

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Prime Minister)

NATIVE TITLE BILL 1993

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(Prime Minister)

A BILL

FOR

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.

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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.

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

Short title

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

Commencement

Commencement of provisions on Royal Assent

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

Commencement of provisions by Proclamation

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(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. 10

Objects

Main objects

3. The main objects of this Act are:

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- (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 invalidated because of the existence of native title. 20

Outline of Act

4. The following table broadly summarises the content of this Act:

OUTLINE OF ACT—continued	
Part	Coverage
1	Preliminary matters.
2	<p>Native title:</p> <p>(a) Division 1 deals mainly with the recognition of native title;</p> <p>(b) Divisions 2 and 3 deal with past acts and future acts, and set out the consequences in terms of:</p> <p style="padding-left: 40px;">(i) the validity of the acts;</p> <p style="padding-left: 40px;">(ii) the effect of the acts on native title;</p> <p style="padding-left: 40px;">(iii) the entitlement of native title holders to compensation for the acts;</p> <p>(c) Division 4 contains sundry provisions relating to native title;</p> <p>(d) Division 5 deals with the determination of compensation;</p> <p>(e) Division 6 provides for native title and compensation to be held in trust.</p>
3	<p>Applications:</p> <p>(a) Division 1 deals with applications for determinations of native title and with applications for compensation;</p> <p>(b) Division 2 deals with applications under the right to negotiate provisions in Subdivision B of Division 3 of Part 2;</p> <p>(c) Division 3 deals with miscellaneous matters in relation to applications.</p>
4	<p>Determinations of the Federal Court:</p> <p>This Part sets out the functions of the Federal Court in relation to native title and the procedures to be followed when dealing with matters arising under this Act.</p>
5	<p>Native Title Registrar:</p> <p>This Part provides for there to be a Native Title Registrar.</p>

OUTLINE OF ACT—continued	
Part	Coverage
6	<p>National Native Title Tribunal:</p> <p>(a) Division 1 establishes the Tribunal and sets out its purpose and way of operating;</p> <p>(b) Division 2 sets out who can be members of the Tribunal and provides for the terms and conditions of those members;</p> <p>(c) Division 3 covers the organisation of the Tribunal for the purpose of inquiries;</p> <p>(d) Division 4 deals with the management of the Tribunal and with the staff of the Tribunal;</p> <p>(e) Division 5 contains provisions dealing with the conduct of inquiries by the Tribunal, determinations that may be made by the Tribunal and appeals to the Federal Court;</p> <p>(f) Division 6 sets out offences in relation to the Tribunal;</p> <p>(g) Division 7 deals with miscellaneous matters in relation to the Tribunal.</p>
7	<p>Register of Native Title Claims:</p> <p>This Part provides for the establishment and keeping of the Register of Native Title Claims.</p>
8	<p>National Native Title Register:</p> <p>This Part provides for the establishment and keeping of the National Native Title Register.</p>
9	<p>National Aboriginal and Torres Strait Islander Land Fund:</p> <p>This Part establishes a National Aboriginal and Torres Strait Islander Land Fund.</p>
10	<p>Representative Aboriginal/Torres Strait Islander bodies:</p> <p>This Part provides for representative Aboriginal/Torres Strait Islander bodies.</p>
11	<p>Miscellaneous provisions.</p>

OUTLINE OF ACT—continued	
Part	Coverage
12	<p>Amendment of other Acts:</p> <p>(a) Division 1 contains amendments of the <i>Federal Court of Australia Act 1976</i>, mainly to provide for the appointment of assessors who will assist the Court in performing its functions under this Act;</p> <p>(b) Division 2 contains amendments of other Acts that are consequential to this Act.</p>
13	<p>Definitions:</p> <p>(a) Division 1 contains a list of the definitions in the Part;</p> <p>(b) Division 2 contains definitions of the central concepts of “native title”, “past act” and “future act”, as well as a number of related definitions;</p> <p>(c) Division 3 contains definitions related to leases;</p> <p>(d) Division 4 contains sundry definitions.</p>

Act binds Crown

5 5. 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.

Application to external Territories, coastal sea and other waters

10 6. 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*.

Effect of this Act on State or Territory laws

7. 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.

Definitions located in Part 13

15 8. Part 13 contains definitions of certain expressions that are used in this Act.

PART 2—NATIVE TITLE

Division 1—Recognition and protection of native title

Recognition and protection of native title

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

Extinguishment of native title

10. Native title is not able to be extinguished contrary to this Act.

Native title part of Commonwealth law

11. Subject to this Act, the common law of Australia in respect of native title has, after 30 June 1993, the force of a law of the Commonwealth. 5

Approved determinations of native title*Applications to Native Title Registrar*

12.(1) An application may be made to the Registrar 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 10
- (b) to revoke or vary an approved determination of native title on the grounds set out in subsection (5).

Native title determinations by NNTT or Federal Court when determining compensation entitlements

(2) If: 15

- (a) the NNTT or 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 NNTT or 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. 20

Approved determinations of native title

(3) Subject to subsection (4), each of the following is an “**approved determination of native title**”: 25

- (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. 30

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 NNTT or the Federal Court, in determining an application under Part 3; or 35
- (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 NNTT or 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—Past acts and native title

Subdivision A—Acts attributable to the Commonwealth

Validation of Commonwealth acts

13. 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 on native title

14. 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 214(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 214(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 214(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 5
- (d) if it is a category C past act or a category D past act—the non-extinguishment principle applies to the act.

Preservation of beneficial reservations and conditions

- 15. If:** 10
- (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); 15

nothing in section 14 affects that reservation or condition or those rights or interests.

Entitlement to compensation 20

Extinguishment case

16.(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 25

(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: 30
 - (i) any land concerned; and
 - (ii) the land adjoining both sides of, or surrounding, any waters concerned; or
- (b) the native title concerned is to some extent in relation to an offshore place and the act could not have been validly done on the assumption that the native title holders instead held any corresponding rights and interests, in relation to the offshore place, that were not native title rights and interests; or 35
- (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. 40

Compensation for partial effect of act

5 (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.

Where “just terms” invalidity

Section applies if acquisition of property other than on just terms

10 17.(1) This section applies if the invalidity (disregarding section 13) 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

15 (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.

20 ***Subdivision B—Acts attributable to a State or Territory***

State/Territory acts may be validated

25 18. If a law of a State or Territory contains provisions to the same effect as sections 14 and 15, 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.

Entitlement to compensation

Compensation where validation

30 19.(1) If a law of a State or Territory validates a past act attributable to the State or Territory in accordance with section 18, the native title holders are entitled to compensation if they would be so entitled under subsection 16(1) or (2) on the assumption that section 16 applied to acts attributable to the State or Territory.

Compensation where no validation

35 (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 18.

Who pays compensation

- (3) The compensation is payable by the State or Territory.

Division 3—Future acts and native title***Subdivision A—General*****Agreements to surrender etc. native title**

5

Extent of agreements

20.(1) Native title holders may, under an agreement with the Commonwealth, a State or a Territory:

- (a) by surrendering their native title rights and interests in relation to land or waters of the Commonwealth, the State or the Territory (as the case may be), extinguish those rights and interests; or 10
- (b) authorise any future act that will affect their native title.

Agreement to consideration or conditions

(2) 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). 15

Consideration may be freehold grant or other accepted interests

(3) Without limiting subsection (2), 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, that the native title holders may choose to accept. 20

Regional or local agreements

(4) Subsection (1) does not prevent agreements mentioned in that subsection being made by native title holders on a regional or local basis.

Impermissible future acts

25

21. Subject to sections 23 and 24, if an act is an impermissible future act, the act is invalid to the extent that it affects native title.

Permissible future acts*Coverage of section*

22.(1) This section applies if an act is a permissible future act, other than one to which section 23 or 24 applies. 30

Validation of act

(2) Subject to Subdivision B (which deals with the right to negotiate), the act is valid.

Extinguishment of native title by compulsory acquisition

35

(3) If the act is the acquisition, under a Compulsory Acquisition Act, of the whole or part of any native title rights and interests:

- (a) nothing in this Act prevents the acquisition from extinguishing the whole or the part of those rights and interests, whether by express provision in the Compulsory Acquisition Act or otherwise; and
- (b) if the Compulsory Acquisition Act does not provide for compensation on just terms to the native title holders for the acquisition, they are entitled to compensation for the acquisition in accordance with Division 5.

Non-extinguishment and compensation

(4) In the case of any other act to which this section applies:

- (a) the non-extinguishment principle applies to the act; and
- (b) if:

- (i) the act is not a low impact future act; and
- (ii) the similar compensable interest test is satisfied in relation to the act; and

- (iii) the law mentioned in section 225 (which defines “similar compensable interest test”) does not provide for compensation for the act;

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:

- (i) if a law of the Commonwealth provides, in the case of an act consisting of the doing of any thing at the request of a person, that the person is liable to pay the compensation—the 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, in the case of an act consisting of the doing of any thing at the request of a person, that the person is liable to pay the compensation—the person; or
- (ii) if not—the Crown in right of the State or Territory.

Procedural rights

(6) In the case of any act to which this section applies (other than a low impact future act or one to which Subdivision B applies), the native title holders 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 that the act is in relation to an onshore place—ordinary title to any land concerned and to the land adjoining both sides of, or surrounding, any waters concerned; or

- (b) to the extent that the act is in relation to an offshore place—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

(7) If: 5

- (a) because of subsection (6) 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 doing all of the following: 10

- (c) notifying, in the way determined in writing by the Commonwealth Minister for the purposes of this paragraph, any representative Aboriginal/Torres Strait Islander bodies for the area concerned that the act is to take place; 15

- (d) notifying, in the way determined in writing by the Commonwealth Minister for the purposes of this paragraph, any occupier of any land concerned that the act is to take place;

- (e) placing notices, in the way determined in writing by the Commonwealth Minister for the purposes of this paragraph, on any land concerned, advising that the act is to take place; 20

- (f) notifying the public in the determined way (see section 237) that the act is to take place.

Where unopposed non-claimant applications

Consequences of applications 25

23.(1) If:

- (a) section 60 (which deals with non-claimant applications) applies to an application in relation to an area and, under subsection 60(4), the application is taken to be unopposed; or

- (b) a law of a State or Territory has similar effect in relation to an application for an approved determination of native title in relation to an area by a recognised State/Territory body; 30

the following provisions apply:

- (c) any future act by any person in relation to the area that is done before the making of any approved determination of native title in relation to the area is valid; 35

- (d) if the act mentioned in paragraph (c) extinguishes native title to any extent—the native title holders are entitled to compensation for the act in so far as it has that effect;

- (e) if the act mentioned in paragraph (c) does not so extinguish native title and the native title holders would be entitled to compensation under subsection 16(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 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.

Renewal under pre-1 January 1994 right to renew

Consequences of act

24.(1) If a future act consists of the renewal of any interest in relation to land or waters that takes place in exercise of a legally enforceable right that was created before 1 January 1994:

- (a) the act is valid; and
- (b) the non-extinguishment principle applies to the act; and
- (c) if any native title holders would be entitled to compensation under subsection 16(2) for the act on the assumption that it was a past act referred to in that subsection—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.

Subdivision B—Right to negotiate

When Subdivision applies

Subdivision applies to certain permissible future acts

25.(1) This Subdivision applies if the Commonwealth, a State or Territory (the “**Government party**”) proposes, at any time after the commencement of this Subdivision, to do any permissible future act covered by subsection (2) in relation to an onshore place.

Acts covered

(2) Subject to subsection (3), the acts are as follows:

- (a) the creation of a right to mine, whether by the grant of a mining lease or otherwise;
- (b) the variation of such a right, to extend the area to which it relates;
- (c) 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;
- (d) the compulsory acquisition of native title rights and interests under a Compulsory Acquisition Act, where the purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on persons other than the Government party;
- (e) any other act approved by the Commonwealth Minister, in writing, for the purposes of this paragraph.

Exclusions

- (3) Subsection (2) does not apply if the act is:
 - (a) an act to which section 23 or 24 applies; or
 - (b) an act determined in writing by the Commonwealth Minister to be an act excluded from the coverage of subsection (2).

Criteria for exclusions

- (4) The Commonwealth Minister must not determine that a future act is excluded from the coverage of subsection (2) unless:
 - (a) the Commonwealth Minister considers the act will have minimal effect on any native title concerned; and
 - (b) the Commonwealth Minister has:
 - (i) notified any relevant representative Aboriginal/Torres Strait Islander bodies, and notified the public in the determined way, of the proposed determination; and
 - (ii) invited submissions from them about it; and
 - (c) the Commonwealth Minister is satisfied that, if the proposed determination is made, any native title holders concerned will be appropriately consulted about any access, to any land or waters to which the native title relates, that may be authorised as a consequence of the act or of an act included in the class of act concerned.

Arbitral body

Arbitral bodies—recognised State/Territory bodies 35

26.(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, 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:

- 5 (a) a future act is proposed to be done by the Commonwealth; or
 (b) a future act is proposed to be 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.

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

10 *Invalidity*

27.(1) The act is only valid if:

- (a) by the end of the period of 2 months starting when notice is given under section 28, there is no native title party in relation to any of the land or waters that will be affected by the act; or
 15 (b) subsection 31(2) (which applies where no objection is made after the giving of a notice that the act attracts the expedited procedure) allows the act to be done; or
 (c) a determination is made under subsection 31(4) that the act is an act attracting the expedited procedure; or
 20 (d) a copy of an agreement that the act may be done, or may be done subject to conditions being complied with, is given to the arbitral body under section 32; or
 (e) a determination is made under section 36 that the act may be done, or may be done subject to conditions being complied with; or
 25 (f) a determination that the act must not be done is declared to be overruled in accordance with section 40.

Breach of undertaking to trustee

(2) Even if any of paragraphs (1)(b) to (f) is complied with, the act is nevertheless invalid if:

- 30 (a) a trustee who is holding compensation under this Subdivision in respect of the act is informed by the Government party as mentioned in paragraph 50(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.

35 **Notification of parties affected**

Notice in accordance with section

28.(1) The Government party must give notice, in accordance with this section, of its intention to do the act.

Persons to be given notice

(2) The Government party must give notice to:

- (a) any registered native title holder (a “**native title party**”) in relation to any of the land or waters that will be affected by the act; and
- (b) any registered native title claimant (also a “**native title party**”) in relation to any of the land or waters that will be affected by the act; and
- (c) any representative Aboriginal/Torres Strait Islander body in relation to any of the land or waters that will be affected by the act; and
- (d) if the act is to be done at the request of, or on application 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
- (e) the arbitral body in relation to the act.

Public notification

(3) The Government party must also notify the public in the determined way of its intention to do the act.

Acts attracting the expedited procedure

(4) The Government party may include in the notice that it gives under this section a statement that it considers the act is an act attracting the expedited procedure.

Additional native title parties

29. Any person who, within the period of 2 months starting when the notice is given, becomes a registered native title claimant, or a registered native title holder, in relation to any of the land or waters that will be affected by the act is also a “**native title party**”.

Normal negotiation procedure*Government party to negotiate*

30.(1) Except where the notice includes a statement that the Government party considers the act attracts the expedited procedure, the Government party must:

- (a) give all native title parties an opportunity to make submissions to it, in writing or orally, regarding the act; and
- (b) negotiate in good faith with the native title parties and the grantee parties with a view to obtaining the agreement 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.

Arbitral body to assist in negotiations

(2) 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.

5 **Expedited procedure***When section applies*

31.(1) This section applies if the notice given under section 28 includes a statement that the Government party considers the act is an act attracting the expedited procedure.

10 *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

15 (3) The native title parties may, within the period of 2 months starting when the notice is given, lodge an objection with the arbitral body against the inclusion of the statement.

Objections against inclusion of statement

20 (4) If the 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.

Requirement to negotiate

25 (5) If the arbitral body determines that the act is not an act attracting the expedited procedure, the arbitral body must:

(a) request the Government party and the grantee parties to negotiate in good faith with the native title parties with a view to obtaining their agreement to:

(i) the doing of the act; or

30 (ii) the doing of the act subject to conditions to be complied with by any of the parties; and

(b) offer to mediate among the negotiation parties to assist in obtaining their agreement.

Parties to give copy of any agreement to arbitral body

35 32. If, at any time before any determination is made by the arbitral body under section 36, the negotiation parties make an agreement of the kind mentioned in paragraph 30(1)(b) or subsection 31(5), they must give a copy of it to the arbitral body.

Application for determination

33. Any negotiation party may apply to the arbitral body for a determination in relation to the act if there is no such agreement within:

- (a) if the act is the grant of a licence to prospect or explore for things that may be mined—the period of 4 months starting when the notice under section 28 is given; or 5
- (b) in any other case—the period of 6 months starting when the notice is given.

Determination to be made within specified period

All reasonable steps to be taken 10

34.(1) Subject to section 35, the arbitral body must take all reasonable steps to make a determination in relation to the act within:

- (a) if the act is the grant of a licence to prospect or explore for things that may be mined—the period of 4 months starting when the application is made; or 15
- (b) in any other case—the period of 6 months starting when the application is made.

Report to Commonwealth Minister

(2) If the arbitral body is the NNTT and it does not make the determination within the period, it must, as soon as is reasonably practicable after the end of the period, advise the Commonwealth Minister in writing of the reason for it not doing so. 20

No determination if agreement

35. If, before it makes a determination, the arbitral body is given a copy of an agreement in accordance with section 32, it must not make the determination. 25

Kinds of determination

Kinds of determination

36.(1) Except where section 35 applies, the arbitral body must make one of the following determinations: 30

- (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.

Profit-sharing conditions not to be determined 35

(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;

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

Criteria for making determinations

Criteria

37.(1) In making its determination, the arbitral body must take into account the following:

- 10 (a) the effect of the proposed act on:
 - (i) any native title rights and interests; and
 - (ii) the way of life, culture and traditions of any of the native title parties; and
 - 15 (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 lands or waters concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the lands or waters in accordance with their traditions; and
 - 20 (v) any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions; and
 - (vi) the natural environment of the land or waters concerned;
- 25 (b) the findings of any other body that has made an assessment of the effect of the proposed act on the natural environment of the land or waters concerned;
- (c) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of the lands or waters concerned;
- 30 (d) the economic or other significance of the proposed act to Australia and to the State or Territory concerned;
- (e) any public interest in the proposed act proceeding;
- (f) any other matter that the arbitral body considers relevant.

Laws protecting sites of significance etc. not affected

- 35 (2) Taking into account the effect of the proposed 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.

No re-opening of issues previously decided**38. 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 permissible future act consisting 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.

Effect of determination*Conditions have contractual effect***39.(1) Subject to this section:**

- (a) a determination by the arbitral body; or
- (b) an agreement, a copy of which is given to the arbitral body under section 32;

that the proposed 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) Where a native title party is a registered native title claimant, any other person (except a registered native title claimant) with whom the claimant claimed to hold the native title concerned is taken to be a negotiation party for the purposes only of subsection (1).

Determined compensation to be held in trust

(3) Subject to subsection (4), in the case of a determination by the arbitral body, if the conditions require the Government party or any grantee party to pay compensation to any native title party, the compensation is held in trust, in accordance with the regulations, until it is paid in accordance with section 50.

Final determinations of compensation do not require a trust

(4) Subsection (3) does not apply if the determination by the arbitral body is:

- (a) a determination of compensation in accordance with Division 5; or
- (b) a determination of compensation on just terms for an acquisition of native title rights and interests under a Compulsory Acquisition Act.

Overruling of determinations

Right of State or Territory to overrule

5 **40.(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

10 **(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 interest of the State or Territory;
 to overrule a determination of the NNTT, the Commonwealth Minister may, by writing given to the NNTT, make a declaration in accordance with
 15 subsection (3).

Kinds of declaration

(3) The Minister concerned may make either of the following declarations:
 (a) a declaration that the determination is overruled;
 20 (b) a declaration that the determination is overruled subject to conditions to be complied with by any of the parties.

Time limit for making declaration

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

25 *Compensation condition*

(5) If a condition to be complied with is that compensation must be paid to a native title party:
 (a) the arbitral body concerned must determine the amount of compensation; and
 30 (b) subject to subsection (6), the compensation is held in trust, in accordance with the regulations, until the amount is paid in accordance with section 50.

Final determinations of compensation do not require a trust

35 **(6)** Paragraph (5)(b) does not apply if the determination by the arbitral body is:
 (a) a determination of compensation in accordance with Division 5; or
 (b) a determination of compensation on just terms for an acquisition of native title rights and interests under a Compulsory Acquisition Act.

Conditions have contractual effect

(7) 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. Where a native title party is a registered native title claimant, any other person (except a registered native title claimant) with whom the claimant claimed to hold the native title concerned is a negotiation party for this purpose only. 5

Copy of declaration to be given to parties

(8) The arbitral body must give a copy of the declaration to the negotiation parties. 10

Modification of Subdivision where satisfactory alternative State or Territory provisions

Modification if requirements met

41.(1) If: 15

- (a) a law of a State or Territory makes alternative provisions to those contained in this Subdivision in relation to acts covered by this Subdivision that are attributable to the State or Territory; and
- (b) the Commonwealth Minister determines in writing that the alternative provisions comply with subsection (2); 20

the alternative provisions have effect.

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 holders, registered native title claimants and potential native title claimants of the proposed act; and 25
- (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 proposed act; and 30
- (d) give registered native title holders and registered native title claimants the right to object against the act; and
- (e) provide that the body hearing the objection consists of, or includes, persons enrolled for at least 5 years as legal practitioners of:
 - (i) the High Court; or 35
 - (ii) another federal court; or
 - (iii) the Supreme Court of a State or Territory; and
- (f) require the body hearing the objection to take into account the matters mentioned in subsection 37(1) and an appropriately broad range of other considerations; and 40

- 5 (g) 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 hearing and determination; and
- (h) provide that any decision of the body hearing the objection may only be overruled on grounds of State or Territory interest or of national interest; and
- 10 (i) make appropriate provision for compensation for the proposed act, including provision for trusts on similar terms to those in subsection 39(3) and paragraph 40(5)(b).

Additional operation of Subdivision

15 42. 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.

Division 4—Other provisions relating to native title

RDA compensation to be determined under this Act

20 43. 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 48 as if the entitlement arose under this Act.

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

25 44. The non-extinguishment principle applies to:

30 (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.

Pastoral leases held by native title claimants

35 *When section applies*

45.(1) This section applies if:

- (a) an application under section 55 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. 5

Prior extinguishment to be disregarded

(2) Any extinguishment of the native title rights and interests by the grant of the lease itself, or by the creation of any other interest itself in relation to the area, must be disregarded for all purposes under this Act in relation to the application. 10

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 the validity of the lease; 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 15
 - (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 proposed act, in relation to the land or waters, to which Subdivision B of Division 3 (which deals with the right to negotiate) applies. 20

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

Compensation payable in accordance with Division

46. Compensation payable under Division 2, 3 or 4 in relation to an act is only payable in accordance with this Division. 25

No multiple compensation for essentially same act

47. Despite anything in Division 2, 3 or 4:
- (a) compensation is only payable under this Act once for acts that are essentially the same; and 30
 - (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.

Bodies that may determine compensation 35

Section exhaustive

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

Applications to Registrar

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

Determination by recognised State/Territory body

- 5 (3) If:
- (a) the act concerned is attributable to a State or Territory for which there is a recognised State/Territory body; and
 - (b) a law of the State or Territory allows the conferral of jurisdiction by this Act on that body to determine the compensation;
- 10 jurisdiction is conferred on that body to determine the compensation.

Federal jurisdiction only conferred on courts

(4) If the conferral of the jurisdiction would invest a recognised State/Territory body that is not a court of the State with federal jurisdiction, subsection (3) does not invest the body with that jurisdiction.

15 *Jurisdiction to hear appeals, to review etc. not affected*

- (5) 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
 - 20 (b) the jurisdiction of the High Court.

Criteria for determining compensation*Just compensation*

25 49.(1) Subject to subsection (3), the entitlement to compensation under Division 2, 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 Act

30 (2) If the act is the acquisition under a Compulsory Acquisition Act 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 set out in that Act for determining compensation.

Acquisitions where similar compensable interest test satisfied

- 35 (3) If:
- (a) the act is not the acquisition under a Compulsory Acquisition Act 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 225 (which defines “similar compensable interest test”).

5

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

(4) If:

(a) neither subsection (2) nor (3) applies; and

(b) there is a Compulsory Acquisition Act 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;

10

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 Act for determining compensation.

15

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:

20

(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.

25

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.

30

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.

35

Compensation held in trust under “right to negotiate” procedures*When section applies*

5 **50.(1)** This section applies if compensation (the “**negotiated compensation**”) in respect of a proposed act is being held in trust in accordance with subsection 39(3) or paragraph 40(5)(b) and any of the following happens:

- 10 (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 no longer proposes to do the act;
- (c) the following requirements are satisfied:
 - 15 (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 by a body corporate under Division 6) the native title holders in relation to the area affected by the act; and
 - 20 (ii) the body corporate holding the native title under Division 6 advises the trustee that it wishes to accept the negotiated compensation instead of any compensation to which it may be entitled under Division 2, 3 or 4 for the act;
- (d) a determination is made, on a claim for compensation in respect of the act:
 - 25 (i) in accordance with this Division; or
 - (ii) on just terms under a Compulsory Acquisition Act;
 that a person is entitled to compensation, or that no compensation is payable to any person.

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

30 **(2)** In a paragraph (1)(a) or (b) case, the trustee must:

- (a) repay the negotiated compensation 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 negotiated compensation.

Paragraph (1)(c) case

35 **(3)** In a paragraph (1)(c) case:

- (a) the trustee must pay the negotiated compensation to the body corporate; and
- (b) subject to section 51, there is no entitlement to compensation under Division 2, 3 or 4 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 negotiated compensation is the same as the amount determined—the trustee must pay the negotiated compensation to the person; or 5
- (b) if the negotiated compensation is less than the amount determined—the trustee must pay the negotiated compensation to the person and the Government party must pay the shortfall to the person; or 10
- (c) if the negotiated compensation is more than the amount determined—the trustee must:
 - (i) pay the person so much of the negotiated compensation as equals the amount determined; and
 - (ii) refund the excess to the person who paid the negotiated compensation to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment. 15

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 negotiated compensation. 20

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 negotiated compensation 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. 25

“Just terms” compensation*Entitlement to “just terms” compensation* 30

51.(1) Where, apart from this section:

- (a) the doing of any future act by the Commonwealth; 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 the Commonwealth as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms. 35

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.

5 **Commonwealth compensation payable from CRF***Amounts payable from CRF*

52.(1) The following amounts are payable out of the Consolidated Revenue Fund:

- 10 (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 49(6)(b) (which deals with requests for non-monetary compensation).

15 *Appropriation*

(2) The Consolidated Revenue Fund is appropriated for the purposes of paying the amounts.

*Division 6—Holding of native title etc. by bodies corporate***Native title to be held by body corporate**20 *Determination of body corporate to hold native title*

53.(1) If:

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

the NNTT or the Federal Court must, at the same time as it makes the determination, determine in accordance with subsection (2) which prescribed body corporate is, in accordance with subsection (3), to hold the rights and interests from time to time comprising the native title.

30 *How body corporate is to be determined*

(2) The NNTT or the Federal Court is to take the following steps in determining which prescribed body is to hold the rights and interests:

- 35 (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 nominate, 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 NNTT or the Federal Court must determine that the body is to hold the rights and interests;

- (c) thirdly, if no prescribed body corporate is nominated in accordance with the request, the NNTT or the Federal Court must, in accordance with the regulations, determine which prescribed body is to hold the rights and interests.

Body corporate holds native title

5

(3) On the making of the determination, the prescribed body corporate holds the rights and interests from time to time comprising the native title, in accordance with the regulations, on behalf of the common law holders.

Prescribed bodies corporate

(4) The regulations may prescribe the kinds of bodies corporate that may be determined to hold native title rights and interests in accordance with this section in either or both of the following ways: 10

- (a) by providing that bodies corporate may be established and operated for the purpose in a specified way;
- (b) by providing that the bodies corporate may be those that have been, or may be, established by other laws of the Commonwealth, a State or a Territory. 15

Holding of native title to be as prescribed

(5) The regulations may also make provision in respect of the following matters relating to the holding of native title rights and interests by bodies corporate: 20

- (a) the way in which the rights and interests are to be held on behalf of the common law holders, for example by being held:
- (i) on trust; or
- (ii) by a company whose shareholders are the common law holders; 25
- (b) the functions to be performed by the bodies corporate;
- (c) the nature of any consultation with, or other role for, the common law holders;
- (d) the circumstances in which the rights and interests may be surrendered, transferred or otherwise dealt with; 30
- (e) the determination of any matter by the NNTT or the Federal Court;
- (f) any other matter.

Agreements by body corporate bind common law holders

(6) Any agreement made by the body corporate in relation to the native title binds the common law holders. 35

Compensation to be held by body corporate etc.*Determined compensation*

5 **54.(1)** If a determination of an entitlement to compensation is made in accordance with Division 5 in relation to native title rights and interests that are, or are to be, held by a body corporate:

- (a) if the compensation is monetary—it must be paid to the body corporate, which must hold or deal with it in accordance with the regulations; and
- 10 (b) if the compensation is not monetary—the body corporate must perform such functions (if any) in relation to the compensation as are required by the regulations.

Agreed compensation

15 **(2)** The body corporate must, in accordance with the regulations, also hold or deal with any other amount that may be paid to it as a result of any agreement in relation to the surrender, transfer or other dealing with the native title rights and interests that may be authorised by the regulations under section 53.

Rights of common law holders

20 **(3)** The payment of the compensation or other amounts to, or the doing of things in relation to the compensation by, the body corporate discharges any liability to pay the amount to, or permit the things to be done by, the common law holders.

PART 3—APPLICATIONS*Division 1—Native title and compensation applications*25 **Native title and compensation applications***Applications that may be made*

55.(1) The following table sets out applications that may be made under this Division to the Native Title Registrar and the persons who may make each of those applications:

APPLICATIONS		
Kind of application	Application	Persons who may make application
Native title determination application	Application under subsection 21(1) for a determination of native title.	<ul style="list-style-type: none"> (1) A person or persons claiming to hold the native title either alone or with others; or (2) A person who holds an 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 wholly within the jurisdictional limits of the State or Territory concerned.
Revised native title determination application	Application under subsection 21(1) for revocation or variation of an approved determination of native title.	<ul style="list-style-type: none"> (1) The registered native title holder; 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 Registrar.
Compensation application	Application under subsection 48(2) for a determination for compensation.	<ul style="list-style-type: none"> (1) The registered native title holder (if any); or (2) A person or persons claiming to be entitled to the compensation either alone or with others.

Form and contents

(2) An application must be in the prescribed form and be given to the Registrar. It must also contain such information in relation to the matters sought to be determined as is prescribed.

5 *Claims to hold title with other persons*

(3) An application made by a person or persons claiming to hold native title, or to be entitled to compensation, with others must describe or otherwise identify those others. In doing so, it is not necessary to name them or to say how many there are.

10 **Material and fees to accompany applications***Material to accompany applications by native title claimants*

56.(1) A native title determination application by a person or persons claiming to hold the native title in relation to an area must:

- (a) be accompanied by a declaration by the applicant that the applicant:
- 15 (i) has conducted searches of all official title registers, including the National Native Title Register, that are relevant in relation to title in the land or waters; and
- (ii) believes that native title has not been extinguished in relation to any part of the area; and
- 20 (iii) believes that none of the area is covered by an entry in the National Native Title Register; and
- (b) contain a list of all official title registers searched; and
- (c) state the name and address of the person who is to be taken to be the claimant.

Note: The person whose name is given under paragraph (1)(c) will become the registered native title claimant.

25 *Material and fees to accompany all applications*

(2) Any application under section 55 must be accompanied by any prescribed documents and any prescribed fee.

Action to be taken in relation to applications*Action by Registrar*

30 **57.(1)** If an application complies with section 55 and is accompanied by the things required by section 56, the Registrar must accept the application unless the Registrar considers that:

- 35 (a) if the application is a native title determination application by a person or persons claiming to hold native title—native title in relation to any part of the area covered by the application has been extinguished; or
- (b) if the application is a native title determination application—any part of the area covered by the application is covered by an entry in the National Native Title Register; or

- (c) if the application is by a person or persons claiming to hold native title or to be entitled to compensation—the application does not contain sufficient information about any physical connection, that may be required by the common law concept of native title, to exist, or to have existed, between the applicant, or any of the applicant’s ancestors, and the land or waters covered by the application; or 5
- (d) if the application is a non-claimant application—any of the area covered by the application is covered by an entry in the Register of Native Title Claims; or
- (e) the geographical boundaries of the area that is covered by the application are not sufficiently described in the application; or 10
- (f) the application is frivolous or vexatious.

Note: Under section 45, any prior extinguishment of native title is to be disregarded in certain cases where a lessee is seeking a determination of native title.

Action by presidential member

(2) If the Registrar does not accept an application, the Registrar must give the application to a presidential member. The presidential member must accept the application unless he or she considers that any of paragraphs (1)(a) to (f) applies to the application. 15

Powers in relation to applications

Powers of the Registrar

58.(1) The Registrar may, with the approval of the President, exercise any of the powers in relation to an application that the Tribunal may exercise under sections 147 to 151. 20

Powers of presidential member

(2) A presidential member may exercise any of the powers in relation to an application that the Tribunal may exercise under sections 147 to 151. 25

Action to be taken in relation to accepted applications

Action by Registrar

- 59.(1) If an application is accepted under section 57, the Registrar must:
- (a) give notice of the application to all persons whose interests may be affected by a determination in relation to the application; and 30
 - (b) if the application is a native title determination application by a person or persons claiming to hold the native title—record details of the application in the Register of Native Title Claims.

Giving of notice

(2) The Registrar is taken to have given notice to all persons whose interests may be affected by a determination in relation to an application if the Registrar: 35

- (a) gives notice containing details of the application to:
- (i) the registered native title claimant (if any) in relation to the area covered by the application; and
 - (ii) the Commonwealth Minister; and
 - 5 (iii) 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; and
 - (iv) any registered native title holder in relation to any of the area covered by the application; and
 - 10 (v) any representative Aboriginal/Torres Strait Islander body for any of the area covered by the application; and
- (b) notifies the public in the determined way of the application.

Contents of notice

(3) A notice under subsection (2) must also state that:

- 15 (a) if the application is a non-claimant application—the application will be taken to be unopposed unless the condition in subsection (4) is satisfied within the period of 2 months starting on the day the notice is given; or
- 20 (b) in any other case—a person who wants to be a party in relation to the application must notify the Registrar, in writing, within the period of 2 months starting on the day the notice is given.

Paragraph (3)(a) condition

25 (4) The condition mentioned in paragraph (3)(a) is that a person or persons who claim to hold native title give a native title determination application, that covers any part of the area covered by the non-claimant application, to the Registrar or to a recognised State/Territory body entitled to receive it.

Special procedure in relation to certain native title determination applications

When section applies

30 **60.(1)** This section applies to a native title determination application (the “**non-claimant application**”) made in relation to an area other than by a person or persons claiming to hold the native title.

Application lapses if an application by native title claimants is accepted

- 35 (2) The non-claimant application is taken to have been dismissed if:
 - (a) within the period specified in the notice under section 59, a person or persons claiming to hold native title give a native title determination application that covers any part of the area covered by the non-claimant application to the Registrar or to a recognised
 - 40 State/Territory body entitled to receive it; and

- (b) the application given as mentioned in paragraph (a) is accepted (whether initially or on appeal and whether or not within the specified period).

Decision on application to be made within one month

(3) If an application is given as mentioned in paragraph (2)(a) to the Registrar, all reasonable steps must be taken, within a period of one month starting when that application is given, to decide whether to accept the application. 5

Applications taken to be unopposed

(4) If a non-claimant application is not taken to have been dismissed under subsection (2), the application is taken to be unopposed for the purposes of section 63. 10

Parties

Applicant

61.(1) The applicant is a party in relation to the application. 15

Other parties

- (2) Another person is a party in relation to the application if:
 - (a) the person is covered by any of subparagraphs 59(2)(a)(i) to (v) or the person’s interests may be affected by a determination in relation to the application; and 20
 - (b) the person notifies the Registrar, in writing, within the period specified in the notice under section 59, that the person wants to be a party in relation to the application.

Tribunal to decide persons whose interests may be affected

Tribunal to decide 25

62.(1) If it is necessary for the purposes of this Division to decide whether the interests of a person may be affected by a determination, that matter is to be decided by the Tribunal and, if the Tribunal decides that the interests of a person may be affected, the decision of the Tribunal is conclusive. 30

Constitution of Tribunal

(2) For the purposes of making a decision under subsection (1), the Tribunal must be constituted by a presidential member.

Unopposed applications

Tribunal may make determination 35

63.(1) In the case of an application accepted under section 57 that is unopposed, the Tribunal may make a determination in, or consistent with, the terms sought by the applicant if:

- (a) the Tribunal is satisfied that the applicant has made out a *prima facie* case for a determination in those terms; and
- (b) the Tribunal considers the determination to be just and equitable in all the circumstances.

5 *Meaning of unopposed*

(2) For the purposes of this section, an application is unopposed if:

- (a) at the end of the period specified in the notice under section 59, the only party is the applicant; or
- (b) each party notifies the Tribunal in writing that he or she does not oppose the application; or
- (c) the application is taken to be unopposed for the purposes of this section by section 60.

Power of Tribunal if parties reach agreement

64. If:

- (a) at the end of the period specified in the notice under section 59, the parties advise the Tribunal that they have reached agreement as to the terms of a determination of the Tribunal in relation to the application; and
- (b) the terms of the agreement, in writing signed by or on behalf of the parties, are given to the Tribunal; and
- (c) the Tribunal is satisfied that a determination in, or consistent with, those terms would be within the powers of the Tribunal and would be just and equitable in all the circumstances; and
- (d) the Tribunal is satisfied that the applicant has made out a *prima facie* case for a determination in, or consistent with, those terms;

the Tribunal must make a determination in accordance with, or consistent with, those terms.

Mediation conference to be held

Conference to be held

- 30 **65.(1)** If an application is accepted under section 57 and the Tribunal does not make a determination under section 63 or 64, the President must direct the holding of a conference of the parties or their representatives to help in resolving the matter.

Member to preside

- 35 (2) Any such conference must be presided over by a member.

Member not to take further part in relation to application

(3) A member who presides over a conference in relation to an application may not, in any capacity, take any further part in proceedings in relation to the application.

Power of Tribunal if parties reach agreement after mediation conference

66. If:

- (a) at the end of any such conference the parties advise the Tribunal that they have reached agreement as to the terms of a determination of the Tribunal in relation to the application; and 5
- (b) the terms of the agreement, in writing signed by or on behalf of the parties, are given to the Tribunal; and
- (c) the Tribunal is satisfied that a determination in, or consistent with, those terms would be within the powers of the Tribunal and would be just and equitable in all the circumstances; and 10
- (d) the Tribunal is satisfied that the applicant has made out a *prima facie* case for a determination in accordance with those terms;

the Tribunal must make a determination in, or consistent with, those terms.

Applications not settled are to be referred to the Federal Court 15

67. If an application is accepted under section 57 and the Tribunal does not make a determination under section 63, 64 or 66, the Registrar must lodge the application to the Federal Court for decision.

Division 2—“Right to negotiate” applications

“Right to negotiate” applications 20

Applications that may be made

68.(1) The following table sets out applications that may be made to the Registrar under this Division and the persons who may make each of those applications:

APPLICATIONS		
Kind of application	Application	Persons who may make application
Objection to inclusion in an expedited procedure application	Application under subsection 31(3) objecting against the inclusion of a statement that an act is an act attracting the expedited procedure.	A native title party.
Future act determination application	Application under section 33 for a determination in relation to a future act.	A negotiation party.

Form and contents

(2) An application must be in the prescribed form and be given to the Registrar. It must also contain such information in relation to the matters sought to be determined as is prescribed.

5 **Material and fees to accompany applications**

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

Action to be taken in relation to applications

10 70. If an application complies with section 68 and is accompanied by the things required by section 69, the Registrar must accept the application.

Note: The procedure to be followed in relation to these applications is set out in Subdivision B of Division 3 of Part 2.

*Division 3—Miscellaneous***Assistance to potential applicants***Registrar may give assistance*

15 71.(1) The Registrar may give such assistance as the Registrar considers reasonable to help people prepare applications and accompanying material.

Types of assistance

(2) Without limiting subsection (1), the assistance may include:

(a) the provision of research services; or

(b) the conducting of searches referred to in subparagraph 56(1)(a)(i).

20 **Requests for non-monetary compensation***Requests must be considered*

25 72.(1) If, during negotiations in relation to an application under this Part (whether or not during a conference under section 65), a person or persons who may be entitled to compensation request 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 request; and

(b) must negotiate in good faith in relation to the request.

Examples of non-monetary compensation

30 (2) The transfer of property or the provision of goods or services are examples of compensation in a form other than money.

PART 4—DETERMINATIONS OF THE FEDERAL COURT*Division 1—General***Operation of Part**

35 73. The provisions of this Part apply in proceedings in relation to applications lodged with the Federal Court under section 67.

Jurisdiction of the Federal Court

74. The Federal Court has jurisdiction to hear and determine applications lodged with it under section 67 and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

Federal Court's way of operating

5

Objectives

75.(1) The Federal Court must pursue the objective of providing a mechanism of determination that is fair, just, economical, informal and prompt.

Concerns of Aboriginal peoples and Torres Strait Islanders

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(2) The Court, in conducting proceedings, must take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

Court not bound by technicalities etc.

(3) The Court, in conducting proceedings, is not bound by technicalities, legal forms or rules of evidence.

15

Assessor assisting the Federal Court

Assessor to assist Court

76.(1) The Chief Judge is to direct an assessor to assist the Federal Court in relation to each proceedings.

20

Assessor subject to Court's control

(2) The assessor is, in relation to those proceedings, subject to the control and direction of the Court.

Assessor not to exercise judicial power

(3) In assisting the Court, the assessor is not to exercise any judicial power of the Court.

25

Parties

Persons to remain parties

77.(1) The persons who were parties under section 61 in relation to the application are parties.

30

Joining parties

(2) A person may seek leave of the Federal Court to be joined as a party to proceedings if the person's interests are affected by the matter or may be affected by a determination in the proceedings.

Representation before Federal Court

35

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

Evidence and findings in other proceedings

79. In the course of proceedings, the Federal Court may, in its discretion:

(a) receive into evidence the transcript of evidence in any other proceedings before:

- (i) the Court; or
- (ii) another court; or
- (iii) the NNTT; or
- (iv) a recognised State/Territory body; or
- (v) any other person or body;

and draw any conclusions of fact from that transcript that it thinks proper; and

(b) receive into evidence the transcript of evidence in any proceedings before the assessor and draw any conclusions of fact from that transcript that it thinks proper; and

(c) adopt any recommendation, finding, decision or judgment of any court, person or body of a kind mentioned in any of subparagraphs (a)(i) to (v).

Power of Federal Court if parties reach agreement*Power of Court*

80.(1) If, at any stage of proceedings:

(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 lodged with the Court; and

(c) the Court is satisfied that an order in, or consistent with, those terms would be within the powers of the Court and would be just and equitable in all the circumstances; and

(d) if the agreement relates to the order of the Court in relation to an application—the Court is satisfied that the applicant has made out a *prima facie* case for a determination in, or consistent with, those terms;

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.

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. 5

*Division 2—Conferences etc.***Conferences***Conference may be held*

81.(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. 10

Assessor to preside

(2) The conference must be presided over by the assessor who is assisting the Court in relation to the proceedings. 15

Right of appearance

82. Subject to section 84, a party has the right to appear at a conference.

Participation by telephone etc.

83. An assessor may allow a person to participate in a conference by:

- (a) telephone; or 20
- (b) closed-circuit television; or
- (c) any other means of communication.

Conferences to be held in public except in special circumstances*Public conferences*

84.(1) Subject to subsection (3), a conference must be held in public. 25

Participation by telephone etc.

(2) If, when a conference is in public, a person participates by a means allowed under section 83, the assessor must take such steps as are reasonably necessary to ensure the public nature of the conference is preserved.

Private conferences

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(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

35

(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.

Federal Court may prohibit disclosure of evidence*Power of Court*

85.(1) The Federal Court may direct that:

- 5 (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.

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

Powers of assessor to take evidence*Evidence on oath or affirmation*

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

15 *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.

Witnesses

- 20 (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

- 25 (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.

- 30 (6) If a person participates by a means allowed under section 83, 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**Order that compensation is payable**

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

- (a) if the compensation must be paid to a body corporate in accordance
with section 54—the name of the body corporate; or

- (b) in any other case:
- (i) the person or persons entitled to the compensation or the method for determining the person or persons entitled to the compensation; and
 - (ii) the method (if any) for determining the amount or kind of compensation to be given to each person; and 5
 - (iii) the method for determining any dispute regarding the entitlement of a person to an amount of the compensation.

PART 5—NATIVE TITLE REGISTRAR

Appointment of Registrar 10

Registrar

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

Appointment by Governor-General

(2) The Registrar is to be appointed by the Governor-General on the nomination of the President. 15

Qualifications

(3) A person is not to be appointed as Registrar unless the person 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.

Powers of Registrar—assisting the President 20

Powers, when assisting President

89.(1) The Registrar may do all things necessary or convenient to be done for the purpose of assisting the President under section 122.

Acting for President—administrative affairs

(2) In particular, the Registrar may act for the President in relation to the administrative affairs of the Tribunal. 25

President may give directions

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

Powers of Registrar—applications 30

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

Powers of Registrar—Register of Native Title Claims and National Native Title Register

91. The Registrar has the powers set out in Parts 7 and 8 in relation to the Register of Native Title Claims and the National Native Title Register. 35

Delegation by Registrar

92. 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.

5 Remuneration and allowances*Determination by Remuneration Tribunal*

93.(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.

10 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*.

Terms and conditions of appointment**20 Period for which office held**

94.(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.

Age limit

25 (2) A person who is 65 or over cannot be appointed as Registrar and a person cannot be appointed as Registrar for a period extending beyond the day on which he or she will reach 65.

Terms and conditions

30 (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.

Leave of absence*Recreation leave*

35 95.(1) Subject to section 87E of the *Public Service Act 1922*, 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.

5

Resignation

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

Termination of appointment*Misbehaviour or incapacity*

10

97.(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:

15

(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

20

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(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

25

(c) the Registrar engages in paid employment contrary to section 98; or

(d) the Registrar fails, without reasonable excuse, to comply with section 99.

Retirement—incapacity

(3) If the Registrar is:

30

(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.

35

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

5 (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:

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

(b) is under 60 years of age;

15 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.

Outside employment

Consent of President required

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

20 *Service in Defence Force*

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

Disclosure of interests by Registrar

25 99. 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.

PART 6—NATIONAL NATIVE TITLE TRIBUNAL

Division 1—Establishment, purpose and way of operating

Establishment of the National Native Title Tribunal

30 100. A National Native Title Tribunal is established.

Function of the Tribunal

Applications, inquiries and determinations

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

35 *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
- (c) linguistics.

5

Tribunal's way of operating*Objectives*

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

10

Concerns of Aboriginal peoples and Torres Strait Islanders

(2) The Tribunal, in conducting inquiries, must take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

Tribunal not bound by technicalities etc.

15

(3) The Tribunal, in conducting an inquiry, is not bound by technicalities, legal forms or rules of evidence.

Division 2—Membership of the National Native Title Tribunal**Membership of the Tribunal**

103. The membership of the Tribunal is as set out in the following table: 20

MEMBERSHIP OF THE NATIONAL NATIVE TITLE TRIBUNAL			
Member	Number to be appointed	Class of member	Persons who may be appointed
President	One	Presidential	(1) A Judge of the Federal Court; or (2) A former judge.
Deputy President	Any number or none		
Other member	Any number or none	Non-presidential	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 (c) is a member of a recognised State/Territory body.

Appointment of members of Tribunal

Appointment by Governor-General

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

Full-time or part-time appointments

5 **(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.

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

Judges

105.(1) The appointment of a Judge as a presidential member, or service by a Judge as a presidential member, does not affect: 5

- (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

10

(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. 15

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.

Delegation to members

106. 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. 20

Remuneration and allowances

Determination by Remuneration Tribunal

107.(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. 25

Prescribed allowances

(2) A member to whom subsection (1) applies is to be paid such other allowances as are prescribed. 30

Subject to Remuneration Tribunal Act 1973

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

Terms and conditions of appointment

Period for which office held

35

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

Age limit

5 (2) A person who is 65 or over cannot be appointed as a full-time non-presidential member, and a person cannot be appointed as a full-time non-presidential member for a period extending beyond the day on which he or she will reach 65.

When Judge or assessor ceases to be member

(3) 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.

Terms and conditions

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

Oath or affirmation of office

Member to take oath or affirmation

15 109.(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!”

20 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

- 25 (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.

Leave of absence

30 *Recreation leave*

110.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time member has the recreation leave entitlements determined by the Remuneration Tribunal.

Other leave

35 (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.

Resignation

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

Termination of appointment—members other than Judges or assessors

5

Misbehaviour or incapacity

112.(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.

10

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:

15

- (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.

20

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*;

25

retire the member from office on the ground of incapacity.

Retirement—invalidity—Superannuation Act 1976

30

(4) In spite of anything contained in this Act, a member 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.

35

Retirement—invalidity—Superannuation Act 1990

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

40

- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
- (b) is under 60 years of age;

5 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.

Suspension of members other than a Judge—misbehaviour or incapacity

Misbehaviour or incapacity

10 **113.(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

15 (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

20 (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.

Member's appointment to be terminated

25 (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.

30 *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.

Outside employment

35 *Consent of Commonwealth Minister required*

114.(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.

Disclosure of interests*Member to disclose conflict of interest*

5

115.(1) A member who has a conflict of interest in relation to an application under Part 4 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.

10

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.

15

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 4 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.

20

Division 3—Organisation of the Tribunal**Arrangement of business**

25

President may give directions

116.(1) Subject to sections 62 and 117, the President may give directions as to any of the following:

- (a) the arrangement of the business of the Tribunal;
- (b) the presidential member who is to consider a particular application under subsection 57(2);
- (c) the persons who are to constitute the Tribunal for the purposes of a particular inquiry, or for the purposes of making a decision under section 62;
- (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.

35

Factors to be considered

5 (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.

Constitution of Tribunal for exercise of powers*Constitution of Tribunal*

10 117.(1) Subject to section 62, 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.

Constitution where 3 members

15 (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.

Reconstitution of the Tribunal*When section applies*

20 118.(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

25 (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

30 (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

35 (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.

5

Member presiding

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

Places of sitting

120. 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.

10

Division 4—Management of the Tribunal

Subdivision A—Management responsibilities of President and Registrar

Management of administrative affairs of Tribunal

15

President responsible for administrative affairs

121.(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:

20

- (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.

25

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.

30

35

Native Title Registrar

122. 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 and staff of Tribunal**Deputy Registrars and staff of the Tribunal***Deputy Registrars and staff*

5 **123.(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 1922

10 (3) The Deputy Registrars and the staff of the Tribunal are to be persons appointed or employed under the *Public Service Act 1922*.

Secondment

15 (4) The Registrar may, on behalf of the President, arrange with the Secretary of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department 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.

20 Powers of Registrar regarding Deputy Registrars and Tribunal staff

124. In relation to the branch of the Australian Public Service consisting of the Deputy Registrars and the staff of the Tribunal, the Registrar has the same powers as if that branch were a Department of the Australian Public Service and the Registrar were the Secretary of that Department.

25 Engagement of consultants etc.*Registrar may engage consultants*

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

Services include research

30 (2) Without limiting subsection (1), the services that a consultant may be engaged to perform include carrying out research under subsection 101(2).

How engagement to be made

(3) An engagement under subsection (1) must be made:

(a) on behalf of the Commonwealth; and

35 (b) by written agreement.

Subdivision C—Miscellaneous administrative matters

Annual report

President to give report etc. to Commonwealth Minister

126.(1) As soon as practicable after the end of each financial year, the President is to give to the Commonwealth Minister:

5

- (a) a report of the management of the administrative affairs of the Tribunal during the financial year; and
- (b) financial statements for that financial year.

Form of financial statements

(2) The financial statements are to be in a form approved by the Minister for Finance.

10

Audit of financial statements

(3) Before giving the financial statements to the Commonwealth Minister, the President must give them to the Auditor-General who must report to the Commonwealth Minister:

15

- (a) whether, in the opinion of the Auditor-General, 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, in his or her opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Commonwealth Minister.

20

25

Tabling of annual report

(4) The Commonwealth Minister must cause a copy of the report and financial statements, together with a copy of the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Commonwealth Minister.

30

Proper accounts and records to be kept

President to ensure account etc. kept

127.(1) The President must ensure that proper accounts and records of the transactions and affairs relating to the administration of the Tribunal under section 121 are kept.

35

President to ensure certain things

(2) The President must do all things necessary to ensure that:

- (a) all payments out of money appropriated by the Parliament for the purposes of the Tribunal are correctly made and properly authorised; and

40

- (b) proper control is maintained over assets held by, or in the custody of, the President on behalf of the Commonwealth and over the incurring of liabilities on behalf of the Commonwealth under this Part.

Audit

5 *Auditor-General to audit*

128.(1) The Auditor-General must, at least once in each financial year, inspect and audit:

- (a) the accounts and records of financial transactions relating to the administration of the affairs of the Tribunal under section 121; and
- 10 (b) the records relating to assets held by, or in the custody of, the President on behalf of the Commonwealth.

Auditor-General to notify Commonwealth Minister of irregularities

15 **(2)** The Auditor-General must immediately draw the attention of the Commonwealth Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of enough importance to justify such action.

Auditor-General may limit audit

20 **(3)** The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

Auditor-General to report to Commonwealth Minister

(4) The Auditor-General must report to the Commonwealth Minister the results of the inspection and audit carried out under subsection (1).

Access to accounts and records

25 **(5)** The Auditor-General or a person authorised by him or her may, at all reasonable times, have full and free access to all accounts and records maintained under section 127 that relate directly or indirectly to:

- (a) the receipt or payment of money; or
- 30 (b) the acquisition, receipt, custody or disposal of assets by the President on behalf of the Commonwealth.

Power to make copies

(6) The Auditor-General or a person authorised by him or her may make copies of, or take extracts from, any such accounts and records.

Power to obtain information

35 **(7)** The Auditor-General or a person authorised by him or her may require any person to give him or her:

- (a) information in the person's possession; or
- (b) information to which the person has access;

if the Auditor-General or authorised person considers the information necessary for the purposes of the functions of the Auditor-General under this Act. The person must comply with the requirement.

Offence

(8) A person who, without reasonable excuse, contravenes subsection (7) is guilty of an offence and is punishable, on conviction, by a fine of not more than 10 penalty units. 5

Proceedings arising out of administration of Tribunal

129. 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. 10

Division 5—Inquiries and determinations by the Tribunal

Subdivision A—Special inquiries 15

Special inquiries

Ministerial direction

130.(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. 20

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; and 25
- (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.

Notice 30

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

Subdivision B—Inquiries—General

Inquiries

132.(1) The Tribunal must hold an inquiry into: 35

- (a) an application covered by section 63 or 64 (an “**unopposed application**”); or
 (b) an application covered by section 68 (a “**right to negotiate application**”); or
 5 (c) a matter or an issue covered by section 130 (a “**special matter**”).

Inquiries may cover more than one matter

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

Parties

Unopposed applications

- 10 134.(1) The parties to an inquiry in relation to an unopposed application are the persons who are the parties under section 61.

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.

15 *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.

20 **Opportunity to make submissions concerning evidence**

135. Subject to sections 146 and 147, 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
 25 relation to those documents.

Representation before Tribunal

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

Manner in which questions to be decided

30 *Questions of law*

137.(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

- 35 (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.

Reference of questions of law to the Federal Court

5

Referral to Federal Court

138.(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

10

(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.

15

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.

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Evidence and findings in other proceedings

139. 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:

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- (i) the Tribunal; or
- (ii) a court; or
- (iii) a recognised State/Territory body; or
- (iv) any other person or body;

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and draw any conclusions of fact from that transcript that it thinks proper; and

- (b) adopt any 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.

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Power of Tribunal where a proceeding is frivolous or vexatious

140. 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.

Power of Tribunal where *prima facie* case not made out

141. The Tribunal may dismiss an application, at any stage of the inquiry relating to the application, if it is satisfied that the applicant is unable to make out a *prima facie* case in relation to the application.

5 ***Subdivision C—Conferences and hearings***

Conferences

Conference may be held

10 142.(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

15 (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

20 (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.

Hearings

143. For the purposes of an inquiry, the Tribunal may hold hearings.

Right of appearance

25 144. Subject to section 146, a party to an inquiry has the right to appear at hearings and conferences that are held for the purposes of the inquiry.

Participation by telephone etc.

30 145. A person holding a conference mentioned in section 142, 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.

Inquiries to be held in public except in special circumstances

35 *Public inquiries*

146.(1) Subject to subsection (3), an inquiry 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 145, the Tribunal must take such steps as are reasonably necessary to ensure the public nature of the hearing is preserved.

Private inquiries

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(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 an inquiry, or a part of an inquiry, be held in private and give directions as to the persons who may be present.

Concerns of Aboriginal peoples or Torres Strait Islanders

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(4) In determining if an inquiry or part of an inquiry 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.

Tribunal may prohibit disclosure of evidence

147. The Tribunal may direct that:

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- (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 146.

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Powers of Tribunal to take evidence*Evidence on oath or affirmation*

148.(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

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(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.

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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.

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Participation by telephone etc.

5 (6) If a person participates by a means allowed under section 145, 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.

Tribunal may authorise another person to take evidence

Who may exercise Tribunal's powers

10 149.(1) The powers of the Tribunal under section 148 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

15 (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 148.

Written record to be made

20 (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.

Interpretation

25 (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.

Interpreters

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

Retention and copying of documents

30 151. 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

Determination of the Tribunal—section 55 applications

35 *Tribunal to make determination*

152.(1) After holding an inquiry in relation to an application made under section 55, 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.

Determination that compensation is payable

153. If the Tribunal makes a determination that compensation is payable, the determination must set out: 5

- (a) if the compensation must be paid to a body corporate in accordance with section 54—the name of the body corporate; or
- (b) in any other case:
 - (i) the person or persons entitled to the compensation or the method for determining the person or persons entitled to the compensation; and 10
 - (ii) the method (if any) for determining the amount or kind of compensation to be given to each person; and
 - (iii) the method for determining any dispute regarding the entitlement of a person to an amount of the compensation. 15

Determination of the Tribunal—right to negotiate applications*Tribunal to make determination*

154.(1) Subject to section 35, 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. 20

Tribunal must state findings of fact

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

Reports after special inquiries 25*Tribunal to make report*

155.(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. 30

Determinations and reports to be in writing

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

Determination of native title or compensation not conclusive 35

157. A determination of the Tribunal, other than a determination in relation to a right to negotiate application, is not binding or conclusive.

Subdivision E—Registration of determinations in Federal Court

Registration of determination

Coverage of section

158.(1) This section applies to a determination made under section 152.

5 *Registrar to lodge determination with Federal Court*

(2) As soon as practicable after the determination is made, the Registrar must lodge the determination in a Registry of the Federal Court.

Determination to be registered

10 (3) Upon lodgment of the determination, a Registrar (within the meaning of section 35A of the *Federal Court of Australia Act 1976*) must register the determination.

Registrar to give notice of registration

15 (4) Within 7 days after the determination is registered, the Native Title Registrar must give written notice of the registration to each of the parties to the inquiry. The notice must specify the date of registration and must include a copy of the determination.

Registered determination has effect as an order of the Federal Court

Registered determination has effect as an order

20 159.(1) Upon registration of a determination under section 158, the determination has effect as if it were an order made by the Federal Court.

Delay in enforcement

(2) No action to enforce the determination may be taken before the end of the normal application and review period.

Failure with positive requirement

25 (3) A failure by a party, during the normal application and review period, to comply with a positive requirement of the determination is not a contravention of the determination.

Persons who may apply for review of determination

30 (4) A party to the inquiry before the Tribunal, or any other person whose interests are affected by the determination, may apply to the Federal Court for review of the determination.

Period for application for review

(5) Subject to subsection (6), the application for review must be made before the end of 28 days after the day the determination is registered.

35 *Extension of period for application for review*

(6) After those 28 days, a party may apply for review only with the leave of the Federal Court. The Court may grant leave only in exceptional circumstances.

Orders that the Court may make

(7) If the Court grants leave, it may make one or more of the following orders:

- (a) an order prohibiting action, or further action, to enforce the determination during a specified period ending no later than when proceedings on the review are completed or otherwise terminated; 5
- (b) an order staying, for such a period, action to enforce the determination that has already begun;
- (c) an order that failure to comply, during such a period, with specified positive requirements of the determination is not a contravention of the determination; 10
- (d) an order that a past failure to comply, during such a period, with such requirements is taken never to have been such a contravention.

Orders

- (8) The Court may make an order under subsection (7): 15
 - (a) on such conditions, if any, as it thinks fit; and
 - (b) whether or not it also makes an order under subsection 160(3).

Revocation of orders

- (9) The Federal Court may vary or revoke an order under subsection (7).

Definitions

- (10) In this section:

“**normal application and review period**” means the period starting when the determination is registered and finishing:

- (a) if a party applies in accordance with subsection (4) for a review of the determination—when proceedings on the review are completed or otherwise terminated; or 25
- (b) in any other case—at the end of the 28th day after the day the determination is registered.

Review of registered determination*Coverage of section*

- 160.(1) This section applies if an application is made to the Federal Court under section 159 for review of a determination. 30

Parties

- (2) The parties to the review are:
 - (a) the applicant for review; and 35
 - (b) the persons who were parties to the inquiry before the Tribunal; and
 - (c) any other person whose interests are affected by the determination who applies to be made a party.

Application of Part 4 to review

(3) Part 4 (other than sections 73, 74 and 77) applies to the review in the same way as it applies to proceedings in relation to applications lodged with the Federal Court under section 67.

5 *Interim orders*

(4) The Court may at any time make an interim order that suspends the operation of the whole or any part of the determination. The order may be made on such conditions, if any, as the Court thinks fit.

Review of issues of fact

10 (5) In reviewing the determination, the Court may review all issues of fact and law.

Leave required for new evidence

(6) A party cannot adduce new evidence without the leave of the Court.

Orders of the Court

15 (7) After reviewing the determination, the Court may make such orders as it thinks fit (including a declaration of right). The orders may confirm a determination that is registered under section 158.

Court may dismiss applications

20 (8) The Court may dismiss the application for review at any time if it considers that the applicant is not dealing with the application promptly enough. The Court may do this either of its own motion or on the application of the respondent.

Subdivision F—Appeals

25 **Appeals to Federal Court from decisions and determinations of the Tribunal**

Appeal from Tribunal determination or decision—right to negotiate the applications

30 **161.(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 decision to not accept

(2) If a person has given an application to the Registrar under section 55, the person may appeal to the Court, on a question of fact or law, from a decision of a presidential member to not accept the application.

35 *Appeal from decision that interests not affected*

(3) If a person has applied to the Tribunal to be made a party to an application, and the Tribunal decides that the interests of the person will not be affected by a determination, the person may appeal to the Court, on a question of fact or law, from the decision of the Tribunal.

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 5
- (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. 10

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. 15

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 20
- (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.

Operation and implementation of a decision or determination that is subject to appeal 25

Operation of decision or determination

162.(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. 30

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: 35

- (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.

Court or Judge may vary orders

5 (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:

10 (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

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

Division 6—Offences

Failure of witness to attend

20 **163.** 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, without reasonable excuse:

(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.

Penalty: Imprisonment for 3 months.

25 **Refusal to be sworn or to answer questions etc.**

164. A person appearing before the Tribunal to give evidence must not, without reasonable excuse:

(a) refuse or fail to take either an oath or affirmation when required by the Tribunal; or

30 (b) refuse or fail to answer a question that the person is required to answer by the Tribunal.

Penalty: Imprisonment for 3 months.

Giving of false or misleading evidence

35 **165.** A person appearing before the Tribunal to give evidence must not knowingly give evidence that is false or misleading in a material particular.

Penalty: Imprisonment for 3 months.

Refusal to produce document

166. A person must not, without reasonable excuse, refuse or fail to produce a document that the person is required to produce by a summons under section 148 that has been served on the person in the prescribed way. Penalty: Imprisonment for 3 months. 5

Provision of false or misleading document*Offence*

167.(1) A person must not, in complying with a summons under section 148, produce a document that, to the knowledge of the person, is false or misleading in a material particular. 10

Exception

(2) Subsection (1) does not apply to a person who produces a document that, to the knowledge of the person, is false or misleading in a material particular if the document is accompanied by a written statement signed by the person: 15

- (a) stating that the document is, to the knowledge of the person, false or misleading in a material particular; and
- (b) setting out, or referring to, the material particular in which the document is false or misleading. 20

Penalty: Imprisonment for 3 months. 20

Contravention of direction prohibiting disclosure of evidence

168. A person must not disclose any material in contravention of a direction made under section 85 or 147. Penalty: Imprisonment for 3 months.

Contempt of Tribunal 25

169. A person must not:

- (a) obstruct or hinder the Tribunal or a member 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. 30

Penalty: Imprisonment for 3 months.

*Division 7—Miscellaneous***Sending of documents to the Federal Court**

170. If a determination of the Tribunal is lodged with the Federal Court under section 158, an appeal to the Federal Court is made under section 161 or a question of law is referred to the Court under section 138: 35

- (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.

Return of documents etc. at completion of proceeding

If no appeal to Federal Court

171.(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 170(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 170(a) to the Tribunal, the President may arrange for the document to be returned to the person who gave it to the Tribunal.

Protection of members and persons giving evidence

Protection of members

172.(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 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.

Confidential information not to be disclosed

Persons not required to give evidence

173.(1) A person who is, or has been, a member or an officer of the Tribunal is not competent, and must not be required, to give evidence to a court relating to a matter if:

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- (a) the giving of the evidence would be contrary to a direction of the Tribunal in force under section 147; or
- (b) an application has been made to the Tribunal for an order under that section concerning the matter to which the evidence would relate and the Tribunal has not determined that application.

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Persons not required to produce documents

(2) A person who is, or who has been, a member or an officer of the Tribunal 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 147; or
- (b) an application has been made to the Tribunal for an order under that section in relation to the document and the Tribunal has not determined that application.

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Members not required to give evidence

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(3) A person who is, or has been, a member of the Tribunal must not be required to give evidence to a court in relation to any proceedings before the Tribunal.

Definitions

(4) In this section:

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“**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.

Fees for persons giving evidence

Prescribed fees etc.

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174.(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:

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- (a) if the witness was summoned at the request of a party—by that party; or
- (b) in any other case—by the Commonwealth.

Assistance in proceedings*Parties may apply for assistance*

175.(1) A person who is a party to:

(a) an inquiry by the Tribunal; or

(b) proceedings before the Federal Court under this Act;

may apply to the Attorney-General for the provision of assistance under this section in relation to the inquiry or proceedings.

Attorney-General may grant assistance

(2) If the Attorney-General is satisfied that:

(a) the applicant is not eligible to receive assistance in relation to the inquiry or proceedings from any other source (including from a representative Aboriginal/Torres Strait Islander body); and

(b) to refuse the application will involve hardship to the applicant; and

(c) the provision of assistance to the applicant in relation to the inquiry or proceedings is in accordance with the guidelines (if any) determined under subsection (3); and

(d) 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

(3) 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

(4) The Attorney-General cannot authorise the provision of assistance under this section to the Commonwealth Minister, a State Minister or a Territory Minister.

Delegation by Attorney-General

(5) The Attorney-General may, by signed instrument, delegate to the holder of an office in the Senior Executive Service of the Australian Public Service all or any of the Attorney-General's powers under subsection (2).

PART 7—REGISTER OF NATIVE TITLE CLAIMS**Claims to native title**

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

Register of Native Title Claims

Establishment

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

Registrar to establish and keep

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(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.

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. 10

Contents of the Register

Information to be included

178.(1) The Register must contain the following information for each claim: 15

- (a) whether the application was lodged with the Registrar or a recognised State/Territory body;
- (b) if the application was lodged with a recognised State/Territory body—the name of that body; 20
- (c) the date on which the application was lodged;
- (d) the name and address for service of the person who is taken to be the claimant;
- (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. 25

Other information

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

Inspection of the Register

Register to be available during business hours

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179.(1) Subject to section 180, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.

Prescribed fee

(2) A person may inspect the Register if the person pays the prescribed fee. 35

If register kept on computer

5 (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.

Parts of the Register may be kept confidential*Public interest test*

10 180.(1) Section 179 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.

Names and addresses to be confidential

15 (2) Section 179 does not apply to so much of the Register as consists of names or addresses of persons who it is claimed hold native title, other than the name and address for service of a person who is taken to be a claimant.

Concerns of Aboriginal peoples and Torres Strait Islanders

20 (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.

Registrar of the High Court to notify Registrar

181. The Registrar of the High Court must, as soon as is practicable, notify the Registrar of:

- 25 (a) the details of any claim contained in an application given to the High Court; and
 (b) the details of any decision or determination covering a claim made by the High Court.

Keeping the Register*Registrar to include claims*

30 182.(1) The Registrar must, as soon as practicable after becoming aware of them, include in the Register:

- 35 (a) details of any claims contained in applications given to the Registrar; and
 (b) details of any claims of which the Registrar is notified under section 181; and
 (c) details of any claims of which the Registrar is notified by a recognised State/Territory body.

Amending entries after determinations

(2) If:

- (a) the Tribunal makes a decision or determination covering a claim; or
- (b) the Registrar is notified under section 181 or 188 of a decision or determination covering a claim; or
- (c) the Registrar is notified by a recognised State/Territory body of a decision or determination covering a claim;

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the Registrar must, as soon as practicable after becoming aware of the decision or determination, amend the entry in the Register that relates to the claim by including details of the decision or determination.

Delegation by Registrar to recognised State/Territory body

183. The Registrar may 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 much of the Register as relates to land or waters within the jurisdictional limits of that State or Territory.

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PART 8—NATIONAL NATIVE TITLE REGISTER

National Native Title Register

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Establishment

184.(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 Registrar.

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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.

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Contents of the Register

Determinations to be included

185.(1) The Register must contain the information set out in subsection (2) in relation to the following:

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- (a) approved determinations of native title by the NNTT, 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.

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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 the name and address of the body corporate that, under section 53, is to hold the native title rights and interests.

5 *Other information*

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

Inspection of the Register*Register to be available during business hours*

15 **186.(1)** Subject to section 187, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.

Prescribed fee

20 (2) A person may inspect the Register if the person pays the prescribed fee.

If register kept on computer

25 (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.

Parts of the Register may be kept confidential*Public interest test*

30 **187.(1)** Section 186 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

35 (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.

Registrar of the Federal Court to notify Registrar

188. A Registrar of the Federal Court (within the meaning of section 35A of the *Federal Court of Australia Act 1976*) must, as soon as is practicable, notify the Native Title Registrar of the details of any decision or determination covering a claim made by the Court. 5

Keeping the Register

189. The Native Title Registrar must, as soon as is practicable, include in the Register details of determinations or decisions covered by subsection 185(1).

Delegation by Registrar to recognised State/Territory body 10

190. 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.

Registrar to notify land titles office 15*Registrar to notify*

191.(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.

Definition 20

(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 9—NATIONAL ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND 25**National Aboriginal and Torres Strait Islander Land Fund***Establishment of Fund*

192.(1) A National Aboriginal and Torres Strait Islander Land Fund is established. 30

Purpose of Fund

(2) The purpose of establishing the Fund is to assist Aboriginal peoples and Torres Strait Islanders:

- (a) to acquire land; and
- (b) to manage the acquired land in a way that provides economic, environmental, social or cultural benefits to the Aboriginal peoples and Torres Strait Islanders. 35

Operation of Fund

(3) The regulations may make provision in relation to:

- (a) the kinds of payments that are to be made into and from the fund; and
- (b) the circumstances in which such payments may be made; and
- 5 (c) the persons who are to operate the fund; and
- (d) the investment of money standing to the credit of the fund; and
- (e) the keeping of accounts in relation to the operations of the fund; and
- (f) reporting on the operation of the fund; and
- (g) any other matter relating to the nature and operation of the fund.

10 **PART 10—REPRESENTATIVE ABORIGINAL/TORRES STRAIT ISLANDER BODIES**

Representative Aboriginal/Torres Strait Islander bodies*Determination*

15 **193.(1)** The Commonwealth Minister may, in writing, determine that a body is a representative Aboriginal/Torres Strait Islander body for an area specified in the determination.

More than one body possible for each area

(2) The Commonwealth Minister may determine more than one body in relation to any area.

20 *Criteria to be satisfied*

(3) The Commonwealth Minister must not make the determination unless he or she is satisfied that:

- (a) the body is broadly representative of the Aboriginal peoples or Torres Strait Islanders in the area; and
- 25 (b) the body satisfactorily performs its existing functions; and
- (c) the body will satisfactorily perform its functions under subsection (4).

Functions of body

30 (4) A representative Aboriginal/Torres Strait Islander body may:

- (a) facilitate the researching, preparation or making of claims, by individuals or groups from among Aboriginal peoples or Torres Strait Islanders, for determinations of native title or for compensation for acts affecting native title; or
- (b) assist in the resolution of disagreements among such individuals or groups about the making of such claims; or
- 35 (c) assist such individuals or groups by representing them, if requested to do so, in negotiations and proceedings relating to the doing of acts affecting native title, the provision of compensation in relation to such acts or any other matter relevant to the operation of this Act.

Financial assistance to representative Aboriginal/Torres Strait Islander bodies

Applications

194.(1) A representative Aboriginal/Torres Strait Islander body may apply to the Commonwealth Minister for assistance under this section. 5

Grant of assistance

(2) If the Commonwealth Minister is satisfied that in all the circumstances it is reasonable to do so, the Commonwealth Minister may authorise the provision by the Commonwealth to the applicant of legal or financial assistance to enable the body to perform its functions under subsection 193(4). 10

PART 11—MISCELLANEOUS

Act not to apply so as to exceed Commonwealth power

Intention of Parliament

195.(1) Unless the contrary intention appears, if a provision of this Act: 15
 (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 20

(2) Despite subsection (1), the provision is not to have a particular valid application if: 20
 (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 25
 (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. 30

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). 35

Definitions

(4) In this section:

“**application**” means an application in relation to:

- (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.

Operation of beneficial land rights laws not affected

196. 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*.

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

Confirmation of ownership of natural resources etc.

197.(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
- (e) areas that were public places at the end of 31 December 1993.

Effect of confirmation under subsection (2)

(3) Any confirmation under subsection (2) does not extinguish any native title rights and interests and does not affect any conferral of land or an interest in land under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.

5

Provisions relating to Federal Court jurisdiction*Native title to be determined in accordance with this Act*

198.(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.

10

Matters arising under this Act

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

Disallowable instruments

199. The following are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*;

15

- (a) a determination under paragraph 22(7)(c), (d) or (e), 25(3)(b) or 41(1)(b) or subsection 193(1), 230(4), 236(1) or 237(1);
- (b) an approval under paragraph 25(2)(e).

Regulations

20

General

200.(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.

25

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 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
- (b) the regulations may make provision:
 - (i) prescribing fees to be paid in relation to applications to the Registrar; 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

30

35

(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.

5

PART 12—AMENDMENT OF ACTS

Division 1—Amendment of the Federal Court Act 1976

Object of Division

10 **201.** The object of this Division is to provide for the appointment of, and terms and conditions of appointment for, assessors under the *Federal Court of Australia Act 1976*.

Principal Act

202. In this Division, “**Principal Act**” means the *Federal Court of Australia Act 1976*¹.

15 **Insertion of new Part**

203. After Part V of the Principal Act, the following Part is inserted:

“PART VA—ASSESSORS

Appointment of assessors

20 “37A.(1) There are to be assessors to assist the Court in the exercise of its jurisdiction under the *Native Title Act 1993*.

“(2) The assessors are to be appointed by the Governor-General.

“(3) An assessor must be appointed either as a full-time assessor or as a part-time assessor.

25 “(4) As far as is practicable, persons appointed as assessors are to be selected from Aboriginal peoples or Torres Strait Islanders.

Qualifications for appointment

“37B. A person is not to be appointed as an assessor unless the person has, in the opinion of the Governor-General, special knowledge in relation to:

30 (a) Aboriginal or Torres Strait Islander societies; or

(b) land management; or

(c) dispute resolution; or

(d) any other class of matters considered by the Governor-General to have substantial relevance to the duties of an assessor.

Remuneration and allowances

“37C.(1) An assessor is to be paid the remuneration determined by the Remuneration Tribunal. If there is no determination in force, the assessor is to be paid such remuneration as is prescribed.

“(2) An assessor is to be paid such allowances as are prescribed. 5

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

Terms and conditions of appointment

“37D.(1) An assessor is appointed for the period (not longer than 5 years) specified in the instrument of appointment, but is eligible for reappointment. 10

“(2) A person who is 65 or over cannot be appointed as a full-time assessor, and a person cannot be appointed as a full-time assessor for a period extending beyond the day on which he or she will reach 65.

“(3) An assessor holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are prescribed. 15

Oath or affirmation of office

“37E. A person who is appointed or re-appointed as an assessor must, before beginning to discharge the duties of the office, take, before the Chief Judge or a Judge of the Court, an oath or affirmation in the following form: 20

‘I,, do swear that I will well and truly serve in the office of assessor 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 25

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

Leave of absence

“37F.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time assessor has the recreation leave entitlements determined by the Remuneration Tribunal. 30

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

Resignation

“37G. An assessor may resign by giving a signed notice of resignation to the Governor-General. 35

Termination of appointment—bankruptcy etc.

“37H. The Governor-General must terminate the appointment of an assessor if the assessor:

- (a) becomes bankrupt; or
- 5 (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.

10 Termination of appointment—misbehaviour or incapacity

“37I.(1) The Governor-General may terminate the appointment of an assessor if an address praying for the termination of the assessor’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
15 Parliament in the same session of the Parliament.

“(2) The Governor-General may, with the consent of an assessor who is:

- (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
- 20 (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;

retire the assessor from office on the ground of incapacity.

“(3) In spite of anything contained in this Act, an assessor who:

- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
- 25 (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.

30 “(4) In spite of anything contained in this Act, an assessor 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
35 the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Suspension of assessors—misbehaviour or incapacity

“37J.(1) The Governor-General may suspend an assessor from office on the ground of misbehaviour or of physical or mental incapacity.

“(2) If the Governor-General suspends an assessor from office, the 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.

“(3) If such a statement is laid before a House of the Parliament, that House may, within 15 sitting days of that House after the day on which the statement is laid before it, by resolution, declare that the assessor’s appointment should be terminated. 5

“(4) If each House of the Parliament passes the resolution in that way, the Governor-General must terminate the assessor’s appointment. 10

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

“(6) The suspension of an assessor from office under this section does not affect any entitlement of the assessor to be paid remuneration and allowances. 15

Outside employment

“37K.(1) Except with the consent of the Minister, a full-time assessor must not engage in paid employment outside the duties of his or her office.

“(2) The reference in subsection (1) to paid employment does not include service in the Defence Force. 20

Note: An assessor will be taken to be performing the functions of his or her office as assessor if he or she is performing the functions of a member of the National Native Title Tribunal.

Disclosure of interests

“37L.(1) An assessor who has a conflict of interest in relation to proceedings must disclose the matters giving rise to that conflict to the Chief Judge and the parties. 25

“(2) The assessor must not take part in the proceedings or exercise any powers in relation to the proceedings unless the Chief Judge consents.

“(3) For the purposes of this section, an assessor has a conflict of interest in relation to proceedings if the assessor has any interest, pecuniary or otherwise, that could conflict with the proper performance of the assessor’s functions in relation to the proceedings.”. 30

Rules of court

204. Section 59 of the Principal Act is amended by adding at the end of subsection (2) the following word and paragraphs:

“; and (zj) the practice and procedure of the Court in relation to any matter arising under the *Native Title Act 1993*; and 35

- (zk) the notification of determinations of native title to the Registrar of the National Native Title Tribunal; and
- (zl) the duties of assessors appointed under Part VA of this Act.”.

Division 2—Amendment of other Acts

5 **Amendment of the Jurisdiction of Courts (Cross-vesting) Act**

205. Section 4 of the *Jurisdiction of Courts (Cross-vesting) Act 1987* is amended by inserting after paragraph (4)(b) the following paragraph:
 “(ba) the *Native Title Act 1993*; or”.

10 **Amendment of the Petroleum (Submerged Lands) Act and the Minerals (Submerged Lands) Act**

Amendment of the Petroleum (Submerged Lands) Act

206.(1) The *Petroleum (Submerged Lands) Act 1967* is amended by omitting section 127 and substituting the following section:

Property in petroleum

- 15 “127. Subject to this Act, if petroleum is recovered by a permittee, lessee or licensee in the permit area, lease area or licence area:
- (a) the petroleum becomes the property of the permittee, lessee or licensee; and
 - 20 (b) it is not subject to any rights of other persons (other than any person to whom the permittee, lessee or licensee transfers, assigns or otherwise disposes of the petroleum or an interest in the petroleum).”.

Amendment of the Minerals (Submerged Lands) Act

25 (2) The *Minerals (Submerged Lands) Act 1981* is amended by omitting section 77 and substituting the following section:

Property in minerals

- 30 “77. Subject to this Act, if any mineral in a block is recovered from the block under and in accordance with a permit or licence:
- (a) the mineral becomes the property of the permittee or licensee, as the case may be; and
 - (b) the mineral is not subject to any rights of other persons (other than any person to whom the permittee or licensee transfers, assigns or otherwise disposes of the mineral or an interest in the mineral).”.

Application of amendments

35 (3) The amendments made by this section apply to petroleum or minerals recovered either before or after the commencement of this section.

PART 13—DEFINITIONS

Division 1—List of definitions

List of definitions

207. The following table lists the definitions in this Part and shows their location:

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Native title

Common law rights and interests

208.(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) If native title rights and interests as defined by subsection (1) are 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.

Native title holder

209. The expression “**native title holder**”, in relation to native title, means:

- (a) if a body corporate is registered on the National Native Title Register as the holder of the native title—that body corporate; or
- (b) in any other case—the person or persons who hold the native title.

Determination of native title

210. A “**determination of native title**” is a determination of the following:

- (a) whether native title exists in relation to a particular area of land or waters;
- (b) if it exists:
 - (i) who holds it; and
 - (ii) whether the native title rights and interests confer possession, occupation, use and enjoyment of the land or waters on its holders to the exclusion of all others; and
 - (iii) if not, the nature and extent of the native title rights and interests; and
 - (iv) in any case—the nature and extent of any other interest in relation to the land or waters that may affect the native title rights and interests.

Act

Section affects meaning of “act” in references relating to native title

211.(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)** Subject to subsection (4), “**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) Subject to subsection (4), an “act” may be done by the Crown in any of its capacities or by any other person.

Excluded acts

(4) An act is not to be taken into account if it is declared by the regulations to be an excluded act for the purposes of this subsection.

Act affecting native title

212. An act “affects” native title if it is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests.

Past act

Definition

213.(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.

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.

Category A past act*Section defines expression*

214.(1) This section defines the expression “**category A past act**”.

Grant of certain freehold estates

(2) 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 213(3) (which deals with such things as the exercise of options) or 213(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 the same capacity; or
 - (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) The grant of:

- (a) a commercial lease, an agricultural lease, a pastoral lease or a residential lease; or
- (b) what is taken by subsection 230(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 213(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 the same 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.

Construction of public works

(4) 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 213(9) applies.

Category B past act

215. 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 213(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 the same 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.

Category C past act

216. A “**category C past act**” is a past act consisting of the grant of a mining lease.

Category D past act

217. 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.

Future act

Definition

218.(1) Subject to subsection (2), 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 legislation excluded

(2) If:

- (a) the act consists of the making, amendment or repeal of legislation; and
- (b) the act purports to validate any past act;

subsection (1) does not apply to the extent that the act purports to validate the past act.

Low impact future act

219. A “**low impact future act**” is a future act in relation to land or waters where:

- (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, where the determination is that native title exists; and
- (b) the act does not consist of, authorise or otherwise involve:
 - (i) the grant of a freehold estate in any of the land or waters; or
 - (ii) the grant of a lease over any of the land or waters; or
 - (iii) the conferral of a right of exclusive possession over any of the land or waters; or
 - (iv) the excavation or clearing of any of the land or waters; or
 - (v) mining; 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.

Permissible future act

Definition

220.(1) This section defines “**permissible future act**”.

Legislative acts in relation to onshore places

(2) A future act in relation to an onshore place is a “**permissible 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 both sides of, 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 both sides of, or surrounding, the waters).

Example for purposes of paragraph (2)(a)—equally affecting all title

(3) An example of a future act covered by paragraph (2)(a) is the making of legislation that permits mining on land in respect of which there is either native title or ordinary title.

Example for purposes of paragraph (2)(b)—bringing native title into line with ordinary title

(4) An example of a future act covered by paragraph (2)(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.

Non-legislative acts in relation to onshore places

(5) A future act in relation to an onshore place is also a **“permissible 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 both sides of, or surrounding, the waters.

Example for purposes of subsection (5)

(6) An example of a future act covered by subsection (5) 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.

Other future permissible acts

(7) Any of the following is also a **“permissible future act”**:

- (a) a future act in relation to an offshore place;
- (b) a low impact future act;
- (c) an agreement covered by section 20 or a future act authorised by such an agreement.

Impermissible future act

221. An **“impermissible future act”** is any future act that is not a permissible future act.

Act attracting the expedited procedure

222. A future act is an **“act attracting the expedited procedure”** if:

- (a) the act does not directly interfere with the community life 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 does not 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 does not involve major disturbance to any land concerned or create rights whose exercise will involve major disturbance to any land concerned.

Non-extinguishment principle

Effect of references

223.(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 6 of Part 2 (which deals with the holding of native title etc. by bodies corporate).

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 213(3), (4) or (9) applies expires), the rights and interests again have full effect.

Act attributable to the Commonwealth, a State or a Territory

224. 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.

Similar compensable interest test

225. The “**similar compensable interest test**” is satisfied in relation to a past act or a future act if compensation would, apart from this Act, be payable under any law for the act on the assumption that the native title holders instead held:

- (a) to the extent that the native title concerned is in relation to an onshore place—ordinary title to any land concerned and to the land adjoining both sides of, or surrounding, any waters concerned; and
- (b) to the extent that the native title concerned is in relation to an offshore place—any corresponding rights and interests in relation to the offshore place that were not native title rights and interests.

Division 3—Leases

Coverage of Division

226. This Division contains definitions relating to leases.

Lease

227. 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.

Lessee

228. 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 a lessee (including of a person who is a lessee because of another application or applications of this section).

Permit

Definition

229.(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.

Mining lease

Definition

230.(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 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).

Commercial lease

Definition

231.(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 232, 233 and 234 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.

Agricultural lease

232. 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.

Pastoral lease

233. 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.

Residential lease*Definition*

234.(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.

*Division 4—Sundry definitions etc.***Application to things happening before commencement**

235. 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.

Recognised State/Territory body*Determination*

236.(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, when the body becomes a recognised State/Territory body under this Act:

- (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; and
 - (iii) determinations whether acts affecting native title may be done; will be consistent with those set out in this Act; 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
- (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
- (g) the State or Territory will consult with the Commonwealth Minister on non-judicial appointments to the body; 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
 - (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 after doing so, the Commonwealth Minister is still not satisfied—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 1 of Part 4.

Notify the public in the determined way*Definition*

237.(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.

Other definitions

238. Unless the contrary intention appears:

“**Aboriginal peoples**” means peoples of the Aboriginal race of Australia;
“**approved determination of native title**” has the meaning given by subsections 12(3), (4) and (7);

“**arbitral body**” has the meaning given by section 26;

“**assessor**” means an assessor appointed under Part VA of the *Federal Court of Australia Act 1976*;

“**Chief Judge**” means the Chief Judge of the Federal Court;

“**coastal sea**” has the meaning given by subsection 15B(4) of the *Acts Interpretation Act 1901*;

“**common law holders**” has the meaning given by section 53;

“**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*;

“**Compulsory Acquisition Act**”, in relation to the Commonwealth, a State or a Territory, means a law of the Commonwealth, the State or the Territory that:

- (a) provides for the compulsory acquisition by the Commonwealth, the State or the Territory of interests in relation to land or waters; and
- (b) provides for compensation for the acquisition of any native title rights and interests; and
- (c) contains provisions to the same effect as section 72 in relation to the determination of the compensation;

other than a law declared by the regulations not to be a Compulsory Acquisition Act;

“**Federal Court**” means the Federal Court of Australia;

“**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 25(1);

“**grantee party**” has the meaning given by paragraph 28(2)(d);

“**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 the bed or subsoil under waters;

“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:

- (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;

“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 party” has the meaning given by paragraphs 28(2)(a) and (b) and section 29;

“Native Title Registrar” means the Native Title Registrar appointed under Part 5;

“negotiation party” means a Government party, a grantee party or a native title party;

“non-claimant application” has the meaning given by subsection 60(1);

“non-presidential member” means a member who, in accordance with the table in subsection 103(1), is of the non-presidential class;

“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 103, 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) a building, or other structure, that is a fixture; or
- (b) a road, railway or stock-route; or
- (c) any major earthworks;

constructed or established by or on behalf of the Crown, or a statutory authority of the Crown, in any of its capacities;

“recognised State/Territory body” means a court, office, tribunal or body in relation to which a determination under section 236 is in force;

“Register of Native Title Claims” means the Register established and maintained in accordance with Part 7;

“registered native title claimant”, in relation to land or waters, means a person whose name appears in an entry (other than an entry amended under subsection 182(2) to include details of a decision or determination) on the Register of Native Title Claims in relation to the land or waters;

“registered native title holder” means a body corporate that is registered on the National Native Title Register as a holder of native title;

“Registrar” means the Native Title Registrar;

“representative Aboriginal/Torres Strait Islander body” means a body that is the subject of a determination under subsection 193(1);

“right to negotiate application” has the meaning given by paragraph 132(1)(b);

“**special matter**” has the meaning given by paragraph 132(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 established by a law of the Commonwealth, the State or Territory other than a general law allowing incorporation as a company or body corporate;

“**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;

“**unopposed application**” has the meaning given by paragraph 132(1)(a);

“**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)).

NOTE

1. No. 156, 1976, as amended. For previous amendments, see Nos. 19 and 87, 1979; No. 61, 1981; No. 26, 1982; No. 91, 1983; Nos. 11, 72 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; No. 141, 1987; Nos. 8, 99 and 120, 1988; No. 157, 1989; Nos. 11, 70 and 115, 1990; Nos. 112, 113, 122, 136 and 181, 1991; and Nos. 49, 94 and 143, 1992.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

NATIVE TITLE BILL 1993

SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE

Regional Agreements

Govt 1 Preamble, page 3, after line 18, insert:

“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.”.

Financial Assistance to States

Govt 2 Clause 4, page 6, table containing outline of Act, after entry relating to Part 8, insert the following entry:

“ 8A	<p>Financial Assistance to States and Territories:</p> <p style="padding-left: 40px;">This Part provides for the Commonwealth to enter into agreements for the provision of financial assistance to States and Territories that have validated past acts.</p>	”.
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Govt 40 After Part 8, page 82, insert the following Part:

**“PART 8A — FINANCIAL ASSISTANCE
TO STATES AND TERRITORIES**

Financial assistance to States or Territories

Financial assistance that may be given

“191A.(1) If a State or Territory has validated past acts as mentioned in

section 18, 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 arising under Part 2; 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 of that State or Territory; or
- (d) costs and expenses of administering any provisions having effect under subsection 41(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.”.

Parliamentary Joint Committee

Govt 3 Clause 4, page 6, table containing outline of Act, after entry relating to Part 10, insert the following entry:

“

10A	Parliamentary Joint Committee on Native Title: This Part provides for the appointment of a Parliamentary Joint Committee on Native Title.
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”.

Govt 44A After Part 10, page 84, insert the following Part:

**“PART 10A — PARLIAMENTARY JOINT COMMITTEE
ON NATIVE TITLE**

Establishment and membership

“194A.(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, 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.

Powers and proceedings

“194B. Subject to this Part, all matters relating to the Parliamentary Joint Committee’s powers and proceedings must be determined by resolution of both Houses.

Duties

“194C. The Parliamentary Joint Committee’s duties are:

- (a) to consult extensively about the implementation and operation of this Act 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 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
 - (ii) to which, in the Parliamentary Joint Committee's opinion, the Parliament's attention should be directed; and
- (d) at the end of 2 years after the commencement of this Part, 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
 - (v) the operation of the National Aboriginal and Torres Strait Islander Land Fund established by Part 9; and
 - (vi) the effect of the operation of this Act on land management; 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.

Sunset provision

“194D. This Part ceases to be in force at the end of 5 years after the Parliamentary Joint Committee is first appointed.”.

Racial Discrimination Act

GWA 1A After clause 6, page 7, insert the following clause:

Racial Discrimination Act

Operation of RDA not affected

“6A.(1) Nothing in this Act affects the operation of the *Racial Discrimination Act 1975*.”.

Validation provisions not affected

“(2) Subsection (1) does not affect the validation of past acts by or in accordance with this Act.”.

Effect of Validation

Dem 2A(1) Clause 10, page 8, at end of clause, add the following subclause:

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 3 of Part 2 (which deals with future acts and native title); or
- (b) by validating past acts in relation to the native title.”.

Govt 5 Clause 13, page 9, at end of clause, add the following subclause:

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.”.

Govt 7 Clause 18, page 11, at end of clause, add the following subclause:

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.”.

Onshore Waters

Govt 6 Clause 16, page 10, subparagraph (2)(a)(ii), line 32, omit “both sides of”.

Govt 12 Clause 22, page 13, paragraph (6)(a), line 40, omit “both sides of”.

Govt 61 Clause 220, page 103, paragraph (2)(a), line 24, omit “both sides of”.

Govt 62 Clause 220, page 103, paragraph (2)(b), line 28, omit “both sides of”.

Govt 63 Clause 220, page 104, subparagraph (5)(b)(ii), line 12, omit “both sides of”.

Govt 64 Clause 225, page 106, paragraph (a), line 21, omit “both sides of”.

Govt 72 Clause 238, page 113, definition of “**land**”, lines 7 and 8, omit the definition, substitute the following definition:

“**land**’ includes the airspace over, or subsoil under, land, but does not include waters;

Note: 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’.”.

Offshore Waters

GWA 3A(1) Clause 16, page 10, paragraph (2)(b), lines 34 to 38, omit the paragraph, substitute the following paragraph:

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

GWA 3A(2) Clause 22, page 13, paragraph (4)(b), lines 11 to 17, omit the paragraph, substitute the following paragraph:

“(b) either:

- (i) the native title concerned relates to an offshore place and the act is not a low impact future act; or
- (ii) the native title concerned relates to an onshore place and the following conditions are satisfied:
 - (A) the act is not a low impact future act; and
 - (B) the similar compensable interest test is satisfied in relation to the act; and
 - (C) the law mentioned in section 225 (which defines ‘similar compensable interest test’) does not provide for compensation to the native title holders for the act.”.

GWA 3A(3) Clause 225, page 106, lines 14 to 24, omit the clause, substitute the following clause:

Similar compensable interest test

“225. The ‘**similar compensable interest test**’ is satisfied in relation to a past 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.”.

Compensation Rights

Govt 8 Clause 19, page 12, subclause (3), lines 1 and 2, omit the subclause, substitute the following subclauses:

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 47(b) deals with the situation where there are multiple rights to compensation under Commonwealth, State and Territory laws.”.

Govt 10 Clause 22, page 13, subparagraph (4)(b)(iii), line 16, after “compensation”, insert “to the native title holders”.

Govt 11 Clause 22, page 13, subclause (5), line 21, omit “compensation is payable by”, substitute “native title holders may recover the compensation from”.

Govt 13 Clause 23, page 15, subclause (2), line 7, omit “compensation is payable by”, substitute “native title holders may recover the compensation from”.

Govt 19 Clause 43, page 25, at end of clause, add the following subclause:

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.”.

Govt 22 Clause 48, page 27, subclauses (3) and (4), lines 4 to 14, omit the subclauses.

Right to Negotiate

Govt 9 Clause 22, page 13, after subclause (3), insert the following note:

“Note: Subdivision B (which deals with the right to negotiate) applies to some acquisitions under Compulsory Acquisition Acts.”.

Govt 17 Clause 37, page 21, paragraph (1)(b), lines 24 to 26, omit the paragraph, substitute the following paragraph:

“(b) any assessment of the effect of the proposed act on the natural environment of the land or waters concerned:

(i) made by a court or tribunal; or

(ii) made, or commissioned, by the Crown in any capacity or by a statutory authority;”.

- Dem 9A(1)** Clause 41, page 24, after paragraph (2)(d), insert the following paragraph:
“(da) make provision on similar terms to section 29 and contain time limits similar to those applicable under this Subdivision; and”.

Extinguishment by Compulsory Acquisition

- GWA 6A** Clause 22, page 13, paragraph (3)(a), lines 1 to 3, omit the paragraph, substitute the following paragraphs:
“(a) the non-extinguishment principle applies to the acquisition; and
(aa) nothing in this Act prevents any act that is done in giving effect to the purpose of the acquisition from extinguishing the native title rights and interests; and”.

Negotiations

- GWA 31A** After clause 31, page 19, insert the following clause:
Negotiations to include certain things
“31A. Without limiting the scope of any negotiations, they may, where 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.”.

Overruling of Determinations

- GWA 14C** Clause 14, page 10, at end of clause, add the following subclause:
“(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, regrant or extension of which is validated by section 13.”.

Pastoral Lease Conversions

- Govt 20** Clause 45, page 26, subclause (2), lines 7 to 10, omit the subclause, substitute the following subclause:
“(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.”

Govt 21

Clause 45, page 26, paragraph (3)(a), line 14, omit the paragraph, substitute the following paragraph:

“(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”.

Compensation Held by Trustees

Govt 23

Clause 50, page 29, at end of subclause (1), add the following paragraph:

“(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 negotiated compensation to that person or another person”.

Govt 24

Clause 50, page 30, at end of clause, add the following subclause:

Paragraph (1)(e) case

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

Protection of Native Title from Debt Recovery

Govt 25

Clause 53A, page 32, at end of clause, add the following subclauses:

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:

- (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).”

Bodies Corporate

- Govt 75(1)** Clause 4, page 5, table containing outline of Act, entry relating to Part 2, paragraph (e), lines 16 and 17, omit the paragraph, substitute the following paragraph:
- “(e) Division 6 provides for prescribed bodies corporate to perform functions in relation to native title, which may include holding the native title on trust.”
- Govt 75(2)** Clause 28, page 18, paragraph (2)(a), line 3, omit “holder”, substitute “body corporate”.
- Govt 75(3)** Clause 29, page 18, lines 23 to 26, omit the clause, substitute the following clause:
- “29. Each of the following is also a ‘native title party’:
- (a) any person who, within the period of 2 months starting when the notice is given, becomes a registered native title claimant in relation to any of the land or waters that will be affected by the act;
 - (b) any body corporate that, within that period of 2 months, becomes a registered native title body corporate in relation to any of the land or waters that will be affected by the act.”
- Govt 75(4)** Clause 41, page 24, paragraph (2)(a), line 26, omit “holders”, substitute “bodies corporate”.
- Govt 75(5)** Clause 41, page 24, paragraph (2)(d), line 31, omit “holders”, substitute “bodies corporate”.
- Govt 75(6)** Clause 50, page 29, subparagraph (1)(c)(i), line 15, omit “by a body corporate”, substitute “in trust”.
- Govt 75(7)** Clause 50, page 29, subparagraph (1)(c)(ii), line 18, omit “body corporate holding the native title under Division 6”, substitute “registered native title body corporate”.
- Govt 75(8)** Clause 50, page 29, subparagraph (1)(c)(ii), line 20, omit “it”, substitute “the native title holders”.

Govt 75(9) Division 6, line 18 (page 31) to line 22 (page 33), omit the Division, substitute the following Division:

***“Division 6 — Native title functions of prescribed bodies corporate
and holding of native title in trust***

Determinations by NNTT and Federal Court

“53. If:

(a) the NNTT or 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 NNTT or the Federal Court must, at the same time as it makes the determination, make the determinations in section 53A (which deals with holding the native title on trust) and 53B (which deals with non-trust functions of prescribed bodies corporate).

Determination whether native title to be held in trust

Trust determination

“53A.(1) One of the determinations that the NNTT or 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 NNTT or 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 NNTT or 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 NNTT or the Federal Court must determine that the prescribed body corporate is to hold the rights and interests 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 NNTT or 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 NNTT or 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.

Determination of prescribed body corporate etc.

Where trustee

“53B.(1) If the determination under section 53A 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 238), 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 53C).

Where not trustee

“(2) If the determination under section 53A is not as mentioned in subsection (1) of this section, the NNTT or 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 NNTT or 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 NNTT or the Federal Court must determine that the body is to perform the functions;
- (c) thirdly, if no prescribed body corporate is nominated in accordance with the request, the NNTT or 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 53C).

Functions under regulations

“53C. 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 53A — 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 their 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.

Kinds of prescribed bodies corporate

“53D. The regulations may prescribe the kinds of bodies corporate that may be determined under section 53A or 53B in either or both of the following ways:

- (a) by providing that bodies corporate may be established and operated for the purpose in a specified way;
- (b) by providing that the bodies corporate may be those that have been or may be established by other laws of the Commonwealth, a State or a Territory.

Replacement of prescribed bodies corporate

“53E. 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.”.

Govt 75(10) Clause 55, page 34, subclause (1), table of applications, “Revised native title determination application” entry, **Persons who may make application** column, line 23, omit “holder”, substitute “body corporate”.

Govt 75(11) Clause 55, page 34, subclause (1), table of applications, “Compensation application” entry, **Persons who may make application** column, line 35, omit “holder”, substitute “body corporate”.

Govt 75(12) Clause 59, page 37, subparagraph (2)(a)(iv), line 8, omit “holder”, substitute “body corporate”.

Govt 75(13) Clause 87, line 34 (page 45) to line 8 (page 46), omit the clause, substitute the following clause:

“87. 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.”.

Govt 75(14) Clause 153, page 68, lines 5 to 16, omit the clause, substitute the following clause:

“153. If the Tribunal makes a determination that compensation is payable, the determination 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.”.

Govt 75(15) Clause 185, page 81, paragraph (2)(d), lines 7 to 9, omit the paragraph, substitute the following paragraph:

“(d) the matters determined, including:

- (i) who the common law holders of the native title are; and
- (ii) the name of any prescribed body corporate that holds the native title rights and interests on trust; and
- (iii) the name and address of the prescribed body corporate determined under section 53A or 53B in relation to the native title.”.

Govt 75(16) Clause 207, page 94, table containing list of definitions, after entry for “**Register of Native Title Claims**”, insert the following entry:

“**registered native title body corporate** 238”.

Govt 75(17) Clause 207, page 94, table containing list of definitions, line 21, omit “**registered native title holder** 238”.

Govt 75(18) Clause 209, page 96, paragraph (a), lines 4 and 5, omit the paragraph, substitute the following paragraph:

“(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”.

Govt 75(19) Clause 223, page 105, subclause (5), line 26, omit “etc. by bodies corporate”, substitute “on trust”.

Govt 75(20) Clause 238, page 112, definition of “**common law holders**”, line 6, omit “53”, substitute “53A”.

Govt 75(21) Clause 238, page 114, after definition of “**Register of Native Title Claims**”, insert the following definition:

“‘**registered native title body corporate**’ means the prescribed body corporate whose name and address are registered on the National Native Title Register under subparagraph 185(2)(d)(iii);”.

Govt 75(22) Clause 238, page 114, definition of “**registered native title holder**”, lines 34 and 35, omit the definition.

Applications

Dem 23 Clause 55, page 34, subclause (1), table of applications, “Revised native title determination application” entry, **Application** column, omit “21(1)”, substitute “12(1)”.

GWA 22A(1) Clause 56, page 35, paragraphs (1)(a) and (b), lines 14 to 22, omit the paragraphs, substitute the following paragraphs:

“(a) be accompanied by an affidavit sworn by the applicant that the applicant:

- (i) believes that native title has not been extinguished in relation to any part of the area; and
- (ii) believes that none of the area is covered by an entry in the National Native Title Register; and
- (iii) believes that all of the statements made in the application are true; and

(b) contain all information known to the applicant about interests in relation to any of the land or waters concerned that are held by persons other than as native title holders; and

(ba) contain a description of the area over which the native title is claimed; and”.

GWA 22A(2) Clause 57, line 28 (page 35) to line 17 (page 36), omit the clause, substitute the following clauses:

Applications complying with section 56

Acceptance of applications that are not frivolous etc.

“**57.(1)** If the requirements of section 56 are complied with in relation to the application, the Registrar must accept it, unless he or she is of the opinion:

- (a) that the application is frivolous or vexatious; or
- (b) that *prima facie* the claim cannot be made out.

Reference of vexatious etc. cases to presidential member

“(2) If the Registrar is of the opinion mentioned in paragraph (1)(a) or (b), the Registrar must refer the application to a presidential member.

Where presidential member agrees that application is vexatious etc.

“(3) If the presidential member is of the same opinion, the presidential member must:

- (a) advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the presidential member that the application is not frivolous or vexatious, or that a *prima facie* claim can be made out, as the case requires; and
- (b) if the applicant so satisfies the presidential member — direct the Registrar to accept the application; and
- (c) if the applicant does not so satisfy the presidential member — direct the Registrar not to accept the application.

Where presidential member considers application not vexatious etc.

“(4) If the presidential member is not of the same opinion as the Registrar, the presidential member must direct the Registrar to accept the application.

Applications not complying with section 56

Reference to presidential member

“57A.(1) If the Registrar considers that the requirements of section 56 are not complied with in relation to the application, the Registrar must refer the application to a presidential member.

Where presidential member considers requirements not complied with

“(2) If the presidential member also considers that the requirements are not complied with, the presidential member must:

- (a) advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the presidential member that the requirements are complied with; and
- (b) if the applicant so satisfies the presidential member — direct the Registrar to accept the application; and
- (c) if the applicant does not so satisfy the presidential member — direct the Registrar not to accept the application.

Where presidential member considers requirements are complied with

“(3) If the presidential member considers the requirements are complied with, the presidential member must direct the Registrar to accept the application.”.

Tribunal and Court Procedure

Govt 26 Clause 59, page 37, after subparagraph (2)(a)(iv), insert the following subparagraph:

“(iva) any person who holds a proprietary interest in any of the area covered by the application, being an interest that is registered in a register of interests in relation to land or waters maintained by the Commonwealth, a State or a Territory; and”.

- Govt 27** Clause 60, pages 37 and 38, subclause (2), line 34 (page 37) to line 3 (page 38), omit the subclause, substitute the following subclause:
Effect if an application by native title claimants is accepted
“(2) If:
(a) within the period specified in the notice under section 59, a person or persons claiming to hold native title give a native title determination application (the ‘claimant application’) that covers any part of the area covered by the non-claimant application to the Registrar or to a recognised State/Territory body entitled to receive it; and
(b) the claimant application is accepted (whether initially or on appeal and whether or not within the specified period);
then:
(c) if the non-claimant application is by or on behalf of a Minister, the Crown in any capacity or a statutory authority — the non-claimant application is taken to be dismissed; or
(d) in any other case — the non-claimant application is taken, for all purposes after the claimant application is given to the Registrar, not to relate to the area covered by the claimant application.”.
- Govt 28** Clause 64, page 39, paragraphs (c) and (d), lines 21 to 25, omit the paragraphs, substitute the following paragraph:
“(c) the Tribunal is satisfied that a determination in, or consistent with, those terms would be within the powers of the Tribunal and would be appropriate in the circumstances;”.
- Govt 29** Clause 65, page 39, after subclause (2), insert the following subclause:
Statements at conference are without prejudice
“(2A) In proceedings before the Federal Court, and 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.”.
- Govt 30** Clause 65, page 39, subclause (3), line 37, omit “A member”, substitute “Unless the parties otherwise agree, a member”.
- Govt 31** Clause 65, page 39, at end of clause, add the following subclause:
Participation by telephone etc.
“(4) The member may allow a person to participate by:
(a) telephone; or
(b) closed-circuit television; or
(c) any other means of communication.”.

- Govt 32** Clause 66, page 40, paragraphs (c) and (d), lines 9 to 13, omit the paragraphs, substitute the following paragraph:
“(c) the Tribunal is satisfied that a determination in, or consistent with, those terms would be within the powers of the Tribunal and would be appropriate in the circumstances.”.
- Govt 33** Clause 76, page 42, subclause (1), line 19, omit “is to”, substitute “may”.
- Govt 34** Clause 80, page 43, paragraphs (c) and (d), lines 28 to 34, omit the paragraphs, substitute the following paragraph:
“(c) the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court.”.
- Govt 35** Clause 88, page 46, subclause (2), lines 14 and 15, omit “on the nomination of the President”.
- Govt 36** Clause 132, page 63, paragraph (1)(a), line 1, omit “or 64”, substitute “, 64 or 66”.
- Govt 37** Clause 139, page 64, paragraph (b), line 33, before “findings”, insert “report,”.
- Govt 38** After clause 141, page 65, insert the following clause:
Power of Tribunal where applicant requests dismissal
“141A. 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.”.
- Govt 39** Clause 178, page 78, after subclause (1), insert the following note:
“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 28(2)(b), are to be given.”.
- Dem 27** Clause 108, page 53, subclause (2), lines 1 to 5, omit the subclause.
- Offences**
- GWA 26** Clause 163, page 73, line 24, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 20 penalty units”.
- GWA 27** Clause 164, page 73, line 32, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 20 penalty units”.
- GWA 28** Clause 165, page 73, line 36, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 40 penalty units”.
- GWA 29** Clause 166, page 74, line 5, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 20 penalty units”.

- GWA 30** Clause 167, page 74, line 20, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 40 penalty units”.
- GWA 31** Clause 168, page 74, line 24, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 40 penalty units”.
- GWA 32** Clause 169, page 74, line 32, omit “Penalty: Imprisonment for 3 months”, substitute “Maximum Penalty: 40 penalty units”.

Report by Social Justice Commission

Dem 28A After clause 195, page 85, insert the following clause:

Reports by Aboriginal and Torres Strait Islander Social Justice Commissioner

Yearly report

“195A.(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).”.

Government Funding

Govt 41 Clause 194, page 84, subclause (1), line 5, after “Minister”, insert “or ATSIC”.

Govt 42 Clause 194, page 84, subclause heading and subclause (2), lines 6 and 7, omit the heading and “(2) If”, substitute:

Grant of assistance — Commonwealth Minister

“(2) If an application is made to the Commonwealth Minister and”.

Govt 43 Clause 194, page 84, at end of clause, add the following subclauses:

Grant of assistance — ATSIC

“(3) If an application is made to ATSIC and ATSIC is satisfied in all the circumstances that it is reasonable to do so, ATSIC may authorise the provision of financial assistance, from money appropriated for the purposes of ATSIC, to enable the body to perform its functions under subsection 193(4).

Definition of ATSIIC

“(4) In this section:

‘ATSIC’ means the Aboriginal and Torres Strait Islander Commission established by the *Aboriginal and Torres Strait Islander Commission Act 1989*.”.

Preservation of Rights

GWA 33B After clause 196, page 85, insert the following clause:

Preservation of certain native rights and interests

Requirements for removal of prohibition etc. on native title holders

“196A.(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
- (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.

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

Fishing Rights

GWA 34A Clause 197, page 86, subclause (3), lines 1 to 5, omit the subclause, substitute the following subclause:

Effect of confirmation under subsection (2)

“(3) Any confirmation under this section does not extinguish or impair 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.”.

Revocation of Recognition

Govt 46 Clause 199, page 86, at end of clause, add the following paragraph:

“;(c) a revocation of a determination under paragraph 236(4)(b)”.

Govt 68 Clause 236, page 111, paragraph (4)(b), line 11, before “revoke”, insert “in writing”.

Aboriginal and Torres Strait Islander Land

Govt 47 Clause 207, page 92, table containing list of definitions, after entry for “**Aboriginal peoples**”, insert the following entry:

“**Aboriginal/Torres Strait Islander land or waters** 238”.

Govt 56 Clause 214, page 101, paragraph (3)(d), at end of paragraph, add the following word and subparagraph:

“; or (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters”.

Govt 58 Clause 215, page 102, paragraph (d), at end of paragraph, add the following word and subparagraph:

“; or (iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters”.

Govt 59 Clause 218, page 102, subclause (1), line 11, omit “subsection (2)”, substitute “this section”.

Govt 60 Clause 218, page 102, at end of clause, add the following subclause:

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 238;

(b) any act affecting Aboriginal/Torres Strait Islander land or waters.”.

Govt 69A Clause 238, page 111, after definition of “**Aboriginal peoples**”, insert the following definition:

“**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 prescribed for the purposes of the provision in which the expression is used;”.

Definitions: Mining, Native Title, etc.

Govt 48 Clause 207, page 92, table containing list of definitions, after entry for “**determination of native title**”, insert the following entry:

“**explore** 238”.

Govt 49 Clause 208, page 95, subclause (3), line 28, omit “If”, substitute “Subject to subsection (4), if”.

Govt 50A Clause 208, page 95, at end of clause, add the following subclause:

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.”.

- Govt 65** Clause 227, page 106, at end of clause, add the following subclause:
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.”.
- Govt 66** Clause 228, page 106, line 36, omit “The”, substitute “Subject to subsection (2), the”.
- Govt 67** Clause 228, page 106, at end of clause, add the following subclause:
Lessee of certain mining leases
“(2) In the case of a lease that is a mining lease because of subsection 227(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.”.
- Govt 71** Clause 238, page 112, after definition of “Compulsory Acquisition Act”, insert the following definition:
“‘explore’ includes:
(a) conduct a geological, geophysical or geochemical survey; or
(b) take samples for the purpose of analysis;”.
- GWA 37** Clause 208, page 95, subsection (3), line 28, after “subsection (1) are”, insert “, or have been at any time in the past,”.
- Miscellaneous Definitions**
- Govt 52** Clause 212, page 97, lines 8 to 10, omit the clause, substitute the following clause:
“212. 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.”.
- Govt 54** Clause 214, page 100, subclause (2), line 11, omit “The”, substitute “A past act consisting of the”.
- Govt 55** Clause 214, page 100, subclause (3), line 28, omit “The”, substitute “A past act consisting of the”.
- Govt 57** Clause 214, page 101, subclause (4), line 12, omit “The”, substitute “A past act consisting of the”.

- Govt 70** Clause 238, page 112, definition of “**Compulsory Acquisition Act**”, paragraph (a), lines 13 and 14, omit the paragraph, substitute the following paragraph:
“(a) 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 other interests in relation to land or waters; and”.
- Govt 73** Clause 238, page 114, definition of “**registered native title claimant**”, line 33, after “Native Title Claims”, insert “as the person who is taken to be the claimant”.
- GWA 39** Clause 210, page 96, subparagraph (b)(iii), lines 17 and 18, omit the subparagraph, substitute the following subparagraph:
“(iii) those native title rights and interests that the maker of the determination considers to be of importance; and”.
- GWA 47** Clause 214, page 100, subparagraph (2)(b)(i), line 21, omit “in the same capacity”, substitute “in any capacity”.
- GWA 49** Clause 214, page 101, subparagraph (3)(d)(i), line 5, omit “in the same capacity”, substitute “in any capacity”.
- GWA 51** Clause 215, page 101, subparagraph (d)(i), line 36, omit “in the same capacity”, substitute “in any capacity”.
- GWA 58** Clause 222, page 104, paragraph (c), lines 37 to 39, after “land” (wherever occurring), insert “or waters”.
- GWA 63** Clause 236, page 110, subclause (2), lines 5 and 6, omit “, when the body becomes a recognised State/Territory body under this Act”.

Definition of “act”

- Govt 51** Clause 211, page 97, subclause (4), lines 4 to 6, omit the subclause.

Definition of “permissible future act”

- Dem 53** Clause 220, page 104, after subclause (6), insert the following subclause:

Renewals, re-grants or extensions of certain leases

“(6A) A future act is also a ‘permissible future act’ if:

- (a) it is:
(i) the renewal; or
(ii) the re-grant; or

- (iii) the extension of the term;
of a commercial, agricultural, pastoral or residential lease; and
- (b) the renewal, re-grant or extension takes effect at the end of the term
of the lease, or at the time of any earlier termination of the lease;
and
- (c) the act does not:
 - (i) create a proprietary interest where the lease previously
created only a non-proprietary interest; or
 - (ii) create a larger proprietary interest than was previously
created by the lease; and
- (d) if the lease contains a reservation or condition for the benefit of
Aboriginal peoples or Torres Strait Islanders — the renewed, re-
granted or extended lease contains the same reservation or
condition.”.

HARRY EVANS
Clerk of the Senate

The Senate
Canberra, 22 December 1993 a.m.