National Native Title Tribunal
Submission to the House of Representatives Standing Committee on Industry and Resources

INQUIRY INTO
RESOURCES EXPLORATION IMPEDIMENTS

Friday, 26 July 2002

The Hon Christopher Sumner AM
Deputy President
National Native Title Tribunal

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1. EXECUTIVE SUMMARY

(1) The High Court in *Mabo v Queensland [No. 2]* (1992) 175 CLR 1; 107 ALR 1 (High Court, 3 June 1992) ('the Mabo decision') held that native title was capable of being recognised by the common law provided that connection to the land has been maintained by native title holders since European settlement and native title had not been extinguished by the grant of a tenure which was inconsistent with native title (for instance a freehold grant to a third party extinguishes native title).

(2) The *Native Title Act* 1993 (Cth) (NTA) was passed as a response to the Mabo decision and among other things set out procedures for future dealings which affect native title. This included a special right to negotiate for holders and registered claimants of native title in relation mainly to the grant of exploration and mining tenements. Had the procedures not been put in place it is possible that Indigenous people would have sought access to the Courts to protect their newly recognised rights.

(3) The right to negotiate provisions have imposed another regulatory step on the mining industry before access to land can be granted but this flowed from the recognition of native title in the Mabo decision.

(4) If the right to negotiate provisions are followed, then Governments may validly do the future acts covered by them (including the grant of mining and exploration tenements). There is no veto given to Indigenous people and the procedures, if used, do ensure that a decision about a grant can be made within a defined time. The Tribunal to date has not determined that a future act cannot be done.

(5)(i) There is an exception to the normal right to negotiate (the expedited procedure or fast-tracking) where the grant will not directly interfere with the social or community life of the native title holders, interfere with sites of particular (special) significance to them or cause major disturbance to land. Governments usually say that the expedited procedure applies to the grant of prospecting or exploration licences. Native title parties may object to the expedited procedure following which the Tribunal must conduct an inquiry to determine if the expedited procedure is justified or whether the normal right to negotiate must be followed.

(5)(ii) In practice, in Western Australia particularly, most objections to the expedited procedure are settled by agreement often by the signing of a heritage protection agreement. For example, of all objections (573 in total) finalised in Western Australia in 2001-02, 259, or 45%, were resolved as a result of a heritage agreement being entered into. This in turn meant that 280 tenements (exploration and prospecting licences) were cleared for grant.

(6)(i) The normal right to negotiate means that the negotiation parties (Government, grantee and native title parties) must negotiate in good faith, can seek the assistance of the Tribunal to mediate and may, 6 months after the s 29 notice date, apply to the Tribunal for a future act determination.

(6)(ii) The Tribunal must then conduct an inquiry and make a determination based on evidence submitted by the parties. The Tribunal will determine if the future act can be done and if any conditions should be imposed. The Tribunal will take account of the effect of the future act on native title rights and interests and other matters of Indigenous interest and weigh these up with the economic significance of the future act and the public interest.

(7) The Federal Court and Tribunal have developed a considerable body of law and practice relating to the Tribunal's mediation and inquiry functions since 1995. This is publicly available and guides the parties in what determinations to expect from the Tribunal.

(8) Although the NTA provides the legal framework and procedures for the resolution of disputes about whether a grant can be made, in reality most are settled by negotiation between the parties. The settlement of issues by negotiation and mediation is encouraged by the Tribunal.

(9) Since 1995 a considerable body of expertise within the Tribunal and amongst parties has developed in the making of agreements and the Tribunal confidently expects that matters will increasingly be settled in this way with resort to the Tribunal for arbitration being the exception.

(10) Practical measures that can be taken by Governments to enhance the capacity of parties to reach agreement will assist in the resolution of issues and speed up access to land for exploration.

(11) States and Territories should examine their legislation relating to exploration and mining to see if changes are necessary to ensure compatibility with the right to negotiate procedures in the NTA.

2. INTRODUCTION

The purpose of this submission is to provide background information on the National Native Title Tribunal (NNTT) and native title processes under the Commonwealth's *Native Title Act* 1993 (NTA) as they relate to mineral and petroleum exploration in Australia. The submission will also outline the native title processes in each State/Territory as they tend to differ due to policy decisions by government and the ability of jurisdictions to establish alternative provisions.

With respect to the terms of reference for the Inquiry into Resources Exploration Impediments, the Tribunal will focus on:

- Access to land including Native Title and Cultural Heritage issues; and
- Relationships with Indigenous communities.

In relation to these specific terms of reference, the Tribunal wishes to point out that the protection, and in some respects the promotion of cultural heritage is inextricably linked to native title and inevitably becomes a focal point in most native title agreements. In addition, successful native title negotiations are very much about building long-lasting and mutually respectful relationships with Indigenous communities. These issues are clearly identifiable throughout this submission.

Whilst the Tribunal acknowledges there is considerable debate about the current state of resources exploration in Australia and its importance to the continued expansion and development of the resources sector of the Australian economy, the Tribunal does not have the expertise and does not consider it appropriate to analyse whether or not native title and associated cultural heritage issues and relationships with Indigenous communities act as impediments to resources exploration in Australia. This is not to say that native title may not

have effects (including economic effects) on exploration and mining, but the nature and extent of the impact is difficult to ascertain with precision, particularly as there are other factors involved. The issue is complex and the Tribunal is only capable of contributing part of the information which may be of help to the Committee. Accordingly, the focus of the Submission will be to document what has occurred in Australia with respect to the processing of exploration related tenure and native title but to also make general observations about the agreements that have been reached with native title parties in addition to commenting on the increased trend towards resolution of matters by agreement.

The Tribunal is also prepared to comment on native title issues raised in other submissions. This has been discussed and agreed with the Committee Secretary of the Inquiry into Resources Exploration Impediments.

As a general source of reference material on native title, comprehensive information is available from the Tribunal's website (http://www.nntt.gov.au/) in relation to native title claims, future acts and Indigenous Land Use Agreements (ILUAs). The website also contains a complete database of determinations made in relation to future acts (including the expedited procedure) in each State/Territory and a *Guide to future act decisions made under the Commonwealth right to negotiate scheme*.

3. BACKGROUND TO THE FUTURE ACT REGIME UNDER THE *NATIVE TITLE ACT* 1993

The future act regime established under the *Native Title Act* 1993 provides a scheme for land management and development where native title may be affected. A 'right-to-negotiate' for native title holders or registered claimants is triggered where a government advertises its intention, for example, to grant a prospecting or exploration licence or mining lease.[1] This is also known as a s 29 notice. The registered native title claimants (native title parties) negotiate with the grantee party (the mining or petroleum company seeking the grant of the title) and the State/Territory government in order to seek agreement in relation to the proposed mining or petroleum project. Where parties can not reach agreement any of the negotiation parties can request the Tribunal to arbitrate and make a determination in relation to the grant (i.e. whether the grant can be made and if so whether any conditions should be imposed).

A 'fast-tracking' process (the expedited procedure) exists for the grant of exploration, prospecting and some miscellaneous licences, in recognition that exploration and similar activities are less likely than mining to have an adverse impact on native title. Where a grant is not likely directly to interfere with the social or community activities of the claimant or holders of native title, interfere with sites of particular significance or cause major disturbance to land, the grant may be fast-tracked (i.e. granted without the normal negotiations referred to above). The vast majority of applications for exploration related tenements in Western Australia (11,351 notices or 67.2% of all those submitted) have been granted without attracting an objection to the expedited procedure and, apart from the statutory four month notification period, have not incurred delays.

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[1] A right to negotiate also exists under the *Native Title Act* 1993 where a government proposes to compulsorily acquire native title rights and interests in land for the purpose of conferring rights and interests in land on a non-government party (for example, where land is acquired for an industrial estate with the purpose of transferring the land to the developer)

To the end of June 2002, approximately 97% of future act matters generated in Australia are Western Australian based but this will change as the Northern Territory (and possibly other States) seeks to ensure the validity of their grants through the right to negotiate provisions of the NTA.

The future act regime throughout its evolution has been accompanied by misconceptions. Contrary to popular belief, Indigenous people have no right of veto over mineral or petroleum production or exploration (or other development projects), and the right to negotiate is not an open ended process. Whilst there is regular criticism of the NTA for the delays that may occur in the granting of mineral and petroleum titles, the Tribunal can only intervene in mediation as requested by one or other of the negotiation parties, or make a determination as to whether the grant should go ahead and under what conditions, on application by those parties.

For the grant of a petroleum or mineral production title, which by their very nature may be considered likely to have a significant impact on native title interests, particularly if resource production is going to be carried out, the statutory time frame for negotiation between the parties is a minimum of six months from the s 29 notification date. If the grantee and Government party negotiate in good faith with the native title party but have been unable to reach agreement, the Tribunal can be asked to decide whether or not the future act should proceed and if so under what conditions. The Tribunal has to endeavour to decide the matter within six months of the application being lodged. Therefore, if agreement cannot be reached and the timeframes are strictly adhered to, the delay in the grant of a mineral or petroleum production title could potentially be 16 months, which includes the statutory s 29 notification period of four months. For various reasons negotiations often continue beyond six months and this minimum period for resolving a matter is not usually adhered to. However, once the matter comes before the Tribunal for a determination it has usually been able to complete its inquiry within six months.

For exploration related titles, if the Tribunal determines that the expedited procedure (fast-tracking) does not apply, the normal negotiation in good faith must also take place.

There are also provisions in the NTA which enable the Minister to make a determination in lieu of the Tribunal or override a Tribunal's determination.

There have been well publicised instances of lengthy delays, i.e. significantly longer than 12 months in reaching settlement with Indigenous parties. However, in many cases the parties either chose not to seek Tribunal mediation assistance, or chose not to take the option of seeking arbitration by the Tribunal after the 6 months minimum period for negotiations.

3.1 National Future Act Processes

For financial year – 2001-02:

- 2,642 mineral tenements have been the subject of s 29 Future Act Notices.
- 1,764 of these tenements (66.8%) were notified under expedited procedure provisions.
- Of the tenements notified under expedited procedure provisions, and which are out of the notification period, 510 (45%) were not objected to by native title parties, effectively clearing them for grant.

- 368 tenements in the expedited procedure were cleared for grant following the withdrawal of the objection[2]. (308 tenements as a result of agreement being reached)

- 99 tenements in the expedited procedure were cleared for grant following Tribunal inquiries this financial year. The outcome of the respective inquiries was that the expedited procedure is attracted.

- In Western Australia, of all 573 expedited procedure matters finalised in 2001-02, just under 90% of all those applications were finalised within 34 to 40 weeks of the lodgement of the objection application with the Tribunal. A similar timeframe applied in the Northern Territory where of all 159 expedited procedure applications finalised in 2001-02, just under 90% were finalised within 33 to 39 weeks of lodgement of the objection application.

- 616 tenements are still within Tribunal run expedited procedure processes (488 of these tenements were notified during the period).

- Of the tenements previously objected to by native title parties, and later submitted to the right to negotiate procedures, 40 tenements were referred to the Tribunal for mediation.

- Of the tenements previously objected to by native title parties, and later submitted to the right to negotiate procedures, 43 tenements were referred to the Tribunal for a future act determination.

- Of the tenements previously objected to by native title parties, and later submitted to the right to negotiate procedures, 36 tenements were cleared for grant following a Tribunal Hearing.

3.2 National Future Act Cumulative Workload Summary

For the period 1 January 1994 (i.e. commencement of the operation of the NTA) to 30 June 2002, 22,915 future act notices were issued (refer to Appendix 1 for a map of Australia that provides a visualisation of the extent and area of all s 29 notices issued since 30 September 1998).

Of these notices 17,999 [78.5%] asserted that the expedited procedure applies. Of these:

- 10,880 notices [47.5% of all notices] relate to proposals to grant exploration licences (of these 10,279 were in Western Australia, 595 were in the Northern Territory and 6 were in New South Wales);
- 6,469 notices [28.2% of all notices] relate to proposals to grant prospecting licences (of these all were in Western Australia);
- 650 notices [2.8% of all notices] relate to proposals to grant miscellaneous or other licences (of these all were in Western Australia).

[2] These figures include outcomes achieved from objection applications lodged prior to 1 July 2001.

Of the notices which asserted that the expedited procedure applies, and are out of the notification period, 11,615 [67.2%] were cleared for grant without attracting any objection. Of these:

- 6,480 were notices relating to exploration licence applications (of these 6,216 were in Western Australia and 264 were in the Northern Territory);
- 4,511 were notices relating to prospecting licence applications (of these all were in Western Australia);
- 624 were notices relating to miscellaneous or other licence applications (of these all were in Western Australia).

4,804 objections to the nomination of the expedited procedure were lodged with the Tribunal dating from January 1994 involving approximately 7,724 future act notices (of these notices 7,477 were in Western Australia, 241 were in the Northern Territory and 6 were in New South Wales).

2,443 future act determination applications were lodged with the Tribunal dating from January 1994 involving approximately 4,352 future act notices (of these notices 4,327 were in Western Australia, 1 was in the Northern Territory, 3 were in New South Wales, 18 were in Queensland).[3]

6,862 future act notices were submitted to the right to negotiate procedure. Of these:

- 4,916 were non-expedited mining lease or other proposals;
- 1,946 were exploration, prospecting or other proposals where the Tribunal has determined or where a consent determination was reached that the expedited procedure did not apply.

4. PROMOTION OF AGREEMENTS

The Tribunal has developed strong relationships with parties and worked actively to encourage parties to reach agreement. Mediation support is offered where this might assist the process. However, parties may choose to undertake negotiations themselves.

While the early practices of some mining and petroleum companies engaging individually with native title parties to secure access to ground for exploration and mining created some concern, there has since been significant progress in agreement-making between native title and grantee parties using more standard template agreements.

This is not to say that the promotion of a culture of negotiation has not been challenging in recent years, sometimes because of the vigorous political debate about the efficacy of the NTA. The Western Australian Goldfields, where most future act applications occurred and where there was also the greatest number of overlapping claims, was singled out for particular scrutiny during the Wik amendments debate. Further complications arose because of the high level of intra-Indigenous conflict and the preponderance of unrepresented claimants in the region. However, through intensive mediation undertaken by the Tribunal, the number of overlapping claims in the Western Australian Goldfields has been significantly reduced.

[3] Most of these were withdrawn or dismissed after lodgement without any inquiry being conducted.

The following examples illustrate the diversity of local area and regional development agreements. Much of the substance and character of an agreement is proportional to the scale of a project or the geographic, cultural, economic and other complexities of the area under consideration, as well as to the amount and kind of effort put into the process by parties. The main point to observe is that 'new' agreements can be modelled on existing agreements which are adapted for use in another regional or local setting. They also normally represent more cost effective solutions to native title issues than litigation. By way of example, the Century Zinc project in Queensland cost in the order of $52,000 for the Tribunal to mediate. Costings for its possible arbitration by the Tribunal were estimated to amount to nearly $200,000, and the cost of litigating a solution through the courts was estimated at millions of dollars.[4]

4.1 Century Zinc Project, QLD

The Century Zinc agreement reached in May 1997 between native title parties, the company and the State of Queensland illustrated the role which government could play in attracting investment in resource development to regional Australia.

The Bill to give effect to Queensland's obligations under the Century agreement was introduced into Parliament in 1998, following years of negotiations between the State, Century Zinc and a number of native title parties. When agreement could not be reached the Tribunal was involved in mediation and subsequently an application for a future act determination was made by the company under the *Native Title Act*. The matter was settled by agreement before substantive hearings began.

4.2 The Kalkadoon Explorer Reference Group (KERG) ILUA, QLD

The Kalkadoon People approached the Queensland State Government in September 2000 to establish a process to develop an ILUA to be utilised within their claim area which is in the Mount Isa region. As the Kalkadoon's claim area had the largest number of pending exploration permit applications in the State (up to 80), negotiations commenced. In addition, a group of explorers, MIM, Western Metals, Noranda, Anglo Gold and Pasminco, also became directly involved in the negotiations. Matrix Metals and BHP contributed financially, but did not attend the meetings. The Kalkadoon People are not represented by the representative body for the area. Hence, KERG was formed.[5]

The National Native Title Tribunal was involved in facilitating the latter half of the negotiation process.[6]

The ILUA was registered with the Tribunal on 17 May 2002.[7]

Essentially, the KERG IULA is an agreement between the State and the Kalkadoon People whereby explorers can opt into the ILUA by signing a deed. It is structured with an Explorer Deed, to be signed by explorers opting into the agreement, and a KERG Deed for those explorers who participated in the negotiations. In addition, the ILUA only applies to the grant of backlog exploration permit applications with the added provision that the native title

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[4] National Native Title Tribunal, *Native title: a five year retrospective 1994-1998*, pp. 31.
[5] Natural Resources and Mines (QLD), *KERG ILUA – (Kalkadoon Explorer Reference Group),* http://www.nrm.qld.gov.au/mines/nativetitle/kerg.html.
[6] Ibid.
[7] Ibid.

conditions outlined in the ILUA will be conditions of the permit upon grant and can therefore be enforced under the State's *Mineral Resources Act*.[8]

The ILUA does not apply to any areas of overlapping claims within the Kalkadoon application.[9]

Lastly, the KERG ILUA outlines a review process which will be triggered six months after its registration.[10]

4.3 Pilot Project Agreement, Goldfields Region WA

As part of a recommendation by the State Government's Technical Taskforce on Mineral Tenements and Land Title Applications (refer to WA section for more detail), a heritage survey was conducted in late 2001 over an area of about 40,000 hectares in the Eastern Goldfields containing over 100 mining tenement applications.

The agreement that underpinned this initiative was made between the native title representative body (NTRB) for the area (the Goldfields Land and Sea Council), industry and Government and based on the principles outlined in the Goldfields Regional Heritage Protection Protocol developed by the Goldfields Native Title Liaison Council, chaired by Tribunal Member Bardy McFarlane.

The major success of this initiative was not only the ability to clear a large number of tenement applications in an area of significant concentration of tenement backlog but also the efficiencies that resulted from significant survey cost reductions by co-operating and undertaking block type surveys over a large area.

The idea behind this project is that it can be replicated in other areas of the State where there is a significant concentration of backlog tenement applications. However, it is likely the agreement utilised would vary from region to region.

4.4 Goldfields Land and Sea Council Initiatives, Goldfields Region WA

In the Goldfields region, the Goldfields Land and Sea Council (GLSC) has promoted the development and use of regional or claim-wide heritage agreements to facilitate the grant of prospecting, exploration and miscellaneous licence applications. A number of individual companies, such as Croesus Mining, WMC, Delta Gold – now Aurion Gold, Placer (Granny Smith), Sons of Gwalia, Heron Resources and Mt Burgess Mining, Preston Resources and the Amalgamated Prospectors and Leaseholders Association (APLA) have become parties to the agreements.[11]

The only precondition in relation to the agreements is an undertaking by the miner to undertake a heritage survey in accordance with the heritage agreement. The agreement contemplates two types of Aboriginal heritage survey. For prospecting and exploration activity of a low-impact nature, a limited heritage survey is undertaken provided that the disturbance to the ground is minimal. An anthropologist and/or archaeologist is not necessarily required. A more detailed heritage protection survey is undertaken when disturbance to the ground is extensive which requires an anthropologist and/or archaeologist.[12]

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[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 90.
[12] Ibid., pp. 90.

The use of these types of agreements has proved particularly effective in a region that accounts for just over 55% of the backlog of tenement applications in the State. Of the proportion of backlog in the Goldfields, 42% are for exploration and prospecting licences and 55% for mining leases.

Due to the high concentration of tenement application in the Goldfields, the GLSC no longer routinely objects to expedited procedure matters, preferring to take the regional agreement approach outlined above and strike regional agreements with tenement holders and applicants in the area that cover current and future applications.

4.5 Yamatji Land and Sea Council Initiatives, Mid-West, Gascoyne and Pilbara Regions, WA

The Yamatji Land and Sea Council (YLSC) has successfully negotiated several hundred heritage agreements for exploration purposes in the Murchison-Gascoyne and the Pilbara (operating as the Pilbara Native Title Service) regions of the State.

The standard heritage agreement utilised sets out a contract for service in relation to the conduct of a heritage survey prior to the commencement of any ground disturbing activities. A deferred heritage agreement is also available that provides for some low- impact exploration activities on the tenement without the conduct of a heritage survey. Both types of agreement are individually negotiated with grantee parties that are involved in the expedited procedure ranging from large mining companies to individual prospectors.[13]

The YLSC has a policy of objecting to all expedited procedure matters within the Mid-West, Gascoyne and Pilbara regions of the State unless applications are covered by an existing regional agreement that pre-empts the need to object. Collectively, these regions account for approximately 30% of the State's backlog of tenement applications with nearly 18% of these in the Mid-West and Gascoyne regions and 11% in the Pilbara region. Of the proportion of the backlog in the Mid-West and Gascoyne, 51% are for exploration and prospecting licences and 47% for mining leases. Of the 11% in the Pilbara, 51% are for exploration and prospecting licences and 34% for mining leases[14]

4.6 Striker Resources and Other Kimberley Agreements, Kimberley Region WA

The Striker Resources[15] diamond exploration agreement over some 6,500 square kilometres in the Kimberley provided for compensation to the native title claimants at four stages of the development:

- at the exploration stage, a percentage of on-ground costs would be paid;
- at the mine construction stage, 1.5 per cent of capital costs would be handed over to Balanggarra people;
- when the mine is operating, the Balanggarra people would get part of quarterly sales proceeds; and
- annual land rents would be calculated on the area disturbed.

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[13] Ibid., pp. 91.
[14] Ibid., pp. 215.
[15] *West Australian*, 21 August 1997

To date, the Kimberley Land Council (the recognised NTRB for the area) still use this Balanggarra style agreement, primarily on Aboriginal Reserve land, as a framework for other agreements in the region. Although the exact content may vary from claim to claim, the underlying principles remain.[16]

Another type of agreement utilised in the Kimberley is the Kimberley Explorers Group Native Title and Heritage Protection Memorandum of Understanding (MoU). This was developed in June 1999 by the Kimberley Explorers Group (Acacia Resources Ltd – subsequently taken over by AngloGold Ltd, BHP Minerals Pty Ltd, Glengarry Resources NL, Rio Tinto Exploration Pty Ltd, Shell Development (Australia) Pty Ltd, Tanami Gold NL and Western Metals Zinc NL. The main aim of the MoU is to establish relationships based on understanding and respect amongst the parties. In summary, the MoU provides for flexible heritage protection measures that can include desktop assessments, low-impact or comprehensive clearance surveys for exploration activity. It is at the discretion of claimant groups in the area whether they wish to enter into this type of agreement.[17]

Approximately 5% of the backlog of tenement applications in Western Australia are in the Kimberley region, with approximately 87% of these for exploration and prospecting licences and 12% for mining leases.[18]

4.7 Amalgamated Prospectors and Leaseholders Association (APLA), Western Australia

For the last three years APLA has received funding from the Commonwealth Attorney General's Department to assist non-corporate mineral title applicants get applications through native title processes. The funding means that eligible applicants do not have to pay any of the costs associated with clearing applications through native title processes and also covers heritage survey costs.

It is estimated by APLA that over this time they have assisted approximately 120 applicants get around 240 tenements granted.

APLA has arrangements in place with all NTRBs in Western Australia that allow for special provisions in relation to heritage protection for non-corporate entities. Essentially, APLA discuss the proposed work program with the relevant NTRB to decide whether it is of low or high impact classification. In undertaking a site clearance survey an anthropologist/archaeologist is normally not required and the number of informants partaking in the survey is capped at three. These are nominated by the relevant claim group.

To allow for greater efficiency, APLA and the respective NTRBs work together to batch applications in nearby areas so surveys can be undertaken all at once. This reduces the burden on the informants participating but also leads to greater cost efficiencies.

NTRBs also play a significant role in referring non-corporate applicants to APLA for assistance.

Overall, APLA's main aim is to ensure that native title related costs are kept at an affordable level for non-corporate entities so that if the Attorney General's Department funding ceases, the

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[16] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 92-93.
[17] Ibid., pp. 92.
[18] Ibid., pp. 215.

work will have already been done to minimise costs so that non-corporate entities can still afford to hold tenements.

4.8 Gawler Craton, South Australia

The Chamber of Mines in South Australia and the South Australian Aboriginal Legal Rights Movement[19] (the NTRB) announced an agreement in respect of mineral exploration in the south west of the state which provided for a major heritage survey over 44,000 square kilometres. The agreement established a blueprint for further agreements between five Aboriginal groups and 14 mining companies.

The companies agreed to maintain roads in the area, and develop an environmental management plan. Benefits to the community included jobs, training, business opportunities, compensation payments and community infrastructure. All parties emphasised that the agreement culminated several years of close relationship.

4.9 Cooper Basin Petroleum Agreement, South Australia

The Cooper Basin Petroleum Agreement was negotiated as a result of high-level cooperation between native title claimants and petroleum explorers. The agreement was completed in late October 2001.[20]

It has been estimated that the agreement will allow for $45 million worth of new investment in petroleum exploration, over eleven exploration licences in the Cooper Basin.[21]

The agreement is between three native title claim groups (the Edward Landers Dieri, Yandruwandha/Yawarrawarrka and Wangkangurru/Yarluyandi Peoples), seven different exploration consortiums and the South Australian Government.[22]

The agreement is conjunctive and accordingly will cover the exploration phase and also provide for the development of any discoveries should any economic resource/s be discovered.[23]

The agreement establishes processes to protect Aboriginal heritage before and during field operations and to provide payments for the interference with the enjoyment of the native title rights of the native title claimants.[24]

The exploration licences involved in the agreement were first offered in late 1998, with successful bidders announced in April 1999. The negotiation process commenced in June 1999.[25]

4.10 Indigenous Land Use Agreements in Australia

The following table is a breakdown by State, type and agreement subject matter of all 50 ILUAs registered in Australia as of 30 June 2002:

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[19] *The Australian,* 19 August 1997
[20] Department of Industry, Tourism and Resources, *Australian Energy News*, December 2001, http://www.industry.gov.au/resources/netenergy/aen/aen22/15native.html.
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.

Type of Agreement	Agreement Subject Matter	NSW	VIC	NT	QLD	WA	SA	Total
Area Agreement	access				2			2
	extinguishment		2	1	1			4
	infrastructure	1			12			13
	mining	2		6	5	1		14
	pipeline		2					2
	government				5			5
	development	1	2		1		1	5
Area Agreement Total		**4**	**6**	**7**	**26**	**1**	**1**	**45**
Body Corporate Agreement	access				4			4
	infrastructure				1			1
Body Corporate Agreement Total					**5**			**5**
TOTAL		**4**	**6**	**7**	**31**	**1**	**1**	**50**

4.11 Other Miscellaneous Agreements

At the Tribunal's "Negotiating Country" conference in August 2003[26], Senator Jeannie Ferris, Chair of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, outlined the resourcing difficulties that some companies and some native title representative bodies had experienced. She also contrasted those difficulties with the success of Indigenous Land Use Agreements. As an example, Senator Ferris said that Giants Reef Exploration negotiated a 25 year ILUA with the Central Land Council enabling exploration, mining and related activities covering a 7,500 square kilometre area near Tennant Creek. The agreement provides continuity and certainty of tenure, and means that the company does not need to go through individual native title processes for each tenement in the future. Senator Ferris says that there are clearly efficiencies to be gained in the negotiation of broad, long-term agreements or "framework" agreements such as the Giants Reef agreement.

Rio Tinto in its survey of community leaders, the *Indigenous Priorities Survey*, released in November 2001, said that it believes that competitiveness and future access depend not only on their employees and the quality and quantity of their assets, but also on their record as a good neighbour and partner around the world. Putting this into practice, Rio Tinto reached

[26] Note – papers are available on the Tribunal's web page: http://www.nntt.gov.au/

agreement in June 2002 with the Northern Land Council covering approximately 80% of the native title land in the Top End of the Northern Territory that is subject to exploration licence applications. This came in close succession to an agreement reached in February 2002, also between Rio Tinto and the Northern Land Council, covering approximately 31,000 square kilometres of native title land subject to exploration licence applications.[27]

At the Western Australian Chamber of Minerals and Energy Conference: *Moving Forward: Best Practice for Indigenous Relations in Western Australia* – April 2001, Mr Mark Donovan of WMC Resources said of the company's West Musgrave greenfields exploration project – the discovery of which encouraged a flurry of activity in the area:

> *The bottom line will be the strength of our relationships with the local communities and their advisers. Our certainty of land access and the ability of WMC to meet the needs of our stakeholders will come from a focus on building and maintaining enduring relationships with indigenous communities not by WMC seeking legal or political solutions.*

It is becoming apparent that there is growing recognition in the minerals sector that appropriate relationships with Indigenous people are a part of doing business. There should also be a recognition that many mining companies and individuals have created positive relationships and outcomes for themselves.

The possibilities for agreement making are well illustrated in *Agreements Between Mining Companies and Indigenous Communities*, the final draft report to the Australian Minerals and Energy Environment Foundation as part of the two year global, Mining Minerals and Sustainable Development (Australia) (MMSD) project prepared by Indigenous Support Services and ACIL Consulting.

The MMSD project was designed:

- to identify how the minerals industry can best contribute to the global transition to sustainable development;
- to build understanding and trust between the industry and people affected by its operations; and
- to develop a shared vision for future minerals development.

In relation to native title, perhaps the most notable outcome of the MMSD project at both a national and global level is the recognition that the mining industry should respect Indigenous communities' right of prior, informed consent to minerals development on their lands. In order to achieve this it will require the provision of comprehensive information on proposals; access to independent advice and expertise; and appropriate timeframes in which to respond to proposals.

5. SIGNIFICANT DEVELOPMENTS IN THE LAW OF NATIVE TITLE

In March 2001, the High Court heard argument in one of the most significant appeals against a decision by the Full Court of the Federal Court, specifically as it relates to clarifying the extent to which native title may or may not exist in relation to areas covered by pastoral leases and past mining leases. This decision has the potential to affect the area of land covered by native title and hence the number of mineral tenements which will be subject to the right to negotiate.

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[27] National Indigenous Times, "NLC announce agreements on 80 percent of land", 19 June 2002, pp. 8.

The appeal in *Western Australia v Ward* ('the Ward decision') raised numerous important issues including:

- the nature of native title (e.g. whether it is a 'bundle of rights');
- the circumstances in which native title is or may be extinguished;
- whether native title can be extinguished partially, right by right, and with cumulative effect in the event of a succession of grants or appropriations;
- whether the grant of a pastoral lease with a reservation in favour of Aboriginal people demonstrates a clear and plain intention to extinguish all incidents of native title not referred to in the reservation and, if so, what those incidents are;
- whether 'a right to maintain, protect and prevent the misuse of cultural knowledge of the common law holders associated with the determination area' can be the subject of a determination of native title;
- whether any possible native title rights in respect of resources must be confined to resources which, on the evidence, have been customarily or traditionally used or whether those rights extend to minerals or petroleum;
- whether there can be a determination of native title where there was no evidence of use or presence upon the parts of the land by Aborigines; and
- whether spiritual connection to land is sufficient to ground a determination of native title.

To date, the High Court has not handed down its decision in this case.

6. THE LAW AND TRIBUNAL PRACTICE RELATING TO FUTURE ACTS

Since 1995, the Federal Court and Tribunal have made a number of important decisions and determinations about the right to negotiate provisions in the NTA. The law and Tribunal's practice is now reasonably well settled and should enable all parties to assess with some certainty what determinations to expect of the Tribunal in an expedited procedure objection or a future act determination inquiry. The Tribunal has prepared a '*Guide to future act decisions made under the Commonwealth right to negotiate scheme*' which is a comprehensive summary of the law. The Guide is on the Tribunal's website and updated quarterly. It includes, for instance, reference to conditions which the Tribunal has imposed on a determination that a Western Australian mining lease (for further exploration) may be granted (*Minister for Mines (WA) v Evans* (1998) 163 FLR 274 at 314-332).

The NTA emphasises the importance of settling both claims and future act issues by negotiation and mediation and this is encouraged by the Tribunal. Agreements enable the parties to resolve issues taking account of their respective interests and can deal with matters which the Tribunal cannot cover in a determination. For instance, a determination cannot include a condition for payments to a native title party based on profits, income or things produced. Further, the Tribunal cannot determine compensation for the extinguishment or other effect of a future act on native title (only the Federal Court can do that) and only has powers to order that payment be made into trust pending a determination of native title and compensation. To date the Tribunal has not made such an order.

While agreements offer a flexible and often less expensive option of resolving whether a mineral tenement can be granted, any of the negotiation parties may resort to the Tribunal for a determination to finalise the dispute knowing the current state of the law.

7. SUMMARY OF MINERAL TENEMENT BACKLOG ISSUES IN AUSTRALIA

Partly as a result of State and Territory governments delaying the commencement of the right to negotiate provisions in their jurisdictions, backlogs of mining and exploration applications have developed. Such backlogs are required to be dealt with according to the right to negotiate process or alternative State/Territory processes[28].

In the Northern Territory at the end of 2001-02 there was a backlog of approximately 1,085 tenement applications. Of these, 440 were yet to be notified in accordance with s 29 of the NTA. 170 of these were exploration licence applications, 201 mineral claim applications, 30 mineral lease applications and 39 other ancillary title applications.

There were 172 new exploration licence applications lodged in 2001-02 compared to 228 in 2000-01. Consequently the 170 exploration licence applications yet to be advertised are predominantly new applications therefore implying that the backlog of exploration licences in existence as at 6 September 2000 has been largely addressed.

The other high figure is the number of outstanding mineral claims, ie. 201. These are mainly concentrated in the Northern Land Council (NLC) representative body area. The reason for the build up of mineral claim applications is that the NTRBs in the Northern Territory, the NLC and the Central Land Council (CLC), have given priority to dealing with exploration licence applications.

Experience to date in the Northern Territory has shown that agreements are being reached in the CLC region, particularly in relation to exploration licence applications with the possibility that a similar strategy will be utilized to process the 43 mineral claim applications in the CLC region.

In Queensland, as of June 2001, there was an estimated backlog of approximately 1,200 mining title applications[29] with nearly 800 of those for exploration permits.[30]

Western Australia has the largest backlog of tenement applications, which is approximately 11,200. Of these, it is estimated that 6,056 have cleared State *Mining Act* approval and are awaiting referral under the NTA. Furthermore, in relation to this category of applications, the Department of Mineral and Petroleum Resources (MPR) estimates that some 4,000 (or 66%) of applications have not been referred to NTA processes pending the High Court's judgement in the *Ward* case. In addition, it is also estimated 1,000 applications have not been referred to NTA processes due to limitations in NTRB resources, 400 applications have been suspended awaiting policy changes in relation to mining in the conservation estate and, lastly, an undetermined number of applications have not been referred to NTA processes as MPR are awaiting confirmation from the applicants that they wish to proceed.[31]

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[28] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*, http://www.hreoc.gov.au/social_justice/ntreport_01/chap1.html, pp. 3.
[29] Ibid., pp. 3.
[30] Ibid., pp. 17.
[31] Auditor General for Western Australia, *Level Pegging: Managing Mineral Titles in Western* Australia, Report No. 1, June 2002, http://www.audit.wa.gov.au/reports/report2002_01.html Source – Department of Mineral and Petroleum Resources, pp. 26.

According to Tribunal records, as of 31 March 2002, some 5,649 tenement applications in Western Australia have been submitted to the right to negotiate provisions of the NTA, some of which have been there longer than 19 months.

Of Western Australia's backlog of approximately 11,200 applications, approximately 19% are for prospecting licences, 29% are for exploration licences, 47% are for mining leases and 4% are for other types of ancillary titles.[32]

There are no reports of backlogs of mineral tenement applications in New South Wales or Victoria.

Some of these States and Territories are developing procedures or are beginning to process their backlogs. The manner in which State and Territory governments administer their backlog may differ according to whether that government utilises any of the various exceptions and/or amendments to the right to negotiate process that are provided for in the NTA.[33] These are outlined in further detail below.

It must also be noted that as the NTA interacts with numerous pieces of State/Territory based legislation throughout Australia, the Tribunal always thought that State and Territory governments would need to amend legislation in their jurisdictions to minimize any negative interaction/inconsistencies with the NTA. Tribunal Members have commented on this very issue, specifically in relation to the operation of the *Mining Act* 1978 (WA) and the *Native Title Act* 1993 (Cth). Members Sumner, O'Neil and Neate said in *Western Australia v Thomas (Waljen)* (1996) 133 FLR 124, 17 June 1996, that:

> *We accept that the legislation was enacted with knowledge of the importance of the Australian mining and resources industry, and that the right to negotiate provisions were intended to deal with the ongoing grant of mining and petroleum titles, which is the largest and most significant aspect of the future dealings covered by the Act.*
>
> *The Federal Parliament was aware of the constitutional responsibility vested in the States for land management (including mining titles) and the somewhat different regimes which have been established. In general, the Act contemplates that these provisions should continue to operate. This does not mean that State Parliaments should not take the opportunity to ensure that their legislation is adapted appropriately to the realities of native title.*

8. THE DIFFERING APPROACHES OF STATE AND TERRITORY GOVERNMENTS

8.1 Western Australia

8.1.1 Background

In Western Australia, the right to negotiate potentially applies to approximately 93% of the State's land (ie. Crown land including that which is subject to pastoral leases) with almost 90% of Crown land under native title claim. Around 38% of the State's land mass is under pastoral lease.

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[32] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 215. Note, pp 215-227 provide detailed statistics on the breakdown of the backlog by representative body area and also set out at what stage in the granting process the tenement applications are.

[33] Auditor General for Western Australia, *Level Pegging: Managing Mineral Titles in Western* Australia, Report No. 1, June 2002, http://www.audit.wa.gov.au/reports/report2002_01.html Source – Department of Mineral and Petroleum Resources, pp. 3.

The extent to which native title survives over pastoral leases and consequently, the extent of the application of the right to negotiate is still unclear, pending determination of the questions raised in the *Ward* case, heard by the High Court in March 2001. Nevertheless, the right to negotiate potentially covers the vast majority of the State.[34]

In July 2000, the previous State Government issued policy guidelines indicating that it would not notify native title claimants of the proposed grant of mining tenements over lands subject to (or previously subject to) Western Australian pastoral leases or pastoral leases that had been:

- Enclosed and improved if the lease was granted prior to 1933; and
- Enclosed or improved if the lease was granted after 1934.

The Government did not process these tenement applications under the right to negotiate provisions of the NTA on the basis that the Full Federal Court decision in *Western Australia v Ward* established that native title had been extinguished on such lands.[35]

However, in February 2001, the current State Government suspended this policy pending the outcome of the High Court's decision.[36]

8.1.2 Future Act Regime Utilised in Western Australia

Western Australia is the only State which until recently systematically engaged in the process of clearance provided by the future act negotiation and inquiry regime in the NTA. This policy decision was taken following the High Court's finding, on 16 March 1995, that the State Government's *Land (Titles and Traditional Useage) Act* 1993 contravened the Commonwealth *Racial Discrimination Act* 1975.

However, in December 1999, the Western Australian Parliament enacted the *Native Title (State Provisions) Act* 1999 providing for a scheme of alternative provisions under s 43 and s 43A of the NTA. That legislation was assented to on 10 January 2000.

In March 2000, the Western Australian Government requested a determination from the Commonwealth Attorney-General in relation to the s 43A component of the legislation. The proposed scheme would have applied principally to acts creating a right to mine and certain compulsory acquisitions of native title rights and interests on pastoral lease or reserve land.

On 27 October 2000 the Attorney-General determined that the s 43A scheme complied with the provisions of the NTA. On 9 November 2000, the Senate voted 32 to 28 to disallow the determination.

Subsequently, the current Western Australian Government implemented its election policy decision that it would utilise the "…existing National Native Title Tribunal instead of establishing a State Native Title Commission.".[37] It was however considered feasible to undertake negotiations with industry and Native Title Representative Bodies to develop a s 26A low-impact exploration scheme based on the NSW model.[38] The latter has not materialised as the industry members of the Technical Taskforce (as discussed below) felt that the low impact

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[34] Ibid., pp. 10.
[35] Ibid., pp. 10.
[36] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 9.
[37] WA Labor Party, *Native Title: Agreement not Argument,* http://www.wa.alp.org.au/policy/camp2001/nativet.pdf, pp. 5.
[38] Ibid., pp. 4.

State provisions in New South Wales and Queensland had led to a worsening of land access for exploration purposes.[39]

In July 2001, the Nharnuwangga, Wajarri and Ngarla Indigenous Land Use Agreement was registered with the NNTT. This satisfied one of the conditions necessary to give effect to the Federal Court's consent determination of native title.

The agreement provides a framework under which future mining activities can proceed whilst allowing for the recognition and protection of significant Aboriginal sites. In particular, the ILUA provides that the native title holders forego the right to negotiate under the NTA in respect of the grant of future mining tenements. The RTN is replaced with agreed rights of consultation and compensation set out in the *Native Title (State Provisions) Act* 1999.[40]

8.1.3 State Government Initiative to Address the Backlog of Mineral Tenements

In April, 2001, the current Western Australian Government announced the establishment of the Technical Taskforce on Mineral Tenements and Land Title Applications.

The purpose of the Technical Taskforce on Mineral Tenements and Land Title Applications was to look at ways for the efficient progressing of mineral tenement and land title applications whilst at the same time protecting the native title rights of Indigenous people. In particular, the Taskforce looked at ways to address the backlog of mineral tenement applications in WA and prevent it from recurring. The Taskforce also looked at the use of agreements including template and Indigenous Land Use Agreements and resourcing issues for parties involved in future act processes.

The Taskforce was chaired by NNTT Member Bardy McFarlane and included representatives of native title representative bodies, the Ministry of Premier and Cabinet, the Department of Minerals and Petroleum Resources, the Department of Land Administration, the Amalgamated Prospectors and Leaseholders Association of WA, the Association of Mining and Exploration Companies, and the Chamber of Minerals and Energy.

The following is an excerpt from the Executive Summary contained in the Technical Taskforce's Final Report which documents issues and recommendations made that are of particular relevance to this Inquiry:

Heritage Protection

1. *Heritage protection and clearance procedures are key elements in most future act agreements. It is critical that there is recognition that the protection of Aboriginal heritage is fundamental to advancing the processing of future acts within Western Australia.*

2. *Statutory protection for Aboriginal heritage is provided by the Aboriginal Heritage Act 1972. This act predates the Native Title Act 1993 by 22 years. The inadequacies of the AHA have been emphasised by the requirements of the NTA. This has been repeatedly highlighted in the submissions received. It is clear that the AHA and current processes cannot deal with the issues raised by the interaction of native title and the Mining Act 1978.*

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[39] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 147.
[40] Ibid., pp. 147.

3. *However, what the NTA processes have done is provide Aboriginal people with a tool to enforce heritage protection and management.*

4. *The Taskforce has recommended the establishment of a Heritage Protection Working Group (HPWG) of industry and NTRBs to give effect to the recommendations dealing with the grant of mineral tenements.*

5. *While the recommendations in this report go someway to addressing heritage issues as they arise in the context of the NTA and the Mining Act 1978, there is an urgent need for a complete overhaul of the current system or the establishment of a new system for heritage protection and management. The Taskforce has therefore suggested that once the working group has completed its task, consideration be given as to whether it evolves into a body with more diverse representation to consider heritage protection and management issues generally or a separate group be established.*

6. *The Department of Indigenous Affairs has acknowledged the deficiencies and problems identified and has advised that it has begun to address these issues and is committed to reforms. It is imperative that this work is consistent with the approaches recommended by the Taskforce and results in a fundamental overhaul of the administration of Aboriginal heritage in Western Australia.*

Resourcing

1. *Future act processes are resource intensive. The capacity of representative bodies to respond to new future act initiatives will be crucial in making new proposals work on the ground.*

2. *However they only form one part of the NTRB and claimants' efforts in the native title arena. Significant resources are also expended in advancing individual native title claims towards a determination of native title. These and other competing priorities further exacerbate the problem.*

3. *In accordance with the specific term of reference, the Taskforce has recommended the re-allocation of Government resources to each of the NTRBs pro-rata, based on the mineral tenement activity within each region.*

4. *The Taskforce considers that there are also opportunities for Government departments to provide further support: for example, that MPR provide Tendex/mapping assistance and DIA establish uniform reporting standards. This approach could be assisted by making these priority areas in any re-allocation of resources within government agencies.*

5. *While these strategies should improve the NTRBs capacity to deal with future acts more effectively, the NTRBs will remain chronically under-resourced.*

Future Acts

1. *Western Australia's Mining Act 1978 is unique in that mining leases granted under it allow for continuation of exploration. The vast majority of mining lease applicants seek mining leases to enable further exploration. At present less than 5% of all granted mining leases are the subject of a productive mine site.*

2. *Historically, significant backlogs have developed in mineral tenement applications waiting to enter the future act processes of the NTA. The backlog, as at 30 September 2001, stood at 11,175 tenements, including 5,500 applications for new exploration and prospecting licences and 5,240 applications for mining leases pending.*

3. *To some extent the backlog has arisen because of the incompatibility of the Mining Act 1978 and the NTA.*

4. *Past and present WA Governments have asserted that the expedited procedure applies to all exploration and prospecting tenement applications. Historically this has led to the grant of 70% of tenements applied for. Industry views this figure favourably. NTRBs and claimants do not. Their concern is based on their inability to lodge and prosecute objections to the use of the expedited procedure due to a chronic lack of resources.*

5. *Where there has been a determination of native title it would be appropriate for Government to consider whether the expedited procedure should be used at all.*

6. *As a result of the differing views, a widespread practice has arisen whereby industry and claimants enter into heritage protection arrangements which deal with their concerns. This reflects the reality that even if matters are referred to the RTN, after passing through the expedited procedure process without agreement being reached, determinations by the NNTT that the tenement can be granted are inevitably subject to a condition requiring heritage protection.*

7. *The Taskforce recommends that this pragmatic approach be formalised by making it a precondition to tenements entering the expedited procedure, that a heritage protection agreement be entered into. It should be noted that the recommendation is not meant to displace any existing regional agreements or agreements between parties with ongoing operation.*

8. *For a variety of reasons these agreements will have regional variations. Accordingly each of the NTRB areas will have their own standard form of agreement negotiated with industry through the proposed Heritage Protection Working Group. These standard agreements could also be useful models for claimants who are not represented by NTRBs.*

9. *In considering the long term perspective, the Taskforce has noted the potential for recurrence of the existing backlog arising from the unique nature of WA mining leases which allow for continued exploration. A range of options was considered to address this issue, some of which would involve significant changes to the Mining Act 1978. The mining industry has raised legitimate concerns about making such changes without a thorough consideration of the implications. The Taskforce has therefore made two general recommendations that contain a number of these options for consideration.*

10. *It is proposed that a Mining Recommendations Working Group (MRWG), which includes all NTRBs and the current membership of MILC, establish the technical requirements to implement both the short and long term recommendations.*

11. *It is recommended that the two working groups (HPWG and MRWG) work concurrently with the common objective of finalising their work in time for the necessary legislative changes to go to the first sitting of Parliament in 2002.*

12. *There are a series of recommendations that address future act issues arising in the context of petroleum tenements and land title applications. These recommendations are essentially of an administrative and policy nature and can be implemented by the relevant Government department without legislative change.*

Agreements

1. *Consideration was given to the use of regional agreement approaches. This included ILUAs as well as protocols and template agreements.*

2. *There are a large number of agreements of varying types currently used across Western Australia to address native title parties' concerns and facilitate access to land. While they all have common elements, it is clear there are regional variations of significance that would preclude a standard form of agreement applicable to the whole of the state. While the Technical Taskforce recognises the desirability of State-wide agreements, it is unlikely such an arrangement would be achieved in the short term.*

3. *The Taskforce has therefore recommended that standard agreements be established for use in each NTRB area in the first instance. As a longer term goal the parties should move towards indigenous land use agreements which provide for alternate procedures to allow for the more expeditious processing of mineral tenements than is currently available under the Native Title Act 1993.*[41]

The Technical Taskforce's recommendations are yet to be fully endorsed by the State Government. However, the Government has given the go-ahead for the development of the transitional provisions to the *Mining Act* 1978 (WA) and also the convening of the Heritage Protection Working Group to develop regional heritage agreements as part of the recommended options to address the backlog of mineral tenements in Western Australia and to also address future applications.

While the Taskforce dealt with Western Australia including some features of the mining regime unique to that State (eg. mining leases to be used for further exploration), other issues relating to the importance of heritage protection and template agreements are common throughout Australia.

8.1.5 The Unique Nature of Western Australian Mining Leases

A large number of the tenements that are in the backlog of applications in the right to negotiate process are mining lease applications, where the immediate purpose of the lease is to continue with exploration. Future act processes for progressing mining lease applications under the NTA are more complex and time consuming than the processes for dealing with exploration through the expedited procedure.

In their decision in *Re Koara People* (1996) 132 FLR 73 (23 July 1996) (at 82), Deputy President Seaman QC, and Members Smith and McDaniel outlined the problem:

> *In Western Australia mining leases are not only applied for where a mineable ore body has been identified as a result of prospecting or exploration activities but also at the expiry of the term of a prospecting or exploration licence when there is sufficient encouragement to convert to a mining lease to continue exploration. It can be seen therefore that a Western Australian mining lease is not what its name suggests. The grant of a*

[41] Ibid., pp. 15-17.

mining lease under the Mining Act 1978 (WA) is the creation of a single right to mine for the purposes of the Native Title Act but for the purposes of the Mining Act it is the creation of two sets of rights with very different consequences. The first are rights to explore over more limited areas than apply to exploration licences and at higher rentals and with more onerous expenditure conditions than apply to either exploration licences or prospecting licences. The second are rights to carry out actual mining operations.

Also (at 85):

The difficulty arising from the nature of the mining lease

It can be seen that a Western Australian mining lease gives miners rights and authorities over a long term which affords them great flexibility of exploration together with the security that if an ore body is found as a result of their exploration efforts they have the right to carry out the actual mining operations.

It may seem strange as a matter of first impression that a miner can explore an area of land for 21 years with a right of renewal for a further 21 years without any obligation to undertake any actual mining operations at any stage but it seems that the mining lease is tailored to create the greatest possible incentive for miners to explore for minerals by giving them long-term access to land with a guarantee that they will have the right to undertake actual mining operations at any time throughout the term of the lease should the exploration prove successful.

The effect in law of the grant of a mining lease on native title rights and interests is that they continue to exist, but will have no effect in relation to the lease while it is in force: s 238(8).

A number of consequences flow from the nature of Western Australian mining leases.

First in this case from the time when the normal negotiating procedures commenced the parties were left to negotiate without any real opportunity to consider the most important effects of the proposed grants, namely the impact of actual mining operations.

Secondly when an application is made for a determination in relation to the proposed act there are obvious difficulties for the Tribunal in applying the criteria in s 39 to an actual mining operation which may never occur and about which little or nothing is presently known.

Thirdly the grantee parties are unable to give any worthwhile evidence about the nature and extent of the mining operations which might eventually be conducted with the result that the native title party cannot respond with any specific evidence about the effects of actual mining operations, or the interests, proposals, opinions or wishes of the Koara people in relation to the management, use or control of the land concerned.

Fourthly the Government party has difficulty in assessing its future liability for compensation in the event that it decides to grant the lease should the Tribunal's determination be that the act may be done.

Fifthly it is difficult for the Tribunal to give full consideration to the native title party's right to be asked about actions affecting his land and to achieve respect for his connection to the land by providing appropriate protection.

The result is that the Tribunal is placed in the position of weighing the criteria set out in s39 at the least logical stage of the process of exploration and mining.

Not only could it be argued that this situation compromises that statutory purpose of the right to negotiate but it is more time consuming and impractical as emphasised by the Tribunal in NNTT WF96/1, WF95/5 and WF96/11; *State of Western Australia/Evans /Sons of Gwalia*, Hon C J

Sumner, Ms Diane Smith and Mr Michael McDaniel, 19 June 1998 (at 53) (which was the Tribunal's final determination in *Re Koara* following appeal to the Federal Court:

> *Enabling the Tribunal to deal expeditiously with the effect of exploration on the factors of s 39 and leaving the assessment of the effect of mining to a time when there is knowledge of what is proposed would be a more cost-efficient and equitable way of dealing with the issue, and consistent with the intention of the Act which was that the right to negotiate over a mining lease be exercised and the criteria in s 39 examined with an actual mining proposal in mind.*

This dilemma is posed for the Tribunal at every determination of a mining lease to be used for further exploration when in practicality, very few of these leases will ever eventuate in productive mining and could in the main be dealt with expeditiously. In *Re Koara People* the Government party produced evidence that 19,960 square kilometres of the State is the subject of mining leases but only 506 square kilometres is in fact mined. This evidence, provided in 1996, supports the proposition that the vast majority of mining lease applications do not result in active mining of a resource, but instead are sought for the purpose of continuing exploration and a slim possibility of active mining at some point in the future. Productive mining is activated by the giving of a Notice of Intent to mine (NOI) to the Department of Mineral & Petroleum Resources which contains details of the mining project. The total number of NOIs submitted varies according to market fluctuations and other factors, but following table indicates the number approved during the period May 2000 to April 2001.

Month	May	June	July	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr
NOIs	40	50	14	36	39	40	27	56	85	41	23	57

However, the number of first time (greenfields) NOIs are likely to be much less. Some 11 NOIs on a ten yearly average have related to first time (greenfields) productive mining proposals. This figure is based on evidence provided to the Tribunal in NNTT WF96/1, WF96/5, WF96/11, covering the years 1986 – 1995.

In the *Thomas v Western Australia* 133 FLR 124 (17 July 1996), future act determination applications, Members Sumner, O'Neil and Neate also outlined the difference between the conditions imposed on exploration/prospecting licences and mining leases (at 133-134):

> *In general, what is permitted to be done pursuant to an exploration licence (s 66 Mining Act) is the same as that permitted to be done pursuant to a prospecting licence (s 48 Mining Act). The only significant differences are that a prospecting licence is smaller in area and is granted for a term of four years, whereas an exploration licence can be for up to nine years. 500 tonnes of material may be extracted in the case of a prospecting licence, but 1,000 tonnes of material may be extracted pursuant to an exploration licence. These amounts can be increased with the approval of the Minister.*
>
> *Proposed Conditions Nos. 2-6 in this case are standard conditions which are imposed on a mining lease which is to be used for exploration purposes and are the same as the standard conditions imposed on both exploration licences and prospecting licences.*
>
> *The mining lease will also contain a condition (No. 7) which prevents developmental or productive mining or construction activity being commenced without the written approval of the State Mining Engineer. A plan of those operations and measures to safeguard the environment must first be submitted to the State Mining Engineer for assessment.* [NOTE: That is, the Notice of Intent]
>
> *The rights given by s 85 of the Mining Act are constrained by the conditions imposed. In cases such as these,*

which involve the conversion of prospecting or exploration licences to a mining lease to enable exploration to continue, what the grantee is entitled to do is very similar to what a licensee under a prospecting or exploration licence is entitled to do. The size of the area is different and the rental and expenditure conditions are more onerous. But the mining lease is subject to the same standard conditions as are imposed on a prospecting or exploration licence. They require the written approval of the District Mining Engineer to be first obtained for the use of scrapers, graders, bulldozers, backhoes or other mechanised equipment for surface disturbance or the excavation of costeans. The only significant difference between what can be described as a pre-production mining lease and a prospecting or exploration licence is that there is no restriction on the amount of material that can be extracted.

In summarising, the Technical Taskforce recommendations, if enacted, in the short and longer term should go some way towards addressing the problems posed by the nature of the Western Australian mining lease. It should also be noted that having a mining lease application stalled in the backlog under the right to negotiate with the explicit aim of continuing exploration activity does not necessarily act as an impediment or delay to exploration activity being undertaken. This is because, subject to certain conditions, in particular if the applicant has an underlying, granted exploration or prospecting licence and continues to pay rental and meet expenditure commitments, exploration/prospecting can continue.

8.2 Queensland

8.2.1 Background

Compliance with the Queensland's alternative native title provisions (outlined below) is required on all land where native title may still exist except in certain circumstances. Outlined below are the main categories of underlying tenure where native title may exist, particularly in relation to exploration and mining:

1. Pastoral leases;
2. Reserves and State forests;
3. Aboriginal freehold land and Torres Strait Islander freehold land;
4. Some freehold land held by the State (previously non-exclusive tenure and still undeveloped);
5. Occupation Licences;
6. Permits to Occupy;
7. Unallocated State land;
8. Beds and banks of boundary water courses; and
9. Roads not mentioned in 'extinguishing tenures' below.[42]

Compliance with the State's alternative native title provisions is not necessary on land where native title is taken to have been extinguished, for example:

1. Freehold (other than State freehold as above);

[42] Natural Resources and Mines, http://www.nrm.qld.gov.au/mines/nativetitle/provisions.html

2. Certain leasehold land tenures that have given exclusive possession to the lessees such as Grazing Homestead Perpetual Leases, Grazing Homestead Freeholding Leases, Mining Homestead Perpetual Leases and Agricultural Farms;

3. Areas that have previously been covered by freehold or exclusive tenures but are now under a lesser form of tenure;

4. Certain roads that have been dedicated; and

5. Other public infrastructure such as railways, pipelines, fully developed reserves (eg for schools) etc.

6. Areas of actual disturbance on old Mining Leases and other mining tenements validly granted before 1975.[43]

8.2.2 Future Act Regime Utilised in Queensland

On 21 July 1999, the Queensland Parliament passed legislation that provided modified procedures for alluvial gold and tin mining (s 26B provisions of the NTA), and mining and high impact exploration on pastoral leases (s 43A provisions). The legislation also provided for alternative provisions covering mining and high impact exploration on all tenures (s 43) and low impact exploration (s 26A). Having called for and considered submissions in relation to the legislation, the Commonwealth Attorney-General made a total of 13 determinations on 31 May 2000.

On 8 June 2000, the Australian Democrats moved in the Senate to disallow all 13 determinations. After a debate on 30 August 2000 lasting over three hours, the Senate voted 34 to 31 to disallow the six determinations made under s 26B and s 43A of the Act. The motions to disallow the seven determinations made under s 43 and s 26A failed by a vote of 56 to 10.

Consequential amendments were made to Queensland legislation which commenced to operate on 18 September 2000, the date on which the Attorney-General's determinations were published in the Gazette.

The final results of the legislative changes are:

- the right to negotiate for low-impact mineral exploration is replaced with a low-impact mineral exploration scheme under which explorers must negotiate an access agreement with native title parties before entering an exploration permit area to carry out exploration activities. If agreement cannot be reached, the parties may refer the matter to the Queensland Land and Resources Tribunal for determination.

- For all other mining related future acts to which the right to negotiate process under the NTA would otherwise apply (i.e. 'high-impact' mineral exploration and mining), an alternative State-based regime to the right to negotiate applies. The State-based process applies in the whole of Queensland and is administered by the Queensland Land and Resources Tribunal. The State-based regime is on similar terms to the regime under the NTA.[44]

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[43] Ibid.

[44] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*, http://www.hreoc.gov.au/social_justice/ntreport_01/chap1.html, pp. 19.

The Government is currently processing its backlog of tenement applications utilising the following measures:

- a policy of making 'partial grants' that exclude areas where native title exists;
- utilising the Queensland alternative provisions enacted in 1998 and allowed by the Commonwealth in 2000 pursuant to ss 26A and 43 of the NTA; and
- the negotiation of ILUAs to provide for Indigenous consent to the grant of mineral exploration rights.[45]

The Queensland Government has not adopted the use of the expedited procedure.[46]

However, in February 2001, the Central Queensland Land Council sought judicial review in the Federal Court of the Commonwealth Attorney General's s 43 determinations allowed by the Senate. The decision in this case, *Central Queensland Land Council v A-G of the Commonwealth of Australia & State of Queensland* [2002] FCA 58, was handed down in February 2002. Wilcox J found (amongst other things) that:

- the Minister had no jurisdiction to make the s 43(1) determinations because there was not, at the time of making them, a law of a State or Territory that provided for alternative provisions as required under that subsection; and
- each of the determinations made pursuant to s 43(1)(b) NTA were invalid and without legal effect.

Both the Commonwealth and the State of Queensland have lodged appeals in the above matter as it relates to the validity of the s 43 determinations.

The processes for grants of low-impact exploration permits are unaffected. With respect to high-impact exploration and mining titles the State, in the interim, is still able to grant these where they have been authorised under a registered Indigenous Land Use Agreement.[47]

At the time of writing, articles appeared in national newspapers documenting the mining industry's current dissatisfaction with the state of affairs in Queensland in relation to future acts. The Government is currently considering changes to its State-based provisions following a submission from the mining industry suggesting that in relation to high-impact exploration, industry be given the option of being able to utilise the right to negotiate provisions under the NTA.[48]

8.2.3 State Government Initiative

In March 2000, the Queensland Government and the Queensland Indigenous Working Group (QIWG), an unincorporated association of NTRBs in Queensland, commenced developing a model ILUA for backlog exploration permits with the main aim of assisting all parties by minimising the number of individual negotiations and therefore provide a less time-consuming and costly negotiation process. The model ILUA was finalised in July 2001 and by November 2001 it had been formally endorsed by the Queensland Government and four of the State's NTRBs, the Queensland South Representative Body Aboriginal Corporation, the Gurang Land Council, the Central Queensland Land Council and the North Queensland Land Council. The

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[45] Ibid., pp. 18.
[46] Ibid., pp. 18.
[47] http://www.nrm.qld.gov.au/mines/nativetitle/court.html
[48] Articles in *Australian Financial Review and the West Australian*, 17 July 2002; Ministerial Media Statement by the Hon Peter Beattie MP, Premier, 17 July 2002.

Model ILUA sets out a process for protecting native title rights and interests and the granting of exploration permits.[49]

The Statewide Model ILUA does not in itself allow for the grant of backlog exploration permits but provides a framework from which individual ILUAs can be reached between the State and particular native title groups for backlog exploration permits within a claim area.[50]

Once individual ILUAs are registered with the National Native Title Tribunal, (which could take up to five months subsequent to the date of adoption by the native title groups), explorers can then elect to opt in to the relevant agreement which will enable the grant of an exploration permit and the commencement of activity. However, explorers still retain the option to proceed under the alternative State provisions.[51]

8.3 South Australia

8.3.1 Background

South Australia was the first State/Territory jurisdiction in Australia to take up the option under the NTA of alternative provisions to deal with some future acts mainly the grant of mining (but not petroleum) tenements. Future act mediation and inquiry functions in South Australia are conducted by the Environment, Resources and Development Court.

Native title claims exist over most of the State with the majority of pastoral lease land being under native title claim.

8.3.2 Future Act Regime Utilised in South Australia

Part 9B of the *Mining Act* 1971 (SA) sets out the procedures that must be undertaken prior to the conduct of mineral exploration or mining related activities on native title land. The procedures utilised in South Australia are consistent with those under the NTA but not identical.[52]

8.4 Northern Territory

8.4.1 Background

There are three types of land or waters in the Territory which result in different interactions between native title rights and interests and future acts:

- On Aboriginal land, either Aboriginal freehold under the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) or Territory freehold held by Aboriginal interests, the grant of a mining tenement is not a future act. On such lands and waters the NTA does not regulate the grant of mining tenements and the right to negotiate does not apply.
- On freehold that is not Aboriginal land, native title has been extinguished and the right to negotiate does not apply.

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[49] http://www.nrm.qld.gov.au/mines/nativetitle/ilua.html and Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*, http://www.hreoc.gov.au/social_justice/ntreport_01/chap1.html, pp. 20

[50] http://www.nrm.qld.gov.au/mines/nativetitle/ilua.html

[51] Ibid.

[52] For further information on the future act regime in South Australia refer to the Office of Minerals and Energy Resources South Australia, *Earth Resources Information Sheet M31*, March 2002.

- On land where there is an interest with which native title might co-exist, including pastoral leases or national parks, or on land where there is no other interest, the future act regime under the NTA governs the manner in which mining tenements are to be granted.[53]

In the Northern Territory the land or waters to which the right to negotiate potentially applies is largely that subject to pastoral leases or national parks. Pastoral leases cover around 46% of the area of the Territory.[54]

8.4.2 Future Act Regime Utilised in the Northern Territory

From 23 December 1996 to 5 September 2000 only a limited number of section 29 notices were issued in the Northern Territory. It appears that during this time few or no exploration or prospecting titles were granted in the Northern Territory.[55]

The Northern Territory Government amended its *Mining Act* and *Petroleum Act* to provide for a state-based alternative to the NTA right to negotiate. However this was rejected by the Commonwealth Senate on 31 August 1999. Accordingly, the future act regime under the NTA continued to apply in the Northern Territory.[56]

Between 6 September 2000 and 8 August 2001, the Northern Territory Government issued a series of fortnightly advertisements, each purporting to be a notice under section 29 of the NTA, and each identifying several tenements proposed for grant. A total of 347 exploration licences were notified over a period of 11 months. Of these, 332 had an expedited procedure statement attached, including 65 that were later withdrawn. In addition, 23 mineral claims and 11 extractive mineral leases were notified. None of these had the expedited procedure statement attached.[57]

The content of the s29 notices was challenged in the NNTT in *Roy Dixon on behalf of the Garawa and Gurdanji Peoples/Ashton Mining Ltd/Northern Territory* NNTT DO 01/1-7 (23/4/01). The NNTT found that the notices were not adequate to fulfil the requirements of ss 29 and 252 of the NTA and the *Native Title (Notices) Determination 1998* and that section 29 notices 'must contain a clear description of the land that will be affected'. As a result of this case, the Northern Territory Government changed the form of the notices issued under section 29 NTA, to include a locality map that enables better identification of the location of the proposed tenements. Ultimately, in October 2001, the Northern Territory Government withdrew all the notices issued before 13 December 2000.[58]

8.5 New South Wales

8.5.1 Future Act Regime Utilised in New South Wales

In February 2000 the New South Wales Government sought two determinations in respect of proposed alternative right to negotiate provisions relating to low impact exploration mining and petroleum activities. Having sought and considered submissions from the New South Wales Aboriginal Land Council and the public, the Attorney-General made determinations under s

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53 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*, http://www.hreoc.gov.au/social_justice/ntreport_01/chap1.html, pp. 14-15,
54 Ibid., pp. 15.
55 Ibid., pp. 15.
56 Ibid., pp. 15.
57 Ibid., pp. 15.
58 Ibid., pp. 16.

26A(1) of the Act on 17 October 2000. They were not disallowed and commenced on gazettal on 13 December 2000.

In addition, the NSW Government had previously sought determinations in November 1996 under section 26(3) of the NTA (prior to its amendment) replacing the right to negotiate in some circumstances with the grant and renewal of exploration licences and special prospecting authorities subject to what is known as the 'Minister's consent condition'. The Commonwealth Minister also made determinations in February 2000 under section 26C NTA that certain land and waters in the Lightning Ridge and White Cliffs regions were approved opal or gem mining areas.[59]

The result of the above is that the right to negotiate does not automatically apply to the grant or renewal of any mineral or petroleum exploration licence or prospecting permit in NSW.[60]

The procedures outlined below are now applied to the grant and renewal of proposed onshore exploration and mining titles that affect potential native title land in NSW.

8.5.1.1 Grant or Renewal of Exploration Titles (other than Low-Impact Exploration Licences)

Applications for grant or renewal of non-low-impact exploration titles in NSW are dealt with in one of two ways: subject to the 'Minister's consent condition' (and without the 'right to negotiate' process first having been pursued) or after the 'right to negotiate' process under the NTA has been pursued.[61]

Where exploration or prospecting mining titles are granted or renewed subject to the 'Minister's consent condition', the right to negotiate is postponed from the date of grant (or renewal) of the title until the time the miner actually wants to commence exploring in an area that may be subject to native title. At this time the miner must seek the Minister's consent. The Minister then initiates the right to negotiate process under the NTA for that area. Titles granted in this way are referred to as 'exclusion condition' titles.[62]

Mineral and petroleum exploration titles are granted in this way in the majority of cases.[63]

The 'consent condition' exception to the right to negotiate for non-low impact mining and petroleum future acts for the most part defers the right to negotiate process.[64]

Where an applicant requests that the exploration title be issued without the 'Minister's consent condition' and there is found to be native title claims over the title application area, the right to negotiate applies. The right to negotiate is administered in one of two ways, either:

- the area of the native title claims is excluded from the exploration title (so avoiding having to negotiate with native title parties); or
- agreements are negotiated with the relevant native title parties and the Government to allow the inclusion of the claimed areas in the title.[65]

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[59] Ibid., pp. 21.
[60] Ibid., pp. 21.
[61] Ibid., pp. 21.
[62] Ibid., pp. 21.
[63] Ibid., pp. 22.
[64] Ibid., pp. 22.
[65] Ibid., pp. 22.

The NSW Department of Mineral Resources does not include the expedited procedure statement for exploration licences that are granted by going through the right to negotiate process.[66]

8.5.1.2 Grant or Renewal of Low-Impact Exploration Licences

In general terms, the NSW low-impact exploration scheme applies to the grant of low-impact prospecting titles under the *Mining Act* 1993 (NSW) and low impact petroleum exploration titles under the *Petroleum (Onshore) Act* 1991 (NSW).[67] Essentially, the Commonwealth's right to negotiate scheme with respect to the grant or renewal of low-impact exploration licences has been replaced with a right to be notified, consultation regarding the protection of native title rights and interests and the signing of an access agreement.[68]

8.5.2 Protocol for the Negotiation of Agreements for Exploration and Mining for New South Wales

On 26 June 2001, the NSW Aboriginal Land Council (NSWALC) and the NSW Minerals Council (NSWMC) signed a Protocol for the Negotiation of Agreements for Exploration and Mining for New South Wales. The Protocol, which was not binding, envisaged the development of:

- standardized access agreements relating to exploration under s 26A of the NTA,
- standardized negotiation protocols for exploration or mining projects after s 29 NTA notices have been issued,
- agreement processes regarding exploration and mining in NSW which may result in ILUAs (alternative procedure agreements) which should include a simplified future act regime including an agreed notification process.[69]

The Protocol was developed with the input of a Working Group established between NSWALC and NSWMC.[70]

The Working Group has since been developing a standardized access agreement relating to low-impact exploration. Once agreed and endorsed by the NSW representative body and NSWMC, it will be open to native title parties and miners to adopt the model agreement for any proposed grant of a low-impact exploration licence.[71]

8.6 Victoria

8.6.1 Background

Approximately 32% of Victoria is Crown land and is therefore potentially subject to native title and the right to negotiate. The remaining 68%, including farming lands, is largely held as freehold and is not claimable under native title.[72]

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[66] Ibid., pp. 22.
[67] Technical Taskforce on Mineral Tenements and Land Title Applications, *Final Report,* http://www.ministers.wa.gov.au/main.cfm?MinId=02&Section=0201b, pp. 146.
[68] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*, http://www.hreoc.gov.au/social_justice/ntreport_01/chap1.html, pp. 22.
[69] Ibid., pp. 24.
[70] Ibid., pp. 24.
[71] Ibid., pp. 24.
[72] Aboriginal and Torres Strait Islander Social Justice Commissioner, *Native Title Report 2001*,

8.6.2 Future Act Regime Utilised in Victoria

The Victorian Government requires that all mining and exploration licence applications meet the requirements of the *Native Title Act* 1993 where they cover areas that contain Crown land that is potentially subject to native title.[73]

The expedited procedure is not utilized in Victoria.[74]

Where a mineral tenement application covers an area which includes part claimable and non-claimable land for native title purposes, applicants are able to excise from the tenement application the area that may be subject to native title. In such cases, tenements can be issued without submitting them to the right to negotiate provisions of the NTA.[75]

8.6.3 State Government Initiatives

The Victorian Government has stated that its preferred approach to native title is to seek negotiated outcomes and that it supports the negotiation of ILUAs in relation to future acts. However, as at July 2002, no ILUAs had been negotiated for mining or exploration licences. ILUAs had been negotiated for petroleum and pipeline projects, with one registered with the NNTT.[76]

The Victorian Government plans to facilitate ILUAs based on native title claim areas for the small mining sector to cover mining licences less than 5 hectares in area. The aim of this initiative is to negotiate a template agreement between the Government, the Prospectors and Miners Association of Victoria and the Mirimbiak Nations Aboriginal Corporation. The agreement would then be available to native title claimants to use if they chose. If adopted for a native title claim, the agreement would allow small miners to sign on to the ILUA in order to have licences validly granted without having to negotiate individual agreements.[77]

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[73] Ibid., pp. 24.

[74] Ibid., pp. 24.

[75] Ibid., pp. 24.

[76] Ibid., pp. 24.

[77] Ibid., pp. 24.

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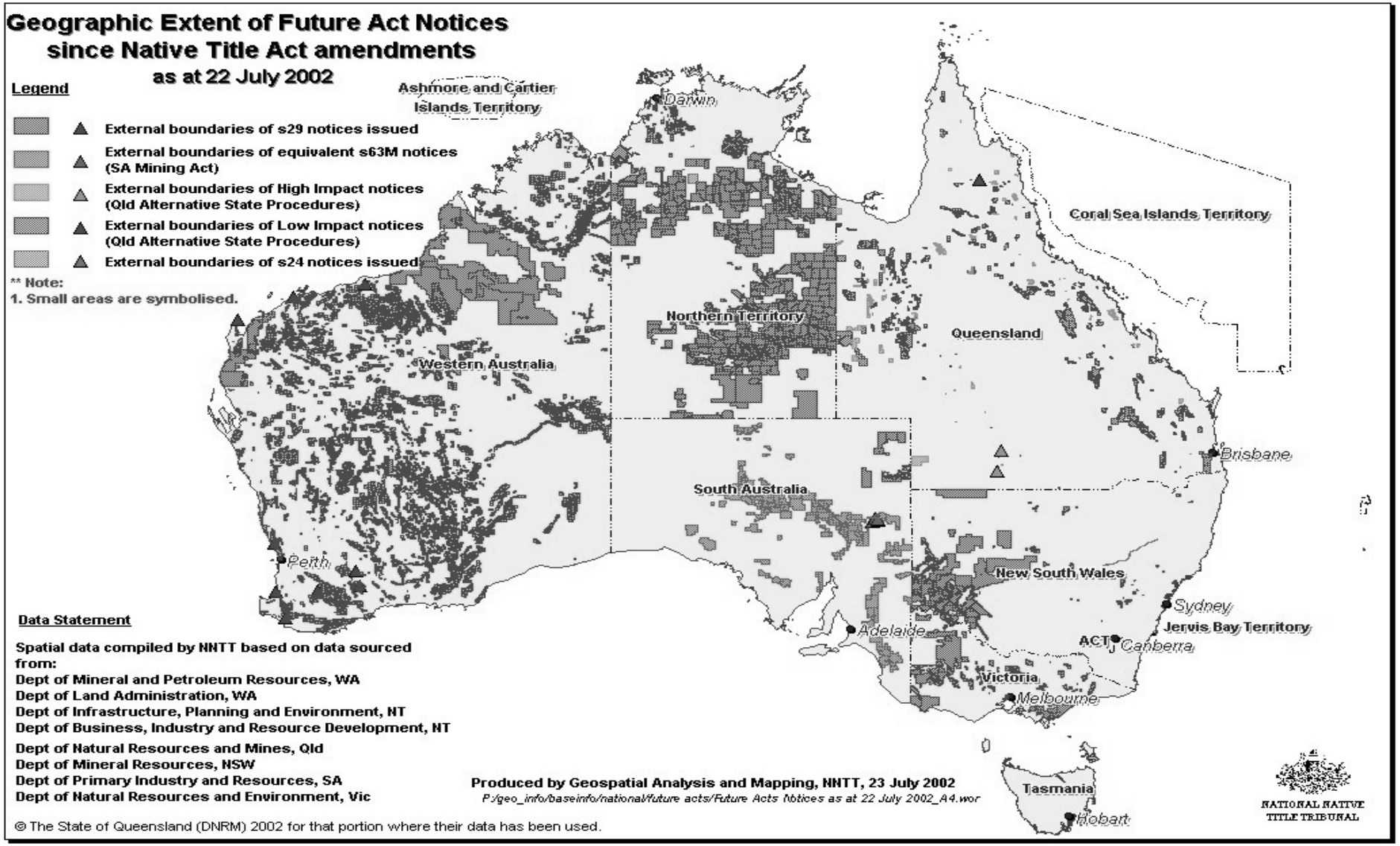
APPENDIX 1 – Geographic Extent of Future Act Notices in Australia since NTA Amendments (30 September 1998)



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