



# **Native Title Amendment Act 1998**

**Act No. 97 of 1998 as amended**

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**[This Act was amended by Act No. 63 of 2002]**

**Amendments from Act No. 63 of 2002**

[Schedule 2 (item 16) amended Item 43 of Schedule 2  
Schedule 2 (item 16) commenced on 30 September 1998]

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# **An Act to amend the *Native Title Act 1993*, and for related purposes**

[Assented to 27 July 1998]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Native Title Amendment Act 1998*.

## **2 Commencement**

- (1) Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), Part 1 of Schedule 3 commences on a day to be fixed by Proclamation.
- (3) If Part 1 of Schedule 3 does not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, that Part commences on the first day after the end of that period.
- (4) Part 2 of Schedule 3 commences:
  - (a) on the first day after the end of the period of 12 months after the commencement of Part 1 of Schedule 3; or
  - (b) if, before the end of that period, a later day is fixed by Proclamation—on that later day.
- (5) Subject to subsection (6), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (6) If a provision referred to in subsection (5) does not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

**3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to acts affecting native title etc.**

### *Native Title Act 1993*

#### **1 Paragraph 3(d)**

After “past acts”, insert “, and intermediate period acts,”.

#### **2 Section 4**

Repeal the section, substitute:

#### **4 Overview of Act**

##### *Recognition and protection of native title*

- (1) This Act recognises and protects native title. It provides that native title cannot be extinguished contrary to the Act.

##### *Topics covered*

- (2) Essentially, this Act covers the following topics:
- (a) acts affecting native title (see subsections (3) to (6));
  - (b) determining whether native title exists and compensation for acts affecting native title (see subsection (7)).

##### *Kinds of acts affecting native title*

- (3) There are basically 2 kinds of acts affecting native title:
- (a) ***past acts*** (mainly acts done before this Act’s commencement on 1 January 1994 that were invalid because of native title); and
  - (b) ***future acts*** (mainly acts done after this Act’s commencement that either validly affect native title or are invalid because of native title).

*Consequences of past acts and future acts*

- (4) For past acts and future acts, this Act deals with the following matters:
- (a) their validity;
  - (b) their effect on native title;
  - (c) compensation for the acts.

*Intermediate period acts*

- (5) However, for certain acts (called *intermediate period acts*) done mainly before the judgment of the High Court in *Wik Peoples v Queensland* (1996) 187 CLR 1, that would be invalid because they fail to pass any of the future act tests in Division 3 of Part 2, or for any other reason because of native title, this Act provides for similar consequences to past acts.

*Confirmation of extinguishment of native title*

- (6) This Act also confirms that many acts done before the High Court's judgment, that were either valid, or have been validated under the past act or intermediate period act provisions, will have extinguished native title. If the acts are *previous exclusive possession acts* (see section 23B), the extinguishment is complete; if the acts are *previous non-exclusive possession acts* (see section 23F), the extinguishment is to the extent of any inconsistency.

*Role of Federal Court and National Native Title Tribunal*

- (7) This Act also:
- (a) provides for the Federal Court to make determinations of native title and compensation; and
  - (b) establishes a National Native Title Tribunal with power to:
    - (i) make determinations about whether certain future acts can be done and whether certain agreements concerning native title are to be covered by the Act; and
    - (ii) provide assistance or undertake mediation in other matters relating to native title; and



- (c) deals with other matters such as the keeping of registers and the role of representative Aboriginal/Torres Strait Islander bodies.

### **3 Section 7**

Repeal the section, substitute:

#### **7 Racial Discrimination Act**

- (1) This Act is intended to be read and construed subject to the provisions of the *Racial Discrimination Act 1975*.
- (2) Subsection (1) means only that:
  - (a) the provisions of the *Racial Discrimination Act 1975* apply to the performance of functions and the exercise of powers conferred by or authorised by this Act; and
  - (b) to construe this Act, and thereby to determine its operation, ambiguous terms should be construed consistently with the *Racial Discrimination Act 1975* if that construction would remove the ambiguity.
- (3) Subsections (1) and (2) do not affect the validation of past acts or intermediate period acts in accordance with this Act.

#### **4 Paragraph 11(2)(a)**

Repeal the paragraph, substitute:

- (a) in accordance with Division 2B (which deals with confirmation of past extinguishment of native title) or Division 3 (which deals with future acts etc. and native title) of Part 2; or

#### **5 Paragraph 11(2)(b)**

After “past acts”, insert “, or intermediate period acts,”.

#### **6 Division 2 of Part 2 (heading)**

Repeal the heading, substitute:

## **Division 2—Validation of past acts**

### **7 Before Subdivision A of Division 2 of Part 2**

Insert:

#### **Subdivision AA—Overview of Division**

##### **13A Overview of Division**

- (1) In summary, this Division validates, or allows States and Territories to validate, certain acts that:
  - (a) took place before 1 January 1994; and
  - (b) would otherwise be invalid because of native title.This Division also covers certain acts done after that day consisting of an extension or renewal etc. of an act done before that day.
- (2) The acts validated are called *past acts*; they are defined in section 228.
- (3) This Division also sets out the effect of such validation on native title. The effect varies depending on the nature of the act. For this purpose, different categories of past act are defined by sections 229 to 232.

##### **8 At the end of subsection 15(1)**

Add:

Note: This subsection does not apply to the act if section 23C or 23G applies to the act.

##### **9 Division 3 of Part 2**

Repeal the Division, substitute:

## **Division 2A—Validation of intermediate period acts etc.**

### **Subdivision A—Overview of Division**

#### **21 Overview of Division**

- (1) In summary, this Division validates, or allows States and Territories to validate, certain acts that:
  - (a) took place on or after 1 January 1994 but on or before 23 December 1996; and
  - (b) would otherwise be invalid to any extent because they fail to pass any of the future act tests in Division 3 of Part 2 or for any other reason because of native title.
- (2) The acts are called *intermediate period acts*; they are defined in section 232A.
- (3) For this validation to apply, before the act was done, there must have been:
  - (a) a grant of a freehold estate or a lease (other than a mining lease); or
  - (b) a public work;over any of the land or waters concerned.
- (4) The Division also sets out the effect of such validation on native title. The effect varies depending on the nature of the act. For this purpose, different categories of intermediate period act are defined by sections 232B to 232E.
- (5) The structure of the Division is very similar to that of Division 2 (which deals with validation of past acts).

### **Subdivision B—Acts attributable to the Commonwealth**

#### **22A Validation of Commonwealth acts**

If an intermediate period act is an act attributable to the Commonwealth, the act is valid, and is taken always to have been valid.

## **22B Effect of validation on native title**

Subject to subsection 24EBA(6), if an intermediate period act is an act attributable to the Commonwealth:

- (a) if it is a category A intermediate period act to which subsection 232B(2), (3) or (4) (which deal with things such as the grant or vesting of freehold estates and certain leases) applies—the act extinguishes all native title in relation to the land or waters concerned; and
- (b) if it is a category A intermediate period act to which subsection 232B(7) (which deals with public works) applies:
  - (i) the act extinguishes the native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and
  - (ii) the extinguishment is taken to have happened when the construction or establishment began; and
- (c) if it is a category B intermediate period act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned—the act extinguishes the native title to the extent of the inconsistency; and
- (d) if it is a category C intermediate period act or a category D intermediate period act—the non-extinguishment principle applies to the act.

Note: This section does not apply to the act if section 23C or 23G applies to the act.

## **22C Preservation of beneficial reservations and conditions**

If:

- (a) an intermediate period act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of an intermediate period act attributable to the Commonwealth would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or

Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage); nothing in section 22B affects that reservation or condition or those rights or interests.

## **22D Entitlement to compensation**

- (1) If an intermediate period act is an act attributable to the Commonwealth, the native title holders are entitled to compensation for the act.

*Who pays compensation*

- (2) The compensation is payable by the Commonwealth.

## **22E Where “just terms” invalidity**

*Section applies if acquisition of property other than on just terms*

- (1) This section applies if the invalidity (disregarding section 22A) of an intermediate period act attributable to the Commonwealth results from a paragraph 51(xxxi) acquisition of property by the Commonwealth from any person having been made otherwise than on paragraph 51(xxxi) just terms.

*Entitlement to compensation*

- (2) The person is entitled to compensation from the Commonwealth for the acquisition in accordance with Division 5 and, if that compensation does not ensure that the acquisition is made on paragraph 51(xxxi) just terms, to such additional compensation from the Commonwealth as is necessary to ensure that it is.

## **22EA Requirement to notify: mining rights**

- (1) If:
  - (a) an act that is attributable to the Commonwealth consists of:
    - (i) the creation of a right to mine; or

- (ii) the variation of such a right to extend the area to which it relates; or
- (iii) the extension of the period for which such a right has effect, other than under an option or right of extension or renewal created by the lease, contract or other thing whose grant or making created the right to mine; and
- (b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and
- (c) at any time before the act was done, either:
  - (i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or
  - (ii) a public work was constructed or established on any of the land or waters affected by the act;

the Commonwealth must, before the end of 6 months after this section commences:

- (d) give notice containing the details set out in subsection (2) to any registered native title body corporate, any registered native title claimant and any representative Aboriginal/Torres Strait Islander body, in relation to any of the land or waters affected by the act; and
- (e) notify the public in the determined way of the details set out in subsection (2).

*Details*

- (2) The details are:
  - (a) the date on which the act was done; and
  - (b) the kind of mining involved; and
  - (c) sufficient information to enable the area affected by the act to be identified; and
  - (d) information about the way in which further details about the act may be obtained.

## **Subdivision C—Acts attributable to a State or Territory**

### **22F State/Territory acts may be validated**

If a law of a State or Territory contains provisions to the same effect as sections 22B and 22C, the law of the State or Territory may provide that intermediate period acts attributable to the State or Territory are valid, and are taken always to have been valid.

### **22G Entitlement to compensation**

#### *Compensation where validation*

- (1) If a law of a State or Territory validates an intermediate period act attributable to the State or Territory in accordance with section 22F, the native title holders are entitled to compensation.

#### *Recovery of compensation*

- (2) The native title holders may recover the compensation from the State or Territory.

#### *States or Territories may create compensation entitlement*

- (3) This section does not prevent a law of a State or Territory from creating an entitlement to compensation for an intermediate period act or for the validation of an intermediate period act.

Note: Paragraph 49(b) deals with the situation where there are multiple rights to compensation under Commonwealth, State and Territory laws.

### **22H Requirement to notify: mining rights**

- (1) If:
  - (a) an act that is attributable to a State or Territory consists of:
    - (i) the creation of a right to mine; or
    - (ii) the variation of such a right to extend the area to which it relates; or
    - (iii) the extension of the period for which such a right has effect, other than under an option or right of extension or

renewal created by the lease, contract or other thing whose grant or making created the right to mine; and

- (b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and
- (c) at any time before the act was done, either:
  - (i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or
  - (ii) a public work was constructed or established on any of the land or waters affected by the act;

the State or Territory must, before the end of 6 months after the commencement of the law of the State or Territory that validates intermediate period acts attributable to the State or Territory in accordance with section 22F:

- (d) give notice containing the details set out in subsection (2) to any registered native title body corporate, any registered native title claimant and any representative Aboriginal/Torres Strait Islander body, in relation to any of the land or waters affected by the act; and
- (e) notify the public in the determined way of the details set out in subsection (2).

*Details*

- (2) The details are:
  - (a) the date on which the act was done; and
  - (b) the kind of mining involved; and
  - (c) sufficient information to enable the area affected by the act to be identified; and
  - (d) information about the way in which further details about the act may be obtained.



## **Division 2AA—Validation of transfers under New South Wales land rights legislation**

### **22I Overview of Division**

In summary, this Division allows New South Wales to validate certain transfers under the *Aboriginal Land Rights Act 1983* of that State.

### **22J Validation of transfers**

If:

- (a) future acts consist of the transfer of lands under section 36 of the *Aboriginal Land Rights Act 1983* of New South Wales; and
- (b) the claims for the lands were made before 28 November 1994; and
- (c) the acts took place before or take place after the commencement of this section; and
- (d) the acts are not intermediate period acts; and
- (e) the acts are invalid to any extent because of Division 3 of Part 2 or for any other reason, but would be valid to that extent if native title did not exist in relation to the lands;

a law of New South Wales may provide that the acts are valid, and are taken always to have been valid.

### **22K Effect of validation on native title**

The non-extinguishment principle applies to the acts.

### **22L Entitlement to compensation**

*Compensation where validation*

- (1) If a law of New South Wales validates the acts, the native title holders concerned are entitled to compensation.

*Recovery of compensation*

- (2) The native title holders may recover the compensation from New South Wales.

*Compensation to take into account rights etc. conferred by transferee*

- (3) The compensation is to take into account all rights, interests and other benefits conferred, in relation to the lands, on the native title holders by, or by virtue of membership of, the Aboriginal Land Council (within the meaning of the *Aboriginal Land Rights Act 1983* of New South Wales) to which the lands are transferred or by which the lands are held.

*NSW may create compensation entitlement*

- (4) This section does not prevent a law of New South Wales from creating an entitlement to compensation for the acts or for their validation.

Note: Paragraph 49(b) deals with the situation where there are multiple rights to compensation under Commonwealth and State legislation.

## **Division 2B—Confirmation of past extinguishment of native title by certain valid or validated acts**

### **23A Overview of Division**

- (1) In summary, this Division provides that certain acts attributable to the Commonwealth that were done on or before 23 December 1996 will have completely or partially extinguished native title.
- (2) If the acts were *previous exclusive possession acts* (involving the grant or vesting of things such as freehold estates or leases that conferred exclusive possession, or the construction or establishment of public works), the acts will have completely extinguished native title.
- (3) If the acts were *previous non-exclusive possession acts* (involving grants of non-exclusive agricultural leases or non-exclusive pastoral
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leases), they will have extinguished native title to the extent of any inconsistency.

- (4) This Division also allows States and Territories to legislate, in respect of certain acts attributable to them, to extinguish native title in the same way as is done under this Division for Commonwealth acts.

### **23B Previous exclusive possession act**

- (1) This section defines *previous exclusive possession act*.

*Grant of freehold estates or certain leases etc. on or before 23.12.1996*

- (2) An act is a *previous exclusive possession act* if:

- (a) it is valid (including because of Division 2 or 2A of Part 2); and

Note: As at the commencement of this section, acts such as grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.

- (b) it took place on or before 23 December 1996; and

- (c) it consists of the grant or vesting of any of the following:

- (i) a Scheduled interest (see section 249C);
- (ii) a freehold estate;
- (iii) a commercial lease that is neither an agricultural lease nor a pastoral lease;
- (iv) an exclusive agricultural lease (see section 247A) or an exclusive pastoral lease (see section 248A);
- (v) a residential lease;
- (vi) a community purposes lease (see section 249A);
- (vii) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to “1 January 1994” were instead a reference to “24 December 1996”;

- (viii) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters.

*Vesting of certain land or waters to be covered by paragraph (2)(c)*

- (3) If:
- (a) by or under legislation of a State or a Territory, particular land or waters are vested in any person; and
  - (b) a right of exclusive possession of the land or waters is expressly or impliedly conferred on the person by or under the legislation;
- the vesting is taken for the purposes of paragraph (2)(c) to be the vesting of a freehold estate over the land or waters.

*Construction of public works commencing on or before 23.12.1996*

- (7) An act is a ***previous exclusive possession act*** if:
- (a) it is valid (including because of Division 2 or 2A); and
  - (b) it consists of the construction or establishment of any public work that commenced to be constructed or established on or before 23 December 1996.

*Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders*

- (9) An act is not a ***previous exclusive possession act*** if it is:
- (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
  - (b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
  - (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

Note: The expression ***Aboriginal peoples*** is defined in section 253.

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*Exclusion of national parks etc.*

- (9A) An act is not a **previous exclusive possession act** if the grant or vesting concerned involves the establishment of an area, such as a national, State or Territory park, for the purpose of preserving the natural environment of the area.

*Exclusion of acts where legislation provides for non-extinguishment*

- (9B) An act is not a **previous exclusive possession act** if it is done by or under legislation that expressly provides that the act does not extinguish native title.

*Exclusion of Crown to Crown grants etc.*

- (9C) If an act is the grant or vesting of an interest in relation to land or waters to or in the Crown in any capacity or a statutory authority, the act is not a **previous exclusive possession act**:
- (a) unless, apart from this Act, the grant or vesting extinguishes native title in relation to the land or waters; or
  - (b) if the grant or vesting does not, apart from this Act, extinguish native title in relation to the land or waters—unless and until the land or waters are (whether before or after 23 December 1996) used to any extent in a way that, apart from this Act, extinguishes native title in relation to the land or waters.

*Exclusion by regulation*

- (10) The regulations may provide that an act is not a **previous exclusive possession act**.

*Effect of exclusions*

- (11) To avoid doubt, the fact that an act is, because of any of the previous subsections, not a previous exclusive possession act does not imply that the act is not valid.

### **23C Confirmation of extinguishment of native title by previous exclusive possession acts of Commonwealth**

#### *Acts other than public works*

- (1) If an act is a previous exclusive possession act under subsection 23B(2) (including because of subsection 23B(3)) and is attributable to the Commonwealth:
  - (a) the act extinguishes any native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned; and
  - (b) the extinguishment is taken to have happened when the act was done.

#### *Public works*

- (2) If an act is a previous exclusive possession act under subsection 23B(7) (which deals with public works) and is attributable to the Commonwealth:
  - (a) the act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and
  - (b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

#### *Other extinguishment provisions do not apply*

- (3) If this section applies to the act, sections 15 and 22B do not apply to the act.

### **23D Preservation of beneficial reservations and conditions**

If:

- (a) a previous exclusive possession act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
  - (b) the doing of a previous exclusive possession act attributable to the Commonwealth would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or
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Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage); nothing in section 23C affects that reservation or condition or those rights or interests.

**23DA Confirmation of validity of use of certain land held by Crown etc.**

To avoid doubt, if the act is a previous exclusive possession act because of paragraph 23B(9C)(b) (which deals with grants to the Crown etc.), the use of the land or waters concerned as mentioned in that paragraph is valid.

**23E Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory**

If a law of a State or Territory contains a provision to the same effect as section 23D or 23DA, the law of the State or Territory may make provision to the same effect as section 23C in respect of all or any previous exclusive possession acts attributable to the State or Territory.

**23F Previous non-exclusive possession act**

- (1) This section defines *previous non-exclusive possession act*.

*Acts on or before 23.12.96*

- (2) An act is a *previous non-exclusive possession act* if:
- (a) it is valid (including because of Division 2 or 2A of Part 2); and
- Note: As at the commencement of this section, acts such as grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.
- (b) it takes place on or before 23 December 1996; and
  - (c) it consists of the grant of a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B).

*Acts after 23.12.96*

- (3) An act is also a ***previous non-exclusive possession act*** if:
- (a) it takes place after 23 December 1996; and
  - (b) it would be a previous non-exclusive possession act under subsection (2) if that subsection were not limited in its application to acts taking place on or before 23 December 1996; and
  - (c) it takes place:
    - (i) in exercise of a legally enforceable right created by any act done on or before 23 December 1996; or
    - (ii) in good faith in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith on or before 23 December 1996, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made.

*Exclusion by regulation*

- (4) The regulations may provide that an act is not a ***previous non-exclusive possession act***.

**23G Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of Commonwealth**

- (1) Subject to subsection (2), if a previous non-exclusive possession act (see section 23F) is attributable to the Commonwealth:
- (a) to the extent that the act involves the grant of rights and interests that are not inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned, the rights and interests granted, and the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them; and
  - (b) to the extent that the act involves the grant of rights and interests that are inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned:



- (i) if, apart from this Act, the act extinguishes the native title rights and interests—the native title rights and interests are extinguished; and
- (ii) in any other case—the native title rights and interests are suspended while the lease concerned, or the lease as renewed, re-made, re-granted or extended, is in force; and
- (c) any extinguishment under this subsection is taken to have happened when the act was done.

*Exclusion of certain acts*

- (2) If the act is the grant of a pastoral lease or an agricultural lease to which paragraph 15(1)(a) applies, this section does not apply to the act.

*Effect on sections 15 and 22B*

- (3) If this section applies to the act, sections 15 and 22B do not apply to the act.

### **23H Preservation of beneficial reservations and conditions**

If:

- (a) a previous non-exclusive possession act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of a previous non-exclusive possession act attributable to the Commonwealth would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage);

nothing in section 23G affects that reservation or condition or those rights or interests.

### **23HA Notification**

In the case of a previous non-exclusive possession act to which subparagraph 23F(3)(c)(ii) applies:

- (a) notice must be given, in the way determined in writing by the Commonwealth Minister, to any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act about the doing or proposed doing of the act, or acts of that class, in relation to the land or waters concerned; and
- (b) they must be given an opportunity to comment on the act or class of acts.

### **23I Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory**

If a law of a State or Territory contains provisions to the same effect as sections 23H and 23HA, the law of the State or Territory may make provision to the same effect as section 23G in respect of all or any previous non-exclusive possession acts attributable to the State or Territory.

### **23J Compensation**

#### *Entitlement*

- (1) The native title holders are entitled to compensation in accordance with Division 5 for any extinguishment under this Division of their native title rights and interests by an act, but only to the extent (if any) that the native title rights and interests were not extinguished otherwise than under this Act.

#### *Commonwealth acts*

- (2) If the act is attributable to the Commonwealth, the compensation is payable by the Commonwealth.

*State and Territory acts*

- (3) If the act is attributable to a State or Territory, the compensation is payable by the State or Territory.

**23JA Attribution of certain acts**

If:

- (a) a previous exclusive possession act or a previous non-exclusive possession act took place before the establishment of a particular State, the Jervis Bay Territory, the Australian Capital Territory or the Northern Territory; and

- (b) the act affected land or waters that, when this section commences, form part of the State or Territory;

then, for the purposes of this Division, the act is taken to be attributable to:

- (c) the State; or  
(d) if the Territory is the Jervis Bay Territory—the Commonwealth; or  
(e) if the Territory is the Australian Capital Territory or the Northern Territory—that Territory.

Note: The meaning given to the expression *attributable* by section 239 will apply for the purposes of this Division to all other previous exclusive and non-exclusive possession acts.

**Division 3—Future acts etc. and native title**

**Subdivision A—Preliminary**

**24AA Overview**

*Future acts*

- (1) This Division deals mainly with future acts, which are defined in section 233. Acts that do not affect native title are not *future acts*; therefore this Division does not deal with them (see section 227 for the meaning of acts that *affect* native title).

*Validity of future acts*

- (2) Basically, this Division provides that, to the extent that a future act affects native title, it will be valid if covered by certain provisions of the Division, and invalid if not.

*Validity under indigenous land use agreements*

- (3) A future act will be valid if the parties to certain agreements (called indigenous land use agreements—see Subdivisions B, C and D) consent to the act being done. A future act (other than an intermediate period act) that has already been done invalidly may also be validated as a result of such agreements.

*Other bases for validity*

- (4) A future act will also be valid to the extent covered by any of the following:
- (a) section 24FA (future acts where procedures indicate absence of native title);
  - (b) section 24GB (acts permitting primary production on non-exclusive agricultural or pastoral leases);
  - (c) section 24GD (acts permitting off-farm activities directly connected to primary production activities);
  - (d) section 24GE (granting rights to third parties etc. on non-exclusive agricultural or pastoral leases);
  - (e) section 24HA (management of water and airspace);
  - (f) section 24IA (acts involving renewals and extensions etc. of acts);
  - (g) section 24JA (acts involving reservations, leases etc.);
  - (h) section 24KA (acts involving facilities for services to the public);
  - (i) section 24LA (low impact future acts);
  - (j) section 24MD (acts that pass the freehold test—but see subsection (5));
  - (k) section 24NA (acts affecting offshore places).

*Right to negotiate*

- (5) In the case of certain acts covered by section 24IC (permissible lease etc. renewals) or section 24MD (acts that pass the freehold test), for the acts to be valid it is also necessary to satisfy the requirements of Subdivision P (which provides a “right to negotiate”).

*Extinguishment/non-extinguishment; procedural rights and compensation*

- (6) This Division provides that, in general, valid future acts are subject to the non-extinguishment principle. The Division also deals with procedural rights and compensation for the acts.

*Activities etc. prevail over native title*

- (7) To avoid doubt, section 44H provides that a valid lease, licence, permit or authority, and any activity done under it, prevail over any native title rights and interests and their exercise.

*Statutory access rights*

- (8) This Division confers access rights in respect of non-exclusive agricultural and non-exclusive pastoral leases on certain persons covered by registered native title claims (see Subdivision Q).

**24AB Order of application of provisions**

*Indigenous land use agreement provisions*

- (1) To the extent that a future act is covered by section 24EB (which deals with the effect of indigenous land use agreements on future acts), it is not covered by any of the sections listed in paragraphs 24AA(4)(a) to (k).

*Other provisions*

- (2) To the extent that a future act is covered by a particular section in the list in paragraphs 24AA(4)(a) to (k), it is not covered by a section that is lower in the list.
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Note: It is important to know under which particular provision a future act is valid because the consequences in terms of compensation and procedural rights may be different.

### **24AC Regulations about notification**

The regulations may impose requirements to notify persons of acts, or classes of acts, that are to any extent valid under this Division (whether such notice is required to be given before or after the acts are done).

### **Subdivision B—Indigenous land use agreements (body corporate agreements)**

#### **24BA Indigenous land use agreements (body corporate agreements)**

An agreement meeting the requirements of sections 24BB to 24BE is an *indigenous land use agreement*.

Note: Subdivisions C and D provide for other kinds of indigenous land use agreements.

#### **24BB Coverage of body corporate agreements**

The agreement must be about one or more of the following matters in relation to an area:

- (a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;
- (aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

- (ab) changing the effects, that are provided for by section 22B or by a law of a State or Territory that contains provisions to the same effect, of an intermediate period act or of intermediate period acts included in classes;

- (b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;
- (c) the relationship between native title rights and interests and other rights and interests in relation to the area;
- (d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;
- (e) extinguishing native title rights and interests in relation to land or waters in the area by the surrender of those rights and interests to the Commonwealth, a State or a Territory;
- (ea) compensation for any past act, intermediate period act or future act;
- (f) any other matter concerning native title rights and interests in relation to the area.

Note 1: If the agreement involves consent to the doing of a future act or class of future act, or the doing of a future act or class of future act subject to conditions, it must include a statement to that effect: see paragraph 24EB(1)(b).

Note 2: If a future act covered by such a statement would otherwise be subject to the “right to negotiate” provisions in Subdivision P, the agreement must also include a statement that those provisions are not intended to apply: see paragraph 24EB(1)(c).

Note 3: If the agreement involves the extinguishment of native title by surrender, it must include a statement to that effect: see paragraph 24EB(1)(d).

#### **24BC Body corporate agreements only where bodies corporate for whole area**

The agreement must not be made unless there are registered native title bodies corporate in relation to all of the area.

#### **24BD Parties to body corporate agreements**

*Registered native title bodies corporate*

- (1) All of the registered native title bodies corporate in relation to the area must be parties to the agreement.

*Governments*

- (2) If the agreement makes provision for the extinguishment of native title rights and interests by surrendering them to the Commonwealth, a State or a Territory as mentioned in paragraph 24BB(e), the Commonwealth, State or Territory must be a party to the agreement. If the agreement does not make such provision, the Commonwealth, a State or a Territory may still be a party.

*Others*

- (3) Any other person or persons may be parties.

*Procedure where no representative body party*

- (4) If there are any representative Aboriginal/Torres Strait Islander bodies for any of the area and none of them is proposed to be a party to the agreement, the registered native title body corporate, before entering into the agreement:
- (a) must inform at least one of the representative Aboriginal/Torres Strait Islander bodies of its intention to enter into the agreement; and
  - (b) may consult any such representative Aboriginal/Torres Strait Islander bodies about the agreement.

**24BE Consideration and conditions**

- (1) The agreement may be given for any consideration, and subject to any conditions, agreed by the parties (other than consideration or conditions that contravene any law).

*Consideration may be freehold grant or other interests*

- (2) Without limiting subsection (1), the consideration may be the grant of a freehold estate in any land, or any other interests in relation to land whether statutory or otherwise.



#### **24BF Assistance to make body corporate agreements**

Persons wishing to make the agreement may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement.

#### **24BG Application for registration of body corporate agreements**

##### *Application*

- (1) Any party to the agreement may, if all of the other parties agree, apply in writing to the Registrar for the agreement to be registered on the Register of Indigenous Land Use Agreements.

##### *Things accompanying application*

- (2) The application must be accompanied by a copy of the agreement and any other prescribed documents or information.

#### **24BH Notice of body corporate agreements**

- (1) The Registrar must:
  - (a) give notice of the agreement, in accordance with subsection (2), to any of the following who are not parties to the agreement:
    - (i) the Commonwealth Minister;
    - (ii) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;
    - (iii) any representative Aboriginal/Torres Strait Islander body for the area covered by the agreement;
    - (iv) any local government body for the area covered by the agreement;
    - (v) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate; and
  - (b) notify the public in the determined way of the agreement in accordance with subsection (2).

*Content of notice*

- (2) The notice under paragraph (1)(a) or (b) must:
  - (a) describe the area covered by the agreement; and
  - (b) state the name of each party to the agreement and the address at which the party can be contacted; and
  - (c) set out any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b), (c) or (d).

**24BI Registration of body corporate agreements**

- (1) Subject to this section, the Registrar must register the agreement on the Register of Indigenous Land Use Agreements.
- (2) The Registrar must not register the agreement if any of the parties to the agreement advises the Registrar, within 1 month after the Registrar gives notice under section 24BH, that the party does not wish the agreement to be registered on the Register.
- (3) The Registrar must not register the agreement if:
  - (a) a representative Aboriginal/Torres Strait Islander body for any of the area advises the Registrar, within 1 month after the Registrar gives notice under section 24BH, that the requirements of paragraph 24BD(4)(a) were not complied with in relation to the agreement; and
  - (b) the Registrar is satisfied that the requirements were not complied with.

**Subdivision C—Indigenous land use agreements (area agreements)**

**24CA Indigenous land use agreements (area agreements)**

An agreement meeting the requirements of sections 24CB to 24CE is an *indigenous land use agreement*.

Note: Subdivisions B and D provide for other kinds of indigenous land use agreements.

## **24CB Coverage of area agreements**

The agreement must be about one or more of the following matters in relation to an area:

- (a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;
- (aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

- (ab) changing the effects, that are provided for by section 22B or by a law of a State or Territory that contains provisions to the same effect, of an intermediate period act or of intermediate period acts included in classes;
- (b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;
- (c) the relationship between native title rights and interests and other rights and interests in relation to the area;
- (d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;
- (e) extinguishing native title rights and interests in relation to land or waters in the area by the surrender of those rights and interests to the Commonwealth, a State or a Territory;
- (ea) compensation for any past act, intermediate period act or future act;
- (f) any other matter concerning native title rights and interests in relation to the area;
- (g) any matter concerning rights conferred by Subdivision Q (which gives certain persons covered by registered native title claims rights of access to non-exclusive agricultural and pastoral leases).

Note 1: If the agreement involves consent to the doing of a future act or class of future act, or the doing of a future act or class of future act subject to conditions, it must include a statement to that effect: see paragraph 24EB(1)(b).

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Note 2: If a future act covered by such a statement would otherwise be subject to the “right to negotiate” provisions in Subdivision P, the agreement must also include a statement that those provisions are not intended to apply: see paragraph 24EB(1)(c).

Note 3: If the agreement involves the extinguishment of native title by surrender, it must include a statement to that effect: see paragraph 24EB(1)(d).

### **24CC Requirement that no bodies corporate for whole of area**

The agreement must not be made if there are registered native title bodies corporate in relation to all of the area.

Note: If there are registered native title bodies corporate for all of the area, an agreement under Subdivision B may be made.

### **24CD Parties to area agreements**

#### *Native title group to be parties*

- (1) All persons in the native title group (see subsection (2) or (3)) in relation to the area must be parties to the agreement.

#### *Native title group where registered claimant or body corporate*

- (2) If there is a registered native title claimant, or a registered native title body corporate, in relation to any of the land or waters in the area, the **native title group** consists of:
    - (a) all registered native title claimants in relation to land or waters in the area; and  

Note 1: Registered native title claimants are persons whose names appear on the Register of Native Title Claims as applicants in relation to claims to hold native title: see the definition of **registered native title claimant** in section 253.

Note 2: The agreement will bind all members of the native title claim group concerned: see paragraph 24EA(1)(b).
    - (b) all registered native title bodies corporate in relation to land or waters in the area; and
    - (c) if, for any part (the **non-claimed/determined part**) of the land or waters in the area, there is neither a registered native title claimant nor a registered native title body corporate—one or more of the following:
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- (i) any person who claims to hold native title in relation to land or waters in the non-claimed/determined part;
- (ii) any representative Aboriginal/Torres Strait Islander body for the non-claimed/determined part.

*Native title group where no registered claimant or body corporate*

- (3) If subsection (2) does not apply, the **native title group** consists of one or more of the following:
  - (a) any person who claims to hold native title in relation to land or waters in the area;
  - (b) any representative Aboriginal/Torres Strait Islander body for the area.

*Other native title parties*

- (4) If the native title group is covered by subsection (2), one or more of the following may also be parties to the agreement:
  - (a) any other person who claims to hold native title in relation to land or waters in the area;
  - (b) any representative Aboriginal/Torres Strait Islander body for the area.

*Government parties*

- (5) If the agreement makes provision for the extinguishment of native title rights and interests by surrendering them to the Commonwealth, a State or Territory as mentioned in paragraph 24CB(e), the Commonwealth, State or Territory must be a party to the agreement. If the agreement does not make such provision, the Commonwealth, a State or a Territory may still be a party.

*Other parties*

- (6) Any other person may be a party to the agreement.

*Procedure where no representative body party*

- (7) If there are any representative Aboriginal/Torres Strait Islander bodies for any of the area and none of them is proposed to be a
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party to the agreement, a person in the native title group, before entering into the agreement:

- (a) must inform at least one of the representative Aboriginal/Torres Islander bodies of its intention to enter into the agreement; and
- (b) may consult any such representative Aboriginal/Torres Strait Islander bodies about the agreement.

Note: The registration of agreements that are certified by a representative Aboriginal/Torres Strait Islander body is facilitated under section 24CK.

#### **24CE Consideration and conditions**

- (1) The agreement may be given for any consideration, and subject to any conditions, agreed by the parties (other than consideration or conditions that contravene any law).

*Consideration may be freehold grant or other interests*

- (2) Without limiting subsection (1), the consideration may be the grant of a freehold estate in any land, or any other interests in relation to land whether statutory or otherwise.

#### **24CF Assistance to make area agreements**

Persons wishing to make the agreement may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement.

#### **24CG Application for registration of area agreements**

*Application*

- (1) Any party to the agreement may, if all of the other parties agree, apply in writing to the Registrar for the agreement to be registered on the Register of Indigenous Land Use Agreements.

*Things accompanying application*

- (2) The application must be accompanied by a copy of the agreement and any other prescribed documents or information.

*Certificate or statement to accompany application in certain cases*

- (3) Also, the application must either:
- (a) have been certified by all representative Aboriginal/Torres Strait Islander bodies for the area in performing their functions under paragraph 202(4)(e) in relation to the area; or
  - (b) include a statement to the effect that the following requirements have been met:
    - (i) all reasonable efforts have been made (including by consulting all representative Aboriginal/Torres Strait Islander bodies for the area) to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified;
    - (ii) all of the persons so identified have authorised the making of the agreement;

Note: The word *authorise* is defined in section 251A. together with a further statement briefly setting out the grounds on which the Registrar should be satisfied that the requirements are met.

**24CH Notice of area agreements etc.**

- (1) The Registrar must:
- (a) give notice of the agreement, in accordance with subsection (2), to any of the following who are not parties to the agreement:
    - (i) the Commonwealth Minister;
    - (ii) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;
    - (iii) any representative Aboriginal/Torres Strait Islander body for the area covered by the agreement;
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- (iv) any local government body for the area covered by the agreement;
- (v) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate; and
- (b) notify the public in the determined way of the agreement in accordance with subsection (2).

*Content of notice*

- (2) The notice under paragraph (1)(a) or (b) must:
  - (a) describe the area covered by the agreement; and
  - (b) state the name of each party to the agreement and the address at which the party can be contacted; and
  - (c) set out any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b),(c) or (d); and
  - (d) include a statement that, within the period (the *notice period*) of 3 months after the notification day (see subsection (3)):
    - (i) if the application was certified by representative Aboriginal/Torres Strait Islander bodies for the area (see paragraph 24CG(3)(a))—any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may object, in writing to the Registrar, against registration of the agreement on the ground that the requirements of paragraphs 202(8)(a) and (b) were not satisfied in relation to the certification; or
    - (ii) if the application contained a statement as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met (in summary, relating to identifying native title holders and ensuring that they have authorised the making of the agreement)—any person claiming to hold native title in relation to land or waters in the area covered by the agreement may wish, in response to the notice, to make a native title determination application or equivalent application under a law of a State or Territory.



*Notice to specify day*

- (3) The notice under paragraph (1)(a) or (b) must specify a day as the **notification day** for the agreement. Each such notice in relation to the agreement must specify the same day.

*Which days may be specified*

- (4) That day must be a day by which, in the Registrar's opinion, it is reasonable to assume that all notices under paragraph (1)(a) or (b) in relation to the agreement will have been received by, or will otherwise have come to the attention of, the persons who must be notified under those paragraphs.

## **24CI Objections against registration**

*Making objections*

- (1) If the application was certified by representative Aboriginal/Torres Strait Islander bodies for the area (see paragraph 24CG(3)(a)), any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may object, in writing to the Registrar, against registration of the agreement on the ground that the requirements of paragraphs 202(8)(a) and (b) were not satisfied in relation to the certification.

*Assistance in withdrawing objection*

- (2) If an objection is made within the notice period, the parties to the agreement may request assistance from the NNTT or a recognised State/Territory body in negotiating with the person making the objection with a view to having the objection withdrawn.

## **24CJ Decision about registration**

The Registrar must, after the end of the notice period, decide whether or not to register an agreement covered by an application under this Subdivision on the Register of Indigenous Land Use Agreements. However, in a case where section 24CL is to be

applied, the Registrar must not do so until all persons covered by paragraph (2)(b) of that section are known.

**24CK Registration of area agreements certified by representative bodies**

*Registration only if conditions satisfied*

- (1) If the application for registration of the agreement was certified by representative Aboriginal/Torres Strait Islander bodies for the area (see paragraph 24CG(3)(a)) and the conditions in this section are satisfied, the Registrar must register the agreement. If the conditions are not satisfied, the Registrar must not register the agreement.

*First condition*

- (2) The first condition is that:
- (a) no objection under section 24CI against registration of the agreement was made within the notice period; or
  - (b) one or more objections under section 24CI against registration of the agreement were made within the notice period, but they have all been withdrawn; or
  - (c) one or more objections under section 24CI against registration of the agreement were made within the notice period, all of them have not been withdrawn, but none of the persons making them has satisfied the Registrar that the requirements of paragraphs 202(8)(a) and (b) were not satisfied in relation to the certification of the application by any of the representative Aboriginal/Torres Strait Islander bodies concerned.

*Second condition*

- (3) The second condition is that if, when the Registrar proposes to register the agreement, there is a registered native title body corporate in relation to any land or waters in the area covered by the agreement, that body corporate is a party to the agreement.

*Matters to be taken into account*

- (4) In deciding whether he or she is satisfied as mentioned in paragraph (2)(c), the Registrar must take into account any information given in relation to the matter by:
- (a) the persons making the objections mentioned in that paragraph; and
  - (b) the representative Aboriginal/Torres Strait Islander bodies that certified the application;
- and may, but need not, take into account any other matter or thing.

**24CL Registration of area agreements not certified by representative Aboriginal/Torres Strait Islander bodies**

*Registration only if conditions satisfied*

- (1) If the application for registration of the agreement contained a statement as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met (in summary, relating to identifying native title holders and ensuring that they have authorised the making of the agreement), and the conditions in subsections (2) and (3) of this section are satisfied, the Registrar must register the agreement. If the conditions are not satisfied, the Registrar must not register the agreement.

*First condition*

- (2) The first condition is that the following persons are parties to the agreement:
- (a) any person who is, at the end of the notice period, a registered native title claimant or a registered native title body corporate in relation to any of the land or waters in the area covered by the agreement; and
  - (b) any person who, after the end of the notice period, becomes a registered native title claimant in relation to any of the land or waters in the area covered by the agreement, where the application containing the claim was made before the end of the notice period and:

- (i) the claim is accepted by the Registrar for registration under subsection 190A(6) or is (otherwise than on appeal or review) found to satisfy conditions equivalent to those set out in sections 190B and 190C under a law of a State or Territory; or
- (ii) the claim is accepted by the Registrar for registration as a result of an application under subsection 190D(2), where the application was made not more than 28 days after the notice under subsection 190D(1) was given; or
- (iii) the claim is found to satisfy conditions equivalent to those set out in sections 190B and 190C under a provision of a law of a State or Territory to similar effect as section 190D, and the application under that provision was made within a time period corresponding to that set out in subparagraph (ii) of this paragraph.

*Second condition*

- (3) The second condition is that the Registrar considers that the requirements in paragraph 24CG(3)(b) (in summary, relating to identifying native title holders and ensuring that they have authorised the making of the agreement) have been met.

*Matters to be taken into account*

- (4) In deciding whether the requirements have been met, the Registrar must take into account:
  - (a) the statements in the application; and
  - (b) any information the Registrar is given on the matter by any representative Aboriginal/Torres Strait Islander body or by any other body or person;and may, but need not, take into account any other matter or thing.

## **Subdivision D—Indigenous land use agreements (alternative procedure agreements)**

### **24DA Indigenous land use agreements (alternative procedure agreements)**

An agreement meeting the requirements of sections 24DB to 24DF is an *indigenous land use agreement*.

Note: Subdivisions B and C provide for other kinds of indigenous land use agreements.

### **24DB Coverage of alternative procedure agreements**

The agreement must be about one or more of the following matters in relation to an area:

- (a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;
- (aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

Note: Intermediate period acts are or can be validated only under Division 2A.

- (b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;
- (c) the relationship between native title rights and interests and other rights and interests in relation to the area;
- (d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;
- (e) providing a framework for the making of other agreements about matters relating to native title rights and interests;
- (ea) compensation for any past act, intermediate period act or future act;
- (f) any other matter concerning native title rights and interests in relation to the area;

- (g) any matter concerning rights conferred by Subdivision Q (which gives certain persons covered by registered native title claims rights of access to non-exclusive agricultural and pastoral leases).

Note 1: If the agreement involves consent to the doing of a future act or class of future act, or the doing of a future act or class of future act subject to conditions, it must include a statement to that effect: see paragraph 24EB(1)(b).

Note 2: If a future act covered by such a statement would otherwise be subject to the “right to negotiate” provisions in Subdivision P, the agreement must also include a statement that those provisions are not intended to apply: see paragraph 24EB(1)(c).

#### **24DC No extinguishment of native title**

The agreement must not provide for the extinguishment of any native title rights or interests.

Note: The non-extinguishment principle will apply to any future acts consented to in the agreement: see subsection 24EB(3).

#### **24DD Bodies corporate and representative bodies etc.**

*No bodies corporate for whole of area*

- (1) The agreement must not be made if there are registered native title bodies corporate in relation to all of the land and waters in the area.

Note: If there are registered native title bodies corporate for all of the area, an agreement under Subdivision B may be made.

*Body corporate or representative body for area*

- (2) There must be at least one registered native title body corporate in relation to land or waters in the area or at least one representative Aboriginal/Torres Strait Islander body for the area.

## **24DE Parties to alternative procedure agreements**

### *Native title group and relevant governments to be parties*

- (1) All persons in the native title group (see subsection (2)) in relation to the area must be parties to the agreement, as must every relevant government (see subsection (3)).

### *Native title group*

- (2) The **native title group** consists of:
- (a) all registered native title bodies corporate in relation to land or waters in the area; and
  - (b) all representative Aboriginal/Torres Strait Islander bodies for the area.

### *Relevant government*

- (3) Each of the following is a **relevant government**:
- (a) the Commonwealth, if any of the area covered by the agreement is a place outside the jurisdictional limits of the States and Territories;
  - (b) a State or Territory, if any of the area covered by the agreement is within the jurisdictional limits of the State or Territory.

### *Other parties*

- (4) Any of the following may also be a party to the agreement:
- (a) any registered native title claimant in relation to land or waters in the area;
    - Note 1: Registered native title claimants are persons whose names appear on the Register of Native Title Claims as applicants in relation to claims to hold native title: see the definition of **registered native title claimant** in section 253.
    - Note 2: The agreement will bind all members of the native title claim group concerned: see paragraph 24EA(1)(b).
  - (b) any other person who claims to hold native title in relation to land or waters in the area;
  - (c) any other person.
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#### **24DF Consideration and conditions**

- (1) The agreement may be given for any consideration, and subject to any conditions, agreed by the parties (other than consideration or conditions that contravene any law).

*Consideration may be freehold grant or other interests*

- (2) Without limiting subsection (1), the consideration may be the grant of a freehold estate in any land, or any other interests in relation to land whether statutory or otherwise.

#### **24DG Assistance to make alternative procedure agreements**

Persons wishing to make the agreement may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement.

#### **24DH Application for registration of alternative procedure agreements**

*Application*

- (1) Any party to the agreement may, if all of the other parties agree, apply in writing to the Registrar for the agreement to be registered on the Register of Indigenous Land Use Agreements.

*Things accompanying application*

- (2) The application must be accompanied by a copy of the agreement and any other prescribed documents or information.

#### **24DI Notice of alternative procedure agreements**

*Notice to be given*

- (1) The Registrar must:
  - (a) give notice of the agreement, in accordance with subsection (2), to any of the following who are not parties to the agreement:



- (i) the Commonwealth Minister;
  - (ii) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;
  - (iii) any local government body for the area covered by the agreement;
  - (iv) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate; and
- (b) notify the public in the determined way of the agreement in accordance with subsection (2).

*Content of notice*

- (2) The notice under paragraph (1)(a) or (b) must:
- (a) describe the area covered by the agreement; and
  - (b) state the name of each party to the agreement and the address at which the party can be contacted; and
  - (c) set out any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b) or (c); and
  - (d) include a statement that, within the period (the **notice period**) of 3 months after the notification day (see subsection (3)), any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may:
    - (i) obtain a copy of the agreement from the Registrar; and
    - (ii) object, in writing to the Registrar, against registration of the agreement on the ground that it would not be fair and reasonable to do so.

*Notice to specify day*

- (3) The notice must specify a day as the **notification day** for the agreement. Each such notice in relation to the agreement must specify the same day.

*Which days may be specified*

- (4) That day must be a day by which, in the Registrar's opinion, it is reasonable to assume that all notices under paragraph (1)(a) or (b)
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in relation to the agreement will have been received by, or will otherwise have come to the attention of, the persons who must be notified under those paragraphs.

*Request for copy of agreement*

- (5) If a person claiming to hold native title in relation to any of the land or waters covered by the agreement requests a copy of the agreement, the Registrar must comply with the request.

**24DJ Objections against registration**

*Making objections*

- (1) Any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may make an application to the Registrar objecting against registration of the agreement on the ground that it would not be fair and reasonable to register the agreement.

*Assistance in withdrawing objection*

- (2) If an objection is made within the notice period, the parties may request assistance from the NNTT or a recognised State/Territory body in negotiating with the person making the objection with a view to having the objection withdrawn.

**24DK Decision about registration**

The Registrar must, after the end of the notice period, decide whether or not to register the agreement on the Register of Indigenous Land Use Agreements.

**24DL Registration of alternative procedure agreements**

*Registration only if conditions satisfied*

- (1) If a condition in subsection (2) is satisfied, the Registrar must register the agreement. If none of the conditions is satisfied, the Registrar must not register the agreement.
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*Conditions*

- (2) The conditions are that:
- (a) no objection against registration of the agreement was made within the notice period; or
  - (b) one or more objections against registration of the agreement were made within the notice period, but they have all been withdrawn; or
  - (c) one or more objections against registration of the agreement were made during the notice period, all of them have not been withdrawn, but none of the persons making them has satisfied the NNTT or a recognised State/Territory body that it would not be fair and reasonable to register the agreement, having regard to:
    - (i) the content of the agreement; and
    - (ii) the effect of the agreement on native title rights and interests; and
    - (iii) any benefits provided under the agreement to current native title holders (whether or not identified at the time the agreement is made) and their successors, and the way in which those benefits are to be distributed; and
    - (iv) any other relevant circumstance.

Note: Sections 77A and 77B deal with applications to the NNTT objecting against registration of the agreement.

**24DM Other registration procedures and conditions**

The regulations may provide for procedures and conditions for the registration of agreements under this Subdivision on the Register of Indigenous Land Use Agreements. Agreements are to be registered if either those procedures and conditions or the ones set out in sections 24DH to 24DL are complied with.

## **Subdivision E—Effect of registration of indigenous land use agreements**

### **24EA Contractual effect of registered agreement**

- (1) While details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, in addition to any effect that it may have apart from this subsection, as if:
- (a) it were a contract among the parties to the agreement; and
  - (b) all persons holding native title in relation to any of the land or waters in the area covered by the agreement, who are not already parties to the agreement, were bound by the agreement in the same way as the registered native title bodies corporate, or the native title group, as the case may be.

Note: Section 199B specifies the details of the agreement that are required to be entered on the Register.

#### *Only certain persons bound by agreement*

- (2) To avoid doubt, a person is not bound by the agreement unless the person is a party to the agreement or a person to whom paragraph (1)(b) applies.

#### *Legislation etc. to give effect to agreement not affected*

- (3) If the Commonwealth, a State or a Territory is a party to an indigenous land use agreement whose details are entered in the Register of Indigenous Land Use Agreements, this Act does not prevent the Commonwealth, the State or the Territory doing any legislative or other act to give effect to any of its obligations under the agreement.

### **24EB Effect of registration on proposed acts covered by indigenous land use agreements**

#### *Coverage of section*

- (1) The consequences set out in this section apply if:
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- (a) a future act is done; and
- (b) when it is done, there are on the Register of Indigenous Land Use Agreements details of an agreement that includes a statement to the effect that the parties consent to:
  - (i) the doing of the act or class of act in which the act is included; or
  - (ii) the doing of the act, or class of act in which the act is included, subject to conditions; and
- (c) if the act is, apart from this Subdivision, an act to which Subdivision P (which deals with the right to negotiate) applies—the agreement also includes a statement to the effect that Subdivision P is not intended to apply; and

Note: The fact that, under the “right to negotiate” provisions in Subdivision P, agreements can be made after notice of an act is given as mentioned in section 29 does not prevent an indigenous land use agreement being made that consents to the doing of the act.

- (d) if the act is the surrender of native title under an agreement covered by Subdivision B or C—the agreement also includes a statement to the effect that the surrender is intended to extinguish the native title rights and interests.

*Validation of act*

- (2) The act is valid to the extent that it affects native title in relation to land or waters in the area covered by the agreement.

*Non-extinguishment principle*

- (3) Unless a statement of the kind mentioned in paragraph (1)(d) in relation to the act is included in the agreement, the non-extinguishment principle applies to the act.

*Restriction on compensation where Subdivision B agreement*

- (4) In the case of an agreement under Subdivision B, the following are not entitled to any compensation for the act under this Act, other than compensation provided for in the agreement:
  - (a) any registered native title body corporate who is a party to the agreement;

- (b) any common law holder of native title:
  - (i) for whom such a registered native title body corporate holds native title rights and interests on trust; or
  - (ii) of whom such a registered native title body corporate is the agent or representative;

Note: For the definition of *common law holder*, see section 56.

- (c) any native title holder who is entitled to any of the benefits provided under the agreement.

*Restriction on compensation where Subdivision C agreement*

- (5) In the case of an agreement under Subdivision C, the following are not entitled to any compensation for the act under this Act, other than compensation provided for in the agreement:
  - (a) any native title holder who is entitled to any of the benefits provided under the agreement;
  - (b) any native title holder who authorised the making of the agreement as mentioned in:
    - (i) if the application was certified by representative Aboriginal/Torres Strait Islander bodies as mentioned in paragraph 24CG(3)(a)—paragraph 202(8)(b); or
    - (ii) if the application included statements as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met (in summary, relating to identifying all native title holders and ensuring that they have authorised the making of the agreement)—that paragraph.

*Restriction on compensation where Subdivision D agreement*

- (6) In the case of an agreement under Subdivision D, no native title holder who is entitled to any of the benefits provided under the agreement is entitled to any compensation for the act under this Act, other than compensation provided for in the agreement.

*Compensation under Division 5*

- (7) If any native title holder in relation to the land or waters covered by the agreement (except one who, because of subsection (4), (5) or
-

(6), is not entitled to compensation other than that provided for in the agreement) would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that subsection:

- (a) he or she is entitled, in accordance with Division 5, to compensation for the act; and
- (b) he or she may recover the compensation from:
  - (i) if subparagraph (ii) does not apply—the Crown in right of the Commonwealth, a State or a Territory (according to whether the act is attributable to the Commonwealth, the State or the Territory); or
  - (ii) any person or persons who, under an agreement in writing with the Commonwealth, the State or the Territory, are liable to pay the compensation.

## **24EBA Effect of registration on previous acts covered by indigenous land use agreements**

### *Coverage of section*

- (1) The consequences set out in this section apply if:
  - (a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to:
    - (i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or
  - Note: Intermediate period acts are or can be validated only under Division 2A.
  - (ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or of future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or
  - (iii) changing the effects, that are provided for by section 22B (which relates to native title rights and interests) or by a law of a State or Territory that contains provisions to the

same effect, of an intermediate period act or of intermediate period acts included in classes; and

- (b) whichever of the Commonwealth, the State or the Territory to which the act or class of acts is attributable is a party to the agreement; and
- (c) where, whether under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the act or class of acts—that person is a party to the agreement.

*Commonwealth future acts valid*

- (2) If subparagraph (1)(a)(i) or (ii) applies and the future act or class of future acts is attributable to the Commonwealth, the act or class of acts is valid, and is taken always to have been valid.

*State or Territory laws may validate their future acts*

- (3) If subparagraph (1)(a)(i) or (ii) applies and the future act or class of future acts is attributable to a State or Territory, a law of the State or the Territory may provide that the act or class of acts is valid, and is taken always to have been valid. The law may do so by applying to all acts, to classes of acts, or to particular acts, to which subparagraph (1)(a)(i) or (ii) applies in respect of which the requirements of subsection (1) are or become satisfied.

*Non-extinguishment principle applies to future acts*

- (4) If subsection (2) applies or a law makes provision in accordance with subsection (3), the non-extinguishment principle applies to the act or class of acts unless:
  - (a) the act or class of acts is the surrender of native title; and
  - (b) the agreement includes a statement to the effect that the surrender is intended to have extinguished the native title rights and interests.



*Compensation consequences of future acts*

- (5) If subsection (2) applies or a law makes provision in accordance with subsection (3), the consequences set out in subsection 24EB(4), (5) or (6), and the consequences set out in subsection 24EB(7), apply to the act or to each of the acts in the class.

*Changing the effects of validated acts*

- (6) If subparagraph (1)(a)(iii) applies, the effects mentioned in that subparagraph are changed in accordance with the agreement.

**24EC Agreements unrelated to future acts**

The fact that this Subdivision deals with agreements with native title holders that relate to their native title rights and interests does not imply that the Commonwealth, a State or a Territory cannot:

- (a) make other agreements; or
  - (b) legislate in relation to the making of other agreements;
- with native title holders that relate to their native title rights and interests (other than agreements consenting to the doing of future acts).

**Subdivision F—Future acts: if procedures indicate absence of native title**

**24FA Consequences if section 24FA protection applies**

- (1) If an area is subject to section 24FA protection (see sections 24FB, 24FC and 24FD) at a particular time:
- (a) any future act by any person in relation to the area that is done at that time is valid; and
  - (b) if such an act extinguishes native title to any extent—the native title holders are entitled to compensation, in accordance with Division 5, for the act in so far as it has that effect; and
  - (c) if the act mentioned in paragraph (a) does not so extinguish native title and the native title holders would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that
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subsection—they are entitled, in accordance with Division 5, to compensation for the act.

*Who pays compensation*

- (2) The native title holders may recover the compensation from:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

**24FB When section 24FA protection arises—government applications**

An area is *subject to section 24FA protection* at a particular time if:

- (a) before that time, a non-claimant application (see section 253), or a corresponding application for an approved determination of native title under a law of a State or Territory, has been made by or on behalf of a Minister, the Crown in any capacity, or a statutory authority; and
- (b) the area is the whole of the area covered by the application and the application has not been amended as to area; and
- (c) the period specified in the notice given under section 66, or under a corresponding provision of the law of the State or Territory, has ended; and
- (d) at the end of that period, there is no relevant native title claim (see section 24FE) covering the area or a part of the area; and
- (e) the application has not been withdrawn, dismissed or otherwise finalised; and
- (f) there is no entry on the National Native Title Register, included under paragraph 193(1)(a) or (b), specifying that native title exists in relation to the area or a part of the area.

**24FC When section 24FA protection arises—non-government applications**

An area is *subject to section 24FA protection* at a particular time if:

- (a) before that time, a non-claimant application, or a corresponding application for an approved determination of native title under a law of a State or Territory, has been made; and
- (b) the application is not covered by paragraph 24FB(a); and
- (c) the area is the whole or a part of the area covered by the application; and
- (d) the period specified in the notice given under section 66, or under a corresponding provision of the law of the State or Territory, has ended; and
- (e) either:
  - (i) at the end of that period, there is no relevant native title claim (see section 24FE) covering the area; or
  - (ii) after the end of that period, but before the particular time, all entries that relate to a relevant native title claim that covered the area are removed from the Register of Native Title Claims or cease to cover the area; and
- (f) the application, in so far as it relates to that area, has not been withdrawn, dismissed or otherwise finalised; and
- (g) there is no entry on the National Native Title Register, included under paragraph 193(1)(a) or (b), specifying that native title exists in relation to the area.

**24FD When section 24FA protection arises—entry on National Native Title Register**

An area is *subject to section 24FA protection* at a particular time if it is covered by an entry on the National Native Title Register, included under paragraph 193(1)(a) or (b), specifying that no native title exists in relation to the area.

## 24FE Relevant native title claim

For the purposes of this Subdivision, there is a *relevant native title claim* covering an area at the end of the period mentioned in paragraph 24FB(c) or 24FC(d) if:

- (a) at that time, there is an entry covering that area on the Register of Native Title Claims; or
- (b) after that time, an entry covering that area is included on the Register of Native Title Claims, provided the application containing the claim was made before that time and:
  - (i) the claim is accepted by the Registrar for registration under subsection 190A(6) or is (otherwise than on appeal or review) found to satisfy conditions equivalent to those set out in sections 190B and 190C under a law of a State or Territory; or
  - (ii) the claim is accepted by the Registrar for registration as a result of an application under subsection 190D(2) and the application was made not more than 28 days after the notice under subsection 190D(1) was given; or
  - (iii) the claim is found to satisfy conditions equivalent to those set out in sections 190B and 190C under a provision of a law of a State or Territory to similar effect as section 190D, and the application under that provision was made within a time period corresponding to that set out in subparagraph (ii).

## Subdivision G—Future acts and primary production

### 24GA Primary production activity

*Primary production activity*

- (1) The expression *primary production activity* includes the following:
  - (a) cultivating land;
  - (b) maintaining, breeding or agisting animals;
  - (c) taking or catching fish or shellfish;
  - (d) forest operations (defined in section 253);

- (e) horticultural activities (see section 253 for the definition of ***horticulture***);
- (f) aquacultural activities;
- (g) leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.

*Mining excluded*

- (2) The expression ***primary production activity*** does not include mining.

**24GB Acts permitting primary production on non-exclusive agricultural and pastoral leases**

- (1) This section applies to a future act if:
    - (a) a non-exclusive agricultural lease (see section 247B) or non-exclusive pastoral lease (see section 248B) was granted on or before 23 December 1996; and
    - (b) the grant was valid (including because of Division 2 or 2A); and
- Note: As at the commencement of this section, grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.
- (c) the future act takes place after 23 December 1996; and
  - (d) the future act permits or requires the carrying on of any of the following while the lease (including as renewed on one or more occasions) is in force:
    - (i) a primary production activity (see section 24GA) on the area covered by the lease; or
    - (ii) another activity, on the area covered by the lease, that is associated with or incidental to a primary production activity covered by subparagraph (i), provided that, when the other activity is being carried on, the majority of the area covered by the lease is used for primary production activities; and
  - (e) the future act could have been validly done or authorised at some time before 31 March 1998, if any native title in relation to the area covered by the lease had not then existed.

Note: For the renewal, re-grant, re-making or extension of certain acts covered by this section, see Subdivision I.

*Farm tourism included*

- (2) This section applies to a future act that:
- (a) takes place after 23 December 1996; and
  - (b) permits or requires a farm tourism activity in the area covered by a lease meeting the requirements of paragraphs (1)(a) and (b) while the lease is in force (including as renewed on one or more occasions).

*Exception to subsection (2)*

- (3) However, this section does not apply to a future act permitting or requiring farm tourism if the act permits or requires tourism that involves observing activities or cultural works of Aboriginal peoples or Torres Strait Islanders.

*Certain acts not covered*

- (4) This section does not apply to a future act if:
- (a) where the lease covered by paragraph (1)(a) is a non-exclusive pastoral lease covering an area greater than 5,000 hectares—the act has the effect that the majority of the area covered by the lease is required or permitted to be used for purposes other than pastoral purposes; or
  - (b) in any case—the act converts a lease covered by paragraph (1)(a) into a lease conferring a right of exclusive possession, or into a freehold estate, over any of the land or waters covered by the lease.

Note: If such an act is done in exercise of a legally conferred right, it could be covered by section 24ID. A lease conferring such rights or a freehold estate could be granted after a compulsory acquisition of native title under section 24MD or under certain indigenous land use agreements.

*Validation of act*

- (5) If this section applies to a future act, the act is valid.
-

*Non-extinguishment principle*

- (6) The non-extinguishment principle applies to the act.

*Compensation*

- (7) The native title holders concerned are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (8) The compensation is payable by:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

*Notification*

- (9) If:
- (a) the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is forest operations, a horticultural activity or an aquacultural activity; or
  - (b) the lease mentioned in paragraph (1)(a) is a non-exclusive pastoral lease and the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is an agricultural activity;
- before the future act is done, the person proposing to do the act must:
- (c) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the non-exclusive agricultural lease or non-exclusive pastoral lease that the act, or acts of that class, are to be done in relation to the particular land or waters; and
  - (d) give them an opportunity to comment on the act or class of acts.

**24GC Primary production etc. activities on non-exclusive agricultural or pastoral leases**

- (1) This section applies to an activity if:
- (a) a non-exclusive agricultural lease (see section 247B) or non-exclusive pastoral lease (see section 248B) was granted on or before 23 December 1996; and
  - (b) the grant was valid (including because of Division 2 or 2A); and

Note: As at the commencement of this section, grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.

- (c) the activity is the carrying on, after 23 December 1996 and while the lease (including as renewed on one or more occasions) is in force, of any of the following:
  - (i) a primary production activity on the area covered by the lease; or
  - (ii) another activity, on the area covered by the lease, that is associated with or incidental to a primary production activity covered by subparagraph (i), provided that, when the other activity is being carried on, the majority of the area covered by the lease is used for primary production activities; and
- (d) at some time before 31 March 1998, the activity could have been done under any legislation then in force, or under any lease, licence, permit or authority that could have then been issued, in relation to the area covered by the lease, if any native title in relation to the area covered by the lease had not then existed.

*Activities prevail over native title etc.*

- (2) To avoid doubt:
- (a) the doing of any activity mentioned in paragraph (1)(c) prevails over any native title rights and interests and any exercise of those rights and interests, but does not extinguish them; and



- (b) the existence and exercise of native title rights and interests do not prevent the carrying on of any such activity.

Note: This subsection is not intended to imply that the person carrying on the activity is not subject to the laws of a State or Territory.

*Compensation*

- (3) Native title holders are not entitled to compensation under this Act for the carrying on of the activity.

Note: Any compensation to which the native title holders may be entitled under this Act for the grant of the lease, or other authority for the doing of the activity, may take into account the doing of the activity.

**24GD Acts permitting off-farm activities that are directly connected to primary production activities**

- (1) This section applies to a future act if:

- (a) a freehold estate, an agricultural lease (see section 247) or a pastoral lease (see section 248) was granted on or before 23 December 1996; and
- (b) the grant was valid (including because of Division 2 or 2A); and

Note: As at the commencement of this section, grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.

- (c) the future act takes place after 23 December 1996; and
- (d) the future act is not:
- (i) the grant of a lease; or
- (ii) any act that confers a right of exclusive possession over land; and
- (e) the future act permits or requires the carrying on of grazing, or an activity consisting of or relating to gaining access to or taking water, that:
- (i) takes place while the freehold estate exists or the agricultural lease or pastoral lease (including as renewed on one or more occasions) is in force; and

- (ii) is directly connected to the carrying on of any primary production activity on the area covered by the freehold estate or the agricultural lease or pastoral lease; and
  - (iii) takes place in an area adjoining or near the area covered by the freehold estate or the agricultural lease or pastoral lease; and
  - (iv) does not prevent native title holders in relation to land or waters in the area in which the activity will be carried on from having reasonable access to the area; and
- (f) if:
- (i) before the future act is done, an approved determination of native title is made in relation to the land or waters on which any activity permitted or required by the future act takes place; and
  - (ii) the determination is that native title exists in relation to the land or waters and that the native title rights and interests confer exclusive possession of the land or waters on the native title holders;
- the doing of the activity is not inconsistent with the exercise of the native title rights and interests.

Example 1: An example of an act covered by this section is the conferral of rights to graze cattle in an area adjoining that covered by an agricultural lease or pastoral lease, if the cattle are also grazed in the area covered by the lease.

Example 2: Another example is the conferral of rights to take water from an area near that covered by an agricultural lease or pastoral lease, if the water is for use in carrying on primary production activities in the area covered by the lease.

Note: For the renewal, re-grant, re-making or extension of certain acts covered by this section, see Subdivision I.

*Validation of act*

- (2) If this section applies to a future act, the act is valid.

*Non-extinguishment principle*

- (3) The non-extinguishment principle applies to the act.

*Compensation*

- (4) The native title holders concerned are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (5) The compensation is payable by:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

*Notification*

- (6) Before the act is done, the person proposing to do the act must:
- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act that the act, or acts of that class, are to be done in relation to the land or waters concerned; and
  - (b) give them an opportunity to comment on the act or class of acts.

**24GE Granting rights to third parties etc. on non-exclusive agricultural or pastoral leases**

- (1) This section applies to a future act if:
- (a) a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B) was granted on or before 23 December 1996; and
  - (b) the grant was valid (including because of Division 2 or 2A); and

Note: As at the commencement of this section, grants before 1 January 1994 that were invalid because of native title have been validated by or under Division 2.

- (c) the future act takes place after 23 December 1996 and while the lease (including as renewed on one or more occasions) is in force; and
- (d) the future act is not the grant of a lease; and
- (e) the future act confers on any person (including the lessee) a right:
  - (i) to cut and remove timber; or
  - (ii) to extract, obtain or remove sand, gravel, rocks, soil or other resources (except so far as doing so constitutes mining);from the area covered by the non-exclusive agricultural lease or non-exclusive pastoral lease; and
- (f) before the future act is done, the person proposing to do the act:
  - (i) has notified, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the non-exclusive agricultural lease or non-exclusive pastoral lease that the act, or acts of that class, are to be done in relation to the particular land or waters; and
  - (ii) has given them an opportunity to comment on the act or class of acts.

Note: For the renewal, re-grant, re-making or extension of certain acts covered by this section, see Subdivision I.

*Validation of act*

- (2) The future act is valid.

*Non-extinguishment principle*

- (3) The non-extinguishment principle applies to the act.

*Compensation*

- (4) The native title holders concerned are entitled to compensation for the act in accordance with Division 5.
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*Who pays compensation*

- (5) The compensation is payable by:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

**Subdivision H—Management of water and airspace**

**24HA Management or regulation of water and airspace**

*Legislative acts*

- (1) This section applies to a future act consisting of the making, amendment or repeal of legislation in relation to the management or regulation of:
- (a) surface and subterranean water; or
  - (b) living aquatic resources; or
  - (c) airspace.

In this subsection, **water** means water in all its forms and **management or regulation** of water includes granting access to water, or taking water.

*Leases, licences etc.*

- (2) This section also applies to a future act consisting of the grant of a lease, licence, permit or authority under legislation that:
- (a) is valid (including because of this Act); and
  - (b) relates to the management or regulation of:
    - (i) surface and subterranean water; or
    - (ii) living aquatic resources; or
    - (iii) airspace.

In this paragraph, **water** means water in all its forms and **management or regulation** of water includes granting access to water, or taking water.

*Validity of act*

- (3) The act is valid.

*Non-extinguishment principle*

- (4) The non-extinguishment principle applies to the act.

*Compensation*

- (5) The native title holders concerned are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (6) The compensation is payable by:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

*Notification*

- (7) Before an act covered by subsection (2) is done, the person proposing to do the act must:
- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act, or acts of that class, that the act, or acts of that class, are to be done; and
  - (b) give them an opportunity to comment on the act or class of acts.

**Subdivision I—Renewals and extensions etc.**

**24IA Future acts to which this section applies**

This Subdivision applies to a future act if the act is:

- (a) a pre-existing right-based act (see section 24IB); or
-

- (b) a permissible lease etc. renewal (see section 24IC).

### **24IB Pre-existing right-based acts**

A future act is a *pre-existing right-based act* if it takes place:

- (a) in exercise of a legally enforceable right created by any act done on or before 23 December 1996 that is valid (including because of Division 2 or 2A); or
- (b) in good faith in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith on or before 23 December 1996, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made.

### **24IC Future acts that are permissible lease etc. renewals**

(1) A future act is a *permissible lease etc. renewal* if:

- (a) it is:
  - (i) the renewal; or
  - (ii) the re-grant or re-making; or
  - (iii) the extension of the term;  
of a lease, licence, permit or authority (the *original lease etc.*) that is valid (including because of Division 2 or 2A); and
- (b) any of the following subparagraphs applies:
  - (i) the original lease etc. was granted on or before 23 December 1996;
  - (ii) the grant of the original lease etc. was a permissible lease etc. renewal or a pre-existing right-based act;
  - (iii) the original lease etc. was created by an act covered by section 24GB, 24GD, 24GE or 24HA (which deal with certain acts in relation to primary production activities or involving management or regulation of water and airspace); and
- (c) the future act does not:
  - (i) confer a right of exclusive possession over any of the land or waters covered by the original lease etc.; or

- (ii) otherwise create a larger proprietary interest in the land or waters than was created by the original lease etc.; or
- (iii) create a proprietary interest over any of the land or waters covered by the original lease etc., where the original lease etc. created only a non-proprietary interest; or
- (iv) if the original lease etc. was a non-exclusive pastoral lease covering an area greater than 5,000 hectares and the majority of the area covered was not required or permitted to be used for purposes other than pastoral purposes—have the effect that the majority of the area covered by the renewed, re-granted, re-made or extended lease is required or permitted to be used for purposes other than pastoral purposes; and
- (d) if the original lease etc. contains, or is subject to, a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders—the renewed, re-granted, re-made or extended lease, licence, permit or authority contains, or is subject to, the same reservation or condition; and
- (e) if the original lease etc. did not permit mining—the renewed, re-granted, re-made or extended lease, licence, permit or authority does not permit mining.

*Replacement by 2 or more leases etc.*

- (2) If 2 or more leases, licences, permits or authorities are granted in place of, respectively, a single lease, licence, permit or authority, then, for the purposes of subsection (1), each of the 2 or more grants is taken to be a **renewal** of the single lease, licence, permit or authority.

*Features that do not prevent a lease etc. from being a renewal*

- (3) The features listed in subsection (4) do not prevent:
    - (a) an act from being the renewal, re-grant, re-making, or extension of the term, of a lease, licence, permit or authority (the **old authority**) for the purposes of subsection (1) (the renewed, re-granted, re-made or extended lease, licence, permit or authority being the **new authority**); or
-



- (b) 2 or more leases, licences, permits or authorities (each of which is a *new authority*) from being granted *in place of* a single lease, licence, permit or authority (the *old authority*) for the purposes of subsection (2).

*Features*

- (4) The features are as follows:
  - (a) the new authority, or the new authorities together, cover a smaller area than the old authority;
  - (b) the term of the new authority, or of any of the new authorities, is longer than the term of the old authority;
  - (c) the new authority or any of the new authorities is a perpetual lease (other than a mining lease);
  - (d) if the new authority or any of the new authorities is a non-exclusive agricultural lease or a non-exclusive pastoral lease—the new authority permits or requires the carrying on of an activity that the old authority did not permit or require and that consists of:
    - (i) a primary production activity (see section 24GA); or
    - (ii) another activity, on the area covered by the new authority or of any of the new authorities, that is associated with or incidental to a primary production activity, provided that, when the other activity is being carried on, the use of the majority of the area covered by the new authority, or the new authorities together, will be for primary production activities.

**24ID Effect of Subdivision applying to an act**

- (1) If this Subdivision applies to a future act:
  - (a) subject to Subdivision P (which deals with the right to negotiate), the act is valid; and

Note: Subdivision P applies only to certain renewals of mining leases etc.: see subsections 26(1A) and 26D(1).

- (b) if the act consists of the grant of a freehold estate, or the conferral of a right of exclusive possession, over particular

land or waters—the act extinguishes any native title in relation to the land or waters; and

Note: The only acts to which this paragraph applies are certain acts covered by section 24IB.

- (c) in any other case—the non-extinguishment principle applies to the act; and
- (d) in any case—the native title holders are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (2) The compensation is payable by:
  - (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

*Notification*

- (3) If paragraph (1)(b) applied in relation to the future act, then, before the act is done, the person proposing to do the act must:
  - (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act that the act, or acts of that class, are to be done in relation to the land or waters concerned; and
  - (b) give them an opportunity to comment on the act or class of acts.

*Other procedural rights*

- (4) If:
  - (a) the act is a permissible lease etc. renewal of a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B); and
  - (b) the act is covered by paragraph 24IC(4)(b) or (c);

subsection 24MD(6B) applies to the act as if the act were a compulsory acquisition, of the kind mentioned in that subsection, of native title rights and interests in relation to the land or waters that will be affected by the act, done by:

- (c) if the act is attributable to the Commonwealth—the Commonwealth; or
- (d) if the act is attributable to a State or Territory—that State or Territory.

## **Subdivision J—Reservations, leases etc.**

### **24JA Acts covered by this Subdivision**

*Reservations etc.*

- (1) This Subdivision applies to a future act (the *later act*) if:
  - (a) an act (the *earlier act*) took place before the later act and on or before 23 December 1996; and
  - (b) the earlier act was valid (including because of Division 2 or 2A); and
  - (c) the earlier act:
    - (i) was done by the Crown in right of the Commonwealth, a State or Territory; or
    - (ii) consisted of the making, amendment or repeal of legislation by the Commonwealth, a State or Territory; and
  - (d) the earlier act contained, made or conferred a reservation, proclamation, dedication, condition, permission or authority (the *reservation*) under which the whole or part of any land or waters was to be used for a particular purpose; and
  - (e) the later act is done in good faith:
    - (i) under or in accordance with the reservation; or
    - (ii) in the area covered by the reservation, so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the reservation would have had.

Example 1: A future act consisting of the creation of a national park management plan might be covered by subparagraph (e)(i), if the land concerned was reserved for the establishment of the national park before 23 December 1996.

Example 2: A future act consisting of the grant of a forestry licence might be covered by that subparagraph, if the grant is done under or in accordance with a dedication for forestry purposes made before 23 December 1996.

Example 3: Subparagraph (e)(ii) might apply if particular land was reserved as a hospital site before 23 December 1996, and instead a school is later built on the land.

### *Leases*

- (2) This Subdivision also applies to a future act (the *later act*) if:
- (a) an act (the *earlier act*) took place before the later act and on or before 23 December 1996; and
  - (b) the earlier act was valid (including because of Division 2 or 2A); and
  - (c) the earlier act was done by the Crown in right of the Commonwealth, a State or a Territory; and
  - (d) the earlier act consisted of the grant of a lease to a statutory authority of the Commonwealth, the State or the Territory, where:
    - (i) under the lease, the whole or part of any land or waters covered by the lease was to be used for a particular purpose; or
    - (ii) there is written evidence, created at any time on or before 23 December 1996 by the Commonwealth, the State or the Territory, that the whole or part of any land or waters covered by the lease was to be used for a particular purpose; and
  - (e) the later act is done in good faith and consists of the use, by the statutory authority or any person, of the land or waters for the particular purpose.

## **24JB Treatment of acts covered by section 24JA**

### *Validation of act*

- (1) If this Subdivision applies to a future act, the act is valid.

### *Extinguishment consequences—public works*

- (2) If the act consists of the construction or establishment of a public work:
  - (a) the act extinguishes any native title in relation to the land or waters on which the public work (on completion of its construction or establishment) is situated; and
  - (b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

### *Extinguishment consequences—not public works*

- (3) If the act does not consist of the construction or establishment of a public work, the non-extinguishment principle applies to the act.

### *Compensation*

- (4) The native title holders are entitled to compensation for the act in accordance with Division 5.

### *Who pays compensation*

- (5) The compensation is payable by:
  - (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

### *Notification of public works*

- (6) If the act consists of the construction or establishment of a public work, then, before the act is done, the person proposing to do the act must:

- (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the reservation or lease that the act, or acts of that class, are to be done in relation to the land or waters; and
- (b) give them an opportunity to comment on the act or class of acts.

*Notification of national, State and Territory park management plans*

- (7) If the act consists of the creation of a plan for the management of a national, State or Territory park intended to preserve the natural environment of an area, then, before the act is done, the person proposing to do the act must:
  - (a) notify, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the plan that the act is to be done in relation to the land or waters; and
  - (b) give them an opportunity to comment on the act.

**Subdivision K—Facilities for services to the public**

**24KA Facilities for services to the public**

*Coverage of Subdivision*

- (1) This Subdivision applies to a future act if:
  - (a) it relates, to any extent, to an onshore place; and
  - (b) it either:
    - (i) permits or requires the construction, operation, use, maintenance or repair, by or on behalf of any person, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; or

- (ii) consists of the construction, operation, use, maintenance or repair, by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; and
- (c) it does not prevent native title holders in relation to land or waters on which the thing is located or to be located from having reasonable access to such land or waters in the vicinity of the thing, except:
  - (i) while the thing is being constructed; or
  - (ii) for reasons of health and safety; and
- (d) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:
  - (i) in the area in which the act is done; and
  - (ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

*Compulsory acquisitions not covered*

- (1A) To avoid doubt, this Subdivision does not apply to a future act that is the compulsory acquisition of the whole or part of any native title rights and interests.

*Facilities etc.*

- (2) For the purposes of paragraph (1)(b), the things are as follows:
- (a) a road, railway, bridge or other transport facility (other than an airport or port);
  - (b) a jetty or wharf;
  - (c) a navigation marker or other navigational facility;
  - (d) an electricity transmission or distribution facility;
  - (e) lighting of streets or other public places;
  - (f) a gas transmission or distribution facility;
  - (g) a well, or a bore, for obtaining water;
  - (h) a pipeline or other water supply or reticulation facility;

- (i) a drainage facility, or a levee or other device for management of water flows;
- (j) an irrigation channel or other irrigation facility;
- (k) a sewerage facility, other than a treatment facility;
- (l) a cable, antenna, tower or other communication facility;
- (m) any other thing that is similar to any one or more of the things mentioned in the paragraphs above.

*Validation of act*

- (3) If this Subdivision applies to a future act, the act is valid.

*Non-extinguishment principle*

- (4) The non-extinguishment principle applies to the act.

*Compensation*

- (5) If any native title holders would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that section, the native title holders are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (6) The native title holders may recover the compensation from:
  - (a) if the act is attributable to the Commonwealth:
    - (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or
    - (ii) if not—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory:
    - (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or
    - (ii) if not—the Crown in right of the State or Territory.



*Procedural rights*

- (7) The native title holders, and any registered native title claimants in relation to land or waters in the area concerned, have the same procedural rights as they would have in relation to the act on the assumption that they instead held:
- (a) to the extent (if any) that the land concerned is covered by a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B)—a lease of that kind; or
  - (b) to the extent (if any) that paragraph (a) does not apply—ordinary title;
- covering any land concerned or covering the land adjoining, or surrounding, any waters concerned.

*Native title rights and interests to be considered*

- (7A) If, in the exercise of those procedural rights, the native title holders are entitled to have matters considered, those matters include their native title rights and interests.

*Satisfying the right to be notified*

- (8) If:
- (a) because of subsection (7) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give the required notification is by notifying, in the way determined in writing by the Commonwealth Minister for the purposes of this subsection the following that the act is to take place:
    - (c) any representative Aboriginal/Torres Islander bodies for the area concerned;
    - (d) any registered native title claimants in relation to land or waters in the area concerned.

*Satisfying other procedural rights*

- (9) If:
- (a) because of subsection (7) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give effect to the requirement is:
    - (c) by doing the thing in relation to any registered native title claimant in relation to land or waters in the area concerned; or
    - (d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for the area concerned have an opportunity to comment on the doing of the act.

**Subdivision L—Low impact future acts**

**24LA Low impact future acts**

- (1) This Subdivision applies to a future act in relation to particular land or waters if:
- (a) the act takes place before, and does not continue after, an approved determination of native title is made in relation to the land or waters, if the determination is that native title exists; and
  - (b) the act does not consist of, authorise or otherwise involve:
    - (i) the grant of a freehold estate in any of the land or waters; or
    - (ii) the grant of a lease over any of the land or waters; or
    - (iii) the conferral of a right of exclusive possession over any of the land or waters; or
    - (iv) the excavation or clearing of any of the land or waters; or
    - (v) mining (other than fossicking by using hand-held implements); or

- (vi) the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or
- (vii) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.

*Exclusion for public health or safety etc.*

- (2) Subparagraph (1)(b)(iv) does not apply to:
  - (a) excavation or clearing that is reasonably necessary for the protection of public health or public safety; or
  - (b) tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities.

*Validation of act*

- (3) If this Subdivision applies to a future act, the act is valid.

*Non-extinguishment*

- (4) The non-extinguishment principle applies to the act.

## **Subdivision M—Acts passing the freehold test**

### **24MA Legislative acts**

This Subdivision applies to a future act if it is the making, amendment or repeal of legislation and:

- (a) the act applies in the same way to the native title holders concerned as it would if they instead held ordinary title to the land (or to the land adjoining, or surrounding, the waters) affected; or
- (b) the effect of the act on the native title in relation to the land or the waters is not such as to cause the native title holders to be in a more disadvantageous position at law than they would be if they instead held ordinary title to the land (or to the land adjoining, or surrounding, the waters).

Example 1: An example of a future act covered by paragraph (a) is the making of legislation that permits mining on land in respect of which there is either native title or ordinary title.

Example 2: An example of a future act covered by paragraph (b) is the amendment of legislation that permits mining on land that is subject to ordinary title so that it will also permit mining, on the same terms, on land in relation to which native title exists.

## **24MB Non-legislative acts**

### *Freehold test*

- (1) This Subdivision applies to a future act if:
- (a) it is an act other than the making, amendment or repeal of legislation; and
  - (b) either:
    - (i) the act could be done in relation to the land concerned if the native title holders concerned instead held ordinary title to it; or
    - (ii) the act could be done in relation to the waters concerned if the native title holders concerned held ordinary title to the land adjoining, or surrounding, the waters; and
  - (c) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:
    - (i) in the area to which the act relates; and
    - (ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Example: An example of a future act covered by this subsection is the grant of a mining lease over land in relation to which there is native title when a mining lease would also be able to be granted over the land if the native title holders instead held ordinary title to it.

### *Opal or gem mining*

- (2) This Subdivision also applies to a future act if:
- (a) it is an act other than the making, amendment or repeal of legislation; and
  - (b) it is not covered by subsection (1); and

- (c) it consists of the creation or variation of a right to mine for opals or gems; and
- (d) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:
  - (i) in the area to which the act relates; and
  - (ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

#### **24MC Only onshore places covered**

However, this Subdivision only applies to a future act to the extent that it relates to an onshore place. A reference to an act to which this Subdivision applies is to be read as referring to the act to that extent only.

#### **24MD Treatment of acts that pass the freehold test**

##### *Validation of act*

- (1) If this Subdivision applies to a future act, then, subject to Subdivision P (which deals with the right to negotiate), the act is valid.

##### *Extinguishment of native title by compulsory acquisition*

- (2) If:
  - (a) the act is the compulsory acquisition of the whole or part of any native title rights and interests under a law of the Commonwealth, a State or a Territory that permits both:
    - (i) the compulsory acquisition by the Commonwealth, the State or the Territory of native title rights and interests; and
    - (ii) the compulsory acquisition by the Commonwealth, the State or the Territory of non-native title rights and interests in relation to land or waters; and
  - (b) the whole, or the equivalent part, of all non-native title rights and interests, in relation to the land or waters to which the

native title rights and interests that are compulsorily acquired relate, is also acquired (whether compulsorily or by surrender, cancellation or resumption or otherwise) in connection with the compulsory acquisition of the native title rights and interests; and

- (ba) the practices and procedures adopted in acquiring the native title rights and interests are not such as to cause the native title holders any greater disadvantage than is caused to the holders of non-native title rights and interests when their rights and interests are acquired;

then:

- (c) the compulsory acquisition extinguishes the whole or the part of the native title rights and interests; and
- (d) if compensation on just terms is provided under a law of the Commonwealth, a State or a Territory to the native title holders for the compulsory acquisition, and they request that the whole or part of any such compensation should be in a form other than money, the person providing the compensation must:
- (i) consider the request; and
  - (ii) negotiate in good faith in relation to the request; and
- (e) if compensation on just terms is not provided under a law of the Commonwealth, a State or Territory to the native title holders for the compulsory acquisition, they are entitled to compensation for the acquisition in accordance with Division 5.

Note 1: Subdivision P (which deals with the right to negotiate) applies to some acquisitions.

Note 2: This subsection only deals with the case where native title rights and interests are compulsorily acquired. It is also possible for native title rights and interests to be acquired voluntarily by means of an indigenous land use agreement or an agreement covered by subsection (2A). In such cases, non-native title rights and interests could be acquired either compulsorily or by some other means (e.g. voluntarily).

*Extinguishment of native title by surrender in course of right to negotiate process*

(2A) If:

- (a) notice of a proposed compulsory acquisition of native title rights and interests is given in accordance with section 29 or with an equivalent alternative provision applicable under section 43 or 43A; and
- (b) an agreement arose out of negotiations in relation to the proposed compulsory acquisition of the native title rights and interests; and
- (c) the agreement includes a statement to the effect that an act consisting of the surrender of the whole or part of the native title rights and interests is intended to extinguish the whole or the part of the native title rights and interests;

then:

- (d) the surrender extinguishes the whole or the part of the native title rights and interests; and
- (e) no native title holder who is entitled to any benefit provided under the agreement is entitled to any compensation for the act under this Act, other than compensation provided for in the agreement; and
- (f) any other native title holder is entitled to compensation for the act in accordance with Division 5.

*Non-extinguishment and compensation*

- (3) In the case of any future act to which this Subdivision applies that is not covered by subsection (2) or (2A):
    - (a) the non-extinguishment principle applies to the act; and
    - (b) if the following conditions are satisfied:
      - (i) the similar compensable interest test is satisfied in relation to the act; and
      - (ii) the law mentioned in section 240 (which defines *similar compensable interest test*) does not provide for compensation to the native title holders for the act;the native title holders are entitled to compensation for the act in accordance with Division 5.
-

*Who pays compensation*

- (4) The native title holders may recover the compensation from:
- (a) if the act is attributable to the Commonwealth:
    - (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or
    - (ii) if not—the Crown in right of the Commonwealth; or
  - (b) if the act is attributable to a State or Territory:
    - (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or
    - (ii) if not—the Crown in right of the State or Territory.

*Exception for certain lessees*

- (5) If:
- (a) the act is the compulsory acquisition of the whole or part of any native title rights and interests; and
  - (b) the land or waters concerned are to any extent the subject of a non-exclusive agricultural lease or a non-exclusive pastoral lease;
- then, despite subsection (4):
- (c) the native title holders are not entitled to recover the compensation from the lessee; and
  - (d) if the act is attributable to the Commonwealth—the native title holders may recover the compensation from the Crown in right of the Commonwealth; and
  - (e) if the act is attributable to a State or Territory—the native title holders may recover the compensation from the Crown in right of the State or Territory.

*Consequences of certain acts*

- (6) In the case of any future act to which this Subdivision applies, other than:
- (a) an act to which Subdivision P (which deals with the right to negotiate) applies; or
-



- (b) an act determined under section 26A to be an approved exploration etc. act; or
- (c) an act determined under section 26B to be an approved gold or tin mining act; or
- (d) an act covered by section 26C (which deals with opal or gem mining);

the consequences in subsections (6A) and (6B) apply.

*Procedural rights*

- (6A) The native title holders, and any registered native title claimants in relation to the land or waters concerned, have the same procedural rights as they would have in relation to the act on the assumption that they instead held ordinary title to any land concerned and to the land adjoining, or surrounding, any waters concerned.

*Other consequences*

- (6B) If the act is:
  - (a) the compulsory acquisition of native title rights and interests for the purpose of conferring rights or interests in relation to the land or waters concerned on persons other than the Commonwealth, the State or the Territory to which the act is attributable; or
  - (b) the creation or variation of a right to mine for the sole purpose of the construction of an infrastructure facility (see section 253) associated with mining;

Note: The acts covered by paragraphs (a) and (b) are not covered by Subdivision P: see subsection (6) and paragraph 26(1)(c).

the following consequences also apply:

- (c) the Commonwealth, the State or the Territory to which the act is attributable must notify each of the following:
  - (i) any registered native title claimant (a *claimant*) in relation to the land or waters; and
  - (ii) any native title body corporate (a *body corporate*), in relation to the land or waters; and
  - (iii) any representative Aboriginal/Torres Strait Islander body in relation to the land or waters;

that the act is to be done; and

(d) any claimant or body corporate may object, within 2 months after the notification, to the doing of the act so far as it affects their registered native title rights and interests; and

(e) either:

(i) in a paragraph (a) case—the Commonwealth, the State or the Territory; or

(ii) in a paragraph (b) case—the person who requested or applied for the doing of the act;

must consult any claimants, and bodies corporate, who object, about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters, and, if relevant, any access to the land or waters or the way in which any thing authorised by the act might be done; and

(f) if any claimant or body corporate objects, as mentioned in paragraph (d), to the doing of the act and so requests, the Commonwealth, the State or the Territory must ensure that the objection is heard by an independent person or body; and

(g) if the independent person or body hearing any objection as mentioned in paragraph (f) makes a determination upholding the objection, or that contains conditions about the doing of the act that relate to registered native title rights and interests, the determination must be complied with unless:

(i) the Minister of the Commonwealth, the State or the Territory responsible for indigenous affairs is consulted; and

(ii) the consultation is taken into account; and

(iii) it is in the interests of the Commonwealth, the State or the Territory not to comply with the determination.

*Meaning of **determination***

(6C) In paragraph (6B)(g):

**determination** includes recommendation.

**in the interests of** the Commonwealth, the State or the Territory includes:

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

*Satisfying the right to be notified*

- (7) If:
- (a) because of subsection (6A) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give the required notification is by notifying, in the way determined in writing by the Commonwealth Minister for the purposes of this subsection, the following that the act is to take place:
    - (c) any representative Aboriginal/Torres Strait Islander bodies for the area concerned;
    - (d) any registered native title claimants in relation to land or waters in the area concerned.

*Satisfying other procedural rights*

- (8) If:
- (a) because of subsection (6A) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give effect to the requirement is:
    - (c) by doing the thing in relation to any registered native title claimant in relation to land or waters in the area concerned; or
    - (d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait

Islander bodies for the area concerned have an opportunity to comment on the doing of the act.

## **Subdivision N—Acts affecting offshore places**

### **24NA Acts affecting offshore places**

#### *Coverage of Subdivision*

- (1) This Subdivision applies to a future act to the extent that it relates to an offshore place. A reference to a future act to which this Subdivision applies is to be read as referring to the act to that extent only.

#### *Validation of act*

- (2) If this Subdivision applies to a future act, the act is valid.

#### *Extinguishment of native title by compulsory acquisition*

- (3) If:
  - (a) the act is the compulsory acquisition of the whole or part of any native title rights and interests under a law of the Commonwealth, a State or a Territory that permits both:
    - (i) the compulsory acquisition by the Commonwealth, the State or the Territory of native title rights and interests; and
    - (ii) the compulsory acquisition by the Commonwealth, the State or the Territory of non-native title rights and interests in relation to land or waters; and
  - (b) the whole, or the equivalent part, of all non-native title rights and interests, in relation to the land or waters to which the native title rights and interests that are compulsorily acquired relate, is also acquired (whether compulsorily or by surrender, cancellation or resumption or otherwise) in connection with the compulsory acquisition of the native title rights and interests; and
  - (c) the practices and procedures adopted in acquiring the native title rights and interests are not such as to cause the native

title holders any greater disadvantage than is caused to the holders of non-native title rights and interests when their rights and interests are acquired;

then the compulsory acquisition extinguishes the whole or the part of the native title rights and interests.

*Non-extinguishment principle*

- (4) In the case of any other future act to which this Subdivision applies, the non-extinguishment principle applies to the act.

*Compensation where compulsory acquisition*

- (5) If this Subdivision applies to a future act consisting of the compulsory acquisition of the whole or part of any native title rights and interests:
- (a) if compensation on just terms is provided under a law of the Commonwealth, a State or a Territory to the native title holders for the acquisition, and they request that the whole or part of any such compensation should be in a form other than money, the person providing the compensation must:
    - (i) consider the request; and
    - (ii) negotiate in good faith in relation to the request; and
  - (b) if compensation on just terms is not provided under a law of the Commonwealth, a State or Territory to the native title holders for the acquisition, they are entitled to compensation for the acquisition in accordance with Division 5.

*Compensation for other acts*

- (6) In the case of any other future act to which this Subdivision applies, the native title holders are entitled to compensation for the act in accordance with Division 5.

*Who pays compensation*

- (7) The native title holders may recover the compensation from:
  - (a) if the act is attributable to the Commonwealth:

- (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or
- (ii) if not—the Crown in right of the Commonwealth; or
- (b) if the act is attributable to a State or Territory:
  - (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or
  - (ii) if not—the Crown in right of the State or Territory.

*Procedural rights*

- (8) In the case of any future act to which this Subdivision applies, the native title holders, and any registered native title claimants in relation to land or waters in the area concerned, have the same procedural rights as they would have in relation to the act on the assumption that they instead held any corresponding rights and interests in relation to the offshore place that are not native title rights and interests.

*Satisfying the right to be notified*

- (9) If:
  - (a) because of subsection (8) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give the required notification is by notifying, in the way determined in writing by the Commonwealth Minister for the purposes of this subsection, the following that the act is to take place:
    - (c) any representative Aboriginal/Torres Strait Islander bodies for the area concerned;
    - (d) any registered native title claimants in relation to land or waters in the area concerned.

*Satisfying other procedural rights*

- (10) If:
- (a) because of subsection (8) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and
  - (b) there has been no approved determination of the native title; then one way in which the person may give effect to the requirement is:
    - (c) by doing the thing in relation to any registered native title claimant in relation to land or waters in the area concerned; or
    - (d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for the area concerned have an opportunity to comment on the doing of the act.

**Subdivision O—Future acts invalid unless otherwise provided**

**24OA Future acts invalid unless otherwise provided**

Unless a provision of this Act provides otherwise, a future act is invalid to the extent that it affects native title.

**Subdivision P—Right to negotiate**

**25 Overview of Subdivision**

- (1) In summary, this Subdivision applies to certain future acts done by the Commonwealth, a State or a Territory that are of any of the following kinds:
- (aa) certain acts covered by section 24IC (which deals with permissible lease etc. renewals);
  - (a) certain conferrals of mining rights;
  - (b) certain compulsory acquisitions of native title rights and interests;
  - (c) other acts approved by the Commonwealth Minister.

- (2) Before the future act is done, the parties must negotiate with a view to reaching an agreement about the act.
- (3) If they do not reach agreement, an arbitral body, or a Minister, will make a determination about the act instead.
- (4) If the procedures in this Subdivision are not complied with, the act will be invalid to the extent that it affects native title.
- (5) States and Territories may make their own laws as alternatives to this Subdivision. The Commonwealth Minister must be satisfied as to certain matters before such laws can take effect.

Note: The fact that action is being taken to comply with this Subdivision does not imply that action under another law, such as processing requests or applications in respect of the act, cannot be taken at the same time.

## **26 When Subdivision applies**

*Subdivision applies to certain permissible lease etc. renewals*

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

*Subdivision also applies to certain future acts*

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

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

  - (b) the act is done by the Commonwealth, a State or a Territory (the ***Government party***); and
  - (c) subject to this section, the act is:



- (i) the creation of a right to mine, whether by the grant of a mining lease or otherwise, except one created for the sole purpose of the construction of an infrastructure facility (see section 253) associated with mining; or

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

- (ii) the variation of such a right, to extend the area to which it relates; or
- (iii) the compulsory acquisition of native title rights and interests, unless:
  - (A) the purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on the Government party and the Government party makes a statement in writing to that effect before the acquisition takes place; or
  - (B) the purpose of the acquisition is to provide an infrastructure facility; or

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

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

#### *Exclusions*

- (2) This Subdivision does not apply to the extent that the act is:
  - (a) an act covered by section 24EB (which deals with the effects of indigenous land use agreements) or by any of the sections listed in paragraphs 24AA(4)(a) to (i); or
  - (b) an act determined in writing by the Commonwealth Minister to be an approved exploration etc. act (see section 26A); or
  - (c) an act determined in writing by the Commonwealth Minister to be an approved gold or tin mining act (see section 26B); or

- (d) an act excluded by section 26C (which deals with opal or gem mining) from the coverage of this Subdivision; or
- (e) an act excluded by section 26D (which deals with renewals of valid mining leases etc.) from the coverage of this Subdivision; or
- (f) an act that is the compulsory acquisition of native title rights and interests and that relates solely to land or waters wholly within a town or city (see section 251C).

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

*Sea and intertidal zone excluded*

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

**26A Approved exploration etc. acts**

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

*First condition*

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

*Second condition*

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

*Drilling and second condition*

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

*Third condition*

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

*Fourth condition*

- (6) The fourth condition is that the Minister is satisfied that, if the determination is made:
- (a) all:
    - (i) registered native title bodies corporate; and
    - (ii) registered native title claimants; and
    - (iii) representative Aboriginal/Torres Strait Islander bodies; in relation to any of the land or waters that will be affected by the act or acts will have a right to be notified that the act or each act included in the class is to be done; and
  - (b) any such persons or bodies will have a right to be heard by an independent person or body about:
    - (i) whether the act is to be done; and
    - (ii) any matter relating to the doing of the act; unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters; and
  - (c) either:
    - (i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body
-

indicates that the person or body does not wish to be so consulted; or

- (ii) procedures will be in place under which such consultation will be required;

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

*Matters relevant to fourth condition*

(7) The matters are:

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs; and
- (b) any access to the land or waters to which the native title rights and interests relate by:
  - (i) those persons; or
  - (ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and
- (c) the way in which any other thing that:
  - (i) is authorised because of, results from, or otherwise relates to, the doing of the act; and
  - (ii) affects the native title rights and interests;is to be done.

*Revocation of determination*

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

- (a) if the act or acts are done by a State or Territory:
    - (i) advise the State Minister or the Territory Minister concerned in writing of the fact; and
-

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

## **26B Approved gold or tin mining acts**

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

### *First condition*

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

### *Second condition*

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

### *Third condition*

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

### *Fourth condition*

- (5) The fourth condition is that, by or under a law of the State or Territory, the persons given the rights to mine will be required to rehabilitate any area of land or waters, in which the mining takes place and in relation to which native title rights and interests may

exist, for the purpose of minimising the impact of the mining on the land or waters.

*Fifth condition*

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

*Sixth condition*

- (7) The sixth condition is that the Commonwealth Minister is satisfied that, if the determination is made:
- (a) all:
    - (i) registered native title bodies corporate; and
    - (ii) registered native title claimants; and
    - (iii) representative Aboriginal/Torres Strait Islander bodies; in relation to any land or waters that will be affected by the acts will have a right to be notified that each act included in the class is to be done; and
  - (b) any such persons or bodies will have a right to be heard by an independent person or body about:
    - (i) whether the act is to be done; and
    - (ii) any matter relating to the doing of the act;unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters; and
  - (c) either:
    - (i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body

indicates that the person or body does not wish to be so consulted; or

- (ii) procedures will be in place under which such consultation will be required;

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

*Matters relevant to sixth condition*

- (8) The matters are:

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs; and
- (b) any access to the land or waters to which the native title rights and interests relate by:
  - (i) those persons; or
  - (ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and
- (c) the way in which any rehabilitation or other thing that is authorised because of, results from, or otherwise relates to, the doing of the act is to be done.

*Revocation of determination*

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

in this section would still not be satisfied—in writing, revoke the determination.

## **26C Excluded opal or gem mining**

### *Mining other than exploring or prospecting*

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

### *Exploring or prospecting*

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



*Approved opal or gem mining area*

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

*First condition*

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

*Second condition*

- (4) The second condition is that the Commonwealth Minister is satisfied, having regard to:
- (a) any mining rights conferred in the past in the area; and
  - (b) any other relevant matter;
- that in the future at least some rights will be conferred to mine in the area that will:
- (c) allow:
    - (i) mining for opals or gems (other than mining consisting of exploring, prospecting or puddling) only in an area no larger than 5 hectares; or
    - (ii) mining consisting of puddling in respect of opals or gems only in an area no larger than 5 hectares; or
    - (iii) mining consisting of exploration or prospecting for opals or gems in an area no larger than 500 hectares; and
  - (d) be conferred for a period of no more than 5 years; and
  - (e) if the rights are renewed one or more times—be renewed for a period of no more than 5 years each time.

*Third condition*

- (5) The third condition is that, before making the request, the State Minister or Territory Minister:
- (a) notified the public, and notified any registered native title bodies corporate, registered native title claimants and
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representative Aboriginal/Torres Strait Islander bodies in relation to any of the area, that he or she was intending to make the request in relation to the area; and

- (b) invited submissions about the request, and in particular about the area covered by the request and about processes for the identification and protection of any area or site within that area of particular significance to native title holders in accordance with their traditional laws and customs; and
- (c) considered any such submissions that were made.

*Fourth condition*

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

*Revocation of determination*

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

## **26D Excluded mining acts: earlier valid acts**

### *Renewal of valid mining lease etc.*

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

### *Act contemplated by exploration or prospecting agreement etc.*

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

the earlier act was not invalid to any extent under section 28;  
and

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

## **27 Arbitral body**

*Arbitral bodies: recognised State/Territory bodies*

- (1) If a law of a State or Territory for which there is a recognised State/Territory body so allows, the body is the **arbitral body** under this Subdivision in relation to acts of the State or Territory to which this Subdivision applies, other than acts in relation to:
  - (a) a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
  - (b) any place outside the jurisdictional limits of the State or Territory.

*Arbitral bodies: NNTT*

- (2) If:
  - (a) a future act is done by the Commonwealth; or
  - (b) a future act is done by a State or Territory and there is no arbitral body under subsection (1) in respect of the act;the National Native Title Tribunal is the **arbitral body** in respect of the act.

*Arbitral body not to include holders of judicial offices*

- (3) If the arbitral body in respect of the act is the NNTT, for the purposes of performing the functions and exercising the powers of the arbitral body in respect of the act, the NNTT must not be constituted by:
- (a) a member who is the holder of a judicial office; or
  - (b) members one or more of whom are the holders of judicial offices.

**27A Relevant Minister**

*Commonwealth Minister*

- (1) If the arbitral body in respect of the act is the NNTT, for the purposes of this Subdivision the **relevant Minister** in respect of the act is the Commonwealth Minister.

*State or Territory Minister*

- (2) If the arbitral body in respect of the act is a recognised State/Territory body, for the purposes of this Subdivision the **relevant Minister** in respect of the act is the State Minister or the Territory Minister, as the case requires.

**27B Conditions under agreements or determinations etc.**

Conditions of the kind mentioned in paragraph 31(1)(b), 36C(4)(c), 38(1)(c) or 42(3)(b) may provide for procedures to be followed by the negotiation parties (see section 30A) for dealing with issues that may arise as a result of, or otherwise in relation to, the doing of the act.

**28 Act invalid if done before negotiation or objection/appeal etc.**

- (1) Subject to this Act, an act to which this Subdivision applies is invalid to the extent that it affects native title unless, before it is done, the requirements of one of the following paragraphs are satisfied:

- (a) by the end of the period of 4 months after the notification day for the act (see subsection 29(4)), there is no native title party in relation to any of the land or waters that will be affected by the act;
- (b) after the end of that period, but immediately before the act is done, there is no native title party in relation to any of the land or waters that will be affected by the act;
- (c) subsection 32(2) (which applies if no objection is made after the giving of a notice that the act attracts the expedited procedure) allows the act to be done;
- (d) a determination is made under subsection 32(4) that the act is an act attracting the expedited procedure;
- (e) native title parties have lodged one or more objections in relation to the act under subsection 32(3), but all such objections are withdrawn under subsection 32(6);
- (f) an agreement of the kind mentioned in paragraph 31(1)(b) is made;
- (g) a determination is made under section 36A or 38 that the act may be done, or may be done subject to conditions being complied with;
- (h) a determination that the act must not be done is declared to be overruled in accordance with section 42.

*Breach of undertaking to trustee*

- (2) Even if, before the act is done, the requirements of one of paragraphs (1)(c) to (h) are satisfied, the act is nevertheless invalid to the extent it affects native title if:
  - (a) a trustee who is holding an amount in trust under this Subdivision in respect of the act until it is dealt with in accordance with section 52 is informed by the Government party as mentioned in paragraph 52(1)(b) that it no longer proposes to do the act; and
  - (b) the Government party does the act without again complying with the requirements of this Subdivision.

## **29 Notification of parties affected**

### *Notice in accordance with section*

- (1) Before the act is done, the Government party must give notice of the act in accordance with this section.

### *Persons to be given notice*

- (2) The Government party must give notice to:
  - (a) any registered native title body corporate (a ***native title party***) in relation to any of the land or waters that will be affected by the act; and
  - (b) unless there are one or more registered native title bodies corporate in relation to all of the land or waters that will be affected by the act:
    - (i) any registered native title claimant (also a ***native title party***); and

Note: Registered native title claimants are persons whose names appear on the Register of Native Title Claims as applicants in relation to claims to hold native title: see the definition of ***registered native title claimant*** in section 253.

  - (ii) any representative Aboriginal/Torres Strait Islander body;  
in relation to any land or waters that will be affected by the act; and
  - (c) if the doing of the act has been requested or applied for by a person (for example, where it is the issue of a licence or the grant of a lease for which the person has applied)—that person (a ***grantee party***); and
  - (d) the registrar or other proper officer of the arbitral body in relation to the act.

### *Public notification*

- (3) Before the act is done, the Government party or the grantee party must also notify the public in the determined way (see section 252) of the act, unless there is a registered native title body corporate in relation to all of the land or waters that will be affected by the act.

*Notice to specify day and include prescribed documents etc.*

- (4) The notice given under subsection (2) or (3) must:
- (a) specify a day as the **notification day** for the act; and
  - (b) contain a statement to the effect that, under section 30, persons have until 3 months after the notification day to take certain steps to become native title parties in relation to the notice; and
  - (c) be accompanied by any prescribed documents and include any prescribed information.

*Each notice to specify the same day*

- (5) Each such notice in relation to the act must specify the same day as the notification day.

*Which days may be specified*

- (6) That day must be a day by which, in the Government party's opinion, it is reasonable to assume that all notices under subsections (2) and (3) in relation to the act will have been received by, or will otherwise have come to the attention of, the persons who must be notified under those subsections.

*Acts attracting the expedited procedure*

- (7) The notices under this section may include a statement that the Government party considers the act is an act attracting the expedited procedure.

*Multiple acts*

- (8) Notice to the public under subsection (3) of 2 or more acts to which this Subdivision applies may be given in the same notice.

*Project acts*

- (9) If such a notice is given and:
- (a) the notice identifies a project to be carried on in a specified area; and



- (b) the 2 or more acts constitute or form part of the project (whether or not the notice separately specifies the area that each act will affect); and
- (c) the arbitral body is the same for each of the acts; and
- (d) the notice states that the acts are project acts for the purposes of this Subdivision;

the acts are ***project acts*** for the purposes of this Subdivision.

Note: Section 42A provides that this Subdivision applies to project acts in a modified way.

*Project acts not to include statement about expedited procedure*

- (10) However, the notice must not include a statement that the Government party considers any of the project acts is an act attracting the expedited procedure.

### **30 Other native title parties etc.**

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

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

- (b) any body corporate that, 3 months after the notification day, is a registered native title body corporate in relation to any of the land or waters that will be affected by the act;
- (c) any body corporate that becomes a registered native title body corporate in relation to any of the land or waters that will be affected by the act:
  - (i) after the end of that period of 3 months; and

- (ii) as a result of a claim whose details were entered on the Register of Native Title Claims before the end of that period of 3 months.

*Ceasing to be a native title party*

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

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

*Registered native title rights and interests*

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

*Replacing a native title party*

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

### **30A Negotiation parties**

Each of the following is a **negotiation party**:

- (a) the Government party;
  - (b) any native title party;
  - (c) any grantee party.
-

### **31 Normal negotiation procedure**

- (1) Unless the notice includes a statement that the Government party considers the act attracts the expedited procedure:
  - (a) the Government party must give all native title parties an opportunity to make submissions to it, in writing or orally, regarding the act; and
  - (b) the negotiation parties must negotiate in good faith with a view to obtaining the agreement of each of the native title parties 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 parties.

Note: The native title parties are set out in paragraphs 29(2)(a) and (b) and section 30. If they include a registered native title claimant, the agreement will bind all of the persons in the native title claim group concerned: see subsection 41(2).

#### *Negotiation in good faith*

- (2) If any of the negotiation parties refuses or fails to negotiate as mentioned in paragraph (1)(b) about matters unrelated to the effect of the act on the registered native title rights and interests of the native title parties, this does not mean that the negotiation party has not negotiated in good faith for the purposes of that paragraph.

#### *Arbitral body to assist in negotiations*

- (3) If any of the negotiation parties requests the arbitral body to do so, the arbitral body must mediate among the parties to assist in obtaining their agreement.

### **32 Expedited procedure**

- (1) This section applies if the notice given under section 29 includes a statement that the Government party considers the act is an act attracting the expedited procedure (see section 237).

*Act may be done if no objection*

- (2) If the native title parties do not lodge an objection with the arbitral body in accordance with subsection (3), the Government party may do the act.

*Kinds of objection*

- (3) A native title party may, within the period of 4 months after the notification day (see subsection 29(4)), lodge an objection with the arbitral body against the inclusion of the statement.

*Objections against inclusion of statement*

- (4) If one or more native title parties object against the inclusion of the statement, the arbitral body must determine whether the act is an act attracting the expedited procedure. If the arbitral body determines that it is, the Government party may do the act.

*Act not attracting expected procedure*

- (5) If the arbitral body determines that the act is not an act attracting the expedited procedure, subsection 31(1) applies as if the notice did not include a statement that the Government party considers the act attracts the expedited procedure.

*Withdrawal of objection*

- (6) At any time before the arbitral body makes a determination under subsection (4), a native title party may withdraw his or her objection. If all such objections are withdrawn, the Government party may do the act.

*Withdrawal of statement about expedited procedure*

- (7) At any time before the arbitral body makes a determination under subsection (4), the Government party may, by giving written notice to the negotiation parties, withdraw its statement that it considers the act is an act attracting the expedited procedure. If it does so, subsection 31(1) applies as if the notice did not include such a statement.
-

### **33 Negotiations to include certain things**

*Profits, income etc.*

- (1) Without limiting the scope of any negotiations, they may, if relevant, include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to:
  - (a) the amount of profits made; or
  - (b) any income derived; or
  - (c) any things produced;by any grantee party as a result of doing anything in relation to the land or waters concerned after the act is done.

*Existing rights, interests and use*

- (2) Without limiting the scope of any negotiations, the nature and extent of the following may be taken into account:
  - (a) existing non-native title rights and interests in relation to the land or waters concerned;
  - (b) existing use of the land or waters concerned by persons other than native title parties;
  - (c) the practical effect of the exercise of those existing rights and interests, and that existing use, on the exercise of any native title rights and interests in relation to the land or waters concerned.

### **34 No agreement if determination**

An agreement of the kind mentioned in paragraph 31(1)(b) has no effect in relation to the act for the purposes of this Subdivision if it is made after the making of a determination under section 36A or 38.

### **35 Application for arbitral body determination**

- (1) Any negotiation party may apply to the arbitral body for a determination under section 38 in relation to the act if:

- (a) at least 6 months have passed since the notification day (see subsection 29(4)); and
- (b) no agreement of the kind mentioned in paragraph 31(1)(b) has been made in relation to the act.

*Withdrawal of application*

- (2) At any time before a determination in relation to the act is made under section 36A or 38, the negotiation party may withdraw the application by giving notice to the arbitral body.

*Negotiations for an agreement*

- (3) Even though the application has been made, the negotiation parties may continue to negotiate with a view to obtaining an agreement of the kind mentioned in paragraph 31(1)(b) before a determination in relation to the act is made under section 36A or 38. If they make such an agreement before such a determination is made, the application is taken to have been withdrawn.

**36 Arbitral body determination to be made as soon as practicable**

- (1) Subject to section 37, the arbitral body must take all reasonable steps to make a determination in relation to the act as soon as practicable.

*Determination not to be made where failure to negotiate in good faith*

- (2) If any negotiation party satisfies the arbitral body that any other negotiation party (other than a native title party) did not negotiate in good faith as mentioned in paragraph 31(1)(b), the arbitral body must not make the determination on the application.

Note: It would be possible for a further application to be made under section 35.

*Report to Commonwealth Minister*

- (3) If the arbitral body is the NNTT and it does not make the determination within the period of 6 months starting when the
-

application is made, it must, as soon as is reasonably practicable after the end of the period, advise the Commonwealth Minister in writing of the reason for it not doing so and include in that advice an estimate of when a determination is likely to be made.

*Relevant Minister may give arbitral body notice as to urgency*

- (4) At any time later than 4 months after a negotiation party has made an application under section 35 that has not been withdrawn, and before either:
- (a) the negotiation parties have made an agreement of the kind mentioned in paragraph 31(1)(b); or
  - (b) the arbitral body has made a determination under section 38;
- the relevant Minister may give a written notice to the arbitral body requesting the arbitral body to make such a determination within the period specified in the notice. The period must end at a time later than 6 months after the application under section 35 was made.

### **36A Ministerial determination if arbitral body determination delayed**

*Relevant Minister may make determination*

- (1) If:
- (a) the arbitral body has not made a determination in relation to the act within the period specified in a notice under subsection 36(4); and
  - (b) no agreement of the kind mentioned in paragraph 31(1)(b) has been made in relation to the act; and
  - (d) the requirements of section 36B are met;
- the relevant Minister may, subject to this section, make a determination in relation to the act.

*Requirement for State/Territory Minister to consult before making determination*

- (1A) If:

- (a) the relevant Minister is a State Minister or a Territory Minister; and
- (b) the determination is that the act may be done or may be done subject to conditions to be complied with by any of the parties;

the relevant Minister may only make the determination after he or she has consulted the Commonwealth Minister about the determination.

*Criteria for making determination*

- (2) The relevant Minister may only make the determination if the relevant Minister considers that:
  - (a) a determination under section 38 is unlikely to be made within a period that is reasonable having regard to all the circumstances; and
  - (b) if the relevant Minister is a State Minister or a Territory Minister—it is in the interests of the State or Territory to make the determination at the time; and
  - (c) if the relevant Minister is the Commonwealth Minister—it is in:
    - (i) in any case—the national interest; and
    - (ii) if the act concerned is an act attributable to a State or Territory—the interests of the State or Territory; to make the determination at the time.

*Relevant Minister may consider other matters*

- (3) Subsection (2) does not prevent the relevant Minister from having regard to other matters in deciding whether to make a determination under this section.

**36B Consultation prior to section 36A determination**

- (1) Before making a determination under section 36A, the relevant Minister must give notice in accordance with subsection (2), and with subsection (3), of this section.



*Notice to arbitral body*

- (2) The relevant Minister must give written notice to the arbitral body requiring it, by the end of the day specified in the notice, to give the Minister and each negotiation party a summary of material that has been presented to the arbitral body in the course of the arbitral body considering whether to make a determination under section 38 in relation to the act.

*Notice to negotiation parties*

- (3) The relevant 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; and
  - (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 any other negotiation party or the arbitral body, 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).

*Specified day*

- (4) The day specified under subsection (2) or (3) must be the same in all of the notices given under the subsections. It must be a day by which, in the relevant Minister's opinion, it is reasonable to assume that all of the notices so given will have been received by, or will otherwise have come to the attention of, the persons who must be so notified.

*Natural justice*

- (5) If the relevant Minister complies with subsection (1), there is no requirement for any person to be given any further hearing before the relevant Minister makes the determination.

*Material etc. taken into account*

- (6) In making the determination, the relevant Minister:
- (a) must take into account:
    - (i) any submission or material provided by any of the negotiation parties in accordance with subsection (3), but only if the negotiation party has complied with the requirements of paragraph (3)(b); and
    - (ii) any report provided by the arbitral body; and
    - (iii) any consultations with the Commonwealth Minister as mentioned in subsection 36A(1A); and
  - (b) may, but need not, take into account any other matter or thing.

*Minister's power not limited*

- (7) The fact that no submission or other material of the kind mentioned in subsection (3) 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.

**36C Section 36A determinations**

*Coverage of section*

- (1) This section:
- (a) sets out the kind of determination that may be made under section 36A; and
  - (b) states the effect of such a determination; and
  - (c) contains other provisions relevant to such a determination.

*Determination*

- (2) The relevant Minister does not have a duty to make a determination. This is so despite:
- (a) the giving of any notice by the Minister; and
  - (b) the giving of any submission or other material to the Minister; and
  - (c) any request by a negotiation party for the Minister to make the determination; and
  - (d) any other circumstance.

*Who makes determination*

- (3) A determination must be made by the relevant Minister personally.

*Kinds of determination*

- (4) The relevant Minister may make any one of the following determinations:
- (a) a determination that the act must not be done;
  - (b) a determination that the act may be done;
  - (c) a determination that the act may be done subject to conditions to be complied with by any of the negotiation parties.

*Trust condition*

- (5) If a condition to be complied with is that an amount is to be paid and held in trust until it is dealt with in accordance with section 52:
- (a) the arbitral body 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 section 52.

Note: The NNTT cannot determine compensation (see Division 5 and Division 1 of Part 3). However, if the arbitral body is not the NNTT, it may be able to do so.

*Conditions to have contractual effect*

- (6) If the act is done, any conditions in a determination by the relevant Minister under this section have effect, in addition to any effect that they may have apart from this subsection, as if they were terms of a contract among the negotiation parties. If a native title party is a registered native title claimant, any other person included in the native title claim group (see section 253) concerned is a negotiation party for this purpose only.

*Copy of determination to be tabled*

- (7) The relevant Minister must, as soon as practicable after making a determination, and in any case within 15 sitting days, cause a copy of the determination, together with reasons for the determination, to be laid:
- (a) if the relevant Minister is the Commonwealth Minister—before each House of the Parliament; or
  - (b) if the relevant Minister is a State Minister—before the House, or both of the Houses, of Parliament of the State concerned; or
  - (c) if the relevant Minister is a Territory Minister—before the Legislative Assembly of the Territory concerned.

**37 No arbitral body determination if agreement or Ministerial determination**

The arbitral body must not make a determination if:

- (a) an agreement of the kind mentioned in paragraph 31(1)(b) has been made; or
- (b) a determination under section 36A has been made.

**38 Kinds of arbitral body determinations**

- (1) Except where section 37 applies, the arbitral body must make one of the following determinations:
- (a) a determination that the act must not be done;
  - (b) a determination that the act may be done;

- (c) a determination that the act may be done subject to conditions to be complied with by any of the parties.

*Determinations may cover other matters*

- (1A) A determination may, with the agreement 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.

Example: The arbitral body could determine that a mining lease may be granted subject to site clearance procedures to be determined by a third person.

*Matters to be determined by arbitration*

- (1B) If:

- (a) the manner specified is arbitration (other than by the arbitral body); and  
(b) the negotiation parties do not agree about the manner in which the arbitration is to take place;

the arbitral body must determine the matter at an appropriate time.

*Profit-sharing conditions not to be determined*

- (2) The arbitral body must not determine a condition under paragraph (1)(c) that has the effect that native title parties are to be entitled to payments worked out by reference to:

- (a) the amount of profits made; or  
(b) any income derived; or  
(c) any things produced;

by any grantee party as a result of doing anything in relation to the land or waters concerned after the act is done.

### 39 Criteria for making arbitral body determinations

- (1) In making its determination, the arbitral body must take into account the following:
- (a) the effect of the act on:
    - (i) the enjoyment by the native title parties of their registered native title rights and interests; and
    - (ii) the way of life, culture and traditions of any of those parties; and
    - (iii) the development of the social, cultural and economic structures of any of those parties; and
    - (iv) the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and
    - (v) any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions;
  - (b) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of land or waters in relation to which there are registered native title rights and interests, of the native title parties, that will be affected by the act;
  - (c) the economic or other significance of the act to Australia, the State or Territory concerned, the area in which the land or waters concerned are located and Aboriginal peoples and Torres Strait Islanders who live in that area;
  - (e) any public interest in the doing of the act;
  - (f) any other matter that the arbitral body considers relevant.

*Existing non-native title interests etc.*

- (2) In determining the effect of the act as mentioned in paragraph (1)(a), the arbitral body must take into account the nature and extent of:
- (a) existing non-native title rights and interests in relation to the land or waters concerned; and
-

- (b) existing use of the land or waters concerned by persons other than the native title parties.

*Laws protecting sites of significance etc. not affected*

- (3) Taking into account the effect of the act on areas or sites mentioned in subparagraph (1)(a)(v) does not affect the operation of any law of the Commonwealth, a State or Territory for the preservation or protection of those areas or sites.

*Agreements to be given effect*

- (4) Before making its determination, the arbitral body must ascertain whether there are any issues relevant to its determination on which the negotiation parties agree. If there are, and all of the negotiation parties consent, then, in making its determination, the arbitral body:
  - (a) must take that agreement into account; and
  - (b) need not take into account the matters mentioned in subsection (1), to the extent that the matters relate to those issues.

#### **40 No re-opening of issues previously decided**

If:

- (a) the arbitral body is making a determination in relation to an act consisting of the creation of a right to mine in relation to an area; and
  - (b) an agreement, or a determination by an arbitral body, under this Subdivision involving the same negotiation parties was previously made in relation to 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 inquiry;
- the negotiation parties must not, without leave of the arbitral body that is making the determination, seek to vary the decision on the issue.

#### **41 Effect of determination or agreement**

- (1) Subject to this section:
    - (a) a determination by the arbitral body; or
-

(b) an agreement of the kind mentioned in paragraph 31(1)(b); that the act may be done subject to conditions being complied with by the parties has effect, if the act is done, as if the conditions were terms of a contract among the negotiation parties. The effect is in addition to any other effect that the agreement or determination may have apart from this subsection.

*Other negotiation parties*

- (2) If a native title party 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 subsection (1).

*Trust condition*

- (3) If, in the case of a determination by the arbitral body, a condition to be complied with is that an amount is to be paid and held in trust until it is dealt with in accordance with section 52:
- (a) the arbitral body 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 section 52.

Note: The NNTT cannot determine compensation (see Division 5 of this Part and Division 1 of Part 3). However, if the arbitral body is not the NNTT, it may be able to do so.

## **41A Copies of agreements and determinations**

*Negotiation parties*

- (1) The negotiation parties must:
- (a) give a copy of any agreement mentioned in paragraph 31(1)(b) to the arbitral body; and
  - (b) advise the relevant Minister in writing of the making of any such agreement.

*Relevant Minister*

- (2) The relevant Minister must give a copy of any determination under section 36A to the negotiation parties and the arbitral body.
-



*Arbitral body*

- (3) The arbitral body must give a copy of any determination under section 38 to the negotiation parties and the relevant Minister.

**42 Overruling of determinations**

- (1) If a State Minister or a Territory Minister considers it to be in the interests of the State or Territory to overrule the determination of a recognised State/Territory body for the State or Territory, the State Minister or Territory Minister may, by writing given to the recognised State/Territory body, make a declaration in accordance with subsection (3).

*Right of Commonwealth to overrule*

- (2) If the Commonwealth Minister considers it to be in:
- (a) in any case—the national interest; or
  - (b) if the act concerned is an act attributable to a State or Territory—the interests of the State or Territory;
- to overrule a determination of the NNTT (other than a determination under subsection 32(4), which deals with the expedited procedure), the Commonwealth Minister may, by writing given to the NNTT, make a declaration in accordance with subsection (3).

*Kinds of declaration*

- (3) The Minister concerned may make either of the following declarations:
- (a) a declaration that the determination is overruled;
  - (b) a declaration that the determination is overruled and that conditions set out in the declaration are to be complied with by any of the parties.

*Time limit for making declaration*

- (4) Any declaration by the Minister concerned must be made within 2 months after the making of the determination.

*Trust condition*

- (5) If a condition to be complied with is that an amount is to be paid and held in trust until it is dealt with in accordance with section 52:
- (a) the arbitral body concerned 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 section 52.

Note: The NNTT cannot determine compensation (see Division 5 of this Part and Division 1 of Part 3). However, if the arbitral body is not the NNTT, it may be able to do so.

*Conditions have contractual effect*

- (6) If the act is done, any conditions in a declaration by a Minister under this section have effect, in addition to any effect that they may have apart from this subsection, as if they were terms of a contract among the negotiation parties. If a native title party is a registered native title claimant, any other person included in the native title claim group concerned is a negotiation party for this purpose only.

*Copy of declaration to be given to parties*

- (7) The arbitral body must give a copy of the declaration to the negotiation parties.

**42A Project acts—modified application of Subdivision**

- (1) This section applies if 2 or more acts are, in accordance with subsection 29(9), project acts for the purposes of this Subdivision.

*General rule—project acts treated as a single act*

- (2) This Subdivision applies to all of the project acts as if they were a single act.

*Conditions*

- (3) However, this does not mean that conditions of the kind mentioned in paragraph 31(1)(b), 36C(4)(c), 38(1)(c) or 42(3)(b) must:
- (a) apply to all of the project acts comprising the single act; or
-

(b) be the same for all of the project acts to which they apply.

#### **43 Modification of Subdivision if satisfactory alternative State or Territory provisions**

##### *Determination about alternative provisions*

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

##### *Requirement to be satisfied*

- (2) The alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:
- (a) contain appropriate procedures for notifying registered native title bodies corporate, representative bodies, registered native title claimants and potential native title claimants of the act; and
  - (b) require negotiation in good faith among the persons concerned; and
  - (c) provide for mediation by a person or body to assist in settling any dispute among the persons concerned regarding the act; and
  - (d) give registered native title bodies corporate and registered native title claimants the right to object against the act; and
  - (e) make provision on similar terms to section 30 and contain time limits similar to those applicable under this Subdivision; and
  - (f) provide that the body determining the objection consists of, or includes, persons enrolled for at least 5 years as legal practitioners of:

- (i) the High Court; or
- (ii) another federal court; or
- (iii) the Supreme Court of a State or Territory; and
- (g) make provision to the same effect as section 39 in relation to matters that are required to be taken into account by the body determining the objection; and
- (h) if the alternative provisions involve the hearing and determination of the objection by a person or body other than the NNTT or a recognised State/Territory body for the State or Territory—provide for a member of the recognised State/Territory body (if any) or of the NNTT to participate in the determination; and
- (i) provide that any decision of the body determining the objection may only be overruled on grounds of State or Territory interest or of national interest; and
- (j) make appropriate provision for compensation for the act, including provision for trusts on similar terms to those in subsections 36C(5), 41(3) and 42(5); and
- (k) if the alternative provisions allow a Minister to make a determination in relation to the act in circumstances other than those covered in paragraph (i)—provide for those circumstances to be similar to those set out in section 36A and for requirements similar to those in sections 36B and 36C to apply.

*Revocation of determination*

- (3) If at any time the alternative provisions are amended so that they no longer comply with subsection (2), the Commonwealth Minister must:
  - (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and
  - (b) if, at the end of 180 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply—in writing, revoke the determination made under paragraph (1)(b); and
  - (c) if:

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

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

*Regulations to make transitional provisions*

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

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

*Determination about alternative provisions*

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

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

*Meaning of alternative provision area*

(2) An *alternative provision area* is:

(a) an area:

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

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

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

(b) an area that is, or was (whether before or after this Act commenced):

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

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

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

*Notification of proposed determination*

(3) Before making the determination, the Commonwealth Minister must:

- (a) notify all representative Aboriginal/Torres Strait Islander bodies for the land or waters concerned of the proposed determination; and
- (b) invite submissions from them about the proposed determination; and
- (c) consider any submissions made in response to the invitation.

*Requirement to be satisfied: procedures etc.*

- (4) For the purposes of paragraph (1)(b), the alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:
  - (a) contain appropriate procedures for notifying each of the following that an act to which the provisions apply is to be done:
    - (i) any registered native title claimant (a ***claimant***) in relation to any of the land or waters to which the act relates;
    - (ii) any registered native title body corporate (a ***body corporate***) in relation to any of that land or waters;
    - (iii) any representative Aboriginal/Torres Strait Islander body in relation to any of that land or waters; and
  - (b) give any claimant or body corporate the right to object, within a specified period after the notification, to the doing of the act so far as it affects their registered native title rights and interests; and
  - (c) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions)—provide for consultation (including provide in relation to mediation) between:
    - (i) any claimants, and bodies corporate, who object; and
    - (ii) the State or Territory;about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned; and
  - (d) in any other case—provide for consultation (including provide in relation to mediation) between:

- (i) any claimants, and bodies corporate, who object; and
- (ii) the person who requested or applied for the doing of the act;  
about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned, including about any access to the land or waters or the way in which any thing authorised by the act might be done; and
- (e) if any person objects as mentioned in paragraph (b), provide for the objection to be heard by an independent person or body; and  
Example: The independent person or body could be a State or Territory tribunal which deals with acts of the kind concerned, for example, a mining warden where the act is the grant of a mining lease.
- (f) provide for judicial review of the decision to do the act; and  
Example: The judicial review could be by the Supreme Court of the State or Territory.
- (g) provide that, if the independent person or body hearing any objection as mentioned in paragraph (e) makes a determination upholding the objection, or that contains conditions about the doing of the act that relate to registered native title rights and interests, the determination must be complied with unless:
  - (i) the Minister of the State or the Territory responsible for indigenous affairs is consulted; and
  - (ii) the consultation is taken into account; and
  - (iii) it is in the interests of the State or the Territory not to comply with the determination; and
- (h) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions)—confer on each claimant and body corporate procedural rights that are not less favourable than those they would have on the assumption that they instead held ordinary title to any land concerned and to the land adjoining, or surrounding, any waters concerned.



*Meaning of determination*

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

**determination** includes recommendation.

**in the interests of** the State or the Territory includes:

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

*Requirement to be satisfied: compensation*

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

*Requirement to be satisfied: preservation of areas of significance*

- (7) For the purposes of paragraph (1)(b), the requirements of this subsection are complied with if, in the opinion of the Commonwealth Minister, a law of the Commonwealth, the State or the Territory provides, for the whole of the land or waters to which the alternative provisions relate, in relation to the preservation or protection of areas, or sites, that may be of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

*Different provisions for different kinds of land or waters*

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

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

*Revocation of determination*

- (9) If at any time the alternative provisions are amended so that they no longer comply as mentioned in paragraph (1)(b), the Commonwealth Minister must:
- (a) advise the State Minister or the Territory Minister concerned in writing of the fact; and
  - (b) if, at the end of 90 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply—in writing, revoke the determination made under paragraph (1)(b); and
  - (c) if:
    - (i) at the end of 90 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and
    - (ii) before the end of the 90 days, the Commonwealth Minister determined in writing that a further period should apply for the purposes of this paragraph; and
    - (iii) at the end of the further period, the alternative provisions still do not comply;in writing, revoke the determination made under paragraph (1)(b).

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

*Exclusion of certain compulsory acquisitions*

- (10) The alternative provisions do not apply to an act of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions) if the act involves the acquisition of native title rights and interests in relation to land or waters in both an alternative provision area and an area that is not an alternative provision area.

*Regulations to make transitional provisions*

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

**43B Mining rights covering both alternative provision area and other area**

If:

- (a) a particular future act is the creation or variation of a right to mine in both an alternative provision area (as defined in subsection 43A(2)) and an area (the *other area*) that is not an alternative provision area; and
- (b) because of section 43A, provisions of a State or Territory law would, apart from this section, have effect in relation to the act;

then, for the purposes of this Subdivision:

- (c) the act is taken to consist of 2 separate acts, as follows:
  - (i) one act consisting of the creation or variation of that right to mine, but only in the alternative provision area; and
  - (ii) the other act consisting of the creation or variation of that right to mine, but only in the other area; and
- (d) the act mentioned in subparagraph (c)(ii) is taken to be done only when the right concerned is first exercised in the other area.

Note: In effect, this section splits the act in 2 (for “right to negotiate” purposes only). Only the “act” mentioned in subparagraph (c)(i)—not the “act” mentioned in subparagraph (c)(ii)—attracts the alternative provisions under section 43A.

**44 Additional operation of Subdivision**

Without affecting its operation apart from this section, this Subdivision also has the effect that it would have if each reference to a grantee party were, by express provision, confined to a grantee party that is a foreign corporation, or a trading or financial corporation formed within the limits of the Commonwealth.

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**Subdivision Q—Conferral of access rights on native title claimants in respect of non-exclusive agricultural and pastoral leases**

**44A Conditions for Subdivision to apply**

- (1) This Subdivision applies if the conditions in this section are met.

*Person in claim group in respect of registered claim over non-exclusive agricultural or pastoral lease*

- (2) A person must be included in the native title claim group (see section 253) in relation to a claim:
- (a) for which there is an entry on the Register of Native Title Claims; and
- Note: Under paragraph 190(4)(d), entries on the Register must be removed when the application in question is withdrawn, dismissed or otherwise finalised.
- (b) that relates to any extent to an area that is covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease.

*Access for traditional activities*

- (3) Either:
- (a) as at the end of 23 December 1996, the person included in the native title claim group must have regularly had physical access to the whole or part (the *traditional access area*) of the area that is covered by both the claim and the lease for the purpose of carrying on one or more traditional activities (see subsection (4)) of the person; or
  - (b) the person included in the native title claim group must be a descendant of a person who, as at 23 December 1996, regularly had such physical access.

*Traditional activity*

- (4) A **traditional activity** is an activity of any of the following kinds, but only if it is carried on for traditional purposes of Aboriginal people or Torres Strait Islanders:
- (a) hunting, fishing, gathering or camping;
  - (b) performing rites or other ceremonies;
  - (c) visiting sites of significance.

**44B Rights of access for traditional activities**

*Conferral of rights*

- (1) At all times while this Subdivision applies, the person included in the native title claim group has a right:
- (a) to have access, in the same way and to the same extent as the access mentioned in subsection 44A(3), to the traditional access area for the purpose of carrying on the one or more traditional activities in that area in the same way and to the same extent as they were carried on pursuant to the access mentioned in that subsection; and
  - (b) to carry on those activities in that area in that way and to that extent.

*Lessee etc. rights prevail*

- (2) The rights of:
- (a) the lessee under the lease; or
  - (b) any person with non-native title rights or interests in relation to the traditional access area;
- prevail over the rights conferred by subsection (1). To avoid doubt, the existence and exercise of the rights conferred by subsection (1) do not prevent the doing of any thing in exercise of the rights of the lessee or person with the non-native title rights or interests.

*Agreements about rights*

- (3) The lessee or any person with non-native title rights or interests in relation to the traditional access area may make an agreement with the person included in the native title claim group about:
- (a) the manner of exercise of any of the rights conferred by subsection (1); or
  - (b) the variation of any of those rights.

Note: For example, an agreement might be made requiring notification of intended exercise of the rights.

*Assistance in making agreements*

- (4) Any persons wishing to make such an agreement may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement.

*Statutory access rights do not amount to native title*

- (5) To avoid doubt, the fact that the person satisfies the conditions in section 44A does not mean that the person has native title rights and interests in relation to the traditional access area.

**44C Suspension of native title rights**

- (1) For so long as the person included in the native title claim group has rights conferred by subsection 44B(1), no person can enforce any native title rights or interests in relation to the whole or part of the land or waters covered by the lease, except in proceedings before the Federal Court or a recognised State/Territory body that are related to the making of an approved determination of native title.

*Other provisions not affected*

- (2) Subsection (1) does not affect the operation of any other provision of this Act.

Note: The “right to negotiate” provisions in Subdivision P are an example of provisions that are not intended to be affected.

#### **44D Certain other laws not affected**

*Laws etc. of benefit to Aboriginal peoples or Torres Strait Islanders*

- (1) This Subdivision does not affect:
  - (a) any reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders contained:
    - (i) in any law of the Commonwealth, a State or a Territory;  
or
    - (ii) elsewhere; or
  - (b) the operation of any law of the Commonwealth, a State or a Territory that allows for the granting of access rights to Aboriginal peoples or Torres Strait Islanders; or
  - (c) the operation of any law of the Commonwealth, a State or Territory that relates to the preservation or protection of any area or site of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

*Laws of general application*

- (2) This Subdivision is not intended to imply that, in exercising rights conferred by subsection 44B(1), a person is not subject to laws of the Commonwealth, a State or a Territory that are of general application.

#### **44E Federal Court jurisdiction**

The Federal Court may, in its discretion, refuse to exercise the jurisdiction conferred on it under subsection 213(2) in relation to a matter involving a right conferred by subsection 44B(1) for the reason that an adequate alternative means of resolving the matter is available.

#### **44F Request for mediation**

If all of the persons involved in any dispute about a right conferred by subsection 44B(1) agree, they may request the NNTT or a recognised State/Territory body to mediate in the dispute.

Note: Persons wishing to make an indigenous land use agreement about access in general may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement: see sections 24BF, 24CF and 24DG.

#### **44G Other mediation, arbitration and agreements not excluded by Subdivision**

Nothing in this Subdivision prevents:

- (a) mediation or arbitration by any person or body of any matter arising in relation to a right conferred by subsection 44B(1); or
- (b) the making or enforcing of agreements about access to the area covered by the non-exclusive agricultural lease or the non-exclusive pastoral lease other than under rights conferred by subsection 44B(1).

#### **10 Before section 45**

Insert:

#### **44H Rights conferred by valid leases etc.**

To avoid doubt, if:

- (a) the grant, issue or creation of a lease, licence, permit or authority is valid (including because of any provision of this Act); and
- (b) the lease, licence, permit or authority requires or permits the doing of any activity (whether or not subject to any conditions); and
- (ba) an activity is done in accordance with the lease, licence, permit or authority and any such conditions;

then:

- (c) the requirement or permission, and the doing of the activity, prevail over any native title rights and interests and any exercise of those rights and interests, but do not extinguish them; and
- (d) the existence and exercise of the native title rights and interests do not prevent the doing of the activity; and



(e) native title holders are not entitled to compensation under this Act for the doing of the activity.

Note 1: Any compensation to which the native title holders may be entitled under this Act for the grant of the lease, licence, permit or authority may take into account the doing of the activity.

Note 2: This section is not intended to imply that the person carrying on the activity is not subject to the laws of a State or Territory.

### **11 Paragraph 47(3)(c)**

Omit “proposed”.

### **12 Paragraph 47(3)(c)**

Omit “Subdivision B”, substitute “Subdivision P”.

### **13 After section 47**

Insert:

### **47A Reserves etc. covered by claimant applications**

*When section applies*

- (1) This section applies if:
- (a) a claimant application is made in relation to an area; and
  - (b) when the application is made:
    - (i) a freehold estate exists, or a lease is in force, over the area or the area is vested in any person, if the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
    - (ii) the area is held expressly for the benefit of, or is held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; and
  - (c) when the application is made, one or more members of the native title claim group occupy the area.

*Prior extinguishment to be disregarded*

- (2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by any of the following acts must be disregarded:
- (a) the grant or vesting mentioned in subparagraph (1)(b)(i) or the doing of the thing that resulted in the holding or reservation mentioned in subparagraph (1)(b)(ii);
  - (b) the creation of any other prior interest in relation to the area, other than, in the case of an area held as mentioned in subparagraph (1)(b)(ii), the grant of a freehold estate for the provision of services (such as health and welfare services).

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

*Effect of determination*

- (3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:
- (a) the determination does not affect:
    - (i) the validity of the grant or vesting or of the creation of the trust or reservation; or
    - (ii) the validity of the creation of any other prior interest in relation to the area; or
    - (iii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and
  - (b) the non-extinguishment principle applies to the grant or vesting or the creation of the trust or reservation or any other prior interest.

*Exclusion of Crown ownership of natural resources*

- (4) For the purposes of this section, a reference to the creation of an interest in relation to an area does not include a reference to the creation of an interest that confirms ownership of natural resources

by, or confers ownership of natural resources on, the Crown in any capacity.

#### **47B Vacant Crown land covered by claimant applications**

##### *When section applies*

- (1) This section applies if:
  - (a) a claimant application is made in relation to an area; and
  - (b) when the application is made, the area is not:
    - (i) covered by a freehold estate or a lease; or
    - (ii) covered by a reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth, a State or a Territory, under which the whole or a part of the land or waters in the area is to be used for public purposes or for a particular purpose; or
    - (iii) subject to a resumption process (see paragraph (5)(b)); and
  - (c) when the application is made, one or more members of the native title claim group occupy the area.

##### *Prior extinguishment to be disregarded*

- (2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by the creation of any prior interest in relation to the area must be disregarded.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

##### *Effect of determination*

- (3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:
  - (a) the determination does not affect:

- (i) the validity of the creation of any prior interest in relation to the area; or
  - (ii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and
- (b) the non-extinguishment principle applies to the creation of any prior interest in relation to the area.

*Renewals and extensions of leases*

- (4) For the purposes of paragraph (1)(b), if, after a lease covering an area expires or is terminated, the lease is bona fide renewed, or its term is bona fide extended, the area is taken to be covered by the lease during the period between the expiry or termination and the renewal or extension.

*Defined expressions*

- (5) For the purposes of this section:
- (a) the ***creation of a prior interest*** in relation to an area does not include the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity; and
  - (b) an area is ***subject to a resumption process*** at a particular time (the ***test time***) if:
    - (i) all interests last existing in relation to the area before the test time were acquired, resumed or revoked by, or surrendered to, the Crown in any capacity; and
    - (ii) when that happened, the Crown had a bona fide intention of using the area for public purposes or for a particular purpose; and
    - (iii) the Crown still had a bona fide intention of that kind in relation to the area at the test time.

## 14 Sections 48 and 49 and subsection 51(1)

After “Division 2,”, insert “2A, 2B,”.

## 15 Subsection 50(1)

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Omit “section”, substitute “Division”.

Note: The heading to subsection 50(1) is altered by omitting “*Section*” and substituting “*Division*”.

### **16 At the end of subsection 50(1)**

Add:

Note: Such compensation is generally for acts that are validated or valid. Native title holders would ordinarily be entitled to compensation or damages for invalid acts under the general law. The Federal Court may be able to award such compensation or damages in proceedings in relation to the invalidity of the act: see subsection 213(2).

### **17 Subsection 51(2)**

Omit “acquisition under a Compulsory Acquisition Act”, substitute “compulsory acquisition”.

### **18 Subsection 51(2)**

Omit “set out in that Act for determining compensation”, substitute “for determining compensation set out in the law under which the compulsory acquisition takes place”.

Note: The heading to subsection 51(2) is altered by omitting “*Compulsory Acquisition Act*” and substituting “*compulsory acquisition law*”.

### **19 Paragraph 51(3)(a)**

Omit “acquisition under a Compulsory Acquisition Act”, substitute “compulsory acquisition”.

### **20 Paragraph 51(4)(b)**

Omit “Compulsory Acquisition Act”, substitute “compulsory acquisition law”.

### **21 Subsection 51(4)**

Omit “that Act”, substitute “that law”.

### **22 After section 51**

Insert:

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## 51A Limit on compensation

### *Compensation limited by reference to freehold estate*

- (1) The total compensation payable under this Division for an act that extinguishes all native title in relation to particular land or waters must not exceed the amount that would be payable if the act were instead a compulsory acquisition of a freehold estate in the land or waters.

### *This section is subject to section 53*

- (2) This section has effect subject to section 53 (which deals with the requirement to provide “just terms” compensation).

## 23 Subsection 52(1)

Omit “compensation (the *negotiated compensation*) in respect of a proposed act is being held in trust in accordance with”, substitute “an amount (the *trust amount*) in respect of an act is being held in trust in accordance with paragraph 36C(5)(b),”.

Note: The heading to section 52 is altered by omitting “**Compensation**” and substituting “**Payment**”.

## 24 Paragraph 52(1)(b)

Omit “no longer proposes”, substitute “is not going”.

## 25 Subparagraph 52(1)(c)(ii)

Repeal the subparagraph, substitute:

- (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 under Division 3 for the act; 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 under Division 3 for the act;

**26 Subparagraph 52(1)(d)(ii)**

Omit “Compulsory Acquisition Act”, substitute “compulsory acquisition law”.

**27 Paragraph 52(1)(e)**

Omit “negotiated compensation”, substitute “trust amount”.

**28 Subsections 52(2) to (7)**

Omit “negotiated compensation” (wherever occurring), substitute “trust amount”.

**29 Paragraph 52(3)(b)**

Omit “2, 3 or 4”, substitute “3”.

**30 Paragraph 53(1)(a)**

Omit “by the Commonwealth”.

**31 Subsection 53(1)**

Omit “from the Commonwealth as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.”, substitute:

from:

(c) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or

(d) in any other case—the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

**32 Paragraph 137(2)(a)**

After “past acts”, insert “or intermediate period acts”.

**33 Section 142**

After “Subject to”, insert “subsection 151(2) and”.

**34 After Part 8**

Insert:

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## **Part 8A—Register of Indigenous Land Use Agreements**

### **199A Register of Indigenous Land Use Agreements**

#### *Establishment*

- (1) There is to be a Register known as the Register of Indigenous Land Use Agreements.

#### *Registrar to establish and keep*

- (2) The Register must be established and kept by the Registrar.

#### *Register may be kept by computer*

- (3) The Register may be kept by use of a computer.

### **199B Contents of the Register etc.**

#### *Information to be included*

- (1) If the Registrar is required by Subdivision B, C or D of Division 3 of Part 2 to register an agreement, the Registrar must enter in the Register the following details of the agreement:
  - (a) a description of the area covered by the agreement; and
  - (b) the name of each party to the agreement and the address at which the party can be contacted; and
  - (c) if the agreement specifies the period during which it will operate—that period; and
  - (d) if the agreement includes any of the statements mentioned in subsection 24EB(1) or 24EBA(1) or (4)—a reference to the fact, setting out any such statement.

#### *Other information*

- (2) The Registrar may also enter in the Register any other details of the agreement that the Registrar considers appropriate.
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*Notification of Commonwealth, State or Territory*

- (3) If the agreement relates to any future act, as soon as reasonably practicable after entering the details, the Registrar must give notice in writing:
- (a) advising that the details have been entered; and
  - (b) setting out the details;
- to any person or body to which the Registrar gave notice of the agreement under paragraph 24BH(1)(a), 24CH(1)(a) or 24DI(1)(a).

**199C Removal of details of agreement from Register**

*Cases requiring removal*

- (1) Subject to subsection (1A), the Registrar must remove the details of an agreement from the Register if:
- (a) in the case of an agreement under Subdivision B of Division 3 of Part 2—an approved determination of native title is made in relation to any of the area covered by the agreement, and the persons who, under the determination, hold native title in relation to the area are not the same as those who had previously been determined to hold it; or
  - (b) in the case of an agreement under Subdivision C of Division 3 of Part 2—an approved determination of native title is made in relation to any of the area covered by the agreement, and any of the persons who, under the determination, hold native title in relation to the area is not a person who authorised the making of the agreement as mentioned in:
    - (i) if the application relating to the agreement was certified by representative Aboriginal/Torres Strait Islander bodies as mentioned in paragraph 24CG(3)(a)—paragraph 202(8)(b); or
    - (ii) if the application relating to the agreement included a statement as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met—that paragraph; or
  - (c) in any case:
    - (i) the agreement expires; or
-

- (ii) all the parties advise the Registrar in writing that they wish to terminate the agreement; or
- (iii) the Federal Court, under subsection (2), orders the details to be removed.

Note: If the details of an agreement are removed from the Register, the agreement will cease to have effect under this Act from the time the details are removed: see subsection 24EA(1) and paragraph 24EB(1)(b).

*Federal Court order not to remove details*

(1A) If:

- (a) the Registrar is or will be required to remove the details of an agreement from the Register in a case covered by paragraph (1)(a) or (b); and
  - (b) the persons who, under the approved determination of native title mentioned in that paragraph, hold native title apply to the Federal Court for an order under this subsection; and
  - (c) the Federal Court is satisfied that those persons accept the terms of the agreement, in accordance with the process by which they would authorise the making of such an agreement;
- the Federal Court may order the Registrar not to remove the details of the agreement from the Register.

*Federal Court order to remove details*

- (2) The Federal Court may, if it is satisfied on application by a party to the agreement, or by a representative Aboriginal/Torres Strait Islander body for the area covered by the agreement, that the ground in subsection (3) has been made out, order the Registrar to remove the details of the agreement from the Register.

*Ground for order*

- (3) The ground is that a party would not have entered into the agreement but for fraud, undue influence or duress by any person (whether or not a party to the agreement).

*Compensation order*

- (4) If the Court orders the Registrar to remove the details, the Court may also order the person who committed the fraud, exerted the influence or applied the duress to pay compensation to any party to the agreement who will suffer loss or damage as a result of the removal of the details.

**199D Inspection of the Register**

*Register to be available during business hours*

- (1) Subject to section 199E, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.

*Prescribed fee*

- (2) Subject to section 199E, when the Register is available for inspection, any member of the public may inspect the Register if the member pays the prescribed fee.

*If register kept on computer*

- (3) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, so far as the Register is kept in that way, by giving members of the public access to a computer terminal that they can use to inspect the Register, either by viewing a screen display or by obtaining a computer print-out.

**199E Parts of the Register to be kept confidential**

- (1) If the parties to an agreement whose details are entered on the Register advise the Registrar in writing that they do not wish some or all of the details to be available for inspection by the public, section 199D does not apply to the part of the Register containing the details concerned.

*Exception for basic information*

- (2) Subsection (1) does not apply to details required to be entered in the Register under subsection 199B(1).

**199F Delegation by Registrar**

The Registrar may, by signed instrument, delegate all or any of his or her powers under:

- (a) this Part; or
- (b) Subdivision B, C or D of Division 3 of Part 2 (which also deals with indigenous land use agreements);

to the holder of an office, or to a body, established by or under a law of a State or Territory, if the State or Territory agrees to the delegation.

**35 After paragraph 211(1)(b)**

Insert:

- (ba) the law does not provide that such a licence, permit or other instrument is only to be granted or issued for research, environmental protection, public health or public safety purposes; and

**36 After paragraph 212(2)(d)**

Insert:

- (da) stock-routes; or

**37 At the end of subsection 211(2)**

Add:

Note: In carrying on the class of activity, or gaining the access, the native title holders are subject to laws of general application.

**38 Subsection 212(3)**

Omit “or impair”.

Note: The heading to subsection 212(3) is altered by omitting “*under subsection (2)*”.

**39 Section 214**

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Repeal the section, substitute:

#### **214 Disallowable instruments**

The following are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*:

- (a) a determination under paragraph 23HA(a), 24GB(9)(c) or 24GD(6)(a), subparagraph 24GE(1)(f)(i), paragraph 24HA(7)(a), 24ID(3)(a) or 24JB(6)(a) or (7)(a), subsection 24KA(8), 24MD(7), 24NA(9), 26A(1), 26B(1) or 26C(2), paragraph 43(1)(b), subparagraph 43(3)(c)(ii), paragraph 43A(1)(b), subparagraph 43A(9)(c)(ii), subsection 202(1), 207A(1), 207B(3), 245(4), 251C(4) or (5) or 252(1) or paragraph (i) of the definition of *infrastructure facility* in section 253;
- (b) an instrument under section 203AD;
- (c) an approval under subparagraph 26(1)(c)(iv);
- (d) a revocation of a determination under subsection 26A(8), 26B(9), 26C(6), 43(3) or 43A(9) or paragraph 207A(4)(b) or 207B(7)(d).

#### **40 Subparagraph 215(2)(a)(i)**

After “Register of Native Title Claims”, insert “, the Register of Indigenous Land Use Agreements”.

#### **41 At the end of section 215**

Add:

##### *Registers*

- (3) Without limiting subsection (1), the regulations may make provision, not inconsistent with this Act, relating to the way in which:
  - (a) the Register of Native Title Claims; or
  - (b) the Register of Indigenous Land Use Agreements; or
  - (c) the National Native Title Register;

is to be established and kept, or relating to any other matter concerning such a register.

**42 Subsection 223(3)**

Omit “subsection (4)”, substitute “subsections (3A) and (4)”.

**43 After subsection 223(3)**

Insert:

*Subsection (3) does not apply to statutory access rights*

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

**44 After section 232**

Insert:

**232A Intermediate period act**

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

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

*Acts between 1.1.94 and 23.12.96*

- (2) Subject to subsection (3), an act is an *intermediate period act* if:

(a) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996 when native title existed in relation to particular land or waters; and

(b) the act did not consist of the making, amendment or repeal of legislation, other than legislation that affects the native title by:

(i) creating a freehold estate, lease or licence over the land or waters; or

(ii) containing, making or conferring a reservation, proclamation or dedication under which the whole or part

of the land or waters is to be used for a particular purpose; and

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

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

*Exclusion by regulation*

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

**232B Category A intermediate period act**

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

*Grant of freehold estates*

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

*Grant of certain leases etc.*

- (3) An intermediate period act consisting of the grant or vesting of:
  - (a) a Scheduled interest (see section 249C); or

- (b) a commercial lease that is neither an agricultural lease nor a pastoral lease; or
- (c) an exclusive agricultural lease (see section 247A) or an exclusive pastoral lease (see section 248A); or
- (d) a residential lease; or
- (e) a community purposes lease (see section 249A); or
- (f) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to “1 January 1994” were instead a reference to “24 December 1996”; or
- (g) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters;

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

*Vesting of certain land or waters*

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

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

*Construction of public works*

- (7) An intermediate period act consisting of the construction or establishment of any public work is a ***category A intermediate period act***.
- (8) An intermediate period act is not a ***category A intermediate period act*** if it is:
  - (a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting



of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

- (b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or
- (c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

*Exclusion by regulation*

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

**232C Category B intermediate period act**

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

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

**232D Category C intermediate period act**

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

### **232E Category D intermediate period act**

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

### **45 Subsection 233(2)**

Repeal the subsection, substitute:

*Validation and extinguishment legislation excluded*

(2) If:

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

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

### **46 Sections 234, 235 and 236**

Repeal the sections.

### **47 Paragraph 237(a)**

Repeal the paragraph, substitute:

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

### **48 Paragraphs 237(b) and (c)**

Omit “does not”, substitute “is not likely to”.

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**49 Paragraph 237(c)**

Omit “will”, substitute “is likely to”.

**50 After section 237**

Insert:

**237A Extinguish**

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

**51 Section 240 (definition of *similar compensable interest test*)**

After “past act”, insert “, an intermediate period act”.

**52 At the end of section 247**

Add:

*Aquaculture*

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

**53 After section 247**

Insert:

**247A Exclusive agricultural lease**

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

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

### **247B Non-exclusive agricultural lease**

A *non-exclusive agricultural lease* is an agricultural lease that is not an exclusive agricultural lease.

Note: In practice, there might be few, or no, non-exclusive agricultural leases.

### **54 After section 248**

Insert:

### **248A Exclusive pastoral lease**

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

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

### **248B Non-exclusive pastoral lease**

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

### **55 After section 249**

Insert:

### **249A Community purposes lease**

A *community purposes lease* is a lease that:

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

### **249B Perpetual lease**

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

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

### **249C Scheduled interest**

(1) A *Scheduled interest* is:

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

*Regulations to cover single type of interest only*

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

*Regulations to cover exclusive possession interests only*

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

### **56 Before section 252**

Insert:

### **251A Authorising the making of indigenous land use agreements**

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

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

### **251B Authorising the making of applications**

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

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

the making of the application and dealing with the matters, or in relation to doing things of that kind.

## **251C Towns and cities**

### *Areas in Western Australia*

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

### *Areas in South Australia*

- (2) Subject to subsection (4), a particular area in South Australia is a **town or city** if, as at 23 December 1996, it was:
- (a) within the boundaries of a town constituted under section 5(g) of the *Crown Lands Act 1929* of South Australia; or
  - (b) set apart as town lands, or suburban lands, by notice under section 5(h) of that Act; or
  - (c) town lands, park lands, or suburban lands, within the meaning of section 4 of that Act; or
  - (d) gazetted in the South Australian Government Gazette, or proclaimed by the Governor of South Australia, as suburban lands, where the gazettal took place, or the proclamation was made, before the enactment of the *Crown Lands Act 1929* of South Australia; or
  - (e) a township within the meaning of section 5(1) of the *Local Government Act, 1934* of South Australia; or
  - (f) park land, within the meaning of section 5(1) of that Act, that was within or adjacent to a township within the meaning of that section; or
  - (g) the area in relation to which a municipal council was constituted under section 6 of that Act; or
  - (h) a township within the meaning of section 319 of that Act; or
  - (i) a township allotment within the meaning of section 5 of the *Renmark Irrigation Trust Act 1936* of South Australia; or

- (j) town lands within the meaning of section 5 of the *Water Conservation Act 1936* of South Australia.

*Areas in the Northern Territory*

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

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

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

*Other areas*

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

*Exclusion of ordinary meaning*

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

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

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

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incidental to, the construction, establishment or operation of the work.

**57 Section 253**

Insert:

*authorise*:

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

**58 Section 253 (definition of *Compulsory Acquisition Act*)**

Repeal the definition.

**59 Section 253**

Insert:

*forest operations* means:

- (a) the planting or tending, in a plantation or forest, of trees intended for felling; or
- (b) the felling of such trees.

**60 Section 253 (definition of *grantee party*)**

Omit “paragraph 29(2)(d)”, substitute “paragraph 29(2)(c)”.

**61 Section 253**

Insert:

*horticulture* includes:

- (a) propagation or maintenance, as well as cultivation; or
- (b) propagation, maintenance or cultivation of seeds, bulbs, spores or similar things; or
- (c) propagation, maintenance or cultivation of fungi; or

- (d) propagation, maintenance or cultivation in environments other than soil, whether natural or artificial.

**62 Section 253**

Insert:

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

**63 Section 253**

Insert:

*infrastructure facility* includes any of the following:

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

**64 Section 253 (paragraph (c) of the definition of *mine*)**

Repeal the paragraph, substitute:

- (c) quarry;

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

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

**65 Section 253 (definition of *negotiation party*)**

Repeal the definition, substitute:

*negotiation party* has the meaning given by section 30A.

**66 Section 253 (definition of *public work*)**

Repeal the definition, substitute:

*public work* means:

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

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

**67 Section 253**

Insert:

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

**68 Section 253 (definition of *statutory authority*)**

After “authority or body”, insert “(including a corporation sole)”.

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**69 Section 253**

Insert:

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

## **Schedule 2—Amendments relating to applications, registration of claims etc.**

### **Part 1—Native Title Act 1993**

#### **1 Section 12**

Repeal the section.

#### **2 Subsection 13(1)**

Omit “Registrar”, substitute “Federal Court”.

Note: The heading to subsection 13(1) is altered by omitting “*Native Title Registrar*” and substituting “*Federal Court*”.

#### **3 Paragraph 13(2)(a)**

Omit “the NNTT or”.

Note: The heading to subsection 13(2) is altered by omitting “*NNTT or*”.

#### **4 Subsection 13(2)**

Omit “NNTT or”.

#### **5 After subsection 13(2)**

Insert:

Note: Under subsection 62(3), if no native title determination application has previously been made in relation to the area to which a compensation application relates, the compensation application must be accompanied by the affidavit, and contain the information, that would be required for a native title determination application for the area.

#### **6 Paragraphs 13(4)(a) and (6)(a)**

Omit “the NNTT or”.

#### **7 Subsection 50(2)**

Omit “Registrar”, substitute “Federal Court”.

**Schedule 2** Amendments relating to applications, registration of claims etc.

**Part 1** Native Title Act 1993

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Note: The heading to subsection 50(2) is altered by omitting “*Registrar*” and substituting “*Federal Court*”.

**8 Section 55**

Omit “the NNTT or” (wherever occurring).

Note: The heading to section 55 is altered by omitting “**NNTT and**”.

**9 Section 55**

Omit “sections”, substitute “section”.

**10 Section 55**

Omit “and 57”, substitute “or 57”.

**11 Subsection 56(1)**

Omit “the NNTT or”.

**12 Subsection 56(2)**

Omit “NNTT or the” (wherever occurring).

**13 Subsection 56(4)**

Omit “the NNTT or”.

**14 Subsection 57(2)**

Omit “the NNTT or” (wherever occurring).

**15 Paragraph 58(d)**

Omit “their”, substitute “its”.

**16 Section 59**

Omit all the words and paragraphs after “or 57”.

**17 At the end of Division 6 of Part 2**

Add:

### **60AA Body corporate for Meriam people**

(1) If:

- (a) a body corporate is or becomes incorporated under the *Aboriginal Councils and Associations Act 1976*; and
- (b) all of the members of the body corporate are members of the Meriam people (see subsection (2)); and
- (c) one of the objects of the body corporate is to become a registered native title body corporate in relation to native title held by the Meriam people; and
- (d) a member of the Meriam people applies to the Federal Court for a determination under this section; and
- (e) the Court is satisfied that the applicant represents the Meriam people;

then:

- (f) this Act applies as if the body corporate were a prescribed body corporate nominated under subsection 56(2) or 57(2) in relation to those native title holders; and
- (g) the Court may make a determination under section 56 or 57, in relation to that native title, as if the Court were doing so at the same time as making an approved determination of native title as mentioned in section 55; and
- (h) if the Court makes such a determination under section 56 or 57—the Native Title Registrar must enter the name and address of the body corporate on the National Native Title Register; and
- (i) while those details are on the Register, the body corporate is taken to be a **registered native title body corporate** for the purposes of this Act.

(2) In this section:

**Meriam people** means the people who were described by the High Court in its declaration in *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 as the Meriam people.

### **18 Part 3**

Repeal the Part, substitute:

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## **Part 3—Applications**

### **Division 1AA—Overview of Part**

#### **60A Overview of Part**

- (1) This Part has the rules for making:
  - (a) applications to the Federal Court for native title determinations, revised native title determinations and compensation: see Division 1; and
  - (b) various other applications to the Federal Court: see Division 1A; and
  - (c) applications to the National Native Title Tribunal under the “right to negotiate” provisions in Subdivision P of Division 3 of Part 2: see Division 2;
  - (d) applications to the Native Title Registrar objecting against registration of certain indigenous land use agreements: see Division 2A.

There are also some general rules that apply to the various kinds of application: see Division 3.

- (2) Basically, the provisions set out who may make the different kinds of application, what they must contain and what is to be done when they are made.

### **Division 1—Applications to the Federal Court: native title and compensation**

#### **61 Native title and compensation applications**

*Applications that may be made*

- (1) The following table sets out applications that may be made under this Division to the Federal Court and the persons who may make each of those applications:



<b>Applications</b>		
<b>Kind of application</b>	<b>Application</b>	<b>Persons who may make application</b>
Native title determination application	Application, as mentioned in subsection 13(1), for a determination of native title in relation to an area for which there is no approved determination of native title.	<p>(1) A person or persons authorised by all the persons (the <i>native title claim group</i>) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group; or</p> <p>Note 1: The person or persons will be the applicant: see subsection (2) of this section.</p> <p>Note 2: Section 251B states what it means for a person or persons to be <i>authorised</i> by all the persons in the native title claim group.</p> <p>(2) A person who holds a non-native title interest in relation to the whole of the area in relation to which the determination is sought; or</p> <p>(3) The Commonwealth Minister; or</p> <p>(4) The State Minister or the Territory Minister, if the determination is sought in relation to an area within the jurisdictional limits of the State or Territory concerned.</p>
Revised native title determination application	Application, as mentioned in subsection 13(1), for revocation or variation of an approved determination of native title, on the grounds set out in subsection 13(5).	<p>(1) The registered native title body corporate; or</p> <p>(2) The Commonwealth Minister; or</p> <p>(3) The State Minister or the Territory Minister, if the determination is sought in relation to an area within the jurisdictional limits of the State or Territory concerned; or</p> <p>(4) The Native Title Registrar.</p>

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**Applications**

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**Kind of**

<b>application</b>	<b>Application</b>	<b>Persons who may make application</b>
Compensation application	Application under subsection 50(2) for a determination of compensation.	(1) The registered native title body corporate (if any); or (2) A person or persons authorised by all the persons (the <b>compensation claim group</b> ) who claim to be entitled to the compensation, provided the person or persons are also included in the compensation claim group.  Note 1: The person or persons will be the applicant: see subsection (2) of this section.  Note 2: Section 251B states what it means for a person or persons to be <b>authorised</b> by all the persons in the compensation claim group.

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*Applicant in case of applications authorised by claim groups*

- (2) In the case of:
- (a) a native title determination application made by a person or persons authorised to make the application by a native title claim group; or
  - (b) a compensation application made by a person or persons authorised to make the application by a compensation claim group;
- the following apply:
- (c) the person is, or the persons are jointly, the **applicant**; and
  - (d) none of the other members of the native title claim group or compensation claim group is the **applicant**.

*Applicant's name and address*

- (3) An application must state the name and address for service of the person who is, or persons who are, the applicant.
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*Applications authorised by persons*

- (4) A native title determination application, or a compensation application, that persons in a native title claim group or a compensation claim group authorise the applicant to make must:
- (a) name the persons; or
  - (b) otherwise describe the persons sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

*Form etc.*

- (5) An application must:
- (a) be in the prescribed form; and
  - (b) be filed in the Federal Court; and
  - (c) contain such information in relation to the matters sought to be determined as is prescribed; and
  - (d) be accompanied by any prescribed documents and any prescribed fee.

**61A Restrictions on making of certain applications**

*No native title determination application if approved determination of native title*

- (1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

*Claimant applications not to be made covering previous exclusive possession act areas*

- (2) If:
- (a) a previous exclusive possession act (see section 23B) was done in relation to an area; and
  - (b) either:
    - (i) the act was an act attributable to the Commonwealth; or

- (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in section 23E in relation to the act;
- a claimant application must not be made that covers any of the area.

*Claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas*

- (3) If:
    - (a) a previous non-exclusive possession act (see section 23F) was done in relation to an area; and
    - (b) either:
      - (i) the act was an act attributable to the Commonwealth; or
      - (ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in section 23I in relation to the act;
- a claimant application must not be made in which any of the native title rights and interests claimed confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.

*Section not to apply in section 47, 47A or 47B cases*

- (4) However, subsection (2) or (3) does not apply to an application if:
  - (a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A or 47B to be disregarded were the application to be made; and
  - (b) the application states that section 47, 47A or 47B, as the case may be, applies to it.

## **62 Information etc. in relation to certain applications**

*Claimant applications*

- (1) A claimant application (see section 253):
  - (a) must be accompanied by an affidavit sworn by the applicant:

- (i) that the applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application; and
- (ii) that the applicant believes that none of the area covered by the application is also covered by an entry in the National Native Title Register; and
- (iii) that the applicant believes that all of the statements made in the application are true; and
- (iv) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and

Note: Section 251B states what it means for the applicant to be *authorised* by all the persons in the native title claim group.

- (v) stating the basis on which the applicant is authorised as mentioned in subparagraph (iv); and
- (b) must contain the details specified in subsection (2); and
- (c) may contain details of:
  - (i) if any member of the native title claim group currently has, or previously had, any traditional physical connection with any of the land or waters covered by the application—that traditional physical connection; or
  - (ii) if any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application—the circumstances in which the access was prevented.

Note: The applicant will be the registered native title claimant in relation to the area claimed if and for so long as the claim is entered on the Register of Native Title Claims.

*Details required by paragraph (1)(b)*

- (2) For the purposes of paragraph (1)(b), the details required are as follows:
  - (a) information, whether by physical description or otherwise, that enables the boundaries of:
    - (i) the area covered by the application; and

- (ii) any areas within those boundaries that are not covered by the application;  
to be identified;
- (b) a map showing the boundaries of the area mentioned in subparagraph (a)(i);
- (c) details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land or waters in the area covered by the application;
- (d) a description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law;
- (e) a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist and in particular that:
  - (i) the native title claim group have, and the predecessors of those persons had, an association with the area; and
  - (ii) there exist traditional laws and customs that give rise to the claimed native title; and
  - (iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs;
- (f) if the native title claim group currently carry on any activities in relation to the land or waters—details of those activities;
- (g) details of any other applications to the High Court, Federal Court or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title;
- (h) details of any notices under section 29 (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area.

Note: Notices under section 29 are relevant to subsection 190A(2).

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*Compensation applications*

- (3) In the case of a compensation application whose making was authorised by a compensation claim group, the application:
- (a) must be accompanied by an affidavit sworn by the applicant:
    - (i) that the applicant believes that native title rights and interests exist or have existed in relation to the area; and
    - (ii) that the applicant believes that all of the statements made in the application are true; and
    - (iii) that the applicant is authorised by all the persons in the compensation claim group to make the application and to deal with matters arising in relation to it; and
- Note: Section 251B states what it means for the applicant to be *authorised* by all the persons in the compensation claim group.
- (iv) stating the basis on which the applicant is authorised as mentioned in subparagraph (iii); and
  - (b) must contain the details that would be required to be specified by paragraph (1)(b), and may contain the details that would be permitted under paragraph (1)(c), if the compensation application were instead a native title determination application in respect of the native title involved in the compensation application.

**62A Power of applicants where application authorised by group**

In the case of:

- (a) a claimant application; or
- (b) a compensation application whose making was authorised by a compensation claim group;

the applicant may deal with all matters arising under this Act in relation to the application.

**63 Reference of applications to Native Title Registrar**

If an application under section 61 is filed in the Federal Court, the Registrar of the Federal Court must, as soon as practicable, give the Native Title Registrar a copy of:

- (a) the application; and

- (b) any affidavit that accompanies the application under paragraph 62(1)(a) or (3)(a); and
- (c) any prescribed documents that accompany the application under paragraph 61(5)(d).

## **64 Amendment of applications**

### *Application may be amended to reduce land or waters covered*

- (1A) An application may at any time be amended to reduce the area of land or waters covered by the application. (This subsection does not, by implication, limit the amendment of applications in any other way.)

Note: If such an amendment is made, the Court may make an appropriate costs order under section 85A.

### *Amendment not to result in inclusion of additional areas*

- (1) An amendment of an application must not result in the inclusion of any area of land or waters that was not covered by the original application.

Note: The Federal Court Rules provide for the amendment of applications.

### *Exception to subsection (1)*

- (2) However, if:
- (a) the application is a claimant application (see section 253); and
  - (b) the amendment combines the application with another claimant application or claimant applications;
- subsection (1) does not prevent the inclusion of any area of land or waters covered by the other application or applications.

### *Application may be amended despite section 190A consideration*

- (3) In the case of a claimant application, the fact that the Registrar is, under section 190A, considering the claim made in the application does not prevent amendment of the application.



*Registrar of the Federal Court to give copy of amended application to Native Title Registrar*

- (4) If an application is amended, the Registrar of the Federal Court must, as soon as practicable, give a copy of the amended application to the Native Title Registrar.

*Group applications—amendment to change applicant*

- (5) If a claimant application, or a compensation application whose making was authorised by a compensation claim group, is amended so as to replace the applicant with a new applicant, the amended application must be accompanied by an affidavit sworn by the new applicant:
- (a) that the new applicant is authorised by the other persons included in the native title claim group, or the compensation claim group, to deal with matters arising in relation to the application; and
  - (b) stating the basis on which the new applicant is authorised as mentioned in paragraph (a).

## **66 Notice of application**

*Registrar to comply with section*

- (1) If the Native Title Registrar is given a copy of an application under section 63, the Registrar must comply with the requirements of this section.

*Copies to State/Territory Minister*

- (2) If any of the area covered by the application is within the jurisdictional limits of a State or Territory, the Registrar must, as soon as is reasonably practicable, give the State Minister or Territory Minister for the State or Territory a copy of:
- (a) the application; and
  - (b) any other documents that the Registrar of the Federal Court gives the Native Title Registrar under section 63 in relation to the application.

*Copies to representative bodies*

- (2A) The Registrar must, as soon as is reasonably practicable, give the representative bodies for the area covered by the application a copy of:
- (a) the application; and
  - (b) any other documents that the Registrar of the Federal Court gives the Native Title Registrar under section 63 in relation to the application.

*Notice to be given*

- (3) Subject to this section, the Registrar must:
- (a) give notice containing details of the application to the following persons or bodies (other than the applicant in relation to the application):
    - (i) any registered native title claimant in relation to any of the area covered by the application; and
    - (ii) any registered native title body corporate in relation to any of the area covered by the application; and
    - (iii) any representative Aboriginal/Torres Strait Islander body for any of the area covered by the application; and
    - (iv) subject to subsection (5), any person who, when the application was filed in the Federal Court, held a proprietary interest, in relation to any of the area covered by the application, that is registered in a public register of interests in relation to land or waters maintained by the Commonwealth, a State or Territory; and
    - (v) the Commonwealth Minister; and
    - (vi) any local government body for any of the area covered by the application; and
    - (vii) if the Registrar considers it appropriate in relation to the person—any person whose interests may be affected by a determination in relation to the application; and
  - (b) give a copy of the notice to the Federal Court; and
  - (c) if any of the area covered by the application is within the jurisdictional limits of a State or Territory—give a copy of the

notice to the State Minister or Territory Minister for the State or Territory; and

- (d) notify the public in the determined way of the application.

*Exception where application is struck out*

- (4) Subsection (3) does not apply if:
- (a) the State or Territory Minister applies to the Federal Court under subsection 84C(1) or otherwise, within 28 days after the day on which the State or Territory Minister is given a copy of the application under subsection (2), to strike out the application; and
  - (b) the Court strikes out the application.

*Exception to subparagraph (3)(a)(iv)*

- (5) If the Registrar considers that, in the circumstances, it would be unreasonable to give notice to a person in accordance with subparagraph (3)(a)(iv), the Registrar is not required to give notice to that person.

*Notice etc. not to be given until claim registration decision made*

- (6) If the application is a claimant application:
- (a) the Registrar must not comply with subsection (3) until the Registrar has decided, in accordance with section 190A, whether or not to accept for registration the claim made in the application; and
  - (b) the notice required to be given under subsection (3) must state whether or not the Registrar has accepted the claim for registration.

*Federal Court order as to notice*

- (7) The Registrar may apply to the Federal Court for an order as to:
- (a) whether a particular person or class of persons must be given notice under paragraph (3)(a); or
  - (b) how such notice must be given.

*Notice to specify day*

- (8) A notice under paragraph (3)(a) or (d) must specify a day as the ***notification day*** for the application. Each such notice in relation to the application must specify the same day.

*Which days may be specified*

- (9) That day must be a day by which, in the Registrar's opinion, it is reasonable to assume that all notices under paragraphs (3)(a) and (d) in relation to the application will have been received by, or will otherwise have come to the attention of, the persons who must be notified under those paragraphs.

*Contents of notice*

- (10) A notice under paragraph (3)(a) or (d) must also include a statement to the effect that:
- (a) in the case of a non-claimant application (see section 253)—the area covered by the application may be subject to section 24FA protection unless, at the end of the period of 3 months starting on the notification day (as defined in subsection (8) of this section), the area is covered by a relevant native title claim (as defined in section 24FE); and
  - (b) in the case of any native title determination application—as there can be only one determination of native title for an area, if a person does not become a party in relation to the application, there may be no other opportunity for the Federal Court, in making its determination, to take into account the person's native title rights and interests in relation to the area concerned; and
  - (c) in any case—a person who wants to be a party in relation to the application must notify the Federal Court, in writing, within the period of 3 months starting on the notification day (as defined in subsection (8)), or, after that period, get the leave of the Federal Court under subsection 84(5) to become a party.

## **66A Notice of amended application**

*Native Title Registrar to notify parties etc.*

- (1) If:
- (a) the Native Title Registrar is given a copy of an amended application under section 64; and
  - (b) the amendment concerned results in a change to the area of land or waters covered by the original application; and
  - (c) subsection (2) does not apply;
- the Registrar must:
- (d) give notice of the amended application to each person who, when the Registrar receives the copy, is a party to a proceeding under Part 4 in relation to the application; and
  - (e) if, when the Registrar receives the copy, the period specified in the notice in accordance with paragraph 66(10)(c) has not ended:
    - (i) give notice of the amended application to all persons to whom the Registrar gave notice of the application in accordance with paragraph 66(3)(a); and
    - (ii) notify the public in the determined way of the amended application.

*Combined applications*

- (2) If an amended application of which the Registrar is given a copy under section 64 results from combining the application with one or more other applications, the Native Title Registrar must:
- (a) give notice of the combining of the applications to each person who, immediately before the combining of the applications, was a party to a proceeding under Part 4 in relation to any of the applications; and
  - (b) if, when the Registrar receives the copy, the period specified in the notice in accordance with paragraph 66(10)(c) has not ended:
    - (i) give notice of the combining of the applications to all persons to whom the Registrar gave notice of the applications in accordance with paragraph 66(3)(a); and

- (ii) notify the public in the determined way of the combining of the applications.

*Federal Court order as to notice*

- (3) The Registrar may apply to the Federal Court for an order as to:
- (a) whether a particular person or class of persons must be given notice under subsection (1) or (2); or
  - (b) how such notice must be given.

*Federal Court may direct Native Title Registrar to give notice*

- (4) The Federal Court may, if it considers it necessary, direct the Native Title Registrar to give such additional notice of the amended application as the Court considers appropriate.

*Parties to original applications become parties to combined application*

- (5) If an amended application of which the Registrar is given a copy under section 64 results from combining the application with one or more other applications, each person who, immediately before the combining of the applications, was a party to a proceeding under Part 4 in relation to any of the applications becomes a party to a proceeding under Part 4 in relation to the combined application.

## **66B Replacing the applicant**

*Application to replace applicant in claimant application*

- (1) One or more members of the native title claim group (the ***claim group***) in relation to a claimant application, or of the compensation claim group (also the ***claim group***) in relation to a compensation application, may apply to the Federal Court for an order that the member, or the members jointly, replace the current applicant for the application on the grounds that:
- (a) either:

- (i) the current applicant is no longer authorised by the claim group to make the application and to deal with matters arising in relation to it; or
  - (ii) the current applicant has exceeded the authority given to him or her by the claim group to make the application and to deal with matters arising in relation to it; and
- (b) the member or members are authorised by the claim group to make the application and to deal with matters arising in relation to it.

*Court order*

- (2) The Court may make the order if it is satisfied that the grounds are established.

*Registrar of Federal Court to notify Native Title Registrar*

- (3) If the Court makes the order, the Registrar of the Federal Court must, as soon as practicable, notify the Native Title Registrar of the name and address for service of the person who is, or persons who are, the new applicant.

*Register to be updated*

- (4) If the claim contained in the application is on the Register of Native Title Claims, the Registrar must amend the Register to reflect the order.

## **67 Overlapping native title determination applications**

- (1) If 2 or more proceedings before the Federal Court relate to native title determination applications that cover (in whole or in part) the same area, the Court must make such order as it considers appropriate to ensure that, to the extent that the applications cover the same area, they are dealt with in the same proceeding.

*Splitting of application area*

- (2) Without limiting subsection (1), the order of the Court may provide that different parts of the area covered by an application are to be dealt with in separate proceedings.

**68 Only one determination of native title per area**

If there is an approved determination of native title (the *first determination*) in relation to a particular area, the Federal Court must not:

- (a) conduct any proceeding relating to an application for another determination of native title; or
  - (b) make any other determination of native title;
- in relation to that area or to an area wholly within that area, except in the case of:
- (c) an application as mentioned in subsection 13(1) to revoke or vary the first determination; or
  - (d) a review or appeal of the first determination.

Note: Paragraph 13(1)(a) provides that no native title determination application can be made in relation to an area for which there is already an approved determination of native title.

**Division 1A—Other applications to the Federal Court**

**69 Applications that may be made**

- (1) The following table sets out applications that may be made under this Division to the Federal Court and the persons who may make each of those applications:

---

<b>Applications</b>		
<b>Kind of application</b>	<b>Application</b>	<b>Persons who may make application</b>
Claim registration application	Application as mentioned in subsection 190D(2) for review of a decision of the Registrar not to accept a claim for registration.	The applicant in relation to the application under section 61.

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<b>Applications</b>		
<b>Kind of application</b>	<b>Application</b>	<b>Persons who may make application</b>
Application to remove agreement from Register	Application as mentioned in subsection 199C(2) for an order to remove the details of an agreement from the Register of Indigenous Land Use Agreements.	(1) A party to the agreement; or (2) A representative Aboriginal/Torres Strait Islander body for the area covered by the agreement.
Application about transfer of records	Application as mentioned in subsection 203FC(4) for orders to ensure that a representative Aboriginal/Torres Strait Islander body complies with directions under subsection 203FC(1).	A person affected by the body's non-compliance with the directions.

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*Other applications*

- (2) This Division also applies to any other application to the Federal Court in relation to a matter arising under this Act.

**70 Federal Court Rules about applications etc.**

*Federal Court Rules*

- (1) The application must be filed in the Federal Court and must comply with any Rules of the Federal Court about:
- (a) the form of the application; or
  - (b) information to be contained in the application; or
  - (c) documents that must accompany the application; or
  - (d) any other matter relating to the application.

*Prescribed fees*

- (2) The application must be accompanied by any prescribed fee.

## **Division 2—Applications to the National Native Title Tribunal: right to negotiate**

### **75 Right to negotiate applications**

The following table sets out applications that may be made to the National Native Title Tribunal under this Division and the persons who may make each of those applications:

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<b>Applications</b>		
<b>Kind of application</b>	<b>Application</b>	<b>Persons who may make application</b>
Expedited procedure objection application	Application objecting as mentioned in subsection 32(3) against the inclusion of a statement that an act is an act attracting the expedited procedure.	A native title party.
Future act determination application	Application as mentioned in section 35 for a determination in relation to a future act.	A negotiation party.

---

### **76 Material and fees to accompany applications**

An application must:

- (a) be in the prescribed form; and
- (b) be given to the Registrar; and
- (c) contain such information in relation to the matters sought to be determined as is prescribed; and
- (d) be accompanied by any prescribed documents and any prescribed fee.

### **77 Action to be taken in relation to applications**

If an application complies with section 76, the National Native Title Tribunal must accept the application.

Note: The procedure to be followed in relation to these applications is set out in Subdivision P of Division 3 of Part 2.

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## **Division 2A—Applications to the Native Title Registrar: objections against registration of indigenous land use agreements**

### **77A Material and fees to accompany applications**

An application under subsection 24DJ(1) objecting against registration of an agreement on the ground that it would not be fair and reasonable to register it must:

- (a) be in the prescribed form; and
- (b) be given to the Registrar; and
- (c) state reasons why it would not be fair and reasonable to register the agreement; and
- (d) be accompanied by any prescribed documents and any prescribed fee.

### **77B Action to be taken in relation to applications**

If an application complies with section 77A, the Registrar must accept the application.

## **Division 3—Miscellaneous**

### **78 Assistance in relation to proceedings**

*Native Title Registrar may assist applicants, respondents etc.*

- (1) The Native Title Registrar may give such assistance as he or she considers reasonable to:
  - (a) help people prepare applications and accompanying material and to help them, at any stage of a proceeding, in matters related to the proceeding; and
  - (b) help other people, at any stage of a proceeding, in matters related to the proceeding.

*Types of assistance*

- (2) Without limiting subsection (1), the assistance may include:
-

- (a) providing research services; or
- (b) conducting searches of registers or other records of current or former interests in land or waters.

*No assistance to search own registers etc.*

- (3) Unless the Native Title Registrar considers there are special reasons for doing so, the Registrar must not give assistance to the Commonwealth, a State or a Territory by way of conducting searches of registers or other records maintained by the Commonwealth, the State or the Territory.

## **79 Requests for non-monetary compensation**

*Requests must be considered*

- (1) If, during negotiations in relation to a compensation application under this Part, a person or persons involved in the negotiations propose that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations:
  - (a) must consider the proposal; and
  - (b) must negotiate in good faith in relation to the proposal.

*Examples of non-monetary compensation*

- (2) The transfer of land or other property or the provision of goods or services is an example of compensation in a form other than money.

## **19 Division 1 of Part 4**

Repeal the Division, substitute:

### **Division 1—Overview of Part**

#### **79A Overview of Part**

This Part has the rules for processing Federal Court applications, and making determinations, relating to native title. Division 1A has

the general rules, and the other Divisions of the Part deal with the following topics:

- (a) referring applications to the NNTT for mediation (see Division 1B);
- (b) agreements and unopposed applications (see Division 1C);
- (c) conferences (see Division 2);
- (d) orders (see Division 3).

## **Division 1A—General**

### **80 Operation of Part**

The provisions of this Part apply in proceedings in relation to applications filed in the Federal Court that relate to native title.

### **81 Jurisdiction of the Federal Court**

The Federal Court has jurisdiction to hear and determine applications filed in the Federal Court that relate to native title and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

### **82 Federal Court's way of operating**

#### *Rules of evidence*

- (1) The Federal Court is bound by the rules of evidence, except to the extent that the Court otherwise orders.

#### *Concerns of Aboriginal peoples and Torres Strait Islanders*

- (2) In conducting its proceedings, the Court may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders, but not so as to prejudice unduly any other party to the proceedings.

### **83 Assessor assisting the Federal Court**

*Assessor to assist Court*

- (1) The Chief Justice may direct an assessor to assist the Federal Court in relation to a proceeding.

*Assessor subject to Court's control*

- (2) The assessor is, in relation to that proceeding, subject to the control and direction of the Court.

*Assessor not to exercise judicial power*

- (3) In assisting the Court, the assessor is not to exercise any judicial power of the Court.

### **83A Federal Court may request searches to be conducted**

*Request to State Minister or Territory Minister*

- (1) If a State Minister or Territory Minister is a party to a proceeding, the Federal Court may, for the purposes of the proceeding, request that Minister to conduct searches of the State or Territory's registers or other records of current or former interests in land or waters and to report the results to the Court.

*Request to Native Title Registrar*

- (2) However, if:
  - (a) no State Minister or Territory Minister is a party to the proceeding; or
  - (b) the Federal Court considers it appropriate;the Federal Court may, for the purposes of the proceeding, instead request the Native Title Registrar to conduct such searches and to report the results to the Court.

## **84 Parties**

### *Coverage of section*

- (1) This section applies to proceedings in relation to applications to which section 61 applies.

### *Applicant*

- (2) The applicant is a party to the proceedings.

### *Affected persons*

- (3) Another person is a party to the proceedings if:
- (a) any of the following applies:
    - (i) the person is covered by paragraph 66(3)(a);
    - (ii) the person claims to hold native title in relation to land or waters in the area covered by the application;
    - (iii) the person's interests may be affected by a determination in the proceedings; and
  - (b) the person notifies the Federal Court, in writing, within the period specified in the notice under section 66, that the person wants to be a party to the proceeding.

### *State or Territory Ministers*

- (4) If any of the area covered by the application is within the jurisdictional limits of a State or Territory, the State Minister or Territory Minister for the State or Territory is a party to the proceedings unless the Minister gives the Federal Court written notice, within the period specified in the notice under section 66, that the Minister does not want to be a party.

### *Joining parties*

- (5) The Federal Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings.

*Persons wanting to exercise public right of access or use*

(5A) If:

- (a) a person wants to become a party to the proceedings; and
- (b) the Federal Court is satisfied that the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application;

the Court:

- (c) may make appropriate orders to ensure that the person's interests are properly represented in the proceedings; but
- (d) need not allow more than one such person to become a party to the proceedings in relation to each area covered by such a public right of access or use.

*Parties may withdraw before first hearing of proceeding*

- (6) In addition to any other rights to withdraw from the proceedings, any party to the proceedings, other than the applicant, may, at any time before the first hearing of the proceedings starts, cease to be a party by giving written notice to the Court.

*Parties may withdraw with leave of Federal Court*

- (7) In addition to any other rights to withdraw from the proceedings, any party to the proceedings, other than the applicant, may, with the leave of the Federal Court, cease to be a party.

*Dismissing parties*

- (8) The Federal Court may at any time order that a person, other than the applicant, cease to be a party to the proceedings.

*Court to consider dismissing parties*

- (9) The Federal Court is to consider making an order under subsection (8) in respect of a person who is a party to the proceedings if the Court is satisfied that:
  - (a) the following apply:



- (i) the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application; and
  - (ii) the person's interests are properly represented in the proceedings by another party; or
- (b) the person never had, or no longer has, interests that may be affected by a determination in the proceedings.

#### **84A Intervention by Commonwealth Minister**

*Commonwealth Minister may intervene*

- (1) The Commonwealth Minister may, at any time, on behalf of the Commonwealth, by giving written notice to the Federal Court, intervene in a proceeding before the Court in a matter arising under this Act.

*Court may order costs against Commonwealth*

- (2) If the Commonwealth Minister intervenes in a proceeding before the Court, the Court may make an order as to costs against the Commonwealth.

*Commonwealth Minister taken to be a party for purposes of appeal*

- (3) If the Commonwealth Minister intervenes in a proceeding before the Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Commonwealth Minister is taken to be a party to the proceeding.

*Court may order costs against Commonwealth if Commonwealth Minister appeals*

- (4) If, under subsection (3), the Commonwealth Minister institutes an appeal from a judgment, a court hearing the appeal may make an order as to costs against the Commonwealth.

### **84B Parties may appoint an agent**

- (1) A party to a proceeding may appoint a society, organisation, association or other body to act as agent on behalf of the party in relation to the proceeding.

*Body may act for 2 or more parties*

- (2) The same body may act as agent for 2 or more parties in the same proceeding.

Example: An industry body may act as agent for a number of its members who are parties to a particular proceeding.

### **84C Striking out applications for failure to comply with requirements of this Act**

*Strike-out application*

- (1) If an application (the *main application*) does not comply with section 61 (which deals with the basic requirements for applications), 61A (which provides that certain applications must not be made) or 62 (which requires applications to be accompanied by affidavits and to contain certain details), a party to the proceedings may at any time apply to the Federal Court to strike out the application.

Note: The main application may still be amended even after a strike-out application is filed.

*Court must consider strike-out application before other proceedings*

- (2) The Court must, before any further proceedings take place in relation to the main application, consider the application made under subsection (1).

*Registrar of Court to advise Native Title Registrar of application etc.*

- (3) The Registrar of the Court must advise the Native Title Registrar of the making of any application under subsection (1) and of the outcome of the application.

*Other strike-out applications unaffected*

- (4) This section does not prevent the making of any other application to strike out the main application.

## **85 Representation before Federal Court**

A party may appear in person or may be represented by a barrister, a solicitor or, with the leave of the Federal Court, another person.

### **85A Costs**

- (1) Unless the Federal Court orders otherwise, each party to a proceeding must bear his or her own costs.

*Unreasonable conduct*

- (2) Without limiting the Court's power to make orders under subsection (1), if the Federal Court is satisfied that a party to a proceeding has, by any unreasonable act or omission, caused another party to incur costs in connection with the institution or conduct of the proceeding, the Court may order the first-mentioned party to pay some or all of those costs.

## **86 Evidence and findings in other proceedings**

Subject to subsection 82(1), the Federal Court may:

- (a) receive into evidence the transcript of evidence in any other proceedings before:
- (i) the Court; or
  - (ii) another court; or
  - (iii) the NNTT; or

- (iv) a recognised State/Territory body; or
  - (v) any other person or body;
- and draw any conclusions of fact from that transcript that it thinks proper; and
- (b) receive into evidence the transcript of evidence in any proceedings before the assessor and draw any conclusions of fact from that transcript that it thinks proper; and
  - (c) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (v).

## **Division 1B—Reference to NNTT for mediation**

### **86A Purpose of mediation**

*Proceeding not involving compensation*

- (1) The purpose of mediation in a proceeding that does not involve a compensation application is to assist the parties to reach agreement on some or all of the following matters:
  - (a) whether native title exists or existed in relation to the area of land or waters covered by the application;
  - (b) if native title exists or existed in relation to the area of land or waters covered by the application:
    - (i) who holds or held the native title;
    - (ii) the nature, extent and manner of exercise of the native title rights and interests in relation to the area;
    - (iii) the nature and extent of any other interests in relation to the area;
    - (iv) the relationship between the rights and interests in subparagraphs (ii) and (iii) (taking into account the effects of this Act);
    - (v) to the extent that the area is not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer or conferred possession, occupation, use

and enjoyment of the land or waters on its holders to the exclusion of all others.

Note: The matters set out in paragraphs (a) and (b) are based on those that are required, under section 225, for a determination of native title.

*Proceeding involving compensation*

- (2) The purpose of mediation in a proceeding that involves a compensation application is to assist the parties to reach agreement on some or all of the following matters:
- (a) the matters set out in paragraphs (1)(a) and (b) in relation to the area of land or waters covered by the application;
  - (b) the amount or kind of any compensation payable;
  - (c) the name of the person or persons entitled to any compensation or the method for determining the person or persons;
  - (d) the method (if any) for determining the amount or kind of compensation to be given to each person;
  - (e) the method for determining any dispute regarding the entitlement of a person to an amount of compensation.

Note: The matters set out in paragraphs (b) to (e) reflect the matters that, under section 94, must be set out in an order for compensation.

**86B Referral of matters to NNTT for mediation**

*Federal Court must refer applications to mediation*

- (1) Unless an order is made under subsection (2) that there be no mediation, the Federal Court must refer every application under section 61 to the NNTT for mediation, including the ascertaining of agreed facts, as soon as practicable after the end of the period specified in the notice under section 66.

*Court may order no mediation*

- (2) The Court may, on application by a party to the proceeding, or of its own motion, make an order that there be no mediation in relation to the whole of the proceeding or a part of the proceeding.

*No mediation if it will be unnecessary etc.*

- (3) The Court, upon application under subsection (2) or if it is considering making an order of its own motion, must order that there be no mediation in relation to the whole of the proceeding or a part of the proceeding if the Court considers that:
- (a) any mediation will be unnecessary in relation to the whole or that part, whether because of an agreement between the parties about the whole or the part of the proceeding or for any other reason; or
  - (b) there is no likelihood of the parties being able to reach agreement on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2) in relation to the whole or that part; or
  - (c) the applicant in relation to the application under section 61 has not provided sufficient detail (whether in the application or otherwise) about the matters mentioned in subsection 86A(1) or (2) in relation to the whole or that part.

*Factors to take into account*

- (4) In deciding whether to make an order that there be no mediation in relation to the whole of the proceeding or a part of the proceeding, the Court is to take the following factors into account:
- (a) the number of parties;
  - (b) the number of those parties who have appointed the same agent under section 84B or same representative;
  - (c) how long it is likely to take to reach agreement on the matters set out in subsection 86A(1) or (2) in relation to the whole or the part of the proceeding;
  - (d) the size of the area involved;
  - (e) the nature and extent of any non-native title rights and interests in relation to the land and waters in the area;
  - (f) any other factor that the Court considers relevant.

*Whole or part of a proceeding may be referred at any time*

- (5) In addition to referring a proceeding to mediation under subsection (1), the Court may, at any time in a proceeding, refer the whole or a part of the proceeding to the NNTT for mediation if the Court considers that the parties will be able to reach agreement on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2).

**86C Cessation of mediation**

*Court may order mediation to cease*

- (1) The Court may, of its own motion, at any time in a proceeding, order that mediation is to cease in relation to the whole or a part of the proceeding if the Court considers that:
- (a) any further mediation will be unnecessary in relation to the whole or that part; or
  - (b) there is no likelihood of the parties being able to reach agreement on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2) in relation to the whole or that part.

*Party may seek cessation of mediation*

- (2) A party to a proceeding may, at any time after 3 months after the start of mediation, apply to the Court for an order that mediation cease in relation to the whole of the proceeding or a part of the proceeding.

*Where Court must order mediation to cease*

- (3) If the party making the application is:
- (a) the applicant in relation to the application under section 61; or
  - (b) the Commonwealth, a State or a Territory;
- the Court must make an order that mediation is to cease unless the Court is satisfied that the mediation is likely to be successful in enabling the parties to reach agreement on any of the matters set out

in subsection 86A(1) or (2) in relation to the whole or the part of the proceeding.

*Where Court may order mediation to cease*

- (4) If the party making the application is any other person, the Court may make such an order unless the Court is satisfied that the mediation is likely to be successful as mentioned in subsection (3).

*Court to consider NNTT report*

- (5) The Court, in deciding whether to make an order under subsection (1), (3) or (4), must take into account any report provided by the NNTT under section 86E or by the presiding member of the NNTT under subsection 136G(3).

### **86D Federal Court's powers**

*Court may determine fact or law*

- (1) The Court may, at any time during mediation, determine a question of fact or law that is referred to it by the NNTT.

Note: Under subsection 136D(1), the presiding member of the NNTT may refer to the Federal Court a question of fact or law that arises during mediation.

*Court may adopt agreement on facts*

- (2) The Court may adopt any agreement on facts between the parties, reached during mediation.

### **86E Federal Court may request reports from NNTT**

The Federal Court may request the NNTT to provide reports on the progress of any mediation under this Division being undertaken by the NNTT and may specify when the report is to be provided.



## **Division 1C—Agreements and unopposed applications**

### **86F Agreement to settle application etc.**

*Parties may negotiate for agreement*

- (1) Some or all of the parties to a proceeding in relation to an application may negotiate with a view to agreeing to action that will result in any one or more of the following:
  - (a) the application being withdrawn or amended;
  - (b) the parties to the proceeding being varied;
  - (c) any other thing being done in relation to the application.The agreement may involve matters other than native title.

*Assistance by NNTT*

- (2) The parties may request assistance from the NNTT in negotiating the agreement.

*Court may order adjournment to help negotiations*

- (3) The Federal Court may order an adjournment of the proceeding to allow time for the negotiations. It may do so on its own motion or on application by a party.

*Court may end adjournment*

- (4) The Federal Court may order that the adjournment end. It may do so:
  - (a) on its own motion; or
  - (b) on application by a party; or
  - (c) if the NNTT reports that the negotiations are unlikely to succeed.

*Court's powers not limited*

- (5) Subsection (3) does not limit the Federal Court's powers to order an adjournment.

## **86G Unopposed applications**

### *Federal Court may make order*

- (1) If, at any stage of a proceeding in relation to an application under section 61, but after the end of the period specified in the notice given under section 66:
  - (a) the application is unopposed; and
  - (b) the Federal Court is satisfied that an order in, or consistent with, the terms sought by the applicant is within the power of the Court;

the Court may, if it appears appropriate to do so, make such an order without holding a hearing or, if a hearing has started, without completing the hearing.

Note: If the application involves making a determination of native title, the Court's order would need to comply with section 94A (which deals with the requirements of native title determination orders).

### *Meaning of **unopposed***

- (2) For the purpose of this section, an application is **unopposed** if the only party is the applicant or if each other party notifies the Federal Court in writing that he or she does not oppose an order in, or consistent with, the terms sought by the applicant.

## **87 Power of Federal Court if parties reach agreement**

### *Power of Court*

- (1) If, at any stage of proceedings after the end of the period specified in the notice given under section 66:
  - (a) agreement is reached between the parties on the terms of an order of the Federal Court in relation to:
    - (i) the proceedings; or
    - (ii) a part of the proceedings; or
    - (iii) a matter arising out of the proceedings; and
  - (b) the terms of the agreement, in writing signed by or on behalf of the parties, are filed with the Court; and

(c) the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court;  
the Court may, if it appears to it to be appropriate to do so, act in accordance with whichever of subsection (2) or (3) is relevant in the particular case.

*Agreement as to order*

- (2) If the agreement is on the terms of an order of the Court in relation to the proceedings, the Court may make an order in, or consistent with, those terms without holding a hearing or, if a hearing has started, without completing the hearing.

Note: If the application involves making a determination of native title, the Court's order would need to comply with section 94A (which deals with the requirements of native title determination orders).

*Agreement as to part of proceedings*

- (3) If the agreement relates to a part of the proceedings or a matter arising out of the proceedings, the Court may in its order give effect to the terms of the agreement without, if it has not already done so, dealing at the hearing with the part of the proceedings or the matter arising out of the proceedings, as the case may be, to which the agreement relates.

## **20 After section 94**

Insert:

### **94A Order containing determination of native title**

An order in which the Federal Court makes a determination of native title must set out details of the matters mentioned in section 225 (which defines *determination of native title*).

## **21 After section 97**

Insert:

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### **97A Searches for Federal Court etc.**

The Registrar has the power to conduct, or arrange for the conducting of, searches:

- (a) as requested by the Federal Court under section 83A; or
- (b) for the purposes of section 190A or any other provision of this Act.

## **22 Section 98**

Repeal the section, substitute:

### **98 Powers of Registrar—registers**

The Registrar has the powers set out in Parts 7, 8 and 8A in relation to the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements.

### **98A Power of Registrar—other public records and information**

*Registrar may keep other records and information*

- (1) The Registrar has the power to keep such other records and information as he or she considers appropriate and to make those records or that information available to the public.

*Certain information to be confidential*

- (2) The Registrar must not make particular information available to the public if the Registrar considers that it would not be in the public interest for the information to be available to the public.

*Concerns of Aboriginal peoples and Torres Strait Islanders*

- (3) In determining whether it would or would not be in the public interest for information to be available to the public, the Registrar must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

## **23 After subsection 108(1)**

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Insert:

*Mediation for Federal Court proceedings*

- (1A) The Tribunal has the functions in relation to Federal Court proceedings given to the Tribunal by Division 4A.

*Requests for assistance or mediation*

- (1B) The Tribunal has the function of providing assistance or mediating in accordance with any provision of this Act.

**24 Subsection 109(2)**

Repeal the subsection, substitute:

*Concerns of Aboriginal peoples and Torres Strait Islanders*

- (2) The Tribunal, in carrying out its functions, may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders, but not so as to prejudice unduly any party to any proceedings that may be involved.

**25 Subsection 109(3)**

Omit “conducting an inquiry”, substitute “carrying out its functions”.

**26 Section 110 (table, column dealing with persons who may be appointed, row dealing with presidential members)**

Add:

- ; or (3) A person who is, and has been for at least 5 years, enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.

**27 Subsections 122(1) and (3)**

Omit “Part 4”, substitute “Part 3”.

**28 Subsection 123(1)**

Omit “sections 69 and”, substitute “section”.

**29 Paragraph 123(1)(b)**

Repeal the paragraph, substitute:

- (b) the persons who are to conduct mediation in a particular proceeding, or to provide assistance in making or negotiating agreements under this Act;

**30 Paragraph 123(1)(c)**

Omit “, or for the purposes of making a decision under section 69”.

**31 Subsection 124(1)**

Omit “Subject to section 69, the”, substitute “The”.

**32 Subdivision B of Division 4 of Part 6 (heading)**

Repeal the heading, substitute:

**Subdivision B—Other officers, Tribunal staff and consultants**

**33 After section 131**

Insert:

**131A President may engage consultants**

- (1) The President may engage a person as a consultant in relation to any assistance or mediation that the Tribunal provides under any provision of this Act.

*Consultants to have relevant skills or knowledge*

- (2) The President may only engage a person under subsection (1) if:

- (a) the person has, in the opinion of the President, particular skills or knowledge in relation to matters of substantial relevance to the assistance or mediation; and
- (b) so far as is reasonably practicable, the person has, in the opinion of the President, special knowledge in relation to Aboriginal or Torres Strait Islander societies.

*Engagements to be in writing*

- (3) An engagement under subsection (1) must be made:
  - (a) on behalf of the Commonwealth; and
  - (b) by written agreement.

*Consultant subject to President's direction*

- (4) A consultant engaged under subsection (1) is subject to directions given by the President under subsection 123(1).

Note 1: The heading to section 132 is replaced by the heading "**Registrar may engage consultants**".

Note 2: The heading to subsection 132(1) is omitted.

## **131B Disclosure of interests**

*Consultant to disclose conflict of interest*

- (1) A person engaged under subsection 131A(1) as a consultant in relation to any assistance or mediation being provided by the Tribunal who has a conflict of interest in relation to the assistance or mediation must disclose the matters giving rise to that conflict to:
  - (a) the President of the Tribunal; and
  - (b) the persons to whom the Tribunal is providing the assistance or mediation.

*Requirement for consent*

- (2) The person must not perform his or her duties as a consultant in relation to the assistance or mediation unless the President and the persons to whom the Tribunal is providing the assistance or mediation consent.

*Meaning of conflict of interest*

- (3) For the purposes of this section, a person engaged under subsection 131A(1) as a consultant in relation to any assistance or mediation being provided by the Tribunal has a conflict of interest in relation to the assistance or mediation if the person has any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties as a consultant in relation to the assistance or mediation.

*Conflict of interest at a particular time*

- (4) Without limiting subsection (3), a person engaged under subsection 131A(1) as a consultant in relation to any assistance or mediation being provided by the Tribunal has a conflict of interest at a particular time in relation to the assistance or mediation if:
- (a) at that time, the person is employed by, or engaged as a consultant to, an organisation that has an interest in the matter in relation to which the assistance or mediation is being provided; or
  - (b) at any time in the 12 months immediately before that time, the person was so employed or engaged.

**34 After section 136**

Insert:

**Division 4A—Mediation conferences**

**136A Mediation conferences**

*President to direct conference to be held*

- (1) If the Federal Court refers the whole or a part of a proceeding to the Tribunal under section 86B for mediation, the Tribunal may hold such conferences of the parties or their representatives as the Tribunal considers will help in resolving the matter.



*Member must preside*

- (2) A conference must be presided over by a member of the Tribunal.

*Assistance for presiding member*

- (3) The member presiding at a conference may be assisted by another member of the Tribunal or by a member of the staff of the Tribunal.

*Statements at conference are without prejudice*

- (4) In a proceeding before the Court, unless the parties otherwise agree, evidence may not be given, and statements may not be made, concerning any word spoken or act done at a conference.

*Member not to take further part in relation to a proceeding*

- (5) Unless the parties otherwise agree, a member who presides over, or assists at, a conference in relation to a proceeding may not, in any other capacity, take any further part in the proceeding.

*Participation by telephone etc.*

- (6) The presiding member may allow a person to participate by:
- (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication.

*Division applies as if consultant were a member*

- (7) If a consultant is engaged under subsection 131A(1) to conduct mediation in relation to a particular matter under this Division, this Division applies in relation to that matter as if the consultant were a member of the Tribunal.

### **136B Parties at conferences**

#### *Limiting parties at conferences*

- (1) The presiding member may direct that only one or some of the parties may attend, and be represented, at a conference.

#### *Excluding parties from conferences*

- (2) If the presiding member considers that:
  - (a) a party, or a party's representative, at a conference is disrupting or hindering the conference; or
  - (b) excluding a party, or a party's representative, from a conference would help to resolve matters;the member may direct that the party or representative not attend at that conference or at other conferences.

#### *Parties may be represented*

- (3) A party may be represented by a barrister, a solicitor or another person.

### **136C Other persons attending or participating in conferences**

The presiding member may, with the consent of all of the parties present at a conference:

- (a) direct that other persons be permitted to attend as observers of the conference; or
- (b) if he or she considers it would assist the parties to reach agreement on any of the matters mentioned in subsection 86A(1) or (2)—direct that other persons be permitted to participate in the conference.

### **136D Referral of questions of fact or law**

#### *Reference of questions to Federal Court*

- (1) Subject to subsections (2) and (3), if the presiding member considers that it would expedite the reaching of an agreement on any
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matter that is the subject of mediation, he or she may refer to the Federal Court a question of fact or law relating to a proceeding that arises during the mediation.

Note: Under subsection 86D(1), the Federal Court may determine a question of fact or law that the NNTT refers to it.

*Presiding member not a consultant*

- (2) If the presiding member is not a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
- (a) on the initiative of the presiding member; or
  - (b) at the request of a party, if the presiding member agrees.

*Presiding member a consultant*

- (3) If the presiding member is a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
- (a) on the initiative of the presiding member, if a presidential member agrees; or
  - (b) at the request of a party, if both the presiding member and a presidential member agree.

*Mediation may continue*

- (4) If a question of fact or law arising during mediation has been referred to the Court under this section, the presiding member may continue mediation if he or she considers that it is appropriate.

**136E Conferences to be held in private**

A conference must be held in private, unless the member presiding directs otherwise and no party objects.

**136F Presiding member may prohibit disclosure of information**

*Power of presiding member*

- (1) The presiding member may direct that:
-

- (a) any information given, or statements made, at a conference; or
  - (b) the contents of any document produced at a conference;
- must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the presiding member specifies.

*Applications etc.*

- (2) The presiding member may make the direction on his or her own initiative or on an application by a party.

*Presiding member may disclose if parties agree*

- (3) If the parties agree, the presiding member may, despite the direction, disclose things of the kind mentioned in paragraph (1)(a) or (b).

**136G Report to be given to Federal Court**

*Report after mediation concludes*

- (1) The presiding member must, as soon as practicable after mediation is successfully concluded, provide a written report to the Federal Court setting out the results of the mediation.

*Report requested under section 86E*

- (2) The presiding member must provide a written report to the Federal Court setting out the progress of the mediation if requested to do so under section 86E.

*Report to assist the Court*

- (3) The presiding member may provide a written report to the Federal Court setting out the progress of the mediation if the presiding member considers that it would assist the Federal Court in progressing the proceeding in relation to which the mediation is being undertaken.

*Agreement on facts*

- (4) If the parties agree, any report under this section must include any agreement on facts between the parties that was reached during the mediation concerned.

**Division 4B—How assistance or mediation is to be provided**

**136H Regulations about assistance or mediation**

- (1) The regulations may make provision in relation to the way in which:
- (a) any assistance is to be provided by the NNTT under any provision of this Act; or
  - (b) any mediation, that the NNTT is requested to provide, is to be provided under any provision of this Act.

*Regulations must be consistent with this Act*

- (2) Such regulations must not be inconsistent with Division 4A or any other provision of this Act.

**35 Paragraph 139(a)**

Repeal the paragraph.

**36 At the end of section 139**

Add:

- ; or (d) if a person has made an application under subsection 24DJ(1) objecting against registration of an indigenous land use agreement and not withdrawn the objection—whether the person satisfies the Tribunal that it would not be fair and reasonable to register the agreement having regard to the matters mentioned in paragraph 24DL(2)(c).

**37 Subsection 141(1)**

Repeal the subsection.

**38 At the end of section 141**

Add:

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*Registration of indigenous land use agreements*

- (4) The parties to an inquiry into whether a person satisfies the Tribunal that it would not be fair and reasonable to register an indigenous land use agreement are:
- (a) the person; and
  - (b) the parties to the agreement; and
  - (c) any other person who satisfies the Tribunal that his or her interests are affected by the agreement.

**39 Section 148**

Repeal the section, substitute:

**148 Power of Tribunal where no jurisdiction, failure to proceed etc.**

The Tribunal may dismiss an application, at any stage of an inquiry relating to the application, if:

- (a) the Tribunal is satisfied that it is not entitled to deal with the application; or
- (b) the applicant fails within a reasonable time to proceed with the application or to comply with a direction by the Tribunal in relation to the application.

**40 After section 149**

Insert:

**149A Power of Tribunal to reinstate application**

If it appears to the Tribunal that an application has been dismissed in error, the Tribunal may, on the application of a party to the application or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

**41 At the end of section 151**

Add:

*Determinations “on the papers”*

(2) The Tribunal may:

- (a) decide for the purposes of paragraph 24DL(2)(c) whether it would be fair and reasonable to register an agreement; or
- (b) make a determination in relation to a right to negotiate application;

by considering, without holding a hearing, the documents or other material lodged with or provided to the Tribunal. However, the Tribunal must hold a hearing if it appears to the Tribunal that the issues for determination cannot be adequately determined in the absence of the parties.

**42 Subsection 154(1)**

Omit “an inquiry”, substitute “a hearing”.

Note 1: The heading to section 154 is altered by omitting “**Inquiries**” and substituting “**Hearings**”.

Note 2: The heading to subsection 154(1) is altered by omitting “*inquiries*” and substituting “*hearings*”.

**43 Subsection 154(3)**

Omit “an inquiry, or a part of an inquiry,”, substitute “a hearing, or part of a hearing,”.

Note: The heading to subsection 154(3) is altered by omitting “*inquiries*” and substituting “*hearings*”.

**44 Subsection 154(4)**

Omit “an inquiry or part of an inquiry”, substitute “a hearing or part of a hearing”.

**45 Sections 160, 161 and 165**

Repeal the sections.

**46 Subdivision E of Division 5 of Part 6**

Repeal the Subdivision.

**47 Subsections 169(2) and (3)**

Repeal the subsections, substitute:

*Appeal from Tribunal decision—indigenous land use agreement registration*

- (2) A party to an inquiry relating to registration of an indigenous land use agreement before the Tribunal may appeal to the Federal Court, on a question of law, from any decision of the Tribunal in that proceeding.

Note: The heading to subsection 169(1) is altered by omitting “*the*”.

**48 Section 176**

After “section 92”, insert “, 136F”.

**49 Paragraph 177(a)**

Omit “or a member”, substitute “, a member or a consultant engaged under subsection 131A(1)”.

**50 Section 178**

Omit “a determination of the Tribunal is lodged with the Federal Court under section 166,”.

**51 After subsection 180(1)**

Insert:

*Protection of consultants*

- (1A) A person engaged under subsection 131A(1) as a consultant has, in performing duties under the engagement, the same protection and immunity as a Justice of the High Court.

**52 Section 181**

Repeal the section, substitute:



## **181 Confidential information not to be disclosed**

### *Persons to whom section applies*

- (1) This section applies to a person who is a member or officer of the Tribunal or a consultant engaged under subsection 131A(1).

### *Persons not competent etc. to give evidence*

- (2) A person to whom this section applies is not competent, and must not 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 of the Tribunal in force under section 155 or to a direction of the presiding member under subsection 136F(1); or
  - (b) an application has been made to the Tribunal for a direction under section 155, or to the presiding member for a direction under section 136F, concerning the matter to which the evidence would relate and the Tribunal or the presiding member has not determined that application.

### *Persons not required to produce documents*

- (3) A person to whom this section applies must not be required to produce in a court a document given to the Tribunal in connection with a proceeding if:
- (a) the production of the document would be contrary to a direction of the Tribunal in force under section 155 or to a direction of the presiding member under subsection 136F(1); or
  - (b) an application has been made to the Tribunal for a direction under section 155, or to the presiding member for a direction under section 136F, in relation to the document and the Tribunal or the presiding member has not determined that application.

*Persons not required to give evidence*

- (4) A person to whom this section applies must not be required to give evidence to a court in relation to any proceedings before the Tribunal or any mediation required under subsection 31(3).

*Definitions*

- (5) In this section:

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

*produce* includes permit access to.

**53 Section 183**

Repeal the section, substitute:

**183 Assistance from Attorney-General**

*Assistance in relation to inquiries etc.*

- (1) A person who is a party, or who intends to apply to be a party, to an inquiry, mediation or proceeding related to native title may apply to the Attorney-General for the provision of assistance under this section in relation to the inquiry, mediation or proceeding.

*Assistance in relation to agreements and disputes*

- (2) A person who:
- (a) is or intends to become a party to an indigenous land use agreement or an agreement about rights conferred under subsection 44B(1); or
  - (b) is in dispute with any other person about rights conferred under subsection 44B(1);
- may apply to the Attorney-General for the provision of assistance under this section in relation to:
- (c) negotiating the agreement; or
  - (d) any inquiry, mediation or proceeding in relation to the agreement; or
-

- (e) resolving the dispute.

*Attorney-General may grant assistance*

- (3) If the Attorney-General is satisfied that:
- (a) the applicant is not eligible to receive assistance in relation to the matter concerned from any other source (including from a representative Aboriginal/Torres Strait Islander body); and
  - (b) the provision of assistance to the applicant in relation to the matter concerned is in accordance with the guidelines (if any) determined under subsection (4); and
  - (c) in all the circumstances, it is reasonable that the application be granted;

the Attorney-General may authorise the provision by the Commonwealth to the applicant, either unconditionally or subject to such conditions as the Attorney-General determines, of such legal or financial assistance as the Attorney-General determines.

*Attorney-General may determine guidelines*

- (4) The Attorney-General may, in writing, determine guidelines that are to be applied in authorising the provision of assistance under this section.

*Assistance not to be provided to Ministers*

- (5) The Attorney-General cannot authorise the provision of assistance under this section to the Commonwealth Minister, a State Minister or a Territory Minister.

*Assistance not to be provided to native title claimants etc.*

- (6) The Attorney-General must not authorise the provision of assistance under this section to a person in relation to:
- (a) any claim by the person, in an inquiry, mediation or proceeding, to hold native title or to be entitled to compensation in relation to native title; or

- (b) an indigenous land use agreement, if the person holds or claims to hold native title in relation to the area covered by the agreement; or
- (c) an agreement or dispute about rights conferred under subsection 44B(1), if the person is included in the native title claim group concerned.

*Delegation by Attorney-General*

- (7) The Attorney-General may, in writing, delegate any or all of his or her powers under subsection (3) to:
  - (a) the Secretary of the Department; or
  - (b) a person engaged under the *Public Service Act 1997* who occupies a specified position in the Department.

**54 Section 184**

Omit “given to the Registrar, or”, substitute “filed in the Federal Court, or given”.

**55 Subsection 185(2)**

Before “Registrar”, insert “Native Title”.

**56 Subsection 186(1)**

After “each claim”, insert “covered by subsection 190(1)”.

**57 Paragraph 186(1)(a)**

Omit “lodged with the Registrar or”, substitute “filed in the Federal Court or lodged with”.

**58 Paragraph 186(1)(c)**

After “was”, insert “filed or”.

**59 After paragraph 186(1)(c)**

Insert:

- (ca) the date on which the claim is entered on the Register;

**60 Paragraph 186(1)(d)**

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Omit “person who is taken to be the claimant”, substitute “applicant”.

**61 After paragraph 186(1)(f)**

Insert:

- ; (g) a description of the native title rights and interests in the claim that:
- (i) the Registrar in applying subsection 190B(6); or
  - (ii) a recognised State/Territory body in applying provisions equivalent to that subsection;
- considered, prima facie, could be established.

**62 At the end of subsection 188(1)**

Add:

Note: Such information must not be made available to the public: see subsection 98A(2).

**63 Subsection 188(2)**

Repeal the subsection.

**64 Sections 189 and 190**

Repeal the sections, substitute:

**189 Senior Registrar of the High Court to notify Registrar**

The Senior Registrar of the High Court must, as soon as is practicable, notify the Registrar of the details of any decision or determination made by the High Court that covers a claim.

**189A Registrar of Federal Court to notify Native Title Registrar**

The Registrar of the Federal Court must, as soon as practicable, notify the Native Title Registrar of:

- (a) the withdrawal of an application that contains a claim (whether or not covered by an entry on the Register); and
- (b) the details of any decision or determination of the Federal Court that covers a claim (whether or not covered by an entry on the Register).

## **190 Keeping the Register**

### *Registrar to include claims*

- (1) The Native Title Registrar must, as soon as practicable, include in the Register:
  - (a) details of any claims accepted for registration by the Registrar under section 190A; and
  - (b) details of any claims that have been found to satisfy conditions equivalent to those set out in sections 190B and 190C, being claims of which the Registrar is notified by a recognised State/Territory body.

### *Amending Register after amendment of claims: recognised bodies*

- (2) If a recognised State/Territory body notifies the Registrar of an amendment of an application containing a claim that is on the Register, the Registrar must, as soon as practicable:
  - (a) if the claim as set out in the amended application has been found to satisfy conditions equivalent to those set out in sections 190B and 190C—amend the Register to reflect the amendment; or
  - (b) if the claim as set out in the amended application has been found not to satisfy conditions equivalent to those set out in sections 190B and 190C—amend the Register to remove any entry relating to the claim.

### *Amending Register after amendment of claims: other cases*

- (3) If the Registrar is given a copy of an amended application under subsection 64(4) that contains a claim or amends a claim, the Registrar must, as soon as practicable:
  - (a) if the claim is accepted for registration under section 190A—amend the Register to reflect the amendment; or
  - (b) if the claim is not accepted for registration under section 190A—amend the Register to remove any entry relating to the claim.

*Amending Register where additional information provided*

(3A) If:

- (a) the Registrar accepts for registration a claim made in an application under section 63 or an amended application under subsection 64(4); and
- (b) in accordance with this section, the Registrar includes in the Register details of the claim and a description of the nature and extent of the native title rights and interests concerned; and
- (c) afterwards, but before a native title determination in relation to the application or amended application is made, the applicant provides to the Registrar further information relating to any native title rights and interests that were claimed in the application but whose details and description were not included in the Register; and
- (d) the Registrar considers that, if the information had been provided before the claim had been accepted for registration, the details and description would have been included in the Register;

the Registrar must amend the Register to include the details and description.

*Entries removed or amended after determination, decision or withdrawal*

(4) If:

- (a) the Registrar is notified under section 189 or 189A of a decision or determination covering a claim; or
- (b) the Registrar is notified by a recognised State/Territory body of a decision or determination covering a claim; or
- (c) the Registrar is notified that an application that contained a claim has been withdrawn;

the Registrar must, as soon as practicable:

- (d) if the application in question has been withdrawn, dismissed or otherwise finalised—remove the entry on the Register that relates to the claim; or

- (e) in any other case—amend the entry on the Register that relates to the claim so that it only relates to the matters in relation to which the application has not been finalised.

Note: If an application has been finalised in relation to part of the area claimed, the Register would be amended to remove references to that area. If the application has been finalised by an approved determination of native title, that determination would be entered on the National Native Title Register.

## **190A Registrar to consider claims**

### *Claims made to Federal Court*

- (1) If the Registrar is given a copy of a claimant application under section 63 or subsection 64(4), the Registrar must, in accordance with this section, consider the claim made in the application.

Note: In the case of an amended application (under subsection 64(4)), the Registrar would be required to consider the claim in the amended application even if the Registrar had already accepted for registration the claim in the original application. In such a case, if the claim in the amended application were then accepted for registration, the Registrar would be required under subsection 190(3) to amend the Native Title Register to reflect the amendment.

### *Effect of section 29 notice*

- (2) If, either before the Registrar begins to do so or while he or she is doing so, a notice is given under section 29 in relation to an act affecting any of the land or waters in the area covered by the application, the Registrar must use his or her best endeavours to finish considering the claim by the end of 4 months after the notification day specified in the notice.

### *Information to be considered*

- (3) In considering a claim under this section, the Registrar must have regard to:
- (a) information contained in the application and in any other documents provided by the applicant; and
  - (b) any information obtained by the Registrar as a result of any searches conducted by the Registrar of registers of interests in



relation to land or waters maintained by the Commonwealth, a State or a Territory; and

- (c) to the extent that it is reasonably practicable to do so in the circumstances—any information supplied by the Commonwealth, a State or a Territory, that, in the Registrar’s opinion, is relevant to whether any one or more of the conditions set out in section 190B or 190C are satisfied in relation to the claim;

and may have regard to such other information as he or she considers appropriate.

*Information about other rights and interests*

- (4) Without limiting subsection (3), information mentioned in that subsection may include information about current or previous non-native title rights and interests in, or in relation to, the land or waters in the area covered by the application.

*Effect of paragraph (3)(b)*

- (5) The fact that no information of the kind referred to in paragraph (3)(b) has been supplied at a particular time does not prevent the Registrar accepting a claim for registration under this section.

*Notification about amending application*

- (5A) Before the Registrar has decided whether or not to accept the claim for registration, he or she may notify the applicant that the application may be amended under the Federal Court Rules.

*Test for registration*

- (6) The Registrar must accept the claim for registration if the claim satisfies all of the conditions in:
- (a) section 190B (which deals mainly with the merits of the claim); and
  - (b) section 190C (which deals with procedural and other matters).
- In any other case, the Registrar must not accept the claim for registration.

Note: The fact that the Registrar is considering the claim under this section does not mean that the application cannot be amended: see subsection 64(3).

*Effect of withdrawal etc. of application*

- (7) If:
- (a) before the Registrar has decided whether or not to accept the claim for registration; or
  - (b) after the Registrar has decided to accept the claim for registration but before the Registrar has included details of the claim in the Register of Native Title Claims;
- the Registrar is notified under section 189 or 189A of a decision or determination to the effect that the application has been dismissed or otherwise finalised, or is notified that the application has been withdrawn, the Registrar must not:
- (c) decide whether or not to accept the claim for registration; or
  - (d) enter the details in the Register;
- as the case requires.

**190B Registration: conditions about merits of the claim**

- (1) This section contains the conditions mentioned in paragraph 190A(6)(a).

*Identification of area subject to native title*

- (2) The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters.

*Identification of native title claim groups*

- (3) The Registrar must be satisfied that:
- (a) the persons in the native title claim group are named in the application; or

- (b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

*Identification of claimed native title*

- (4) The Registrar must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

*Factual basis for claimed native title*

- (5) The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:
  - (a) that the native title claim group have, and the predecessors of those persons had, an association with the area; and
  - (b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests; and
  - (c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

*Prima facie case*

- (6) The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

Note: If the claim is accepted for registration, the Registrar must, under paragraph 186(1)(g), enter on the Register of Native Title Claims details of only those claimed native title rights and interests that can, prima facie, be established. Only those rights and interests are taken into account for the purposes of subsection 31(2) (which deals with negotiation in good faith in a “right to negotiate” process) and subsection 39(1) (which deals with criteria for making arbitral body determinations in a “right to negotiate” process).

*Physical connection*

- (7) The Registrar must be satisfied that at least one member of the native title claim group:
- (a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or
  - (b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:
    - (i) the Crown in any capacity; or
    - (ii) a statutory authority of the Crown in any capacity; or
    - (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

*No failure to comply with section 61A*

- (8) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of section 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

*No extinguishment etc. of claimed native title*

- (9) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:
- (a) to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas; or
  - (b) to the extent that the native title rights and interests claimed relate to waters in an offshore place—those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place; or

- (c) in any case—the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2) or 47B(2)).

### **190C Registration: conditions about procedural and other matters**

- (1) This section contains the conditions mentioned in paragraph 190A(6)(b).

#### *Information etc. required by sections 61 and 62*

- (2) The Registrar must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

#### *No previous overlapping claim groups*

- (3) The Registrar must be satisfied that no person included in the native title claim group for the application (the **current application**) was a member of the native title claim group for any previous application, if:
  - (a) the previous application covered the whole or part of the area covered by the current application; and
  - (b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and
  - (c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.

#### *Identity of claimed native title holders*

- (4) The Registrar must be satisfied that either of the following is the case:
  - (a) the application has been certified under paragraph 202(4)(d) by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or

- (b) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group.

Note: The word *authorise* is defined in section 251B.

*Requirements for uncertified applications*

- (5) If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:
  - (a) includes a statement to the effect that the requirement set out in paragraph (4)(b) has been met; and
  - (b) briefly sets out the grounds on which the Registrar should consider that it has been met.

*Overlapping representative body areas*

- (6) Paragraph (4)(a) does not require certification by a particular representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions if:
  - (a) the application has been certified under paragraph 202(4)(d) by another representative Aboriginal Torres Strait Islander body whose area includes all of the area of land or waters, to which the application relates, that is within the first-mentioned body's area; or
  - (b) the application has been certified under paragraph 202(4)(d) by 2 or more other representative Aboriginal/Torres Strait Islander bodies whose areas, when combined, include all of the area of land or waters, to which the application relates, that is within the first-mentioned body's area.

*Definition of area*

- (7) In subsection (6):

**area**, in relation to a representative Aboriginal/Torres Strait Islander body, means the area in relation to which the body has been

determined under section 202 to be a representative  
Aboriginal/Torres Strait Islander body.

### **190D If the claim cannot be registered**

- (1) If the Registrar does not accept the claim for registration, the Registrar must, as soon as practicable, give the applicant and the Federal Court written notice of his or her decision not to accept the claim, including a statement of the reasons for the decision.

#### *Content of notice where failure to satisfy physical connection test*

- (1A) If the only reason why the Registrar cannot accept the claim for registration is that the condition in subsection 190B(7) (which is about a physical connection with the claim area) is not satisfied, the notice must advise the applicant of the applicant's right to make an application to the Federal Court under subsection (2) and of the power of the Court to make an order in accordance with subsection (4) in respect of the application.

#### *Applicant may apply to Federal Court for review*

- (2) If the Registrar gives the applicant a notice under subsection (1), the applicant may apply to the Federal Court for a review of the Registrar's decision not to accept the claim.

#### *Federal Court has jurisdiction*

- (3) The Court has jurisdiction to hear and determine an application made to it under subsection (2).

#### *Court order where physical connection test failed*

- (4) If, on an application under subsection (2) in a case to which subsection (1A) applies, the Court is satisfied that:
  - (a) prima facie, at least some of the native title rights and interests claimed in the application can be established; and
  - (b) at some time in his or her lifetime, at least one parent of one member of the native title claim group had a traditional physical connection with any part of the land or waters and

would reasonably have been expected to have maintained that connection but for things done (other than the creation of an interest in relation to land or waters) by:

- (i) the Crown in any capacity; or
- (ii) a statutory authority of the Crown in any capacity; or
- (iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease;

the Court may order the Registrar to accept the claim for registration.

*Opportunity to be heard*

- (5) Before making an order under subsection (4), the Court must give to any person who is a party to the proceedings in the Court under Part 4 in relation to the application an opportunity to be heard in relation to the making of the order.

**65 Section 191**

After “Registrar may”, insert “, if the State or Territory concerned agrees,”.

**66 Subsection 192(2)**

Before “Registrar”, insert “Native Title”.

**67 Paragraph 193(1)(a)**

Omit “the NNTT,”.

**68 Paragraph 193(2)(d)**

Repeal the paragraph, substitute:

- (d) the matters determined, including:
  - (i) whether or not native title exists in relation to the land or waters covered by the determination; and
  - (ii) if it exists—who the common law holders of the native title are and a description of the nature and extent of the native title rights and interests concerned; and
  - (iii) in the case of an approved determination of native title by the Federal Court, where the determination is that



native title exists—the name and address of any prescribed body corporate that holds the native title rights and interests concerned on trust or that is determined under section 57 in relation to the native title; and

- (iv) in the case of an approved determination of native title by a recognised State/Territory body, where the determination is that native title exists—the name and address of any body corporate that holds the native title rights and interests concerned on trust or that is determined in relation to the native title under a provision of a law of the State or Territory concerned that corresponds to section 57.

**69 Section 196**

Repeal the section.

**70 Subsection 200(1)**

Omit all the words before “Commonwealth”, substitute “The”.

**71 Paragraph 200(1)(a)**

Omit “arising under Part 2”, substitute “for acts affecting native title”.

**72 Paragraph 200(1)(c)**

After “State/Territory body”, insert “, or equivalent body (within the meaning of subsection 207B(1)),”.

**73 Paragraph 206(d)**

Omit “at the end of 2 years after the commencement of this Part”, substitute “from time to time”.

**74 Section 207**

Omit “at the end of 5 years after the Parliamentary Joint Committee is first appointed”, substitute “on 23 March 2004”.

**75 After Part 12**

Insert:

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## Part 12A—State/Territory bodies

### 207B Equivalent State/Territory bodies

#### *Equivalent bodies*

- (1) This section applies if the State Minister for a State, or the Territory Minister for a Territory, nominates to the Commonwealth Minister one or more offices, tribunals or bodies (each of which is an **equivalent body**), established by or under a law of the State or Territory, for the purpose of each performing specified functions or exercising specified powers of the NNTT or the Native Title Registrar, in specified circumstances, under specified equivalent body provisions (see subsection (9)).

#### *Different functions/powers etc.*

- (2) To avoid doubt, the nomination may specify:
  - (a) different functions or powers in relation to different equivalent bodies; or
  - (b) different functions or powers in different circumstances.

#### *Determination*

- (3) The Commonwealth Minister may, in writing, determine that the one or more equivalent bodies are to perform the specified functions or exercise the specified powers in the specified circumstances, under the specified equivalent body provisions.

#### *Criteria to be satisfied*

- (4) In order to ensure that there is a nationally consistent approach to the recognition and protection of native title, the Commonwealth Minister must not make the determination unless the Commonwealth Minister is satisfied that:
  - (a) the one or more equivalent bodies will have available to them, through the bodies' membership, appropriate expertise (including expertise in matters relating to Aboriginal peoples

- and Torres Strait Islanders) for performing their functions or exercising their powers under the determination; and
- (b) under the law of the State or Territory, the procedures of the one or more equivalent bodies in performing those functions or exercising those powers will be fair, just, informal, accessible and expeditious; and
  - (c) the one or more equivalent bodies will have adequate resources to enable them to perform those functions or exercise those powers; and
  - (ca) members of the one or more equivalent bodies will enjoy security of tenure no less favourable than that enjoyed by members of the NNTT or the Native Title Registrar, as the case requires; and
  - (d) the law of the State or Territory will enable and require the one or more equivalent bodies to perform those functions or exercise those powers if the Commonwealth Minister makes the determination; and
  - (e) if any of the functions or powers that the one or more equivalent bodies will perform or exercise under the determination involves the maintenance of any register under this Act—the law of the State or Territory will require the functions to be performed or the powers to be exercised in a way that ensures that the register will be maintained in a nationally integrated and accessible manner; and
  - (f) if any of the functions or powers that will be performed or exercised under the determination are those of the NNTT—the law of the State or Territory will require the member or at least one of the members of the equivalent body to be a member of the NNTT; and
  - (g) any other requirement that the Commonwealth Minister considers relevant will be satisfied.

*Modified application of Act etc.*

- (5) While the determination is in force, this Act, and Schedule 5 to the *Native Title Amendment Act 1998*, have effect, in relation to a function or power of the NNTT or Native Title Registrar specified in the determination, as if, in the specified circumstances:
-

- (a) the one or more equivalent bodies had the functions or powers, instead of the NNTT or the Registrar; and
- (b) if one of the powers specified in the determination is the power to make determinations under Subdivision P of Division 3 of Part 2 of this Act—for the purposes of sections 36A, 36B, 36C and 42 of this Act, the State Minister or the Territory Minister of the relevant State or Territory had the powers of the Commonwealth Minister under that section, instead of the Commonwealth Minister.

Note: The *Administrative Decisions (Judicial Review) Act 1977* will apply to decisions that an equivalent body or a State or Territory Minister may, because of this section, make under this Act to the same extent to which it applies to corresponding decisions of the NNTT, the Native Title Registrar or the Commonwealth Minister under this Act.

*Vesting of functions and powers in equivalent bodies*

- (6) While the determination is in force, the functions and powers specified in the determination are vested in the one or more equivalent bodies, in the circumstances set out in the determination.

*Revocation of determination*

- (7) If, at any time:
  - (a) the law of the State or Territory is amended; and
  - (b) as a result, the Commonwealth Minister ceases to be satisfied as mentioned in subsection (4) in relation to any or all of the equivalent bodies;he or she must:
  - (c) advise the State Minister or the Territory Minister concerned in writing of the fact; and
  - (d) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the Commonwealth Minister is still not satisfied as mentioned in subsection (4)—in writing, revoke the determination.

*Regulations to make transitional provisions*

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

*Equivalent body provisions*

- (9) The *equivalent body provisions* are:
- (a) all of the provisions of this Act, except the following:
    - (i) this section;
    - (ii) Part 5;
    - (iii) the provisions of Part 6, other than subsection 136D(1) and sections 139, 145, 169, 178 and 179; and
  - (b) Schedule 5 to the *Native Title Amendment Act 1998*.

**76 After paragraph 215(2)(a)**

Insert:

- (aa) the regulations may make provision:
- (i) prescribing fees to be paid to obtain access to, or information from, records or information kept by the Native Title Registrar as mentioned in section 98A; and
  - (ii) for or in relation to the waiver or refund, in whole or part, of such fees; and

**77 Subparagraph 215(2)(b)(i)**

Before “Registrar”, insert “Native Title”.

**78 After subparagraph 215(2)(b)(i)**

Insert:

- (ia) the waiver, in whole or in part, of those fees; and

**79 Section 222 (table)**

Repeal the table, substitute:

**Schedule 2** Amendments relating to applications, registration of claims etc.  
**Part 1** Native Title Act 1993

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## **80 Section 225**

Repeal the section, substitute:

### **225 Determination of native title**

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

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and

- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

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

**81 Subsection 226(2)**

Omit “Subject to subsection (4), *act* includes”, substitute “An *act* includes”.

**82 Subsection 226(3)**

Omit “Subject to subsection (4), an”, substitute “An”.

**83 Subparagraph 251(2)(a)(ii)**

Omit “and”.

**84 Subparagraph 251(2)(a)(iii)**

Repeal the subparagraph.

**85 After paragraph 251(2)(a)**

Insert:

- (aa) any procedures under the law of the State or Territory for determinations whether acts affecting native title may be done will be consistent with those set out in this Act; and
- (ab) the law of the State or Territory will require a decision to be made whether a claim in respect of native title satisfies conditions equivalent to those set out in sections 190B and 190C; and

**86 Paragraph 251(2)(g)**

Repeal the paragraph.

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**87 After subparagraph 251(2)(i)(i)**

Insert:

- (ia) any claims contained in any such applications (including amended applications) that have been found to satisfy conditions equivalent to those set out in sections 190B and 190C; and
- (ib) any amendments of applications covered by subparagraph (ia), if the claims contained in the application as amended have been found not to satisfy conditions equivalent to those set out in sections 190B and 190C; and
- (ic) any withdrawal or dismissal of applications covered by subparagraph (i); and

**88 Paragraph 251(4)(b)**

After “90 days”, insert “, or such longer period as the Commonwealth Minister allows,”.

**89 Subsection 251(6)**

Omit “Division 1 of Part 4”, substitute “Division 1A of Part 4”.

**90 Section 251**

After amending the section in accordance with this Schedule, move the section to new Part 12A (so that it appears immediately after the heading to that Part) and re-number the section as 207A.

**91 Section 253 (paragraph (c) of the definition of  
*Aboriginal/Torres Strait Islander land or waters*)**

After “law”, insert “, or part of a law,”.

**92 Section 253**

Insert:

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

**93 Section 253**

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Insert:

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

**94 Section 253 (definition of *land*, after the note)**

Insert:

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

**95 Section 253**

Insert:

*native title claim group* means:

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

**96 Section 253 (definition of *non-claimant application*)**

Repeal the definition, substitute:

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

**97 Section 253 (definition of *recognised State/Territory body*)**

Omit “section 251”, substitute “section 207A”.

**98 Section 253 (definition of *registered native title body corporate*)**

Repeal the definition, substitute:

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***registered native title body corporate*** means:

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

**99 Section 253 (definition of *registered native title claimant*)**

Repeal the definition, substitute:

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

**100 Section 253 (definition of *unopposed application*)**

Repeal the definition.

**101 Section 253 (at the end of the definition of *waters*)**

Add:

- ; or (c) the shore, or subsoil under or airspace over the shore, between high water and low water.

## Part 2—Federal Court of Australia Act 1976

### 102 After subsection 18AB(2)

Insert:

- (2A) The Judges, or a majority of them, may also make Rules of Court delegating to the Judicial Registrars all or any of the following powers of the Court:
- (a) to determine parties to proceedings under the *Native Title Act 1993*;
  - (aa) to hear and determine applications under subsection 50(2) of that Act for determinations of compensation, where:
    - (i) the amount of the compensation to which the applicant claims to be entitled is less than \$100,000 or such other amount as is prescribed instead for the purposes of this paragraph; and
    - (ii) at the time the hearing and determination takes place, one or more approved determinations of native title have been made in relation to the whole of the area concerned;
  - (b) to make orders under sections 86D and 87 of that Act.
- (2B) If, in accordance with subsection (2A), Rules of Court are made delegating to the Judicial Registrars the powers of the Court to hear and determine applications under subsection 50(2) of the *Native Title Act 1993* for determinations of compensation as mentioned in paragraph (2A)(aa), the Judges, or a majority of them, may, in respect of any such application, give such directions as they consider appropriate for the purpose of ensuring that, so far as is reasonably practicable, the application is determined as expeditiously and cheaply as possible and without unnecessary formality.
- (2C) Without limiting the directions that may be made, they may cover all or any of the following:
- (a) principles and procedures to be applied in hearing and determining the application;
  - (b) referring any matter for mediation;

- (c) ensuring that the issues in dispute are identified as soon as possible and that the procedures to be applied, and the evidence that may be given, in the proceedings are limited to what is necessary to resolve those issues;
- (d) limiting the amount of costs of the proceedings that may be awarded against the claimant;
- (e) requiring some or all of the costs of the claimant to be paid by another party to the proceedings.

**103 Subsections 18AB(3), (6) and (7)**

After “subsection (1)” (wherever occurring), insert “or (2A)”.

## **Schedule 3—Amendments relating to representative Aboriginal/Torres Strait Islander bodies**

### **Part 1—Initial amendments**

#### **1 Before section 202**

Insert:

#### **Division 1—Preliminary**

##### **201A Definitions**

In this Part, unless the contrary intention appears:

*director*, in relation to a representative body, means a member of the governing body of the representative body.

*executive officer*, in relation to a representative body, means:

- (a) a director of the representative body; or
- (b) any other person who is concerned in, or takes part in, the management of the representative body at a senior level.

*exempt State body* means a body established by a law of a State that confers functions or powers on the body to be performed or exercised in its capacity as a body representing the interests of, or acting on behalf of, Aboriginal peoples or Torres Strait Islanders.

*functions*, in relation to a representative body, means the functions conferred on the body by this Act and includes the obligations imposed on the body by this Act, whether or not any of those functions or obligations are also conferred or imposed on the body under a law of a State or Territory.

*governing body*, in relation to a representative body, means the group of persons (by whatever name called) who are responsible for the executive decisions of the representative body.



*powers*, in relation to a representative body, means the powers conferred on the body by this Act, whether or not any of those powers are also conferred on the body under a law of a State or Territory.

*transition period* means the period:

- (a) beginning on the day on which Division 2 commences; and
- (b) ending immediately before Division 3 commences.

## **201B Eligible bodies**

- (1) For the purposes of this Part, an *eligible body* is:
- (a) a body corporate, incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*, the objects of which enable the body to perform the functions of a representative body under Division 3 of this Part; or
  - (b) a body corporate that is a representative body at the commencement of this section; or
  - (c) a body corporate established by or under a law of the Commonwealth, a State or a Territory, or a part of such a law, prescribed for the purposes of this paragraph.

However, a registered native title body corporate cannot be an eligible body.

- (2) A regulation prescribing a law, or a part of a law, for the purposes of paragraph (1)(c) may be limited in its application to bodies corporate included in a specified class or classes of bodies corporate.

## **Division 1A—Original representative Aboriginal/Torres Strait Islander bodies**

### **2 Subsection 202(4)**

Omit “may”, substitute “determined under this section may do the following”.

### **3 Paragraphs 202(4)(a) and (b)**

Omit “claims”, substitute “applications”.

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**4 Paragraphs 202(4)(a) and (b)**

Omit “or” (last occurring).

**5 Paragraph 202(4)(c)**

Repeal the paragraph, substitute:

- (c) assist such individuals or groups by representing them, if requested to do so, in negotiations and proceedings relating to:
  - (i) the doing of acts affecting native title; or
  - (ii) the provision of compensation in relation to such acts; or
  - (iii) indigenous land use agreements or other agreements in relation to native title; or
  - (iv) rights of access conferred under this Act or otherwise; or
  - (v) any other matter relevant to the operation of this Act;
- (d) certify, in writing, applications for determinations of native title relating to areas of land or waters wholly or partly within the area in relation to which the representative body has been determined to be a representative body;
- (e) certify, in writing, applications for registration of indigenous land use agreements relating to areas of land or waters wholly or partly within the area in relation to which the representative body has been determined to be a representative body;
- (f) become a party to indigenous land use agreements.

**6 At the end of section 202**

Add:

*Certification of applications for determinations of native title*

- (5) A representative body must not certify under paragraph (4)(d) an application for a determination of native title unless it is of the opinion that:
  - (a) the applicant has authority to make the application, and deal with matters arising in relation to it, on behalf of all the other persons in the native title claim group; and

- (b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

Note: Section 251B deals with *authority* to make the application.

*Overlapping applications for determinations of native title*

- (6) If the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, the representative body must make all reasonable efforts:
  - (a) to achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and
  - (b) to minimise the number of applications covering the land or waters.

However, a failure by the representative body to comply with this subsection does not invalidate any certification of the application by the representative body.

*Statement to be included in certifications of applications for determinations of native title*

- (7) A certification of an application for a determination of native title by a representative body must:
  - (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a) and (b) have been met; and
  - (b) briefly set out the body's reasons for being of that opinion; and
  - (c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (6).

*Certification of applications for registration of indigenous land use agreements*

- (8) A representative body must not certify under paragraph (4)(e) an application for registration of an indigenous land use agreement unless it is of the opinion that:
-

**Schedule 3** Amendments relating to representative Aboriginal/Torres Strait Islander bodies

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---

- (a) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified; and
- (b) all of the persons so identified have authorised the making of the agreement.

Note: Section 251A deals with *authority* to make the agreement.

*Statement to be included in certifications of applications for registration of indigenous land use agreements*

- (9) A certification of an application for registration of an indigenous land use agreement by a representative body must:
  - (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (8)(a) and (b) have been met; and
  - (b) briefly set out the body's reasons for being of that opinion.

**7 After section 202**

Insert:

**202A Entering indigenous land use agreements**

Before becoming a party to an indigenous land use agreement, a representative body must, as far as practicable, consult with, and have regard to the interests of, persons who hold or may hold native title in relation to land or waters in that area.

**8 Subsection 203(1)**

After "Islander body", insert "determined under section 202".

**9 Subsection 203(1)**

Omit "the Commonwealth Minister or".

**10 Subsection 203(2)**

Repeal the subsection.

Note: The heading to subsection 203(3) is altered by omitting "—*ATSIC*".

---

## **11 At the end of Part 11**

Add:

### **Division 2—Recognition of representative Aboriginal/Torres Strait Islander bodies**

#### **203A Inviting applications for recognition**

*Commonwealth Minister may invite applications*

- (1) Subject to section 203AA, the Commonwealth Minister may, in the way determined in writing by the Commonwealth Minister, invite applications from eligible bodies for recognition as the representative body for an area.

*Invitations may cover more than one area*

- (2) The invitation may specify more than one area for which applications are invited.

*Invitations to specify application period*

- (3) The invitation must specify the period (of at least 28 days) within which applications are to be given to the Commonwealth Minister.

*Invitations may be general*

- (4) For the avoidance of doubt, the way determined under subsection (1) for inviting applications may provide for the publication of general invitations to eligible bodies, and need not require that a separate invitation be made to each eligible body.

#### **203AA Inviting applications from representative bodies during the transition period**

*Commonwealth Minister to invite applications*

- (1) As soon as practicable after the start of the transition period, the Commonwealth Minister must make invitations under section 203A
-

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relating to areas that, taken together, cover all the land and waters to which this Act extends. The invitations need not all be made at the same time.

*Matters to which Commonwealth Minister must have regard*

- (2) Without limiting the matters to which the Commonwealth Minister may have regard in deciding the areas in relation to which the invitations will be made, he or she must have regard to the following:
- (a) the areas for the representative bodies that are already in existence;
  - (b) the need to minimise any disruption to the performance of the functions of those representative bodies;
  - (c) the requirements of subsection 203AD(4) in relation to the recognition of representative bodies.

*Invitation to representative bodies*

- (3) If an invitation under section 203A relates to an area (the **original invitation area**) that wholly or partly covers an area for which a body was, on the day on which this section commenced, a representative body:
- (a) the invitation must initially be made only to each of the bodies that was, on that day, a representative body for an area wholly or partly covered by the original invitation area; and
  - (b) other than as provided in subsection (4), no other invitations may be made under section 203A, for areas that wholly or partly cover the original invitation area, until the end of the transition period.

*Situations where general invitations can still be made*

- (4) If the Commonwealth Minister has, as mentioned in paragraph (3)(a), made an invitation in respect of the original invitation area to a representative body or bodies, the Commonwealth Minister may make another invitation within the transition period in respect of the original invitation area, or an area wholly or partly within the original invitation area, if:
-

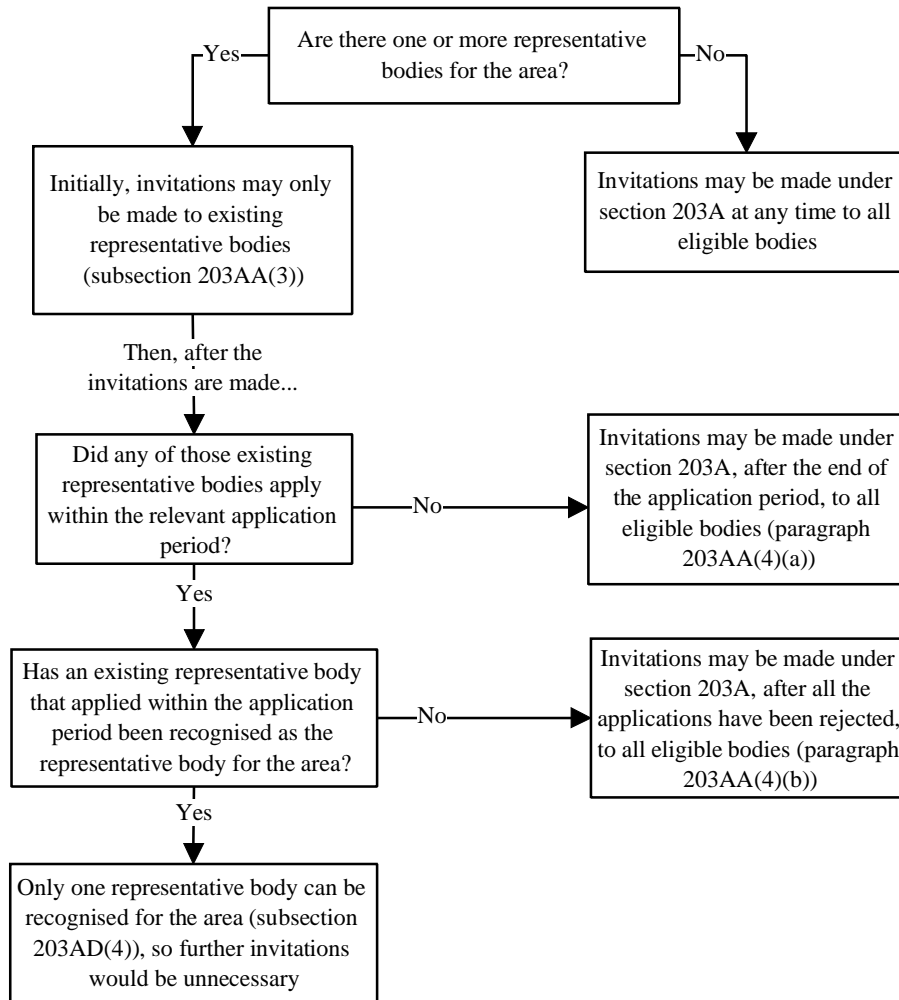
- (a) none of the bodies invited as mentioned in paragraph (3)(a) applied for recognition as the representative body for the original invitation area within the relevant application period under subsection 203A(3); or
- (b) the Commonwealth Minister has rejected the application of each of the bodies so invited that did apply.

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*Diagram of the rules for making invitations*

(5) This diagram shows when, under section 203A and this section, invitations can be made, during the transition period, for applications for recognition as the representative body for a particular area.



Note: These rules will not apply once the transition period has ended.



### **203AB Application for recognition**

*Eligible bodies may apply*

- (1) Subject to subsection (3), an eligible body may apply to the Commonwealth Minister, in the form approved by the Commonwealth Minister, for recognition as the representative body for the area, or for one or more of the areas, in respect of which applications have been invited under section 203A.

*Application period*

- (2) The application must be given to the Commonwealth Minister within the period specified under subsection 203A(3), or within such further period as the Commonwealth Minister allows (whether or not the initial period has expired).

*Invitation to existing representative bodies*

- (3) If the invitation in question was one to which subsection 203AA(3) applied, an application can only be made by an eligible body that has been invited to apply in accordance with subsection 203AA(3) or (4), as the case requires.

### **203AC Dealing with applications**

- (1A) The Commonwealth Minister must determine applications under section 203AB:
- (a) as soon as practicable after:
- (i) the period specified under subsection 203A(3); or
  - (ii) if a further period applies under subsection 203AB(2) in relation to one or more of those applications—the last such further period to end; or
  - (iii) if the Commonwealth Minister has, in relation to one or more of those applications, given to a body a notice under subsection (1) requiring the body to give further information within a specified period—the last such period to end;
- whichever occurs last; and
-

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- (b) if the applications are in respect of an invitation to which subsection 203AA(3) applied—in any event before the end of the transition period.
- (1) The Commonwealth Minister may give to a body that has made an application under section 203AB a notice requiring the body to give further information relating to the application within a period specified in the notice.
- (2) The period specified:
  - (a) must not begin before the day on which the notice was given; and
  - (b) must be a period of at least 21 days.
- (3) The fact that no further information has been given to the Commonwealth Minister as at the end of the period specified in the notice does not prevent the Commonwealth Minister from determining the application.
- (4) The notice must contain a statement setting out the effect of subsection (3).

**203AD Recognition of representative bodies**

*Commonwealth Minister may recognise representative bodies*

- (1) The Commonwealth Minister may, by written instrument, recognise, as the representative body for an area, an eligible body that has applied under section 203AB to be the representative body for the area if the Commonwealth Minister is satisfied that:
    - (a) the body will satisfactorily represent persons who hold or may hold native title in the area; and
    - (b) the body will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the area; and
    - (c) if the body is already a representative body—the body satisfactorily performs its existing functions; and
    - (d) the body would be able to perform satisfactorily the functions of a representative body.
-

*When recognition takes effect*

- (2) The recognition of the body as a representative body takes effect on the day specified in the instrument of recognition. However, that day must not precede the day on which Division 3 commences.

*Exempt State bodies*

- (3) The Commonwealth Minister must not recognise an exempt State body unless satisfied that the obligations it would have under this Act, together with its other obligations under the laws of a State, provide an appropriate level of accountability.

*Commonwealth Minister not to recognise more than one body for an area*

- (4) The Commonwealth Minister must not, under this section, recognise a body as the representative body for an area at a particular time if, at that time, there is already a representative body recognised under this section (whether or not the recognition has taken effect) for all or part of that area.

Note: The fact that a representative body has previously been determined under section 202 will not prevent recognition of a body under this section.

*Notifying unsuccessful applicants*

- (5) If the Commonwealth Minister decides not to recognise as the representative body for an area a body that applied for that recognition, the Commonwealth Minister must notify the body, in writing, of the decision and the reasons for the decision.

**203AI Matters to which Commonwealth Minister must have regard**

*Fairness of organisational structures and administrative processes*

- (1) In considering, for the purposes of making a decision under this Division in relation to a particular area, whether a body:
- (a) will satisfactorily represent persons who hold or may hold native title in the area; or
-

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(b) will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the area;  
the Commonwealth Minister must take into account whether, in the Commonwealth Minister's opinion, the body's organisational structures and administrative processes will operate in a fair manner.

*Criteria for assessing fairness*

- (2) Without limiting the matters to which the Commonwealth Minister may have regard in assessing the fairness of the body's organisational structures and administrative processes, the Commonwealth Minister must have particular regard to:
- (a) the opportunities for the Aboriginal peoples or Torres Strait Islanders for whom it might act to participate in its processes; and
  - (b) the level of consultation with them involved in its processes; and
  - (c) its procedures for making decisions and for reviewing its decisions; and
  - (d) its rules or requirements relating to the conduct of its executive officers; and
  - (e) the nature of its management structures and management processes; and
  - (f) its procedures for reporting back to persons who hold or may hold native title in the area, and to the Aboriginal peoples or Torres Strait Islanders living in the area.

*Commonwealth Minister's consideration of other matters unaffected*

- (3) This section does not limit any other matters that the Commonwealth Minister may take into account in making a decision under this Division.

Note: Divisions 3 to 6 of this Part are to be inserted, and will enter into force, at the end of the transition period (see Part 2 of Schedule 3 to the *Native Title Amendment Act 1998*).

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## Division 7—Miscellaneous

### 203FC Transfer of documents and records

#### *Commonwealth Minister may issue directions*

- (1) The Commonwealth Minister may, by written instrument, issue directions requiring, or relating to, either or both of the following:
  - (a) a former representative body returning documents and records, relating to the performance of its functions or the exercise of its powers in respect of its former area, to the person or persons who provided them to the body;
  - (b) the former representative body allowing access to, giving or giving copies of documents and records held by the former representative body to a body (the **replacement body**) that has become the representative body for all or part of the former representative body's former area, where the documents and records are reasonably necessary for the performance of the functions, or the exercise of the powers, of the replacement body.

Directions take effect on the day on which they are issued.

#### *Limit on directions*

- (2) Directions must not require the former representative body to allow access to, give or give copies of documents and records, of the kind mentioned in paragraph (1)(b) that relate to:
  - (a) a claim in a claimant application or a compensation application; or
  - (b) native title rights and interests that are the subject of a determination of native title;to the replacement body, unless the replacement body has been asked by the claimants to assist them in relation to the claim, or has been asked by the persons who have been determined to hold the native title rights and interests to assist them in relation to those rights and interests.

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*Bodies must comply with directions*

- (3) A body to which directions apply must comply with those directions.

*Orders by the Federal Court*

- (4) If a body fails to comply with subsection (3), the Federal Court may, on the application of a person affected by the non-compliance, make such orders as it thinks fit to ensure the body's compliance.

*Definitions*

- (5) In this section:

*former area*, in relation to a former representative body, means the area for which the body is no longer a representative body.

*former representative body* means a body that:

- (a) has ceased to be a representative body; or
- (b) has ceased to be a representative body for a particular area; or
- (c) has had the area for which it is a representative body reduced.

**203FCA Representative body etc. to comply with wishes of traditional custodians**

- (1) If:
- (a) a representative body, in performing its functions and exercising its powers; or
  - (b) a former representative body (as defined in subsection 203FC(5)), in complying with directions in accordance with subsection 203FC(3);

deals with traditional materials, or any information contained in them, the body must make all reasonable efforts to comply with the wishes of the traditional custodians of the traditional materials about the way in which the traditional materials or information is to be dealt with.

*Definitions*

(2) In this section:

***traditional custodian*** of traditional materials means a person who, according to the traditional laws and customs concerned, is responsible for the traditional materials.

***traditional materials*** means documents, records or other things that are of significance to Aboriginal peoples or Torres Strait Islanders according to their traditional laws and customs.

**203FD Liability of executive officers etc.**

An executive officer or a member of a representative body is not personally liable to an action or other proceeding for damages in relation to an act done or omitted to be done in good faith:

- (a) by the representative body; or
- (b) by the person in the capacity of executive officer or member; in connection with the performance of the representative body's functions or the exercise of its powers.

**203FH Conduct by directors, employees and agents**

*State of mind of directors, employees or agents of bodies corporate*

- (1) If, for the purposes of this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the state of mind.

*Conduct of directors, employees or agents of bodies corporate*

- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of this
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Part, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

*State of mind of employees or agents of persons other than bodies corporate*

- (3) If, for the purposes of this Part, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.

*Conduct of employees or agents of persons other than bodies corporate*

- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of this Part, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.

*Other persons not to be punished by imprisonment*

- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.

*Meaning of state of mind*

- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
-



- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

*Meaning of director*

- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Failing etc. to engage in conduct*

- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

**12 Section 253 (at the end of the definition of *representative Aboriginal/Torres Strait Islander body*)**

Add "or that is recognised under section 203AD".

**13 Section 253**

Insert:

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

## **Part 2—Later amendments**

### **14 Paragraph 24CG(3)(a)**

Omit “paragraph 202(4)(e)”, substitute “paragraph 203BE(1)(b)”.

### **15 Subparagraph 24CH(2)(d)(i)**

Omit “paragraphs 202(8)(a) and (b)”, substitute “paragraphs 203BE(5)(a) and (b)”.

### **16 Subsection 24CI(1)**

Omit “paragraphs 202(8)(a) and (b)”, substitute “paragraphs 203BE(5)(a) and (b)”.

### **17 Paragraph 24CK(2)(c)**

Omit “paragraphs 202(8)(a) and (b)”, substitute “paragraphs 203BE(5)(a) and (b)”.

### **18 Subparagraph 24EB(5)(b)(i)**

Omit “paragraph 202(8)(b)”, substitute “paragraph 203BE(5)(b)”.

### **19 Subsection 108(1B)**

Repeal the subsection, substitute:

*Assistance and mediation generally*

(1B) The Tribunal has the functions of:

- (a) providing assistance, or mediating, in accordance with any provision of this Act; and
- (b) entering into agreements as mentioned in subsection 203BK(3) in relation to assistance of the kind referred to in that subsection.

### **20 Paragraph 190C(4)(a)**

Omit “paragraph 202(4)(d)”, substitute “Part 11”.

### **21 At the end of paragraph 190C(4)(a)**

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Add:

Note: An application can be certified under section 203BE, or may have been certified under the former paragraph 202(4)(d).

## **22 Subsections 190C(6) and (7)**

Repeal the subsections.

## **23 Subparagraph 199C(1)(b)(i)**

Omit “paragraph 202(8)(b)”, substitute “paragraph 203BE(5)(b)”.

## **24 Section 201A**

Insert:

*ATSIC* means the Aboriginal and Torres Strait Islander Commission established by the *Aboriginal and Torres Strait Islander Commission Act 1989*.

*native title application* means an application under subsection 24DJ(1) or section 61, 69 or 75, and includes an appeal under subsection 169(1).

## **25 Division 1A of Part 11**

Repeal the Division.

## **26 After section 203AD**

Insert:

### **203AE Extension of areas**

The Commonwealth Minister may, by written instrument, extend the area for which a body is the representative body by adding adjoining land or waters to the area if:

- (a) there is no representative body for the adjoining land or waters; and
- (b) the Commonwealth Minister considers that the adjoining land or waters are not of such significance that invitations should be made under section 203A in respect of them; and

- (c) the Commonwealth Minister is satisfied that the body will satisfactorily represent persons who hold or may hold native title in the adjoining land or waters; and
- (d) the Commonwealth Minister is satisfied that the body will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the area of the adjoining land or waters; and
- (e) the Commonwealth Minister is satisfied that the body will satisfactorily perform its functions in relation to the adjoining land or waters; and
- (f) the body has agreed to the adjoining land or waters being added.

### **203AF Variation of adjoining areas**

#### *Applications to vary areas*

- (1) If the boundary of an area for which a body is the representative body adjoins the boundary of an area for which another body is the representative body, the bodies may jointly apply in writing to the Commonwealth Minister to vary the area for which each body is the representative body. The proposed variations are to relate only to the adjoining boundary.

#### *Consultation prior to applications*

- (2) Before making an application under subsection (1), the bodies must:
  - (a) take all reasonable steps to consult the Aboriginal peoples or Torres Strait Islanders who could reasonably be expected to be affected by the proposed variations; and
  - (b) satisfy themselves that there is broad support for the variations among the persons who hold, or may hold, native title in the area that will be covered by a different representative body as a result of the variations.

#### *Matters to be included in applications*

- (3) The application must:
-

- (a) include a statement of the steps the bodies took in consulting the Aboriginal peoples or Torres Strait Islanders referred to in paragraph (2)(a); and
- (b) briefly set out the grounds on which the bodies are satisfied that there is broad support for the variations among the persons referred to in paragraph (2)(b).

*Commonwealth Minister may vary areas*

- (4) The Commonwealth Minister may, by written instrument, vary the areas for which each body is the representative body in accordance with the application if the Commonwealth Minister is satisfied that, after the variations:
  - (a) each body will satisfactorily represent the native title holders and persons who may hold native title in the area for which it will, after the variations, be the representative body; and
  - (b) each body will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the area for which it will, after the variations, be the representative body; and
  - (c) each body will satisfactorily perform its functions.

**203AG Reduction of areas**

*Grounds for reducing the areas of representative bodies*

- (1) The Commonwealth Minister may, by written instrument, reduce the area for which a body is the representative body by excising a specified part of the area if satisfied that:
  - (a) the body is not satisfactorily representing native title holders or persons who may hold native title in that part of the area; or
  - (b) the body is not consulting effectively with Aboriginal peoples and Torres Strait Islanders living in that part of the area; or
  - (c) the body is not satisfactorily performing its functions in relation to that part of the area.

*Effect on remainder of areas*

- (2) The Commonwealth Minister must not so reduce the area unless satisfied that, after the reduction, the body:
- (a) will satisfactorily represent native title holders or persons who may hold native title in the remainder of the area; and
  - (b) will be able to consult effectively with Aboriginal peoples and Torres Strait Islanders living in the remainder of the area; and
  - (c) will satisfactorily perform its functions in relation to the remainder of the area.

*Notice that reduction of area is being considered*

- (3) At least 90 days before deciding to reduce the area, the Commonwealth Minister must notify the body that the reduction is being considered. The notice must be in writing and must:
- (a) state the reasons why the Minister is considering reducing the area; and
  - (b) invite the body to make submissions to the Commonwealth Minister, within the period specified in the notice, about whether the area should be reduced.

The period specified must not begin before the day on which the notice was given, and must be a period of at least 90 days.

*Consideration of reports etc.*

- (4) In deciding whether to reduce the area, the Commonwealth Minister may consider the following:
- (a) any reports under section 203DF of audits or investigations of the body;
  - (b) any reports under section 76 of the *Aboriginal and Torres Strait Islander Commission Act 1989* in relation to a grant made to the body under section 203C or 203FE of this Act;
  - (c) any notices that ATSIC has given to the Minister under section 203F in relation to the body;
  - (d) any information or documents that ATSIC has given to the Minister under section 203FA in relation to the body.

*Commonwealth Minister's consideration of other matters unaffected*

- (5) Subsection (4) does not limit any other matters that the Commonwealth Minister may take into account in deciding whether to reduce the area.

*Consideration of submissions*

- (6) In deciding whether to reduce the area, the Commonwealth Minister must consider any submissions made by the body within the period referred to in subsection (3).

*Notice of decision*

- (7) As soon as practicable after deciding whether to reduce the area, the Commonwealth Minister must notify the body, in writing, of:
- (a) the decision; and
  - (b) if the decision is that the area be reduced—the reasons for the decision.

## **203AH Withdrawal of recognition**

*Mandatory grounds for withdrawing recognition*

- (1) The Commonwealth Minister must, by written instrument, withdraw the recognition of a body as the representative body for an area if:
- (a) the body has ceased to exist; or
  - (b) the body makes a written request to the Commonwealth Minister for the recognition to be withdrawn.

However, paragraph (b) only applies if the request was authorised by a meeting of the body open to all its members and convened and conducted in accordance with the procedures governing the convening and conduct of such meetings by the body. The body must include in its request to the Commonwealth Minister evidence that the request was so authorised.

*Discretionary grounds for withdrawing recognition*

- (2) The Commonwealth Minister may, by written instrument, withdraw the recognition of a body as the representative body for an area if satisfied that:
- (a) the body:
    - (i) is not satisfactorily representing the native title holders or persons who may hold native title in the area; or
    - (ii) is not consulting effectively with Aboriginal peoples and Torres Strait Islanders living in the area; or
    - (iii) is not satisfactorily performing its functions; and
  - (b) the body is unlikely to take steps to ensure that, within a reasonable period, none of subparagraphs (a)(i), (ii) and (iii) apply in relation to the body.

*Notice that withdrawal of recognition is being considered*

- (3) At least 90 days before deciding to withdraw the recognition under subsection (2), the Commonwealth Minister must notify the body that withdrawal of the recognition is being considered. The notice must be in writing and must:
- (a) state the reasons why the Minister is considering withdrawal of the recognition; and
  - (b) invite the body to make submissions to the Commonwealth Minister, within the period specified in the notice, about whether the recognition should be withdrawn.

The period specified must not begin before the day on which the notice was given, and must be a period of at least 90 days.

*Consideration of reports etc.*

- (4) In deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister may consider the following:
- (a) any reports under section 203DF of audits or investigations of the body;
  - (b) any reports under section 76 of the *Aboriginal and Torres Strait Islander Commission Act 1989* in relation to a grant made to the body under section 203C or 203FE of this Act;
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- (c) any notices that ATSIC has given to the Minister under section 203F in relation to the body;
- (d) any information or documents that ATSIC has given to the Minister under section 203FA in relation to the body.

*Commonwealth Minister's consideration of other matters unaffected*

- (5) Subsection (4) does not limit any other matters that the Commonwealth Minister may take into account in making a decision under subsection (2).

*Consideration of submissions*

- (6) In deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister must consider any submissions made by the body within the period referred to in subsection (3).

*Notice of decision*

- (7) As soon as practicable after deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister must notify the body, in writing, of:
  - (a) the decision; and
  - (b) if the decision is that the recognition be withdrawn—the reasons for the decision.

**27 Paragraph 203AI(1)(a)**

After “will satisfactorily represent”, insert “, or is not satisfactorily representing,”.

**28 Paragraph 203AI(1)(b)**

After “will be able to consult effectively”, insert “, or is not consulting effectively,”.

**29 Subsection 203AI(1)**

After “operate”, insert “, or are operating,”.

**30 Subsection 203AI(3) (note)**

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Repeal the note.

### **31 After Division 2 of Part 11**

Insert:

## **Division 3—Functions and powers of representative bodies**

### **203B Functions of representative bodies**

#### *General*

- (1) A representative body has the following functions:
  - (a) the *facilitation and assistance functions* referred to in section 203BB;
  - (b) the *certification functions* referred to in section 203BE;
  - (c) the *dispute resolution functions* referred to in section 203BF;
  - (d) the *notification functions* referred to in section 203BG;
  - (e) the *agreement making function* referred to in section 203BH;
  - (f) the *internal review functions* referred to in section 203BI;
  - (g) the functions referred to in section 203BJ and such other functions as are conferred on representative bodies by this Act.

#### *Other laws may confer functions*

- (2) The functions conferred on a representative body by this Act are in addition to, and not instead of, any functions conferred on the representative body (whether in its capacity as a representative body or otherwise) by or under:
  - (a) any other law of the Commonwealth; or
  - (b) a law of a State or Territory.

#### *Representative bodies to perform functions*

- (3) Except as mentioned in section 203BB, 203BD or 203BK, a representative body must not enter into an arrangement with another person under which the person is to perform the functions of the representative body.
-

*Priorities of representative bodies*

- (4) A representative body:
- (a) must from time to time determine the priorities it will give to performing its functions under this Part; and
  - (b) may allocate resources in the way it thinks fit so as to be able to perform its functions efficiently;
- but must give priority to the protection of the interests of native title holders.

**203BA How functions of representative bodies are to be performed**

*Functions to be performed in a timely manner*

- (1) A representative body must use its best efforts to perform its functions in a timely manner, particularly in respect of matters affected by:
- (a) the time limits under this Act; or
  - (b) time limits, under another law of the Commonwealth or a law of a State or Territory, that are relevant to the performance of its functions.

*Maintenance of organisational structures and processes*

- (2) A representative body must perform its functions in a manner that:
- (a) maintains organisational structures and administrative processes that promote the satisfactory representation by the body of native title holders and persons who may hold native title in the area for which it is the representative body; and
  - (b) maintains organisational structures and administrative processes that promote effective consultation with Aboriginal peoples and Torres Strait Islanders living in the area for which it is the representative body; and
  - (c) ensures that the structures and processes operate in a fair manner, having particular regard to the matters set out in paragraphs 203AI(2)(a) to (f).

**203BB Facilitation and assistance functions**

*General*

- (1) The *facilitation and assistance functions* of a representative body are:
- (a) to research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications; and
  - (b) to assist registered native title bodies corporate, native title holders and persons who may hold native title (including by representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to the following:
    - (i) native title applications;
    - (ii) future acts;
    - (iii) indigenous land use agreements or other agreements in relation to native title;
    - (iv) rights of access conferred under this Act or otherwise;
    - (v) any other matters relating to native title or to the operation of this Act.

*Facilitation and assistance functions only exercisable on request*

- (2) A representative body must not perform its facilitation and assistance functions in relation to a particular matter unless it is requested to do so.

*Facilitation and assistance functions only exercisable within a representative body's area*

- (3) A representative body can only perform its facilitation and assistance functions in relation to a matter that relates to land or waters:
- (a) that are wholly within the area for which the body is the representative body; or
  - (b) that are partly within that area.

If paragraph (b) applies, the body must not perform the functions for the part of the land or waters that is outside that area except in accordance with section 203BD.

*Consent required if matters relate to same land or waters*

(4) If:

- (a) a registered native title body corporate or a person who holds or may hold native title requests that a representative body represent the body or the person (the ***new body or person***) in relation to a particular matter that relates to particular land or waters; and
- (b) the representative body is already representing another body or person (the ***original body or person***) in relation to one or more other matters that relate wholly or partly to that land or those waters;

the representative body must not represent the new body or person unless the representative body has obtained consent, from the original body or person, for the representative body also to represent the new body or person to the extent that the other matters relate to the land or waters.

*“Briefing out” matters that relate to the same land or waters*

- (5) Subsection (4) does not prevent a representative body from facilitating the representation of a body or person, in relation to a particular matter, by entering into an arrangement with another person under which the other person represents the body or person in relation to that matter.

*Definition*

- (6) In this section and section 203BC:

***matter*** means a native title application, or a consultation, mediation, negotiation or proceeding of a kind referred to in paragraph (1)(b).

**203BC How facilitation and assistance functions are to be performed**

*General*

- (1) In performing its facilitation and assistance functions in relation to any matter, a representative body must:
  - (a) consult with, and have regard to the interests of, any registered native title bodies corporate, native title holders or persons who may hold native title who are affected by the matter; and
  - (b) if the matter involves the representative body representing such bodies corporate, native title holders or persons—be satisfied they understand and consent to any general course of action that the representative body takes on their behalf in relation to the matter.

*Consent of native title holders etc.*

- (2) For the purposes of paragraph (1)(b), a native title holder or a person who may hold native title is taken to have consented to action if:
  - (a) where there is a process of decision-making that, under the traditional laws and customs of the group to which he or she belongs, must be complied with in relation to giving consent of that kind—the consent was given in accordance with that process; or
  - (b) where there is no such process of decision-making—the consent was given in accordance with a process of decision-making agreed to and adopted by the members of the group to which he or she belongs in relation to giving the consent or giving consent of that kind.

*Streamlining of applications process*

- (3) In performing its facilitation and assistance functions in relation to an application under section 61 in relation to land or waters wholly or partly within the area for which the body is the representative body, the representative body must:
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- (a) act in a way that promotes an orderly, efficient and cost-effective process for making such applications; and
- (b) if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware—make all reasonable efforts to minimise the number of applications covering the land or waters.

### **203BD Matters that overlap different representative body areas**

If:

- (a) a native title application covers land or waters partly within the area for which the body is the representative body and partly within an adjoining area for which another body is the representative body; or
- (b) a consultation, mediation, negotiation or proceeding relates to:
  - (i) a native title application; or
  - (ii) a future act; or
  - (iii) an indigenous land use agreement or other agreement in relation to native title; or
  - (iv) a right of access conferred under this Act or otherwise; or
  - (v) any other matter relating to native title or to the operation of this Act;

in respect of the areas referred to in paragraph (a);

the first-mentioned representative body may perform its facilitation and assistance functions, in relation to the application, consultation, mediation, negotiation or proceeding, for the part of the land or waters within the adjoining area, if it is acting in accordance with a written arrangement entered into with the other representative body.

### **203BE Certification functions**

*General*

- (1) The *certification functions* of a representative body are:

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- (a) to certify, in writing, applications for determinations of native title relating to areas of land or waters wholly or partly within the area for which the body is the representative body; and
- (b) to certify, in writing, applications for registration of indigenous land use agreements relating to areas of land or waters wholly or partly within the area for which the body is the representative body.

*Certification of applications for determinations of native title*

- (2) A representative body must not certify under paragraph (1)(a) an application for a determination of native title unless it is of the opinion that:
  - (a) all the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it; and
  - (b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

Note: Section 251B deals with *authority* to make the application.

*Overlapping applications for determinations of native title*

- (3) If the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, the representative body must make all reasonable efforts to:
  - (a) achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and
  - (b) minimise the number of applications covering the land or waters.

However, a failure by the representative body to comply with this subsection does not invalidate any certification of the application by the representative body.



*Statement to be included in certifications of applications for determinations of native title*

- (4) A certification of an application for a determination of native title by a representative body must:
- (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a) and (b) have been met; and
  - (b) briefly set out the body's reasons for being of that opinion; and
  - (c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3).

*Certification of applications for registration of indigenous land use agreements*

- (5) A representative body must not certify under paragraph (1)(b) an application for registration of an indigenous land use agreement unless it is of the opinion that:
- (a) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified; and
  - (b) all the persons so identified have authorised the making of the agreement.

Note: Section 251A deals with *authority* to make the agreement.

*Statement to be included in certifications of applications for registration of indigenous land use agreements*

- (6) A certification of an application for registration of an indigenous land use agreement by a representative body must:
- (a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a) and (b) have been met; and
  - (b) briefly set out the body's reasons for being of that opinion.

### **203BF Dispute resolution functions**

*Dispute resolution functions*

- (1) The *dispute resolution functions* of a representative body are:
- (a) to assist in promoting agreement between its constituents about:
    - (i) the making of native title applications; or
    - (ii) the conduct of consultations, mediations, negotiations or proceedings about native title applications, future acts, indigenous land use agreements, rights of access conferred under this Act or otherwise or about any other matter relating to native title or the operation of this Act; and
  - (b) to mediate between its constituents about the making of such applications or the conduct of such consultations, mediations, negotiations or proceedings.

*Meaning of constituent*

- (2) In this section:

*constituent* means:

- (a) a person on whose behalf the representative body is acting or may act; or
- (b) a registered native title body corporate in relation to native title in the area in respect of which the representative body is recognised; or
- (c) a native title holder in relation to native title in that area; or
- (d) a person who may hold native title in that area.

### **203BG Notification functions**

The *notification functions* of a representative body are:

- (a) to ensure that, as far as reasonably practicable, notices:
    - (i) that are given to the representative body (whether under this Act or otherwise); and
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- (ii) that relate to land or waters wholly or partly within the area for which the body is a representative body; are brought to the attention of any person who the representative body is aware holds or may hold native title in relation to the land or waters, where the representative body considers that the notices would be unlikely to come to the attention of the person by some other means; and
- (b) as far as is reasonably practicable, to identify and notify other persons who hold or may hold native title in relation to the land or waters about notices of the kind mentioned in paragraph (a); and
- (c) as far as is reasonably practicable, to advise the persons referred to in paragraphs (a) and (b) of relevant time limits under this Act or another law of the Commonwealth or a law of a State or a Territory, if the person would not otherwise be notified of those time limits.

Note 1: Subsection 203BA(1) requires a representative body to make its best efforts to perform its functions in a timely manner, particularly in respect of matters affected by time limits.

Note 2: This Act also imposes notification obligations on other persons.

### **203BH Agreement making function**

- (1) The *agreement making function* of a representative body is to be a party to indigenous land use agreements.
- (2) In performing its agreement making function in respect of an area, a representative body must, as far as practicable, having regard to the matters proposed to be covered by the agreement, consult with, and have regard to the interests of, persons who hold or may hold native title in relation to land or waters in that area.

### **203BI Internal review functions**

The *internal review functions* of a representative body are:

- (a) to provide a process for registered native title bodies corporate, native title holders and persons who may hold native title to seek review by the representative body of its

- decisions and actions, made or taken in the performance of its functions or the exercise of its powers, that affect them; and
- (b) to publicise that process appropriately.

### **203BJ Other functions**

In addition to the functions referred to in sections 203BB to 203BI, a representative body must:

- (a) as far as is reasonably practicable, enter into written arrangements with other representative bodies so that the representative body can exercise its facilitation and assistance functions in relation to a matter of a kind referred to in paragraph 203BD(a) or (b); and
- (b) as far as is reasonably practicable, identify persons who may hold native title in the area for which the body is the representative body; and
- (c) as far as is reasonably practicable, take such action as the body considers appropriate to promote understanding, among Aboriginal people and Torres Strait Islanders living in the area, about matters relevant to the operation of this Act; and
- (d) as far as is reasonably practicable, inform such of the following as the representative body knows are, in relation to the area:
- (i) registered native title bodies corporate;
  - (ii) native title holders;
  - (iii) persons who may hold native title;
- of any matter that the representative body considers may relate to, or may have an impact upon, native title in the area; and
- (e) whenever the body considers it necessary in the performance of its functions—consult with Aboriginal or Torres Strait Islander communities that might be affected by the matters with which the body is dealing; and
- (f) as far as is reasonably practicable, co-operate with other representative bodies for the purpose of promoting the effective and efficient exercise of the functions and powers of representative bodies.
-

### **203BK Powers of representative bodies**

- (1) A representative body has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Without limiting subsection (1), a representative body has power to enter into arrangements and contracts to obtain services to assist in the performance by the representative body of its functions.

*Assistance in performing dispute resolution functions*

- (3) Without limiting subsection (1), in performing its dispute resolution functions in a particular case, a representative body may be assisted by the NNTT, but only if the representative body and the NNTT have entered into an agreement under which the representative body is liable to pay the NNTT for the assistance.

## **Division 4—Finance**

### **203C Grants to representative bodies**

*Representative body may apply for grant*

- (1) A representative body may apply to ATSIC for a grant of money under this section for the purpose of enabling the body to perform its functions or exercise its powers.

*Grants of money*

- (2) ATSIC may make a grant of money to the representative body from money appropriated for the purposes of ATSIC.
- (3) The grant of money may be:
  - (a) in respect of a financial year; or
  - (b) in respect of a part of a financial year; or
  - (c) in respect of any other period not exceeding 3 years.

### **203CA Grant conditions**

#### *Conditions of grants*

- (1) A grant of money to a representative body under this Division may be subject to such conditions as ATSIC thinks fit. However, ATSIC must impose conditions relating to:
- (a) the purposes for which the money may be spent; and
  - (b) the period within which the money is to be spent; and
  - (c) the acquittal of money spent; and
  - (d) the giving of information relating to expenditure of the money; and
  - (e) the appointment of a person, in cases where ATSIC considers that grant money has not been spent in accordance with the conditions of the grant, with the power to prevent expenditure of further grant money otherwise than in accordance with the conditions of the grant; and
  - (f) the representative body's continuing satisfactory performance of its functions and continuing compliance with this Act; and
  - (g) the giving of information relating to the performance of the body's functions and its compliance with this Act.

#### *Repayment of part of grant on withdrawal of recognition*

- (1A) The grant is also subject to a condition that if:
- (a) the representative body's recognition as a representative body is withdrawn under section 203AH; and
  - (b) the withdrawal takes effect during the period to which the grant relates;
- the representative body must repay to ATSIC an amount equal to so much (if any) of the grant as is uncommitted at the time the recognition is withdrawn.

#### *Uncommitted amount of the grant*

- (1B) For the purposes of subsection (1A), the amount of the grant that is uncommitted is the difference (if any) between:
-

- (a) the portion (if any) of the grant that has, at the time the recognition is withdrawn, been paid to the representative body by ATSIC; and
- (b) the sum of:
  - (i) the portion (if any) of the grant that has, at that time, been spent by the representative body in connection with the performance of its functions and the exercise of its powers; and
  - (ii) the portion (if any) of the grant that the representative body is, at that time, liable to pay to other persons in connection with the performance of its functions and the exercise of its powers.

*Strategic plan to be considered in making grants*

- (2) In making the grant and deciding on the conditions to be imposed under subsection (1), ATSIC must have regard to the matters set out in the strategic plan (see section 203D) of the representative body concerned. The conditions of the grant must be consistent with the strategic plan.

*Bodies must comply with conditions of grants*

- (3) The representative body must comply with the conditions of the grant.

*Application of ATSIC Act*

- (4) Sections 20, 21, 21A and 22 of the *Aboriginal and Torres Strait Islander Commission Act 1989* apply to a grant under this Division as if the grant had been made under section 14 of that Act.

Note: The effect of this subsection is to enable ATSIC to recover from a representative body amounts of grants if the body breaches conditions of those grants.

*Serious or repeated breaches of conditions*

- (5) If ATSIC considers that the representative body:
    - (a) has committed, or is committing, serious breaches of conditions of a grant under this Division; or
-

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- (b) has repeatedly breached, or is repeatedly breaching, conditions of a grant under this Division;

ATSIC must give to the Commonwealth Minister a written notice informing the Minister of the breaches and stating what measures ATSIC is taking, or proposes to take, as a result of the breaches.

**203CB Banking and investment**

*Payment into bank account*

- (1) A representative body must pay all money received by it under this Division into an account maintained by it with a bank.

*Surplus money*

- (2) The representative body may invest surplus money:
- (a) on deposit with a bank; or
  - (b) in securities of the Commonwealth or of a State or Territory; or
  - (c) in securities guaranteed by the Commonwealth, a State or a Territory; or
  - (d) in any other manner approved by the Treasurer in writing.

*Restrictions on entering into contracts*

- (3) A provision of the law by or under which the representative body is incorporated to the effect that the body must not enter into a contract involving expenditure or payment of more than a specified amount of money without a specified person's approval does not apply to a contract for the investment of money under subsection (2), unless:
- (a) the provision expressly states that it applies to such a contract; or
  - (b) the body concerned is an exempt State body.

*Definitions*

- (4) In this section, unless the contrary intention appears:
-



**bank** means:

- (a) a person who carries on the business of banking, either in Australia or outside Australia; or
- (b) any other institution:
  - (i) that carries on a business in Australia that consists of or includes taking money on deposit; and
  - (ii) the operations of which are subject to prudential supervision or regulation under a law of the Commonwealth, a State or a Territory.

**surplus money** means money received by the representative body under this Division that is not immediately required for the purposes of the body.

## **Division 5—Accountability**

### **203D Strategic plan**

*Representative body must prepare strategic plan*

- (1) A representative body must prepare a strategic plan relating to its functions for each period (of not less than 3 years) determined in writing by the Minister.

Note: A reference to a representative body's functions is a reference to its functions and obligations under this Act—see section 201A.

*Matters to be included in strategic plan*

- (2) The strategic plan must include, but is not limited to, the following matters:
  - (a) a general financial plan;
  - (b) a general statement of the objectives of the body in relation to the performance of its functions and the exercise of its powers;
  - (c) a general statement of the strategies and policies proposed to achieve those objectives, including, but not limited to, strategies and policies about the following:

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- (i) consultation with Aboriginal peoples and Torres Strait Islanders about matters relevant to the operation of this Act;
- (ii) procedures for making decisions and for providing the review process referred to in paragraph 203BI(a);
- (iii) the setting of priorities by the body in relation to the performance of its functions and the exercise of its powers.

*Strategic plan to be prepared in consultation with ATSIC*

- (3) The representative body must prepare the strategic plan in consultation with ATSIC.

*Revision of strategic plan*

- (4) The representative body may revise the strategic plan during the period to which the strategic plan relates if the representative body considers, after consultation with ATSIC, that circumstances have arisen that could significantly affect the achievement of the objectives set out in the strategic plan.

*Strategic plan to be given to Commonwealth Minister for approval*

- (5) The representative body must give the strategic plan or revised strategic plan, as the case requires, to the Commonwealth Minister for approval as soon as practicable after it is prepared or revised.

*Commonwealth Minister to be informed of significant matters*

- (6) The representative body must inform the Commonwealth Minister about matters that might significantly affect the achievement of the objectives in the strategic plan.

*Strategic plan to be made available*

- (7) The representative body must make copies of the strategic plan generally available to:
    - (a) native title holders in relation to land or waters in the area for which the body is the representative body; and
-

- (b) registered native title bodies corporate in relation to native title in that area; and
- (c) persons who may hold native title in that area; and
- (d) Aboriginal persons and Torres Strait Islanders living in that area.

### **203DA Accounting records**

#### *Proper accounts and records to be kept*

- (1) A representative body must keep accounting records that properly record and explain its transactions and financial position, to the extent that its transactions and financial position relate to the performance of its functions or the exercise of its powers. It must keep those records in a way that:
  - (a) enables the preparation of the financial statements required by this Division; and
  - (b) allows those financial statements to be conveniently and properly audited in accordance with this Division.

#### *Accounting records to be separate from others*

- (2) The body must keep accounts and records required to be kept by subsection (1) separate from any other accounts and records kept by the body.

#### *Retention of accounting records*

- (3) The body must retain those records for at least 7 years after completion of the transactions to which they relate.

#### *Availability of accounting records*

- (4) The body must make those records available at all reasonable times for inspection by any director of the body.

**203DB Payments to be properly made etc.**

A representative body must do all things necessary to ensure that payments out of the money of the body are correctly made and properly authorised, and that adequate control is maintained over:

- (a) the assets of, or in the custody of, the body; and
- (b) the incurring of liabilities by the body;

to the extent that the payments, or the assets or liabilities, relate to the performance of its functions or the exercise of its powers.

**203DC Annual reports by representative body**

*Annual report*

- (1) A representative body must, in respect of each financial year:
  - (a) prepare a report of the operations of the body during that year, together with financial statements in respect of that year; and
  - (b) give the report and the financial statements to ATSIC by 15 October in the next financial year.

*Extensions of the deadline*

- (2) ATSIC may grant an extension of time (whether or not the initial deadline has expired) in special circumstances.

*Report to relate to representative body functions*

- (3) The report and the financial statements are to relate only to the performance of its functions or the exercise of its powers.

*Form of financial statements*

- (4) The financial statements must be in such form as the Commonwealth Minister approves in writing, and must be accompanied by a copy of the report on those statements prepared in accordance with subsection (5).

*Audit of financial statements*

- (5) The financial statements must be audited by a person having the prescribed qualifications and appointed by the body for the purpose, who is to report to the body:
- (a) whether the statements are based on proper accounts and records; and
  - (b) whether the statements are in agreement with the accounts and records; and
  - (c) whether the receipt, expenditure and the investment of money, and the acquisition and disposal of assets, by the body during the year have been in accordance with this Act and any grant conditions imposed under subsection 203CA(1); and
  - (d) as to such other matters arising out of the statements as the person appointed considers should be reported to the body.

*Report to be laid before Parliament*

- (6) On receipt of a report and financial statements given under subsection (1), ATSIC must provide a copy of each document to the Commonwealth Minister, who must cause them to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Commonwealth Minister receives that report and those financial statements.

**203DD Modified requirements for first year of recognition**

*Body recognised during last 3 months of a financial year*

- (1) If the recognition of a representative body under section 203AD takes effect during the last 3 months of a financial year:
- (a) the representative body is not required to prepare an annual report and financial statements for that financial year; and
  - (b) the period from the time of recognition to the end of the financial year must be dealt with in the next annual report and financial statements.

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*Representative body established during first 9 months of a financial year*

- (2) Subject to section 203DE, if the recognition of a representative body under section 203AD takes effect during the first 9 months of a financial year, the annual report and financial statements for the financial year must cover the period from the time of recognition to the end of the financial year.

**203DE Modified requirements for bodies whose recognition is withdrawn**

If the recognition of a body as a representative body is withdrawn under section 203AH during a financial year, the annual report and financial statements must cover the period from the beginning of the financial year to the time at which the withdrawal of recognition takes effect.

**203DF Inspection and audit, or investigation, of a representative body**

*Appointment of person to conduct inspection and audit or investigation*

- (1) The Commonwealth Minister may appoint a person who, in the Commonwealth Minister's opinion, has skills or knowledge in relation to matters of substantial relevance to the conduct of an inspection and audit or investigation under this section to:
- (a) inspect and audit the accounts and records kept by a representative body under section 203DA; or
  - (b) investigate the body's performance of its functions and exercise of its powers.

Note: A representative body may also be audited under Division 9 of Part 2 of the *Aboriginal and Torres Strait Islander Commission Act 1989*, which enables the Office of Evaluation and Audit, when requested to do so by the Commonwealth Minister or ATSIC, to evaluate and audit the operations of a body that has received a grant from ATSIC.

*Circumstances in which auditor or investigator can be appointed*

- (2) The Commonwealth Minister must not appoint a person under subsection (1) to conduct an inspection and audit, or an investigation, of a representative body unless the Commonwealth Minister is of the opinion that there is, or may be:
- (a) serious or repeated irregularities in the financial affairs of the representative body; or
  - (b) a serious failure, or repeated failure, to perform its functions.

*Notice requirements*

- (3) If the Commonwealth Minister decides that an inspection and audit, or an investigation, is to be undertaken under this section, the Commonwealth Minister must give written notice of that decision to the representative body concerned. The notice must name the person who is to carry out the inspection and audit or the investigation.

*Report to Commonwealth Minister*

- (4) A person appointed under subsection (1) to conduct an inspection and audit or an investigation must give to the Commonwealth Minister a report on the results of that inspection and audit or investigation.

*Irregularity to be disclosed*

- (5) A report under subsection (4) must draw attention to:
- (a) any irregularity in the financial affairs of the body disclosed by the inspection and audit or the investigation; or
  - (b) any failure by the body to perform its functions disclosed by the inspection and audit or the investigation.

*Report not to contain matters subject to legal professional privilege*

- (6) A report under subsection (4) must not contain any information, or include any document or record, that is subject to legal professional privilege or that is derived from information that is subject to legal professional privilege.
-

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*Legal professional privilege must be claimed*

- (7) For the purposes of subsection (6), information, or a document or record, is not taken to be subject to legal professional privilege unless, at or before the time it was obtained by the person appointed under subsection (1), it was claimed to be subject to legal professional privilege by a person entitled to make such a claim.

*Auditor or investigator taken to be a Commonwealth officer*

- (8) To avoid doubt, a person appointed under subsection (1) of this section is taken, for the purposes of sections 70, 72, 73, 74 and 75 of the *Crimes Act 1914*, to be a Commonwealth officer.

**203DG Access to information**

*General*

- (1) For the purpose of conducting an inspection and audit, or an investigation, of a representative body under section 203DF, the person appointed under subsection 203DF(1):
- (a) is entitled at all reasonable times to full and free access to documents relating to the representative body; and
  - (b) may make copies, or take extracts from, any such document; and
  - (c) may require a representative body:
    - (i) to answer such questions; and
    - (ii) to produce such documents in the representative body's possession or to which the representative body has access;as the person so appointed considers necessary for that purpose.

*Use of legally professionally privileged documents*

- (2) A representative body must produce a document or record or disclose information as required under paragraph (1)(c), whether or not the document, record or information is the subject of legal professional privilege.
-



*Production does not affect legal professional privilege*

- (3) A document, record or information does not cease to be the subject of legal professional privilege merely because it is produced under paragraph (1)(c).

*Failure to comply with paragraph (1)(c)*

- (4) A representative body who, without reasonable excuse, refuses or fails to comply with the requirement under paragraph (1)(c) is guilty of an offence punishable upon conviction by a fine not exceeding 20 penalty units.

*Self-incrimination*

- (5) For the purposes of subsection (4), it is not a reasonable excuse for a representative body to refuse or fail:
- (a) to give information; or
  - (b) to produce a record or document;
- in accordance with a requirement under paragraph (1)(c), on the ground that the information or the production of the document or record, as the case may be, might tend to incriminate the representative body or make the representative body liable to a penalty.

*Admissibility in criminal proceedings*

- (6) Despite subsection (5):
- (a) giving the information or producing the document or record;
  - or
  - (b) any information, document, record or thing obtained as a direct or indirect consequence of the giving of the information or production of the document or record;
- is not admissible in evidence against the person in any criminal proceedings, other than proceedings against, or arising out of, subsection (4) or (7).

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*Knowingly making a statement that is false or misleading*

- (7) A representative body who, in purported compliance with the requirement under paragraph (1)(c), makes a statement that it knows to be false or misleading in a material particular, is guilty of an offence punishable on conviction by a fine not exceeding 20 penalty units.

**203DH Effect of withdrawal of recognition**

A withdrawal of the body's recognition under section 203AH does not affect the undertaking of an inspection and audit, or investigation, under section 203DF.

**Division 6—Conduct of directors and other executive officers**

**203E Application of Division**

*Relation to representative body functions and powers*

- (1) This Division does not apply to anything that is not related to the performance of the functions of a representative body or the exercise of its powers.

*Exempt State bodies*

- (2) This Division does not apply to the directors or executive officers of a representative body that is an exempt State body, except to the extent that a law of a State provides that it does so apply.

**203EA Application of certain provisions of the Commonwealth Authorities and Companies Act**

Subject to this section and to section 203EB, Division 4 of Part 3 and Schedule 2 (other than clauses 8 and 12) of the *Commonwealth Authorities and Companies Act 1997* apply in relation to a representative body as if:

- (a) each reference in that Division and in that Schedule to a Commonwealth authority were a reference to the representative body; and
- (b) each reference in that Division to an officer of a Commonwealth authority were a reference to an executive officer of the representative body; and
- (c) each reference in that Division to a former officer of a Commonwealth authority were a reference to a former executive officer of the representative body; and
- (d) each reference in that Division and in that Schedule to a director of a Commonwealth authority were a reference to a director of the representative body; and
- (e) each reference in that Division to the Board of a Commonwealth authority were a reference to the governing body of the representative body; and
- (f) each reference in that Schedule to the Finance Minister were a reference to the Commonwealth Minister.

### **203EB Application of section 21 of the Commonwealth Authorities and Companies Act**

Section 21 of the *Commonwealth Authorities and Companies Act 1997* applies in relation to a representative body as if subsections (3), (4) and (5) were omitted and the following subsection substituted:

- (3) The director:
  - (a) must not be present during any deliberation by the governing body on the matter; and
  - (b) must not take part in any decision of the governing body on the matter.

### **203EC Sections 203EA and 203EB not to affect certain obligations**

To avoid doubt, sections 203EA and 203EB do not affect the obligations imposed by the *Commonwealth Authorities and Companies Act 1997* upon a representative body that is a

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Commonwealth authority within the meaning of section 7 of that Act.

**32 Before section 203FC**

Insert:

**203F ATSIIC to inform Minister of certain matters**

If ATSIIC is of the opinion that:

- (a) a representative body is not satisfactorily representing the native title holders or persons who may hold native title in the area for which the body is the representative body; or
- (b) a representative body is not effectively consulting with Aboriginal peoples and Torres Strait Islanders living in the area; or
- (c) a representative body is not satisfactorily performing its functions; or
- (d) there may be irregularities in the financial affairs of a representative body;

ATSIIC must give written notice of its opinion to the Commonwealth Minister.

Note: ATSIIC must also give written notice of breaches of grant conditions to the Commonwealth Minister—see subsection 203CA(5).

**203FA ATSIIC to give information etc. about certain matters to Minister**

If the Commonwealth Minister suspects that, in relation to a particular matter:

- (a) a representative body is not satisfactorily representing the native title holders or persons who may hold native title in the area for which the body is the representative body; or
  - (b) a representative body is not effectively consulting with Aboriginal peoples and Torres Strait Islanders living in the area; or
  - (c) a representative body is not satisfactorily performing its functions; or
-

(d) there may be irregularities in the financial affairs of the representative body; or

(e) the representative body has breached, or is breaching, a condition of a grant under Division 4;

the Commonwealth Minister may request that ATSIC provide to the Commonwealth Minister all information or documents, or specified information or documents, in ATSIC's possession that relates to that matter. ATSIC must comply with the request.

### **203FB Review of assistance decisions**

#### *Person may apply for review*

- (1) An Aboriginal person or Torres Strait Islander affected by a decision of a representative body not to assist him or her in the performance of its facilitation and assistance functions under section 203BB may apply to ATSIC for review of the decision.

Note: The Aboriginal person or Torres Strait Islander is able to obtain a statement of reasons etc. for the decision from the representative body under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

#### *Appointment of person to conduct the review*

- (2) As soon as practicable after receiving the application, ATSIC must appoint to conduct the review a person who, in ATSIC's opinion, has skills or knowledge in relation to matters of substantial relevance to the conduct of the review.

#### *Review of decision*

- (3) Subject to subsection (4), the person appointed must review the decision and report to ATSIC whether:
  - (a) the decision should be affirmed; or
  - (b) ATSIC should make a grant of money under section 203FE to a person or body for the purpose of performing specified facilitation and assistance functions of a representative body in relation to the matter to which the decision relates.

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*Failure to use internal review procedures*

- (4) The person appointed may refuse to review the decision if satisfied that the applicant did not, before applying for the review, make all reasonable efforts to seek a review by the representative body of its decision.

*Report to be given within 3 months*

- (5) The person appointed must give the report referred to in subsection (3) to ATSIC within 3 months after the day on which he or she was appointed, or within such other period as ATSIC allows (whether or not the 3 months have expired).

*Inviting submissions*

- (6) Before reviewing the decision, the person appointed must invite the representative body that made the decision to make a submission in relation to the decision. The invitation must specify a period of not less than 14 days within which submissions must be made.

*Action to be taken by ATSIC*

- (7) ATSIC must, within one month of the end of the period referred to in subsection (5):
- (a) affirm the decision; or
  - (b) make a grant of money under section 203FE as mentioned in paragraph (3)(b) of this section.

*Notice of decision on review*

- (8) ATSIC must give the applicant and the representative body written notice of its decision under subsection (7). The notice must include the reasons for that decision.

**33 After section 203FD**

Insert:

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**203FE Grants of assistance by ATSIC**

*Grants if there is no representative body*

- (1) ATSIC may make one or more grants of money to a person or body for the purpose of enabling the person or body to perform, in respect of a specified area for which there is no representative body:
- (a) all the functions of a representative body; or
  - (b) specified functions of a representative body;
- either generally or in relation to one or more specified matters.

*Grants following certain decisions under section 203FB*

- (2) ATSIC may make one or more grants of money to a person or body for the purpose of enabling the person or body to perform specified facilitation and assistance functions of a representative body in relation to a matter to which a decision under paragraph 203FB(7)(b) relates.

*Conditions of grants*

- (3) A grant of money to a person or body under this section may be subject to such conditions as ATSIC thinks fit. However, ATSIC must impose conditions relating to:
- (a) the purposes for which the money may be spent; and
  - (b) the period within which the money is to be spent; and
  - (c) the acquittal of money spent; and
  - (d) the giving of information relating to expenditure of the money; and
  - (e) the appointment of a person, in cases where ATSIC considers that grant money has not been spent in accordance with the conditions of the grant, with the power to prevent expenditure of further grant money otherwise than in accordance with the conditions of the grant; and
  - (f) the person's or body's continuing satisfactory performance of its functions referred to in subsection (1) or (2), as the case requires; and

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- (g) the giving of information relating to the performance of the functions referred to in subsection (1) or (2), as the case requires.

*Grant period to be specified*

- (4) ATSIC must determine the period during which the person or body may spend the money.

*Grant period may be extended*

- (5) If ATSIC considers it appropriate, ATSIC may determine that the period during which the person or body may spend the money is extended for a specified further period.

*Persons or bodies must comply with conditions etc.*

- (6) The person or body must comply with the conditions of the grant, and with any determinations under subsection (4) or (5).

*Application of ATSIC Act*

- (7) Sections 20, 21, 21A and 22 of the *Aboriginal and Torres Strait Islander Commission Act 1989* apply to a grant under this section as if the grant had been made under section 14 of that Act.

Note: The effect of this subsection is to enable ATSIC to recover from a person or body amounts of grants if the person or body breaches conditions of those grants.

**203FF Financial and accountability requirements imposed by other legislation**

*Obligations under other laws unaffected*

- (1) The obligations imposed on a representative body by Divisions 4 and 5 are in addition to, and not instead of, requirements imposed by any other law of the Commonwealth, a State or Territory.
-



*Combined reports to the Commonwealth Minister*

- (2) A representative body that has an obligation under another law of the Commonwealth to give a report to the Commonwealth Minister may include as a part of that report a report that it is obliged to give to the Minister under Division 5. However, that part must be identified in the report as a report under Division 5.

**203FG False statements etc.**

A person is guilty of an offence if the person:

- (a) makes a statement or presents a document in or in connection with an application to ATSIC for a grant under section 203C; and
- (b) does so knowing that the statement is, or that the document contains information that is, false or misleading in a material particular.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

**34 Paragraph 214(a)**

Omit “202(1),”.

**35 At the end of paragraph 214(b)**

Add “, 203AE, 203AF or 203AG or subsection 203AH(2)”.

**36 At the end of section 215**

Add:

*Transitional or saving provisions*

- (4) Without limiting subsection (1), the regulations may make such transitional or saving provisions as are necessary or convenient as a result of the recognition of representative Aboriginal/Torres Strait Islander bodies being withdrawn under section 203AH.

**37 Section 253 (definition of *representative Aboriginal/Torres Strait Islander body*)**

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**Part 2** Later amendments

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Omit “that is the subject of a determination under subsection 202(1) or”.

Note: This amendment will have the effect that, when this Part commences, representative bodies under subsection 202(1) will no longer be representative bodies.

## **Schedule 4—Addition of Schedule**

### *Native Title Act 1993*

#### **1 At the end of the Act**

Add:

## **Schedule 1—Scheduled interests**

Note: This Schedule lists things that are covered by the expression *Scheduled interest* (see section 249C).

### **Part 1—New South Wales**

#### **1 *Crown Lands Occupation Act 1861***

A lease for special purposes under section 30 of the *Crown Lands Occupation Act 1861*.

#### **2 *Crown Lands Act 1884***

- (1) A conditional lease under the *Crown Lands Act 1884*.
- (2) A special lease under section 89 of the *Crown Lands Act 1884*.
- (3) A special lease under section 90 of the *Crown Lands Act 1884* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - agriculture; bakery; bee and poultry farm; boiling down works; brick-kiln; bridge; building or repairing ships or boats; construction of a drainage canal; construction of an irrigation canal; cricket; cultivation of eucalyptus; dairying; dam; erection of machinery; factory; ferry; freezing works; graving dock; inn; irrigation or drainage canal; lime-kiln; mail station; night soil depot; nursery garden; patent slip; pig and poultry farm; punt-house; residence; saw-mill; sericulture; sheep and cattle yard; show ground; site for storage of explosives; skin drying and skin packing; slaughterhouse; slaughterhouse accommodation

paddock; smelting works; smithy; storage; store; tank; tannery; tobacco growing; tramway; vegetable garden; wattle growing; well; wharf; wool washing establishment.

- (4) A special lease under section 92 of the *Crown Lands Act 1884* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- (a) irrigation or drainage canals;
  - (b) forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.

**3 *Western Lands Act 1901, Crown Lands Consolidation Act 1913 and other land Acts***

- (1) A residential lease (whether an original or an additional holding) under section 48 of the *Crown Lands Act 1889*, section 50 of the *Crown Lands Act 1895* or section 80 of the *Crown Lands Consolidation Act 1913*.
- (2) A homestead selection or grant (whether an original or an additional holding) under the *Crown Lands Act 1895* or the *Crown Lands Consolidation Act 1913*.
- (3) A settlement lease (whether an original or an additional holding) under the *Crown Lands Act 1895* or the *Crown Lands Consolidation Act 1913*, other than a lease that:
- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (4) A lease under section 23 of the *Western Lands Act 1901* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; mixed farming or any similar purpose other than grazing.

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- (5) A conditional lease under the *Western Lands Act 1901* or the *Crown Lands Consolidation Act 1913*.
- (6) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for a business purpose of any of the following:
- accommodation building; bus depot; cafe; caravan and camping park; concrete batching plant; factory; feedlot; fish marketing and processing; fuel depot; garage; holiday accommodation; hospital; hotel; kiosk; manufacturing works; marina; motel; motor repair facility; nursing home; office accommodation; oyster depuration; oyster processing; processing plant; restaurant; retail shop; retirement village; service station; showroom; storage; tourist accommodation and facilities; workshop.
- (7) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for a waterfront business of a marina, slipway, retail shop or food sales.
- (8) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- abattoirs accommodation paddock; abattoirs and resting paddock; accommodation house; aerodrome; agriculture; agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; archery ground; bakery; basketball court; bee and poultry farm; boatshed; boiling down works; bowling green; brick kiln; bridge; building and repairing boats; building and repairing boats or ships; building or repairing of ships; bushfire brigade facilities; cable station; church and school site; community centre; construction of drainage canal; construction of irrigation canal; council chambers; council depot; council office; coursing ground and plumpton; cricket; cultivation; cultivation of eucalyptus; Country Women's Association rest rooms; dairying; dam; dam, weir or tank; day care centre; depot; dog and animal pound; dog racing course; domestic garden; driver training ground; equestrian grounds; erection of building; erection of coke oven;
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erection of dwelling; erection of machinery; factory; feedlot; ferries; freezing works; golf course; graving dock; gymnasium; horse racing course; horticulture; inn; kindergarten; land-based aquaculture; library; lime-kiln; mail station; manufacture of eucalyptus oil; market garden; mixed farming or any similar purpose other than grazing; motel; motor car and bike racing track; motor sports activities and facilities; neighbourhood depot; night soil depot; nursery garden; orchard; parking area; patent slip; pig and poultry farm; piggery; planting; poultry farm; power house, engine house, boiler house, bathroom, loading facilities or coal washery in connection with coal mining; pre-school; punt house; railway siding; railway station and depot; reclamation; refreshment room; refuse tip site; research centre; residence; residential development; residential subdivision; retirement village; rifle and pistol range; sale yard; sawmill; school and church site; school or other educational institution; septic tank; sericulture; sewage farm; sheep and cattle yard; showground; site for storage of explosives; skin drying and skin packing; slaughterhouse or abattoirs accommodation paddock; slaughterhouse; slip; smelting works; smithy; sporting club building; sporting ground; sporting ground and facilities; stable; storage of explosives; storage purposes; store; sugar cane growing; surf life saving club; swimming pool; tank; tannery; telecommunications or broadcasting tower, mast or building; tobacco growing; tramway; tree farming; vegetable garden; vegetable garden and nursery; velodrome; vineyard; volunteer rescue facilities; waste depot; water race; water storage; wattle growing; weighbridge; well; whaling station; wharf; wool washing establishment.

- (9) A conditional purchase lease (whether an original or an additional holding) under the *Crown Lands (Amendment) Act 1905* or the *Crown Lands Consolidation Act 1913*.
- (10) A Crown lease (whether an original or an additional holding) under the *Crown Lands (Amendment) Act 1912* or the *Crown Lands Consolidation Act 1913*, other than a lease that:
- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
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- (11) A suburban holding (whether an original or an additional holding), a town land lease within an irrigation area, a homestead farm (whether an original or an additional holding), an irrigation farm lease or a non-irrigable lease, under the *Crown Lands (Amendment) Act 1912* or the *Crown Lands Consolidation Act 1913*.
- (12) A week-end lease under the *Crown Lands Consolidation Act 1913*.
- (13) A special conditional purchase lease (whether an original or an additional holding) under the *Crown Lands Consolidation Act 1913*.
- (14) A lease under section 69A of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- army depot; artillery range; beacon site; bombing range; firing range; lighthouse; naval facilities; pilot station; pistol range; quarantine station; rifle range; Royal Australian Air Force base; telecommunications or broadcasting tower, mast or building; training facility.
- (15) A special lease under section 74 of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- artificial reef; boatshed; building and repairing boats; dam; erection of a building; erection of machinery; floating dock; jetty; pier; reclamation; waterfront business for the purpose of a marina, retail shop, restaurant or boat repairs; whaling station; wharf.
- (16) A special lease under section 76 of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- irrigation or drainage canal; forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.
- (17) A lease of town land under section 82A of the *Crown Lands Consolidation Act 1913*.
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**4 Returned Soldiers Settlement Act 1916**

A lease under section 4 of the *Returned Soldiers Settlement Act 1916*.

**5 Closer Settlement Amendment (Conversion) Act 1943**

A group purchase lease, closer settlement lease or settlement purchase lease, under the *Closer Settlement Amendment (Conversion) Act 1943*.

**6 Crown Lands Act 1989**

A lease under section 34 of the *Crown Lands Act 1989* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture; aquatic centre; boatshed; building for the use of charitable or community service organisation; bushfire brigade facilities; cafe; caravan and camping area; childcare facilities; commercial retail purposes; community centre; council depot; day care centre; equestrian centre; factory; feedlot; golf course; hotel; industrial depot; kindergarten; kiosk; library; marina; motel; office accommodation; registered club; residential purposes; restaurant; rifle and pistol range; sporting club; sporting ground; sporting ground and facilities; storage area; telecommunications or broadcasting tower, mast or building; tennis court; tourist accommodation and facilities; volunteer rescue facilities; youth organisation facilities.

**7 National Parks legislation**

- (1) A lease under subsection 11(3) of the *Kosciusko State Park Act 1944*.
- (2) A lease under paragraph 30(1)(a) or (b) of the *National Parks and Wildlife Act 1967*.
- (3) A lease under paragraph 151(1)(a), (b), (c), (d) or (e) of the *National Parks and Wildlife Act 1974*.



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## 8 Various Acts

A lease under section 5 of the *Public Parks Act 1854*, section 6 of the *Public Parks Act 1884*, section 7 of the *Public Parks Act 1902*, Part IIIA or Division 3 of Part IIIB of the *Crown Lands Consolidation Act 1913*, Schedule 9A to the *National Parks and Wildlife Act 1974* or Division 5 of Part 5 of the *Crown Lands Act 1989* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

accommodation house; amusement centre; art gallery; boat storage; boatshed; bowling green; building for use by community and charitable bodies; cafe; caravan park and camping ground; craft centre; day care centre; dog racing course and facilities; driver training ground; entertainment centre; football; golf course; Guide hall; historic building, structure and display; horse racing course and facilities; jetty; kindergarten; kiosk; launching ramp; marina; museum; restaurant; retail shop; retirement village; Scout hall; sporting club; sporting ground; sporting ground and facilities; sports stadium; swimming pool; tea room; telecommunications or broadcasting tower, mast or building; tourist information centre; volunteer rescue organisation; wharf; wharf and jetty; youth club; youth organisation facilities.

## Part 2—Victoria

### 9 Land Acts etc.

- (1) A lease under section XXI, XXIII or XLVII of the **Land Act 1862**.
- (2) A lease under section L of the **Land Act 1862** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection 3, 5, 8 or 9 of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
- (3) A lease under section 13 or 38 of the **Amending Land Act 1865**.
- (4) A lease under section 37 of the **Amending Land Act 1865** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection 3, 5, 8 or 9 of section L of the **Land Act 1862** or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
- (5) A lease under section 20, 31, 33 or 46 of the **Land Act 1869**.
- (6) A lease under section 45 of the **Land Act 1869** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (III), (V), (VIII) or (IX) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
- (7) A lease under section 18, 44, 92 or 94 of the **Land Act 1884**.
- (8) A lease under the **Land Act 1884** in accordance with the conditions contained in a non-residence licence under section 49 of that Act.
- (9) A lease under section 91 of the **Land Act 1884** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

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- (10) A lease of an agricultural allotment, or an agricultural lease, under the **Land Act 1884**, the **Land Act 1890**, the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1941** or the **Land Act 1958**.
  - (11) A lease of drained and reclaimed swamp land under section 85 of the **Land Act 1884**, section 85 of the **Land Act 1890**, section 131 of the **Land Act 1901**, section 110 of the **Land Act 1915**, section 110 of the **Land Act 1928** or section 110 of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural or residential purposes.
  - (12) A lease under section 18 or 100 of the **Land Act 1890**.
  - (13) A lease under section 97 of the **Land Act 1890** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
  - (14) A lease under the **Land Act 1890** in accordance with the conditions contained in a non-residence licence under section 49 of that Act or section 51 of the **Land Act 1898**.
  - (15) A lease of a village community allotment under the **Settlement on Lands Act 1893** or the **Land Act 1901**.
  - (16) A lease of a township allotment under the **Settlement on Lands Act 1893** or the **Land Act 1901**.
  - (17) A lease of a homestead section under the **Settlement on Lands Act 1893** or the **Land Act 1901**.
  - (18) A lease under section 2 of the **Land Act 1896**.
  - (19) A perpetual lease under the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Land Act 1904**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1941**, the **Land Settlement Act 1953**, the **Land**
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- Settlement Act 1958** or the **Land Act 1958**, other than a perpetual lease under Division 3 of Part II of the **Land Act 1958**.
- (20) A conditional purchase lease under the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Murray Settlements Act 1907**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1933**, the **Land Act 1941** or the **Land Act 1958**.
- (21) A lease of a grazing allotment under section 61 of the **Land Act 1898** or section 56 of the **Land Act 1901**.
- (22) A lease under section 19 of the **Land Act 1900**.
- (23) A lease under section 18, 143, 144, 309, 311, 402 or 411 of the **Land Act 1901**.
- (24) A lease under the **Land Act 1901** in accordance with the conditions contained in a non-residence licence under section 50 of that Act.
- (25) A lease under section 142 of the **Land Act 1901** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
- (26) A residential lease of a selection purchase allotment, non-residential lease of a selection purchase allotment, or selection purchase lease, under the **Land Act 1901**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1915 (No. 2)**, the **Land Act 1928**, the **Land Act 1941** or the **Land Act 1958**.
- (27) A lease under section 28 of the **Land Act 1904**.
- (28) A lease under section 73 of the **Land Act 1911**.
- (29) A lease under section 125 of the **Land Act 1915** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
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- (30) A lease under section 127 or 128 of the **Land Act 1915**.
- (31) A lease under section 4 of the **Land Act 1915 (No. 2)**.
- (32) A lease under subsection 126(2) or section 127, 128 or 356 of the **Land Act 1928**.
- (33) A lease under section 125 or 352 of the **Land Act 1928** or subsection 7(2) or section 14 of the **Land Act 1941** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph 125(1)(c), (e), (h) or (i) of the **Land Act 1928**, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.
- (34) A right to occupy a residence area under the **Land (Residence Areas) Act 1935** or the **Land Act 1958**.
- (35) A lease under section 14 of the **Land Act 1941** to or by the holder of a lease under subsection 126(2) or section 127, 128 or 356 of the **Land Act 1928**.
- (36) A development lease under the **Land (Development Leases) Act 1951** or the **Land Act 1958**.
- (37) An improvement purchase lease under the **Land (Improvement Purchase Lease) Act 1956** or the **Land Act 1958**.
- (38) A cultivation lease under section 133B of the **Land Act 1958**.
- (39) A lease under section 134 of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)(c), (e), (h) or (i) of that section or for any of the following:
- Aboriginal health services centre; accommodation and facilities for tourists; ambulance station; amusement park; bathing house; bowling club; bowling club and car park; bowls; bridge; car parking; caravan park; caravan park and camping ground; chair lift; church; clubhouse; clubroom; communications tower; Country Women's Association centre; craft centre; creative arts communication centre; depositing materials; depot; equestrian events; factory; ferry; ferry terminal; film and performing arts centre; fire station; fish freezing works; fish processing and
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freezing; fish processing works; football club; gas regulating and metering station; Girl Guides hall; gliding club; gliding field; golf; golf club; golf club house; golf course; golf driving range; grain testing facility; Guide hall; gun club; hall; harness racing club; health and fitness club and restaurant; holiday accommodation and agricultural farming; industrial purposes; industrial storage; jetty pens; lawn tennis club; line depot; manufacture of industrial accessories; manufacture of salt; manufacturing and storage; marina; marine education centre; marine operations terminal; marine workshop and sales; maritime industry warehouse; mobile telecommunications tower; motor car club; motor cycle club; museum and interpretive centre; office accommodation; office; pistol club; pistol range; processing and storage of petrol; processing, freezing and retailing fish; production of salt; punt house; purification plant; quay; radio relay station; radio repeater station; radio station; radio telephone and repeaters; radio transmission tower; radio transmitting station; relay station; retail shopping centre; rifle range; Returned Services League club; salt extraction; sawmill; school; Scout hall; sea pilot's station and amenities; shooting range; site for a line depot; stadium; storage of materials; telecommunications tower; television transmitting station; tennis court; tennis courts and clubroom; toll house; transmission tower; vehicular ferry terminal; warehouse; waste transfer station; water industry training centre and accommodation; yacht club; yacht clubhouse and yard.

- (40) A lease under subsection 135(2) or section 136, 137, 151E, 222A, 222B of the **Land Act 1958**.
- (41) A lease under Subdivision 1 of Division 9 of Part I of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial purposes or for the generation of electricity for supply or sale.
- (42) An industrial lease, industrial purchase lease, or industrial development lease, under the **Land Act 1958**.

## 10 Water Acts etc.

- (1) A lease under section 75 of the **Victorian Water Conservation Act 1881**.
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- (2) A lease under section 118 of the **Irrigation Act 1886**.
  - (3) A lease under section 68, 243 or 292 of the **Water Act 1890**, section 299 of the **Water Act 1905**, section 299 of the **Water Act 1915**, section 299 of the **Water Act 1928**, section 324 of the **Water Act 1958** or section 132 of the **Water Act 1989**, that permits the lessee to use the land or waters covered by the lease solely or primarily for:
    - (a) agricultural or residential purposes; or
    - (b) an angling club or the storage and launching of boats.
  - (4) A lease under section 277 of the **Water Act 1890**.
  - (5) A lease under section 213 of the **Water Act 1905**.
  - (6) A lease under section 184 of the **Water Act 1915**.
  - (7) A lease under section 184 of the **Water Act 1928**.
  - (8) A lease under section 200 of the **Water Act 1958**.

## **11 Forests Acts**

- (1) A lease under section 39 of the **Forests Act 1918** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of a dwelling-house or business premises.
- (2) A lease under section 51 of the **Forests Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - cabin accommodation; caravan park; dwelling house; hotel;
  - mobile communications base station; nursery; preservation of an historic building; rifle range; saw mill; ski lodge; softwood production; steel tower and storage shed; telecommunications tower; television transmitter station; training and research centre; transmission tower.
- (3) A lease under section 51 of the **Forests Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph 134(1)(c), (e),

(h) or (i) of the **Land Act 1958**, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(4) A lease under section 57B of the **Forests Act 1958**.

## 12 National Parks Act 1975

(1) A lease or tenancy under paragraph 19(2)(a) or section 30AA, 32AB or 32B of the **National Parks Act 1975**.

(2) A tenancy of a building under paragraph 19(2)(b) of the **National Parks Act 1975**.

(3) A lease under section 31AA of the **National Parks Act 1975** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (2)(a) or (c) of that section.

(4) A tenancy under section 32C of the **National Parks Act 1975** that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes or for erecting, providing or using particular structures, facilities or equipment in connection with the keeping of horses or the conduct of a riding school.

## 13 Alpine Resorts Act 1983

(1) A lease under subsection 28(2) of the **Alpine Resorts Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (a) or (b) of that subsection.

(2) A lease under paragraph 28(2)(c) of the **Alpine Resorts Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for a fire station, telecommunications relay station or telephone exchange.

(3) A lease under section 28A of the **Alpine Resorts Act 1983**.



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**14 Gardens Acts**

- (1) A lease under subsection 24(2) of the **Royal Botanic Gardens Act 1991** that permits the lessee to use the land or waters covered by the lease solely or primarily for a kiosk, cafe, restaurant, shop or other outlet providing refreshment services.
- (2) A lease under subsection 24(3A) of the **Royal Botanic Gardens Act 1991**.
- (3) A lease under paragraph 33(2)(a) of the **Zoological Parks and Gardens Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for a kiosk, cafe, restaurant, shop or other outlet providing refreshment services.

**15 Settlement Acts etc.**

- (1) A settlement interim lease, settlement purchase lease or purchase lease under the **Soldier Settlement Act 1946**, the **Soldier Settlement Act 1958**, the **Land Act 1958**, the **Land Settlement Act 1959** or the **Rural Finance Act 1988**.
- (2) A perpetual lease under the **North-West Mallee Settlement Areas Act 1948** or Division 3 of Part II of the **Land Act 1958**, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (3) A lease under section 43 of the **Soldier Settlement Act 1958** pending the grant of an interim lease under that Act.
- (4) A temporary lease under the **Land Settlement Act 1959**.
- (5) A lease under section 47 of the **Land Settlement Act 1959**.

## 16 Crown Land (Reserves) Act 1978

- (1) A lease under section 14D, 16, 17C or 17D of the **Crown Land (Reserves) Act 1978** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - antenna; caravan park; caravan park and camping ground;
  - clubhouse; curtilage to a dwelling; curtilage to a private club;
  - environmental education centre; fire tower; golf club; golf course;
  - historic society; house encroachment; houseboat hire and servicing; kiosk, tea room, fish shop and jetty; marine research laboratory; mobile communications base station; museum;
  - museum and interpretative centre; pistol range; pre-school centre;
  - preserving historic building; public hall; radio transmission tower; rescue station; residence; sailing school; theatre; water filtration plant; water pump and underground tank.
- (2) A lease under section 22 or 23 of the **Crown Land (Reserves) Act 1978**.
- (3) A lease under section 29A of the **Crown Land (Reserves) Act 1978** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)(b) of that section.

## 17 Melbourne and Metropolitan Board of Works Acts

- (1) A lease under section 147 of the **Melbourne and Metropolitan Board of Works Act 1890**, section 209 of the **Melbourne and Metropolitan Board of Works Act 1915**, section 209 of the **Melbourne and Metropolitan Board of Works Act 1928** or section 235 of the **Melbourne and Metropolitan Board of Works Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial or residential purposes.
- (2) A building or improving lease under section 148 of the **Melbourne and Metropolitan Board of Works Act 1890**, section 210 of the **Melbourne and Metropolitan Board of Works Act 1915**, section 210 of the **Melbourne and Metropolitan Board of Works Act**

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**1928** or section 236 of the **Melbourne and Metropolitan Board of Works Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial or residential purposes.

## **18 Port Acts etc.**

- (1) A lease under section 35 of the **Harbor Boards Act 1958**, paragraph 24(2)(b) or 26B(1)(a) or subsection 46(1) of the **Port of Geelong Authority Act 1958**, paragraph 50(2)(b) or 56A(1)(a) or section 50A of the **Port of Melbourne Authority Act 1958**, paragraph 17A(2)(b) or 17E(1)(a) or subsection 19(2) of the **Port of Portland Authority Act 1958** or paragraph 65(4)(d) of the **Port Services Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - berthing and mooring facilities; jetty; loading and unloading of commercial shipping; pier and associated rock wall; storage of cargo or storage and operation of equipment and machinery for shipping operations or launching boats; wharf.
- (2) A lease under paragraph 24(2)(b) or 26B(1)(a) or subsection 46(1) of the **Port of Geelong Authority Act 1958** that permits the lessee to use the land or waters covered by the lease for any of the purposes mentioned in subsection 46(1) of that Act.
- (3) A lease under subsection 20(2) or 24(1) of the **Docklands Authority Act 1991** that permits the lessee to use the land or waters covered by the lease solely or primarily for a shipping terminal, workshop, port services headquarters or the operation of the Port of Melbourne, or for industrial purposes.

## **19 Railway and Transport Acts**

- (1) A lease under section 76 of the **Railways Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for cultivation, for grazing and cultivation, or for residential purposes.
  - (2) A lease under paragraph 41(1)(a) of the **Emerald Tourist Railway Act 1977** of a refreshment room, shed, office, shop, house, stall or
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other building, of a site for the erection of a refreshment room, shed, office, shop, house, stall or other building, or for storage.

- (3) A lease under subparagraph 21(1)(f)(i) of the **Railway Construction and Property Board Act 1979** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial or residential purposes.
- (4) A lease or tenancy under subsection 25(3) or 26(1) of the **Railway Construction and Property Board Act 1979**.
- (5) A lease under paragraph 47(2)(b) of the **Transport Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for cultivation, for grazing and cultivation, or for residential purposes.

## 20 Various Acts

- (1) A lease under section 17 or 20A of the **Education Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for a cultural centre, sports ground, school or other educational institution.
- (2) A lease under section 3 of the **Land (Surf Life Saving Association) Act 1967**.
- (3) A lease under subsection 7(2) or paragraph 15(1)(f) of the **Albury-Wodonga Agreement Act 1973** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural or residential purposes.
- (4) A lease or tenancy under paragraph 6(2)(a) of the **Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977** or paragraph 7(2)(a) of the **Melbourne Market Authority Act 1977** that permits the lessee to use the land or waters covered by the lease solely or primarily for storing, distributing or selling vegetables, fruit, flowers or other produce.
- (5) A lease under paragraph 13(1)(i) of the **Government Employee Housing Authority Act 1981**.

- (6) A lease under section 128K of the **Casino Control Act 1991**.
- (7) A lease under paragraph 24(1)(b) of the **Melbourne Sports and Aquatic Centre Act 1994**, or a lease deemed to be granted under subsection 24(2) of that Act, that permits the lessee to use the land or waters covered by the lease solely or primarily for sport or gaming activities or an entertainment centre.
- (8) A lease under section 7 of the **Australian Food Industry Science Centre Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural research.

## Part 3—Queensland

### 21 Leases under various Land Acts etc.

- (1) A lease under section XII of the *Alienation of Crown Lands Act 1860*.
- (2) A lease under section 51 of the *Crown Lands Alienation Act 1868*.
- (3) A special lease under section 69 of the *Crown Lands Alienation Act 1868*, section 70 of the *Crown Lands Alienation Act 1876* or section 188 of the *Land Act 1897*.
- (4) A lease under the *Gold Fields Town Lands Act 1869*.
- (5) A lease under section 28 of the *Crown Lands Alienation Act 1876*.
- (6) A perpetual town allotment lease under the *Land Act 1897*.
- (7) A perpetual suburban allotment lease under the *Land Act 1897*.
- (8) A lease under section 119A of the *Land Act 1910*.
- (9) A lease under subsection 185(2) of the *Land Act 1910*, section 343 of the *Land Act 1962* or subsection 57(1) of the *Land Act 1994*, a special lease under the *Land Act 1910* or the *Land Act 1962*, a lease for a term of years or a perpetual lease under section 22B of the *State Housing Act 1945*, or a term lease or perpetual lease under the *Land Act 1994*, that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - abattoir; accommodation; accommodation paddock adjoining an abattoir; aerodrome; aeromodellers club; aged persons' home; agricultural and horticultural society showground; agriculture; air traffic control facilities; aircraft hangar site; aircraft hangar, repair and administration building; aircraft landing ground; airfield; airstrip; airstrip and terminal; all sports complex; amphitheatre; amusement and entertainment park and pub; animal refuge boarding kennel; animal refuge home; Apex club; archery club; archery range; arts and craft centre; automatic telephone exchange; aviation building; band hall site; bank;

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basketball; basketball club; basketball court; beacon; boat building; boat hire; boat pilot base and wharf; boat ramp; boat repair; boat sales; boat shed; boating and fishing club; bowhunting; bowhunting club; bowhunting range; bowling club; bowling green; bowls club; Boy Scouts hall; Boys Brigade hall; British Australian club; broadcasting tower, mast or facility; building encroachment; building or repairing boats; bulk fuel depot; bulk storage; bulk storage depot; burning of sawmill waste; bus depot; butchery; cafe; cafeteria; cane employees' accommodation; car parking; car storage; car wrecking yard; caravan park; catamaran club; cattle transport depot or yard; causeway; change rooms and associated facilities; charitable organisation; child care centre; church; church and church hall; church school; city band hall; civil aviation anemometer site; civil aviation visual omni range; clubhouse; clubhouse for the Grand Lodge of the Royal Antediluvian Order of Buffaloes; coast guard facilities; coffee growing; coffee shop; coke works; commercial building development; communal bore; communal dam; communal storage building; communal tank; community centre; compressor station site; concrete batching plant; concrete manufacturing and storage of earthmoving equipment; conservatorium of music; coral art display and sales shop and residence; coral art display and sales shop or centre; crane hire; cricket; cricket club; cricket ground; cricket ground and grandstand; crocodile farm; croquet club; croquet pitch; culture centre; dairy; dam; dam site and agriculture; dance hall; dart playing hall; delicatessen-snack bar; depot; development office; dining hall; dip site; dog training; drive-in picture theatre; driver training; drug and alcohol rehabilitation centre; dry dock; educational institution; electricity generator and depot; electricity substation; electricity transmission tower; elevated passenger cable way pylons and building; Endeavour workshop; engineering workshop; equestrian and general sporting purposes; equestrian club; equestrian field; equestrian or pony field; explosive magazine; explosive manufacture, testing and storage; export game meat receipt and kangaroo pet food depot; fast food outlet; feed lot; ferry terminal; fertiliser storage depot; fibre board plant; field archery range; fire brigade station; fire observation tower; fish depot; fishing club; flood mitigation dam or canal; flying field and soaring/gliding building; football; football club; football ground; freight terminal and barge ramp; fruit growing; fruit storage; fuel and garage facilities; fuel depot; fuel storage; game

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collection centre; game fishing club; garage; gas compressor; gas offtake and pressure regulating system; gas storage tank; gas treatment plant; general engineering workshop; general store; Girl Guides hall; golf club; golf course; golf links; grain handling facilities; grain storage depot; gravel treatment; grazing and horticulture; grocery shop; gun club; heavy engineering and fabrication; helipad site; historical museum; hockey club; hockey pitch; holiday unit; home unit; horse and pony club; horse stabling; horticulture; hostel; hotel; hotel-casino; housing purposes; indoor sports centre; industrial development; industrial purposes; Jaycees room; jetty; judo; kindergarten; kiosk; knackery; land-based aquaculture; land-based aquaculture inlet canal; land-based mariculture; licensed club; light industrial purposes; lighthouse; line depot; log storage; lot feeding; machinery shed; machinery storage; maintenance depot; manufacturing; marina; marine stadium; marine workshop and slipway; market garden; market gardening; Masonic lodge; mechanical workshop; medical centre; memorial club; metal fabrication; microwave radio feeder station; microwave radio tower, mast or building; microwave repeater station; milk depot; mobile telecommunications tower, mast or building; mobile two way radio tower, mast or building; monorail train operation; motel; motocross track; motorbike sales and service; motorbike track; motor club; motorcycle club; motorcycle raceway; motor raceway; motor racing; motor sports; multi-unit residential development; multi-purpose family centre; music hall; netball; netball club; netball court; newsagency; nursery; office; offtake and pressure regulating station; oil depot; on-shore boat house; optical fibre repeater station; orchard; pharmacy; piggery; pine plantation; pipe band hall; pistol club; pistol range; plant nursery; playground; Police Citizens Youth Club; polocrosse; polocrosse club; polocrosse field; pony club; pony field; post office; pottery club; power and sailing boat club and launching, storage and preparation area; power station; power substation; prawn receiving depot; pre-school; preparation and distribution of meals; private school; produce store; professional fishing base, building and wharf; Progress Association hall; pump site and agriculture; pump station; pumping plant; pumping station; quarry depot; racecourse; racecourse and showground; radio communication tower, mast or building; radio station; radio telephone station; radio transmitter; radio-telephone transmitter; rail transport infrastructure; railway; railway loop and train loading facilities;

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reclamation; repeater station; residential building development; residential flats; residential purposes; restaurant; restoration of historical structure and tourist accommodation and facilities; retail liquor outlet; retail shopping; retail shops and/or commercial office; retirement village; Returned Services League club; rice growing and small crops; rifle club; rifle range; roadhouse; roadside stall; rodeo ground; rowing club; rugby league clubhouse; rural training school; rural youth hall; sailing club; saleyard; salt production; sand blasting workshop; sawmill; sawmill products storage; school; school playground; sea cadets hall; secondary school; seed storage; service and maintenance depot; service station; settling pond; sewage disposal; sewage treatment plant; sewage treatment works; shed; shooting range; shop premises; shopping centre; shopping complex; shop; show society and associated sporting ground; showground; showroom; single person's quarters; skating rink; skeet shooting range; ski club; slaughterhouse; sleeper sawmill; slipway and associated facilities; small bore rifle range; soccer club; speedway and associated purposes; sporting complex; sporting field; sports club or complex; sports ground, field, pitch, stadium or oval; spray painting and mechanical repair; spraypainting; squash court; State Emergency Service purposes; stockpiling gravel; stockpiling sand and gravel; stock trucking yard; storage and milling of rice; storage of boats; storage of containers; storage of electrical equipment; storage of ilmenite; storage of plant and machinery; storage shed; sugar cane growing; sugar mill pumping site; sugar storage; supermarket; surf life saving facility; swimming club; swimming pool; tank site; tannery; tannery and knackery; target bowhunting; telecommunications tower, mast or building; telephone optical fibre repeater site; television tower site; television translator; television transmitting tower, mast or building; tennis club; tennis court; theatre; theatre or hall; timber storage; timber yard; tobacco growing; toll bridge; tourist accommodation; tourist accommodation and facilities; train loading facilities; tramway; tramway loading siding; transformer site; translator broadcasting station; transport depot; transport terminal; travel agency; tropical science field station; truck and machinery depot; trucking depot; trucking yard; union office and associated facilities; vehicle parking; vehicle service and maintenance; vehicle traffic ramp and loading dock; vehicle wrecking yard; vehicles and machinery depot; vineyard; voltage regulator site; war graves; war veterans' home; warehouse;

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warehouse storage; water activity centre for Scouts; water bore site; water dissipation plant; water pumping station; water ski club; water storage facilities; waterfront shop; weighbridge; welding workshop; well site; wheat storage and handling depot; wheat storage shed or silo; wholesale plant nursery; workers' accommodation and marshalling yard; workshop; workshop for handicapped persons; yacht club; youth hall.

- (10) A development lease under the *Crown Land Development Act 1959* or the *Land Act 1962* that permits the lessee to use the land or waters covered by the lease solely or primarily for manufacturing, business, industrial, residential or tourist and recreational purposes.

## 22 Freeholding leases

- (1) A freeholding lease under the *State Housing Act 1945*.
- (2) A grazing homestead freeholding lease under the *Land Act 1962* or the *Land Act 1994*.
- (3) A freeholding lease as defined in Schedule 6 to the *Land Act 1994*.

## 23 Homestead interests

- (1) A homestead lease under the *Gold Fields Homestead Act 1870*, the *Gold Fields Homestead Leases Act 1886* or the *Mineral Homesteads Leases Act 1891*.
- (2) A homestead selection under the *Homestead Areas Act 1872* or the *Crown Lands Alienation Act 1876*.
- (3) An agricultural homestead under the *Land Act 1897*, the *Special Agricultural Homesteads Act 1901* or the *Land Act 1910*.
- (4) A free homestead under the *Land Act 1897* or the *Land Act 1910*.
- (5) A miner's homestead perpetual lease under the *Miners' Homestead Leases Act 1913*.
- (6) A miner's homestead lease under the *Miners' Homestead Leases Act 1913*, the *Mining Act 1898* or any Act repealed by the *Mining Act 1898*.

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(7) A grazing homestead under the *Upper Burnett and Callide Land Settlement Act 1923*.

(8) A grazing homestead perpetual lease under the *Land Act 1962*.

#### **24 Settlement farm leases**

(1) A settlement farm lease under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Land Act 1962* or the *Irrigation Areas (Land Settlement) Act 1962*.

(2) A designed settlement farm lease under the *Land Act 1910*.

#### **25 Agricultural farms**

An agricultural farm under the *Crown Lands Act 1884*, the *Agricultural Lands Purchase Act 1894*, the *Agricultural Lands Purchase Act 1897*, the *Land Act 1897*, the *Special Agricultural Selections Act 1901*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

#### **26 Perpetual lease selections**

A perpetual lease selection under the *Land Act 1897*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Upper Burnett and Callide Land Settlement Act 1923*, the *Sugar Workers' Perpetual Lease Selections Act 1923*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

#### **27 Perpetual town leases**

(1) A perpetual town lease, including an auction perpetual lease that is a perpetual town lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land*

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*Regulations Ratification Act 1924, the Irrigation Acts Amendment Act 1933, the State Housing Act 1945, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962.*

- (2) A perpetual town lease without competition under the *Land Act 1910, the Irrigation Areas (Land Settlement) Act 1962 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952.*
- (3) A perpetual town lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962.*

## **28 Perpetual suburban leases**

- (1) A perpetual suburban lease, including an auction perpetual lease that is a perpetual suburban lease, under the *Closer Settlement Act 1906, the Land Act 1910, the Discharged Soldiers' Settlement Act 1917, the Workers' Homes Act 1919, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the State Housing Act 1945, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962.*
- (2) A perpetual suburban lease without competition under the *Land Act 1910, the Irrigation Areas (Land Settlement) Act 1962 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952.*
- (3) A perpetual suburban lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962.*

## **29 Perpetual country leases**

- (1) A perpetual country lease, including an auction perpetual lease that is a perpetual country lease, under the *Closer Settlement Act 1906, the Land Act 1910, the Tully Sugar Works Area Land Regulations Ratification Act 1924, the Irrigation Areas (Land Settlement) Act 1962 or the Land Act 1962.*
- (2) A perpetual country lease without competition under the *Land Act 1910 or the City of Brisbane (Flood Mitigation Works Approval) Act 1952.*

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- (3) A perpetual country lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

### **30 Prickly pear-related interests**

- (1) A prickly pear frontage selection under the *Land Act 1897*.
- (2) A prickly pear infested selection under the *Land Act 1897*.
- (3) A prickly-pear selection under the *Prickly Pear Selections Act 1901* or the *Land Act 1910*.
- (4) A perpetual lease prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.
- (5) A prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.

### **31 Leases under agreements given the force of law**

- (1) Any special lease granted to Amoco Australia Pty Limited under clause 3 of the Agreement that is given the force of law by section 3 of the *Amoco Australia Pty Limited Agreement Act 1961*.
- (2) The lease granted to Austral-Pacific Fertilizers Limited under clause 4(b) or 4(c) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.
- (3) Any special lease granted to Austral-Pacific Fertilizers Limited under clause 4(d) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.
- (4) The special lease granted to the Gateway Bridge Company Limited under clause 1(5) of Part III of the Agreement that is given the force of law by section 4 of the *Gateway Bridge Agreement Act 1980*.
- (5) The special lease granted to the Sunshine Motorway Company Limited under clause 1(4) of Part III of the Agreement that is given

the force of law by section 4 of the *Motorways Agreements Act 1987*.

### 32 Various interests

- (1) A lease under the *Leasing Act 1866*.
- (2) A lease under the *Gold Fields Homestead Act Amendment Act 1880*.
- (3) An unconditional selection under the *Crown Lands Act 1891*, the *Land Act 1897*, the *Closer Settlement Act 1906* or the *Land Act 1910*.
- (4) A designed agricultural selection under the *Land Acts Amendment Act 1952*.
- (5) A perpetual lease under section 8 of the *Clermont Flood Relief Act 1917*.
- (6) A sugar workers' agricultural farm under the *Tully Sugar Works Area Land Regulations Ratification Act 1924*.
- (7) A lease under section 64A of the *Harbours Act 1955*.
- (8) A purchase lease under the *Brigalow and Other Lands Development Act 1962*.
- (9) An auction purchase freehold under the *Land Act 1962*, including a lease under section 176 of that Act.
- (10) A special lease purchase freehold under the *Land Act 1962*, including a lease under subsection 207(7) of that Act.
- (11) A sub-lease under subsection 6A(2) of the *Industrial Development Act 1963*.
- (12) A lease under paragraph 24(b) of the *Industrial Development Act 1963*.
- (13) A mining titles freeholding lease under the *Mining Titles Freeholding Act 1980*.

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## **Part 4—Western Australia**

### **33 Legislation before 1898**

- (1) A lease of town land under the *Land Regulations 1829* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.
- (2) A lease of special occupation land under the *Land Regulations 1872*.
- (3) A conditional purchase lease under clause 46, 47, 48, 49, 50, 52 or 53 of the *Land Regulations 1887*.
- (4) A lease under subsection 12(5) of the *Mineral Lands Act 1892*.
- (5) A homestead farm under the *Homesteads Act 1893*.
- (6) A homestead lease under the *Homesteads Act 1893*.
- (7) A lease under the *Agricultural Lands Purchase Act 1896*.

### **34 Land Act 1898 and Land Act 1933**

- (1) A lease under section 41a of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - agriculture; artificial limb factory; bakehouse and store; boarding house; boat repairing and shed for crews; bowling green; brickmaking; brine evaporation plant; cultivation; dairying; experimental cultivation; experimental gardening purposes; fish curing, canning and manufacture of by-products; fruit and confectionary shop; golf links; hospital site; manure and cement factory; market garden; pig and poultry farm; post office; residential purposes; sandalwood stack and store; slaughter yard; stable and storage yard; stacking firewood; stacking telegraph poles; store and dwelling; tramway and timber yard; tropical agriculture; vegetable growing; veterinary hospital.

- (2) A lease under section 152 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8), (12) or (13) of that section.
- (3) A lease under section 152 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- artificial lake; bathing house; billiard room; blacksmith and wheelwright shop; boarding house; boat building, fish canning and horse paddock; boat shed; bone crushing mill; brick kiln; bridge; building and repairing boats; butchering and slaughtering; canning and preserving works; cement works; chemical works; church site; clayhole and brick kiln; collection in catchment ditches and manufacture of salt; cultivation; cultivation of tobacco; dairying; depositing of materials; depot for sponge fishery; explosives magazine; factory site; ferry; fertiliser factory; fire brick manufacture; fishing station; foundry; gardening; growing cotton; hotel site; inn and general store; jetty site; land base for pearling activities; landing and packing pearl shell; laying up, repairing and fitting pearling vessels; lime burning; lime kiln; machinery depot; manufacturing aerated water; manufacturing plaster of paris and manure; manufacturing white lead; market garden; mixed gardening; monumental site; news and general agent; permanent pearling camp accommodation; piggery; poultry farm; preserving fish; private hospital; pumping station; punt house; quay; repairing luggers; residence; residential purposes; rope and twine factory; sanitary plant and stable; school; sheep dip; site for stores, dwelling or jetty; skating rink; slaughter yard; slipway for boats; stock yard; storage of fodder; storage of sandalwood; store and garden; store site; storing brewery requisites; tea and refreshment rooms; tennis club; tile factory; toll house; tramway siding; whaling factory; whaling station; wharf; wood shed; wool scouring shed; yacht clubhouse; yard for horses.
- (4) A lease of town or suburban land under section 153 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.
- (5) A lease under section 153a of the *Land Act 1898*.
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- (6) A homestead farm under the *Land Act 1898* or the *Land Act 1933*.
- (7) A conditional purchase lease under Part V or VI of the *Land Act 1898* or Part V of the *Land Act 1933*.
- (8) A lease of special settlement land under the *Land Act 1898* or the *Land Act 1933*.
- (9) A lease of a working man's block under the *Land Act 1898* or the *Land Act 1933*.
- (10) A lease under subsection 32(1) of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- aerodrome; agriculture; angling clubhouse; aviary; boat shed; building; bulk wheat storage; caravan park; children's playground; concrete batching plant and stockpiling metal products; constructed stock and domestic water supply facility; cropping; cultivation; field laboratory for rock lobster research; fishing depot, building, repairing and hiring of boats, and petrol service station; fishing station; freezer works and residence; fuel depot; garage and building; garden and parking area; garden and poultry raising; golf links; holiday campsite consisting of residential buildings; hotel; land-based experimental aquaculture; lighthouse; market garden; monumental works; office extension; plant for treatment of mineral bearing earth; pound; radio translator; residence; residence, garden and apiary; rest room; rifle range; road train access and turn around area; sawmill; service station; shore whaling station; siding for delivery of wheat; slaughter yard; stock holding paddock adjoining transport facilities for stock awaiting transportation; stock holding paddock for abattoir; storage; storage of implements and vehicles; storage of manganese ore; storage of ore; taxi rank; timber mill; timber storage; transport depot; trotting racecourse; vehicle parking; weighbridge; woodyard.
- (11) A lease under subsection 33(3) of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- aerial landing ground; aged persons' home; bulk grain terminal; church; foreshore amusement park; livestock sales and produce processing; play group facilities; residential purposes; restaurant;
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rifle range; surf life saving club.

- (12) A lease under section 116 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8), (12) or (13) of that section.
- (13) A lease under section 116 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; accommodation; accommodation and other buildings associated with the cultured pearl industry; aerial landing ground; agriculture; airstrip; airstrip and fishing base; angling clubhouse; aquatic centre; arboretum; auto repair business; automotive metal product fabrication; aviary; base for offshore petroleum operations; bistro-brasserie; boat pen and jetty site; boat shed; bombing range; brick kiln; brickworks; brine catchment ditches; broadcasting and television tower and associated buildings; bulk fuel depot; bulk oil installation; bus depot; cafe; camel farm; camping and caravan park; car club; caravan and chalet park; caravan park; caravan park extension; church; church and church hall; church site; collection in catchment ditches and manufacture of salt; commercial snail farming; commercial tropical agriculture or horticulture; community theatre; company housing and recreation; company housing or accommodation; concrete batching and stockpiling of metal products; concrete batching plant; contractors' accommodation; conveyor belt; crocodile farm; cropping; cropping and grazing; cropping, grazing and private airstrip; cultivation and grazing; cultivation of plants for pharmaceutical purposes; dam; depositing of materials; depot; depot or storage; dwelling; effluent disposal; equestrian centre; explosive storage and manufacture; extension to commercial premises; extension to timber mill; factory; ferry; field laboratory associated with marine research; fire station; fish processing; fishing base; fishing holiday accommodation; garden; garden and tennis court; garden nursery; gas processing plant; gas production facility; general industry and staff accommodation; grain receipt depot; grain storage; grazing and agriculture; group housing; hall; hall and place of worship; heated swimming pool; holiday and tourist resort fishing station; homestead and tourist facility; homestead tourist facilities; horse stable; horse yard; hotel; hotel extension; hotel, motel and service station; housing for workforce;

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hydroponic vegetable garden; industrial purposes; industrial storage; intensive horticulture; jetty; land base associated with pearl oyster hatchery or pearling activities; land base associated with pearling; land base for fishing industry; land-based aquaculture; land-based experimental aquaculture or oyster hatchery; land-based oyster nursery; land-based pearl farming; land-based scallop/oyster farm; landing ground for aircraft; landscape gardening supplies business; light industrial purposes; light industry; lighthouse; lime burning; lime crushing; loading and unloading stock; lobster receival depot; manganese road train assembly area; manse; manufacture and storage of concrete products; manufacture of salt; market garden; market garden and residence; mechanical workshop; meteorological station; mill; motel; motel and service station; motel unit development; motor cross speedway; motorcycle clubhouse; non-irrigated agriculture; noxious industry; office accommodation; office accommodation and storage; office and employee accommodation; oil storage depot; parking; parking and maintenance of vehicles; parking and spraying of machinery; parking and storage; permanent mining camp accommodation; pig farm; pistol club; plant nursery; potato growing; poultry farm; processing of crayfish; production of algae derivatives; professional fisherman's permanent camp accommodation; propagation of wildflowers; pumping station; quarantine station; quay; radio mast; radio station; radio translator site; radio transmitter receiving site; recreational game fishing accommodation and facilities; residence; residence and agriculture; residence and depot; residence and dog kennel; residence and garden; residence and market garden; residence and storage; residence and storage of mining equipment; residence, cropping and grazing; restoration and occupation of historical building; retail shop for coffee and light meals; retail shop for gifts, souvenirs and food; rifle clubhouse; rifle range; road train parking; road transport depot; roadhouse; roadhouse, service station and general store; roadhouse, service station and restaurant; rubbish and effluent disposal; sandblasting; sawmill; school; service station; sewage pond, generator shed and landscaping; sewage treatment pond; shearing team quarters; sheep dips; ship or boat building; showroom and workshop; single person's quarters; slaughterhouse and holding paddock; slaughter yard; small bore pistol clubhouse; souvenir shop; speedway clubhouse and motor racing track; sporting complex; sportsground; stabling of horses; staff accommodation; staff

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quarters; stock sale yard; stock yard; stockpiling of river sand; storage and display of machinery; storage of cereal grain and bulk storage facility; storage of chemical spraying equipment; storage of machinery; storage yard and depot; store; sugar refinery; tailings dam; tannery; tavern; tea garden; telephone exchange; television station and translator facilities; tourist accommodation and facilities; tourist and travel shop; tourist facility associated with emus; tourist mine; tourist railway; trades hall and offices; transport terminal; tree farming; tropical garden; trotting course; truck depot; warehouse; water storage; water storage and garden; water tank; weather station; weighbridge; wharf; wool shed; workshop vehicle and machinery parking; workshop; workshop and storage of drilling materials; zoo.

(14) A lease of town land under section 117 of the *Land Act 1933*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for the purpose of a yacht harbour or mine buffer zone; or

(b) both:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

access; communications; grazing or pastoral purposes; nature trail; pipeline; prawning; quarry; recreation; utilities; water supply;

and

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose, or solely or primarily for any of the following:

accommodation; amusement park; archery range; basketball court; bowhunting; bowling green; caravan park; car park; cropping; croquet pitch; dam; depot; golf course; industrial purposes; jetty; land-based aquaculture; manufacturing; motorbike track; motor racing track; racecourse; residence; rifle range; shop; skating rink; sports centre; sports club; sports field; sports ground; storage; swimming pool; tennis court; theatre; tree farming.

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- (15) A lease of town land under section 117 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for a communications tower, mast or building.
  - (16) A lease under section 117A of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for the construction and maintenance of a subway or bridge.
  - (17) A lease under Part IV of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.

### **35 Other legislation after 1898**

- (1) A lease under the *Agricultural Lands Purchase Act 1909*.
- (2) A miner's homestead lease under Part VIII of the *Mining Act 1904*, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (3) A lease of a worker's dwelling house under Part V of the *State Housing Act 1946-1974*.
- (4) A perpetual lease under the *War Service Land Settlement Scheme Act 1954*.

### **36 Leases under certain mining-related and other Acts**

A lease (other than a mineral lease) under the Agreement a copy of which is set out in the Schedule to any of the following Acts:

*the Oil Refinery Industry (Kwinana Agreement) Act 1952; the Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960; the Iron Ore (Hamersley Range) Agreement Act 1963; the Iron Ore (Hamersley Range) Agreement Act 1963-1968; the Iron Ore (Robe River) Agreement Act 1964; the*

*Iron Ore (Mount Goldsworthy) Agreement Act 1964; the Iron Ore (Mount Newman) Agreement Act 1964; the Leslie Solar Salt Industry Agreement Act 1966; the Dampier Solar Salt Industry Agreement Act 1967; the Evaporites (Lake MacLeod) Agreement Act 1967; the Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968; the Irrigation (Dunham River) Agreement Act 1968; the Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968; the Alumina Refinery (Pinjarra) Agreement Act 1969; the Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970; the Poseidon Nickel Agreement Act 1971; the Iron Ore (Goldsworthy-Nimngarra) Agreement Act 1972; the Iron Ore (McCamey's Monster) Agreement Authorization Act 1972; the Iron Ore (Mount Bruce) Agreement Act 1972; the Alumina Refinery (Worsley) Agreement Act 1973; the Nickel (Agnew) Agreement Act 1974; the Mineral Sands (Eneabba) Agreement Act 1975; the Alumina Refinery (Wagerup) Agreement and Acts Amendment Act 1978; the Collie Coal (Griffin) Agreement Act 1979; the Collie Coal (Western Collieries) Agreement Act 1979; the North West Gas Development (Woodside) Agreement Act 1979; the Diamond (Argyle Diamond Mines) Agreement Act 1981; the Shark Bay Solar Salt Industry Agreement Act 1983; the Camballin Farms (AIL Holdings Pty Ltd) Agreement Act 1985; the Western Mining Limited (Throssell Range) Agreement Act 1985; the Iron Ore (Channar Joint Venture) Agreement Act 1987; the Iron Ore (Marillana Creek) Agreement Act 1991;*

that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

accommodation for employees and visitors; aerial landing ground; agriculture; airport; airstrip; ballast stockpile; ballast stockpile site; berthing and loading facilities and stockpiling salt; bulk handling and shipping terminal; bulk handling facilities; bulk loading facilities; camp comprising residential buildings; causeway; caustic soda farm; caustic soda train loader and pumping station; chalet; collection in catchment ditches and manufacture of salt; commissioning and operating of pilot plant for metallurgical research purposes; communications tower; communications tower and associated buildings; construction and maintenance of worker accommodation; construction and operation of branch lines and marshalling yard; construction and operation of railway; construction and use of causeway; contractor's accommodation; contractor's laydown area; dam site;

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dog pound; domestic television transmitter site; employee housing; extension to townsite for residential accommodation; heavy industry; heliport; housing; industrial area; industrial purposes; industrial site and associated facilities, installations and works; industrial stockpiling; irrigated agriculture; jetty with berthing and loading facilities; loading and stockpiling; maintenance and construction of workers' accommodation; market garden; marshalling yard; materials offloading facility; mine service area comprising contractor accommodation; offloading construction materials; permanent construction camp accommodation for employees; permanent mining camp accommodation; permanent railway construction camp accommodation; permanent way store; plant nursery; plant site area; port industrial area; power station cooling water intake system; produce loading jetty; production plant; pumping installation and reservoir; radio repeater station site; railway; railway and ancillary installations, works and facilities; railway shunting; railway shunting and marshalling; railway spur line; red mud pond; refinery, power station, water storage and buffer zone; residential purposes; sewage disposal site; sewage treatment plant and radio and television transmitter tower; ship loading; shunting lines; stockpile area; stockpile site; stockpile site and shiploading facilities; stockpiling site for railway ballast; storage and maintenance of quarry equipment; storage of railway equipment; supply base; supply base and laydown area; tailing area; transmission mast; treatment plant; treatment plant and administration building; waste disposal site; waste material dump; water tank; wharf; workers' construction camp accommodation; workforce housing and welfare services; yard or site for ship-building, boat-building, storing of timber, coal, merchandise, goods or other property, or for the erection of a workshop or foundry.

## Part 5—South Australia

### 37 Perpetual leases and leases for a term of years

- (1) A perpetual lease, or a lease for a term of years, of a working man's block, or a homestead block, (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under Part XI of the *Crown Lands Consolidation Act 1886*, Part VII of the *Crown Lands Act 1888*, Part IX of the *Crown Lands Act 1903*, Part IX of the *Crown Lands Act 1915* or Part IX of the *Crown Lands Act 1929*.
- (2) A perpetual lease under the *Crown Lands Act 1888*, the *Crown Lands Amendment Act 1893*, the *Closer Settlement Act 1897*, the *Crown Lands, Closer Settlement, and Blockholders' Loans Amendment Act 1901*, the *Crown Lands Act 1903*, the *Crown Lands Act 1915*, the *Returned Soldiers Settlement Act 1915*, the *Discharged Soldiers Settlement Act 1917*, the *Agricultural Graduates Land Settlement Act 1922*, the *Discharged Soldiers Settlement Act 1934*, Part V or section 66A or 199 of the *Crown Lands Act 1929*, the *Marginal Lands Act 1940*, the *Crown Lands Development Act 1943-1973* or the Agreement a copy of which is set out in the Schedule to the *War Service Land Settlement Agreement Act 1945*, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (3) A perpetual lease under section 8 of the *Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act 1900* or section 5 of the *Hummock Hill to Iron Knob Tramway Extension Act 1927*.
- (4) A perpetual lease of a block of horticultural or commonage land under Part IV of the *Village Settlements Act 1901*, Part VIII of the



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*Crown Lands Act 1915, the Lyrup Village Association (District Extension) Act 1921 or Part VIII of the Crown Lands Act 1929.*

- (5) A perpetual lease, or a lease for a term of years, of a block within an irrigation area under the *Irrigation and Reclaimed Lands Act 1908*, the *Irrigation and Reclaimed Lands Act 1914*, the *Irrigation Act 1922* or the *Irrigation (Land Tenure) Act 1930*.
- (6) A lease for a term of years under the *Returned Soldiers Settlement Act 1915*, the *Discharged Soldiers Settlement Act 1917* or the *Discharged Soldiers Settlement Act 1934*, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (7) A perpetual lease, or a lease for a term of years, of a town allotment within an irrigation area under the *Irrigation Act 1922* or the *Irrigation (Land Tenure) Act 1930*.

### **38 Miscellaneous leases**

- (1) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 1 of the *Miscellaneous Leases Act 1872*, section 92 of the *Crown Lands Consolidation Act (No. 86, 1877)*, section 159 of the *Crown Lands Consolidation Act 1886*, section 118 of the *Crown Lands Act 1888*, section 11 of the *Closer Settlement Act 1897*, section 11 of the *Closer Settlement Act 1902*, section 80 or 126 of the *Crown Lands Act 1903*, section 24 of the *Irrigation and Reclaimed Lands Act 1908*, section 26 of the *Irrigation and Reclaimed Lands Act 1914*, section 83 or 128 of the *Crown Lands Act 1915*, section 48 of the *Irrigation Act 1922*, section 77 or 182 of the *Crown Lands Act 1929* or section 27 or 44 of the *Irrigation (Land Tenure) Act 1930* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
    - accommodation; aerodrome; agriculture; airstrip and living quarters; amusement centre; bakery; bathing-house; boat building
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or repairing; boat hire depot; boat landing; boatshed; brick or lime kiln; bridge; building; building for business purposes; building for the use of charitable or community service organisations; bulk fuel agency; bulk fuel agency, transport depot and residence; camel holding for tourists; car park; caravan and camping park; caravan park; cereal growing; church; clubhouse; communications tower; cooling pond and pump house; deposit of materials or produce; drive-in theatre; factory; fellmongering establishment; firearms shooting; fishermen's residences and drying ground; Girl Guide accommodation cabin; Girl Guide hall; golf club; government building; grazing and cultivation; grazing, cultivation and nursery; hall; holiday accommodation; holiday home; horse training; horticulture; hostel; houseboat marina; houseboat mooring and car parking; industrial purposes; inn; irrigated forest and disposal of winery effluent and waste water; jetty; kindergarten; land-based aquaculture and grazing; land-based aquaculture development; land-based fish farming; land-based oyster cultivation; legal chambers; life saving club; light industrial development; lodge; mail station; manse; manufactory; manufacture of salt; manufacturing; marine research facility; motel; motorcycle track; nursery; operating and maintaining a tramway; paper-mill; parking; parking, effluent disposal, water storage and power house; piggery; pine plantation; plant for ore reduction, manufacture of sulphuric acid and chemical manure; pony club; poultry farming; preservation of historic building; punt house; quay; radio tower; railway; railway station and jetty; residence; residence and kiosk; residence and storage depot; restaurant and kiosk; retail shop; retirement village; rifle range; road house, petrol reselling, motel and caravan park; rubbish dump; salt evaporation pond; sawmill; school or other educational institution; Scout accommodation cabin; Scout hall; shack site; ship building or repairing; showground; site for the depositing of materials or produce; site for wharf, quay, jetty; slaughterhouse; slaughterhouse and agriculture; slaughterhouse and associated yard; smelting works; smithy; sporting car club; sporting club; sporting ground; staff accommodation; stock sale yard; storage; storage and loading facilities; store; tannery; theatre; timber plantation, sawmill and timber processing; toilet block; toll house; tourist accommodation and facilities; tourist facilities; tourist information centre; tourist mine; tramway; transport depot; vegetable and fodder growing and grazing; vegetable growing; vegetable growing, fodder

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production and pig raising; water ski club; weather station; weighbridge; wharf; working men's club; working men's homestead block; worm-growing; wrecking yard and garage; youth cabin accommodation.

- (2) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 92 of the *Crown Lands Consolidation Act* (No. 86, 1877) that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection II or III of section 94 of that Act.
- (3) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 159 of the *Crown Lands Consolidation Act 1886* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection II or III of section 162 of that Act.
- (4) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 118 of the *Crown Lands Act 1888* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection I or II of section 123 of that Act.
- (5) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 80 of the *Crown Lands Act 1903* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V or VII of that section or paragraph II(a) or (b) of section 203 of that Act.
- (6) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 83 of the *Crown Lands Act 1915* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V or VII of that section or paragraph II(a) or (b) of section 245 of that Act.

- (7) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 77 of the *Crown Lands Act 1929* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)III, IV, V or VII of that section or paragraph II(a) or (b) of section 244 of that Act.
- (8) A miscellaneous lease under section 78B of the *Crown Lands Act 1929* that permits the lessee to develop or use the land or waters covered by the lease solely or primarily for the purpose of holiday accommodation or a shack site.

### 39 Other interests

- (1) A lease with a right of purchase under the *Scrub Lands Act 1866*, the *Scrub Lands Act Amendment Act 1867*, the *Scrub Lands Act Extension Act 1870-71*, section 58 of the *Crown Lands Consolidation Act* (No. 86, 1877), section 20 of the *Crown Lands Amendment Act 1882*, Part II of the *Agricultural Crown Lands Amendment Act 1884*, Part II of the *Crown Lands Consolidation Act 1886*, Part III of the *Crown Lands Amendment Act 1887* or Part II of the *Crown Lands Act 1888*.
- (2) A credit agreement, or an agreement of sale and purchase on credit, under the *Waste Lands Amendment Act 1868-9*, the *Waste Lands Alienation Act 1872*, the *Crown Lands Consolidation Act* (No. 86, 1877), the *Crown Lands Amendment Act 1880*, the *Crown Lands Amendment Act 1881*, the *Crown Lands Amendment Act 1882*, the *Agricultural Crown Lands Amendment Act 1884* or the *Crown Lands Consolidation Act 1886*.
- (3) A lease with a right of purchase under section 39 of the *Waste Lands Alienation Act 1872* or Part III (other than section 58) of the *Crown Lands Consolidation Act* (No. 86, 1877) that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of agriculture or cultivation.
- (4) A selector's lease under Part III of the *Agricultural Crown Lands Amendment Act 1884* or Part III of the *Crown Lands Consolidation Act 1886*.

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- (5) A lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 29 of the *Crown Lands Amendment Act 1885*.
  - (6) A grazing and cultivation lease, or a lease of grazing and cultivation lands, under Part II of the *Crown Lands Consolidation Act 1886* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of agriculture or cultivation.
  - (7) A lease with a right of purchase under the *Crown Lands Act 1888* or the *Crown Lands Amendment Act 1893*, other than a lease that:
    - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
    - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
  - (8) A villager's lease under section 80 of the *Crown Lands Amendment Act 1893*.
  - (9) An agreement under Part IX of the *Crown Lands Act 1903*.
  - (10) A lease under clause 11 of the Indenture a copy of which is set out in the Schedule to the *Broken Hill Proprietary Company's Indenture Act 1937* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purpose of constructing or extending a tramway.
  - (11) A lease under section 35 of the *National Parks and Wildlife Act 1972* that permits the lessee to develop or use the land or waters covered by the lease solely or primarily for any of the following:
    - airstrip; archery clubhouse and archery range; cabin accommodation; canoe clubhouse; caravan park; cottage accommodation for residents, visitors or guests; employee accommodation in huts or other buildings; field station cabin accommodation; fish factory; garden; golf course; golf driving range; grazing and cropping; gymnasium; holiday house; horse and pony riding club; indoor health centre; jetty; kiosk and restaurant; lighthouse; model aircraft flying clubhouse; occupation and maintenance of historic or heritage building; optical fibre repeater building and solar panel; pistol club and
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**Schedule 4** Addition of Schedule

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shooting range; radio tower; radio/telephone tower and building; research centre; research station; residential accommodation; Scout or Guide hall; shack accommodation; storage of mining equipment; storage, take-off and landing of aircraft; tennis court; tourist accommodation; tourist accommodation, camping facilities, food and fuel outlet and licensed premises; youth hostel.

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## Part 6—Tasmania

### 40 Crown Lands Acts

- (1) A lease under section 81 or 82 of the *Crown Lands Act 1890*.
- (2) A lease under section 24 of the *Crown Lands Act 1890*, section 24 of the *Crown Lands Act 1903* or section 11 of the *Crown Lands Act 1911* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - children’s playground; cycling track; dam or weir; fire station;
  - golf club; hospital; monument; public hall; public pound;
  - showground; sports ground; town hall; war memorial; wharf.
- (3) A lease under subsection 128(1) or section 129 of the *Crown Lands Act 1903*.
- (4) A lease under subsection 128(2) of the *Crown Lands Act 1903*, subsection 108(2) of the *Crown Lands Act 1911* or subsection 77(4) of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - bowling green; cool store; council works depot; erecting or working any manufactory, mill or other such work; fish hatchery;
  - fuel depot; golf club; grain elevator; Hydro-Electric Commission substation; hotel; jetty; land-based aquaculture; marina; petrol depot; port facilities; refuse area; rowing club clubhouse; Scout accommodation; senior citizens’ club; sewerage plant; ship building; showground; slipway; tennis court; water pumping station; wharf; yacht club.
- (5) A lease under subsection 108(1) or section 109 of the *Crown Lands Act 1911*.
- (6) A building lease under the *Crown Lands Act 1935*.
- (7) A lease under subsection 7(2) of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

aged persons' home; ambulance centre; aqueduct; bridge; club; communications tower, mast or building; community care institution; construction of a drain; construction of a water course; construction of an irrigation canal; crematorium; dam; fire station; hall; hospital; landing-place; library; literary or scientific institution; museum; quay; reservoir; sports club; sports facilities; sports ground; theatre; trigonometrical station; wharf.

- (8) A lease under section 23 of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
- air force base; army base; army depot; bombing range; naval base; rifle range.
- (9) A lease under subsection 77(1) or section 78 of the *Crown Lands Act 1935*.
- (10) A lease under section 29 of the *Crown Lands Act 1976* that permits the lessee to use the land or waters covered by the lease solely or primarily for the any of the following:
- agriculture; dairying; erection of residential building; growing of trees for commercial or industrial purposes; horticulture; industrial purposes; piggery; poultry farm; viticulture.

#### **41 *Closer Settlement Act 1929***

A lease under Part V of the *Closer Settlement Act 1929*, other than:

- (a) a lease under section 41 or 42 of that Act; or
- (b) a lease that:
  - (i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.



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## Part 7—Northern Territory

### 42 Town leases etc.

- (1) A lease of town land under Division 4 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 25CF, 74A or 74D or Division 4 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for a harbour; or
  - (b) both:
    - (i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
    - (ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (2) A town land subdivision lease under Division 6 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory.

### 43 Agricultural leases etc.

- (1) A lease of agricultural land, or an agricultural lease, under Division 3 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the
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Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth, section 25CG, 25DAA, 74A or 74D or Division 3 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory or section 14 of the *Agricultural Development Leases Ordinance 1956* of the Commonwealth, or under the Agreement a copy of which is set out in the Schedule to the *Rice Development Agreement Ordinance 1956* of the Commonwealth, other than:

- (a) an agricultural (mixed farming and grazing) lease; or
  - (b) a lease that:
    - (i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
    - (ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (2) An agricultural lease of an experimental farm under section 16A of the *Crown Lands Act 1931-1991* of the Northern Territory, other than a lease that:
- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (3) An agricultural development lease under the *Agricultural Development Leases Ordinance 1956* of the Commonwealth or under the Agreement a copy of which is set out in the Schedule to the *Rice Development Agreement Ordinance 1956* of the Commonwealth, other than:
- (a) an agricultural (mixed farming and grazing) lease; or
  - (b) a lease that:
    - (i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

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- (ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

#### **44 Leases for special purposes etc.**

- (1) A lease for special purposes, or a special purposes lease, under section 83 of the *Northern Territory Land Act 1872* of South Australia, section 79 of the *Northern Territory Crown Lands Consolidation Act 1882* of South Australia, section 77 or 78 of the *Northern Territory Crown Lands Act 1890* of South Australia or section 4 of the *Special Purposes Leases Act* of the Northern Territory that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; Aboriginal hostel; accommodation; aerodrome; aged home; aged persons' flats; agricultural farm and garden; agriculture and mixed farming; airstrip; ambulance headquarters; ambulance station; amphitheatre; animal husbandry centre; animal shelter; archery club; archery range; art gallery; aviary; bakery; banana plantation; barge landing; barge terminal; basketball club; basketball court; bathing house; benevolent social work centre; blood centre and meeting rooms; blood transfusion centre; board headquarters; boatyard; botanic gardens; bowhunting club; bowhunting range; bowling club; bowling green; brick factory; brick yard; building or repairing boats; bulk cargo wharf; butcher; cafe; cannery; canteen; car parking; caravan park; caravan park and camping ground; cargo handling; cargo storage; carparking; cattle holding yard; centre for the spiritual and social welfare of children; child care; child minding centre; children's home; children's hostel; church; church hall; church manse; church rectory; cinema; civic centre; clinic; club building; club house; club room; college; community creche; community hall; community storage; community welfare centre; company headquarters; convent; convention centre; cooperative society; court house; craft complex; creche; crematorium; cricket club; cricket ground; croquet club; croquet pitch; dairy; depositing materials or produce; disposal of red mud; drive-in theatre; dry cleaners; educational institution; elderly persons' home; engineering workshop; equestrian club; equestrian field; erection of a wharf, berth, storehouse or slip for building or repairing ships and other vessels; explosive storage; factory; feed lot yard; ferry

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terminal; fish processing; food processing; football club; football ground; funeral home; game fishing club; game safari base; garage; gas storage facility; general store; Girl Guide accommodation cabin; Girl Guide hall; gliding club; golf club; golf course; greyhound racing; greyhound track; guest house; Guide hall; gun club; hall; headquarters of Australian Red Cross; hockey club; hockey pitch; holiday accommodation and facilities; holiday cabin; horse and pony club; horse stable; horse yard; horticulture; hostel; hotel; hotel/motel; housing units; industrial area; industrial purposes; inflammable materials storage; inn; institute of linguistics; jetty; kennel; kiln; landscaping supply depot; leadership centre; library; light industry; lime works; lodge hall; lodge room; lodge temple; mail station; manufacture of stockfood; marina; marina workshop; Masonic hall; meat packaging; meatwork effluent disposal; meatworks; meeting room; motel; motocross circuit; motorcycle racing; motor racing circuit; motor sports; municipal depot; museum; museum and art gallery; netball club; netball court; nursery; office; office of the Northern Territory Electricity Commission; on-shore tour boat base; on-shore trawler base; ore stockpile; orphanage; patrol headquarters; pearl culture land base; pearling depot; permanent construction camp accommodation; petrol depot; petrol station; pistol club; pistol range; police station; police youth club; polocrosse club; polocrosse field; pony club; pony field; post office; poultry farm; pound; power station; pre-school; preservation and protection of artillery museum; preservation and restoration of well site; private sport site; private sports club; public swimming pool; punt house; quay; racecourse; racing club; radio communications building; radio communications tower; radio receiver station; radio transmitter; rail line; railway spurline; religious centre; research centre; research institute; residence; residential purposes; rest rooms; restaurant; retail store; rice growing; rifle club; rifle range; road house; road transport depot; rural residence; Salvation Army centre; sawmill; sawmilling depot; school; scientific research centre; Scout hall; seafarers' centre; seed processing plant; service station; sewage treatment; sheltered workshop; ship's chandlery; ship maintenance facility; shooting range; shore base for oyster cultivation; show ground; showroom; slaughter yard; slipway; speedway; sporting arena; sporting oval; sports club; sports complex; sports field, pitch, stadium or oval; sports ground; sports training ground; stockpiling and loading ore; storage; storage

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depot; storage of boats; store; studio; surgery; swimming club; swimming pool; television studio; tennis club; tennis court; theatre; toll house; tour base; tourist accommodation; tourist lodge; tourist theme park or facility; training centre; transport depot; warehouse; water treatment plant; watersports; wayside cafe; wayside inn; welfare centre; wharf; wholesale outlet; windmill; windmill servicing depot; wireless aerial site; workshop; youth services centre; zoo.

- (2) A special purposes lease under section 6 of the *Mining (Gove Peninsula Nabalco Agreement) Act* of the Northern Territory or subclause 4(2) of the Agreement a copy of which is set out in the Schedule to that Act that permits the lessee to use the land or waters covered by the leases solely or primarily for any of the following:

bulk cargo wharf; disposing of red mud and other effluents; general cargo wharf; industrial purposes; intake and discharge canal associated with plant cooling system; permanent construction camp accommodation; plant cooling system; sewage treatment plant; water reticulation plant.

#### **45 Miscellaneous leases**

- (1) A miscellaneous lease under Division 5 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 25DAA, 74D or 74E or Division 5 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; Aboriginal hostel; accommodation; agricultural and mixed farming; agricultural farm and garden; agriculture; airstrip; amphitheatre; amusement hall; animal husbandry centre; archery club; archery range; art gallery; aviary; bakery; banana plantation; basketball club; basketball court; board and lodging house; board headquarters; boatbuilding; boatyard; bowhunting

club; bowhunting range; bowling club; bowling green; brewery; brick factory; brick yard; brickmaking; Buffalo temple site; building or repairing boats; butchering; cafe; cannery; cargo storage; cinema; club; club house; club room; convalescent home; convent; convention centre; cotton farming; court house; crematorium; cricket club; cricket ground; croquet club; croquet pitch; cultivation; curing and storage of buffalo hides; dairy; depot; drive-in theatre; dry cleaners; dwelling house; engineering workshop; equestrian club; equestrian field; factory; feed lot yard; ferry terminal; fishing depot; flower seed plantation; football club; football ground; fruit growing; funeral home; game fishing club; game safari base; garage; garden; gas storage facility; general store; golf club; golf course; goods shed; guest house; hangar; hay production; hay shed; hockey club; hockey pitch; holding ground for cattle slaughtering; holiday accommodation and facilities; homestead; horse stable; horse yard; hostel; hotel; hotel store; industrial purposes; irrigation farming; kennel; kiln; kindergarten; landscaping supply depot; laundry; library; lodge room; market garden; motocross circuit; motor racing circuit; netball club; netball court; office; old men's home; on-shore tour boat base; orchard; orchid garden; pasture seed plantation; permanent construction camp accommodation petrol depot; pig yard; piggery; pistol club; pistol range; plant nursery; plantation; polocrosse club; polocrosse field; pony club; pony field; poultry farm; pound; power station; racecourse; radio communications building; radio communications tower; radio transmission tower; rail line; recreation centre for women; religious centre; repair shop; research centre; residence; rice growing; rifle club; rifle range; rural residence; sawmilling; seafarers' centre; service station; ship's chandlery; ship maintenance facility; shop; showroom; slaughter yard; slipway; sports club; sports complex; sports field, pitch, stadium or oval; sports ground; stockyard; storage of boats; store; studio; surgery; swimming club; swimming pool; tank sinking plant; tannery; tennis club; tennis court; theatre; tour base; tourist camel farm; tourist theme park or facility; transport depot; tree farming; tropical agriculture; vineyard; viticulture; warehouse; water treatment plant; welfare centre; wholesale outlet; wireless station; wood yard; wool scouring; workshop.

- (2) A miscellaneous lease of garden land under section 73A of the *Crown Lands Ordinance 1924* of the Commonwealth, section 69 of
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the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, section 69 of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 70 of the *Crown Lands Act 1931-1991* of the Northern Territory.

#### **46 Other leases**

- (1) A lease under section 30 or 81 of the *Northern Territory Land Act 1872* of South Australia.
- (2) A lease under section 30 or 77 of the *Northern Territory Crown Lands Consolidation Act 1882* of South Australia.
- (3) A lease under Part II of the *Northern Territory Crown Lands Act 1890* of South Australia.
- (4) A lease under section 54 of the *Northern Territory Crown Lands Act 1890* of South Australia.
- (5) A lease under section 78 of the *Northern Territory Crown Lands Act 1890* of South Australia that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII, IX or X of that section or subsection II or III of section 81 of that Act.
- (6) A lease under section 6A of the *Crown Lands Act 1931-1991* of the Northern Territory.
- (7) A lease under paragraph 23(b) or 23(c) of the *Crown Lands Act 1931-1991* of the Northern Territory, or a Crown lease under paragraph 26(a) or (b) of the *Crown Lands Act* of the Northern Territory, that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following purposes:
  - aerial sports academy; agricultural and mixed farming;
  - agricultural development and marketing; agricultural farm and garden; agriculture; aircraft landing strip; airstrip; ambulance headquarters; amphitheatre; animal husbandry centre; aquatic entertainment centre; archery club; archery complex; archery range; art gallery; ash disposal pond; aviary; aviation; aviation historical society; banana plantation; basketball club; basketball

court; beacon site; bitumen plant; boat landing facility; boatyard; bombing range; bowhunting club; bowhunting range; bowling club; bowling green; brick factory; brick yard; building or repairing boats; bus depot; bus terminal; cannery; car park; car repair shop; car sales yard; car storage and parking; caravan park; cargo storage; cashew production; cement plant; cereal crops; child care centre; children's playground; church; church hall; cinema; club; club hall; club room; clubhouse; coach terminal; college; commercial building development; commercial cropping; commercial property subdivision; community centre; community hall; community storage; compressor station; convention centre; council complex; council depot; council office; council works yard; court house; creche; crematorium; cricket club; cricket ground; crocodile research facility; cropping; crops; croquet club; croquet pitch; crushing plant; cultivation; cultural centre; Country Women's Association rest rooms; dairy; dam; day care centre; depot; development of tourist accommodation and facilities; disposal of dangerous goods; dog breeding; dressage-safe riding area; drive-in theatre; dry cleaners; dump; effluent disposal; equestrian centre; equestrian club; equestrian field; factory; feed hay agriculture; feed lot yard; fire station; fodder mill; football club; football ground; freight storage; fuel depot; funeral home; funeral parlour; game fishing club; game safari base; gaol; garbage dump; gas storage facility; Girl Guides cabin accommodation; Girl Guides hall; golf club; golf course; guest house; Guide hall; hall; hay production; hazardous industrial development; headquarters; health centre; health clinic; helicopter base; herb farm; Hindu temple; historic railway; hockey club; hockey pitch; holiday accommodation and facilities; homestead; horse and pony club; horse stable; horse yard; horticulture; hospital; hostel; hotel; indoor recreation; industrial development; industrial development on waterfront; industrial purposes; industrial subdivision; inn; Islamic centre; kennel; kiln; laboratory; land-based aquaculture; land-based commercial prawn farm; land-based fish culture; landscaping supply depot; library; lodge room; mango farm; manufacturing; marina; market gardening; medical centre; meeting room; motel; motor racing circuit; motor sports; motorcross circuit or track; municipal depot; museum; netball club; netball court; nursery; nursing home; office; on-shore fishing base; on-shore houseboat base; on-shore tour boat base; optical fibre regenerator site; orchard; orchid nursery; oval; permanent construction camp accommodation;

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pharmacy; picture theatre; pistol club; pistol range; polocrosse club; polocrosse field; pony club; pony field; port-related industry; post office; pound; private sports club; protection of heritage building; public car park; racecourse; racing club; radio broadcast aerial station; radio repeater; radio tower; radio transmission tower; railway; rail line; Red Cross centre; refuse tip; research centre; residential development; residential purposes; residential subdivision; resource centre; restaurant; restoration of police station; retail shop; retirement village; rice growing; rifle club; rifle range; roadhouse; rural residence; sailing club; satellite receiving station; school; scientific research centre; Scout hall; seafarers' centre; seed production; senior citizens' centre; service station; sheltered workshop; ship's chandlery; ship maintenance facility; shop; shopping complex; showground; showroom; silviculture; slipway; social club; solid waste disposal facility; sports club; sports complex; sports field, pitch, stadium or oval; sports ground; sports training ground; stable; stock fodder production; stockyard; storage; storage of boats; studio; supermarket; surf life saving club; surgery; swimming club; swimming pool; table grape growing; tavern; temple; tennis club; tennis court; theatre; timber mill; tour base; tourist camel farm; tourist facilities; tourist information centre; tourist lodge; tourist theme park or facility; tower construction; transport depot; transport terminal; trucking yard; units for aged persons; university; vegetable production; vehicle sales yard; vehicle storage; warehouse; water retention basin; water treatment plant; wayside inn; weather station; wharf; wholesale outlet; women's refuge; workshop; yacht association; yacht club; youth centre; youth club; zoo.

- (8) A lease under section 68A, 68B, 68C, 68D, 68E, 68F, 68G or 68H of the *Crown Lands Act 1931-1991* of the Northern Territory.
- (9) A lease under section 112A of the *Crown Lands Act 1931-1991* of the Northern Territory.
- (10) A lease under section 2 of the *Darwin Leases (Special Purposes) Ordinance 1946* of the Commonwealth or section 3 of the *Darwin Short Term Leases Ordinance 1946* of the Commonwealth.
- (11) A lease under section 3 of the *Church Lands Leases Ordinance 1947* of the Commonwealth.
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**Schedule 4** Addition of Schedule

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- (12) A lease under section 4 or 29A of the *Darwin Town Area Leases Act 1947-1979* of the Northern Territory.
- (13) A lease under section 16A, 16AA, 16B, 16C or 16D of the *Darwin Town Area Leases Act 1947-1979* of the Northern Territory.
- (14) A lease under section 5 of the *Crown Lands Act* of the Northern Territory.

## **Schedule 5—Application and transitional**

### **Part 1—Contents of this Schedule**

#### **1 Contents**

- (1) This Schedule contains application and transitional provisions in relation to amendments made by this Act about:
  - (a) future acts (see Part 2); and
  - (b) native title determination applications etc. (see Parts 3 and 4);  
and
  - (c) various other matters (see Part 5).
  
- (2) This Schedule also:
  - (a) deals with the effect of the failure to table a particular determination made under the old Act (see Part 6); and
  - (b) ensures that there will be compensation for the effect of this Act (see Part 7); and
  - (c) provides for the making of regulations for the purposes of this Act (see Part 8); and
  - (d) defines terms used in this Schedule (see Part 9).

## Part 2—Application of future act amendments

### 2 Application

Subject to this Schedule:

- (a) the repeal of Division 3 of Part 2 of the old Act; and
- (b) the insertion of Subdivisions A to P of Division 3 of Part 2 of the new Act; and
- (c) any related amendments of the new Act;

by this Act apply to future acts taking place after the commencement of this Act.

### 3 Transitional—certain modified Subdivisions of Division 3 of Part 2 to have effect in period from 23.12.96 until commencement

The old Act applies to future acts taking place after 23 December 1996 but before the commencement of this Act as if:

- (a) Subdivisions G to K of Division 3 of Part 2 of the new Act (disregarding paragraph 24GE(1)(f)), and any related provisions of the new Act, were included in the old Act; and
- (b) acts to which those Subdivisions apply were permissible future acts.

### 4 Transitional—old Act section 29 notices etc.

*Old Act section 29 notices—section 28 satisfied or arbitral body application*

- (1) If, before the commencement of the new “right to negotiate” provisions:
  - (a) a notice was given in relation to a future act under section 29 of the old Act; and
  - (b) apart from this subitem, the new “right to negotiate” provisions would apply in relation to the future act after the commencement of this Act; and
  - (c) either:

- (i) the requirements of any of paragraphs 28(1)(a) to (f) of the old Act were satisfied; or
- (ii) an application was made under section 35 of the old Act to an arbitral body and had not been withdrawn;

then, after the commencement of this Act, the old “right to negotiate” provisions continue to apply, despite the amendments made by this Act, in relation to the future act.

*Old Act section 29 notices—old Act native title parties*

(2) If:

- (a) a notice under section 29 of the old Act was given in relation to a future act at least 2 months before the commencement of the new “right to negotiate” provisions; and
- (b) apart from this subitem, the new “right to negotiate” provisions would apply in relation to the future act after the commencement of this Act; and
- (c) subitem (1) does not apply to the future act;

then, after the commencement of this Act, the new “right to negotiate” provisions apply in relation to the future act as if:

- (d) the only persons who were native title parties were those who were native title parties under the old Act; and
- (e) the requirements of section 29 of the new Act had been complied with.

*Old Act section 29 notices—expedited procedure*

(3) If:

- (a) before the commencement of the new “right to negotiate” provisions:
  - (i) a notice under section 29 of the old Act was given in relation to a future act; and
  - (ii) the notice included a statement that the Government party considered the act to be an act attracting the expedited procedure; and
- (iii) an objection was lodged under subsection 32(3) of the old Act against the inclusion of the statement; and

- (b) by the time the new “right to negotiate” provisions commenced, no determination had been made under section 32(4) of the old Act in relation to the objection; and
- (c) apart from this subitem, the new “right to negotiate” provisions would apply in relation to the future act after the commencement of this Act;

then, after the commencement of this Act:

- (d) the old “right to negotiate” provisions continue to apply, despite the amendments made by this Act, for the purpose of making the determination; and
- (e) if the determination is that the act is not an act attracting the expedited procedure, the new “right to negotiate” provisions apply in relation to the future act as if:
  - (i) the only persons who were native title parties were those who were native title parties under the old Act; and
  - (ii) the requirements of section 29 of the new Act had been complied with.

*Saving of old Act agreements and arbitral determinations*

- (4) The amendments made by this Act do not affect any conditions in:
  - (a) an agreement of the kind mentioned in paragraph 31(1)(b) of the old Act; or
  - (b) a determination under section 38 of the old Act; or
  - (c) a declaration under section 42 of the old Act;that was made before the commencement of this Act.

## **Part 3—Application of amendments relating to section 61 applications: proceedings relating to determinations**

### **5 Table of situations and consequences**

The table in item 6 sets out various situations that may exist in relation to an application that was given to the Native Title Registrar as mentioned in section 61 of the old Act, and certain consequences of the commencement of this Act.

### **6 Table**

<b>Case</b>	<b>Situation at the commencement of this Act</b>	<b>Consequences</b>
1	Application: (a) is being processed; or (b) is being reviewed by a court; or (c) has been accepted but the Registrar has not started giving notification.	Application is taken to have been made to Federal Court.
2	Registrar has given, or is giving, notification but section 66 period not completed.	Application is taken to have been made to Federal Court. Any notification is taken to be for that application and the same people are the parties.
3	Notification given by Registrar, section 66 period for the application is completed and application is not finalised.	Application is taken to have been made to Federal Court. Any notification is taken to be for that application and the same people are the parties. If the application is not unopposed, item 7 or 8 applies in relation to mediation. If the application is a non-claimant application that is unopposed, item 9 applies in relation to section 24FA protection.

**Schedule 5** Application and transitional

**Part 3** Application of amendments relating to section 61 applications: proceedings relating to determinations

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<b>Case</b>	<b>Situation at the commencement of this Act</b>	<b>Consequences</b>
4	NNTT has made, or has purported to make, a determination under the old Act that there is no native title in relation to an area. The normal application and review period defined in subsection 167(10) of the old Act has finished, and case 3 does not apply.	Native Title Registrar must remove any relevant entry from National Native Title Register. Any determination is taken not to have been an approved determination of native title. Any determination is taken never to have been registered under section 166 of the old Act. Item 10 applies in relation to section 24FA protection. A further native title determination application may be made.

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**7 Case 3 in item 6—previously directed mediation conference**

If:

- (a) an application that was made to the Native Title Registrar under section 61 of the old Act is taken to have been made to the Federal Court; and
- (b) at or before the commencement of this Act, the President has directed the holding of a conference of the parties or their representatives under subsection 72(1) of the old Act, in respect of the whole or a part of the proceeding; and
- (c) the Tribunal has not made a determination under section 73 or 160 of the old Act; and
- (d) the Native Title Registrar has not lodged the application with the Federal Court under section 74 of the old Act;

then, for the purposes of the new Act, the Federal Court is taken to have referred the proceeding, or the part of the proceeding, to mediation under section 86B of the new Act. The Court is taken to have made the referral at the commencement of this Act.

**8 Case 3 in item 6—application already with Federal Court**

If:



- (a) an application that was made to the Native Title Registrar under section 61 of the old Act is taken to have been made to the Federal Court; and
- (b) the Native Title Registrar has lodged the application with the Federal Court under section 74 of the old Act;

the Federal Court is taken to have made an order, under subsection 86C(1) of the new Act, that mediation cease in relation to the whole of the proceeding.

### **9 Case 3 in item 6—effect of section 24FA protection**

If case 3 in the table in item 6 applies to a non-claimant application covering an area, the area:

- (a) is taken to be subject to section 24FA protection (within the meaning of the new Act) unless and until:
  - (i) the area is covered by an entry in the National Native Title Register specifying that native title exists in relation to the area; or
  - (ii) the non-claimant application is withdrawn or dismissed; and
- (b) is taken to have been subject to section 24FA protection (within the meaning of the new Act) at all times since the end of the period of 2 months worked out under section 66 of the old Act.

### **10 Case 4 in item 6—effect of section 24FA protection**

If case 4 in the table in item 6 applies to an area, any part of the area:

- (a) is taken to be subject to section 24FA protection (within the meaning of the new Act) unless and until that part of the area is covered by an entry in the National Native Title Register specifying that native title exists in relation to that part of the area; and
- (b) is taken to have been subject to section 24FA protection (within the meaning of the new Act) at all times since the end of the period of 2 months worked out under section 66 of the old Act.

## Part 4—Application of amendments relating to section 61 applications: registration of claims

### 11 Registration of claims

#### *Pre-commencement registered claims covered*

- (1) This item sets out the consequences of the commencement of this Act in relation to a claim made in an application that was given to the Native Title Registrar as mentioned in section 61 of the old Act if, when this Act commenced, an entry recording details of the claim was on the Register of Native Title Claims.

#### *Excluded case*

- (2) However, the item does not apply if, before this Act commenced, an approved determination of native title had been made in relation to the application.

#### *Section 190A to be applied, with expedited consideration, to applications before 27 June 1996 where section 29 notice*

- (3) If:
- (a) the application was made before 27 June 1996; and
  - (b) a notice is given under section 29 of the new Act, or a corresponding provision of a law of a State or Territory covered by a determination under subsection 43(1) of the new Act or old Act, in relation to an act affecting any of the land or waters covered by the claim; and
  - (c) no such notice has previously been given in relation to an act affecting any of the land or waters covered by the claim;
- the Registrar must:
- (d) consider the claim under section 190A of the new Act; and
  - (e) use his or her best endeavours to finish doing so by the end of 4 months after the notice is given.

If he or she does not do so by that time, he or she must consider the claim under that section as soon as reasonably practicable afterwards.

*Section 190A to be applied within one year to applications before 27 June 1996 where freehold estate or non-mining lease*

- (4) If:
- (a) the application was made before 27 June 1996; and
  - (b) at the commencement of this Act, any part of the area covered by the claim is covered by a freehold estate or a lease (other than a mining lease);

the Registrar must:

- (c) consider the claim under section 190A of the new Act; and
- (d) use his or her best endeavours to finish doing so by the end of one year after the commencement of this Act.

If he or she does not do so by that time, he or she must consider the claim under that section as soon as reasonably practicable afterwards.

*Section 190A to be applied to applications made on or after 27 June 1996*

- (5) If the application was made on or after 27 June 1996, the Registrar must consider the claim under section 190A of the new Act as soon as reasonably practicable.

*Expedited section 190A consideration where section 29 notice*

- (6) If:
- (a) either before the Registrar begins to consider the claim in accordance with subitem (4) or (5) or while the Registrar is doing so, a notice is given under section 29 of the new Act, or a corresponding provision of a law of a State or Territory covered by a determination under subsection 43(1) of the new Act, in relation to an act affecting any of the land or waters covered by the claim; and

Note: Subitem 14(4) deems determinations under subsection 43(1) of the old Act to be made under subsection 43(1) of the new Act for post-commencement purposes.

**Schedule 5** Application and transitional

**Part 4** Application of amendments relating to section 61 applications: registration of claims

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- (b) no such notice has previously been given in relation to an act affecting any of the land or waters covered by the claim;

the Registrar must use his or her best endeavours to finish considering the claim under section 190A of the new Act by the end of 4 months after the notice is given. If he or she does not do so by that time, he or she must consider the claim under that section as soon as reasonably practicable afterwards.

*Order of consideration of claims affected by same section 29 notice*

(7) If:

- (a) a notice is given under section 29 of the new Act, or under a corresponding provision of a law of a State or Territory covered by a determination under subsection 43(1) of the new Act; and
- (b) as a result of the giving of the notice, the Registrar is required by subitem (3) or (6), or by subitems (3) and (6), to consider 2 or more claims under section 190A of the new Act;

then the Registrar must consider the claims under that section in the order in which their details were entered on the Register of Native Title Claims.

*Later information to be taken into account*

(8) In considering a claim in accordance with subitems (3) to (7), the Registrar must:

- (a) in addition to having regard to information in accordance with subsection 190A(3) of the new Act, also have regard to any information provided by the applicant after the application was made; and
- (b) apply section 190A of the new Act as if the conditions in sections 190B and 190C requiring that the application:
- (i) contain or be accompanied by certain information or other things; or
  - (ii) be certified or have other things done in relation to it;

also allowed the information or other things to be provided, or the certification or other things to be done, by the applicant or another person after the application is made; and

- (c) for the purposes of paragraphs (a) and (b) of this subitem, advise the applicant that the Registrar is considering the claim, and allow the applicant a reasonable opportunity to provide any further information or other things, or to have any things done, in relation to the application.

*Removal of claim from Register if it fails test in section 190A of the new Act*

- (9) If the claim does not satisfy all of the conditions in sections 190B and 190C of the new Act:
  - (a) the Registrar must remove the details of the claim from the Register and give written notice as required by subsection 190D(1); and
  - (b) the other provisions of sections 190A to 190D apply as if the notice mentioned in paragraph (a) were given under subsection 190D(1); and
  - (c) after the Registrar has complied with subitems (3) to (8) and this subitem (in so far as they are applicable), he or she is taken to have complied with section 190A.

*Removal of claim from Register if it fails new State/Territory test*

- (10) If:
  - (a) a law of a State or Territory that deals with notifying the Registrar of claims for the purposes of paragraph 190(1)(c) of the old Act is amended so as to impose conditions for registration of claims equivalent to those set out in sections 190B and 190C of the new Act; and
  - (b) a recognised State/Territory body of the State or Territory notifies the Registrar that a specified claim, of which details are on the Register when the amendment commences, does not satisfy the new conditions in the law of the State or Territory;the Registrar must remove the details of the claim from the Register.

**Schedule 5** Application and transitional

**Part 4** Application of amendments relating to section 61 applications: registration of claims

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*Consequences of removal of claim—pre-27 June 1996 cases*

(11) If:

- (a) the application was made before 27 June 1996; and
- (b) under subitem (9) or (10), the Registrar removes the details of the claim from the Register;

then the new “right to negotiate” provisions (including as modified by Part 2 of this Schedule) or the old “right to negotiate” provisions, as the case requires, apply in relation to any act of which notice was given under section 29 of the old Act, or a provision of a law of a State or Territory that is equivalent to that section, as if the details of the claim had not been removed from the Register.

*Consequences of removal of claim—27 June 1996 and later cases*

(12) If:

- (a) the application was made on or after 27 June 1996; and
- (b) under subitem (9) or (10), the Registrar removes the details of the claim from the Register;

then the new “right to negotiate” provisions (including as modified by Part 2 of this Schedule) or the old “right to negotiate” provisions, as the case requires, apply in relation to:

- (c) any act of which notice was given under section 29 of the old Act, or a provision of a law of a State or Territory that is equivalent to that section; and
- (d) any act of which notice was given under section 29 of the new Act, or a provision of a law of a State or Territory that is equivalent to that section, before the removal of the details;

as if the details had never been entered in the Register.

*Agreements and determinations are not affected*

(13) Despite subitem (12), if:

- (a) an agreement of the kind mentioned in paragraph 31(1)(b) of the new Act or of the old Act; or
  - (b) a determination under section 36A or 38 of the new Act or under section 38 of the old Act; or
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(c) a declaration under section 42 of the new Act or of the old Act;

was made in relation to any of the acts mentioned in that subitem before the removal of details relating to the claim, the agreement, determination or declaration remains in effect after the removal of the details as if the subitem had not been enacted.

Note: This item is subject to any regulations that may be made under subsection 43(4) or 43A(11) of the new Act.

## **Part 5—Various application and transitional provisions**

### **12 Transitional—State and Territory validation legislation**

If a law of a State or Territory made before the commencement of this Act contained provisions to the same effect as sections 15 and 16 of the old Act, the provisions continue to have that effect despite the amendments made by this Act.

### **13 Transitional—former section 21 agreements**

The repeal of section 21 of the old Act by this Act does not apply to any agreement covered by that section that was made before the commencement of this Act.

### **14 Transitional—determinations, approvals, regulations etc.**

- (1) Any determination made under paragraph 23(7)(c) of the old Act that is in force immediately before the commencement of this Act has effect after the commencement of this Act as if:
    - (a) it were a determination made under each of subsections 24MD(7) and 24NA(9) of the new Act; and
    - (b) it applied to the notification of registered native title claimants in relation to land or waters in the area concerned in the same way as it applied to notification of representative Aboriginal/Torres Strait Islander bodies for that area.
  - (2) Any approval of an act under paragraph 26(2)(e) of the old Act that is in force immediately before the commencement of this Act has effect after the commencement of this Act as if it were an approval under subparagraph 26(1)(c)(iv) of the new Act.
  - (3) If a determination of an act under paragraph 26(3)(b) of the old Act was in force immediately before the commencement of this Act, the new “right to negotiate” provisions do not apply to the act, until such time as the determination is revoked in writing by the Commonwealth Minister. Such a revocation is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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- (4) Any determination made under subsection 43(1) of the old Act that is in force immediately before the commencement of this Act has effect after the commencement of this Act as if it were made under subsection 43(1) of the new Act.
- (5) Any regulations made for the purposes of subsection 61(2) or 62(2) of the old Act that are in force immediately before the commencement of this Act have effect after the commencement of this Act as if they were made for the purposes of subsection 61(5) of the new Act.
- (6) Any regulations made for the purposes of subsection 75(2) or section 76 of the old Act that are in force immediately before the commencement of this Act have effect after the commencement of this Act as if they were made for the purposes of section 76 of the new Act.
- (7) The repeal of subsection 183(5) of the old Act by this Act does not apply to any delegation made under that subsection before the commencement of this Act.
- (8) Any determination made under subsection 251(1) of the old Act has effect after the commencement of this Act as if it were made under subsection 207A(1) of the new Act.
- (9) Any determination made under subsection 252(1) of the old Act for the purposes of subsection 29(3) or paragraph 66(2)(b) of the old Act that is in force immediately before the commencement of this Act has effect after the commencement of this Act as if it were a determination made for the purposes of subsection 29(3) or paragraph 66(3)(d), respectively, of the new Act.

### **15 Transitional—section 26D of new Act**

Section 26D of the new Act has effect, in addition to its effect apart from this item, as if the reference in subparagraph 26D(1)(b)(ii) to “this Subdivision” included a reference to Subdivision B of Division 3 of Part 2 of the old Act.

### **16 Transitional—statutory access rights**

If, at any time before the commencement of Subdivision Q of Division 3 of Part 2 of the new Act, an entry was made on the Register of Native Title Claims, then, for the purposes of that Subdivision, the persons who claimed to hold the native title concerned, and any others with whom those persons claimed to hold the native title, are taken to be persons included in the native title claim group in relation to the claim, for so long as the entry is on the Register.

### **17 Application of sections 24GC and 44H**

- (1) Section 24GC of the new Act applies to activities done at any time, whether before or after the commencement of that section.
- (2) Section 44H of the new Act applies to the grant, issue or creation of a lease, licence, permit or authority at any time, whether before or after the commencement of that section.

### **18 Application of compensation limitation provision**

Section 51A of the new Act applies if the entitlement to the compensation concerned arose either before or after the commencement of that section.

### **19 Application of consolidation provision**

Section 67 of the new Act applies to applications made either before or after the commencement of that section.

### **20 Application of native title determination provision**

Section 68 of the new Act applies:

- (a) whether the first-mentioned native title determination in that section is made before or after the commencement of that section; and
- (b) whether the application that results in the second-mentioned determination in that section is made before or after the commencement of that section.

### **21 Application of strike-out provision**

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Section 84C of the new Act applies where the main application mentioned in that section was made either before or after the commencement of that section. If the main application was made before the commencement, the reference in that section to section 61 or section 62 is a reference to section 61 or section 62 of the old Act.

## **22 Application of mediation provisions**

Division 1A of Part 4, and any related provisions, of the new Act apply in relation to applications made either before or after the commencement of that Division or those provisions.

## **23 Transitional—assistance to native title claimants**

Despite subsection 183(6) of the new Act, if:

- (a) before the commencement of that subsection, the Attorney-General authorised the provision of assistance under section 183 of the old Act to a person claiming to hold native title to an area; and
- (b) after the commencement of that subsection, the person applies under that section for the provision of further assistance in respect of the same claim;

section 183 of the new Act has effect in relation to the application as if subsection 183(6) were omitted.

## **24 Application of native title determination provision**

The repeal of section 225 of the old Act and insertion of section 225 in the new Act by this Act apply to all determinations made after the commencement of this Act, regardless of when any native title determination application (if relevant) was made.

## **25 Transitional—definition of *registered native title claimant***

**Schedule 5** Application and transitional

**Part 5** Various application and transitional provisions

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For the purposes of the definition of *registered native title claimant* in the new Act, if, at the commencement of this Act, an entry relating to a claim is on the Register of Native Title Claims (other than an entry that had been amended under subsection 190(2) of the old Act to include details of a decision or determination), then, for so long as the entry remains on the Register, the person whose name appears in the entry as the person who is taken to be the claimant in relation to the claim is taken to be a person whose name appears in the entry as the applicant in relation to the claim.

## Part 6—Validation of certain acts

### 26 Validation of acts etc.

(1) In this item:

*amending determination* means the determination made under the old Act on 12 December 1995 that purported to amend the original determination.

*original determination* means the determination made under the old Act on 24 December 1993 that, according to the determination, may be cited as Native Title (Notices) Determination No. 1 of 1993.

(2) If:

- (a) before or after the commencement of this item, anything was or is done, or not done, in reliance or purported reliance on a notification or giving of notice; and
- (b) the notification or giving of notice took place in the way set out in:
  - (i) the original determination; or
  - (ii) the original determination as amended by the amending determination;

then the doing of the thing, or failure to do the thing, is not ineffective, and is taken never to have been ineffective, for the purposes of the *Native Title Act 1993* merely because the original determination was not laid before each House of the Parliament within 15 sitting days of that House after its meeting.

Note: Section 214 of the *Native Title Act 1993* made the original determination a disallowable instrument, which meant that it was required under the *Acts Interpretation Act 1901* to be tabled.

## Part 7—Compensation etc.

### 27 Entitlement to “just terms” compensation

- (1) If, apart from this item, the application of any of the provisions of this Act in any particular case would result in a paragraph 51(xxxi) acquisition of property of a person other than on paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by the *Native Title Act 1993*, from:
- (a) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or
  - (b) in any other case—the Commonwealth;
- as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

#### *Federal Court’s jurisdiction*

- (2) The Federal Court has jurisdiction with respect to matters arising under subitem (1) and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

## **Part 8—Regulations**

### **28 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
  
- (2) In particular, regulations may be made for transitional measures in relation to the transition from the old Act to the new Act.

## Part 9—Interpretation

### 29 Contents of this Part

This Part defines terms used in this Schedule.

### 30 Meaning of *commencement of this Act*

The *commencement of this Act* is the time when this item commences.

### 31 Meaning of *new Act and old Act*

- (1) The *new Act* is the *Native Title Act 1993*, as amended at the commencement of this Act.
- (2) The *old Act* is the *Native Title Act 1993*, as in force immediately before the commencement of this Act (including as it applies in accordance with item 3).

### 32 Meaning of *new “right to negotiate” provisions and old “right to negotiate” provisions*

- (1) The *new “right to negotiate” provisions* are the provisions in Subdivision P of Division 3 of Part 2 of the new Act.
- (2) The *old “right to negotiate” provisions* are the provisions in Subdivision B of Division 3 of Part 2 of the old Act.

### 33 Meaning of *application is being processed*

- (1) An *application is being processed* if:
  - (a) the application has been given to the Native Title Registrar under subsection 61(1) of the old Act; and
  - (b) the application is still being reviewed by the Registrar (see subitem (2)) or a presidential member (see subitem (3)).
- (2) An application is being *reviewed by the Registrar* if:
  - (a) the Registrar has not yet completed consideration of the application; or



- (b) the Registrar has completed consideration of the application and:
  - (i) has formed an opinion mentioned in paragraph 63(1)(a) or (1)(b) or subsection 64(1) of the old Act; but
  - (ii) has not referred the application to a presidential member under subsection 63(2) or 64(1) of the old Act.
- (3) An application is being *reviewed by a presidential member* if:
  - (a) the Registrar has referred the application to a presidential member under subsection 63(2) or 64(1) of the old Act; and
  - (b) the presidential member has not completed consideration of the application.

### **34 Meaning of *application is being reviewed by a court***

An *application is being reviewed by a court* if:

- (a) the presidential member has made a direction under paragraph 63(3)(c) or 64(2)(c) of the old Act; and
- (b) either:
  - (i) the direction is the subject of a proceeding under the old Act before a court; or
  - (ii) the period during which an application for some form of review of the direction, or of a decision made on review of the direction, may be made has not yet finished.

### **35 Meaning of *application has been accepted***

An *application has been accepted* if it has been accepted under section 63 or 64 of the old Act.

### **36 Meaning of *application is taken to have been made to Federal Court***

If an application is *taken to have been made to the Federal Court*:

- (a) the application is to be treated as if it were made to the Federal Court under the relevant provisions of the new Act; and
  - (b) the Native Title Registrar must give the application to the Federal Court, but section 63 of the new Act does not apply in relation to the application.
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**37 Meaning of *Registrar is giving notification***

The *Registrar is giving notification* if he or she has given notice of the application to a person whose interests may be affected by a determination but has not given, and is not taken to have given, notice to all such persons.

**38 Meaning of *Registrar has given notification***

The *Registrar has given notification* if he or she has given, or is taken to have given, notice of the application to all persons whose interests may be affected by a determination in relation to the application, under section 66 of the old Act.

**39 Meaning of *section 66 period***

The *section 66 period*, for an application, means the period of 2 months worked out under section 66 of the old Act in relation to the application.

**40 Meaning of *notification is taken to be for that application***

If, in relation to an application, *notification is taken to be for that application*, the notification is to be treated as if it were notice of the application given, or taken to have been given, under section 66 of the new Act, that contained details of the application.

**41 Meaning of *unopposed***

An application is *unopposed* if the application is unopposed for the purposes of section 70 of the old Act.

**42 Meaning of *not finalised***

An application is *not finalised* if:

- (a) the application is the subject of a proceeding before the NNTT, the Federal Court or the High Court; or
- (b) a determination has been made in respect of the application but the normal application and review period defined in subsection 167(10) of the old Act has not finished.

**43 Meaning of *same people are the parties***

If the *same people are the parties*:

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- (a) any people who were parties to the application that was made to the Registrar under section 61 of the old Act are taken to be the parties to the application that is taken to have been made to the Federal Court under the relevant provisions of the new Act; and
- (b) a person who notifies the Registrar under paragraph 68(2)(b) of the old Act, after the commencement of the new Act but within the period of 2 months worked out under section 66 of the old Act, is also a party.

Note: Other people may also become parties (see section 84 of the new Act).

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*[Minister's second reading speech made in—  
House of Representatives on 9 March 1998  
Senate on 11 March 1998]*