Native Title Act 1993

Act No. 110 of 1993 as amended

This compilation was prepared on 12 April 2006 taking into account amendments up to Act No. 30 of 2006

[Note: Part 12 ceased to have effect on 23 March 2006, see section 207]

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General’s Department, Canberra
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An Act about native title in relation to land or waters, and for related purposes

Preamble

This preamble sets out considerations taken into account by the Parliament of Australia in enacting the law that follows.

The people whose descendants are now known as Aboriginal peoples and Torres Strait Islanders were the inhabitants of Australia before European settlement.

They have been progressively dispossessed of their lands. This dispossession occurred largely without compensation, and successive governments have failed to reach a lasting and equitable agreement with Aboriginal peoples and Torres Strait Islanders concerning the use of their lands.

As a consequence, Aboriginal peoples and Torres Strait Islanders have become, as a group, the most disadvantaged in Australian society.

The people of Australia voted overwhelmingly to amend the Constitution so that the Parliament of Australia would be able to make special laws for peoples of the aboriginal race.

The Australian Government has acted to protect the rights of all of its citizens, and in particular its indigenous peoples, by recognising international standards for the protection of universal human rights and fundamental freedoms through:

(a) the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination and other standard-setting instruments such as the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights; and
(b) the acceptance of the Universal Declaration of Human Rights; and
(c) the enactment of legislation such as the Racial Discrimination Act 1975 and the Human Rights and Equal Opportunity Commission Act 1986.

The High Court has:
(a) rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement; and
(b) held that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia.
in accordance with their laws and customs, to their traditional lands; and

(c) held that native title is extinguished by valid government acts that are inconsistent with the continued existence of native title rights and interests, such as the grant of freehold or leasehold estates.

The people of Australia intend:

(a) to rectify the consequences of past injustices by the special measures contained in this Act, announced at the time of introduction of this Act into the Parliament, or agreed on by the Parliament from time to time, for securing the adequate advancement and protection of Aboriginal peoples and Torres Strait Islanders; and

(b) to ensure that Aboriginal peoples and Torres Strait Islanders receive the full recognition and status within the Australian nation to which history, their prior rights and interests, and their rich and diverse culture, fully entitle them to aspire.

The needs of the broader Australian community require certainty and the enforceability of acts potentially made invalid because of the existence of native title. It is important to provide for the validation of those acts.

Justice requires that, if acts that extinguish native title are to be validated or to be allowed, compensation on just terms, and with a special right to negotiate its form, must be provided to the holders of the native title. However, where appropriate, the native title should not be extinguished but revive after a validated act ceases to have effect.

It is particularly important to ensure that native title holders are now able to enjoy fully their rights and interests. Their rights and interests under the common law of Australia need to be significantly supplemented. In future, acts that affect native title should only be able to be validly done if, typically, they can also be done to freehold land and if, whenever appropriate, every reasonable effort has been made to secure the agreement of the native title holders through a special right to negotiate. It is also important that the broader Australian community be provided with certainty that such acts may be validly done.

A special procedure needs to be available for the just and proper ascertainment of native title rights and interests which will ensure that, if possible, this is done by conciliation and, if not, in a manner that has due regard to their unique character.

Governments should, where appropriate, facilitate negotiation on a regional basis between the parties concerned in relation to:

(a) claims to land, or aspirations in relation to land, by Aboriginal peoples and Torres Strait Islanders; and
(b) proposals for the use of such land for economic purposes.

It is important that appropriate bodies be recognised and funded to represent Aboriginal peoples and Torres Strait Islanders and to assist them to pursue their claims to native title or compensation.

It is also important to recognise that many Aboriginal peoples and Torres Strait Islanders, because they have been dispossessed of their traditional lands, will be unable to assert native title rights and interests and that a special fund needs to be established to assist them to acquire land.

The Parliament of Australia intends that the following law will take effect according to its terms and be a special law for the descendants of the original inhabitants of Australia.

The law, together with initiatives announced at the time of its introduction and others agreed on by the Parliament from time to time, is intended, for the purposes of paragraph 4 of Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination and the Racial Discrimination Act 1975, to be a special measure for the advancement and protection of Aboriginal peoples and Torres Strait Islanders, and is intended to further advance the process of reconciliation among all Australians.

The Parliament of Australia therefore enacts:
Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the Native Title Act 1993.

2 Commencement [see Note 1]

Commencement of provisions on Royal Assent

(1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.

Commencement of provisions by Proclamation

(2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.

Forced commencement of provisions

(3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 9 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Objects

Main objects

The main objects of this Act are:

(a) to provide for the recognition and protection of native title; and

(b) to establish ways in which future dealings affecting native title may proceed and to set standards for those dealings; and

(c) to establish a mechanism for determining claims to native title; and

(d) to provide for, or permit, the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.
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.
Part 1  Preliminary

Section 5

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.

5 Act binds Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island. However, nothing in this Act renders the Crown liable to be prosecuted for an offence.

6 Application to external Territories, coastal sea and other waters

This Act extends to each external Territory, to the coastal sea of Australia and of each external Territory, and to any waters over which Australia asserts sovereign rights under the Seas and Submerged Lands Act 1973.
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.

8 Effect of this Act on State or Territory laws

This Act is not intended to affect the operation of any law of a State or a Territory that is capable of operating concurrently with this Act.

8A Application of the Criminal Code

(1) Subject to subsection (2), Chapter 2 of the *Criminal Code* applies to all offences against this Act.

   Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(2) Part 2.5 of the *Criminal Code* does not apply to an offence against Part 11 of this Act.

9 Definitions located in Part 15

Part 15 contains definitions of certain expressions that are used in this Act.
Part 2—Native Title

Division 1—Recognition and protection of native title

10 Recognition and protection of native title

Native title is recognised, and protected, in accordance with this Act.

11 Extinguishment of native title

(1) Native title is not able to be extinguished contrary to this Act.

Effect of subsection (1)

(2) An act that consists of the making, amendment or repeal of legislation on or after 1 July 1993 by the Commonwealth, a State or a Territory is only able to extinguish native title:

(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

(b) by validating past acts, or intermediate period acts, in relation to the native title.

13 Approved determinations of native title

Applications to Federal Court

(1) An application may be made to the Federal Court under Part 3:

(a) for a determination of native title in relation to an area for which there is no approved determination of native title; or

(b) to revoke or vary an approved determination of native title on the grounds set out in subsection (5).
Native title determinations by Federal Court when determining compensation entitlements

(2) If:

(a) the Federal Court is making a determination of compensation in accordance with Division 5; and
(b) an approved determination of native title has not previously been made in relation to the whole or part of the area concerned;

the Federal Court must also make a current determination of native title in relation to the whole or the part of the area, that is to say, a determination of native title as at the time at which the determination of compensation is being made.

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.

Approved determinations of native title

(3) Subject to subsection (4), each of the following is an approved determination of native title:

(a) a determination of native title made on an application under paragraph (1)(a) or in accordance with subsection (2);
(b) an order, judgment or other decision of a recognised State/Territory body that involves a determination of native title in relation to an area within the jurisdictional limits of the State or Territory.

Variation or revocation of determinations

(4) If an approved determination of native title is varied or revoked on the grounds set out in subsection (5) by:

(a) the Federal Court, in determining an application under Part 3; or
(b) a recognised State/Territory body in an order, judgment or other decision;

then:

(c) in the case of a variation—the determination as varied becomes an approved determination of native title in place of the original; and
(d) in the case of a revocation—the determination is no longer an approved determination of native title.

*Grounds for variation or revocation*

(5) For the purposes of subsection (4), the grounds for variation or revocation of an approved determination of native title are:

(a) that events have taken place since the determination was made that have caused the determination no longer to be correct; or

(b) that the interests of justice require the variation or revocation of the determination.

*Review or appeal*

(6) If:

(a) a determination of the Federal Court; or

(b) an order, judgment or other decision of a recognised State/Territory body;

is subject to any review or appeal, this section refers to the determination, order, judgment or decision as affected by the review or appeal, when finally determined.

*High Court determinations*

(7) A determination of native title by the High Court is an approved determination of native title.
Division 2—Validation of past acts

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.

Subdivision A—Acts attributable to the Commonwealth

14 Validation of Commonwealth acts

(1) If a past act is an act attributable to the Commonwealth, the act is valid, and is taken always to have been valid.

   Effect of validation of law

(2) To avoid any doubt, if a past act validated by subsection (1) is the making, amendment or repeal of legislation, subsection (1) does not validate:
   (a) the grant or issue of any lease, licence, permit or authority; or
   (b) the creation of any interest in relation to land or waters; under any legislation concerned, unless the grant, issue or creation is itself a past act attributable to the Commonwealth.
15 Effect of validation on native title

(1) If a past act is an act attributable to the Commonwealth:
   (a) if it is a category A past act other than one to which subsection 229(4) (which deals with public works) applies—the act extinguishes the native title concerned; and
   (b) if it is a category A past act to which subsection 229(4) applies:
      (i) in any case—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) if paragraph 229(4)(a) applies—the extinguishment is taken to have happened on 1 January 1994; and
   (c) if it is a category B past 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 past act or a category D past act—the non-extinguishment principle applies to the act.

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

(2) The extinguishment effected by this section does not by itself confer any right to eject or remove any Aboriginal persons who reside on or who exercise access over land or waters covered by a pastoral lease the grant, re-grant or extension of which is validated by section 14.

16 Preservation of beneficial reservations and conditions

If:
   (a) the 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 the act 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 15 affects that reservation or condition or those rights or interests.

17 **Entitlement to compensation**

*Extinguishment case*

(1) If the act attributable to the Commonwealth is a category A past act or a category B past act, the native title holders are entitled to compensation for the act.

*Non-extinguishment case*

(2) If it is any other past act, the native title holders are entitled to compensation for the act if:

(a) the native title concerned is to some extent in relation to an onshore place and the act could not have been validly done on the assumption that the native title holders instead held ordinary title to:
   (i) any land concerned; and
   (ii) the land adjoining, or surrounding, any waters concerned; or

(b) the native title concerned is to some extent in relation to an offshore place; or

(c) the native title concerned relates either to land or to waters and the similar compensable interest test is satisfied in relation to the act.

*Compensation for partial effect of act*

(3) If the entitlement arises only because one, but not both, of paragraphs (2)(a) and (b) are satisfied, it is only an entitlement for the effect of the act on the native title in relation to the onshore place, or the offshore place, mentioned in the relevant paragraph.

*Who pays compensation*

(4) The compensation is payable by the Commonwealth.
Section 18

18 Where just terms invalidity

Section applies if acquisition of property other than on just terms

(1) This section applies if the invalidity (disregarding section 14) of a past 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.

Subdivision B—Acts attributable to a State or Territory

19 State/Territory acts may be validated

(1) If a law of a State or Territory contains provisions to the same effect as sections 15 and 16, the law of the State or Territory may provide that past acts attributable to the State or Territory are valid, and are taken always to have been valid.

Effect of validation of law

(2) To avoid any doubt, if a past act validated by subsection (1) is the making, amendment or repeal of legislation, subsection (1) does not validate:

(a) the grant or issue of any lease, licence, permit or authority; or
(b) the creation of any interest in relation to land or waters; under any legislation concerned, unless the grant, issue or creation is itself a past act attributable to the State or Territory.

20 Entitlement to compensation

Compensation where validation

(1) If a law of a State or Territory validates a past act attributable to the State or Territory in accordance with section 19, the native title
holders are entitled to compensation if they would be so entitled under subsection 17(1) or (2) on the assumption that section 17 applied to acts attributable to the State or Territory.

Compensation where no validation

(2) Native title holders are entitled to compensation for the past act attributable to a State or Territory that, at the time when the claim for compensation is determined, has not been validated by the State or Territory in accordance with section 19.

Recovery of compensation

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

States or Territories may create compensation entitlement

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

Note: Paragraph 49(b) deals with the situation where there are multiple rights to compensation under Commonwealth, State and Territory laws.
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.
Section 22D

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
Section 22F

(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.
Part 2 Native Title
Division 2A Validation of intermediate period acts etc.

Section 22H

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.
Section 22I

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.
Part 2 Native Title

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

Section 23A

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 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);
Confirmation of past extinguishment of native title by certain valid or validated acts

**Division 2B**

**Section 23B**

(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:
Part 2  Native Title

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

Section 23B

(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.

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.
Part 2  Native Title
Division 2B  Confirmation of past extinguishment of native title by certain valid or validated acts

Section 23D

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 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

Native Title Act 1993
Confirmation of past extinguishment of native title by certain valid or validated acts

**Division 2B**

**Section 23G**

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

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

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.
Section 23H

(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.
Part 2  Native Title
Division 2B  Confirmation of past extinguishment of native title by certain valid or validated acts

Section 23JA

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);
Part 2  Native Title
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Section 24AB

(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.

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.
Part 2  Native Title
Division 3  Future acts etc. and native title

Section 24BC

(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.
Section 24BE

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.
Section 24BG

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.
Section 24CC

(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).

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

(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:

(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.
Section 24CE

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 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 203BE(1)(b) 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;
Section 24CH

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;
(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
Section 24CI

203BE(5)(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 203BE(5)(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
Section 24CJ

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 203BE(5)(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).
Section 24DC

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.

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.
Part 2  Native Title
Division 3  Future acts etc. and native title

Section 24DG

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) 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.

*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.
Section 24EB

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:

(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 203BE(5)(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.
Part 2  Native Title
Division 3  Future acts etc. and native title

Section 24EBA

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.
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(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
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(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 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:
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(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

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(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
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(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:

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(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
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(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.

68  Native Title Act 1993
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.
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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.

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.

241A 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).

241B 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.

241C 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
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(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
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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:
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(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:
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(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.
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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
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(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:
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(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:
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(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);
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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:

(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.

Extinction 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-extinction principle

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

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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.  

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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:

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(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.
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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
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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 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;
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(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.
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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 expedited 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
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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:
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(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

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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
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(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:
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(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.
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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
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(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:
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(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.
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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
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(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.
(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.

(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.

(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.

(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.

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 \textit{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 \textit{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.
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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 a 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).
Division 4—Other provisions relating to native title

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.

45 RDA compensation to be determined under this Act

(1) If the Racial Discrimination Act 1975 has the effect that compensation is payable to native title holders in respect of an act that validly affects native title to any extent, the compensation, in so far as it relates to the effect on native title, is to be determined in accordance with section 50 as if the entitlement arose under this Act.
Recovery of compensation

(2) If the act took place before 1 January 1994 and is attributable to the Commonwealth, a State or a Territory, the native title holders may recover the compensation from the Commonwealth, the State or the Territory, as the case requires.

46 Effect of grant of leases and licences validated by McArthur River legislation

The non-extinguishment principle applies to:
(a) the granting of the mineral leases and exploration licences validated by section 3 of the McArthur River Project Agreement Ratification Amendment Act 1993 of the Northern Territory; and
(b) the granting of the mineral lease and exploration licence by section 4A of the McArthur River Project Agreement Ratification Act 1992 of the Northern Territory.

47 Pastoral leases held by native title claimants

When section applies

(1) This section applies if:
(a) an application under section 61 is made in relation to an area; and
(b) when the application is made, a pastoral lease is held over the area by:
(i) any of the persons who made the application claiming to hold the native title or any other persons with whom they claimed to hold the title; or
(ii) a trustee, on trust for any of those persons; or
(iii) a company whose only shareholders are any of those persons.

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 by any of the following acts must be disregarded:
(a) the grant of the lease itself;
(b) the creation of any other interest itself in relation to the area;
(c) the doing of any act under the lease or by virtue of holding the interest.

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 exists and is held by the persons mentioned in subparagraph (1)(b)(i), (ii) or (iii):
   (a) the determination does not affect:
      (i) the validity of the lease; 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 in relation to the grant of the lease and any other prior act affecting the native title; and
   (c) any person, trustee or company holding the lease as mentioned in subparagraph (1)(b)(i), (ii) or (iii) has no procedural rights as holder of the lease in relation to any act, in relation to the land or waters, to which Subdivision P of Division 3 (which deals with the right to negotiate) applies.

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
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(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
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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.
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Division 5—Determination of compensation for acts affecting native title etc.

48  Compensation payable in accordance with Division

Compensation payable under Division 2, 2A, 2B, 3 or 4 in relation to an act is only payable in accordance with this Division.

49  No multiple compensation for essentially same act

Despite anything in Division 2, 2A, 2B, 3 or 4:

(a) compensation is only payable under this Act once for acts that are essentially the same; and

(b) the court, person or body determining compensation in accordance with this Division must take into account any compensation awarded under a law of a State or Territory, or under another Commonwealth law, for essentially the same act.

50  Bodies that may determine compensation

Division exhaustive

(1) A determination of the compensation may only be made in accordance with this Division.

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).

Applications to Federal Court

(2) An application may be made to the Federal Court under Part 3 for a determination of the compensation.

Jurisdiction to hear appeals, to review etc. not affected

(3) Nothing in this Division affects:

(a) any jurisdiction of a court, person or body to hear appeals against, to review or otherwise to affect, a determination of compensation made in accordance with this Division; or

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(b) the jurisdiction of the High Court.

51 Criteria for determining compensation

Just compensation

(1) Subject to subsection (3), the entitlement to compensation under Division 2, 2A, 2B, 3 or 4 is an entitlement on just terms to compensate the native title holders for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

Acquisition under compulsory acquisition law

(2) If the act is the compulsory acquisition of all or any of the native title rights and interests of the native title holders, the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria for determining compensation set out in the law under which the compulsory acquisition takes place.

Compensation where similar compensable interest test satisfied

(3) If:

(a) the act is not the compulsory acquisition of all or any of the native title rights and interests; and

(b) the similar compensable interest test is satisfied in relation to the act;

the court, person or body making the determination of compensation must, subject to subsections (5) to (8), in doing so apply any principles or criteria for determining compensation (whether or not on just terms) set out in the law mentioned in section 240 (which defines similar compensable interest test).

Compensation not covered by subsection (2) or (3)

(4) If:

(a) neither subsection (2) nor (3) applies; and
(b) there is a compulsory acquisition law for the Commonwealth (if the act giving rise to the entitlement is attributable to the Commonwealth) or for the State or Territory to which the act is attributable;

the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria set out in that law for determining compensation.

**Monetary compensation**

(5) Subject to subsection (6), the compensation may only consist of the payment of money.

**Requests for non-monetary compensation**

(6) If the person claiming to be entitled to the compensation requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the court, person or body:

(a) must consider the request; and

(b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to give the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation.

**Where recommendation not complied with**

(7) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person claiming to be entitled to the compensation may request the court, person or body to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

**Where recommendation complied with**

(8) If the person does transfer the property or provide the goods or services in accordance with the recommendation, the transfer of the property or provision of the goods or services constitutes full compensation for the act, and the entitlement to it is taken to have been determined in accordance with this Division.
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).

52 Payment held in trust under right to negotiate procedures

When section applies

(1) This section applies if an amount (the trust amount) in respect of an act is being held in trust in accordance with paragraph 36C(5)(b), subsection 41(3) or paragraph 42(5)(b) and any of the following happens:

(a) an approved determination of native title is made to the effect that there is no native title in relation to the area concerned immediately before the act takes place;

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

(c) the following requirements are satisfied:

(i) an approved determination of native title is made to the effect that the native title parties concerned are (disregarding any holding of the native title in trust under Division 6) the native title holders in relation to the area affected by the act; and

(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;

(d) a determination is made, on a claim for compensation in respect of the act:
   (i) in accordance with this Division; or
   (ii) on just terms under a compulsory acquisition law;
   that a person is entitled to compensation, or that no compensation is payable to any person;

(e) none of paragraphs (a), (b), (c) and (d) applies and the Federal Court decides, on application by any person, that it would be just and equitable in all the circumstances to pay the trust amount to that person or another person.

**Paragraph (1)(a) or (b) case**

(2) In a paragraph (1)(a) or (b) case, the trustee must:
   (a) repay the trust amount to the person who paid it to the trustee; or
   (b) if that person no longer exists—apply to the Federal Court for a direction as to the payment of the trust amount.

**Paragraph (1)(c) case**

(3) In a paragraph (1)(c) case:
   (a) the trustee must pay the trust amount to the body corporate; and
   (b) subject to section 53, there is no entitlement to compensation under Division 3 for the act.

**Paragraph (1)(d) case where monetary compensation**

(4) In a paragraph (1)(d) case where the determination is that a person is entitled to an amount of monetary compensation:
   (a) if the trust amount is the same as the amount determined—the trustee must pay the trust amount to the person; or
   (b) if the trust amount is less than the amount determined—the trustee must pay the trust amount to the person and the Government party must pay the shortfall to the person; or
   (c) if the trust amount is more than the amount determined—the trustee must:
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(i) pay the person so much of the trust amount as equals the amount determined; and
(ii) refund the excess to the person who paid the trust amount to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment.

Paragraph (1)(d) case where non-monetary compensation

(5) In a paragraph (1)(d) case where the transfer of property or the provision of goods or services constitutes some or all of the compensation, the trustee must apply to the Federal Court for a direction as to the payment of the trust amount.

Paragraph (1)(d) case where no compensation

(6) In a paragraph (1)(d) case where the determination is that no compensation is payable or to be given to any person, the trustee must repay the trust amount to the person who paid it to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment.

Paragraph (1)(e) case

(7) In a paragraph (1)(e) case, the trustee must pay the trust amount in accordance with the decision of the Federal Court mentioned in that paragraph.

53 Just terms compensation

Entitlement to just terms compensation

(1) Where, apart from this section:
   (a) the doing of any future act; or
   (b) 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 this Act, from:
   (c) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or
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(d) 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 subsection (1) and that jurisdiction is exclusive of the
jurisdiction of all other courts except the High Court.

54 Commonwealth compensation payable from CRF

Amounts payable from CRF

(1) The following amounts are payable out of the Consolidated
Revenue Fund:
   (a) amounts of compensation payable by the Commonwealth in
       accordance with this Division;
   (b) amounts to be spent by the Commonwealth in acquiring
       property or providing goods or services in order to comply
       with a recommendation under paragraph 51(6)(b) (which
       deals with requests for non-monetary compensation).

Appropriation

(2) The Consolidated Revenue Fund is appropriated for the purposes
of paying the amounts.
Division 6—Native title functions of prescribed bodies corporate and holding of native title in trust

55 Determinations by Federal Court

If:

(a) the Federal Court proposes to make an approved determination of native title; and
(b) the determination is that native title exists at the time of making the determination;

the Federal Court must, at the same time as it makes the determination, make the determinations in sections 56 (which deals with holding the native title on trust) or 57 (which deals with non-trust functions of prescribed bodies corporate).

56 Determination whether native title to be held in trust

Trust determination

(1) One of the determinations that the Federal Court must make is whether the native title is to be held in trust, and, if so, by whom.

Steps in making determination

(2) The Federal Court is to take the following steps in making the determination:

(a) first, it must request a representative of the persons it proposes to include in the determination of native title as the native title holders (the common law holders) to indicate whether the common law holders intend to have the native title held in trust by:

(i) nominating, in writing given to the Federal Court within a specified period, a prescribed body corporate to be trustee of the native title; and

(ii) including with the nomination the written consent of the body corporate; and

(b) secondly, if the common law holders give the nomination within the period, the Federal Court must determine that the prescribed body corporate is to hold the rights and interests...
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from time to time comprising the native title in trust for the common law holders; and
(c) thirdly, if the common law holders do not give the nomination within the period, the Federal Court must determine that the rights and interests are to be held by the common law holders.

Native title held in trust

(3) On the making of a determination under paragraph (2)(b), the prescribed body corporate holds, in accordance with the regulations, the rights and interests from time to time comprising the native title in trust for the common law holders.

Holding of native title to be as prescribed

(4) The regulations may also make provision in respect of the following matters relating to the holding in trust of the native title rights and interests:
(a) the functions to be performed by the body corporate;
(b) the nature of any consultation with, or other role for, the common law holders;
(c) the circumstances in which the rights and interests may be surrendered, transferred or otherwise dealt with;
(d) the determination of any other matter by the Federal Court;
(e) the termination of the trust or replacement of the trustee where the common law holders wish the trust to be terminated or the trustee to be replaced;
(f) any other matter.

Protection of native title from debt recovery processes etc.

(5) Subject to subsection (6), native title rights and interests held by the body corporate are not able to be:
(a) assigned, restrained, garnisheed, seized or sold; or
(b) made subject to any charge or interest; or
(c) otherwise affected;
as a result of:

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(d) the incurring, creation or enforcement of any debt or other liability of the body corporate (including a debt or liability owed to the Crown in any capacity or to any statutory authority); or
(e) any act done by the body corporate.

Subsection (5) not applicable to dealings authorised by regulations

(6) Subsection (5) does not apply if the incurring of the debt, creation of the liability or doing of the act was in connection with a dealing with the native title rights and interests authorised by regulations for the purposes of paragraph (4)(c).

57 Determination of prescribed body corporate etc.

Where trustee

(1) If the determination under section 56 is that the native title rights and interests are to be held in trust by a prescribed body corporate, the prescribed body corporate, after becoming a registered native title body corporate (see the definition of that expression in section 253), must also perform:
   (a) any other functions given to it as a registered native title body corporate under particular provisions of this Act; and
   (b) any functions given to it as a registered native title body corporate under the regulations (see section 58).

Where not trustee

(2) If the determination under section 56 is not as mentioned in subsection (1) of this section, the Federal Court must take the following steps in determining which prescribed body corporate is, after becoming a registered native title body corporate, to perform the functions mentioned in subsection (3):
   (a) first, it must request a representative of the common law holders to nominate, in writing given to the Federal Court within a specified period, a prescribed body corporate for the purpose;
   (b) secondly, if a prescribed body corporate is nominated in accordance with the request, the Federal Court must determine that the body is to perform the functions;
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(c) thirdly, if no prescribed body corporate is nominated in accordance with the request, the Federal Court must, in accordance with the regulations, determine which prescribed body is to perform the functions.

Functions where not trustee

(3) After becoming a registered native title body corporate, the body must perform:

(a) any functions given to it as a registered native title body corporate under particular provisions of this Act; and
(b) any functions given to it under the regulations (see section 58).

58 Functions under regulations

The regulations may make provision for a registered native title body corporate to do all or any of the following:

(a) if it does not hold the native title on trust under section 56—to act as agent or representative of the common law holders in respect of matters relating to the native title;
(b) to perform in a specified way any functions in relation to the native title given to it under other provisions of this Act;
(c) to hold on trust, or perform functions in relation to, compensation under this Act for acts affecting the native title;
(d) to consult with, and act in accordance with the directions of, the common law holders in performing any of its functions;
(e) if it does not hold the native title on trust to enter into agreements in relation to the native title that are binding on the common law holders, if:
   (i) the common law holders have been consulted about, and have authorised, the agreements; and
   (ii) the agreements have been made in accordance with processes set out in the regulations;
(f) to perform any other functions in relation to the native title.

59 Kinds of prescribed bodies corporate

The regulations may prescribe the kinds of bodies corporate that may be determined under section 56 or 57.
60 Replacement of prescribed bodies corporate
The regulations may make provision for the replacement of a prescribed body corporate by another prescribed body corporate at the initiation of the common law holders.

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.
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:

<table>
<thead>
<tr>
<th>Kind of application</th>
<th>Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Native title determination application</td>
<td>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.</td>
</tr>
</tbody>
</table>

(1) A person or persons authorised by all the persons (the **native title claim group**) 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

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 **authorised** by all the persons in the native title claim group.

(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

(3) The Commonwealth Minister; or

(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.
**Part 3 Applications**

**Division 1 Applications to the Federal Court: native title and compensation**

**Section 61**

### Applications

<table>
<thead>
<tr>
<th>Kind of application</th>
<th>Application</th>
<th>Persons who may make application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised native title determination application</td>
<td>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).</td>
<td>(1) The registered native title body corporate; or (2) The Commonwealth Minister; or (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 (4) The Native Title Registrar.</td>
</tr>
<tr>
<td>Compensation application</td>
<td>Application under subsection 50(2) for a determination of compensation.</td>
<td>(1) The registered native title body corporate (if any); or (2) A person or persons authorised by all the persons (the compensation claim group) who claim to be entitled to the compensation, provided the person or persons are also included in the compensation claim group.</td>
</tr>
</tbody>
</table>

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 authorised by all the persons in the compensation claim group.

**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.
Applications Part 3
Applications to the Federal Court: native title and compensation Division 1

Section 61A

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.

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
Section 62

(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
Applications Part 3

Applications to the Federal Court: native title and compensation Division 1

Section 62

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).

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:
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Applications to the Federal Court: native title and compensation Division 1

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(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.

170 Native Title Act 1993
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:
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Section 66A

(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
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Applications to the Federal Court: native title and compensation Division 1

Section 66A

(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...
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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.

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Applications

Part 3

Applications to the Federal Court: native title and compensation
Division 1

Section 67

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:

<table>
<thead>
<tr>
<th>Applications</th>
<th>Application</th>
<th>Persons who may make application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim registration application</td>
<td>Application as mentioned in subsection 190D(2) for review of a decision of the Registrar not to accept a claim for registration.</td>
<td>The applicant in relation to the application under section 61.</td>
</tr>
<tr>
<td>Application to remove agreement from Register</td>
<td>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.</td>
<td>(1) A party to the agreement; or (2) A representative Aboriginal/Torres Strait Islander body for the area covered by the agreement.</td>
</tr>
<tr>
<td>Application about transfer of records</td>
<td>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).</td>
<td>A person affected by the body’s non-compliance with the directions.</td>
</tr>
</tbody>
</table>

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.
Part 3 Applications
Division 2 Applications to the National Native Title Tribunal: right to negotiate

Section 75

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:

<table>
<thead>
<tr>
<th>Applications</th>
<th>Kind of application</th>
<th>Application</th>
<th>Persons who may make application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expedited procedure objection application</td>
<td>Application objecting as mentioned in subsection 32(3) against the inclusion of a statement that an act is an act attracting the expedited procedure.</td>
<td>A native title party.</td>
<td></td>
</tr>
<tr>
<td>Future act determination application</td>
<td>Application as mentioned in section 35 for a determination in relation to a future act.</td>
<td>A negotiation party.</td>
<td></td>
</tr>
</tbody>
</table>

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.
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.
Part 3 Applications
Division 3 Miscellaneous

Section 78

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.
Part 4—Determinations of the Federal Court

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.
Section 83A

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.
Part 4 Determinations of the Federal Court
Division 1A General

Section 84A

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.
Section 85

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:

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(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).
Part 4 Determinations of the Federal Court
Division 1B Reference to NNTT for mediation

Section 86A

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;
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Section 86B

(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
Part 4 Determinations of the Federal Court
Division 1B Reference to NNTT for mediation

Section 86C

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.

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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.
Section 86E

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.
Part 4 Determinations of the Federal Court
Division 1C Agreements and unopposed applications

Section 86G

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


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(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.
Part 4 Determinations of the Federal Court
Division 2 Conferences etc.

Section 88

Division 2—Conferences etc.

88 Conferences

Conference may be held

(1) The Federal Court may direct the holding of a conference of the parties or their representatives to help in resolving any matter that is relevant to the proceedings.

Assessor to preside

(2) The conference must be presided over by the assessor who is assisting the Court in relation to the proceedings.

89 Right of appearance

Subject to section 91, a party has the right to appear at a conference.

90 Participation by telephone etc.

An assessor may allow a person to participate in a conference by:
(a) telephone; or
(b) closed-circuit television; or
(c) any other means of communication.

91 Conferences to be held in public except in special circumstances

Public conferences

(1) Subject to subsection (3), a conference must be held in public.

Participation by telephone etc.

(2) If, when a conference is in public, a person participates by a means allowed under section 90, the assessor must take such steps as are reasonably necessary to ensure the public nature of the conference is preserved.
Private conferences

(3) The assessor may, on his or her own initiative or on the application of a party, if he or she is satisfied that it is appropriate to do so, direct that a conference, or a part of a conference, be held in private and give directions as to the persons who may be present.

Concerns of Aboriginal peoples and Torres Strait Islanders

(4) In determining whether a conference or part of a conference is to be held in private, the assessor must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

92 Federal Court may prohibit disclosure of evidence

Power of Court

(1) The Federal Court may direct that:
   (a) any evidence given before an assessor; or
   (b) the contents of any document produced to an assessor;
   must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the Court specifies.

Applications etc.

(2) The Federal Court may make the direction on its own initiative or on an application by a party or by the assessor.

93 Powers of assessor to take evidence

Evidence on oath or affirmation

(1) The assessor may take evidence on oath or affirmation and for that purpose the assessor may administer an oath or affirmation.

Assessor may apply for summons

(2) An assessor may apply to the Federal Court for an order to summon a person to appear before the assessor to give evidence and to produce such documents (if any) as are referred to in the summons.
Section 93

**Witnesses**

(3) A party may call witnesses.

**Examination**

(4) A person appearing as a witness before the assessor may be examined.

**Leave for cross-examination and re-examination**

(5) A person appearing as a witness before the assessor may only be cross-examined or re-examined with the leave of the assessor.

**Participation by telephone etc.**

(6) If a person participates by a means allowed under section 90, the assessor may make such arrangements as appear to the assessor to be appropriate in the circumstances for administering an oath or affirmation to the person.
Division 3—Orders

94 Order that compensation is payable

If the Federal Court makes an order that compensation is payable, the order must set out:

(a) the name of the person or persons entitled to the compensation or the method for determining the person or persons; and

(b) the method (if any) for determining the amount or kind of compensation to be given to each person; and

(c) the method for determining any dispute regarding the entitlement of a person to an amount of the compensation.

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).
Part 5—Native Title Registrar

95 Appointment of Registrar

Registrar

(1) There is to be a Native Title Registrar.

Appointment by Governor-General

(2) The Registrar is to be appointed by the Governor-General.

Qualifications

(3) A person is not to be appointed as Registrar unless:
   (a) the person is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and
   (b) the person has substantial experience in relation to:
       (i) Aboriginal or Torres Strait Islander societies; or
       (ii) the law; or
       (iii) administration; or
       (iv) any other activities relevant to the duties of the Registrar.

96 Powers of Registrar—assisting the President

Powers, when assisting President

(1) The Registrar may do all things necessary or convenient to be done for the purpose of assisting the President under section 129.

Acting for President—administrative affairs

(2) In particular, the Registrar may act for the President in relation to the administrative affairs of the Tribunal.
President may give directions

(3) The President may give the Registrar directions regarding the exercise of the Registrar’s powers under this Part.

97 Powers of Registrar—applications

The Registrar has the powers set out in Part 3 in relation to applications.

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.

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.

99 Delegation by Registrar

The Registrar may by signed instrument delegate to one or more of the Deputy Registrars or of the members of the staff of the Tribunal all or any of the Registrar’s powers under this Act.

100 Remuneration and allowances

Determination by Remuneration Tribunal

(1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal. If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

Prescribed allowances

(2) The Registrar is to be paid such other allowances as are prescribed.

Appropriation

(3) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Tribunal.

Subject to Remuneration Tribunal Act 1973

(4) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.

101 Terms and conditions of appointment

Period for which office held

(1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for re-appointment.
Terms and conditions

(3) The Registrar holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined by the President.

102 Leave of absence

Recreation leave

(1) The Registrar has the recreation leave entitlements determined by the Remuneration Tribunal.

Other leave

(2) The President may grant the Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as are determined by the President with the approval of the Commonwealth Minister.

103 Resignation

The Registrar may resign by giving a signed notice of resignation to the Governor-General.

104 Termination of appointment

Misbehaviour or incapacity

(1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

Termination for other reasons

(2) The Governor-General must terminate the appointment of the Registrar if:
   (a) the Registrar:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with his or her creditors; or
      (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
Part 5 Native Title Registrar

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(b) the Registrar is absent from duty, except on leave of absence granted by the President, for 14 consecutive days or for 28 days in any 12 months; or

(c) the Registrar engages in paid employment contrary to section 105; or

(d) the Registrar fails, without reasonable excuse, to comply with section 106.

Retirement—incapacity

(3) If the Registrar is:

(a) an eligible employee for the purposes of the Superannuation Act 1976; or

(b) a member of the superannuation scheme established by deed under the Superannuation Act 1990;

the Governor-General may, with the Registrar’s consent, retire the Registrar from office on the ground of incapacity.

Retirement—invalidity—Superannuation Act 1976

(4) In spite of anything contained in this Act, a Registrar who:

(a) is an eligible employee for the purposes of the Superannuation Act 1976; and

(b) has not reached his or her retiring age within the meaning of that Act;

is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

Retirement—invalidity—Superannuation Act 1990

(5) In spite of anything contained in this Act, a Registrar who:

(a) is a member of the superannuation scheme established by deed under the Superannuation Act 1990; and

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

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105 Outside employment

Consent of President required

(1) Except with the consent of the President, the Registrar must not engage in paid employment outside the duties of his or her office.

Service in Defence Force

(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

106 Disclosure of interests by Registrar

The Registrar must give written notice to the President of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

106A Appointment of acting Registrar

President may appoint acting Registrar

(1) The President may appoint a person to act as the Registrar:
   (a) if there is a vacancy in the office of Registrar; or
   (b) during any period, or during all periods, when the Registrar is absent from duty or absent from Australia or is, for any reason, unable to perform the duties of the office.

A person appointed to act during a vacancy is not to continue so to act for more than 12 months.

Qualifications

(2) A person is not to be appointed to act as Registrar unless:
   (a) the person is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory; and
   (b) the person has substantial experience in relation to:
      (i) Aboriginal or Torres Strait Islander societies; or
      (ii) the law; or
      (iii) administration; or
      (iv) any other activities relevant to the duties of the Registrar.
Section 106A

Validation

(3) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in, or in connection with, the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

Note: Section 33A of the Acts Interpretation Act 1901 has additional rules that apply to acting appointments.
Part 6—National Native Title Tribunal

Division 1—Establishment, purpose and way of operating

107 Establishment of the National Native Title Tribunal

A National Native Title Tribunal is established.

108 Function of the Tribunal

Applications, inquiries and determinations

(1) The Tribunal has the functions in relation to applications, inquiries and determinations given to it by Part 3 and Division 5.

Mediation for Federal Court proceedings

(1A) The Tribunal has the functions in relation to Federal Court proceedings given to the Tribunal by Division 4A.

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 203B(3) in relation to assistance of the kind referred to in that subsection.

Research

(2) The Tribunal may carry out research for the purpose of performing its functions.

Matters for research

(3) Without limiting subsection (2), the Tribunal may carry out research under that subsection into:

(a) the history of interests in relation to land or waters in Australia; or

(b) anthropology; or

Native Title Act 1993 209
109 Tribunal’s way of operating

Objectives

(1) The Tribunal must pursue the objective of carrying out its functions in a fair, just, economical, informal and prompt way.

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.

Tribunal not bound by technicalities etc.

(3) The Tribunal, in carrying out its functions, is not bound by technicalities, legal forms or rules of evidence.
Division 2—Membership of the National Native Title Tribunal

110 Membership of the Tribunal

The membership of the Tribunal is as set out in the following table:

<table>
<thead>
<tr>
<th>Member</th>
<th>Number to be appointed</th>
<th>Class of member</th>
<th>Persons who may be appointed</th>
</tr>
</thead>
<tbody>
<tr>
<td>President</td>
<td>One</td>
<td>Presidential</td>
<td>(1) A Judge of the Federal Court; or (2) A former judge; 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.</td>
</tr>
<tr>
<td>Deputy President</td>
<td>Any number or none</td>
<td>Presidential</td>
<td></td>
</tr>
<tr>
<td>Other member</td>
<td>Any number or none</td>
<td>Non-presidential</td>
<td>A person (other than a Judge or a former judge) who: (a) has, in the opinion of the Governor General, special knowledge in relation to: (i) Aboriginal or Torres Strait Islander societies; or (ii) land management; or (iii) dispute resolution; or (iv) any other class of matters considered by the Governor-General to have substantial relevance to the duties of such a member; or (b) is an assessor; or</td>
</tr>
</tbody>
</table>

Native Title Act 1993 211
111 Appointment of members of Tribunal

Appointment by Governor-General

(1) The members are to be appointed by the Governor-General.

Full-time or part-time appointments

(2) A member (other than a Judge or an assessor) must be appointed either as a full-time member or as a part-time member.

112 Appointment of a Judge or an assessor as a member not to affect tenure etc.

Judges

(1) The appointment of a Judge as a presidential member, or service by a Judge as a presidential member, does not affect:
   (a) the Judge’s tenure of office as a Judge; or
   (b) the Judge’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge.

Assessors

(2) The appointment of an assessor as a member, or service by an assessor as a member, does not affect:
   (a) the assessor’s tenure of office as an assessor; or
   (b) the assessor’s salary, annual or other allowances or other rights or privileges as the holder of his or her office as an assessor.
Section 113

Service as member taken to be service in office of Judge or assessor

(3) Service by a Judge or an assessor as a member is taken for all purposes to be service as the holder of his or her office as a Judge or assessor.

113 Delegation to members

The President may, by signed instrument, delegate to one or more of the members all or any of the President’s powers under this Act.

114 Remuneration and allowances

Determination by Remuneration Tribunal

(1) A member, other than a member who is a Judge or an assessor, is to be paid the remuneration and allowances determined by the Remuneration Tribunal. If there is no determination in force, the member is to be paid such remuneration as is prescribed.

Prescribed allowances

(2) A member to whom subsection (1) applies is to be paid such other allowances as are prescribed.

Subject to Remuneration Tribunal Act 1973

(3) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.

115 Terms and conditions of appointment

Period for which office held

(1) A member is appointed for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for reappointment.

When Judge or assessor ceases to be member

(2) A member who is a Judge or an assessor ceases to be a member if he or she ceases to be a Judge or assessor.
Section 116

Terms and conditions

(3) A member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are prescribed.

116 Oath or affirmation of office

Member to take oath or affirmation

(1) A person who is appointed or re-appointed as a member must take an oath or affirmation in the following form:

“I, ....................................., do swear that I will well and truly serve in the office of (insert name of office) and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, So Help Me God!”.

Or

“I, ....................................., do solemnly and sincerely promise and declare that (as above, omitting the words ‘So Help Me God’).”.

Who oath or affirmation is to be taken before

(2) The oath or affirmation must be taken before:

(a) the Governor-General; or
(b) a Justice of the High Court; or
(c) a judge of another federal court; or
(d) a judge of the Supreme Court of a State or Territory.

117 Leave of absence

Recreation leave

(1) A full-time member has the recreation leave entitlements determined by the Remuneration Tribunal.

Other leave

(2) The Commonwealth Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Commonwealth Minister determines.
118 Resignation

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

119 Termination of appointment—members other than Judges or assessors

Misbehaviour or incapacity

(1) The Governor-General may terminate the appointment of a member, other than a Judge or an assessor, if an address praying for the termination of the member’s appointment on the ground of proved misbehaviour or of physical or mental incapacity is presented to the Governor-General by each House of the Parliament in the same session of the Parliament.

Termination for other reasons

(2) The Governor-General must terminate the appointment of a member, other than a Judge or an assessor, if the member:
(a) becomes bankrupt; or
(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
(c) compounds with his or her creditors; or
(d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

Retirement—incapacity

(3) The Governor-General may, with the consent of a member other than a Judge or an assessor who is:
(a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
(b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
retire the member from office on the ground of incapacity.

Retirement—invalidity—Superannuation Act 1976

(4) In spite of anything contained in this Act, a member who:
Section 120

(a) is an eligible employee for the purposes of the
Superannuation Act 1976; and
(b) has not reached his or her retiring age within the meaning of
that Act;
is not capable of being retired from office on the ground of
invalidity within the meaning of Part IVA of that Act unless the
Commonwealth Superannuation Board of Trustees No. 2 has given
a certificate under section 54C of that Act.

Retirement—invalidity—Superannuation Act 1990

(5) In spite of anything contained in this Act, a member who:
(a) is a member of the superannuation scheme established by
deed under the Superannuation Act 1990; and
(b) is under 60 years of age;
is not capable of being retired from office on the ground of
invalidity within the meaning of that Act unless the
Commonwealth Superannuation Board of Trustees No. 1 has given
a certificate under section 13 of that Act.

120 Suspension of members other than a Judge—misbehaviour or
incapacity

Misbehaviour or incapacity

(1) The Governor-General may suspend a member other than a Judge
from office on the ground of misbehaviour or of physical or mental
incapacity.

Statement of grounds

(2) If the Governor-General suspends a member from office, the
Commonwealth Minister must cause a statement of the ground of
the suspension to be laid before each House of the Parliament
within 7 sitting days of that House after the suspension.

Resolution by a House of Parliament

(3) If such a statement has been laid before a House of the Parliament,
that House may, within 15 sitting days of that House after the day
on which the statement has been laid before it, by resolution,
declare that the member’s appointment should be terminated.
Section 121

Member’s appointment to be terminated

(4) If each House of the Parliament passes the resolution, the Governor-General must terminate the member’s appointment.

Termination of suspension

(5) If, at the end of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed the resolution, the suspension terminates.

Suspension not to affect entitlements

(6) The suspension of a member from office under this section does not affect any entitlement of the member to be paid remuneration and allowances.

121 Outside employment

Consent of Commonwealth Minister required

(1) Except with the consent of the Commonwealth Minister, a full-time member must not engage in paid employment outside the duties of his or her office.

Service in Defence Force

(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

122 Disclosure of interests

Member to disclose conflict of interest

(1) A member who has a conflict of interest in relation to an application under Part 3 or an inquiry by the Tribunal must disclose the matters giving rise to that conflict:
   (a) if the member is the President—to the Commonwealth Minister and the parties; or
   (b) in any other case—to the President and the parties.
Part 6  National Native Title Tribunal
Division 2  Membership of the National Native Title Tribunal

Section 122

Requirement for consent

(2) The member must not take part in the inquiry or exercise any powers in relation to the application or the inquiry unless:
   (a) if the member is the President—the Commonwealth Minister and the parties consent; or
   (b) in any other case—the President and the parties consent.

Meaning of conflict of interest

(3) For the purposes of this section, a member has a conflict of interest in relation to an application under Part 3 or an inquiry by the Tribunal if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member’s functions in relation to that application or inquiry.

(4) Without limiting subsection (3), a person has a conflict of interest at a particular time in relation to an application under Part 3, or an inquiry by the Tribunal, if:
   (a) at that time, the person is employed by, or engaged as a consultant to, an organisation that has an interest in the subject matter of the application or the inquiry; or
   (b) at any time in the 12 months immediately before that time, the person was so employed or engaged.
Division 3—Organisation of the Tribunal

123 Arrangement of business

President may give directions

(1) Subject to section 124, the President may give directions as to any of the following:
   (a) the arrangement of the business of the Tribunal;
   (b) the persons who are to conduct mediation in a particular proceeding, or to provide assistance in making or negotiating agreements under this Act;
   (c) the persons who are to constitute the Tribunal for the purposes of a particular inquiry;
   (d) the places at which the Tribunal is to sit;
   (e) the procedure of the Tribunal generally;
   (f) the procedure of the Tribunal at a particular place.

Factors to be considered

(2) In giving a direction as to the persons who are to constitute the Tribunal for the purposes of a particular inquiry, the President must have regard to the degree of public importance or complexity of the matters to which that inquiry relates.

124 Constitution of Tribunal for exercise of powers

Constitution of Tribunal

(1) The Tribunal for the purposes of a particular inquiry must be constituted by:
   (a) a member; or
   (b) 3 members not more than one of whom is a presidential member.
Part 6  National Native Title Tribunal
Division 3  Organisation of the Tribunal

Section 125

Constitution where 3 members

(2) If the Tribunal is constituted by 3 members, the President must, as far as is reasonably practicable, ensure that the Tribunal includes at least one member with special knowledge in relation to Aboriginal or Torres Strait Islander societies.

125  Reconstitution of the Tribunal

When section applies

(1) This section applies if a member (the unavailable member) who constitutes the Tribunal, or who is one of the members who constitutes the Tribunal, for the purposes of a particular inquiry:

(a) stops being a member; or

(b) for any reason is not available for the purpose of the inquiry.

Where unavailable member constituted Tribunal

(2) If the unavailable member constitutes the Tribunal, the President must direct another member or members to constitute the Tribunal for the purposes of finishing the inquiry.

Other cases

(3) If the unavailable member is one of the members who constitute the Tribunal, the President must either:

(a) direct that the Tribunal is to be constituted for the purposes of finishing the inquiry by the remaining member or members; or

(b) direct that the Tribunal is to be constituted for that purpose by the remaining member or members together with another member or members.

Member who is reappointed

(4) For the purposes of subsections (2) and (3), a member who stops being a member and at a later time becomes a member again is taken, from that later time, to be another member.
Tribunal may have regard to previous proceedings

(5) The Tribunal as constituted in accordance with a direction under subsection (2) or (3) must continue and finish the inquiry and may, for that purpose, have regard to any record of the proceedings of the inquiry made by the Tribunal as previously constituted.

126 Member presiding

The President must give a direction as to the member who is to be the presiding member for a particular inquiry.

127 Places of sitting

Sittings of the Tribunal are to be held from time to time as required at the places at which the registries of the Tribunal are established, but the Tribunal may sit at any place in Australia or to which this Act extends.
Section 128

Division 4—Management of the Tribunal

Subdivision A—Management responsibilities of President and Registrar

128 Management of administrative affairs of Tribunal

President responsible for administrative affairs

(1) The President is responsible for managing the administrative affairs of the Tribunal.

Powers of President

(2) For that purpose, the President may do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:
   (a) entering into contracts; and
   (b) acquiring or disposing of personal property.

Powers are additional to other powers

(3) The powers given to the President by subsection (2) are in addition to any powers given to the President by any other provision of this Act or by any other Act.

Limits on powers

(4) Subsection (2) does not authorise the President to:
   (a) acquire any interest or right that would constitute an interest in land for the purposes of the Lands Acquisition Act 1989; or
   (b) except with the approval of the Commonwealth Minister—enter into a contract under which the Commonwealth is to pay or receive an amount over $250,000 or, if a higher amount is prescribed, that higher amount.

129 Native Title Registrar

In the management of the administrative affairs of the Tribunal, the President is to be assisted by the Native Title Registrar.
Subdivision B—Other officers, Tribunal staff and consultants

130 Deputy Registrars and staff of the Tribunal

Deputy Registrars and staff

(1) In addition to the Registrar, there are to be such Deputy Registrars and staff of the Tribunal as are necessary.

Appointment of Deputy Registrars

(2) The Deputy Registrars are to be appointed by the Registrar.

Employment etc. under Public Service Act

(3) The Deputy Registrars and the staff of the Tribunal are to be persons engaged under the Public Service Act 1999.

Secondment

(4) The Registrar may, on behalf of the President, arrange with an Agency Head within the meaning of the Public Service Act 1999, or with an authority of the Commonwealth, for the services of officers or employees of the Agency or of the authority to be made available for the purposes of the Tribunal.

Powers etc.

(5) The Deputy Registrars and the staff of the Tribunal have such duties, powers and functions as are given by this Act or by the President.

131 Statutory Agency etc. for purposes of Public Service Act

For the purposes of the Public Service Act 1999:

(a) the Registrar and the APS employees assisting the Registrar together constitute a Statutory Agency; and

(b) the Registrar is the Head of that Statutory Agency.
Section 131A

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).

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.

132 Registrar may engage consultants

(1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

Services include research

(2) Without limiting subsection (1), the services that a consultant may be engaged to perform include carrying out research under subsection 108(2).
Part 6  National Native Title Tribunal  
Division 4  Management of the Tribunal

Section 133

How engagement to be made

(3) An engagement under subsection (1) must be made:
   (a) on behalf of the Commonwealth; and
   (b) by written agreement.

Subdivision C—Miscellaneous administrative matters

133 Annual report

(1) As soon as practicable after 30 June in each year, the President must prepare and give to the Commonwealth Minister a report of the management of the administrative affairs of the Tribunal during the year.

(2) The report must include:
   (a) the financial statements required by section 49 of the Financial Management and Accountability Act 1997; and
   (b) an audit report on those statements under section 57 of the Financial Management and Accountability Act 1997.

(3) The Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

136 Proceedings arising out of administration of Tribunal

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Tribunal under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.

226  Native Title Act 1993
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 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.
Part 6  National Native Title Tribunal
Division 4B  How assistance or mediation is to be provided

Section 136H

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.
Division 5—Inquiries and determinations by the Tribunal

Subdivision A—Special inquiries

137 Special inquiries

Ministerial direction

(1) The Commonwealth Minister may, by written notice, direct the Tribunal to hold an inquiry in relation to a particular matter or issue relating to native title.

Matters covered by inquiry

(2) Without limiting subsection (1), the matters that an inquiry may cover include:

(a) the effect on Aboriginal peoples and Torres Strait Islanders of the validation of particular past acts or intermediate period acts; and

(b) alternative forms of compensation that could be provided in relation to acts covered by this Act; and

(c) action that could be taken to assist Aboriginal peoples and Torres Strait Islanders where native title has been extinguished.

138 Notice

The Registrar must notify the public in the determined way about the inquiry.

Subdivision B—Inquiries—General

139 Inquiries

The Tribunal must hold an inquiry into:

(b) an application covered by section 75 (a right to negotiate application); or

(c) a matter or an issue covered by section 137 (a special matter); or
Part 6 National Native Title Tribunal
Division 5 Inquiries and determinations by the Tribunal

Section 140

(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).

140 Inquiries may cover more than one matter

An inquiry may cover more than one matter, issue or application.

141 Parties

Right to negotiate applications

(2) The parties to an inquiry in relation to a right to negotiate application are the Government party, the native title parties and the grantee parties.

Special matters

(3) The parties to an inquiry in relation to a special matter are the Commonwealth Minister and, with leave of the Tribunal, any other person who notifies the Tribunal, in writing, before the start of the inquiry, that they want to be a party.

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.

142 Opportunity to make submissions concerning evidence

Subject to subsection 151(2) and sections 154 and 155, the Tribunal must ensure that every party is given a reasonable opportunity to present his or her case and, in particular, to inspect any documents to which the Tribunal proposes to have regard in
making a determination in the inquiry and to make submissions in relation to those documents.

143 Representation before Tribunal

A party may appear in person or may be represented by a barrister, a solicitor or another person.

144 Manner in which questions to be decided

Questions of law

(1) A question of law arising in an inquiry (including the question whether a particular question is one of law) must be decided in accordance with the opinion of the member presiding.

Other questions

(2) Subject to subsection (1), when the members constituting the Tribunal for the purposes of a particular proceeding are divided in opinion as to the decision to be made on any question:
   (a) if there is a majority of the one opinion—the question must be decided according to the opinion of the majority; or
   (b) in any other case—the question must be decided according to the opinion of the member presiding.

145 Reference of questions of law to the Federal Court

Referral to Federal Court

(1) The Tribunal may, on its own initiative or at the request of a party, refer a question of law arising in an inquiry to the Federal Court for a decision.

Presiding member must agree

(2) A question of law must not be referred to the Court unless the member presiding over the inquiry agrees.

Jurisdiction of Federal Court

(3) The Court has jurisdiction to hear and determine a question of law referred to it under this section.
Tribunal to suspend inquiry

(4) If a question of law arising in an inquiry has been referred to the Court under this section, the Tribunal must not, in that inquiry:
   (a) give a determination to which the question is relevant while the reference is pending; or
   (b) proceed in a manner, or make a determination, that is inconsistent with the opinion of the Court on the question.

146 Evidence and findings in other proceedings

In the course of an inquiry, the Tribunal may, in its discretion:
   (a) receive into evidence the transcript of evidence in any other proceedings before:
       (i) the Tribunal; or
       (ii) a court; or
       (iii) a recognised State/Territory body; or
       (iv) any other person or body;
       and draw any conclusions of fact from that transcript that it thinks proper; and
   (b) adopt any report, findings, decision, determination or judgment of any court, person or body mentioned in any of subparagraphs (a)(i) to (iv) that may be relevant to the inquiry.

147 Power of Tribunal where a proceeding is frivolous or vexatious

The Tribunal may dismiss an application if, at any stage of an inquiry relating to the application, the Tribunal is satisfied that the application is frivolous or vexatious.

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.
149 Power of Tribunal where applicant requests dismissal

The Tribunal may dismiss an application if:
(a) the applicant requests, in writing, that the application be dismissed; and
(b) the Tribunal is satisfied that it is appropriate to dismiss the application.

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.

Subdivision C—Conferences and hearings

150 Conferences

Conference may be held

(1) The President may direct the holding of a conference of the parties or their representatives to help in resolving any matter that is relevant to the inquiry.

Member or officer to preside

(2) The conference must be presided over by a member or by an officer of the Tribunal.

Statements at conference are without prejudice

(3) At a hearing before the Tribunal, unless the parties otherwise agree, evidence may not be given, and statements may not be made, concerning any words spoken or act done at a conference.

Member not to constitute Tribunal

(4) Unless the parties otherwise agree, a member who presides over a conference is not entitled to be a member of the Tribunal as constituted for the purposes of the inquiry.
151 Hearings

(1) For the purposes of an inquiry, the Tribunal may hold hearings.

_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.

152 Right of appearance

Subject to section 154, a party to an inquiry has the right to appear at hearings and conferences that are held for the purposes of the inquiry.

153 Participation by telephone etc.

A person holding a conference mentioned in section 150, and the Tribunal in a hearing for the purposes of an inquiry, may allow a person to participate by:
   (a) telephone; or
   (b) closed-circuit television; or
   (c) any other means of communication.

154 Hearings to be held in public except in special circumstances

_Public hearings_

(1) Subject to subsection (3), a hearing must be held in public.

_Participation by telephone etc._

(2) If, when a hearing is in public, a person participates by a means allowed under section 153, the Tribunal must take such steps as are
reasonably necessary to ensure the public nature of the hearing is preserved.

Private hearings

(3) The Tribunal may, on its own initiative or on the application of a party, if it is satisfied that it is appropriate to do so, direct that a hearing, or part of a hearing, be held in private and give directions as to the persons who may be present.

Concerns of Aboriginal peoples or Torres Strait Islanders

(4) In determining if a hearing or part of a hearing is to be held in private, the Tribunal must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

155 Tribunal may prohibit disclosure of evidence

The Tribunal may direct that:
(a) any evidence given before it; or
(b) the contents of any document produced to it; must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the Tribunal specifies. This section does not limit the Tribunal’s powers under section 154.

156 Powers of Tribunal to take evidence

Evidence on oath or affirmation

(1) The Tribunal may take evidence on oath or affirmation and for that purpose a member of the Tribunal may administer an oath or affirmation.

Power to summon

(2) A member of the Tribunal may summon a person to appear before the Tribunal to give evidence and to produce such documents (if any) as are referred to in the summons.

Witnesses

(3) A party may call witnesses.
Part 6  National Native Title Tribunal
Division 5  Inquiries and determinations by the Tribunal

Section 157

Examination of witnesses

(4) A person appearing as a witness before the Tribunal may be examined.

Leave required for cross-examination or re-examination

(5) A person appearing as a witness before the Tribunal may only be cross-examined or re-examined with the leave of the Tribunal.

Participation by telephone etc.

(6) If a person participates by a means allowed under section 153, the Tribunal may make any arrangements that appear to the Tribunal to be appropriate in the circumstances for administering an oath or affirmation to the person.

157 Tribunal may authorise another person to take evidence

Who may exercise Tribunal’s powers

(1) The powers of the Tribunal under section 156 may be exercised by the Tribunal, or on behalf of the Tribunal by a person who is authorised in writing to do so by the Tribunal.

Limitations apply

(2) The powers may be exercised subject to any limitations that may be specified by the Tribunal.

Powers of person taking evidence

(3) A person authorised to take evidence for the purposes of an inquiry has, for the purpose of taking that evidence, all the powers of the Tribunal under section 156.

Written record to be made

(4) A person who exercises the power of the Tribunal to take evidence on oath or affirmation must cause a written record of the evidence taken to be made and sent to the Tribunal.
Section 158

Interpretation

(5) For the purpose of the exercise of powers by a person authorised, this Act has effect (except where the context otherwise requires) as if a reference to the Tribunal included a reference to that person.

158 Interpreters

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

159 Retention and copying of documents

The Tribunal may keep for a reasonable period, and may make copies of, any documents, or parts of documents, produced to the Tribunal in the course of an inquiry or a hearing.

Subdivision D—Determinations and reports

162 Determination of the Tribunal—right to negotiate applications

Tribunal to make determination

(1) Subject to section 37, after holding an inquiry in relation to a right to negotiate application, the Tribunal must make a determination about the matters covered by the inquiry.

Tribunal must state findings of fact

(2) The Tribunal must state in the determination any findings of fact upon which it is based.

163 Reports after special inquiries

Tribunal to make report

(1) After holding an inquiry in relation to a special matter, the Tribunal must make a report about the matters covered by the inquiry.

Tribunal must state findings of fact

(2) The Tribunal must state in the report any findings of fact upon which it is based.
164 Determinations and reports to be in writing

Determinations and reports by the Tribunal must be in writing and be given to each of the parties.

Subdivision F—Appeals

169 Appeals to Federal Court from decisions and determinations of the Tribunal

Appeal from Tribunal determination or decision—right to negotiate applications

(1) A party to an inquiry relating to a right to negotiate application before the Tribunal may appeal to the Federal Court, on a question of law, from any decision or determination of the Tribunal in that proceeding.

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.

How appeal is to be instituted

(4) An appeal is to be instituted:

(a) within the period of 28 days starting on the day on which the decision or determination of the Tribunal is given to the person or within such further time as the Court (whether before or after the end of that period) allows; and

(b) in such manner as is prescribed by rules of court made under the Federal Court of Australia Act 1976.

Jurisdiction of Federal Court

(5) The Court has jurisdiction to hear and determine appeals instituted in the Court in accordance with this section and that jurisdiction may be exercised by the Court constituted as a Full Court.

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Court to make order

(6) The Court must hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision.

Orders

(7) Without limiting subsection (6), the orders that may be made by the Court on an appeal include:
   (a) an order affirming or setting aside the decision or determination of the Tribunal; or
   (b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court.

170 Operation and implementation of a decision or determination that is subject to appeal

Operation of decision or determination

(1) Subject to this section, the institution of an appeal to the Federal Court from a decision or determination of the Tribunal does not affect the operation of the decision or determination or prevent the taking of action to implement the decision or determination.

Court or Judge may make orders

(2) If an appeal is instituted in the Court from a decision or determination of the Tribunal, the Court or a Judge of the Court may make such order staying or otherwise affecting the operation or implementation of either or both of the following:
   (a) the decision or determination of the Tribunal or a part of that decision or determination; and
   (b) the decision or determination to which the proceeding before the Tribunal related or a part of that decision or determination;

as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.
Section 170

_Court or Judge may vary orders_

(3) The Court or a Judge of the Court may vary or revoke an order at any time.

_Effect of orders_

(4) An order:

(a) is subject to such conditions as are specified in the order; and

(b) has effect until:

(i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision or determination; or

(ii) if no period is so specified—the giving of a decision on the appeal.
Division 6—Offences

171 Failure of witness to attend

(1) A person who has been served in the prescribed way with a summons to appear before the Tribunal to give evidence and has been paid reasonable expenses must not:
   (a) fail to attend as required by the summons; or
   (b) fail to appear and report from day to day, unless excused, or released from further attendance, by the Tribunal.

Maximum Penalty: 20 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

(3) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

172 Refusal to be sworn or to answer questions etc.

(1) A person appearing before the Tribunal to give evidence must not:
   (a) refuse or fail to take either an oath or affirmation when required by the Tribunal; or
   (b) refuse or fail to answer a question that the person is required to answer by the Tribunal.

Maximum Penalty: 20 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

173 Giving of false or misleading evidence

A person appearing before the Tribunal to give evidence must not intentionally give evidence that the person knows is false or misleading in a material particular.
Part 6 National Native Title Tribunal
Division 6 Offences

Section 174

Maximum Penalty: 40 penalty units.

174 Refusal to produce document

(1) A person must not refuse or fail to produce a document that the person is required to produce by a summons under section 156 that has been served on the person in the prescribed way.

Maximum Penalty: 20 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the Criminal Code).

176 Contravention of direction prohibiting disclosure of evidence

(1) A person must not disclose any material in contravention of a direction made under section 92, 136F or 155.

Maximum Penalty: 40 penalty units.

(2) Subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

177 Contempt of Tribunal

A person must not:

(a) obstruct or hinder the Tribunal, a member or a consultant engaged under subsection 131A(1) in the performance of the functions of the Tribunal; or
(b) disrupt the taking of evidence by the Tribunal; or
(c) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Maximum Penalty: 40 penalty units.
Division 7—Miscellaneous

178 Sending of documents to the Federal Court

If an appeal to the Federal Court is made under section 169 or a question of law is referred to the Court under section 145:

(a) the Tribunal must send to the Court all documents and other things that were before the Tribunal in relation to the inquiry to which the determination relates; and

(b) at the end of the proceeding before the Court, the Court must return the documents and other things to the Tribunal.

179 Return of documents etc. at completion of proceeding

If no appeal to Federal Court

(1) If:

(a) a proceeding before the Tribunal has ended; and

(b) either:

(i) the time within which an appeal from the decision or determination of the Tribunal in the proceeding may be made; or

(ii) if that time has been extended—the period of the extension;

has expired without an appeal being made;

the President may arrange for a document or any other thing given to the Tribunal for the purposes of the proceeding (other than a document or thing sent under paragraph 178(a)) to be returned to the person who gave it to the Tribunal.

Documents etc. returned by Federal Court

(2) If the Federal Court returns a document or other thing that was sent under paragraph 178(a) to the Tribunal, the President may arrange for the document to be returned to the person who gave it to the Tribunal.
Section 180

180 Protection of members and persons giving evidence

Protection of members

(1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a Justice of the High Court.

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.

Protection of representatives

(2) A barrister, solicitor or other person appearing before the Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Protection of witnesses

(3) Subject to this Part, a person summoned to attend, or appearing, before the Tribunal to give evidence has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

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
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(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.
Section 182

182 Fees for persons giving evidence

Prescribed fees etc.

(1) A person, other than a party, summoned to appear before the Tribunal to give evidence is entitled to be paid, for his or her attendance, any fees, and allowances for expenses, that may be prescribed.

Who must pay fees etc.

(2) The fees and allowances must be paid:
   (a) if the witness was summoned at the request of a party—by that party; or
   (b) in any other case—by the Commonwealth.

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.
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*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 1999* who occupies a specified position in the Department.
Part 7—Register of Native Title Claims

184 Claims to native title

A reference in this Part to a claim is a reference to an assertion contained in an application filed in the Federal Court, or given to a recognised State/Territory body, that a person or persons hold native title in relation to a specified area of land or waters.

185 Register of Native Title Claims

Establishment

(1) There is to be a register known as the Register of Native Title Claims.

Registrar to establish and keep

(2) The Register must be established and kept by the Native Title Registrar.

Register may be kept by computer

(3) The Register may be kept by use of a computer.

Register may consist of 2 or more registers

(4) The Register may consist of 2 or more registers, each of which contains so much of the information that must be entered into the Register as the Registrar determines.

186 Contents of the Register

Information to be included

(1) The Register must contain the following information for each claim covered by subsection 190(1):

   (a) whether the application was filed in the Federal Court or lodged with a recognised State/Territory body;
   (b) if the application was lodged with a recognised State/Territory body—the name of that body;
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(c) the date on which the application was filed or lodged;
(ca) the date on which the claim is entered on the Register;
(d) the name and address for service of the applicant;
(e) the area of land or waters covered by the claim;
(f) a description of the persons who it is claimed hold the native title;
(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.

Note: The person mentioned in paragraph (1)(d) is the registered native title claimant. This is the person to whom notices, for example under paragraph 29(2)(b), are to be given.

Other information

(2) The Registrar may include in the Register such other details about the claim as the Registrar thinks appropriate.

187 Inspection of the Register

Register to be available during business hours

(1) Subject to section 188, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.

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.
188 Parts of the Register may be kept confidential

Public interest test

(1) Section 187 does not apply to a part of the Register if the Registrar is satisfied that it would not be in the public interest for information in that part of the Register to be available to the public.

Note: Such information must not be made available to the public: see subsection 98A(2).

Concerns of Aboriginal peoples and Torres Strait Islanders

(3) In determining whether it would or would not be in the public interest for information in that part of the Register 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.

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

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(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
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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.
Section 190A

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.

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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.
Part 7  Register of Native Title Claims

Section 190B

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:
Section 190C

(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:

262 Native Title Act 1993
(a) the application has been certified under Part 11 by each representative Aboriginal/Torres Strait Islander body that could certify the application in performing its functions under that Part; or

Note: An application can be certified under section 203BE, or may have been certified under the former paragraph 202(4)(d).

(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.

**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.
Section 191

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.

191 Delegation by Registrar to recognised State/Territory body

The Registrar may, if the State or Territory concerned agrees, delegate to a recognised State/Territory body of a State or Territory all or any of his or her powers under this Part in relation to so
Section 191

much of the Register as relates to land or waters within the jurisdictional limits of that State or Territory.
192 National Native Title Register

Establishment
(1) There must be a register known as the National Native Title Register.

Registrar to establish and keep
(2) The Register must be established and kept by the Native Title Registrar.

Register may be kept by computer
(3) The Register may be kept by use of a computer.

Register may consist of 2 or more registers
(4) The Register may consist of 2 or more registers, each of which contains so much of the information that must be entered into the Register as the Registrar determines.

193 Contents of the Register

Determinations to be included
(1) The Register must contain the information set out in subsection (2) in relation to the following:
   (a) approved determinations of native title by the Federal Court or the High Court;
   (b) approved determinations of native title by recognised State/Territory bodies;
   (c) other determinations of, or in relation to, native title in decisions of courts or tribunals.
Information to be included

(2) The Register is to contain the following information in relation to each determination:

(a) the name of the body that made the determination;
(b) the date on which the determination was made;
(c) the area of land or waters covered by the determination;
(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.

Other information

(3) The Registrar may include in the Register such other details about the determination or decision as the Registrar thinks appropriate.

194 Inspection of the Register

Register to be available during business hours

(1) Subject to section 195, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.
Section 195

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.

195 Parts of the Register may be kept confidential

Public interest test

(1) Section 194 does not apply to a part of the Register if the Registrar is satisfied that it would not be in the public interest for information in that part of the Register to be available to the public.

Concerns of Aboriginal peoples or Torres Strait Islanders

(2) In determining whether it would or would not be in the public interest for information in that part of the Register 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.

197 Keeping the Register

The Native Title Registrar must, as soon as is practicable, include in the Register details of determinations or decisions covered by subsection 193(1).

198 Delegation by Registrar to recognised State/Territory body

The Registrar may delegate to a recognised State/Territory body in a State or Territory any or all of his or her powers and duties under this Part in relation to so much of the Register as relates to land or waters within the jurisdictional limits of that State or Territory.

199 Registrar to notify land titles office

Registrar to notify

(1) The Registrar must, as soon as is practicable after including details of a determination or decision in the Register, advise the relevant land titles office of the determination or decision.
Section 199

Definition

(2) The relevant land titles office is the prescribed body, responsible for keeping a register of interests in real estate, in the State or Territory within whose jurisdictional limits the land or waters covered by the determination or decision are located.
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.
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 203BE(5)(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
Part 8A  Register of Indigenous Land Use Agreements

Section 199C

(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.

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.
Financial assistance to States and Territories

200 Financial assistance to States and Territories

Financial assistance that may be given

(1) The Commonwealth may enter into a written agreement with the State or Territory for the provision of financial assistance to that State or Territory in relation to:
   (a) the satisfaction of any liability to pay compensation for acts affecting native title; or
   (b) the satisfaction of any liability to pay any costs incidental to any claim for such compensation or determination of liability for such compensation; or
   (c) costs and expenses of establishing and administering any recognised State/Territory body, or equivalent body (within the meaning of subsection 207B(1)), of that State or Territory; or
   (d) costs and expenses of administering any provisions having effect under subsection 43(1).

Conditions

(2) The financial assistance is to be provided on such conditions as are determined by the Commonwealth Minister and set out in the agreement.
Part 11—Representative Aboriginal/Torres Strait Islander bodies

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.

native title application means an application under subsection 24DJ(1) or section 61, 69 or 75, and includes an appeal under subsection 169(1).

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.
Part 11  Representative Aboriginal/Torres Strait Islander bodies
Division 1  Preliminary

Section 201B

*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 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 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.
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.

Yes

Are there one or more representative bodies for the area?

Invitations may be made under section 203A at any time to all eligible bodies

No

Initially, invitations may only be made to existing representative bodies (subsection 203AA(3))

Then, after the invitations are made...

Did any of those existing representative bodies apply within the relevant application period?

Invitations may be made under section 203A, after the end of the application period, to all eligible bodies (paragraph 203AA(4)(a))

No

Yes

Has an existing representative body that applied within the application period been recognised as the representative body for the area?

Invitations may be made under section 203A, after all the applications have been rejected, to all eligible bodies (paragraph 203AA(4)(b))

No

Yes

Only one representative body can be recognised for the area (subsection 203AD(4)), so further invitations would be unnecessary

Note: These rules will not apply once the transition period has ended.
Part 11  Representative Aboriginal/Torres Strait Islander bodies
Division 2  Recognition of representative Aboriginal/Torres Strait Islander bodies

Section 203AB

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

(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.

280  Native Title Act 1993
(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.

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
Representative Aboriginal/Torres Strait Islander bodies  Part 11
Recognition of representative Aboriginal/Torres Strait Islander bodies  Division 2

Section 203AF

(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;

(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
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(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 193X of the Aboriginal and Torres Strait Islander Act 2005 in relation to funding provided to the body under section 203C or 203FE of this Act;
(c) any notices that the Secretary of the Department has given to the Minister under section 203F 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).
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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 193X of the Aboriginal and Torres Strait Islander Act 2005 in relation to funding provided to the body under section 203C or 203FE of this Act;
(c) any notices that the Secretary of the Department has given to the Minister under section 203F 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.

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, or is not satisfactorily representing, persons who hold or may hold native title in the area; or
(b) will be able to consult effectively, or is not consulting 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, or are operating, 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.
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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:

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(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:
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(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

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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:

(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:
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(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:

(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.

Native Title Act 1993
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.
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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.
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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
   (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:

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(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 Funding of representative bodies

Representative body may apply for funding

(1) A representative body may apply to the Secretary of the Department for funding under this section for the purpose of enabling the body to perform its functions or exercise its powers.

Provision of funds

(2) The Secretary of the Department may, on behalf of the Commonwealth, provide funds to a representative body, by making a grant to the representative body or in any other way the Secretary considers appropriate, from money appropriated by the Parliament.

(3) The provision of funding 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 Conditions of funding

Conditions of funding

(1) Funds provided to a representative body under this Division, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate. However, the Secretary 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 the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds.
provided, otherwise than in accordance with the conditions of
the funding; 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 funding provided on withdrawal of
recognition

(1A) The provision of funding, however achieved, 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 for which
funding is provided;
the representative body must repay to the Commonwealth an
amount equal to so much (if any) of the funding provided as is
uncommitted at the time the recognition is withdrawn.

Uncommitted amount of funding provided

(1B) For the purposes of subsection (1A), the amount of funding
provided that is uncommitted is the difference (if any) between:
(a) the portion (if any) of funding provided that has, at the time
the recognition is withdrawn, been paid to the representative
body by the Commonwealth; and
(b) the sum of:
(i) the portion (if any) of funding provided 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 funding provided 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 providing funds

(2) In providing funds and deciding on the conditions to be imposed
under subsection (1), the Secretary of the Department must have
regard to the matters set out in the strategic plan (see section 203D) of the representative body concerned. The conditions on which money is provided must be consistent with the strategic plan.

**Bodies must comply with conditions of funding**

(3) The representative body must comply with the conditions of funding.

**Serious or repeated breaches of conditions**

(5) If the Secretary of the Department considers that the representative body:

(a) has committed, or is committing, serious breaches of conditions to which the provision of funding has been made subject under this Division; or

(b) has repeatedly breached, or is repeatedly breaching, such conditions;

the Secretary must give to the Commonwealth Minister a written notice informing the Minister of the breaches and stating what measures the Secretary is taking, or proposes to take, as a result of the breaches.

**Certain instruments not to be legislative instruments**

(6) An instrument that:

(a) determines conditions of funding for the purposes of subsection (1); or

(b) informs the Minister of a breach under subsection (5);

is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

**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 Finance Minister in writing.

(2A) The Finance Minister may, by written instrument, delegate any of the Finance Minister’s powers or functions under this section to an official (within the meaning of the Financial Management and Accountability Act 1997). In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

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
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(ii) the operations of which are subject to prudential supervision or regulation under a law of the Commonwealth, a State or a Territory.

*Finance Minister* means the Minister who administers the *Financial Management and Accountability Act 1997*.

*surplus money* means money received by the representative body under this Division that is not immediately required for the purposes of the body.
Part 11  Representative Aboriginal/Torres Strait Islander bodies

Division 5  Accountability

Section 203D

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:
   (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 Department

(3) The representative body must prepare the strategic plan in consultation with the Department.
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 the Department, 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
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(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 the Department by 15 October in the next financial year.

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Extensions of the deadline

(2) The Secretary of the Department 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), the Secretary of the Department 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.

*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

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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 Part 4B of the Aboriginal and Torres Strait Islander Act 2005, which enables the Office of Evaluation and Audit, when requested to do so by the Commonwealth Minister or a Commonwealth authority that has made a grant to a representative body, or when the funding agreement in relation to a grant made to a representative body so provides, to evaluate and audit the operations of the body that has received the grant.

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:
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(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.

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 section 70 of the Crimes Act 1914, to be a Commonwealth officer.

Auditor or investigator taken to be a Commonwealth public official

(9) To avoid doubt, a person appointed under subsection (1) of this section is taken, for the purposes of the Criminal Code, to be a Commonwealth public official.

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 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.

Reasonable excuse for non-compliance

(4A) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4A) (see subsection 13.3(3) of the Criminal Code).

Self-incrimination

(5) For the purposes of subsection (4A), 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).

**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
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(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 Commonwealth authority within the meaning of section 7 of that Act.
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203F Secretary to inform Minister of certain matters

If the Secretary of the Department 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;
the Secretary must give written notice of its opinion to the Commonwealth Minister.

Note: The Secretary must also give written notice of breaches of grant conditions to the Commonwealth Minister—see subsection 203CA(5).

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 the Secretary of the Department 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, the Secretary must appoint to conduct the review a person who, in the Secretary’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 the Secretary whether:
   (a) the decision should be affirmed; or
   (b) the Secretary 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.

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 the Secretary within 3 months after the day on which he or she was appointed, or within such other period as the Secretary 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 the Secretary

(7) The Secretary 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) The Secretary 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.

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.

203FE Provision of funding by the Commonwealth

Funding if there is no representative body

(1) The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate, 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.

Funding following certain decisions under section 203FB

(2) The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate, 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 funding

(3) Funds provided to a person or body under this section, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate. However, the Secretary of the Department 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 the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided otherwise than in accordance with the conditions of the funding; 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
(g) the giving of information relating to the performance of the functions referred to in subsection (1) or (2), as the case requires.

Certain instruments not to be legislative instruments

(3A) An instrument that determines conditions of funding for the purposes of subsection (3) is not a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Funding period to be specified

(4) The Secretary of the Department must determine the period during which the person or body may spend the money.

Funding period may be extended

(5) If the Secretary of the Department considers it appropriate, the Secretary 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 funding, and with any determinations under subsection (4) or (5).

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 the Secretary of the Department for funding 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.

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:
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(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 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.

203FI Delegation

The Secretary of the Department may, by written instrument,
delegate to an SES employee, to an acting SES employee or to
another person of equivalent rank, all or any of the Secretary’s
powers under sections 203C, 203CA, 203DC, 203F, 203FB, 203FE
and 203FG.

Note 1: The expressions SES employee, and acting SES employee are defined
in section 17AA of the Acts Interpretation Act 1901.

Note 2: See also sections 34AA and 34AB of the Acts Interpretation Act 1901.
Part 12—Parliamentary Joint Committee on Native Title and the Land Account

204 Establishment and membership

(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Account, must be appointed.

(2) The Parliamentary Joint Committee must consist of 10 members, of whom:
   (a) 5 must be senators appointed by the Senate; and
   (b) 5 must be members of the House of Representatives appointed by that House.

(3) The appointment of members by a House must be in accordance with that House’s practice relating to the appointment of members of that House to serve on joint select committees of both Houses.

(4) A person is not eligible for appointment as a member if he or she is:
   (a) a Minister; or
   (b) the President of the Senate; or
   (c) the Speaker of the House of Representatives; or
   (d) the Deputy President and Chairman of Committees of the Senate; or
   (e) the Deputy Speaker and Chairman of Committees of the House of Representatives.

(5) A member ceases to hold office:
   (a) when the House of Representatives expires or is dissolved; or
   (b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or
   (c) if he or she ceases to be a member of the House by which he or she was appointed; or
(d) if he or she resigns his or her office as provided by 
subsection (6) or (7), as the case requires.

(6) A member appointed by the Senate may resign his or her office by 
writing signed and delivered to the President of the Senate.

(7) A member appointed by the House of Representatives may resign 
his or her office by writing signed and delivered to the Speaker of 
that House.

(8) A House may appoint one of its members to fill a vacancy among 
the members of the Parliamentary Joint Committee appointed by 
that House.

205 Powers and proceedings

Subject to this Part, all matters relating to the Parliamentary Joint 
Committee’s powers and proceedings must be determined by 
resolution of both Houses.

206 Duties

(1) The Parliamentary Joint Committee’s duties are:

(a) to consult extensively about the implementation and 
operation of this Act and Part 4A of the *Aboriginal and 
Torres Strait Islander Act 2005* with:

(i) groups of Aboriginal peoples and Torres Strait 
Islanders; and

(ii) industry organisations; and

(iii) Commonwealth, State, Territory and local governments; 
and

(iv) other appropriate persons and bodies; and

(b) to report from time to time to both Houses on the 
implementation and operation of this Act; and

(c) to examine each annual report that is prepared by the 
President of the NNTT or by any person under Part 4A of the 
*Aboriginal and Torres Strait Islander Act 2005* and of which a 
copy has been laid before a House, and to report to both 
Houses on matters:

(i) that appear in, or arise out of, that annual report; and
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(ii) to which, in the Parliamentary Joint Committee’s opinion, the Parliament’s attention should be directed; and

(d) from time to time, to inquire into and, as soon as practicable after the inquiry has been completed, to report to both Houses on:

(i) the effectiveness of the NNTT; and

(ii) the extent to which there are recognised State/Territory bodies; and

(iii) the appropriateness of powers of delegation exercisable by the Registrar under this Act; and

(iv) the extent of extinguishment or impairment of native title rights and interests as a result of the operation of this Act; and

(vi) the effect of the operation of this Act on land management; and

(vii) the operation of the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Account established by Part 4A of the *Aboriginal and Torres Strait Islander Act 2005*; and

(e) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

(2) In paragraph (1)(c), the reference to an annual report prepared under Part 4A of the *Aboriginal and Torres Strait Islander Act 2005* includes a reference to a report of the Indigenous Land Corporation referred to in subsection 193K(2) of that Act.

207 Sunset provision

This Part ceases to be in force on 23 March 2006.
Part 12A—State/Territory bodies

207A Recognised State/Territory body

_Determination_

(1) The Commonwealth Minister may, in writing, determine that a court, office, tribunal or body (which court, office, tribunal or body is called the _body_) established by or under a law of a State or Territory is a _recognised State/Territory body_ if the State Minister for the State, or Territory Minister for the Territory, nominates the body to the Commonwealth Minister for the purposes of this section.

_Criteria to be satisfied_

(2) 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) any procedures under the law of the State or Territory for:
   (i) approved determinations of native title by the body; and
   (ii) determinations of compensation for acts affecting native title;

   will be consistent with those set out in this Act; and

(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

(b) any procedures that will apply under the law of the State or Territory for the registration and notification of any claims in respect of native title that may be made to the body will be efficient; and
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(c) the body will have available to it, through its membership or otherwise, appropriate expertise (including expertise in matters relating to Aboriginal peoples and Torres Strait Islanders) for performing its functions in relation to native title; and

(d) the procedures of the body under the law of the State or Territory in performing its functions in relation to native title will be informal, accessible and expeditious; and

(e) the body will, under the law of the State or Territory, be able to mediate matters in appropriate cases; and

(f) the body will have adequate resources to enable it to perform its functions in relation to native title; and

(h) provisions under the law of the State or Territory to similar effect as those in Division 6 of Part 2 (which deals with the holding of native title etc. by bodies corporate) will apply in relation to any approved determination of native title by the body; and

(i) the law of the State or Territory will require the Native Title Registrar to be informed of:
   (i) any applications for decisions, orders or judgments of the body that involve an approved determination of native title; and

   (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

   (ii) the making of any such determination by the body; and

(j) any other requirement that the Commonwealth Minister considers relevant will be satisfied.

More than one body

(3) The Commonwealth Minister may determine more than one body in respect of the same State or Territory.
De-recognition

(4) If the Commonwealth Minister at any time is not satisfied as mentioned in subsection (2) in relation to a recognised State/Territory body, he or she 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 Commonwealth Minister is still not satisfied—in writing, revoke the determination in relation to the body.

Regulations to make transitional provisions

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

Effect of recognition

(6) The making of a determination in relation to a body under this section does not affect any functions of the NNTT under Division 1 of Part 6 or jurisdiction of the Federal Court under Division 1A of Part 4.

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
Part 12A  State/Territory bodies

Section 207B

(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

Native Title Act 1993
(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.
Part 13—Miscellaneous

208 Act not to apply so as to exceed Commonwealth power

*Intention of Parliament*

(1) Unless the contrary intention appears, if a provision of this Act:
   (a) would, apart from this section, have an invalid application; and
   (b) also has at least one valid application;
   it is the Parliament’s intention that the provision is not to have the invalid application, but is to have every valid application.

*When provision not to have valid operation*

(2) Despite subsection (1), the provision is not to have a particular valid application if:
   (a) apart from this section, it is clear, taking into account the provision’s context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth’s legislative power; or
   (b) the provision’s operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth’s legislative power.

*Where contrary intention*

(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

*Definitions*

(4) In this section:

   *application* means an application in relation to:
Section 209

(a) one or more particular persons, things, matters, places, circumstances or cases; or
(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

Invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth’s legislative power.

Valid application, in relation to a provision, means an application that, if it were the provision’s only application, would be within the Commonwealth’s legislative power.

209 Reports by Aboriginal and Torres Strait Islander Social Justice Commissioner

Yearly report

(1) As soon as practicable after 30 June in each year, the Aboriginal and Torres Strait Islander Social Justice Commissioner (appointed under the Human Rights and Equal Opportunity Commission Act 1986) must prepare and submit to the Commonwealth Minister a report on:
   (a) the operation of this Act; and
   (b) the effect of this Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.

Reports on particular matters

(2) The Commonwealth Minister may at any time, by written notice, direct the Commissioner to report to the Commonwealth Minister on any matter covered by paragraph (1)(a) or (b).

210 Operation of beneficial land rights laws not affected

Nothing in this Act affects the rights or interests of any person under:
   (a) the Aboriginal Land Grant (Jervis Bay Territory) Act 1986; or
   (b) the Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987; or
   (c) the Aboriginal Land Rights (Northern Territory) Act 1976.
211 Preservation of certain native title rights and interests

Requirements for removal of prohibition etc. on native title holders

(1) Subsection (2) applies if:

(a) the exercise or enjoyment of native title rights and interests in relation to land or waters consists of or includes carrying on a particular class of activity (defined in subsection (3)); and
(b) a law of the Commonwealth, a State or a Territory prohibits or restricts persons from carrying on the class of activity other than in accordance with a licence, permit or other instrument granted or issued to them under the law; and
(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
(c) the law is not one that confers rights or interests only on, or for the benefit of, Aboriginal peoples or Torres Strait Islanders.

Removal of prohibition etc. on native title holders

(2) If this subsection applies, the law does not prohibit or restrict the native title holders from carrying on the class of activity, or from gaining access to the land or waters for the purpose of carrying on the class of activity, where they do so:

(a) for the purpose of satisfying their personal, domestic or non-commercial communal needs; and
(b) in exercise or enjoyment of their native title rights and interests.

Note: In carrying on the class of activity, or gaining the access, the native title holders are subject to laws of general application.

Definition of class of activity

(3) Each of the following is a separate class of activity:

(a) hunting;
(b) fishing;
(c) gathering;
(d) a cultural or spiritual activity;
Section 212

(e) any other kind of activity prescribed for the purpose of this paragraph.

212 Confirmation of ownership of natural resources, access to beaches etc.

Confirmation of ownership of natural resources etc.

(1) Subject to this Act, a law of the Commonwealth, a State or Territory may confirm:
   (a) any existing ownership of natural resources by the Crown in right of the Commonwealth, the State or the Territory, as the case may be; or
   (b) any existing right of the Crown in that capacity to use, control and regulate the flow of water; or
   (c) that any existing fishing access rights prevail over any other public or private fishing rights.

Confirmation of access to beaches etc.

(2) A law of the Commonwealth, a State or a Territory may confirm any existing public access to and enjoyment of:
   (a) waterways; or
   (b) beds and banks or foreshores of waterways; or
   (c) coastal waters; or
   (d) beaches; or
   (da) stock-routes; or
   (e) areas that were public places at the end of 31 December 1993.

Effect of confirmation

(3) Any confirmation under this section does not extinguish any native title rights and interests and does not affect any conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.
213 Provisions relating to Federal Court jurisdiction

Native title to be determined in accordance with this Act

(1) If, for the purpose of any matter or proceeding before the Federal Court, it is necessary to make a determination of native title, that determination must be made in accordance with the procedures in this Act.

Matters arising under this Act

(2) Subject to this Act, the Federal Court has jurisdiction in relation to matters arising under this Act.

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 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, 203AE, 203AF or 203AG or subsection 203AH(2);

(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).

215 Regulations

General

(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.
Prescribed fees

(2) Without limiting subsection (1):
   (a) the regulations may make provision:
      (i) prescribing fees to be paid for inspecting the Register of
           Native Title Claims, the Register of Indigenous Land
           Use Agreements or the National Native Title Register;
           and
      (ii) for or in relation to the waiver or refund, in whole or in
           part, of such fees; and
   (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
   (b) the regulations may make provision:
      (i) prescribing fees to be paid in relation to applications to
           the Native Title Registrar; and
      (ia) the waiver, in whole or in part, of those fees; and
      (ii) for or in relation to the refund, in whole or in part, of
           fees so paid where proceedings on the applications
           terminate in a manner favourable to the applicants; and
   (c) regulations prescribing fees may:
      (i) prescribe fees in relation to a particular class or classes
           of applications only; and
      (ii) prescribe different fees in relation to different classes of
           applications.

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.
(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.
Part 14—Amendment of Acts

Section 216-221

Note:

The amendments made by this Part are incorporated in the compilations on SCALEplus and ComLaw.

Federal Court Act 1976
Jurisdiction of Courts (Cross-vesting) Act 1987
Petroleum (Submerged Lands) Act 1967
Minerals (Submerged Lands) Act 1981
[repealed by Act No. 29, 1994, s. 3]

For access to the wording of the amendments made by this Part, see Act No. 110, 1993.
Part 15—Definitions

Division 1—List of definitions

222 List of definitions

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Definitions Part 15
Key concepts: Native title and acts of various kinds etc. Division 2

Section 223

Division 2—Key concepts: Native title and acts of various kinds etc.

223 Native title

Common law rights and interests

(1) The expression native title or native title rights and interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

(c) the rights and interests are recognised by the common law of Australia.

Hunting, gathering and fishing covered

(2) Without limiting subsection (1), rights and interests in that subsection includes hunting, gathering, or fishing, rights and interests.

Statutory rights and interests

(3) Subject to subsections (3A) and (4), if native title rights and interests as defined by subsection (1) are, or have been at any time in the past, compulsorily converted into, or replaced by, statutory rights and interests in relation to the same land or waters that are held by or on behalf of Aboriginal peoples or Torres Strait Islanders, those statutory rights and interests are also covered by the expression native title or native title rights and interests.

Note: Subsection (3) cannot have any operation resulting from a future act that purports to convert or replace native title rights and interests unless the act is a permissible future act.

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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).

Case not covered by subsection (3)

(4) To avoid any doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title rights and interests):
   (a) in a pastoral lease granted before 1 January 1994; or
   (b) in legislation made before 1 July 1993, where the reservation or condition applies because of the grant of a pastoral lease before 1 January 1994.

224 Native title holder

The expression native title holder, in relation to native title, means:
   (a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust—the prescribed body corporate; or
   (b) in any other case—the person or persons who hold the native title.

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.

226 Act

Section affects meaning of act in references relating to native title

(1) This section affects the meaning of act in references to an act affecting native title and in other references in relation to native title.

Certain acts included

(2) An act includes any of the following acts:
   (a) the making, amendment or repeal of any legislation;
   (b) the grant, issue, variation, extension, renewal, revocation or suspension of a licence, permit, authority or instrument;
   (c) the creation, variation, extension, renewal or extinguishment of any interest in relation to land or waters;
   (d) the creation, variation, extension, renewal or extinguishment of any legal or equitable right, whether under legislation, a contract, a trust or otherwise;
   (e) the exercise of any executive power of the Crown in any of its capacities, whether or not under legislation;
   (f) an act having any effect at common law or in equity.

Acts by any person

(3) An act may be done by the Crown in any of its capacities or by any other person.

227 Act affecting native title

An act affects native title if it extinguishes the native title rights and interests or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.
228 Past act

Definition

(1) This section defines past act.

Acts before 1 July 1993 or 1 January 1994

(2) Subject to subsection (10), if:
   (a) either:
      (i) at any time before 1 July 1993 when native title existed in relation to particular land or waters, an act consisting of the making, amendment or repeal of legislation took place; or
      (ii) at any time before 1 January 1994 when native title existed in relation to particular land or waters, any other act took place; and
   (b) apart from this Act, the act was invalid to any extent, but it would have been valid to that extent if the native title did not exist;

   the act is a past act in relation to the land or waters.

Options exercised on or after 1 January 1994 etc.

(3) Subject to subsection (10), an act that takes place on or after 1 January 1994 is a past act if:
   (a) it would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and
   (b) it takes place:
      (i) in exercise of a legally enforceable right created by the making, amendment or repeal of legislation before 1 July 1993 or by any other act done before 1 January 1994; or
      (ii) in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith before 1 July 1993, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made; and
   (c) the act is not the making, amendment or repeal of legislation.
Extensions, renewals etc.

(4) Subject to subsections (6) and (10), an act (the later act) that takes place on or after 1 January 1994 is a past act if:

(a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and

(b) an act (the earlier act) that is a past act because of any subsection of this section (including because of another application of this subsection) took place before the later act; and

(c) the earlier act created interests in a person and the later act creates interests in:

(i) the same person; or

(ii) another person who has acquired the interests of the first person (by assignment, succession or otherwise);

in relation to the whole or part of the land or waters to which the earlier act relates; and

(d) the interests created by the later act take effect before or immediately after the interests created by the earlier act cease to have effect; and

(e) the interests created by the later act permit activities of a similar kind to those permitted by the earlier act.

Examples of similar and dissimilar acts for the purposes of paragraph (4)(e)

(5) The following are examples for the purposes of paragraph (4)(e):

(a) the grant of a lease that permits mining only for a particular mineral followed by the grant of a lease that permits similar mining for another mineral is an example of a case where interests created by an earlier act permit activities that are of a similar kind to those permitted by a later act;

(b) the grant of a lease that permits only grazing followed by the grant of a lease that permits mining is an example of a case where interests created by an earlier act permit activities that are not of a similar kind to those permitted by a later act.
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Cases excluded from subsection (4)

(6) Subsection (4) does not apply if:
   (a) the earlier act was the creation of a non-proprietary interest in relation to land or waters and the later act is the creation of a proprietary interest in land or waters; or
   (b) the earlier act was the creation of a proprietary interest in land or waters and the later act is the creation of a larger proprietary interest in land or waters; or
   (c) if the earlier act contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders—the later act does not contain the same reservation or condition; or
   (d) the earlier act or the later act is the making, amendment or repeal of legislation.

Example of earlier and later acts for the purposes of paragraph (6)(a)

(7) For the purposes of paragraph (6)(a), the issue of a licence followed by the grant of a lease is an example of an earlier act that is the creation of a non-proprietary interest in relation to land and a later act that is the creation of a proprietary interest in land.

Example of earlier and later acts for the purposes of paragraph (6)(b)

(8) For the purposes of paragraph (6)(b), the grant of a lease followed by the grant of a freehold estate is an example of an earlier act that is the creation of a proprietary interest in land and a later act that is the creation of a larger proprietary interest in land.

Other extensions, and developments, of earlier acts

(9) Subject to subsection (10), an act (the later act) that takes place on or after 1 January 1994 is a past act if:
   (a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and
   (b) an act (the earlier act) that is a past act because of any subsection of this section took place before the later act; and
(c) the earlier act contained or conferred a reservation, condition, permission or authority under which the whole or part of the land or waters to which the earlier act related was to be used at a later time for a particular purpose (for example, a reservation for forestry purposes); and

(d) the later act is done in good faith under or in accordance with the reservation, condition, permission or authority (for example, the issue in good faith of a licence to take timber under a reservation for forestry purposes); and

(e) the later act is not the making, amendment or repeal of legislation.

Excluded acts

(10) An act is not a past act if it is:

(a) the Queensland Coast Islands Declaratory Act 1985 of Queensland; or

(b) any other act declared by the regulations to be an excluded act for the purposes of this paragraph.

229 Category A past act

Section defines expression

(1) This section defines the expression category A past act.

Grant of certain freehold estates

(2) A past act consisting of the grant of a freehold estate is a category A past act if:

(a) either:

(i) the grant was made before 1 January 1994 and the estate existed on 1 January 1994; or

(ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or 228(9) (which deals with other extensions etc. of earlier acts) applies; and

(b) the grant is not:

(i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
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(ii) a grant made by or under legislation that grants freehold estates only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
(iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

Grant of certain leases

(3) A past act consisting of the grant of:
(a) a commercial lease, an agricultural lease, a pastoral lease or a residential lease; or
(b) 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;
is a category A past act if:
(c) either:
   (i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or
   (ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) or (9) applies; and
(d) the grant is not:
   (i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
   (ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
   (iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
   (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

Construction of public works

(4) A past act consisting of the construction or establishment of any public work is a category A past act if:
(a) the work commenced to be constructed or established before 1 January 1994 and the construction or establishment had not been completed by that day; or
(b) the work was constructed or established before 1 January 1994 and still existed on that day; or
(c) the work was constructed or established on or after 1 January 1994 and the construction or establishment is a past act because subsection 228(9) applies.

230 Category B past act
A category B past act is a past act consisting of the grant of a lease where:
(a) the grant is not a category A past act; and
(b) the lease is not a mining lease; and
(c) either:
   (i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or
   (ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or (9) (which deals with other extensions etc. of earlier acts) applies; and
(d) the grant is not:
   (i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
   (ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
   (iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
   (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

231 Category C past act
A category C past act is a past act consisting of the grant of a mining lease.

232 Category D past act
A category D past act is any past act that is not a category A past act, a category B past act or a category C past act.
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).
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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
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(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.

233 Future act

Definition

(1) Subject to this section, an act is a future act in relation to land or waters if:
   (a) either:
      (i) it consists of the making, amendment or repeal of legislation and takes place on or after 1 July 1993; or
      (ii) it is any other act that takes place on or after 1 January 1994; and
   (b) it is not a past act; and
   (c) apart from this Act, either:
      (i) it validly affects native title in relation to the land or waters to any extent; or
      (ii) the following apply:
         (A) it is to any extent invalid; and
         (B) it would be valid to that extent if any native title in relation to the land or waters did not exist; and
         (C) if it were valid to that extent, it would affect the native title.

Validation and extinguishment legislation excluded

(2) If:
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(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.

Acts creating or affecting Aboriginal/Torres Strait Islander land or waters excluded

(3) Subsection (1) does not apply to any of the following acts:
(a) an act that causes land or waters to be held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under a law mentioned in the definition of Aboriginal/Torres Strait Islander land or waters in section 253;
(b) any act affecting Aboriginal/Torres Strait Islander land or waters.

237 Act attracting the expedited procedure

A future act is an act attracting the expedited procedure if:
(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
(b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of the native title in relation to the land or waters concerned; and
(c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

Native Title Act 1993
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.

238  Non-extinguishment principle

*Effect of references*

(1) This section sets out the effect of a reference to the non-extinguishment principle applying to an act.

*Native title not extinguished*

(2) If the act affects any native title in relation to the land or waters concerned, the native title is nevertheless not extinguished, either wholly or partly.

*Rights and interests wholly ineffective*

(3) In such a case, if the act is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act.

*Rights and interests partly ineffective*

(4) If the act is partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but the rights and interests have no effect in relation to the act to the extent of the inconsistency.

*Who the native title holders are*

(5) Despite the fact that the native title rights and interests have no effect (as mentioned in subsection (3)) or have only limited effect (as mentioned in subsection (4)) in relation to the act, the persons who are entitled in accordance with the traditional laws and customs, as applying from time to time, to possess those rights and interests continue to be the native title holders, subject to
Division 2  Key concepts: Native title and acts of various kinds etc.

Section 239

Division 6 of Part 2 (which deals with the holding of native title on trust).

Complete removal of act or its effects

(6) If the act or its effects are later wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect.

Partial removal of act or its effects

(7) If the act or its effects are later removed only to an extent, or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

Example of operation of section

(8) An example of the operation of this section is its application to a category C past act consisting of the grant of a mining lease that confers exclusive possession over an area of land or waters in relation to which native title exists. In such a case the native title rights and interests will continue to exist but will have no effect in relation to the lease while it is in force. However, after the lease concerned expires (or after any extension, renewal or re-grant of it to which subsection 228(3), (4) or (9) applies expires), the rights and interests again have full effect.

239 Act attributable to the Commonwealth, a State or a Territory

An act is attributable to the Commonwealth, a State or a Territory if the act is done by:

(a) the Crown in right of the Commonwealth, the State or the Territory; or

(b) the Parliament or Legislative Assembly of the Commonwealth, the State or the Territory; or

(c) any person under a law of the Commonwealth, the State or the Territory.

240 Similar compensable interest test

The similar compensable interest test is satisfied in relation to a past act, an intermediate period act or a future act if:

(a) the native title concerned relates to an onshore place; and
(b) the compensation would, apart from this Act, be payable under any law for the act on the assumption that the native title holders instead held ordinary title to any land or waters concerned and to the land adjoining, or surrounding, any waters concerned.
Division 3—Leases

241 Coverage of Division
This Division contains definitions relating to leases.

242 Lease
(1) The expression lease includes:
   (a) a lease enforceable in equity; or
   (b) a contract that contains a statement to the effect that it is a lease; or
   (c) anything that, at or before the time of its creation, is, for any purpose, by a law of the Commonwealth, a State or a Territory, declared to be or described as a lease.

References to mining lease
(2) In the case only of references to a mining lease, the expression lease also includes a licence issued, or an authority given, by or under a law of the Commonwealth, a State or a Territory.

243 Lessee
(1) Subject to subsection (2), the expression lessee includes any person who, by assignment, succession, sub-lease or otherwise, acquires, enjoys or is entitled to exercise any of the interests under the lease of another (including of a person who is a lessee because of another application or applications of this section).

Lessee of certain mining leases
(2) In the case of a lease that is a mining lease because of subsection 242(2) (which covers licences and authorities given by or under laws), the expression lessee means:
   (a) the person to whom the licence mentioned in that subsection was issued, or the authority so mentioned was given; or
   (b) any person who, by assignment, succession or otherwise, acquires or enjoys the licence or authority or is entitled to exercise rights under the licence or the authority.
244 Permit

Definition

(1) The expression *permit*, in a reference to a lease permitting a thing, means permit:
   (a) expressly by the terms of the lease; or
   (b) by implication from the terms of the lease; or
   (c) otherwise (including expressly, or by implication, from the operation of legislation).

Example of implication from legislation

(2) An example of a thing permitted by implication from the operation of legislation is where the legislation states that, if a lease is not renewed, compensation is payable for any building constructed on the land subject to the lease. The construction of the building is permitted by implication from the statement.

245 Mining lease

Definition

(1) A *mining lease* is a lease (other than an agricultural lease, a pastoral lease or a residential lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for mining.

Mining leases to which subsection (3) applies

(2) Subject to subsection (4), subsection (3) applies to a mining lease if the lease was in force at the beginning of 1 January 1994 (the *test time*) and either or both of the following paragraphs apply:
   (a) the following conditions are satisfied:
      (i) a city, town or private residences had been wholly or partly constructed at the test time on a part of the land or waters covered by the lease;
      (ii) the construction was permitted by the lease;
      (iii) in the case of any private residences—they had been, or were being, constructed as fixtures and it was reasonably likely at the test time that, if mining under
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the lease were to cease at any later time, they would continue to be used as private residences;

(b) the following conditions are satisfied:

(i) other buildings or works had been wholly or partly constructed as fixtures at the test time, on a part of the land or waters covered by the lease, for carrying on an activity in connection with any city, town or private residences covered by paragraph (a);

(ii) the construction was permitted by the lease;

(iii) it was reasonably likely at the test time that, if mining under the lease were to cease at any later time, the buildings or works would continue to be used to carry on the same activity, or a similar activity, in connection with any city, town or private residences mentioned in paragraph (a).

Dissection of mining lease

(3) If this subsection applies to a mining lease, the lease is taken instead to consist of separate leases in respect of:

(a) the part of the land or waters in respect of which paragraph (2)(a) or (b), or both paragraphs, are satisfied; and

(b) the remainder of the land or waters.

Exclusion of certain cities, towns etc.

(4) The Commonwealth Minister may, in writing, determine that a specified city, town, private residence, building or works is not to be taken into account for the purposes of subsection (3).

246 Commercial lease

Definition

(1) A commercial lease is a lease (other than a mining lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for business or commercial purposes. The defining of agricultural lease, pastoral lease and residential lease in sections 247, 248 and 249 is not intended to limit the coverage of commercial lease.
Examples of a commercial lease

(2) For the purposes of subsection (1):

(a) construction on land of a building to be used for business or commercial purposes, or of a hotel, motel or tourist resort, is an example of use of the land for business or commercial purposes; and

(b) use of a building on land for business or commercial purposes, or operation of a hotel, motel or tourist resort on land, is an example of use of the land for business or commercial purposes.

247 Agricultural lease

(1) An agricultural lease is a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural purposes (which includes the planting and growing in the land of trees, vines or vegetables); or

(b) contains a statement to the effect that it is solely or primarily an agricultural lease or that it is granted solely or primarily for agricultural purposes.

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.

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.

248 Pastoral lease

A pastoral lease is a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for:

(i) maintaining or breeding sheep, cattle or other animals; or

(ii) any other pastoral purpose; or

(b) contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes.

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.

249 Residential lease

Definition

(1) A residential lease is a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for constructing or occupying a private residence.

Examples of residential lease

(2) For the purposes of subsection (1):
(a) construction of a house or unit on land for a person to live in is an example of use of the land for constructing a private residence; and
(b) use of a house or unit on land that is leased out to a person to live in is an example of use of the land for occupying a private residence; and
(c) use of a hotel, motel, caravan or tent on land is an example of something that is not use of the land for occupying a private residence.

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.
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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.
Division 4—Sundry definitions etc.

250 Application to things happening before commencement

The use of the present tense in any provision of this Act does not imply that the provision does not apply to things happening before the commencement of the provision.

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
Division 4  Sundry definitions etc.

Section 251C

(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
incidental to, the construction, establishment or operation of the work.

**252 Notify the public in the determined way**

*Definition*

(1) The expression *notify the public in the determined way* means give notice in the way determined by the Commonwealth Minister for the purposes of the provision in which the expression is used.

*Examples of ways that may be determined*

(2) Without limiting the ways that the Commonwealth Minister may determine, he or she may determine that the notice may be given:

(a) in newspapers (including newspapers catering mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders); or

(b) by radio broadcasts or television transmissions.

**253 Other definitions**

Unless the contrary intention appears:

*Aboriginal peoples* means peoples of the Aboriginal race of Australia.

*Aboriginal/Torres Strait Islander land or waters* means land or waters held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under:

(a) any of the following laws of the Commonwealth:

(i) the *Aboriginal Land Grant (Jervis Bay Territory) Act 1986*;

(ii) the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*;

(iii) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

(b) any of the following laws of South Australia:

(i) the *Aboriginal Lands Trust Act 1966*;

(ii) the *Maralinga Tjarutja Land Rights Act 1984*;

(iii) the *Pitjantjatjara Land Rights Act 1981*; or
(c) any other law, or part of a law, prescribed for the purposes of the provision in which the expression is used.

applicant has a meaning affected by subsection 61(2).

approved determination of native title has the meaning given by subsections 13(3), (4) and (7).

arbitral body has the meaning given by section 27.


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.

Chief Justice means the Chief Justice of the Federal Court of Australia.

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.

costal sea has the meaning given by subsection 15B(4) of the Acts Interpretation Act 1901.

common law holders has the meaning given by section 56.

Commonwealth Minister means the Minister applicable, in relation to the provision in which the expression is used, under section 19A of the Acts Interpretation Act 1901.

explore includes:
(a) conduct a geological, geophysical or geochemical survey; or
(b) take samples for the purpose of analysis.

Federal Court means the Federal Court of Australia.

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.

former judge means a person who has been a Justice of the High Court or a judge of another federal court or of the Supreme Court of a State or Territory.

Government party has the meaning given by subsection 26(1).

grantee party has the meaning given by paragraph 29(2)(c).

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.

indigenous land use agreement has the meaning given by sections 24BA, 24CA and 24DA.

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.
interest, in relation to land or waters, means:
(a) a legal or equitable estate or interest in the land or waters; or
(b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:
   (i) the land or waters; or
   (ii) an estate or interest in the land or waters; or
(c) a restriction on the use of the land or waters, whether or not annexed to other land or waters.

Judge means a Judge of the Federal Court.

jurisdictional limits means:
(a) in relation to a State—the area within:
   (i) the limits of the State; or
   (ii) the coastal waters of the State (within the meaning of the Coastal Waters (State Powers) Act 1980); or
(b) in relation to the Northern Territory—the area within:
   (i) the limits of the Territory; or
   (ii) the coastal waters of the Territory (within the meaning of the Coastal Waters (Northern Territory Powers) Act 1980); or
(c) in relation to any other Territory—the area within the limits of the Territory.

land includes the airspace over, or subsoil under, land, but does not include waters.

Note 1: Because of the definition of waters, not only rivers and lakes etc., but also such things as the bed or subsoil under, and airspace over, rivers and lakes etc. will not be included in land.

Note 2: Because of the definition of waters, the area between high water and low water will not be included in land.

major earthworks means earthworks (other than in the course of mining) whose construction causes major disturbance to the land, or to the bed or subsoil under waters.

member means a member of the Tribunal.

mine includes:
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(a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c)); or
(b) extract petroleum or gas from land or from the bed or subsoil under waters; or
(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:
(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.

*National Native Title Register* means the register established and maintained under Part 8.

*National Native Title Tribunal* or *NNTT* means the National Native Title Tribunal established under Part 6.

*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.

*native title party* has the meaning given by paragraphs 29(2)(a) and (b) and section 30.

*Native Title Registrar* means the Native Title Registrar appointed under Part 5.

*negotiation party* has the meaning given by section 30A.

*non-claimant application* means a native title determination application that is not a claimant application.

*non-presidential member* means a member who, in accordance with the table in subsection 110(1), is of the non-presidential class.
Definitions Part 15
Sundry definitions etc. Division 4

Section 253

**offshore place** means any land or waters to which this Act extends, other than land or waters in an onshore place.

**onshore place** means land or waters within the limits of a State or Territory to which this Act extends.

**ordinary title**, in relation to an onshore place that is land, means:
(a) if the land is not in the Australian Capital Territory or the Jervis Bay Territory—a freehold estate in fee simple in the land other than such an estate granted by or under a law that grants such estates only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
(b) if the land is in the Australian Capital Territory or the Jervis Bay Territory—a lease over the land granted by or on behalf of the Commonwealth under a law of the Commonwealth or of the Territory, other than a lease granted by or under a law that grants such leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

**paragraph 51(xxxi) acquisition of property** means an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution.

**paragraph 51(xxxi) just terms** means just terms within the meaning of paragraph 51(xxxi) of the Constitution.

**prescribed** means prescribed by the regulations.

**President** means the President of the Tribunal.

**presidential member** means a member who, in accordance with the table in section 110, is of the presidential class.

**procedural right**, in relation to an act, means:
(a) a right to be notified of the act; or
(b) a right to object to the act; or
(c) any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.

**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:
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(i) a building, or other structure (including a memorial),
that is a fixture; or
(ii) a road, railway or bridge; or
(iia) 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.

recognised State/Territory body means a court, office, tribunal or
body in relation to which a determination under section 207A is in
force.

Register of Indigenous Land Use Agreements means the register
established and maintained under Part 8A.

Register of Native Title Claims means the Register established and
maintained in accordance with Part 7.

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).

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.

Registrar means the Native Title Registrar.

representative Aboriginal/Torres Strait Islander body means a
body that is recognised under section 203AD.

representative body means a representative Aboriginal/Torres
Strait Islander body.
Definitions Part 15
Sundry definitions etc. Division 4

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right to negotiate application has the meaning given by paragraph 139(1)(b).

special matter has the meaning given by paragraph 139(1)(c).

State Minister, in relation to a State, means:
(a) if there is no nomination under paragraph (b)—the Premier of the State; or
(b) a Minister of the Crown of the State nominated in writing given to the Commonwealth Minister by the Premier for the purposes of this definition.

statutory authority, in relation to the Crown in right of the Commonwealth, a State or a Territory, means any authority or body (including a corporation sole) established by a law of the Commonwealth, the State or Territory other than a general law allowing incorporation as a company or body corporate.

subject to section 24FA protection has the meaning given by Subdivision F of Division 3 of Part 2.

Territory Minister, in relation to a Territory, means:
(a) if there is no nomination under paragraph (b)—the Chief Minister of the Territory; or
(b) a Minister of the Territory nominated in writing given to the Commonwealth Minister by the Chief Minister for the purposes of this definition.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

Tribunal means the National Native Title Tribunal.

valid includes having full force and effect.

waters includes:
(a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or
(b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph (a)); or
(c) the shore, or subsoil under or airspace over the shore, between high water and low water.
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:

- irrigation or drainage canals;
- forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.

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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.

(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
Schedule 1  Scheduled interests
Part 1  New South Wales

Clause 3

...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; 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.

(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.
Schedule 1  Scheduled interests
Part 1  New South Wales

Clause 4

(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.


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

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Clause 7

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.

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 (III), (V), (VIII) or (IX) of that section, 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.

(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
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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 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

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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.

(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

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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 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;
Clause 10

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.

(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.
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.


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,
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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.

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.


(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:

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(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.


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
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(1) A lease under 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 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 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
Clause 20

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.
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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.


(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;
- 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.

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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 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; 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;
Clause 21

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; 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.
Clause 22

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*.

(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*. 
Clause 25

25 Agricultural farms

An agricultural farm under the Crown Lands Act 1884, the Agriculture 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 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

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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.

(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.

Clause 31

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.
Clause 32

(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.
Clause 33

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._

(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._
Clause 34

(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; 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 pear 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 boat; fishing holiday accommodation; garden; garden and tennis court; garden nursery; gas processing plant; gas production facility; general industry and staff accommodation; grain receival 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; 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
Clause 34

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 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.

(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:
Clause 36

(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 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:

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; dog pound; domestic television transmitter site; employee housing; extension to townsit 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; treatment mast; treatment plant; treatment plant and administration building; waste disposal site;
- waste material dump; water tank; wharf; workers’ construction camp
Clause 36

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.

Schedule 1

Part 5 South Australia

Clause 38

(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 or repairing; boat hire depot; boat landing; boathed; 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 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.
Schedule 1  Scheduled interests

Part 5  South Australia

Clause 38

(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.

Native Title Act 1993
39 Other interests


(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*.

(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...
Clause 39

(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 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.
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.


(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;
Schedule 1  Scheduled interests

Part 6  Tasmania

Clause 41

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.

424  Native Title Act 1993
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.


43 Agricultural leases etc.

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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
      (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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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 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;
Schedule 1  Scheduled interests

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Clause 44

hotel/motel; housing units; industrial area; industrial purposes; inflammbable 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 artrell 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 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

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Clause 45

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
Schedule 1  Scheduled interests
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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.


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.

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(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.


(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;
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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 tourist boat base; optical fibre regenerator site; orchard; orchid nursery; oval; permanent construction camp accommodation; 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

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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.


(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.

(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.
Notes to the *Native Title Act 1993*

**Note 1**

The *Native Title Act 1993* as shown in this compilation comprises Act No. 110, 1993 amended as indicated in the Tables below.

For cessation details of Part 12 see section 207.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

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Notes to the *Native Title Act 1993*

**Act Notes**

(a) The *Native Title Act 1993* was amended by Schedule 16 (items 56–58) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(3) of which provides as follows:

(3) If an item of a Schedule does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

(b) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:

(4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.

The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.

(c) The *Native Title Act 1993* was amended by Schedule 2 (item 1054) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*

(d) Subsection 2(1) (item 45) of the *Statute Law Revision Act 2002* provides as follows:

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(e) The *Native Title Act 1993* was amended by Schedule 1 (items 676–682) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(f) The *Native Title Act 1993* was amended by Schedule 37 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

(1) Subject to this section, this Act commences at the later of the following times:

(a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 of Schedule 1 commenced on 24 May 2001.

(g) Subsection 2(1) (items 18 and 19) of the *Statute Law Revision Act 2006* provide as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<td>(h) Subsection 2(1) (item 19) of the <em>Statute Law Revision Act 2005</em> provides as follows:</td>
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<tr>
<td>(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.</td>
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Table A

Application, saving or transitional provisions

Native Title Amendment Act 1998 (No. 97, 1998)

Schedule 5

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.
Notes to the *Native Title Act 1993*

### Table A

#### 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:
Table A

(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

<table>
<thead>
<tr>
<th>Case</th>
<th>Situation at the commencement of this Act</th>
<th>Consequences</th>
</tr>
</thead>
</table>
| 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. |
### Table A

<table>
<thead>
<tr>
<th>Case</th>
<th>Situation at the commencement of this Act</th>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Notification given by Registrar, section 66 period for the application is completed and application is not finalised.</td>
<td>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.</td>
</tr>
<tr>
<td>4</td>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>

**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
Notes to the *Native Title Act 1993*

**Table A**

(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.

(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
Table A

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.

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
(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.

(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.
<table>
<thead>
<tr>
<th></th>
<th>Notes to the Native Title Act 1993</th>
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<td><strong>Table A</strong></td>
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<tr>
<td>(5)</td>
<td>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.</td>
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<td>(6)</td>
<td>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.</td>
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<td>(7)</td>
<td>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.</td>
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<td>(8)</td>
<td>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.</td>
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<tr>
<td>(9)</td>
<td>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.</td>
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### 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.
Table A

(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
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
Table A

(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

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: 

Native Title Act 1993 465
Notes to the *Native Title Act 1993*

**Table A**

(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.
Table A

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
Table A

(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.

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.
### Table A

#### 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*:

- (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).
Schedule 2

418 Transitional—pre-commencement offences

(1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:

(a) an offence committed before the commencement of this item; or
(b) proceedings for an offence alleged to have been committed before the commencement of this item; or
(c) any matter connected with, or arising out of, such proceedings;

as if the amendment or repeal had not been made.

(2) Subitem (1) does not limit the operation of section 8 of the Acts Interpretation Act 1901.

419 Transitional—pre-commencement notices

If:

(a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
(b) any or all of those other provisions are repealed by this Schedule; and
(c) the first-mentioned provision is amended by this Schedule;

the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
Table A


4 Application of amendments

(1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

(1) If:

(a) a decision or action is taken or another thing is made, given or done; and

(b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.
Notes to the *Native Title Act 1993*

Table A

(2) In this section:

*Part 2 Act* means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Aboriginal and Torres Strait Islander Commission Amendment Act 2005 (No. 32, 2005)

Schedule 4

40 Transitional provision

Subsection 203CA(1A) of the *Native Title Act 1993* as amended by this Act applies in relation to the repayment, on or after the day Schedules 1 and 2 to this Act commence, of a part of a grant made to a representative body before that day as if:

(a) the amendment of that subsection made by this Act had been in force at the time the grant was made; and

(b) the grant had been made on behalf of the Commonwealth.

44 Transitional provision

Subsection 203CA(1B) of the *Native Title Act 1993* as amended by this Act applies in relation to the repayment, on or after the day Schedules 1 and 2 to this Act commence, of a part of a grant made to a representative body before that day as if:

(a) the amendment of that subsection made by this Act had been in force at the time the grant was made; and

(b) the grant had been made on behalf of the Commonwealth.
48 Saving provision

Despite the repeal of subsection 203CA(4) of the Native Title Act 1993 by this Act, sections 20, 21 and 21A of the Aboriginal and Torres Strait Islander Commission Act 1989 (the ATSIC Act) as in force before the day Schedules 1 and 2 to this Act commence continue to apply on and after that day in relation to any grants to representative bodies made under Division 4 of Part 11 of the Native Title Act 1993 as if:

(a) the grants had been made on behalf of the Commonwealth; and

(b) the grants had been made under section 14 of the ATSIC Act as in force before that day; and

(c) references to the Commission in sections 20, 21 and 21A of the ATSIC Act as in force before that day were references to the Commonwealth.

64 Transitional provision—Secretary to complete applications for review of assistance decisions

If:

(a) before the day Schedules 1 and 2 to this Act commence, an Aboriginal person or Torres Strait Islander has applied to ATSIC for review of a decision of a representative body not to assist the person; and

(b) that review has not been completed before that day;

section 203FB of the Native Title Act 1993 as amended by this Act applies in relation to that application to review, as if that section as so amended had been force at the time when the application was made and the application had been made to the Secretary.

75 Saving provision

Despite the repeal of subsection 203FE(7) of the Native Title Act 1993 by this Act, sections 20, 21 and 21A of the Aboriginal and Torres Strait Islander Commission Act 1989 (the ATSIC Act) as in force before the day Schedules 1 and 2 to this Act commence continue to apply on and after that day in relation to any funding by way of grant made before that day under section 203FE of the Native Title Act 1993 as if:

(a) the grants had been made on behalf of the Commonwealth; and

(b) the grants had been made under section 14 of the ATSIC Act as in force before that day; and
Notes to the *Native Title Act 1993*

**Table A**

(c) references to the Commission in sections 20, 21 and 21A of the ATSIC Act as in force before that day were references to the Commonwealth.

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*Financial Framework Legislation Amendment Act (No. 1) 2006 (No. 30, 2006)*

**Schedule 3**

**11 Transitional**

If, just before the commencement of this Part, an approval by the Treasurer was in force under paragraph 203CB(2)(d) of the *Native Title Act 1993* as then in force, that approval has effect after the commencement of this Part as if it had been given under that paragraph of that Act as amended by this Part.