

NATIVE TITLE (NEW SOUTH WALES) ACT 1994 No. 45

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Objects of this Act
4. Definitions
5. Words and expressions used in Commonwealth Native Title Act
6. Act to bind Crown

PART 2—VALIDATION AND ITS EFFECTS

Division 1—General

7. Objects of this Part
8. Validation of past acts attributable to the State (NTA, s. 19)
9. Application of remaining provisions of this Part

Division 2—Effect of validation on native title

10. Category A past acts that are not public works (NTA, ss. 19 and 15 (1) (a))
11. Category A past acts that are public works (NTA, ss. 19 and 15 (1) (b))
12. Inconsistent category B past acts (NTA, ss. 19 and 15 (1) (c))
13. Category C and D past acts (NTA, ss. 19 and 15 (1) (d))
14. Extinguishment does not confer right to eject or remove Aboriginal peoples (NTA, ss. 15 (2) and 19)

Division 3—Other effects of validation

15. Preservation of beneficial reservations and conditions (NTA, ss. 19 and 16)

PART 3—CONFIRMATION OF CERTAIN RIGHTS

16. Object of this Part
17. Confirmation of ownership of natural resources, right to flow of water and fishing access rights (NTA, s. 212 (1))
18. Confirmation of access to certain areas (NTA, s. 212 (2) and (3))

PART 4—LAND AND ENVIRONMENT COURT, WARDENS' COURTS
AND NATIVE TITLE REGISTRAR

Division 1—Land and Environment Court and wardens' courts

19. Land and Environment Court and wardens' courts to exercise certain functions (NTA, ss. 81, 107 and 108)
20. Courts' way of operating (NTA, ss. 82 and 109)
21. Adjournment of proceedings touching on native title in other courts

Division 2—The Native Title Registrar

22. Registrar (NTA, s. 95 (1))
23. Functions of native title registrar (NTA, ss. 191 and 198)
24. Delegation of functions to registrars of wardens' courts (NTA, ss. 191 and 198)

PART 5—RECOGNISED AND ARBITRAL BODIES

25. Purpose of this Part (NTA, esp. ss. 251 and 27)
26. Conferral of jurisdiction as recognised bodies allowed (NTA, esp. s. 50 (3))
27. Land and Environment Court and wardens' courts to be arbitral bodies (NTA, esp. s. 27 (1))

PART 6—HOLDING OF NATIVE TITLE IN TRUST AND NATIVE TITLE
FUNCTIONS OF PRESCRIBED BODIES CORPORATE

28. Determinations by Land and Environment Court and wardens' courts (NTA, s. 55)
29. Determination whether native title to be held in trust (NTA, ss. 56 and 57 (1))
30. Determination of prescribed body corporate etc. (NTA, s. 57)
31. Replacement of prescribed bodies corporate (NTA, s. 60)

PART 7—APPLICATIONS ABOUT NATIVE TITLE

Division 1—NATIVE title and compensation applications

32. Native title and compensation applications (NTA, s. 61 (1))
33. Form and contents of applications (NTA, s. 61 (2))
34. Claims to hold title with other persons (NTA, s. 61 (3))
35. Material and fees to accompany applications (NTA, s. 62)
36. Applications complying with formal requirements (NTA, s. 63)
37. Applications not complying with formal requirements (NTA, s. 64)
38. General application powers (NTA, s. 65)
39. Action to be taken about accepted applications (NTA, s. 66)
40. Special procedure for non-claimant applications (NTA, s. 67)

Native Title (New South Wales) Act 1994 No. 45

41. Parties (NTA, s. 68)
42. Land and Environment Court or warden's court to decide persons whose interests may be affected (NTA, s. 69)
43. Applications that are unopposed (NTA, s. 70)
44. Power of Land and Environment Court or warden's court if parties reach agreement (NTA, s. 71)
45. Mediation conference to be held (NTA, s. 72)
46. Power of Land and Environment Court or warden's court if parties reach agreement after mediation conference (NTA, s. 73)
47. Applications not settled are to be heard by Land and Environment Court or warden's court (NTA, s. 74)

Division 2—Right to negotiate applications

48. Right to negotiate applications (NTA, s. 75 (1))
49. Form and contents of applications (NTA, s. 75 (2))
50. Material and fees to accompany applications (NTA, s. 76)
51. Action to be taken about applications (NTA, s. 77)

Division 3—Miscellaneous

52. Assistance to potential applicants (NTA, s. 78)

**PART 8—INQUIRIES DETERMINATION OF CONTESTED APPLICATIONS
AND OTHER DETERMINATIONS BY LAND AND ENVIRONMENT COURT
AND WARDENS' COURTS**

Division 1—General

53. Operation of this Part (NTA, ss. 80 and 139)
54. Role of native title assessors in Land and Environment Court and wardens' courts (NTA, ss. 83 and 110)
55. Parties (NTA, ss. 84 and 141)
56. Evidence and findings in other proceedings (NTA, ss. 86 and 146)

Division 2—Conferences, appearances, giving of evidence and orders generally

57. Conferences (NTA, ss. 88 and 150)
58. Right of appearance (NTA, ss. 89 and 152)
59. Taking part by telephone or other means of communication (NTA, ss. 90 and 153)
60. Conferences and hearings to be held in public except in special circumstances (NTA, ss. 91 and 154)
61. Land and Environment Court or warden's court may prohibit disclosure of evidence (NTA, ss. 92 and 155)
62. Powers of Land and Environment Court and wardens' courts to take evidence (NTA, ss. 93 and 156)
63. Decision or determination that compensation is payable (NTA, ss. 94 and 161)

Division 3—Provisions applying only to inquiries

Subdivision 1—Inquiries generally

64. Inquiries (NTA, s. 139)
65. Inquiries may cover more than 1 matter (NTA, s. 140)

Native Title (New South Wales) Act 1994 No. 45

- 66. Opportunity to make submissions about evidence (NTA, s. 142)
- 67. Way in which questions are to be decided (NTA, s. 144)
- 68. Power of Land and Environment Court or warden's court if proceeding is frivolous or vexatious (NTA, s. 147)
- 69. Power of Land and Environment Court or warden's court if prima facie case not made out (NTA, s. 148)
- 70. Power of Land and Environment Court or warden's court if applicant requests dismissal (NTA, s. 149)

Subdivision 2—Hearings

- 71. Hearings (NTA, s. 151)
- 72. Land and Environment Court or wardens' courts may authorise someone else to take evidence (NTA, s. 157)
- 73. Interpreters (NTA, s. 158)
- 74. Retention and copying of documents (NTA, s. 159)
- 75. Fees for persons giving evidence in inquiries (NTA, s. 182)

Subdivision 3—Determinations and reports

- 76. Determinations of Land and Environment Court and wardens' courts—native title and compensation applications (NTA, S. 160)
- 77. Determinations—right to negotiate applications (NTA, s. 162)
- 78. Determinations and reports to be in writing (NTA, s. 164)
- 79. Decision or determination conclusive

Division 4—Provisions applying only to contested applications

- 80. Power of Land and Environment Court or warden's court if parties reach agreement (NTA, s. 87)

Division 5—Appeals

- 81. Appeals to Judge of Land and Environment Court or warden from decisions and determinations of non-judicial members or officers (NTA, s. 169)
- 82. Appeals to Supreme Court from decisions and determinations of Judge of Land and Environment Court or warden (NTA, s. 169)
- 83. Operation and implementation of decision or determination subject to appeal (NTA, s. 170)
- 84. Land and Environment Court, warden's court or Supreme Court may prohibit disclosure of evidence (NTA, s. 92)

Division 6—Miscellaneous

- 85. Contravention of direction prohibiting disclosure of evidence (NTA, s. 176)
- 86. Protection of non-judicial members and officers (NTA, s. 180)
- 87. Confidential information not to be disclosed (NTA, s. 181)

PART 9—NATIVE TITLE REGISTER

- 88. Meaning of "claim" (NTA, s. 184)
- 89. Native title register (NTA, ss. 185 and 192)
- 90. Contents of the native title register (NTA, ss. 186 and 193)
- 91. Inspection of the register (NTA, ss. 187 and 194)
- 92. Parts of the register may be kept confidential (NTA, ss. 188 and 195)

Native Title (New South Wales) Act 1994 No. 45

- 93. Keeping the register (NTA, ss. 190 and 197)
- 94. Register may be located in land registry
- 95. Native title registrar to inform National Registrar of applications, decisions and determinations (NTA, s. 251 (2) (i))

PART 10—INTERIM PROVISIONS

Division 1—Object of this Part

- 96. Object of this Part

Division 2—Compulsory acquisition

- 97. Acquisition of native title rights and interests (NTA, s. 23 (3), (5) and (6))

Division 3—Mining

- 98. Native title holders are owners for State Mining Acts
- 99. State Mining Acts apply with prescribed changes

Division 4—Other interim provisions

- 100. Native title holders are owners
- 101. Interim regulation making power
- 102. Expiry of this Part

PART 11—MISCELLANEOUS

- 103. Notification of native title holders (NTA, ss. 23 (1), (6) and (7) and 252)
- 104. Recovery of compensation paid by the Crown from an authority of the State (NTA, s. 23 (5) (b) (ii))
- 105. Notes in the text
- 106. Regulations
- 107. Miscellaneous amendment of other Acts
- 108. Review of Act

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS

NATIVE TITLE (NEW SOUTH WALES) ACT 1994 No. 45

NEW SOUTH WALES



Act No. 45, 1994

An Act about native title in relation to land or waters; and, for other purposes. [Assented to 2 June 1994]

WHEREAS:

- (1) The High Court of Australia, in *Mabo and ors v. The State of Queensland (No. 2)* (1992) 175 CLR 1, rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement and held that the common law of Australia recognises the native title rights of the indigenous inhabitants of Australia:
- (2) The Commonwealth Government has enacted the Native Title Act 1993 of the Commonwealth which provides a national scheme for the recognition and protection of native title, the regulation of future dealings with, and claims to, native title and the validation of past State acts invalidated because of the existence of native title:
- (3) It is the intention of Parliament that New South Wales should participate in the national scheme established by the Commonwealth Government and that the State should validate past State acts invalidated because of the existence of native title.

The Legislature of New South Wales enacts:**PART I—PRELIMINARY****Short title**

1. This Act may be cited as the Native Title (New South Wales) Act 1994.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Objects of this Act

3. The main objects of this Act are:
 - (a) in accordance with the Commonwealth Native Title Act, to validate any past acts invalidated because of the existence of native title and to confirm certain rights; and
 - (b) to ensure that New South Wales law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title; and
 - (c) to establish State-based mechanisms for deciding claims to native title in accordance with the Commonwealth Native Title Act.

Definitions

4. (1) In this Act:

“accepted application” means an application accepted under section 36 (Applications complying with formal requirements) or 37 (Applications not complying with formal requirements);

“accepted application notice” means a notice given under section 39 (2) (a) (which deals with the giving of notice of accepted applications);

“alternative provisions” means alternative provisions to the provisions of Subdivision B (Right to negotiate) of Division 3 (Future acts and native title) of Part 2 (Native Title) of the Commonwealth Native Title Act;

“claimant application” means a native title determination application made by a person or persons claiming to hold native title in relation to an area;

“Commonwealth Native Title Act” or **“NTA”** means the Native Title Act 1993 of the Commonwealth;

“compensation application” means an application for compensation under a State Compulsory Acquisition Act or a State law mentioned in section 240 (Similar compensable interest test) of the Commonwealth Native Title Act as provided for by section 23 (Permissible future acts) of the Commonwealth Native Title Act;

“contested application” means an application referred to in section 47;

“exercise a function” includes perform a duty;

“function” includes power, authority and duty;

“Land and Environment Court” means the Land and Environment Court constituted by the Land and Environment Court Act 1979;

“mediation conference” means a conference under section 45 (Mediation conference to be held);

“National Native Title Tribunal” means the National Native Title Tribunal established under section 107 (Establishment of the National Native Title Tribunal) of the Commonwealth Native Title Act;

“National Registrar” means the Native Title Registrar under the Commonwealth Native Title Act;

“native title determination application” means an application for a determination of native title in relation to an area for which there is no approved determination of native title that is given to the native title registrar;

“native title register” means the New South Wales native title register;

“native title registrar” means the New South Wales native title registrar and includes a delegate of the native title registrar;

“non-claimant application” means a native title determination application that is not made by a person or persons claiming to hold native title in relation to an area;

“potentially affected person” for an application means a person mentioned in section 39 (2) (a) (which deals with the giving of notice of accepted applications);

“registered native title body corporate” includes a body corporate registered on the native title register as a holder of native title;

“revised native title determination application” means an application to revoke or vary an approved determination of native title on a ground set out in section 13 (5) (which deals with grounds for variation or revocation of approved determinations of native title) of the Commonwealth Native Title Act;

“right to negotiate application” means an objection or application mentioned in section 48 (2) or (3) (which deal with objections and applications about right to negotiate applications);

“State Compulsory Acquisition Act” means any of the following laws:

- Land Acquisition (Just Terms Compensation) Act 1991 and any enactment that authorises the acquisition of land in accordance with that Act
- sections 21 and 22A of the Pipelines Act 1967
- any enactment that effects a compulsory acquisition of land and provides compensation as if the acquisition had been effected by an acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991
- Division 2 of Part 12 of the Roads Act 1993
- an Act prescribed by the regulations made under this Act;

“State Mining Act” means any of the following Acts:

- Mining Act 1992
- Petroleum (Onshore) Act 1991
- an Act prescribed by the regulations made under this Act;

“unopposed application” means an application covered by any of the following sections:

- section 43 (Applications that are unopposed)
- section 44 (Power of Land and Environment Court or warden’s court if parties reach agreement)
- section 46 (Power of Land and Environment Court or warden’s court if parties reach agreement after mediation conference);

“warden’s court” means a warden’s court established under the Mining Act 1992.

(2) In this Act, the expression **“Aboriginal peoples”** includes Torres Strait Islanders.

Note: The expression “approved determination of native title” is defined in s 253 NTA and “determination of native title” is defined in s 225 NTA. A determination of native title involves a determination as to whether native title exists in relation to a particular area of land or waters.

Words and expressions used in Commonwealth Native Title Act

5. (1) Words and expressions used in the Commonwealth Native Title Act and this Act have the same meanings in this Act as they have in the Commonwealth Native Title Act.

(2) This section applies except so far as the context or subject-matter otherwise indicates or requires.

(3) However, this section does not apply to a word or expression defined in section 4 (Definitions),

Note: Section 222 of the Commonwealth Native Title Act (“NTA”) sets out a list of definitions used in that Act.

Act to bind Crown

6. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

PART 2—VALIDATION AND ITS EFFECTS

Division 1—General

Objects of this Part

7. The objects of this Part are:

- (a) to validate, in accordance with section 19 (State/Territory acts may be validated) of the Commonwealth Native Title Act, past acts attributable to the State; and
- (b) to provide for the effects of the validation.

Note: An “act” is defined in s 226 NTA.

A “past act” is defined in s 228 NTA.

An act “attributable” to the State is defined in s. 239 NTA

Validation of past acts attributable to the State (NTA, s 19)

8. Every past act attributable to the State is valid, and is taken always to have been valid.

Application of remaining provisions of this Part

9. (1) The remaining provisions of this Part apply to a past act attributable to the State that is validated by section 8.

(2) Division 2 deals with the effect of the validation on native title.

(3) Division 3 deals with other effects of the validation.

Division 2—Effect of validation on native title

Category A past acts that are not public works (NTA, ss. 19 and 15

(1) (a))

10. (1) This section applies if the past act is a category A past act other than a category A past act to which section 229 (4) (which deals with public works) of the Commonwealth Native Title Act applies.

(2) The past act extinguishes native title.

Note: “Category A past act” is defined in s 229 NTA. This category covers freehold grants, some leasehold grants (commercial, agricultural, pastoral and residential leases and those parts of certain mining leases (such as lands on which there are city, town or private residences) that are taken to be “dissected” in accordance with s 245 NTA) and public works. “Lease”, “permit” and various types of leases are defined in ss 242 to 249 NTA. “Public work” is defined in s 253 NTA.

Category A past acts that are public works (NTA, ss. 19 and 15

(1) (b))

11. (1) This section applies if the past act is a category A past act to which section 229 (4) of the Commonwealth Native Title Act applies.

(2) The past act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated.

(3) If section 229 (4) (a) (which deals with public works completed after 1 January 1994) of the Commonwealth Native Title Act applies to the past act, the extinguishment is taken to have happened on 1 January 1994.

Inconsistent category B past acts (NTA, ss. 19 and 15 (1) (c))

12. (1) This section applies if the past act is a category B past act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned.

(2) The past act extinguishes the native title to the extent of the inconsistency.

Note: “Category B past act” is defined in S 230 NTA. This category covers leasehold grants (other than leases that are category A past acts and mining leases).

Category C and D past acts (NTA, ss. 19 and 15 (1) (d))

13. (1) This section applies if the past act is a category C past act or a category D past act.

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

Note: “Category C past act” is defined in s 231 NTA. This category deals with the grant of mining leases. “Mining lease” is defined in S 245 NTA and “mine” in s 253 NTA.

“Category D past act” is defined in s 232 NTA. It is the residual category of past acts.

The effect of the non-extinguishment principle is set out in s 238 NTA.

Extinguishment does not confer right to eject or remove Aboriginal peoples (NTA, ss. 15 (2) and 19)

14. An extinguishment of native title effected by this Part does not by itself confer a right to eject or remove any Aboriginal peoples who reside on or who exercise access over land or waters covered by a pastoral lease the grant, re-grant or extension of which is validated by section 8 (Validation of past acts attributable to the State).

Division 3—Other effects of validation**Preservation of beneficial reservations and conditions (NTA, s 19 and 16)**

15. (1) This section applies if:

- (a) the past act contains a reservation or condition for the benefit of Aboriginal peoples; or
- (b) the doing of the past act would affect rights or interests (other than native title rights and interests) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage).

(2) Division 2 (Effect of validation on native title) does not affect a reservation or condition or rights or interests mentioned in this section.

PART 3—CONFIRMATION OF CERTAIN RIGHTS**Object of this Part**

16. The object of this Part is to confirm, in accordance with section 212 (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act:

- (a) any existing ownership of natural resources and certain water and fishing access rights; and
- (b) public access to and enjoyment of beaches and certain other places.

Confirmation of ownership of natural resources, right to flow of water and fishing access rights (NTA, s 212 (1))

17. (1) The existing ownership of all natural resources owned by the State is confirmed.

(2) All existing rights of the State to use, control and regulate the flow of water are confirmed.

(3) All existing fishing access rights under State law are confirmed to prevail over any other public or private fishing rights.

Confirmation of access to certain areas (NTA, s 212 (2) and (3))

18. Existing public access to and enjoyment of the following areas is confirmed:

- (a) waterways;
- (b) beds and banks or foreshores of waterways;

- (c) coastal waters;
- (d) beaches;
- (e) areas that were public places at the end of 31 December 1993.

Note: Under section 212 (3) (which deals with the effect of confirmation of ownership of natural resources, the right to flow of water and fishing access rights and with confirmation of access to certain areas) of the Commonwealth Native Title Act, the confirmation made by sections 17 and 18 does not extinguish or impair native title rights and interests and does not affect a conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples.

PART 4—LAND AND ENVIRONMENT COURT, WARDENS' COURTS AND NATIVE TITLE REGISTRAR

Division 1—Land and Environment Court and wardens' courts

Land and Environment Court and wardens' courts to exercise certain functions (NTA, ss. 81, 107 and 108)

19. It is the intention of Parliament that the Land and Environment Court and wardens' courts should exercise the functions given to them respectively under this Act in the same way as similar functions are exercised by the Federal Court and the National Native Title Tribunal.

Courts' way of operating (NTA, ss. 82 and 109)

20. (1) The Land and Environment Court and wardens' courts must pursue the objective of performing their functions under this Act in a fair, just, economical, informal and prompt way.

(2) In conducting inquiries and determining contested applications, the Land and Environment Court and wardens' courts:

- (a) must take into account relevant cultural and customary concerns of Aboriginal peoples; and
- (b) are not bound by technicalities, legal forms or rules of evidence.

Adjournment of proceedings touching on native title in other courts

21. (1) If an assertion of the existence, nature or extent of, or the person or persons holding, native title (other than native title about which an approved determination of native title exists) is made in proceedings before a court other than the Land and Environment Court or a warden's court and the court in which the assertion is made is of the opinion that the proceedings cannot proceed unless the assertion is dealt with, the court may adjourn the proceedings before it to allow a native title determination application to be made to the National Native Title Tribunal or the Land and Environment Court.

(2) The court may act under this section on its own initiative or on application by a party to the proceedings.

(3) The costs of the proceedings before the other court and the Land and Environment Court, so far as they relate to the assertion concerning native title, are to be borne by each party unless the court in which the costs were incurred otherwise orders.

Division 2—The Native Title Registrar

Registrar (NTA, s 95 (1))

22. A New South Wales native title registrar is to be appointed under the Land and Environment Court Act 1979.

Functions of native title registrar (NTA, ss. 191 and 198)

23. The native title registrar has the functions given to the native title registrar under this Act and any functions delegated to the native title registrar by the National Registrar under the Commonwealth Native Title Act.

Delegation of functions to registrars of wardens' courts (NTA, ss. 191 and 198)

24. (1) The native title registrar may delegate functions under this Act (except this power of delegation) to the registrar of a warden's court and the registrar of the warden's court may exercise functions so delegated.

(2) A registrar of a warden's court may also exercise functions delegated to the registrar by the National Registrar under the Commonwealth Native Title Act.

PART 5—RECOGNISED AND ARBITRAL BODIES

Purpose of this Part (NTA, esp. s 251 and 27)

25. The purpose of this Part is to provide for the Land and Environment Court and wardens' courts to be recognised State/Territory bodies, and arbitral bodies, for New South Wales.

Note: "Recognised State/Territory body" is defined in s 251 NTA.

Conferral of jurisdiction as recognised bodies allowed (NTA, esp. s. 251)

26. (1) It is the intention of the Parliament that the Land and Environment Court and wardens' courts should be recognised State/Territory bodies.

(2) When the Commonwealth Minister determines, in accordance with section 251 (1) of the Commonwealth Native Title Act, that the Land and Environment Court and wardens' courts are recognised State/Territory bodies under that Act:

- (a) the Land and Environment Court has jurisdiction, as a recognised State/Territory body, to determine native title determination applications, revised native title determination applications and compensation applications (other than those arising under or in relation to a State Mining Act); and
- (b) each warden's court has jurisdiction, as a recognised State/Territory body, to determine compensation applications arising under or in relation to a State Mining Act and any claimant application that must be determined before the warden's court can determine a compensation application arising under or in relation to a State Mining Act.

(3) The jurisdiction referred to in this section may not be exercised by the Land and Environment Court and wardens' courts until both the Land and Environment Court and wardens' courts are determined to be recognised State/Territory bodies under the Commonwealth Native Title Act.

Land and Environment Court and wardens' courts to be arbitral bodies (NTA, esp. s. 27 (1))

27. (1) When they have been determined to be recognised State/Territory bodies under the Commonwealth Native Title Act, the Land and Environment Court and wardens' courts are to be arbitral bodies under Subdivision B (Right to negotiate) of Division 3 (Future acts and native title) of Part 2 (Native Title) of the Commonwealth Native Title Act for acts of the State, other than acts in relation to:

- (a) a Commonwealth place (within the meaning of the Commonwealth Places (Application of Laws) Act 1970 of the Commonwealth; or
- (b) any place outside the jurisdictional limits of the State.

(2) However, the Land and Environment Court must not be an arbitral body for matters arising under or in relation to a State Mining Act and a warden's court must not be an arbitral body for matters other than those arising under or in relation to a State Mining Act.

Note: S. 27 (1) NTA permits a recognised State/Territory body to be an arbitral body for the purpose of right to negotiate applications under Subdivision B of Division 3 of Part 2 NTA for acts of the State, if a State law so allows. **“Right to negotiate application”** is defined in s 253 NTA.

PART 6—HOLDING OF NATIVE TITLE IN TRUST AND NATIVE TITLE FUNCTIONS OF PRESCRIBED BODIES CORPORATE

Determinations by Land and Environment Court and wardens’ courts (NTA, s 55)

28. (1) If the Land and Environment Court or a warden’s court proposes to make an approved determination of native title and the determination is that native title exists at the time of making the determination, the Land and Environment Court or warden’s court must, at the same time as it makes the determination, also determine:

- (a) whether the native title rights and interests are to be held in trust for the common law holders by a prescribed body corporate; and
- (b) if the native title rights and interests are not to be so held but are to be held by the common law holders, which prescribed body corporate, after becoming a registered native title body corporate, is to perform the functions mentioned in section 57 (3) (which deals with functions of prescribed bodies corporate that are not trustees) of the Commonwealth Native Title Act.

(2) Determinations under subsection (1) (a) and (b) must be made in the same way as the National Native Title Tribunal or the Federal Court would be required to make similar determinations under sections 56 (Determination whether native title to be held in trust) and 57 (Determination of prescribed body corporate etc.) of the Commonwealth Native Title Act.

(3) In this Part, **“prescribed body corporate”** means a body corporate prescribed by regulations made under this Act or under the Commonwealth Native Title Act.

Note: **“Common law holders”** is defined in s 56 (2) (a) NTA.

“Registered native title body corporate” is defined in s 253 NTA.

Determination whether native title to be held in trust (NTA, ss. 56 and 57 (1))

29. (1) On the making of a determination under section 28 (1) (a), the prescribed body corporate holds, in accordance with regulations made under this Act and the Commonwealth Native Title Act, the rights and

interests from time to time comprising the native title in trust for the common law holders in the same way as the body corporate would be required to hold them if the determination had been made under the Commonwealth Native Title Act.

(2) The prescribed body corporate, after becoming a registered native title body corporate, must also perform any functions given to it as a registered native title body corporate under particular provisions of this Act and the Commonwealth Native Title Act and any functions given to it under regulations made under this Act and under the Commonwealth Native Title Act.

Determination of prescribed body corporate etc. (NTA, s. 57)

30. On the making of a determination under section 28 (1) (b), the prescribed body corporate must, after becoming a registered native title body corporate, perform any functions given to it as a registered native title body corporate under particular provisions of this Act and the Commonwealth Native Title Act and any functions given to it under regulations made under this Act and under the Commonwealth Native Title Act.

Replacement of prescribed bodies corporate (NTA, s. 60)

31. Regulations made under this Act or under the Commonwealth Native Title Act may make provision for the replacement of a prescribed body corporate by another prescribed body corporate at the initiative of the common law holders.

PART 7—APPLICATIONS ABOUT NATIVE TITLE

Division 1—Native title and compensation applications

Native title and compensation applications (NTA, s. 61 (1))

32. (1) This section sets out the applications that may be made to the native title registrar under this Division and the persons who may make each of those applications.

- (2) A native title determination application may be made by:
- (a) a person or persons claiming to hold native title either alone or with others; or
 - (b) a person who holds an interest in relation to the whole of the area in relation to which the determination is sought; or
 - (c) the Commonwealth Minister; or
 - (d) the State Minister.

(3) A revised native title determination application may be made by:

- (a) the registered native title body corporate; or
- (b) the Commonwealth Minister; or
- (c) the State Minister; or
- (d) the National Registrar; or
- (e) the native title registrar.

(4) A compensation application may be made by:

- (a) the registered native title body corporate (if any); or
- (b) a person or persons claiming to be entitled to the compensation either alone or with others.

(5) An application mentioned in this section may only be made to the native title registrar about an area within the jurisdictional limits of the State.

Form and contents of applications (NTA, s 61 (2))

33. (1) An application under this Division must be in the form approved by the native title registrar and be given to the native title registrar.

(2) The application must contain the information about the matters to be determined that is prescribed by the regulations made under this Act.

Claims to hold title with other persons (NTA, s 61 (3))

34. (1) An application under this Division made by a person or persons claiming to hold native title, or to be entitled to compensation, with others must describe or otherwise identify the others.

(2) However, it is not necessary to name them or to say how many there are.

Material and fees to accompany applications (NTA, s 62)

35. (1) A native title determination application by a person or persons claiming to hold native title in relation to an area (a “**claimant application**”) must:

- (a) be accompanied by an affidavit sworn by the applicant stating that the applicant:
 - (i) believes that native title has not been extinguished in relation to any part of the area; and

- (ii) believes that none of the area is covered by an entry in the National Native Title Register or an entry made under section 90 (3) or (4) in the native title register; and
 - (iii) believes that all of the statements made in the application are true; and
 - (c) contain all information known to the applicant about interests in relation to any of the land or waters concerned that are held by persons other than a native title holders; and
 - (d) contain a description of the area over which the native title is claimed; and
 - (e) state the name and address of the person who will become the registered native title claimant.
- (2) An application under this Division must also be accompanied by the documents and fee prescribed by the regulations made under this Act.

Applications complying with formal requirements (NTA, s. 63)

36. (1) In this section and section 37, “**the formal requirements**” means the requirements of sections 33, 34 and 35.

(2) If an application complies with the formal requirements, the native title registrar must accept it unless the native title registrar is of the opinion:

- (a) in the case of a claimant application, a non-claimant application or a compensation application—that the application is frivolous or vexatious; or
- (b) in the case of a claimant application or a compensation application—that prima facie the claim cannot be made out.

(3) If the native title registrar is of the opinion that the application is frivolous or vexatious or that prima facie the claim cannot be made out, the native title registrar must refer the application to a Judge of the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, to a warden.

(4) If the Judge or warden is of the same opinion, the Judge or warden must advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the Judge or warden that the application is not frivolous or vexatious, or that a prima facie claim can be made out.

(5) If the applicant so satisfies the Judge or warden, the Judge or warden must direct the native title registrar to accept the application.

(6) If the applicant does not so satisfy the Judge or warden, the Judge or warden must direct the native title registrar not to accept the application.

(7) If the Judge or warden is not of the same opinion as the native title registrar, the Judge or warden must direct the native title registrar to accept the application.

(8) An application accepted by the native title registrar under subsection (2) or as the result of a direction under subsection (5) or (7) becomes an **“accepted application”**.

Applications not complying with formal requirements (NTA, s. 64)

37. (1) If the native title registrar considers that the formal requirements are not complied with by the application, the native title registrar must refer the application to a Judge of the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, to a warden.

(2) If the Judge or warden is of the same opinion, the Judge or warden must advise the applicant in writing of the fact and give the applicant a reasonable opportunity to satisfy the Judge or warden that the requirements are complied with.

(3) If the applicant so satisfies the Judge or warden, the Judge or warden must direct the native title registrar to accept the application.

(4) If the applicant does not so satisfy the Judge or warden, the Judge or warden must direct the native title registrar not to accept the application.

(5) If the Judge or warden is not of the same opinion as the native title registrar, the Judge or warden must direct the native title registrar to accept the application.

(6) An application accepted by the native title registrar as the result of a direction under subsection (3) or (5) also becomes an **“accepted application”**.

General application powers (NTA, s. 65)

38. (1) In this section:

“general powers provisions” means the following sections:

- section 61 (Land and Environment Court or warden’s court may prohibit disclosure of evidence)
- section 62 (Powers of Land and Environment Court and wardens’ courts to take evidence)

- section 72 (Land and Environment Court and wardens' courts may authorise someone else to take evidence)
- section 73 (Interpreters)
- section 74 (Retention and copying of documents).

(2) The native title registrar may, with the approval of the Chief Judge of the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, the chief warden, exercise powers under the general powers provisions in relation to an application.

Action to be taken about accepted applications (NTA, s. 66)

39. (1) If an application becomes an accepted application, the native title registrar must:

- (a) give notice of the application to all persons whose interests may be affected by a determination in relation to the application; and
- (b) in the case of a claimant application—record details of the application in the native title register.

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

- (a) gives notice (an **“accepted application notice”**) containing details of the application to the following persons (the **“potentially affected persons”**):
 - (i) any registered native title claimant in relation to the area covered by the application;
 - (ii) the Commonwealth Minister;
 - (iii) the State Minister;
 - (iv) any registered native title body corporate in relation to any of the area covered by the application;
 - (v) any person who holds a proprietary interest, in any of the area covered by the application, that is registered in a register of interests in relation to the land or waters maintained by the Commonwealth or the State;
 - (vi) any representative Aboriginal/Torres Strait Islander body for any of the area covered by the application; and
- (b) notifies the public of the application in the way determined by the Minister to be appropriate.

(3) An accepted application notice must also state that:

- (a) if the application is a non-claimant application—the application will be taken to be unopposed unless a claimant application in relation to any part of the area covered by the non-claimant application is given to either the National Registrar or the native title registrar within 2 months starting on the day the accepted application notice is given and the claimant application is accepted; or
- (b) in any other case—a person who wants to be a party in relation to the application must give the native title registrar written notice within 2 months starting on the day the accepted application notice is given.

(4) If accepted application notices for an application are given on different days, each notice is taken to have been given on the day the last notice for the application is given.

Special procedure for non-claimant applications (NTA, s 67)

40. (1) This section applies to a non-claimant application.

(2) If:

- (a) within 2 months starting on the day on which the native title registrar gave the accepted application notices for the application, a person or persons claiming to hold native title give a claimant application that covers any part of the area covered by the non-claimant application to the National Registrar or the native title registrar; and
- (b) the claimant application is accepted (whether initially or on appeal and whether or not within the specified period),

then subsections (3) and (4) have effect.

(3) If the non-claimant application is by or on behalf of a Minister, the Crown in any capacity or a statutory authority, the non-claimant application is taken to be dismissed.

(4) In any other case, the non-claimant application is taken, for all purposes after the claimant application is given to the National Registrar or the native title registrar, not to relate to the area covered by the claimant application.

(5) If a claimant application is given to the native title registrar, all reasonable steps must be taken, within 1 month starting when the application is given, to decide whether to accept the application.

(6) If the non-claimant application is not taken to have been dismissed, the application is taken to be unopposed for the purposes of section 43 (Applications that are unopposed).

Parties (NTA, s. 68)

41. (1) The applicant is a party in relation to an application under this Division.

(2) Another person is a party in relation to the application if:

- (a) the person is a potentially affected person or the person's interests may be affected by a determination in relation to the application; and
- (b) within 2 months starting on the day on which the native title registrar gave the accepted application notices for the application, the person gives the native title registrar written notice that the person wants to be a party in relation to the application.

Land and Environment Court or warden's court to decide persons whose interests may be affected (NTA, s. 69)

42. (1) If it is necessary for the purposes of this Division to decide whether the interests of a person may be affected by a determination, the issue is to be decided by the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden's court and, if the Land and Environment Court or warden's court decides that the interests of a person may be affected, the decision of the Land and Environment Court or warden's court is final and conclusive.

(2) In exercising jurisdiction under this section, the Land and Environment Court must be constituted by a Judge and a warden's court must be constituted by a warden.

Applications that are unopposed (NTA, s. 70)

43. (1) If an accepted application is unopposed, the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden's court may make a determination in, or consistent with, the terms sought by the applicant if:

- (a) the Land and Environment Court or warden's court is satisfied that the applicant has made out a prima facie case for a determination in those terms; and
- (b) the Land and Environment Court or warden's court considers that the determination is just and equitable in all the circumstances.

- (2) For the purposes of this section, an application is unopposed if:
- (a) at the end of 2 months starting on the day on which the native title registrar gave the accepted application notices for the application, the applicant is the only party; or
 - (b) each party notifies the Land and Environment Court or warden's court in writing that the party does not oppose the application; or
 - (c) the application is taken to be unopposed for the purposes of this section by section 40 (6) (which deals with certain non-claimant applications that are taken to be unopposed).

Power of Land and Environment Court or warden's court if parties reach agreement (NTA, s 71)

44. (1) This section applies if:

- (a) at the end of 2 months starting on the day on which the native title registrar gave the accepted application notices for the application, the parties inform the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden's court that they have reached agreement about the terms of a determination by the Land and Environment Court or warden's court on the application; and
- (b) the terms of the agreement, in writing signed by or for the parties, are given to the Land and Environment Court or warden's court; and
- (c) the Land and Environment Court or warden's court is satisfied that a determination in, or consistent with, the agreed terms would be within the powers of the Land and Environment Court or warden's court and would be appropriate in the circumstances.

(2) If this section applies, the Land and Environment Court or warden's court must make a determination in, or consistent with, the agreed terms.

Mediation conference to be held (NTA, s 72)

45. (1) If an accepted application is not the subject of a determination under section 43 or 44, the Chief Judge of the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden must direct the holding of a conference (the "mediation conference") of the parties or their representatives to help in resolving the matter.

(2) The mediation conference must be presided over by a Judge, a native title assessor or the native title registrar in the Land and Environment Court or, in the case of a warden's court, a warden, a native title assessor appointed to assist the warden's court or the native title registrar.

(3) At a hearing before the Land and Environment Court or warden's court, evidence must not be given, and statements must not be made, concerning any words spoken or act done at a conference without the agreement of the parties.

(4) The Judge, warden, native title assessor or native title registrar who presides over the mediation conference must not take further part in proceedings concerning the application without the agreement of the parties.

(5) The Judge, native title assessor or native title registrar in the Land and Environment Court, or the warden, native title assessor or native title registrar in a warden's court, may allow a person to participate by:

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

Power of Land and Environment Court or warden's court if parties reach agreement after mediation conference (NTA, s 73)

46. (1) This section applies if:

- (a) at the end of a mediation conference the parties inform the Land and Environment Court or warden's court that they have reached agreement about the terms of a determination of the Land and Environment Court or warden's court on the application; and
- (b) the terms of the agreement, in writing signed by or for the parties, are given to the Land and Environment Court or warden's court; and
- (c) the Land and Environment Court or warden's court is satisfied that a determination in, or consistent with, the agreed terms would be within the powers of the Land and Environment Court or warden's court and would be appropriate in the circumstances.

(2) If this section applies, the Land and Environment Court or warden's court must make a determination in, or consistent with, the agreed terms.

Applications not settled are to be heard by Land and Environment Court or warden's court (NTA, s 74)

47. (1) The Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden's court must hear an accepted application if the Land and Environment Court or warden's court does not make a determination under any of the following sections:

- section 43 (Applications that are unopposed)
- section 44 (Power of Land and Environment Court or warden's court if parties reach agreement)
- section 46 (Power of Land and Environment Court or warden's court if parties reach agreement after mediation conference).

(2) An application referred to in this section is a **“contested application”**.

Note: Unopposed applications (and right to negotiate applications referred to in the following Division) are to be dealt with under Part 8 and, in particular, in accordance with Division 3 of that Part. Contested applications are to be dealt with by the Land and Environment Court or wardens' courts in accordance with Part 8 and, in particular, with Division 4 of that Part.

Division 2—Right to negotiate applications**Right to negotiate applications (NTA, s 75 (1))**

48. (1) This section sets out the applications that may be made to the native title registrar under this Division and the persons who may make the applications.

(2) An objection under section 32 (Expedited procedure) of the Commonwealth Native Title Act to inclusion of a statement that an act is an act attracting the expedited procedure, or an equivalent objection under any alternative provisions made by a State law, may be made by a native title party.

(3) An application for a future act determination under section 35 (Application for determination) of the Commonwealth Native Title Act, or an equivalent application under any alternative provisions made by a State law, may be made by a negotiation party,

(4) An objection or application mentioned in this section is a **“right to negotiate application”**.

Note: “Native title party” and “negotiation party” are defined in s. 253 NTA.

Form and contents of applications (NTA, s. 75 (2))

49. (1) A right to negotiate application must be in the form approved by the native title registrar and be given to the native title registrar.

(2) The application must contain the information about the matters to be determined that is prescribed by the regulations made under this Act.

Material and fees to accompany applications (NTA, s 76)

50. A right to negotiate application must be accompanied by the documents and fee prescribed by the regulations made under this Act.

Action to be taken about applications (NTA, s 77)

51. (1) In this section:

“**application requirement provisions**” means the following sections:

- section 48 (Right to negotiate. applications)
- section 49 (Form and contents of applications)
- section 50 (Material and fees to accompany applications).

(2) If an application complies with the application requirement provisions, the native title registrar must accept the application.

Note: The procedure to be followed for right to negotiate applications is set out in Subdivision B (Right to negotiate) of Division 3 (Future acts and native title) of Part 2 (Native Title) of the Commonwealth Native Title Act.

Division 3—Miscellaneous**Assistance to potential applicants (NTA, s 78)**

52. (1) The native title registrar may give reasonable assistance to help people prepare applications and accompanying material.

(2) Without limiting this section, the assistance may include conducting searches of official title registers, including the native title register.

PART 8—INQUIRIES, DETERMINATION OF CONTESTED APPLICATIONS AND OTHER DETERMINATIONS BY LAND AND ENVIRONMENT COURT AND WARDENS’ COURTS**Division 1—General****Operation of this Part (NTA, ss 80 and 139)**

53. Divisions 1, 2, 5 and 6 of this Part apply to inquiries and contested applications under this Act. Division 3 contains provisions

applying only to inquiries and Division 4 contains provisions applying only to contested applications.

Role of native title assessors in Land and Environment Court and wardens' courts (NTA, ss. 83 and 110)

54. (1) There are to be native title assessors to exercise (together with Judges and wardens) the jurisdiction of the Land and Environment Court and wardens' courts on inquiries and to assist the Land and Environment Court and wardens' courts in relation to the determination of contested applications.

(2) On an inquiry into an unopposed application and when dealing with a right to negotiate application, a native title assessor may adjudicate on any matter with a Judge of the Land and Environment Court or with a warden in a warden's court.

(3) On a hearing of a contested application before the Land and Environment Court or a warden's court, a native title assessor may assist the Land and Environment Court or warden's court, but is not to adjudicate on any matter before the Land and Environment Court or warden's court.

(4) In assisting on a hearing of a contested application before the Land and Environment Court or a warden's court, a native title assessor is subject to the control and direction of the Land and Environment Court or warden's court.

(5) The regulations made under this Act may provide for native title assessors appointed under the Land and Environment Court Act 1979 to exercise jurisdiction in, and to assist, wardens' courts as provided for by this Act and a State Mining Act.

Parties (NTA, ss. 84 and 141)

55. (1) The parties to an inquiry about an unopposed application or to a hearing of a contested application are the persons who are the parties under section 41 (Parties).

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

(3) A person may seek the leave of the Land and Environment Court or a warden's court to be joined as a party to proceedings if the person's interests are affected by the proceedings or may be affected by a determination in the proceedings.

Note: "Government party", "native title party" and "grantee party" are defined in s 253 NTA.

Evidence and findings in other proceedings (NTA, s 86 and 146)

56. In the course of proceedings under this Act, the Land and Environment Court and wardens' courts may, subject to sections 45 (3) and 57 (4):

- (a) receive into evidence the transcript of evidence in other proceedings before:
 - (i) a court; or
 - (ii) the Land and Environment Court or a warden's court; or
 - (iii) the National Native Title Tribunal; or
 - (iv) a recognised State/Territory body; or
 - (v) another person or body,
 and draw any conclusions of fact from the transcript that they think proper; and
- (b) receive into evidence the transcript of evidence in any proceedings before a native title assessor and draw any conclusions from the transcript that they think proper; and
- (c) adopt recommendations, findings, decisions, determinations or judgments of a court: or other person or body of a kind mentioned in paragraph (a).

Division 2—Conferences, appearances, giving of evidence and orders generally**Conferences (NTA, s 88 and 150)**

57. (1) The Land and Environment Court or a warden's court may direct the holding of a conference of the parties or their representatives to help in resolving issues.

(2) A conference concerning an inquiry must be presided over by a Judge, a native title assessor or the native title registrar in the Land and Environment Court or by a warden, a native title assessor or the native title registrar in a warden's court.

(3) A conference concerning a contested application must be presided over by a native title assessor who is assisting the Land and Environment Court or warden's court in relation to the proceedings.

(4) At a hearing before the Land and Environment Court or a warden's court, evidence must not be given, and statements must not be made, concerning any words spoken or act done at a conference without the agreement of the parties.

(5) The Judge, warden or other person who presides over the conference must not take further part in proceedings concerning an inquiry or contested application without the agreement of the parties.

Right of appearance (NTA, s 89 and 152)

58. (1) A party has the right to appear at conferences, inquiries and hearings of contested applications.

(2) This section is subject to section 60 (Conferences and hearings to be held in public except in special circumstances).

Taking part by telephone or other means of communication (NTA, s 90 and 153)

59. A person presiding over a conference under section 57 (Conferences), and the Land and Environment Court or a warden's court in an inquiry or on a hearing of a contested application, may allow a person to take part by telephone, closed-circuit television or any other means of communication.

Conferences and hearings to be held in public except in special circumstances (NTA, s 91 and 154)

60. (1) A conference, inquiry or hearing of a contested application must be held in public.

(2) If, when a conference, inquiry or hearing is in public, a person takes part by a means of communication allowed under section 59 (Taking part by telephone or other means of communication), the person presiding over the conference or the Land and Environment Court or a warden's court in an inquiry or on a hearing (as the case may be) must take the steps reasonably necessary to ensure the public nature of the conference, inquiry or hearing is preserved.

(3) However, the person presiding over a conference or the Land and Environment Court or a warden's court in an inquiry or on a hearing may, of the person's or its own initiative or on the application of a party, direct that a conference, inquiry or hearing, or a part of a conference, inquiry or hearing, be held in private, and give directions about the persons who may be present.

(4) In deciding whether a conference, inquiry or hearing or part of a conference, inquiry or hearing should be held in private, the person presiding over the conference or the Land and Environment Court or a warden's court in an inquiry or on a hearing must have proper regard to relevant cultural and customary concerns of Aboriginal peoples.

Land and Environment Court or warden's court may prohibit disclosure of evidence (NTA, ss 92 and 155)

61. (1) The Land and Environment Court or a warden's court may direct that evidence given before a person presiding over a conference under section 57 (Conferences) or before it, or the contents of a document or other thing produced to a person presiding over a conference or it, must not be disclosed, or must not be disclosed other than in the way, and to the persons, that the Land and Environment Court or warden's court specifies.

(2) The Land and Environment Court or warden's court may make the direction of its own initiative or on application by a party or by the person who presided over the conference.

(3) This section does not limit the powers of the Land and Environment Court or a warden's court under section 60 (Conferences and hearings to be held in public except in special circumstances).

Powers of Land and Environment Court and wardens' courts to take evidence (NTA, ss 93 and 156)

62. (1) The Land and Environment Court and wardens' courts may take evidence on oath or affirmation and, for the purpose of taking evidence, a native title assessor or the native title registrar may administer an oath or affirmation.

(2) The native title registrar may summon a person to appear before the Land and Environment Court or a warden's court to give evidence and to produce a document or other thing specified in the summons and a native title assessor may apply to the Land and Environment Court or a warden's court for an order to summon a person to appear for such purposes.

(3) A party may call witnesses.

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

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

(6) A person appearing as a witness before the Land and Environment Court or a warden's court in an inquiry may be cross-examined or re-examined only with the leave of the Land and Environment Court or warden's court.

(7) If a person takes part by a means of communication allowed under section 59 (Taking part by telephone or other means of communication), the native title assessor, native title registrar, Land and Environment Court or warden's court may make arrangements for administering an oath or affirmation to the person.

Decision or determination that Compensation is payable (NTA, s 94 and 161)

63. If the Land and Environment Court or a warden's court makes a decision or determination that compensation is payable, the decision or determination must specify:

- (a) the name of the person or persons entitled to the compensation or the method for deciding the person or persons entitled to the compensation; and
- (b) any method for deciding the amount or kind of compensation to be given to each person; and
- (c) the method for deciding a dispute about the entitlement of a person to an amount of the compensation.

Division 3—Provisions applying only to inquiries

Subdivision 1—Inquiries generally

Inquiries (NTA, s. 139)

64. The Land and Environment Court must hold inquiries into unopposed applications and right to negotiate applications that do not arise under or in relation to a State Mining Act and wardens' courts must hold inquiries into unopposed applications and right to negotiate applications in matters arising under or in relation to a State Mining Act.

Inquiries may cover more than 1 matter (NTA, s 140)

65. An inquiry may cover more than 1 application or issue.

Opportunity to make submissions about evidence (NTA, s 142)

66. (1) The Land and Environment Court and wardens' courts must ensure that every party is given a reasonable opportunity:

- (a) to present a case and, in particular, to inspect any documents to which the Land and Environment Court or a warden's court proposes to have regard in making a determination in the inquiry; and
- (b) to make submissions about the documents.

(2) This section is subject to the following sections:

- section 60 (Conferences and hearings to be held in public except in special circumstances)
- section 61 (Land and Environment Court or warden's court may prohibit disclosure of evidence).

Way in which questions are to be decided (NTA, s. 144)

67. (1) If the persons exercising the jurisdiction of the Land and Environment Court or a warden's court for particular proceedings are divided in opinion about the decision to be made on a question:

- (a) if there is a majority of the same opinion—the question must be decided according to the opinion of the majority; or
- (b) if there is not a majority of the same opinion—the question must be decided according to the opinion of the presiding member.

(2) However, a question of law arising in an inquiry (including the question whether a particular question is a question of law) must be decided in accordance with the opinion of the presiding member, who must be a Judge, or, in a warden's court, the warden.

Power of Land and Environment Court or warden's court if proceeding is frivolous or vexatious (NTA, s. 147)

68. (1) The Land and Environment Court or a warden's court may dismiss an application if it is satisfied the application is frivolous or vexatious.

(2) The application may be dismissed at any stage of the inquiry.

Power of Land and Environment Court or warden's court if prima facie case not made out (NTA, s. 148)

69. (1) The Land and Environment Court or a warden's court may dismiss an application if it is satisfied that the applicant cannot make out a prima facie case on the application.

(2) The application may be dismissed at any stage of the inquiry.

Power of Land and Environment Court or warden's court if applicant requests dismissal (NTA, s. 149)

70. The Land and Environment Court or a warden's court may dismiss an application if:

- (a) the applicant requests, in writing, that the application be dismissed; and
- (b) the Land and Environment Court or warden's court is satisfied that it is appropriate to dismiss the application.

Subdivision 2—Hearings

Hearings (NTA, s 151)

71. The Land and Environment Court or a warden's court may hold hearings for an inquiry.

Land and Environment Court and wardens' courts may authorise someone else to take evidence (NTA, s 157)

72. (1) The Land and Environment Court or a warden's court may authorise an appropriate person to take evidence for it.

(2) Subject to any limitations specified by the Land and Environment Court or a warden's court, in taking the evidence the authorised person has all of the powers of the Land and Environment Court or a warden's court under section 62 (Powers of Land and Environment Court and wardens' courts to take evidence).

(3) If the authorised person takes the evidence on oath or affirmation, the authorised person must make a written record of the evidence and send it to the Land and Environment Court or relevant warden's court.

(4) This Act applies to the authorised person in taking the evidence as if a reference to the Land and Environment Court or warden's court included a reference to the authorised person.

(5) In this section, "**the authorised person**" means a person authorised under subsection (1).

Interpreters (NTA, s 158)

73. The Land and Environment Court and wardens' courts may allow evidence to be given, or submissions to be made, with the help of an interpreter.

Retention and copying of documents (NTA, s 159)

74. The Land and Environment Court or a warden's court may keep for a reasonable time, and may make copies of or take extracts from, documents produced to the Land and Environment Court or a warden's court in an inquiry.

Fees for persons giving evidence in inquiries (NTA, s 182)

75. (1) A person, other than a party, summoned to appear before the Land and Environment Court or a warden's court to give evidence in an inquiry is entitled to be paid, for attendance, fees and allowances for expenses that may be prescribed by the regulations made under this Act.

(2) The fees and allowances must be paid:

- (a) if the witness was summoned at a party's request—by the party; or
- (b) in any other case—by the State.

Subdivision 3—Determinations and reports**Determinations of Land and Environment Court and wardens' courts—native title and compensation applications (NTA, s 160)**

76. (1) After holding an inquiry about an application made under section 32 (Native title and compensation applications), the Land and Environment Court or a warden's court must make a determination about the matters covered by the inquiry.

(2) The Land and Environment Court or warden's court must state in the determination the findings of fact on which the determination is based.

Determination—right to negotiate applications (NTA, s 162)

77. (1) After holding an inquiry about a right to negotiate application, the Land and Environment Court or a warden's court must make a determination about the matters covered by the inquiry.

(2) The Land and Environment Court or warden's court must state in the determination the findings of fact on which the determination is based.

(3) This section is subject to:

- (a) section 37 (No determination if agreement) of the Commonwealth Native Title Act; and
- (b) an equivalent provision under any alternative provisions made by a State law.

Determinations and reports to be in writing (NTA, s 164)

78. Determinations and reports by the Land and Environment Court and wardens' courts must be in writing and be given to each of the parties.

Decision or determination conclusive

79. The decision or determination of the Land and Environment Court or a warden's court is final and conclusive of the matters decided subject:

- (a) to a decision made on an appeal from a decision or determination of the Land and Environment Court or the warden's court; or
- (b) to a decision of the State Minister acting under and in accordance with section 42 (Overruling of determinations) of the Commonwealth Native Title Act.

Note: Section 42 NTA authorises the State Minister to overrule a determination of a recognised State/Territory body performing functions as an arbitral body under Subdivision B (Right to negotiate) of Division 3 (Future acts and native title) of Part 2 (Native Title) NTA if the State Minister considers it to be in the interests of the State to do so. "State Minister" is defined in s 253 NTA.

Division 4—Provisions applying only to contested applications**Power of Land and Environment Court or warden's court if parties reach agreement (NTA, s 87)**

80. (1) This section applies if:

- (a) at any stage of proceedings, the parties reach agreement on the terms of a determination of the Land and Environment Court or a warden's court in relation to:
 - (i) the proceedings; or
 - (ii) a part of the proceedings; or
 - (iii) a matter arising out of the proceedings; and
- (b) the terms of the agreement, in writing signed by or for the parties, are given to the Land and Environment Court or warden's court; and
- (c) the Land and Environment Court or warden's court is satisfied that a determination in, or consistent with, the agreed terms would be within the powers of the Land and Environment Court or warden's court and would be appropriate in the circumstances.

- (2) If this section applies, the Land and Environment Court or warden's may:
- (a) if the agreement is on the terms of a determination of the Land and Environment Court or warden's court about the proceedings, the Land and Environment Court or warden's court may make a determination in, or consistent with, the agreed terms without holding a hearing or, if a hearing has started, without completing the hearing; or
 - (b) if the agreement relates to a part of the proceedings or a matter arising out of the proceedings, the Land and Environment Court or warden's court may in its determination give effect to the terms of the agreement without, if it has not already done so, dealing at the hearing with the part of the proceedings or the matter arising out of the proceedings to which the agreement relates.

Division 5—Appeals

Appeals to Judge of Land and Environment Court or warden from decisions and determinations of non-judicial members or officers (NTA, s 169)

81. (1) A party to an inquiry about an application made under section 32 (Native title and compensation applications) may appeal to a Judge of the Land and Environment Court or, in a matter arising under or in relation to a State Mining Act, a warden, on a question of law or fact, from a decision or determination of a non-judicial member exercising the jurisdiction of the Land and Environment Court or a warden's court in the inquiry.

(2) A party to an inquiry about a right to negotiate application before the Land and Environment Court or a warden's court may appeal to a Judge of the Land and Environment Court or a warden, on a question of law, from a decision or determination of a non-judicial member exercising the jurisdiction of the Land and Environment Court or warden's court in the inquiry.

(3) If a person gives an application to the native title registrar under section 33 (Form and contents of applications), the person may appeal to the Supreme Court on a question of law from a decision of a Judge or warden not to accept the application.

(4) If a person applies to the Land and Environment Court or a warden's court to be made a party to an application, and the Land and Environment Court or warden's court decides that the interests of the person will not be affected by a determination on the application, the person may appeal to the Supreme Court on a question of fact or law from the decision.

(5) An appeal must be instituted:

- (a) within 28 days starting on the day on which notice of the decision or determination of the non-judicial member or officer is given to the person or within the further time that the Land and Environment Court, warden's court or Supreme Court (whether before or after the end of the period) allows; and
- (b) in the way that may be prescribed by rules of court.

(6) The Land and Environment Court, warden's court or Supreme Court must hear the appeal and may make any order about the appeal as seems appropriate.

(7) Without limiting subsection (6), the orders that may be made by the Land and Environment Court, warden's court or Supreme Court on an appeal include:

- (a) an order confirming or setting aside the decision or determination of the non-judicial member or officer; and
- (b) an order remitting the matter to be heard and decided again by a non-judicial member or officer (either with or without the hearing of further evidence) in accordance with the directions of the Land and Environment Court, warden's court or Supreme Court.

Appeals to Supreme Court from decisions and determinations of Judge of Land and Environment Court or warden (NTA, s. 169)

82 (1) A party in proceedings arising under this Act or the Commonwealth Native Title Act in the Land and Environment Court or a warden's court may appeal to the Supreme Court against a decision or determination of a Judge or warden on a question of law.

(2) On the hearing of the appeal, the Supreme Court is to:

- (a) remit the matter to the Land and Environment Court or warden's court for decision or determination by the Land and Environment Court or warden's court in accordance with the Supreme Court's decision; or
- (b) make any other order about the appeal as seems appropriate.

(3) Despite subsection (1), an appeal against an interlocutory order or decision of a Judge of the Land and Environment Court or a warden does not lie to the Supreme Court without the leave of the Supreme Court.

Operation and implementation of decision or determination subject to appeal (NTA, s 170)

83. (1) The institution of an appeal to a Judge of the Land and Environment Court from a decision or determination of a non-judicial member exercising the jurisdiction of the Land and Environment Court, to a warden from a non-judicial officer exercising the jurisdiction of a warden's court or from a Judge of the Land and Environment Court or warden to the Supreme Court does not affect the operation of the decision or determination or prevent the taking of action to implement the decision or determination.

(2) However, the Land and Environment Court or warden's court, or the Supreme Court, (as the case may be) may, by order, stay a decision or determination of the Land and Environment Court or warden's court to secure the effectiveness of the appeal.

(3) A stay:

- (a) may be granted on conditions the Land and Environment Court or warden's court, or the Supreme Court, considers appropriate; and
- (b) operates for the period specified by the Land and Environment Court or warden's court, or the Supreme Court; and
- (c) may be revoked or amended by the Land and Environment Court or warden's court, or the Supreme Court.

(4) The period of the stay specified by the Land and Environment Court or warden's court, or the Supreme Court, must not extend past the time when the Land and Environment Court or warden's court, or the Supreme Court, decides the appeal.

Land and Environment Court, warden's court or Supreme Court may prohibit disclosure of evidence (NTA, s 92)

84. (1) The Land and Environment Court, a warden's court or the Supreme Court (as the case may be) may direct that evidence given before it, or the contents of a document or other thing produced to it, in an appeal under this Division must not be disclosed, or must not be disclosed other than in the way, and to the persons, that the Land and Environment Court, warden's court or Supreme Court, specifies.

(2) The Land and Environment Court, warden's court or the Supreme Court may make the direction of its own initiative or on application by a party.

Division 6—Miscellaneous**Contravention of direction prohibiting disclosure of evidence (NTA, s. 176)**

85. (1) This section applies to a direction under either of the following sections:

- section 61 (Land and Environment Court or warden’s court may prohibit disclosure of evidence)
- section 84 (Land and Environment Court, warden’s court or Supreme Court may prohibit disclosure of evidence).

(2) A person must not disclose anything in contravention of a direction to which this section applies.

Maximum penalty: 40 penalty units.

Protection of non-judicial members and officers (NTA, s 180)

86. The native title assessors and native title registrar have, in the performance of their duties under this Act, the same protection and immunity as a Judge of the Supreme Court.

Confidential information not to be disclosed (NTA, s 181)

87. (1) This section applies to a person who is, or has been, a Judge, native title assessor or officer of the Land and Environment Court, a warden, native title assessor or officer in a warden’s court or the native title registrar.

(2) A person to whom this section applies is not competent, and must not be required, to give evidence to a court about a matter if:

- (a) giving the evidence would be contrary to a direction (a **“non-disclosure direction”**):
 - (i) of the Land and Environment Court or a warden’s court under section 61 (Land and Environment Court or warden’s court may prohibit disclosure of evidence); or
 - (ii) of the Land and Environment Court, a warden’s court or the Supreme Court under section 84 (Land and Environment Court, warden’s court or Supreme Court may prohibit disclosure of evidence); or
- (b) an application has been made to the Land and Environment Court, a warden’s court or the Supreme Court for a non-disclosure direction about the matter to which the evidence would relate and the application has not been decided.

(3) A person to whom this section applies must not be required to produce in a court a document or other thing given to the Land and Environment Court, a warden's court or the native title registrar if:

- (a) producing the document or thing would be contrary to a non-disclosure direction; or
- (b) an application has been made to the Land and Environment Court, a warden's court or the Supreme Court for a non-disclosure direction about the document or thing and the application has not been decided.

(4) A person who is, or has been, a Judge, native title assessor or officer of the Land and Environment Court, a warden, native title assessor or officer of a warden's court or the native title registrar must not be required to give evidence to a court about a proceeding under this Act before the Land and Environment Court or a warden's court.

(5) This section does not apply to a person who gives evidence, or who produces a document or thing, to a court for the purpose of a prosecution under section 85 (Contravention of direction prohibiting disclosure of evidence).

(6) In this section:

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

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

PART 9—NATIVE TITLE REGISTER

Meaning of “claim” (NTA, s 184)

88. In this Part, “**claim**” means an assertion in an application given to, and accepted by, the native title registrar, or the National Registrar, that a person or persons hold native title in relation to a specified area of land or waters within the jurisdictional limits of the State.

Native title register (NTA, ss 185 and 192)

89. (1) The native title registrar must establish and keep the New South Wales native title register.

(2) The register may be kept by computer.

(3) The register may consist of 2 or more registers, each containing the part of the information that must be entered into the register as the native title registrar decides.

Contents of the native title register (NTA, ss 186 and 193)

90. (1) The native title register must contain the following information for each claim:

- (a) whether the claim was made to the native title registrar, the National Registrar or another body;
- (b) the body to whom the claim was made;
- (c) the date when the claim was made;
- (d) the name and address for service of the person who is taken to be the claimant;
- (e) the area of land or waters covered by the claim;
- (f) a description of the persons who it is claimed hold the native title.

(2) The native title registrar may include in the register other details about the claim that the native title registrar considers appropriate.

(3) The register must contain the information mentioned in subsection (4) about the following determinations and decisions:

- (a) approved native title determinations about areas of land or waters within the jurisdictional limits of the State; and
- (b) other determinations and decisions by courts and tribunals about native title in relation to areas of land or waters within the jurisdictional limits of the State.

(4) The register must contain the following information about each determination or decision:

- (a) the name of the body that made the determination or decision;
- (b) the date when the determination or decision was made;
- (c) the area of land or waters covered by the determination or decision;
- (d) the matters decided, including:
 - (i) who the common law holders of the native title are; and
 - (ii) the name and address of any prescribed body corporate that holds the native title rights and interests on trust; and
 - (iii) the name and address of the prescribed body corporate determined under section 28 (1) (b) (which deals with determinations as to prescribed bodies corporate that do not hold native title in trust but perform other functions) in relation to the native title.

(5) The native title registrar may include in the register the other details about the determination or decision that the native title registrar considers appropriate.

Inspection of the register (NTA, ss. 187 and 194)

91. (1) The native title registrar must ensure that the native title register is available for inspection by members of the public during normal business hours.

(2) A person may inspect the register if the person pays the fee prescribed by the regulations made under this Act.

(3) If the register is kept wholly or partly by computer, subsection (1) is taken to be complied with, so far as the register is kept by computer, by giving members of the public access to a computer terminal that they can use to inspect the register, either by viewing a screen display or by obtaining a computer print-out.

Parts of the register may be kept confidential (NTA, ss. 188 and 195)

92. (1) Section 91 (Inspection of the register) does not apply to a part of the native title register if the native title registrar is satisfied that it would not be in the public interest for information in the part of the register to be available to the public.

(2) Section 91 does not apply to the part of the register that consists of names or addresses of persons who it is claimed hold native title, other than the name and address for service of a person who is taken to be a claimant.

(3) In deciding whether it would or would not be in the public interest for information in a part of the register to be available to the public, the native title registrar must have proper regard to relevant cultural and customary concerns of Aboriginal people.

Keeping the register (NTA, ss. 190 and 197)

93. (1) As soon as practicable after becoming aware of the details of a claim in an accepted application, or a determination or decision about native title in relation to land or waters within the jurisdictional limits of the State, the native title registrar must include the details in the native title register.

(2) If the Land and Environment Court or a warden's court makes a decision or determination about a claim after details of the claim have been included in the register, the native title registrar must, as soon as practicable after becoming aware of the decision or determination, amend the entry in the register that relates to the claim by including details of the decision or determination.

Register may be located in land registry

94. The native title register may be located in the land registry established under the Real Property Act 1900.

Native title registrar to inform National Registrar of applications, decisions and determinations (NTA, S. 251 (2) (i))

- 95.** The native title registrar must inform the National Registrar of:
- (a) all applications for a decision, order or judgment of the Land and Environment Court or a warden's court involving an approved determination of native title; and
 - (b) the making of an approved determination of native title by the Land and Environment Court or a warden's court.

PART 10—INTERIM PROVISIONS**Division 1—Object of this Part****Object of this Part**

96. The object of this Part is to make, and permit the making of, various interim provisions, pending a full review of New South Wales law, to ensure:

- (a) that New South Wales law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title; and
- (b) that New South Wales law is consistent with the requirements of the Racial Discrimination Act 1975 of the Commonwealth for future dealings affecting native title; and
- (c) that claims to native title can be dealt with by State-based mechanisms that are complementary to, and consistent with, the mechanisms established by the Commonwealth Native Title Act.

Division 2—Compulsory acquisition**Acquisition of native title rights and interests (NTA, s. 23 (3), (5) and (6))**

97. A State Compulsory Acquisition Act applies to native title with any changes prescribed by regulations made under this Act that, in the Governor's opinion, are necessary or convenient to ensure that:

- (a) the State Compulsory Acquisition Act is a Compulsory Acquisition Act within the meaning of the Commonwealth Native Title Act; and

- (b) if an acquisition is made at someone's request, the person is liable to pay the compensation; and
- (c) native title holders have the same procedural rights as the holders of ordinary title; and
- (d) the State Compulsory Acquisition Act does not authorise the compulsory acquisition of native title rights and interests for the benefit of persons other than a Government party as referred to in section 26 (2) (d) (which deals with acts covered by right to negotiate procedures) of the Commonwealth Native Title Act unless the requirements of Subdivision B (Right to negotiate) of Division 3 (Future acts and native title) of Part 2 (Native Title) of the Commonwealth Native Title Act are complied with; and
- (e) a compulsory acquisition under the State Compulsory Acquisition Act is capable of attracting the expedited procedure under section 32 (Expedited procedure) of the Commonwealth Native Title Act; and
- (f) the State Compulsory Acquisition Act may comply with section 43 (2) (which deals with alternative right to negotiate provisions) of the Commonwealth Native Title Act; and
- (g) the State Compulsory Acquisition Act is otherwise consistent with and gives effect to the objects and provisions of the Racial Discrimination Act 1975 of the Commonwealth and the Commonwealth Native Title Act.

Division 3—Mining

Native title holders are owners for State Mining Acts

98. (1) For the purposes of every State Mining Act, the owners of land include native title holders within the meaning of the Commonwealth Native Title Act.

(2) This section does not limit by implication the rights and interests of native title holders.

State Mining Acts apply with prescribed changes

99. (1) To ensure that a State Mining Act is consistent with the objects and provisions of the Commonwealth Native Title Act, the State Mining Act applies to native title with the changes prescribed by the regulations made under this Act.

(2) Without limiting this section, the State Mining Act applies to native title with any changes prescribed by the regulations that, in the Governor's opinion, are necessary or convenient to ensure:

- (a) that wardens' courts become recognised State/Territory bodies and arbitral bodies; and
- (b) that acts which create a right to mine under a State Mining Act may be excluded from the coverage of section 26 (2) (which deals with acts covered by right to negotiate procedures) of the Commonwealth Native Title Act in appropriate cases; and
- (c) that the expedited procedure in section 32 (Expedited procedure) of the Commonwealth Native Title Act is attracted in appropriate cases; and
- (d) that the State Mining Act may comply with section 43 (2) (which deals with alternative right to negotiate provisions) of the Commonwealth Native Title Act.

Division 4—Other interim provisions

Native title holders are owners

100. (1) For the purposes of an Act prescribed by the regulations made under this Act, the owners of land include the holders of native title in relation to the land.

(2) Without limiting this section, the native title holders are entitled to every right and privilege of other owners of the land.

(3) This section does not limit by implication the rights or interests of native title holders.

Interim regulation making power

101. (1) The Governor may make regulations containing provisions with respect to a matter necessary or convenient to be prescribed for carrying out or giving effect to the objects and provisions of this Act or the Commonwealth Native Title Act (with or without changes).

(2) Without limiting this section, a regulation may declare that it has effect despite any Act, or a particular Act, passed before the commencement of this Act.

(3) A regulation mentioned in subsection (2) expires 1 year after it is made or on the expiry of this Part, whichever is the earlier, unless it is earlier repealed.

Expiry of this Part

182. This Part expires 2 years after it commences.

PART 11—MISCELLANEOUS**Notification of native title holders (NTA, ss. 23 (1), (6) and (7) and 252)**

103. (1) This section applies if:

- (a) because of any law of the Commonwealth or the State, native title holders have a procedural right that requires another person to notify them of an act that affects or may affect native title rights and interests; and
- (b) there has been no approved determination of native title.

(2) The person may give the required notification of the act by doing the following:

- (a) notifying, in the way determined in writing by the Minister for the purposes of this section, any representative Aborigin/Torres Strait Islander bodies for the area concerned that the act is to take place;
- (b) notifying, in the way determined in writing by the Minister for the purposes of this section, any occupier of any land concerned that the act is to take place;
- (c) placing notices, in the way determined in writing by the Minister for the purposes of this section, on any land concerned, advising that the act is to take place;
- (d) notifying the public in the way determined by the Minister for the purposes of this section that the act is to take place.

Recovery of compensation paid by the Crown from an authority of the State (NTA, S. 23 (5) (b) (ii))

104. If an authority of the State which acquires native title rights and interests in relation to land under a State Compulsory Acquisition Act is not the Crown in the right of the State, the Crown in the right of the State may recover from the authority any compensation paid by the Crown to the native title holders in relation to the acquisition of the native title rights and interests concerned.

Notes in the text

105. Notes included in this Act are explanatory notes and do not form part of this Act.

Regulations

106. The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Miscellaneous amendment of other Acts

107. Each of the Acts mentioned in Schedule 1 is amended in the manner set out in that Schedule.

Review of Act

108. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years after the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS

(Sec. 107)

Aboriginal Land Rights Act 1983 No. 42

(1) Section 4 (Definitions):

(a) In section 4 (1), insert in alphabetical order:

“Commonwealth Native Title Act” or “NTA” means the Native Title Act 1993 of the Commonwealth;

“**native title**” or “**native title rights and interests**” has the same meaning as in the Commonwealth Native Title Act;

(b) At the end of the section, insert:

(4) Notes included in this Act are explanatory notes and do not form part of this Act.

(2) Section 23 (Functions of the Council):

(a) After section 23 (1), insert:

(11) to exercise the functions conferred or imposed, by the Commonwealth Native Title Act, on a representative Aboriginal/Torres Strait Islander body (within the meaning of that Act) if the Council is determined to be such a body by the relevant Commonwealth Minister under that Act;

(b) At the end of the section, insert:

Note: “**Representative Aboriginal/Torres Strait Islander body**” is defined by s. 253 NTA. Sections 23 (7) (c), 26 (4) (b) (i) and 66 (2) (a) (vi) NTA provide that representative Aboriginal/Torres Strait Islander bodies must be notified of specified matters. Section 202 (4) NTA sets out the functions of such bodies while s. 203 (1) NTA provides that they may apply to the relevant Commonwealth Minister or the Aboriginal and Torres Strait Islander Commission (established by the Aboriginal and Torres Strait Islander Commission Act 1989 of the Commonwealth) for financial assistance to enable them to perform those functions.

(3) Section 36 (Claims to Crown lands):

(a) From paragraph (b1) of the definition of “claimable Crown lands” in section 36 (1), omit “and”;

(b) At the end of paragraph (c) of the definition of “claimable Crown lands” in section 36 (X), insert:

and

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

- (d) do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act or the Native Title (New South Wales) Act 1994; and
 - (e) do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).
- (c) In section 36 (9), after “fee simple”, insert “but shall be subject to any native title rights and interests existing in relation to the lands immediately before the transfer”.
- (d) In section 36 (9A), after “that Act” where secondly occurring, insert “but shall be subject to any native title rights and interests existing in relation to the lands immediately before the transfer”.
- (e) At the end of the section, insert:
- Note: “**Non-claimant application**” and “**unopposed application**” (referred to in paragraph (d) of the definition of “claimable Crown lands” in section 36 (1)) are defined in s. 4 (1) of the Native Title (New South Wales) Act 1994. “**Approved determination of native title**” (referred to in paragraph (e) of the definition of “claimable Crown lands” in section 36 (1)) is defined in s. 253 NTA.
- (4) Section 40AA:
- Before section 40A, insert:
- Disposal of land subject to native title restricted**
- 40AA. The New South Wales Aboriginal Land Council or a Local Aboriginal Land Council may not sell, exchange, lease, dispose of, mortgage or otherwise deal with land vested in it subject to native title rights and interests under section 36 (9) or (9A) unless the land is the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act).

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued***Fisheries and Oyster Farms Act 1935 No. 58**

(1) Section 4 (Definitions):

In section 4 (1), in the definition of “Crown lands”, after “the Crown,” wherever occurring, insert “the Minister,”.

(2) Section 17AB:

After section 17A, insert:

Acquisition of land for purposes of a future lease grant

17AB. (1) The Minister may also, on behalf of the Crown, acquire land (including an interest in land) for the purposes of a future lease grant by agreement or compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) An acquisition for a future lease grant is an acquisition to enable the grant of a lease for the purpose of oyster farming under section 58 or for the purpose of fish farming under section 90D

(3) In the case of an acquisition of Crown land that is not vested in the Minister, the Minister must first obtain the prescribed consent referred to in section 17B.

(4) On the publication in the Gazette of an acquisition notice for a purpose that is described as an acquisition for a future lease grant, the land described in the notice:

- (a) if Crown land within the meaning of the Crown Lands Act 1989, remains Crown land within the meaning of that Act; or
- (b) if held by trustees for public recreation or for any other public purpose, vests in the Minister but subject to the trusts on which it was held immediately before that publication.

(5) Nothing in this section is to be taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.

(6) Section 17A (2) and (3) apply to an acquisition under this section.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(3) Section 17B (Prescribed consent):

From section 17B, omit “and 174” wherever occurring, insert instead “, 17A and 17AB”.

Forestry Act 1916 No. 55

Section 15 (Acquisition and sale of land):

After section 15 (4), insert:

(4A) The Minister may, on behalf of the Crown, acquire land (including an interest in land) for the purposes of a future lease grant or dealing by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(4B) An acquisition for a future lease grant or dealing is an acquisition:

- (a) to enable the reservation, dedication or setting apart of land under this Act and the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to land; or
- (b) to enable the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to land already reserved, dedicated or set apart under this Act.

(4C) The publication in the Gazette of an acquisition notice under section 19 of the Land Acquisition (Just Terms Compensation) Act 1991 for a purpose that is described as a future lease grant or dealing does not:

- (a) to the extent to which the land referred to in the acquisition notice was Crown land immediately before the publication of the acquisition notice, affect the status of the land as Crown land; or
- (b) operate to revoke a dedication as State forest, declaration as national forest, dedication or setting apart as a flora reserve or reservation as a timber reserve of the land referred to in the acquisition notice.

(4D) Nothing in this section is to be taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(4E) Subsection (4A) does not limit the purposes for which land may be acquired under subsection (1) or any other provision of this Act.

Hunter Water Board (Corporatisation) Act 1991 No. 53

Section 29:

Omit the section, insert instead:

Acquisition of land for purposes of this Act

29. (1) The Corporation may acquire land (including an interest in land) for the purposes of this Act.

(2) Land that the Corporation is authorised to acquire under this section may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(3) The corporation may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister.

Land Acquisition (Just Terms Compensation) Act 1991 No. 22

(1) Section 4 (**Definitions**):

(a) In section 4 (1), insert in alphabetical order:

“**Commonwealth Native Title Act**” or “**NTA**” means the Native Title Act 1993 of the Commonwealth;

“**native title**” and “**native title rights and interests**” has the same meaning as in the Commonwealth Native Title Act;

(b) In section 4 (1), at the end of paragraph (b) of the definition of “registered interest” insert:

or

(c) recorded in the National Native Title Register kept under the Commonwealth Native Title Act or in the native title register kept under the Native Title (New South Wales) Act 1994 if the interest is an interest in relation to land that is the subject of an approved determination of native title (other than an approved determination that no native title exists);

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(c) After section 4 (4), insert:

(5) For the purposes of this Act, owner of land includes a holder of native title rights and interests in relation to land.

Note: “**Approved determination of native title**”, referred to in paragraph (c) of the definition of “registered interest” in s. 4 (1), is defined in s. 253 NTA.

(2) Section 4A:

After section 4, insert:

Notes in the text

4A. Notes included in this Act are explanatory notes and do not form part of this Act.

(3) Section 7 (**Act not to empower authority to acquire land**):

At the end of section 7, insert:

(2) This section is subject to sections 7A and 7B.

(4) Sections 7A and 7B:

After section 7, insert:

Authority empowered to acquire native title

7A. An authority of the State that is authorised by law to acquire land by compulsory process under this Act is authorised to acquire native title rights and interests in relation to the land in the same way that other interests in the land may be acquired.

Authority empowered to acquire its own land

7B. An authority of the State that is authorised by law to acquire land by compulsory process in accordance with this Act may so acquire the land even if the land is vested in the authority itself.

(5) Section 20 (**Effect of acquisition notice**):

(a) After section 20 (1), insert:

(1A) Subsection (1) is subject to any express provision of an Act that authorises the acquisition of land by compulsory process but preserves the operation of any trusts, restrictions, dedications, reservations, declarations, setting apart of or other matters relating to the land concerned.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(b) At the end of the section, insert:

Note: Examples of express provisions of Acts to which section 20 (1A) refers are section 17AB (4) (b) of the Fisheries and Oyster Farms Act 1935, section 15 (4C) (b) of the Forestry Act 1916, section 186 (3) of the Local Government Act 1993 and section 146 (2C) (b) of the National Parks and Wildlife Act 1974.

(6) Section 29 (**Acquisition of Crown land**):

At the end of section 29 (2), insert “However, this prohibition does not apply if the dedication or reservation is not affected by the compulsory acquisition of the land.”

(7) Section 37A:

After section 37, insert:

Requests for non-monetary compensation for native title

37A. (1) This section applies to any negotiations held about a compulsory acquisition of native title rights and interests in relation to land however arising.

(2) If, during any such negotiations, a person or persons who may be entitled to compensation ask that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations:

(a) must consider the request; and

(b) must negotiate in good faith about the request.

Note: Section 79 NTA quires that requests for non-monetary compensation by persons who may be entitled to compensation for impairment or extinguishment of native title rights and interests must be handled in the manner referred to in section 37A. The transfer of property or the supply of goods or services are examples of compensation in a form other than money.

(8) Section 54 (**Entitlement to just compensation**):

At the end of the section, insert:

(2) If the compensation that is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

Note: Section 23 (3) (c) NTA provides an entitlement to compensation on the basis set out in S. 54 (2) if an acquisition of native title is other than on just terms within the meaning of the Commonwealth Native Title Act.

(9) Section 72 (**Manner of giving or serving notices or documents**):

After section 72 (2), insert:

(3) This section is subject to section 103 of the Native Title (New South Wales) Act 1994.

(10) Schedule 3 (**Savings, transitional and other provisions**):

(a) From clause 1 (1), omit “this Act”, insert instead:
the following Acts:

 this Act

 Native Title (New South Wales) Act 1994

(b) From clause 1 (2), omit “this Act”, insert instead “the Act concerned”.

Land and Environment Court Act 1979 No. 204

(1) Section 4 (**Definitions**):

(a) In section 4 (1), in the definition of “assessor”, after “Part 2”, insert “and includes a native title assessor”.

(b) In section 4 (1), insert in alphabetical order:

 “**Commonwealth Native Title Act**” or “**NTA**” means the Native Title Act 1993 of the Commonwealth;

 “**native title assessor**” means a person appointed as a native title assessor of the Court under Division 3 of Part 2;

 “**native title registrar**” means the native title registrar appointed under Division 4 of Part 2;

(c) In section 4 (1), in the definition of “**registrar**”, after “Court”, insert “but does not include the native title registrar”.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(d) After section 4 (2), insert:

(3) Words and expressions used in the Commonwealth Native Title Act and this Act have the same meanings in this Act as they have in the Commonwealth Native Title Act. However, this does not apply to a word or expression defined in this section or section 55A.

(4) Notes included in this Act are explanatory notes and do not form part of this Act.

(2) Section 12 (**Appointment of assessors**):

(a) In section 12 (2), after “assessor”, insert “(other than a native title assessor)”.

(b) After section 12 (2), insert:

(2A) A person is qualified to be appointed as a native title assessor only if the person has, in the opinion of the Minister, special knowledge about:

(a) Aboriginal societies; or

(b) land management; or

(c) dispute resolution; or

(d) anything else considered by the Minister to have substantial relevance to the duties of a native title assessor for the purposes of the Commonwealth Native Title Act, the Native Title (New South Wales) Act 1994 and this Act.

(3) Section 15 (**Appointment of other officers**):

(a) In section 15 (1), after “assistant registrar”, insert “, native title registrar, deputy native title registrars”.

(b) After section 15 (1), insert:

(1A) A person is qualified to be appointed as native title registrar only if the person is a legal practitioner of the High Court, another federal court or the Supreme Court of a State or Territory of at least 5 years standing.

(c) After section 15 (2), insert:

(2A) The native title registrar has the functions given to the native title registrar under this Act and the Native Title

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(New South Wales) Act 1994 and any functions delegated to the native title registrar under the Commonwealth Native Title Act.

(2B) The native title registrar may do everything necessary or convenient to be done to assist the Chief Judge to manage proceedings in Class 7 of the Court's jurisdiction. In particular, the native title registrar may act for the Chief Judge in managing the administrative affairs of the Native Title Division. However, the Chief Judge may give the native title registrar directions about the exercise of these functions.

(d) After section 15 (3), insert:

(4) The deputy native title registrars have and may exercise the functions of the native title registrar, and all acts, matters and things done or omitted by the deputy native title registrars are as valid and effectual and have the same consequences as if the acts, matters and things had been done or omitted by the native title registrar.

(4) Section 16 (**Jurisdiction of the Court generally**):

Omit section 16 (2). insert instead:

(2) For the purposes of this Act, the jurisdiction of the Court is divided into 7 classes, as provided in this Division.

(5) Section 21B:

Before section 22, insert:

Class 7—native title matters

21B. (1) The Court has jurisdiction (referred to in this Act as “Class 7” of its jurisdiction) to hear and dispose of:

- (a) applications for a determination of native title in relation to an area for which there is no approved determination of native title; and
- (b) applications to revoke or vary an approved determination of native title; and
- (c) applications for compensation under a State Compulsory Acquisition Act (within the meaning of the Native Title (New South Wales) Act 1994) for any acquisition of native title rights and interests.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(2) The Court is an arbitral body under Subdivision B of Division 3 of Part 2 of the Commonwealth Native Title Act for acts of the State, other than acts about:

- (a) a Commonwealth place (within the meaning of the Commonwealth Places (Application of Laws) Act 1970 of the Commonwealth); or
- (b) any place outside the jurisdictional limits of the State.

(3) The jurisdiction of the Court under Subsection (1) and the functions of the Court as an arbitral body under subsection (2) must be exercised only in accordance with the Native Title (New South Wales) Act 1994 and Division 6 of Part 4.

Note: “Native title” and “native title rights and interests” are defined in S. 223 (1) NTA. “Determination of native title” is defined in S. 225 NTA and “approved determination of native title” is defined in S. 253 NTA.

Section 26 (3) of the Native Title (New South Wales) Act 1994 provides that the jurisdiction referred to in subsection (1) of this section may not be exercised by the Court unless the relevant Commonwealth Minister has determined, in accordance with S. 251 (1) NTA, that the Court (and wardens’ courts established under the Mining Act 1992) are recognised State/Territory bodies under the NTA. The term ‘**recognised State/Territory body**’ is defined in S. 253 NTA. Only a recognised State/Territory body may be an arbitral body for the purposes of the NTA. (See S. 27 (1) NTA.)

(6) Section 26 (**Divisions of the Court**):

At the end of section 26, insert:

; and

- (g) the Native Title Division.

(7) Section 28 (**Distribution of business among the Divisions**):

At the end of the section, insert:

(7) Proceedings in Class 7 of the Court’s jurisdiction are to be assigned to the Native Title Division.

(8) Section 30 (**Arrangement of business of the Court**):

After section 30 (2B), insert:

(2C) An assessor must not exercise the jurisdiction of the Court or any other function under this Act in relation to any

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

proceedings arising under the Native Title (New South Wales) Act 1994, unless the qualification for the appointment of the assessor was a qualification referred to in section 12 (2A) and the assessor has been appointed as a native title assessor.

(2D) A native title assessor whose qualification for appointment was a qualification referred to in section 12 (2A) must not exercise the jurisdiction of the Court or any other function under this Act in relation to any proceedings other than proceedings arising under the Native Title (New South Wales) Act 1994.

(9) Section 33 (**Exercise of jurisdiction in the Divisions**):

After section 33 (2), insert:

(2A) Class 7 of the Court's jurisdiction is, in accordance with this Act, to be exercised by a Judge sitting alone or by a Judge and 2 native title assessors. However, questions of law arising in proceedings must be decided by a Judge.

(10) Division 6, Part 4:

At the end of Division 5 of Part 4, insert:

**Division 6—Special provisions respecting Class 7
proceedings (native title matters)**

Definitions

55A. In this Division:

“**accepted application**” means an application accepted under section 36 (Applications complying with formal requirements) or 37 (Applications not complying with formal requirements) of the Native Title (New South Wales) Act 1994;

“**application**” means an application referred to in Part 7 of the Native Title (New South Wales) Act 1994;

“**inquiry**” means an inquiry referred to in Part 8 of the Native Title (New South Wales) Act 1994.

Operation .of Division

55B. Sections 55C–55G apply only to inquiries and the exercise of the functions of the Court as an arbitral body

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(within the meaning of the Commonwealth Native Title Act).
Section 55H applies to inquiries and contested applications.

Arrangement of business (NTA, S. 123)

55C. (1) The Chief Judge may give directions about the following:

- (a) the arrangement of the Court's business when dealing with Class 7 proceedings;
- (b) the Judge who:
 - (i) is to consider a particular application under section 36 (3) or 37 (1) of the Native Title (New South Wales) Act 1994; or
 - (ii) is to constitute the Court for making a decision under section 42 (Land and Environment Court or warden's court to decide persons whose interests may be affected) of the Native Title (New South Wales) Act 1994;
- (c) the members who are to exercise the jurisdiction of the Court to hear an accepted application that is contested under Part 8 of the Native Title (New South Wales) Act 1994;
- (d) the members who are to exercise the jurisdiction of the Court for a particular inquiry;
- (e) the places where the Court is to sit;
- (f) the Court's procedure at a particular place and generally.

(2) In giving a direction about the members who are to exercise the jurisdiction of the Court for a particular inquiry, the Chief Judge must have regard to the degree of public importance or complexity of the matters to which the inquiry relates.

Constitution of Court for exercise of powers (NTA, s. 124)

55D. (1) If the jurisdiction of the Court for a particular inquiry is exercised by 3 members, the Chief Judge must, as far as is reasonably practicable, ensure that the Court includes at least one member with special knowledge about Aboriginal societies.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(2) This clause is subject to section 42 (2) of the Native Title (New South Wales) Act 1994.

Reconstitution of Court (NTA, s. 125)

55E. (1) This section applies if a member (the “unavailable member”) who is exercising the jurisdiction of the Court, or who is one of the members who are exercising the jurisdiction of the Court, for a particular inquiry:

- (a) ceases to be a member; or
- (b) for another reason is not available for the inquiry.

(2) If the unavailable member is exercising the jurisdiction of the Court, the Chief Judge must direct another member or members to exercise the jurisdiction of the Court to finish the inquiry.

(3) If the unavailable member is one of the members who are exercising the jurisdiction of the Court, the Chief Judge must direct that the jurisdiction of the Court, to finish the inquiry, is to be exercised by:

- (a) the remaining member or members; or
- (b) the remaining member or members and another member or members.

(4) For the purposes of subsections (2) and (3), a member who ceases to be a member and at a later time becomes a member again is taken, from the later time, to be another member.

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

Member presiding (NTA, s. 126)

55F The Chief Judge must give a direction about the member who is to be the presiding member for a particular inquiry.

Places of sitting (NTA, s. 127)

55G. Sittings of the Court are to be held at the places at which the Court’s registries are established, but the Court may sit anywhere else in New South Wales.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

Appeals

55H. The provisions of Division 5 of Part 8 of the Native Title (New South Wales) Act 1994 apply to appeals in relation to proceedings in Class 7 of the Court's jurisdiction.

(11) Section 62 (**Proceedings in open court**):

At the end of the section, insert:

(2) In exercising its powers under this section in proceedings in Class 7 of the Court's jurisdiction, the Court is to have regard to the requirements of section 60 of the Native Title (New South Wales) Act 1994.

Local Government Act 1993 No. 38

(1) Section 31 (**Classification of land acquired after the commencement of this Division**):

Omit section 31 (3), insert instead:

(3) A council must not resolve under this section that land be classified as operational land if:

- (a) the land is classified as community land immediately before its acquisition; or
- (b) the resolution would be inconsistent with any other Act, the terms of any trust applying to the land or the terms of any instrument executed by the donor or transferor of the land.

(2) Section 186 (**For what purposes may a council acquire land?**):

After section 186 (2), insert:

(3) However, if the land acquired is, before its acquisition, community land vested in a council, the acquisition does not discharge the land from any trusts, estates, interests, dedications, conditions, restrictions or covenants that affected the land or any part of the land immediately before that acquisition.

Mining Act 1992 No. 29

(1) Section 4 (**Definitions**):

In the Table to the section, insert in alphabetical order "Commonwealth Native Title Act" and "native title holder".

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*(2) Section 138 (**Application of Division**):

At the end of the section, insert:

(2) However, this Division does not apply so as to require an access arrangement in respect of an owner or occupier of land who is a native title holder if the prospecting title concerned was granted after compliance with Subdivision B of Division 3 of Part 2 of the Commonwealth Native Title Act and the grant of the title was not an act that attracted the expedited procedure under and within the meaning of that Subdivision. This subsection has effect despite section 98 of the Native Title (New South Wales) Act 1994

(3) Section 178 (**Application for granting of mineral claim**):

Omit section 178 (2) (e).

(4) Section 180 (**General restrictions**):

After section 180 (4), insert:

(5) A mineral claim may not be granted over private land except with the written consent of the owner and, in the case of private land that is not land in relation to which native title rights and interests within the meaning of the Commonwealth Native Title Act exist, the occupier of the land.

(5) Section 267A:

After section 267, insert:

Effect of determination and payment of compensation under right to negotiate provisions of Commonwealth Native Title Act

267A. (1) If, between the Government party, an applicant for an exploration licence, assessment lease, mining lease, mineral claim or opal prospecting licence as a grantee party and a native title party, compensation is agreed on or determined under Subdivision B of Division 3 of Part 2 of the Commonwealth Native Title Act, the compensation so agreed on or determined is taken:

- (a) to be validly agreed on or assessed for the purposes of whichever is relevant of section 263, 264, 265, 266 or 267 as if the applicant for the exploration licence, assessment lease, mining lease, mineral claim or opal

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

prospecting licence as the grantee party was the holder under this Act of the licence, lease or claim concerned and the native title party was the owner of the land concerned; and

- (b) to be paid under and for the purposes of whichever is relevant of those sections when it is paid in accordance with section 52 of the Commonwealth Native Title Act.

(2) In this section, “**Government party**”, “**grantee party**” and “**native title party**” have the same meanings as they have in the Commonwealth Native Title Act.

(6) Section 272 (**Assessment of compensation**):

At the end of the section, insert:

(2) Any compensation agreed on or determined under Subdivision B of Division 3 or Division 5 of Part 2 of the Commonwealth Native Title Act for essentially the same act as an act in respect of which compensation is to be assessed under this Part must be taken into account in the assessment of compensation for the act under this Part.

(7) Section 294 (**Establishment of wardens’ courts**):

- (a) In section 294 (3), after “is” insert “, subject to this section,”.

- (b) After section 294 (3), insert:

(4) The jurisdiction of a warden’s court for a particular inquiry or the exercise of functions as an arbitral body in accordance with the Native Title (New South Wales) Act 1994 is to be exercised by:

- (a) the warden; or
(b) the warden and 2 native title assessors.

(5) If the jurisdiction of a warden’s court is exercised by 3 members, the warden must, as far as is reasonably practicable, ensure that the court includes at least one member with special knowledge about Aboriginal societies.

(6) Subsections (4) and (5) are subject to section 42 (Land and Environment Court or warden’s court to decide persons whose interests may be affected) of the Native Title (New South Wales) Act 1994.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(7) In this section, “**native title assessors**” means native title assessors appointed to exercise jurisdiction in, and to assist, wardens’ courts in accordance with a regulation made under section 54 (5) of the Native Title (New South Wales) Act 1994.

(8) Section 296 (**Jurisdiction of wardens’ courts**):

After section 296 (u), insert:

(v) matters in respect of which a warden’s court is authorised to exercise jurisdiction as a recognised State/Territory body or perform functions as an arbitral body (within the meaning of the Commonwealth Native Title Act) for the purposes of this Act under the Native Title (New South Wales) Act 1994

(9) Section 321 (**Right to appeal from warden’s court to District Court**):

In section 321 (l), after “court”, insert “(other than a decision of the court in proceedings under the Native Title (New South Wales) Act 1994)”.

(10) Section 325 (**Case stated for opinion of Supreme Court**):

In section 325 (l), after “warden’s court” where firstly occurring, insert “(other than a party to any proceedings under the Native Title (New South Wales) Act 1994)”.

(11) Division 4A, Part 15:

After Division 4 of Part 15, insert:

Division 4A—Appeals concerning native title matters
Appeals concerning native title matters

328A. The provisions of Division 5 of Part 8 of the Native Title (New South Wales) Act 1994 apply to appeals in relation to proceedings arising under the Native Title (New South Wales) Act 1994.

(12) Section 383 (**Service of documents**):

In section 383 (2), after “found”, insert “or identified”.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(13) Sections 383A and 383B:

After section 383, insert:

Service of documents on native title holders

383A. (1) If a document is authorised or required under this Act to be served on an owner of land who is a native title holder, service of the document is taken to be effected in accordance with section 383 if the document is served on a registered native title body corporate in relation to the land concerned.

(2) If no approved determination of native title within the meaning of the Commonwealth Native Title Act exists in relation to the land concerned, service of a notice required to be served under Part 13 or clause 21 (1) or (3) of Schedule 1 on an owner of the land who is a native title holder is taken to be effected in accordance with section 383 and diligent inquiry is taken to have been made for the purposes of section 383 (2) if:

- (a) in the case of a notice under Part 13 or a proposed invitation for tenders for a mining lease referred to in clause 21 (1) of Schedule 1, the notice is served on each person who is a native title party in relation to the mineral claim or the opal prospecting licence concerned or who is a native title party in relation to the land affected by the proposed invitation; or
- (b) in the case of an application for a mining lease referred to in clause 21 (3) of Schedule 1, the notice is served on each person who is a native title party in relation to the land affected by the application within 21 days after the expiration of the period of 2 months referred to in section 30 of the Commonwealth Native Title Act.

(3) If a notice is served in accordance with section 29 of the Commonwealth Native Title Act in relation to a matter referred to in subsection (2) (a) or (b) and, at the expiration of the period of 2 months referred to in section 30 of the Commonwealth Native Title Act, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned, the requirements of Part 63 or clause 21 (1) or (3) of Schedule 1

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

as to the notification of an owner or occupier who is a native title holder are taken to have been met.

(4) However, if any person does become a registered native title claimant or a registered native title body corporate in relation to the land concerned within that period, notices under Part 13 or clause 21 (1) or (3) of Schedule 1 must be served on the registered native title claimant or the registered native title body corporate concerned.

(5) In this section, “native title party”, and in this section and section 383B, “registered native title body corporate” and “registered native title claimant” have the same meanings as they have in the Commonwealth Native Title Act.

Consents of owners and occupiers

383B. (1) This section applies in relation to:

- (a) the requirements of sections 31, 49, 62 and 188 that certain rights cannot be exercised or leases or mineral claims cannot be granted except with the written consent of the occupier and, in the case of private land, the owner of the land concerned; and
- (b) the provision in section 81 that certain operations may be carried out with the consent of the owner and (if the owner is not the occupier) the occupier of the land concerned; and
- (c) the requirement of section 140 that certain operations may not be carried out otherwise than in accordance with an access arrangement agreed with each owner and occupier of the land concerned or determined by an arbitrator as referred to in section 140 (b); and
- (d) the requirements of any regulations made under section 164 (5) or 211 (5) that restrict the exercise of a right of way otherwise than in accordance with the consent of the owner or occupier of the land concerned; and
- (e) the requirements of sections 166 and 213 that certain resources cannot be utilised otherwise than in accordance with the consent of the owner or occupier of the surface of the land concerned; and

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

- (f) the requirement of section 180 that a mineral claim cannot be granted over private land except with the written consent of the owner and, in the case of private land that is not land in which native title within the meaning of the Commonwealth Native Title Act exists, the occupier of the land concerned; and
- (g) the requirement of section 200 that an application for the transfer of a mineral claim that relates to private land must be accompanied by the written consent of the owner and occupier of the land concerned; and
- (h) the requirement of section 265 (4) that rights cannot be exercised unless the amount of compensation payable to an owner or occupier in respect of a mining area is the subject of a valid agreement or of an assessment.

(2) If an owner or occupier of land whose consent or agreement must or may be obtained for a purpose mentioned in subsection (1) (a)—(g) or in relation to whom compensation must be agreed on or assessed for the purpose mentioned in subsection (1) (h) cannot, after diligent inquiry, be found or identified:

- (a) the rights may be exercised or the lease or mineral claim may be granted without the written consent of the owner or occupier of the land concerned; or
- (b) the operations may be carried out without the consent of the owner or occupier of the land concerned; or
- (c) the operations may be carried out in accordance with any access arrangement made with, or determined in respect of, those owners and occupiers (if any) of the land concerned who have been found or identified without the agreement of an owner or occupier of the land who has not been found or identified; or
- (d) the right of way may be exercised without the consent of the owner or occupier of the land concerned; or
- (e) the resources may be utilised without the consent of the owner or occupier of the land concerned; or

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

- (f) the application for the transfer of the mineral claim may be dealt with without the written consent of the owner or occupier of the land concerned; or
 - (g) the rights under the mining lease may be exercised without the agreement as to, or the assessment of, the compensation.
- (3) For the purposes of subsection (2), there has been **“diligent inquiry”** in relation to an owner who is a native title holder:
- (a) if notice of the intention to exercise the rights, to grant the lease or mineral claim or to deal with the transfer of the mineral claim is given by the Government party under section 29 of the Commonwealth Native Title Act for the purposes of the right to negotiate provisions of that Act and, at the expiration of the period of 2 months referred to in section 30 of that Act, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned; or
 - (b) if notice of the intention to exercise the rights, to grant the lease or mineral claim, to carry out the operations, to make an agreement as to an access management or to utilise the resources is given in the manner specified by section 103 of the Native Title (New South Wales) Act 1994 and, at the expiration of the period of 2 months starting when the notice is given, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned.
- (4) In this section, “Government party” has the same meaning as it has in the Commonwealth Native Title Act.
- (14) Schedule 1 (**Public consultation with respect to the granting of assessment leases and mining leases**):
- In clause 21 (3), after “application” where firstly occurring, insert “or, in a case to which section 383A (2) (b) applies, within 21 days after the expiration of the period referred to in that paragraph”.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(15) Dictionary of words and expressions:

(a) Insert in alphabetical order:

“**Commonwealth Native Title Act**” means the Native Title Act 1993 of the Commonwealth;

“**native title holder**” has the same meaning as it has in the Commonwealth Native Title Act;

(b) At the end of paragraph (b) of the definition of “owner” insert:

; and

(c) any native title holder,

(c) In paragraph (b) of the definition of “private land” after “lease”, insert “, not being a pastoral lease held by a native title holder”.

(d) At the end of paragraph (c) of the definition of “private land”, insert:

; or

(d) land in relation to which native title rights and interests within the meaning of the Commonwealth Native Title Act exist,

National Parks and Wildlife Act 1974 No. 80(1) Section 37 (**Revocation or compulsory acquisition of park or site**):

(a) From section 37 (1) (b), omit “appropriated or resumed”, insert instead “compulsorily acquired”.

(b) After section 37 (1), insert:

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a national park or historic site if the reservation of the lands as, or as part of, the national park or historic site is not affected by the compulsory acquisition.

(2) Section 52 (**Revocation or compulsory acquisition of nature reserve**):

(a) From section 52 (1) (b), omit “appropriated or resumed”, insert instead “compulsorily acquired”.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(b) After section 52 (1), insert:

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a nature reserve if the dedication of the lands as, or as part of, the nature reserve is not affected by the compulsory acquisition.

(3) Section 58D (**Revocation or compulsory acquisition of state game reserve**):

(a) From section 58D (1) (b), omit “appropriated or resumed”, insert instead “compulsorily acquired”.

(b) After section 58D (1), insert:

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a state game reserve if the dedication of the lands as, or as part of, the state game reserve is not affected by the compulsory acquisition.

(4) Section 58M (**Revocation or compulsory acquisition of karst conservation reserve**):

(a) From section 58M (1) (b), omit “appropriated or resumed”, insert instead “compulsorily acquired”.

(b) After section 58M (1), insert:

(1A) Nothing in subsection (1) prevents the compulsory acquisition under this Act of lands within a karst conservation reserve if the dedication of the lands as, or as part of, the karst conservation reserve is not affected by the compulsory acquisition.

(5) Section 146 (**Acquisition or occupation of lands for certain purposes**):

After section 146 (2), insert:

(2A) The Minister may, on behalf of the Crown, acquire land (including an interest in land) for the purpose of a future lease grant or dealing by agreement or by compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(2B) An acquisition for a future lease grant or dealing is an acquisition:

- (a) to enable the reservation or dedication of land under this Act and the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to the land; or
- (b) to enable the exercise of powers, authorities, duties and functions conferred or imposed by or under this Act in relation to land already reserved or dedicated under this Act.

(2C) The publication in the Gazette of an acquisition notice under section 19 of the Land Acquisition (Just Term Compensation) Act 1991 for a purpose that is described as a future lease grant or dealing does not:

- (a) to the extent to which the land referred to in the acquisition notice was Crown land immediately before the publication of the acquisition notice, affect the status of the land as Crown land; or
- (b) operate to revoke any reservation as national park or historic site or any dedication as nature reserve, state game reserve or karst conservation reserve of the land referred to in the acquisition notice.

(2D) Nothing in this section is taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.

(2E) Subsection (2A) does not limit the purposes for which land may be acquired under section 145 or any other provision of this Act.

Petroleum (Onshore) Act 1991 No. 84

(1) Section 3 (**Definitions**):

(a) In section 3 (1), insert in alphabetical order:

“Commonwealth Native Title Act” means the Native Title Act 1993 of the Commonwealth;

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(b) In section 3 (1), omit paragraph (d) of the definition of “private land”, insert instead:

(d) land in relation to which native title rights and interests within the meaning of the Commonwealth Native Title Act exist,

and includes any other Holdings or lands declared by the regulations to be private lands, but does not include any land declared by the regulations to be Crown land;

(2) Part 4A:

After Part 4, insert:

**PART 4A—ACCESS ARRANGEMENTS FOR
PROSPECTING TITLES**

Application of Part

69A. (1) This Part applies to the carrying out of prospecting operations under exploration licences, assessment leases and special prospecting authorities (referred to in this Part as “**prospecting titles**”) on private land or on land held under a lease for pastoral purposes.

(2) However, this Part does not apply so as to require an access management in respect of an owner or occupier of land who is a native title holder within the meaning of the Commonwealth Native Title Act if the prospecting title concerned was granted after compliance with Subdivision B of Division 3 of Part 2 of that Act and the grant of the title was not an act that attracted the expedited procedure under and within the meaning of that Act. This subsection has effect despite section 98 of the Native Title (New South Wales) Act 1994.

Arbitration Panel

69B. (1) There is to be an Arbitration Panel.

(2) The Arbitration Panel constituted under section 139 of the Mining Act 1992 is to perform the functions of the Arbitration Panel under this Act.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

Prospecting to be carried out in accordance with access arrangement

69C. The holder of a prospecting title may not carry out prospecting operations on any land otherwise than in accordance with an access arrangement:

- (a) agreed (whether orally or in writing and whether before or after the prospecting title was granted) between the holder of the title and each owner and occupier of the land; or
- (b) determined by an arbitrator in accordance with this Part.

Matters for which access arrangement to provide

69D. (1) An access arrangement may make provision for or with respect to the following matters:

- (a) the periods during which the holder of the prospecting title is to be permitted access to the land;
- (b) the parts of the land in or on which the holder of the prospecting title may prospect and the means by which the holder may gain access to those parts of the land;
- (c) the kinds of prospecting operations that may be carried out in or on the land;
- (d) the conditions to be observed by the holder of the prospecting title when prospecting in or on the land;
- (e) the things which the holder of the prospecting title needs to do in order to protect the environment while having access to the land and carrying out prospecting operations in or on the land;
- (f) the compensation to be paid to any owner or occupier of the land as a consequence of the holder of the prospecting title carrying out prospecting operations in or on the land;
- (g) the manner of resolving any dispute arising in connection with the arrangement;
- (h) the manner of varying the arrangement;
- (i) such other matters as the parties to the arrangement may agree to include in the arrangement.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(2) An access arrangement that is determined by an arbitrator must specify the compensation, as assessed by the arbitrator, to which each owner or occupier of the land concerned is entitled under Part 11.

(3) In the event of an inconsistency between:

- (a) a provision of an access arrangement; and
- (b) a provision of this Act, of the regulations or of a condition of a prospecting title,

the provision referred to in paragraph (b) prevails.

(4) If the holder of a prospecting title contravenes an access arrangement, the owner or occupier of the land may deny the holder access to the land until:

- (a) the holder ceases the contravention; or
- (b) the contravention is remedied to the reasonable satisfaction of the owner or occupier.

(5) Subsection (4) does not affect any proceedings that may be brought against the holder of the prospecting title in respect of the contravention of the access arrangement.

Holder of prospecting title to seek access arrangement

69E. (1) The holder of a prospecting title may, by written notice served on each owner and occupier of the land concerned, give notice of the holder's intention to obtain an access arrangement in respect of the land.

(2) The notice of the holder's intention to obtain an access arrangement must, in addition to stating the holder's intention, contain:

- (a) a plan and description of the area of land over which the access is sought sufficient to enable the ready identification of that area; and
- (b) a description of the prospecting methods intended to be used in that area.

(3) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree (either orally or in writing and either before or after the prospecting title is granted) on an access arrangement.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

Appointment of arbitrator by agreement

69F. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in writing on each owner and occupier of the land of the holder's intention to obtain an access arrangement, the holder and each owner and occupier of the land have been unable to agree on such an arrangement, the holder may, by further notice in writing served on each such owner and occupier, request them to agree to the appointment of an arbitrator.

(2) The holder of a prospecting title, and each owner and occupier of the land concerned, may agree to the appointment of any person as an arbitrator.

Appointment of arbitrator in default of agreement

69G. (1) If, by the end of 28 days after the holder of a prospecting title serves notice in accordance with section 69F, the holder and each owner and occupier of the land concerned have been unable to agree on the appointment of an arbitrator, then any one of them may apply to the Director-General for the appointment of a member of the Arbitration Panel as an arbitrator.

(2) An application must be accompanied by the fee prescribed by the regulations.

(3) The Director-General, after consultation with the Director-General of the Department of Agriculture, is to appoint a member of the Arbitration Panel as an arbitrator.

Arbitration

69H. (1) As soon as practicable after having been appointed, an arbitrator:

- (a) must fix a time and place for conducting a Rearing into the question of access to the land concerned; and
- (b) must cause notice of his or her appointment, and of the time and place fixed for conducting the hearing, to be given to the holder of the prospecting title and to each owner and occupier of that land.

(2) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for conducting the hearing.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(3) The arbitrator must, at the time and place fixed under this section, conduct a hearing into the question of access to the land concerned.

Right of appearance

69I. (1) At any hearing into the question of access to any land by the holder of a prospecting title, the holder and each owner and occupier of the land are entitled to appear and be heard.

(2) A party to a hearing may be represented:

- (a) by an agent who is not a barrister or a solicitor; or
- (b) with the agreement of the parties and the leave of the arbitrator, by a barrister or a solicitor.

Conciliation

69J. (1) An arbitrator is not to make a determination until the arbitrator has used his or her best endeavours to bring the parties to a settlement acceptable to all of them.

(2) If the parties come to such a settlement, the arbitrator must make a determination that gives effect to the terms of the settlement.

Procedure

69K. (1) Except as otherwise provided by this Act or the regulations, the procedure at a hearing is to be as determined by the arbitrator.

(2) An arbitrator must act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms.

(3) An arbitrator may conduct a hearing even though one or more of the parties to the hearing fails to attend the hearing.

Interim determination by arbitrator

69L. (1) As soon as practicable after concluding a hearing, an arbitrator:

- (a) must make an interim determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must prepare a draft access management in respect of that land.

(2) As soon as practicable after making an interim determination, the arbitrator:

- (a) must reduce the determination to writing; and
- (b) must cause a copy of the determination, together with a copy of any draft access arrangement, to be served on each of the parties to the hearing.

Further arbitration

69M. (1) A party to a hearing may, within 14 days after being served with a copy of the arbitrator's interim determination, apply to the arbitrator:

- (a) for reconsideration of the question of access to the land concerned; or
- (b) for variation of any draft access arrangement prepared by the arbitrator in respect of that land.

(2) As soon as practicable after receiving such an application, the arbitrator:

- (a) must fix a time and place for continuing the hearing into the question of access to the land concerned; and
- (b) must cause notice of the time and place fixed for continuing the hearing to be given to the holder of the prospecting title and to each owner and occupier of that land.

(3) The arbitrator may, by a further notice served on the holder of the prospecting title and on each owner and occupier of the land concerned, vary the time or place fixed for continuing the hearing.

(4) The arbitrator must, at the time and place fixed under this section, continue the hearing into the question of access to the land concerned.

Final determination by arbitrator

69N. (1) If an application is not made to the arbitrator within the period of 14 days referred to in section 69M (1):

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

- (a) the interim determination is taken to be the arbitrator's final determination; and
 - (b) any draft access arrangement is taken to be a final access arrangement.
- (2) If an application is made to the arbitrator within the period of 14 days referred to in section 69M (1), the arbitrator, as soon as practicable after concluding the continued hearing:
- (a) must make a final determination as to whether or not the holder of the prospecting title should have a right of access to the land concerned; and
 - (b) if the arbitrator determines that the holder of the prospecting title should have such a right of access, must determine a final access arrangement in respect of that land.
- (3) As soon as practicable after making a final determination, the arbitrator:
- (a) must reduce the determination to writing; and
 - (b) must cause a copy of the determination, together with a copy of any final access arrangement forming part of the determination, to be served on each of the parties to the hearing.

Costs

69O. (1) Each party to the hearing is to bear his or her own costs in relation to the hearing.

(2) The arbitrator's costs in relation to the hearing are to be borne by the holder of the prospecting title.

(3) Payment of the arbitrator's costs in relation to a hearing is, for the purpose of any security given by the holder of a prospecting title, taken to be an obligation under the title.

Withdrawal from arbitration

69P. (1) The parties to a hearing may, at any time before the conclusion of the hearing, terminate the hearing by notice in writing, signed by all of the parties, served on the arbitrator.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(2) This section does not limit the liability of the holder of a prospecting title to bear the arbitrator's costs in relation to the hearing.

Liability

69Q. No proceedings lie against an arbitrator for or with respect to:

- (a) any determination made by the arbitrator; or
- (b) any publication made by the arbitrator; or
- (c) any other act, matter or thing done by the arbitrator,

for the purposes of a hearing, as long as the determination, publication, ~~act~~, matter or thing was made or done in good faith.

Review of determination

69R. (1) A party to a hearing who is aggrieved by an arbitrator's final determination (other than a determination referred to in section 69J (2)) may apply to a warden's court for a review of the determination.

(2) An application:

- (a) must be accompanied by a copy of the determination to which it relates, together with a copy of any access arrangement forming part of the determination; and
- (b) must be filed in a warden's court:

- (i) in the case of an interim determination that has become a final determination—within 28 days after a copy of the interim determination was served on the applicant; ~~or~~

- (ii) in the case of a final determination—within 14 days after a copy of the final determination was served on the applicant.

(3) An application for review may not be made:

- (a) during the period of 14 days within which an application may be made to an arbitrator; or
- (b) if such an application is made, until the arbitrator has made a final determination with respect to the application.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(4) The applicant must cause a copy of the application to be served on each of the other parties to the determination to which the application relates.

(5) Subject to any order of a warden's court to the contrary, an application for review of a determination operates to stay the effect of any related access arrangement in relation to a party to the arrangement from the time when a copy of the arrangement has been served on the party until the decision of a warden's court on the review.

(6) In reviewing a determination under this section, a warden's court has the functions of an arbitrator under this Part in addition to its other functions.

(7) The decision of a warden's court on a review of a determination is final and is to be given effect to as if it were the determination of an arbitrator.

Effect of access arrangement

69S. An access arrangement determined by an arbitrator:

- (a) takes effect:
 - (i) in the case of a draft access arrangement that is taken to be a final access arrangement—at the end of the period of 14 days after a copy of the draft access arrangement has been served on each of the parties; or
 - (ii) in the case of a final access arrangement prepared under section 69N—when a copy of the arrangement has been served on each of the parties,
- or on such later date as may be specified in the arrangement; and
- (b) subject to section 69D (3), has effect as if its terms were embodied in a deed that had been duly executed by each of the parties.

Variation of access arrangements

69T. An access arrangement determined by an arbitrator may, subject to the terms of the arrangement, be varied by the arbitrator with the consent of all of the parties to the arrangement.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

Duration of access arrangements

69U. An access arrangement does not run with the land and, unless sooner terminated, terminates:

- (a) if an owner or occupier of the land with whom the arrangement is made ceases to be an owner or occupier of the land; or
- (b) on the death of an owner or occupier of the land with whom the arrangement is made.

(3) Section 71 (**Restrictions on rights of holders of leases over cultivated land**):

- (a) From section 71 (1) omit “petroleum title”, insert instead “production lease”.
- (b) From section 71 (1) and (2), omit “prospecting or” wherever occurring.

(4) Section 107 (**Compensation**):

- (a) After section 107 (1), insert:
 - (1A) A native title holder within the meaning of the Commonwealth Native Title Act is to be treated as having an estate or interest in land for the purposes of subsection (1).
- (b) After section 107 (3), insert:
 - (4) Any compensation agreed on or determined under Subdivision B of Division 3 of Part 2 of the Commonwealth Native Title Act for essentially the same act as an act in respect of which compensation is payable under this Part must be taken into account in the assessment of compensation for the act under this Part.

(5) Section 115 (**Jurisdiction of court**):

- After section 115 (1) (o,) insert:
- (o1) matters in respect of which a warden’s court is authorised to exercise jurisdiction as a recognised State/Territorybody or perform functions as an arbitral body (within the meaning of the Commonwealth Native Title Act) for the purposes of this Act under the Native Title (New South Wales) Act 1994;

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(6) Section 134:

Omit the section, insert instead:

Service of documents

134. (1) Service of a document authorised or required to be served on any person for the purposes of this Act may be effected:

- (a) on a natural person, by delivering it to the person personally or by leaving it at, or sending it by pre-paid post to, the person's last known residential or business address; or
- (b) on a body corporate, by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate,

or in any other way in which service could have been effected in the absence of this section.

(2) If an owner or occupier of land on whom a document is authorised or required to be served is absent from the State or cannot, after diligent inquiry, be found or identified, and that person's place of residence or business cannot, after diligent inquiry, be ascertained, the document may be served by affixing it on some conspicuous part of the land.

(3) If a person has more than one place of business, service may be effected at any of those places.

(4) Service of a document on a person may be effected by service, in any manner permitted by this section, on the person's agent duly appointed and notified in accordance with the regulations made under this Act.

(5) Nothing in this section prevents service of a document from being effected by facsimile transmission or other electronic means, or by the use of the facilities of a document exchange, but the burden of establishing that a document so despatched was actually received, and of establishing its time of receipt, lies on the person seeking to establish it.

(7) Sections 134A and 134B:

After section 134, insert:

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACT—*continued*

Service of documents on native title holders

134A. (1) If a document is authorised or required under this Act to be served on an owner of land who is a native title holder, service of the document is taken to be effected in accordance with section 134 if the document is served on a registered native title body corporate in relation to the land concerned.

(2) In this section and section 134B, “registered native title body corporate” has the same meaning that it has in the Commonwealth Native Title Act.

Consents of owners and occupiers

134B. (1) This section applies in relation to:

- (a) the requirements of sections 71 and 72 that certain operations cannot be carried out or works erected except with the consent of the owner and occupier of the land concerned; and
- (b) the provision in section 69E for the making of an agreement by the holder of a prospecting title with each owner and occupier of the land concerned as to an access arrangement.

(2) If an owner or occupier of land whose consent must be obtained for the purposes of section 71 or 72 or whose agreement may be obtained for the purposes of section 69E cannot, after diligent inquiry, be found or identified:

- (a) the operations may be carried out or the works erected without the consent of the owner or occupier of the land concerned; or
- (b) the agreement as to the access arrangement may be made with those owners and occupiers (if any) of the land concerned who have been found or identified without the agreement of an owner or occupier of the land who has not been found or identified.

(3) For the purposes of subsection (2), there has been “**diligent inquiry**” in relation to an owner who is a native title holder:

- (a) if notice of the intention to carry out the Operations or to erect the works is given by the Government party

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

under section 29 of the Commonwealth Native Title Act for the purposes of the right to negotiate provisions of that Act and, at the expiration of the period of 2 months referred to in section 30 of that Act, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned; or

- (b) if notice of the intention to carry out the operations or to erect the works or to make an agreement as to an access arrangement is given in the manner specified by section 103 of the Native Title (New South Wales) Act 1994 and, at the expiration of the period of 2 months starting when the notice is given, no person becomes a registered native title claimant or a registered native title body corporate in relation to the land concerned.

(4) In this section, “**Government party**” and “**registered native title claimant**” have the same meanings that they have in the Commonwealth Native Title Act.

Petroleum (Submerged Lands) Act 1982 No. 23

Omit section 128, insert instead:

Property in petroleum

128. Subject to this Act, if petroleum is recovered by a permittee, lessee or licensee in the permit area, lease area or licence area:

- (a) the petroleum becomes the property of the permittee, lessee or licensee; and
- (b) it is not subject to any rights of other persons (other than any person to whom the permittee, lessee or licensee transfers, assigns or otherwise disposes of the petroleum or an interest in the petroleum).

Pipelines Act 1967 No. 90

(1) Section 3 (**Definitions**):

- (a) In section 3 (1), insert in alphabetical order:

“**Commonwealth Native Title Act**” or “**NTA**” means the Native Title Act 1993 of the Commonwealth;

SCHEDULE I—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

(b) At the end of paragraph (c) of the definition of “owner” in section 3 (1), insert:

and

(d) means any native title holder within the meaning of the Commonwealth Native Title Act;

(c) After section 3 (8), insert:

(9) Notes included in this Act are explanatory notes and do not form part of this Act.

(2) Section 21 (**Vesting of lands or easements in licensee**):

At the end of the section, insert:

Note: If lands in relation to which native title rights and interests within the meaning of the Commonwealth Native Title Act exist are affected by the granting of a licence under section 14 or of an application under section 19 for the variation of a licence area by the inclusion of additional land, the right to negotiate regime set out in Subdivision B of Division 3 of Part 2 of the NTA must be followed before a notification under section 21 is published in the *Gazette*.

(3) Section 22 (**Availability of certain land etc for compulsory acquisition**):

At the end of the section, insert:

(2) Lands in relation to which an owner has native title rights and interests within the meaning of the Commonwealth Native Title Act is, for the purpose of the acquisition of those rights and interests under this Act, land held in fee-simple over which the owner has no power of sale as referred to in subsection (1) (c).

(3) If lands referred to in subsection (2) are also held as an incomplete purchase, a homestead selection, a homestead grant or a lease in perpetuity under the Crown Lands Acts, the applicant must give the notice referred to in subsection (1) (c) to the Minister administering the provisions of the Crown Lands Acts applying to those lands as well as to the owner of the native title rights and interests.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued***Roads Act 1993 No. 33**(1) Section 181 (**Definitions**):

(a) Insert in alphabetical order:

“**Commonwealth Native Title Act**” or “**NTA**” means the Native Title Act 1993 of the Commonwealth;

“**native title**” or “**native title rights and interests**” has the same meaning as in the Commonwealth Native Title Act;

(b) Omit the definition of “registered interest”, insert instead:

“**registered interest**” in land means an interest in land recorded in:

- (a) the Register kept under the Real Property Act 1900; or
- (b) the General Register of Deeds kept under the Conveyancing Act 1919; or
- (c) the National Native Title Register kept under the Commonwealth Native Title Act or in the native title register kept under the Native Title (New South Wales) Act 1994 if the interest is an interest in relation to land that is the subject of an approved determination of native title (other than an approved determination that no native title exists).

(c) At the end of the section, insert:

(2) For the purposes of this Division, a holder of native title rights and interests in relation to land has an interest in land.

Note: “**Approved determination of native title**”, referred to in paragraph (c) of the definition of “registered interest”, is defined in s. 253 NTA.

(2) Section 181A:

After section 181, insert:

Notes in the text

181A. Notes included in this Division are explanatory notes and do not form part of this Act.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

(3) Section 182 (**Private individuals etc. may request Minister to acquire land**):

At the end of the section, insert:

Note: In accordance with s. 26 NTA, native title rights and interests in relation to land cannot be compulsorily acquired for the benefit of persons other than a Government party unless the right to negotiate procedures set out in Subdivision B of Division 3 of Part 2 of the NTA are complied with. “**Government party**” is defined in s. 253 NTA.

(4) Section 184 (**Decision on whether to deal with application**):

(a) In section 184 (2) (b), after “proposed acquisition”, insert:
including:

- (i) any registered native title body corporate (within the meaning of the Commonwealth Native Title Act) in relation to the land; and
- (ii) any prescribed body corporate (within the meaning of the Native Title (New South Wales) Act 1994) in relation to the land registered on the native title register kept under the Native Title (New South Wales) Act 1994.

(b) At the end of the section, insert:

Note: “**Registered native title body corporate**” is defined in s. 254 NTA. “**Prescribed body corporate**” is defined in section 28 (3) of the Native Title (New South Wales) Act 1994.

(5) Section 191A:

After section 191, insert:

Requests for non-monetary compensation for native title

191A. (1) This section applies to any negotiations held about a compulsory acquisition of native title rights and interests under this Division.

(2) If, during any such negotiations, a person or persons who may be entitled to compensation ask that the whole or part of the compensation should be in a form other than money, the other person or persons involved in the negotiations:

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER
ACTS—*continued*

- (a) must consider the request; and
- (b) must negotiate in good faith about the request.

Note: Section 79 NTA requires that requests for non-monetary compensation by persons who may be entitled to compensation for impairment or extinguishment of native title rights and interests must be handled in the manner referred to in section 191A. The transfer of property or the supply of goods or services are examples of compensation in a form other than money.

(6) Section 194A:

After section 194, insert:

Entitlement of native title holders to just compensation

194A. If the compensation that ‘is payable under this Part to a person from whom native title rights and interests in relation to land have been acquired does not amount to compensation on just terms within the meaning of the Commonwealth Native Title Act, the person concerned is entitled to such additional compensation as is necessary to ensure that the compensation is paid on that basis.

Note: Section 23 (3) (c) NTA provides an entitlement to compensation on the basis set out in s. 194A if an acquisition of native title is other than on just terms within the meaning of the Commonwealth Native Title Act.

(7) Schedule 2 (**Savings, transitional and other provisions**):

At the end of clause 1 (1), insert:

Native Title (New South Wales) Act 1994;

(8) Dictionary:

In the definition of “interest in land”, after “over”, insert “or in connection with”.

Transport Administration Act 1988 No. 109

(1) Section 90 (**Acquisition of land**):

- (a) After section 90 (1), insert:

(1A) The other purposes for which land may be acquired under subsection (1) include for the purposes of a future sale, lease or disposal, that is, to enable the State Rail Authority to exercise its functions in relation to land under this Act.

SCHEDULE 1—MISCELLANEOUS AMENDMENT OF OTHER ACTS—*continued*

- (b) After section 90 (4), insert:
- (5) Nothing in this section is taken to mean that the State Rail Authority cannot exercise functions in relation to land under this Act unless the State Rail Authority first compulsorily acquires the land concerned.
- (2) Section 101 (Acquisition of land):
- (a) After section 101 (1), insert:
- (1A) The purposes for which land may be acquired under subsection (1) include for the purposes of a future sale, lease or disposal, that is, to enable the State Transit Authority to exercise its functions in relation to land under this Act.
- (b) After section 101 (4), insert:
- (5) Nothing in this section is taken to mean that the State Transit Authority cannot exercise functions in relation to land under this Act unless the State Transit Authority first compulsorily acquires the land concerned.
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*[Minister's second reading speech made in-
Legislative Assembly on 21 April 1994 am
Legislative Council on 12 May 1994]*