so.

## **Part 5 — Provisions relating to compensation**

### **Division 1 — Preliminary**

#### **5.1. Definition**

In this Part, other than in section 5.2(1) and 5.2(2) —

**“native title holders”**, in relation to a Part 2 act, a Part 3 act or a Part 4 act, means the persons who —

- (a) hold native title; or
- (b) immediately before the act was done, held native title,

in relation to the land affected by the act, but only if there has been an approved determination of native title to that effect, which includes the following cases if the act concerned is a compulsory acquisition —

- (c) where it is apparent from the terms of, or reasons for, the determination that the persons held native title immediately before the acquisition; or
- (d) where it is not apparent from the terms of, or reasons for, the determination that native title did not exist immediately before the acquisition.

### **Division 2 — Determination of compensation**

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

- (1) This section applies where a Part 2 act, a Part 3 act or a Part 4 act is done, other than an act that is a compulsory acquisition of native title rights and interests for which the native title holders in relation to the relevant land are entitled to compensation under the *Land Administration Act 1997*.

- (2) The native title holders are entitled to compensation on just terms 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 and 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 matters.
- (5) The compensation is recoverable —
  - (a) from any person who is made liable for the compensation by a 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, or part of it, being recovered from that person,the Commission may order that the compensation, or the part in question, is recoverable from the Crown.
- (7) If compensation is recovered from the Crown because of an order under subsection (6), the Crown is subrogated to the rights that the native title holders concerned had against the person

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referred to in that subsection in relation to the recovery of the amount paid.

- (8) An application under subsection (4) or (6) is to be made —
- (a) by the native title holders concerned; or
  - (b) on their behalf, by a native title holder concerned or a registered native title body corporate,

and is to be made in accordance with any requirements of the regulations.

**5.3. Parties may agree on compensation**

Nothing in section 5.2 prevents —

- (a) the native title holders entitled to compensation under that section for an act, or a registered native title body corporate acting on their behalf; and
- (b) the party from whom the compensation is recoverable,

from settling the amount of compensation by agreement without invoking the jurisdiction of the Commission.

**5.4. Enforcement of order for compensation**

- (1) Where compensation is recoverable by or on behalf of a native title holder by virtue of an order under section 5.2, the Chief Commissioner, on application by or on behalf of the native title holder, is to issue a certified copy of the order.
- (2) If the certified copy is lodged with the clerk or registrar of a court in accordance with the rules of court, the clerk or registrar is to register the order.
- (3) The order when registered may be enforced as if it were an order made by the court.
- (4) In this section —



“court” means —

- (a) a Local Court, if the order would be within the monetary limit of the jurisdiction of a Local Court in respect of the recovery of debts;
- (b) if paragraph (a) does not apply, the District Court, if the order would be within the monetary limit of the jurisdiction of that Court in respect of the recovery of debts; or
- (c) otherwise, the Supreme Court.

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

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

Compensation under this Part —

- (a) is only payable once for acts that are essentially the same; and
- (b) is to be determined taking into account any compensation awarded under another written law, or the NTA, for essentially the same act.

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

The Commission in determining compensation for an act under this Part must, subject to sections 5.7 and 5.8, have regard to any principles or criteria for determining compensation set out in a written law that would apply to the determination if the native title holders instead held ordinary title to any land or waters concerned and to the land adjoining or surrounding any waters concerned.

**5.7. Compensation to be monetary**

Subject to section 5.8, compensation may only consist of the payment of money.

**5.8. Requests for non-monetary compensation**

- (1) If the person applying for compensation under this Part requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the Commission —
  - (a) must consider the request; and
  - (b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to give the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation.
- (2) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person applying for compensation may request the Commission to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.
- (3) If the person does transfer the property or provide the goods or services in accordance with the recommendation —
  - (a) the transfer of the property or provision of the goods or services constitutes full or part compensation for the act, 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.

**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**

- (1) This section applies to a condition in one of the following instruments —
  - (a) a determination by the responsible Minister under section 3.29;
  - (b) a determination by the Commission under section 3.44; and
  - (c) a declaration by the responsible Minister under section 3.51.
  
- (2) 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.

**5.10. 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 —

- (a) 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;
- (b) the Government party informs the trustee in writing that it is not going to do the act;

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- (c) the following requirements are satisfied —
  - (i) 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;
  - (ii) 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
  - (iii) the person who paid the trust amount advises the trustee that the person agrees to the registered native title body corporate accepting 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;
- (d) a determination is made, on a claim for compensation in respect of the act, that a person is entitled to compensation, or that no compensation is payable to any person;
- (e) none of paragraphs (a), (b), (c) and (d) applies and the Commission determines, on application by any person, that it would be just and equitable in all the circumstances to pay the trust amount to that person or another person.

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

Where section 5.10(a) or (b) applies, the trustee must —

- (a) repay the trust amount to the person who paid it to the trustee; or

- (b) if that person no longer exists, apply to the Commission for a direction as to the payment of the trust amount.

**5.12. Section 5.10(c) cases**

Where section 5.10(c) applies —

- (a) the trustee must pay the trust amount to the body corporate; and
- (b) subject to section 53 of the NTA, there is no further entitlement to compensation for the act.

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

Where section 5.10(d) applies and the determination is that a person is entitled to an amount of monetary compensation —

- (a) if the trust amount is the same as the amount determined, the trustee must pay the trust amount to the person;
- (b) if the trust amount is less than the amount determined, the trustee must pay the trust amount to the person and the Government party must pay the shortfall to the person; or
- (c) if the trust amount is more than the amount determined, the trustee must —
  - (i) pay the person so much of the trust amount as equals the amount determined; and
  - (ii) refund the excess to the person who paid the trust amount to the trustee or, if that person no longer exists, apply to the Commission for a direction as to its payment.

**5.14. Section 5.10(d) cases where non-monetary compensation**

Where section 5.10(d) applies and —

- (a) the transfer of property; or
- (b) the provision of goods or services,

constitutes some or all of the compensation, the trustee must apply to the Commission for a direction as to the payment of the trust amount.

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

Where section 5.10(d) applies and the determination is that no compensation is payable or to be given to any person, the trustee must repay the trust amount to the person who paid it to the trustee or, if that person no longer exists, apply to the Commission for a direction as to its payment.

**5.16. Section 5.10(e) cases**

Where paragraph (e) of section 5.10 applies, the trustee must pay the trust amount in accordance with the decision of the Commission mentioned in that paragraph.

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

The Commission has jurisdiction —

- (a) to hear and determine the applications referred to in sections 5.10(e), 5.11(b), 5.13(c)(ii), 5.14 and 5.15; and
- (b) to make such orders in the proceedings as it considers appropriate.

## **Part 6 — Native Title Commission**

### **Division 1 — Commission established**

#### **6.1. Establishment of Commission**

The Native Title Commission of Western Australia is established.

#### **6.2. Functions of Commission**

- (1) The functions of the Commission are —
  - (a) to exercise the jurisdiction and to perform the functions given to it by this Act; and
  - (b) to perform any function that may be given to it by any other written law.
- (2) The Commission may do all things that are necessary or convenient to be done for the performance of its functions.

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

The Commission is to —

- (a) perform its functions fairly, justly and expeditiously; and
- (b) ensure that, subject to this Act, its procedures are informal and accessible.

#### **6.4. Membership of the Commission**

- (1) The Commission is to comprise —
  - (a) a Chief Commissioner; and
  - (b) such number of other members as the Governor considers necessary for the proper performance of the Commission's functions.

- (2) All of the members are to be appointed by the Governor.
- (3) The Chief Commissioner is to be appointed on a full-time basis.
- (4) An ordinary member may be appointed on either a full-time basis or a part-time basis.

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

A person is not eligible to be appointed as the Chief Commissioner unless the person has been enrolled for at least 5 years as a legal practitioner of —

- (a) the Supreme Court;
- (b) the High Court; or
- (c) the Supreme Court of another State or of a Territory.

**6.6. Appointment of member of NNTT**

Not less than one of the ordinary members is to be a person who holds an appointment under the NTA as a member of the NNTT.

**6.7. Qualifications for appointment**

Without limiting section 6.6, a person must not be appointed as an ordinary member unless the person —

- (a) has been enrolled for at least 5 years as a legal practitioner of —
  - (i) the Supreme Court;
  - (ii) the High Court; or
  - (iii) the Supreme Court of another State or of a Territory;

or



- (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.
- (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; or
  - (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.**

- (1) Arrangements may be made under this section to enable the 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.

**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.
- (2) 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.

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

- (1) 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
  - (b) at least one member who holds an appointment under the NTA as a member of the NNNTT.
- (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**

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

- (1) The Chief Commissioner is responsible for —
  - (a) arranging the business of the Commission;
  - (b) directing where the Commission is to sit;
  - (c) determining the procedure of the Commission generally; and
  - (d) determining the procedure of the Commission at a particular place.
- (2) In performing the function in subsection (1)(a) the Chief Commissioner is to specify for the purpose of any particular matter or any particular class of matters —
  - (a) the member or members who are to perform the functions of the Commission; and
  - (b) if 2 or more members are specified, the member who is to be the chairperson.

**6.19. Unavailability of member**

- (1) This section applies if —
  - (a) a member specified under section 6.18(2) for proceedings ceases to be a member and section 6.20 does not apply; or

- (b) a member is for any reason not available for proceedings for which the member has been specified under section 6.18(2).
- (2) The Chief Commissioner must specify another member for the proceedings or, if the parties agree, the Chief Commissioner may direct that the Commission be constituted by the remaining specified member or members (if any).
- (3) In exercising a power in subsection (2) the Chief Commissioner must ensure, if subsection (1) or (2) of section 6.16 applies, that the constitution of the Commission continues to satisfy that subsection.

**6.20. Completion of part-heard proceedings**

Despite a person ceasing to be a member because of the expiry of his or her term of office, the person may, with the approval of the Chief Commissioner, continue as a member for the purpose of completing part-heard proceedings.

**Subdivision 3 — Hearings**

**6.21. Commission to hold hearings**

The Commission is to hold such hearings as are necessary or expedient for the performance of its functions.

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

The Commission may, of its own motion or on the application of any of the parties concerned, direct that specified matters are to be dealt with —

- (a) in the same proceedings or in separate proceedings; or
- (b) at the same hearing or hearings or at separate hearings.

**6.23. Opportunity to make submissions**

Subject to sections 6.27(3) and 6.29, the Commission must ensure that each party is given a reasonable opportunity to present the party's case and, in particular —

- (a) to inspect any documents to which the Commission proposes to have regard in making a recommendation or determination; and
- (b) to make written or oral submissions in respect of those documents.

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

All questions for decision by the Commission are to be decided by a majority of the members hearing the matter, with the chairperson having a casting vote.

**6.25. Representation before Commission**

A party may appear in person or be represented by any person before the Commission.

**6.26. Participation by telephone, etc.**

The Commission may allow a person to participate in a hearing by means of telephone, closed-circuit television or any other means of communication.

**6.27. Hearings normally to be public**

- (1) Subject to this section, a hearing by the Commission must be held in public.
- (2) If a hearing is in public, and a person participates by a means allowed under section 6.26, the Commission must take such steps as are reasonably necessary to maintain the public nature of the hearing.

- (3) The Commission may, of its own motion or on the application of a party, if it is satisfied that it is appropriate to do so, direct that a hearing, or part of a hearing, be held in private and give directions as to the persons who may be present.
- (4) In determining whether a hearing or part of a hearing is to be in private, the Commission must have due regard to the cultural and 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 other 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 to in paragraph (a); or
- (c) adopt any report, findings, decision, determination or judgment of a person or body referred to in paragraph (a),

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 way, and 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 an oath or affirmation.
- (2) A party may call witnesses.
- (3) A person appearing before the Commission as a witness may be examined.
- (4) A person appearing before the Commission as a witness may be cross-examined or re-examined only with the leave of the Commission.
- (5) If a person participates in a hearing by a means allowed under section 6.26, the Commission may make any arrangements that it thinks proper in the circumstances for administering an oath or affirmation to the person.

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

The Commission may require any person appearing before it (whether or not he or she has been summoned to appear) to answer any relevant question put to him or her by a member of the Commission or by any other person appearing before the Commission.

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

- (1) The Commission may authorize a person to take evidence in relation to a matter on behalf of the Commission.
- (2) The authorization must be in writing and may specify limitations on the powers of the person.
- (3) A person authorized under this section has, for the purposes of taking the evidence, and subject to any limitations referred to in subsection (2), all the powers of the Commission under section 6.31.

**6.34. Interpreters**

The Commission may allow evidence to be given, or submissions to be made, with the assistance of an interpreter.

**6.35. Retention and copying of documents**

The Commission may keep for a reasonable time, and may make copies of, any document, or part of a document, produced to the Commission in the course of a hearing.

**Subdivision 5 — Recommendations and determinations**

**6.36. Recommendations and determinations**

- (1) A recommendation or determination of the Commission must —
  - (a) be in writing;
  - (b) state any findings of facts on which it is based;
  - (c) refer to the evidence or other material on which such findings are based; and
  - (d) give reasons for the recommendation or determination.

- (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 *Financial Administration and Audit Act 1985* 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 —

- (a) 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,

the Commission is, so far as it is reasonably practicable to do so, to cause the information contained in the document to be communicated to the person in a manner that the person understands.

(2) Failure to comply with subsection (1) does not affect any thing done under any other provision of this Act.

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

- (1) The Commission may, of its own motion or at the request of a party, refer to the Supreme Court for a decision any question of law arising in proceedings under Part 2, 3, 4 or 5.
- (2) The Supreme Court has jurisdiction to hear and determine a question of law referred to it under this section.

- (3) If a question of law arising in proceedings is referred to the Supreme Court under this section, the Commission must not, in those proceedings —
- (a) make a recommendation or determination to which the question is relevant while the reference is pending; or
  - (b) proceed in a manner, or make a recommendation or determination, inconsistent with the decision of the Court on the question.

**6.42. Offences**

- (1) A person who is served with a summons under section 6.30 must not fail without reasonable excuse to comply with the summons.  
Penalty: \$2 500.
- (2) A person must not fail without reasonable excuse to make an oath or affirmation, or to answer a question, when required to do so by the Commission.  
Penalty: \$2 500.
- (3) A person must not give to —
- (a) the Commission; or
  - (b) a person authorized under section 6.33,
- evidence that the person knows to be false or misleading in a material particular.  
Penalty: \$5 000.
- (4) A person must not misbehave before the Commission, wilfully insult the Commission or a member, or interrupt the proceedings of the Commission.  
Penalty: \$5 000.

- (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
  - (b) an application has been made to the Commission for a direction under that section concerning the matter to which the evidence relates, and the Commission has not yet determined that application.
- (2) A person who is, or has been, a member or an officer of the Commission cannot be required to produce in court a document given to the Commission in connection with a proceeding if —
- (a) the production of the document would be contrary to a direction under section 6.29; or
  - (b) an application has been made to the Commission for a direction under that section concerning the matter to which the document relates, and the Commission has not yet determined that application.
- (3) A person who is, or has been, a member or an officer of the Commission cannot be required to give evidence to a court in relation to any proceedings before the Commission.

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**Division 5** General

**s. 6.45**

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(4) In this section —

**“court”** includes any tribunal, authority or person having the power to require the answering of questions or the production of documents;

**“produce”** includes permit access to.



## **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**

Schedule 2 has effect.

### **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

**s. 7.4**

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provided for by section 29 of the NTA have been given in relation to the act.

- (2) Division 1 of Schedule 3 has effect to enable regulations of a transitional nature to be made as to certain matters in progress at the commencement of Part 2 and Part 3.
- (3) Division 2 of Schedule 3 has effect to enable regulations of a transitional nature to be made as to matters in progress under section 24MD(6B) of the NTA at the commencement of Part 4.

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

[s. 6.12]

### **1. Term of office**

- (1) A member holds office for the term specified in the instrument of appointment but may from time to time be reappointed.
- (2) Subject to subclause (3), a term of appointment must not exceed 5 years.
- (3) An appointment may be made for a term of more than 5 years and not more than 7 years and 6 months if —
  - (a) the appointment is made within 12 months after the commencement of this clause; and
  - (b) on the making of the appointment, members appointed under this subclause do not constitute more than half of the membership.

### **2. Remuneration, allowances and conditions of service**

- (1) A member is to —
  - (a) receive such remuneration and allowances; and
  - (b) have such entitlements to leave and other conditions of service,as are determined by the Governor on the advice of the Minister for Public Sector Management.
- (2) Subclause (1) does not apply to the member referred to in section 6.6.

### **3. Oath or affirmation of office**

Before he or she takes up office a member is to take an oath or make an affirmation before a Judge of the Supreme Court that he or she will faithfully and impartially perform the functions of his or her office.

**4. Leave of absence**

The Minister may grant a full-time member leave of absence, other than leave of absence determined under clause 2, on such terms and conditions as the Minister determines.

**5. Resignation**

A member may resign from office by giving a signed notice of resignation to the Governor.

**6. Termination of appointment of NNTT member**

- (1) The appointment of a person who is appointed as a member for the purposes of section 6.6 terminates if the person ceases to be a member of the NNTT.
- (2) The application of subclause (1) to a person does not affect the application to him or her of clause 7, 8 or 9.

**7. Termination of appointment of member for bankruptcy etc.**

The Governor must terminate the appointment of a member if the member —

- (a) becomes bankrupt;
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

**8. Suspension by Governor and termination**

- (1) The Governor may suspend a member from office on the ground of misbehaviour or of physical or mental incapacity.
- (2) If the Governor suspends a member under subclause (1), the Minister must cause a statement of the grounds for the suspension to be laid before each House of Parliament within 7 sitting days of that House after the suspension.

- (3) If each House of Parliament, within 15 sitting days after the statement was laid before it, declares by resolution that the member's appointment should be terminated, the Governor must terminate the member's appointment.
- (4) If, at the end of 15 sitting days after the statement was laid before a House of Parliament, the House has not passed such a resolution, the suspension terminates.
- (5) The suspension of a member under this clause does not affect any entitlement of the member to be paid remuneration and allowances.

**9. Termination on address of both Houses of Parliament**

The Governor may terminate the appointment of a member if an address praying for the termination of the member's appointment on the ground of proved misbehaviour or of physical or mental incapacity is presented to the Governor by each House of Parliament in the same session of Parliament.

**Schedule 2 — Consequential amendments**

[s. 7.3]

**Division 1 — *Acts Amendment (Land Administration, Mining and Petroleum) Act 1998***

**1. The Act amended**

The amendments in this Division are to the *Acts Amendment (Land Administration, Mining and Petroleum) Act 1998*\*.

[\* *Act No. 61 of 1998.*]

**2. Section 2 amended**

- (1) Section 2(1) is amended by deleting “Subject to subsections (2) and (3), this” and inserting instead —

“ This ”.

- (2) Section 2(2) and (3) are repealed.

**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 —

“

Member of the Native Title Commission established by the *Native Title (State Provisions) Act 1999*.

”.

[\* *Reprinted as at 15 April 1999.*

*For subsequent amendments see Acts Nos. 53 of 1998, and 5, 8, 26 and 34 of 1999.*]

**Division 3 — *Financial Administration and Audit Act 1985***

**5. Schedule 1 amended**

Schedule 1 to the *Financial Administration and Audit Act 1985*\* is amended by inserting in the appropriate alphabetical position the following —

“ Native Title Commission ”.

[\* Reprinted as at 9 July 1999.

For subsequent amendments see Acts Nos. 5, 8 and 26 of 1999.]

**Division 4 — *Land Administration Act 1997***

**6. The Act amended**

The amendments in this Division are to the *Land Administration Act 1997*.\*

[\* Act No. 30 of 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 136, and Act No. 26 of 1999.]

**7. Section 6A inserted**

After section 6 the following section is inserted in Part 1 —

“

**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,
- 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 —

“

**“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” —

“

, or a registered native title body corporate or  
registered native title claimant in relation to the  
land

”.

**9. Section 152A inserted**

After section 152 the following section is inserted —

“

**152A. This Part subject to *Native Title (State Provisions) Act 1999***

Where the taking of land or an interest in land under  
this Part is a Part 2 act, a Part 3 act or a Part 4 act  
within the meaning of the *Native Title (State  
Provisions) Act 1999*, the operation of this Part is  
subject to section 2.6, 3.5 or 4.3, as the case may be, of  
that Act.

”.

**10. Section 153 amended**

Section 153(3) is amended in paragraph (a) of the definition of “in  
accordance with the NTA” as follows:

- (a) by deleting “5” in the 3 places where it occurs and inserting  
instead —

“ 4 ”;

**Schedule 2** Consequential amendments□

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- (b) by deleting “1998” and inserting instead —  
“ 1999 ”.

**11. Section 154 amended**

- (1) Section 154(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) the taking of those interests would be a compulsory acquisition that is referred to in section 26(1)(c)(iii) of the NTA.

”.

- (2) Section 154(3) is amended in the definition of “in accordance with the NTA” as follows:

- (a) in paragraph (a) —

- (i) by deleting “Part 3” in the 3 places where it occurs and inserting instead —

“ Part 2 ”;

- (ii) by deleting “1998” and inserting instead —

“ 1999 ”;

- (b) in paragraph (b) —

- (i) by deleting “4” in the 3 places where it occurs and inserting instead —

“ 3 ”;

- (ii) by deleting “1998” and inserting instead —

“ 1999 ”.

**12. Section 156 amended**

After section 156(2) the following subsection is inserted —

“

- (2a) The entitlement of native title holders to compensation under Part 10 is an entitlement to compensation on just

terms for any loss, diminution or impairment of, or other effect of the taking on, their native title rights and interests.

”

**13. Section 157 amended**

Section 157 is amended by inserting after “native title holders” —  
“ or a registered native title body corporate ”.

**14. Section 158 repealed**

Section 158 is repealed.

**15. Section 162 amended**

(1) Section 162(2) is amended by deleting “In” and inserting instead —  
“ Subject to subsection (3), in ”.

(2) After section 162(2) the following subsection is inserted —

“

(3) Subsection (2) does not apply if the interest taken is a native title right or interest.

”

**16. Section 163 amended**

Section 163 is amended by deleting “of the Minister or of the principal proprietor of the land.” and inserting instead —

“

of —

- (c) the Minister;
- (d) the principal proprietor of the land; or
- (e) if there is a registered native title body corporate or registered native title claimant in

relation to the land, that body corporate or claimant.

”

**17. Section 170 amended**

Section 170(5)(b) is amended by inserting after “occupier of the land” —

“

, any registered native title body corporate or registered native title claimant in relation to the land,

”

**18. Section 175 amended**

Section 175(1)(a) is amended after subparagraph (ii) by deleting “or” and inserting instead —

“

(ia) any registered native title body corporate or registered native title claimant in relation to land affected by the notice;

(ib) the holder of any native title rights and interests in land affected by the notice; or

”

**19. Section 176 amended**

Section 176(1) is amended by deleting “, a lease of Crown land or” and inserting instead —

“ or a lease of Crown land or the holders of ”.

**20. Section 182 amended**

Section 182(2) is amended by deleting “and to” and inserting instead —

“

any registered native title body corporate or registered native title claimant, and

”.

**21. Section 183 amended**

Section 183(2)(a) is amended by deleting “and to” and inserting instead —

“

any registered native title body corporate or registered native title claimant, and

”.

**22. Section 184 amended**

Section 184(3) is amended by deleting “and to” and inserting instead —

“

any registered native title body corporate or registered native title claimant, and

”.

**23. Section 185 amended**

Section 185(3) is amended by deleting “and to” and inserting instead —

“

any registered native title body corporate or registered native title claimant in relation to the land, and

”.

**Schedule 2** Consequential amendments

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**24. Section 186 amended**

Section 186(3)(a) is amended by deleting “and to” and inserting instead —

“

any registered native title body corporate or registered native title claimant, and

”.

**25. Section 206 amended**

Section 206 (1) is amended by inserting after “interest in land” —

“ , other than a native title right or interest, ”.

**26. Section 207 amended**

After section 207(2) the following subsection is inserted —

“

- (2a) The time limit (whether it has expired or not) under this section must, on the application of a person who wishes to make a claim in respect of the taking of native title rights and interests, be extended if an approved determination of native title is made in relation to the land to which the claim relates.

”.

**27. Section 212 amended**

After section 212(2) the following subsection is inserted —

“

- (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), ”.

**Schedule 2** Consequential amendments

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(2) After section 216(3) the following subsection is inserted —

“

- (4) An application cannot be made under subsection (1) if the notice disputing the title of the claimant relates to native title rights and interests.

”.

**30. Section 217 amended**

Section 217(2) is amended as follows:

- (a) by deleting the passage beginning “If a judgment” and ending “under dispute,” and inserting instead —

“

If —

- (a) a judgment of the Supreme Court under section 216 confirms, in whole, or in part, a claimant’s title to an interest in land under dispute; or
- (b) in the case of a claimant to whom section 216(4) applies, an approved determination of native title is made in relation to the claimant,

”.

- (b) by inserting after “confirmed” —

“ or determined ”.

**31. Section 221 amended**

Section 221(2)(b) is deleted and the following paragraph is inserted instead —

“

- (b) if the title of the claimant was disputed then —
- (i) if the Supreme Court confirmed the claimant’s title, in whole or in part,



under section 216 — the day of the judgment; or

- (ii) if an approved determination of native title was made in relation to the claimant — the day of the determination.

”

**32. Section 223 amended**

Section 223(7) is amended by deleting “the judgment of the Supreme Court on that issue under section 216” and inserting instead —

“

—

- (a) the judgment of the Supreme Court on that issue under section 216; or
- (b) in the case of a claimant to whom section 216(4) applies, the outcome of any native title determination application made by the claimant under section 61 of the NTA.

”

**33. Section 224 amended**

Section 224(7) is amended by deleting “the judgment of the Court under section 216” and inserting instead —

“

—

- (a) the judgment of the Supreme Court under section 216; or
- (b) in the case of a claimant to whom section 216(4) applies, the outcome of any native title determination application made by the claimant under section 61 of the NTA.

”

**Schedule 2** Consequential amendments

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**34. Section 241 amended**

- (1) Section 241(1) is amended by deleting “taken under this Part” and inserting instead —

“

, other than native title rights and interests, taken under Part 9

”.

- (2) After section 241(1) the following subsection is inserted —

“

- (1a) In determining the amount of compensation (if any) to be offered, paid, or awarded for native title rights and interests taken under Part 9, regard may be had to the matters referred to in this section.

”.

**Division 5 — *Mining Act 1978***

**35. The Act amended**

The amendments in this Division are to the *Mining Act 1978*\*.

[\* Reprinted as at 26 July 1999.]

**36. Section 19 amended**

- (1) Section 19(6)(a) is amended by inserting immediately before “grant” the following —

“ subject to subsection (6a), ”.

- (2) After section 19(6) the following subsection is inserted —

“

- (6a) If the grant of a mining tenement under subsection (6) is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions)*

*Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3 of that Act as the case may be.

”

**37. Section 39A inserted**

Immediately before section 40 the following section is inserted —

“

**39A. 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 —
- (a) the grant of a prospecting licence; or
  - (b) the grant of any mining tenement under section 56A,

is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act.

- (2) 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.

”

**38. Section 49 amended**

After section 49(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*.

”

**39. Section 56 amended**

After section 56(1) the following subsection is inserted —

“

- (1a) An appeal does not lie under subsection (1) where the warden does not grant an application, or attaches any condition to a grant, because of one of the following instruments made under the *Native Title (State Provisions) Act 1999* —
- (a) an agreement of the kind described in section 2.26, 3.22(1) or 4.21 that is given to the Commission under section 2.26, 3.25 or 4.21;
  - (b) a recommendation under section 2.32 or 4.27;
  - (c) a determination under section 2.38, 3.29, 3.44 or 4.33;
  - (d) a declaration under section 3.51.

”

**40. Section 56AA inserted**

Immediately before section 56B the following section is inserted —

“

**56AA. 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 —
- (a) the grant or extension of an exploration licence;  
or

- (b) the grant of any mining tenement under section 70,

is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act.

- (2) 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.

”.

**41. Section 67 amended**

After section 67(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*.

”.

**42. Section 70AA inserted**

After section 70A the following section is inserted —

“

**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.

- (2) 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.

”

**43. 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*.

”

**44. Section 70O inserted**

Immediately before section 71 the following section is inserted —

“

**70O. This Division subject to *Native Title (State Provisions) Act 1999***

- (1) Where —
- (a) the grant or renewal of a mining lease; or
  - (b) the grant of any mining tenement under section 85B,

is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of the provisions of this Division relating to that grant or renewal is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

- (2) 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.

”

**45. Section 75 amended**

After section 75(7) the following subsection is inserted —

“

- (8) The operation of subsection (7) is subject to section 2.6, 3.5 or 4.3, as the case may be, of the *Native Title (State Provisions) Act 1999*.

”

**46. Section 85C inserted**

Immediately before section 86 the following section is inserted —

“

**85C. This Division subject to *Native Title (State Provisions) Act 1999***

- (1) The operation of this Division in relation to the grant of general purpose leases is subject to section 2.6, 3.5 or 4.3, as the case may be, of the *Native Title (State Provisions) Act 1999*.
- (2) Where the renewal of a general purpose lease is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of this Division in relation to that renewal is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.
- (3) The provisions relating to objections to the granting of an application that apply for the purposes of this

Division 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.

”

**47. Section 90A inserted**

Immediately before section 91 the following section is inserted —

“

**90A. 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 of a miscellaneous licence is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act.
- (2) The provisions relating to objections to the granting of an application that apply for the purposes of this Division 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.

”



**Division 6 — Parliamentary Commissioner Act 1971**

**48. Schedule 1 amended**

Schedule 1 to the *Parliamentary Commissioner Act 1971*\* is amended by inserting in the appropriate alphabetical position the following —

“

The Native Title Commission established by the *Native Title (State Provisions) Act 1999*.

”

[\* Reprinted as at 20 January 1997.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 182, and Act No. 65 of 1998.]

**Division 7 — Petroleum Act 1967**

**49. The Act amended**

The amendments in this Division are to the *Petroleum Act 1967*\*.

[\* Reprinted as at 17 December 1992.

For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 188 and Act No. 17 of 1999.]

**50. Section 5 amended**

After section 5(8) the following subsection is inserted —

“

- (9) If the exercise of the power conferred by subsection (8) to amend or vary any instrument is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999* that exercise is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

**Schedule 2** Consequential amendments

---

**51. Section 11 amended**

After section 11(1) the following subsection is inserted —

“

- (1a) If any act to be done under subsection (1) is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

**52. Section 28B inserted**

Immediately before section 29 the following section is inserted —

“

**28B. This Division subject to *Native Title (State Provisions) Act 1999***

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, renewal or extension of an exploration permit or a drilling reservation is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act.

”

**53. Section 48AA inserted**

Immediately before section 48A the following section is inserted —

“

**48AA. This Division subject to *Native Title (State Provisions) Act 1999***

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 lease is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of that Act.

”.

**54. Section 48L inserted**

Immediately before section 49 the following section is inserted —

“

**48L. This Division subject to *Native Title (State Provisions) Act 1999***

Where the grant or renewal of a production licence is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of the provisions of this Division relating to that grant or renewal is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”.

**55. Section 105 amended**

After section 105(3) the following subsection is inserted —

“

- (3a) Where the grant of a special prospecting authority under subsection (3) is a Part 2 act, a Part 3 act or a Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”.

**56. Section 106 amended**

After section 106(3) the following subsection is inserted —

“

- (3a) Where the grant of an access authority under subsection (3) is a Part 2 act, a Part 3 act or a Part 4 act

within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

**57. Section 116 amended**

After section 116(1) the following subsection is inserted —

“

- (1a) Where the giving of a consent under subsection (1) is a Part 2 act, a Part 3 act or Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

**Division 8 — *Petroleum Pipelines Act 1969***

**58. The Act amended**

The amendments in this Division are to the *Petroleum Pipelines Act 1969*\*.

[\* *Reprinted as at 19 February 1992.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 189 and Acts Nos. 65 of 1998, and 20 of 1999.]*

**59. Section 10A inserted**

After section 10 the following section is inserted —

“

**10A. Licence not to affect native title**

- (1) A licence is not to be taken to authorize the licensee or any other person to do any act that affects native title.

- (2) In subsection (1) —  
    **“affects”** and **“native title”** have the meanings given to them respectively by sections 227 and 223 of the *Native Title Act 1993* of the Commonwealth.

”

**60. Section 19 amended**

After section 19(1) the following subsection is inserted —

“

- (1a) Where the taking of land or an easement in land under subsection (1) is a Part 2 act, a Part 3 act or Part 4 act within the meaning of the *Native Title (State Provisions) Act 1999*, the operation of that subsection is subject to section 2.6, 3.5 or 4.3, as the case may be, of that Act.

”

## **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

**Schedule 3** Transitional provisions

---

- (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.

=====



**Defined terms in this Act**

*[This is a list of terms defined in this Act and the provisions where they are defined. The list is not part of the law.]*

Defined term	Provision(s)
a Part 2 act.....	2.5(1)
a Part 3 act.....	3.4(1)
a Part 4 act.....	4.2
agreement.....	3.48(2)
alternative provision area.....	2.1
application.....	2.45, 3.57, 4.40
Chief Commissioner.....	1.5(4)
close of business.....	2.6(3), 3.5(3), 4.3(3)
closing day.....	1.5(4)
Commission.....	1.5(4)
Commonwealth Minister.....	1.5(3)
consultation parties.....	1.5(4), 2.22, 4.17
consultation period.....	2.27(6), 4.22(5)
court.....	5.4(4), 6.45(4)
determination.....	3.48(2)
existing mining application.....	Sch. 3
Government party.....	1.5(4)
grant for the benefit of Aboriginal persons.....	2.1
in the interests of the State.....	2.41(2), 4.36(2)
last day for the lodgment of objections.....	2.6(3)
member.....	1.5(4)
native title holders.....	5.1
negotiation parties.....	1.5(4), 3.21(1)
negotiation period.....	3.39(7)
objection period.....	3.5(3)
objector.....	1.5(4)
ordinary member.....	1.5(4)
Part 2 act.....	1.5(4)
Part 3 act.....	1.5(4)
Part 4 act.....	1.5(4)
pending application.....	2.6(3)
produce.....	6.45(4)
proponent.....	1.5(4)
recommendation.....	1.5(4)
registered native title rights and interests.....	1.5(4)
relevant land.....	1.5(4)

**Defined Terms**

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relevant provisions of the NTA .....	3.48(2)
responsible Minister .....	1.5(4)
section 24MD(6B) matter .....	Sch. 3
specified .....	2.39(5), 3.52(5), 4.34(5)
the allowed period .....	2.30(1), 3.42(1), 4.25(1)
the Part 2 commencement day .....	1.2(3)
the Part 3 commencement day .....	1.2(4)
the trust amount .....	5.10
written law .....	1.5(5)

**Defined terms in the NTA**

*[This is a list of terms used in this Act and defined in the Native Title Act 1993 of the Commonwealth and the provisions where they are defined. The list is not part of the law.]*

Defined term	Provision of NTA
Aboriginal peoples .....	253
act .....	226
affect.....	227
approved determination of native title.....	253
arbitral body .....	253
attributable.....	239
Commonwealth Minister .....	253
future act .....	233
Government party .....	253
interest .....	253
land .....	253
mine.....	253
native title .....	223
native title claim group .....	253
native title holder .....	224
Native Title Registrar .....	253
native title rights and interests .....	223
National Native Title Register .....	253
NNTT .....	253
ordinary title .....	253
permissible lease etc. ....	24IC
Register of Native Title Claims .....	253
registered native title body corporate .....	253
registered native title claimant .....	253
representative body .....	253
State Minister .....	253
valid .....	253
waters .....	253