Native Title Act 1993

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About this compilation

This compilation

This is a compilation of the *Native Title Act 1993* that shows the text of the law as amended and in force on 12 June 2024 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary 4

1 Short title 4
2 Commencement 4
3 Objects 4
4 Overview of Act 5
5 Act binds Crown 7
6 Application to external Territories, coastal sea and other waters 7
7 Racial Discrimination Act 7
8 Effect of this Act on State or Territory laws 8
8A Application of the *Criminal Code* 8
9 Definitions located in Part 15 8

Part 2—Native Title 9

Division 1—Recognition and protection of native title 9

10 Recognition and protection of native title 9
11 Extinguishment of native title 9
13 Approved determinations of native title 9

Division 2—Validation of past acts 12

Subdivision AA—Overview of Division 12

13A Overview of Division 12

Subdivision A—Acts attributable to the Commonwealth 12

14 Validation of Commonwealth acts 12
15 Effect of validation on native title 13
16 Preservation of beneficial reservations and conditions 13
17 Entitlement to compensation 14
18 Where *just terms* invalidity 15

Subdivision B—Acts attributable to a State or Territory 15

19 State/Territory acts may be validated 15
20 Entitlement to compensation 16

Division 2A—Validation of intermediate period acts etc. 17

Subdivision A—Overview of Division 17

21 Overview of Division 17

Authorised Version C2024C00224 registered 19/06/2024

Subdivision B—Acts attributable to the Commonwealth 18
22A Validation of Commonwealth acts 18
22B Effect of validation on native title 18
22C Preservation of beneficial reservations and conditions 19
22D Entitlement to compensation 19
22E Where "just terms" invalidity 19
22EA Requirement to notify: mining rights 20
Subdivision C—Acts attributable to a State or Territory 21
22F State/Territory acts may be validated 21
22G Entitlement to compensation 21
22H Requirement to notify: mining rights 22
Division 2AA—Validation of transfers under New South Wales land rights legislation 24
22I Overview of Division 24
22J Validation of transfers 24
22K Effect of validation on native title 24
22L Entitlement to compensation 24
Division 2B—Confirmation of past extinguishment of native title by certain valid or validated acts 26
23A Overview of Division 26
23B Previous exclusive possession act 26
23C Confirmation of extinguishment of native title by previous exclusive possession acts of Commonwealth 29
23D Preservation of beneficial reservations and conditions 30
23DA Confirmation of validity of use of certain land held by Crown etc. 30
23E Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory 31
23F Previous non-exclusive possession act 31
23G Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of Commonwealth 32
23H Preservation of beneficial reservations and conditions 33
23HA Notification 33

Authorised Version C2024C00224 registered 19/06/2024

23I Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory 34
23J Compensation 34
23JA Attribution of certain acts 34
Division 3—Future acts etc. and native title 36
Subdivision A—Preliminary 36
24AA Overview 36
24AB Order of application of provisions 38
24AC Regulations about notification 39
Subdivision B—Indigenous land use agreements (body corporate agreements) 39
24BA Indigenous land use agreements (body corporate agreements) 39
24BB Coverage of body corporate agreements 39
24BC Body corporate agreements only where bodies corporate for whole area 40
24BD Parties to body corporate agreements 41
24BE Consideration and conditions 42
24BF Assistance to make body corporate agreements 42
24BG Application for registration of body corporate agreements 42
24BH Notice of body corporate agreements 43
24BI Registration of body corporate agreements 44
Subdivision C—Indigenous land use agreements (area agreements) 45
24CA Indigenous land use agreements (area agreements) 45
24CB Coverage of area agreements 45
24CC Requirement that no bodies corporate for whole of area 46
24CD Parties to area agreements 46
24CE Consideration and conditions 49
24CF Assistance to make area agreements 49
24CG Application for registration of area agreements 50
24CH Notice of area agreements etc. 51
24CI Objections against registration 53
24CJ Decision about registration 54
24CK Registration of area agreements certified by representative bodies 54

Authorised Version C2024C00224 registered 19/06/2024

24CL Registration of area agreements not certified by representative Aboriginal/Torres Strait Islander bodies....55

Subdivision D—Indigenous land use agreements (alternative procedure agreements) 58

24DA Indigenous land use agreements (alternative procedure agreements) 58
24DB Coverage of alternative procedure agreements 58
24DC No extinguishment of native title 59
24DD Bodies corporate and representative bodies etc. 59
24DE Parties to alternative procedure agreements 60
24DF Consideration and conditions 61
24DG Assistance to make alternative procedure agreements 61
24DH Application for registration of alternative procedure agreements 62
24DI Notice of alternative procedure agreements 62
24DJ Objections against registration 64
24DK Decision about registration 65
24DL Registration of alternative procedure agreements 65
24DM Other registration procedures and conditions 66

Subdivision E—Effect of registration of indigenous land use agreements 66

24EA Contractual effect of registered agreement 66
24EB Effect of registration on proposed acts covered by indigenous land use agreements 67
24EBA Effect of registration on previous acts covered by indigenous land use agreements 70
24EC Agreements unrelated to future acts 72
24ED Amended agreements 72

Subdivision F—Future acts: if procedures indicate absence of native title 73

24FA Consequences if section 24FA protection applies 73
24FB When section 24FA protection arises—government applications 74
24FC When section 24FA protection arises—non-government applications 74
24FD When section 24FA protection arises—entry on National Native Title Register 75
24FE Relevant native title claim 75

Authorised Version C2024C00224 registered 19/06/2024

Subdivision G—Future acts and primary production 76
24GA Primary production activity 76
24GB Acts permitting primary production on non-exclusive agricultural and pastoral leases 77
24GC Primary production etc. activities on non-exclusive agricultural or pastoral leases 80
24GD Acts permitting off-farm activities that are directly connected to primary production activities 81
24GE Granting rights to third parties etc. on non-exclusive agricultural or pastoral leases....83
Subdivision H—Management of water and airspace 85
24HA Management or regulation of water and airspace 85
Subdivision I—Renewals and extensions etc. 87
24IA Future acts to which this section applies 87
24IB Pre-existing right-based acts 87
24IC Future acts that are permissible lease etc. renewals 87
24ID Effect of Subdivision applying to an act 90
Subdivision JA—Public housing etc. 92
24JAA Public housing etc. 92
Subdivision J—Reservations, leases etc. 98
24JA Acts covered by this Subdivision 98
24JB Treatment of acts covered by section 24JA....99
Subdivision K—Facilities for services to the public 101
24KA Facilities for services to the public....101
Subdivision L—Low impact future acts 105
24LA Low impact future acts 105
Subdivision M—Acts passing the freehold test 106
24MA Legislative acts 106
24MB Non-legislative acts 107
24MC Only onshore places covered....108
24MD Treatment of acts that pass the freehold test 108
Subdivision N—Acts affecting offshore places 116
24NA Acts affecting offshore places 116
Subdivision O—Future acts invalid unless otherwise provided 119
24OA Future acts invalid unless otherwise provided 119
Subdivision P—Right to negotiate 120
25 Overview of Subdivision....120

Authorised Version C2024C00224 registered 19/06/2024

26	When Subdivision applies	120
26A	Approved exploration etc. acts	123
26B	Approved gold or tin mining acts	126
26C	Excluded opal or gem mining	129
26D	Excluded mining acts: earlier valid acts	132
27	Arbitral body	133
27A	Relevant Minister	134
27B	Conditions under agreements or determinations etc.	134
28	Act invalid if done before negotiation or objection/appeal etc.	135
29	Notification of parties affected	136
30	Other native title parties etc	139
30A	Negotiation parties	140
31	Normal negotiation procedure	140
32	Expedited procedure	142
33	Negotiations to include certain things	144
34	No agreement if determination	144
35	Application for arbitral body determination	145
36	Arbitral body determination to be made as soon as practicable	145
36A	Ministerial determination if arbitral body determination delayed	146
36B	Consultation prior to section 36A determination	148
36C	Section 36A determinations	149
37	No arbitral body determination if agreement or Ministerial determination	152
38	Kinds of arbitral body determinations	152
39	Criteria for making arbitral body determinations	153
40	No re-opening of issues previously decided	155
41	Effect of determination or agreement	155
41A	Copies of agreements and determinations	157
41B	Access to information about agreements	158
42	Overruling of determinations	159
42A	Project acts—modified application of Subdivision	161
43	Modification of Subdivision if satisfactory alternative State or Territory provisions	161
43A	Exception to right to negotiate: satisfactory State/Territory provisions	165

Authorised Version C2024C00224 registered 19/06/2024

43B Mining rights covering both alternative provision area and other area....171
44 Additional operation of Subdivision....172

Subdivision Q—Conferral of access rights on native title claimants in respect of non-exclusive agricultural and pastoral leases 172

44A Conditions for Subdivision to apply....172
44B Rights of access for traditional activities....173
44C Suspension of native title rights....175
44D Certain other laws not affected....175
44E Federal Court jurisdiction....176
44F Request for mediation....176
44G Other mediation, arbitration and agreements not excluded by Subdivision....176

Division 4—Other provisions relating to native title 178

44H Rights conferred by valid leases etc....178
45 RDA compensation to be determined under this Act....178
46 Effect of grant of leases and licences validated by McArthur River legislation....179
47 Pastoral leases held by native title claimants....179
47A Reserves etc. covered by claimant applications....180
47B Vacant Crown land covered by claimant applications....182
47C National parks etc. covered by native title applications....184

Division 5—Determination of compensation for acts affecting native title etc. 189

48 Compensation payable in accordance with Division....189
49 No multiple compensation for essentially same act....189
50 Bodies that may determine compensation....189
51 Criteria for determining compensation....190
51A Limit on compensation....192
52 Bank guarantee required under *right to negotiate* procedures....192
52A Payment held in trust under *right to negotiate* procedures....198
53 *Just terms* compensation....200
54 Commonwealth compensation payable from CRF....201

Authorised Version C2024C00224 registered 19/06/2024

Division 6—Native title functions of prescribed bodies corporate and holding of native title in trust 202
55 Determinations by Federal Court 202
56 Determination whether native title to be held in trust 202
57 Determination of prescribed body corporate etc. 205
58 Functions under regulations 206
59 Kinds of prescribed bodies corporate may be determined 207
59A Prescribed bodies corporate for subsequent determinations of native title 207
60 Replacement of agent prescribed bodies corporate 208
60AAA Assistance in relation to registered native title bodies corporate 209
60AA Body corporate for Meriam people 209
Division 7—Financial matters 211
60AB Fees for services provided by registered native title bodies corporate in performing certain functions 211
60AC Opinion of the Registrar of Aboriginal and Torres Strait Islander Corporations 212
Part 3—Applications 214
Division 1AA—Overview of Part 214
60A Overview of Part 214
Division 1—Applications to the Federal Court: native title and compensation 215
61 Native title and compensation applications 215
61A Restrictions on making of certain applications 218
62 Information etc. in relation to certain applications 220
62A Power of applicants where application authorised by group 225
62B General law duties 225
62C Acting where persons are jointly the applicant etc. 225
63 Reference of applications to Native Title Registrar 227
64 Amendment of applications 227
66 Notice of application 229
66A Notice of amended application 232
66B Replacing the applicant 235
66C Registrar's role in relation to certain applications relating to future acts 237

Authorised Version C2024C00224 registered 19/06/2024

67 Overlapping native title determination applications 238
68 Only one determination of native title per area 238
Division 1A—Other applications to the Federal Court 240
69 Applications that may be made 240
70 Federal Court Rules about applications etc. 241
Division 2—Applications to the National Native Title Tribunal: right to negotiate 242
75 *Right to negotiate* applications 242
76 Material and fees to accompany applications 242
77 Action to be taken in relation to applications 243
Division 2A—Applications to the Native Title Registrar: objections against registration of indigenous land use agreements 244
77A Material and fees to accompany applications 244
77B Action to be taken in relation to applications 244
Division 3—Miscellaneous 245
78 Assistance in relation to proceedings 245
79 Requests for non-monetary compensation 245
Part 4—Determinations of the Federal Court 247
Division 1—Overview of Part 247
79A Overview of Part 247
Division 1A—General 248
80 Operation of Part 248
81 Jurisdiction of the Federal Court 248
82 Federal Court's way of operating 248
83 Assessor assisting the Federal Court 249
83A Federal Court may request searches to be conducted 249
84 Parties 250
84A Intervention by Commonwealth Minister 252
84B Parties may appoint an agent 253
84C Striking out applications for failure to comply with requirements of this Act 254
84D Proceedings affected by possible defect in authorisation 254
85 Representation before Federal Court 255
85A Costs 256

Authorised Version C2024C00224 registered 19/06/2024

86 Evidence and findings in other proceedings....256
Division 1B—Reference for mediation 258
86A Purpose of mediation....258
86B Referral of matters for mediation....259
86BA Mediator may appear before the Court....261
86C Cessation of mediation....262
86D Federal Court's powers....264
86E Federal Court may request reports from a mediator....264
Division 1C—Agreements and unopposed applications 266
86F Agreement to settle application etc.....266
86G Unopposed applications....267
87 Power of Federal Court if parties reach agreement....268
87A Power of Federal Court to make determination for part of an area....271
Division 2—Conferences etc. 275
88 Conferences....275
89 Right of appearance....275
90 Participation by telephone etc.....275
91 Conferences to be held in public except in special circumstances....275
92 Federal Court may prohibit disclosure of evidence....276
93 Powers of assessor to take evidence....276
Division 3—Orders 278
94 Order that compensation is payable....278
94A Order containing determination of native title....278
94B Order relating to an application that has been referred for mediation....278
94C Order dismissing an application relating to a future act....279
Division 4—Mediation 284
94D Mediation conferences....284
94E Parties at conferences....285
94F Other persons attending or participating in conferences....286
94G Producing documents....286
94H Referral of questions of fact or law....287
94J Referral of questions about whether a party should be dismissed....288

Authorised Version C2024C00224 registered 19/06/2024

94K Conferences to be held in private 289
94L Person conducting the mediation may prohibit disclosure of information etc. 289
94M Person conducting the mediation etc. must not be required to give evidence or produce documents to a court 290
94N Report etc. to be given to Federal Court 291
94P Reports about breaches of the requirement to act in good faith 292
94Q Public reporting about breaches of the requirement to act in good faith 294
94R Protection of person conducting the mediation 294
94S Regulations about mediation 295

Part 5—Native Title Registrar 296
95 Appointment of Registrar 296
96 President may give directions to Registrar 296
96A Powers of Registrar—ILUAs and future act negotiations 296
97 Powers of Registrar—applications 297
97A Searches for Federal Court etc. 297
98 Powers of Registrar—registers 297
98AA Powers of Registrar—records of section 31 agreements 297
98A Power of Registrar—other public records and information 297
99 Delegation by Registrar 298
100 Remuneration and allowances 298
101 Terms and conditions of appointment 299
102 Leave of absence 299
103 Resignation 299
104 Termination of appointment 299
105 Outside employment 301
106 Disclosure of interests by Registrar 302
106A Appointment of acting Registrar 302

Part 6—National Native Title Tribunal 303
Division 1—Establishment, purpose and way of operating 303
107 Establishment of the National Native Title Tribunal 303
108 Function of the Tribunal 303

Authorised Version C2024C00224 registered 19/06/2024

109 Tribunal's way of operating 304
Division 2—Membership of the National Native Title Tribunal 305
110 Membership of the Tribunal....305
111 Appointment of members of Tribunal....306
112 Appointment of a Judge or an assessor as a member not to affect tenure etc. 306
113 Delegation to members....307
114 Remuneration and allowances....307
115 Terms and conditions of appointment....307
115A Acting appointments....308
116 Oath or affirmation of office 309
117 Leave of absence 310
118 Resignation....310
119 Termination of appointment—members other than Judges or assessors 311
120 Suspension of members other than a Judge—misbehaviour or incapacity 312
121 Outside employment....313
122 Disclosure of interests 314
Division 3—Organisation of the Tribunal 316
123 Arrangement of business....316
124 Constitution of Tribunal for exercise of powers 317
125 Reconstitution of the Tribunal....317
126 Member presiding....318
127 Places of sitting 318
Division 4—Management of the Tribunal 320
Subdivision A—Management responsibilities etc. of President of Tribunal and Federal Court Chief Executive Officer 320
128 Management of administrative affairs of Tribunal....320
129 Federal Court Chief Executive Officer 320
129A Delegation by Federal Court Chief Executive Officer 321
Subdivision B—Other officers, staff and consultants 321
130 Deputy Registrars and staff etc. 321
131A President may arrange for consultants to be engaged....322
131B Disclosure of interests 323

Authorised Version C2024C00224 registered 19/06/2024

Subdivision C—Miscellaneous administrative matters 324
133 Annual report....324
136 Proceedings arising out of administrative affairs of Tribunal....325
Division 4AA—Review on whether there are native title rights and interests 326
136GC Review on whether there are native title rights and interests....326
136GD Member conducting a review may prohibit disclosure of information....328
136GE Reports....329
Division 4B—How assistance, mediation or review is to be provided 330
136H Regulations about assistance, mediation or review....330
Division 5—Inquiries and determinations by the Tribunal 331
Subdivision A—Special inquiries 331
137 Special inquiries....331
138 Notice....331
Subdivision AA—Native title application inquiries 331
138A Application....331
138B Native title application inquiries....332
138C Tribunal to hold inquiry....332
138D Notice to be given to certain persons before inquiry is held....333
138E Relationship to mediation and reviews on whether there are native title rights and interests....333
138F Cessation of inquiry....334
138G Inquiries may cover more than one proceeding....334
Subdivision B—Inquiries—General 334
139 Inquiries....334
140 Inquiries may cover more than one matter....335
141 Parties....335
142 Opportunity to make submissions concerning evidence....337
143 Representation before Tribunal....337
144 Manner in which questions to be decided....337
145 Reference of questions of law to the Federal Court....337
146 Evidence and findings in other proceedings....338

Authorised Version C2024C00224 registered 19/06/2024

147 Power of Tribunal where a proceeding is frivolous or vexatious 339
148 Power of Tribunal where no jurisdiction, failure to proceed etc....339
149 Power of Tribunal where applicant requests dismissal 339
149A Power of Tribunal to reinstate application 339
Subdivision C—Conferences and hearings 340
150 Conferences 340
151 Hearings....340
152 Right of appearance....341
153 Participation by telephone etc. 341
154 Hearings to be held in public except in special circumstances 341
154A Exception—hearings to be held in private if held during course of a native title application inquiry....342
155 Tribunal may prohibit disclosure of evidence 343
156 Powers of Tribunal to take evidence 343
157 Tribunal may authorise another person to take evidence....344
158 Interpreters....345
159 Retention and copying of documents 345
Subdivision D—Determinations and reports 345
162 Determination of the Tribunal—right to negotiate applications....345
163 Reports after special inquiries 346
163AA Reports after inquiries into subsection 24DJ(1) objection applications....346
163A Reports after native title application inquiries 346
164 Determinations and reports to be in writing 347
Subdivision F—Appeals 347
169 Appeals to Federal Court from decisions and determinations of the Tribunal 347
170 Operation and implementation of a decision or determination that is subject to appeal 348
Division 6—Offences 350
171 Failure of witness to attend 350
172 Refusal to be sworn or to answer questions etc....350
173 Giving of false or misleading evidence 351
174 Refusal to produce document....351

Authorised Version C2024C00224 registered 19/06/2024

176 Contravention of direction prohibiting disclosure of evidence 351
177 Contempt of Tribunal 351
Division 7—Miscellaneous 353
178 Sending of documents to the Federal Court 353
179 Return of documents etc. at completion of proceeding 353
180 Protection of members and persons giving evidence 354
181 Confidential information not to be disclosed 354
182 Fees for persons giving evidence 356
Part 7—Register of Native Title Claims 357
184 Claims to native title 357
185 Register of Native Title Claims 357
186 Contents of the Register 357
187 Inspection of the Register 358
188 Parts of the Register may be kept confidential 359
189 Senior Registrar of the High Court to notify Registrar 359
189A Federal Court Chief Executive Officer to notify Native Title Registrar 359
190 Keeping the Register 360
190A Registrar to consider claims 363
190B Registration: conditions about merits of the claim 367
190C Registration: conditions about procedural and other matters 370
190D If the claim cannot be registered—notice of decision 372
190E If the claim cannot be registered—reconsideration by the NNTT 373
190F If the claim cannot be registered—review by Federal Court 376
191 Delegation by Registrar to recognised State/Territory body 378
Part 8—National Native Title Register 379
192 National Native Title Register 379
193 Contents of the Register 379
194 Inspection of the Register 381
195 Parts of the Register may be kept confidential 382

Authorised Version C2024C00224 registered 19/06/2024

197 Keeping the Register 382
198 Delegation by Registrar to recognised State/Territory body 382
199 Registrar to notify land titles office....382

Part 8A—Register of Indigenous Land Use Agreements 384
199A Register of Indigenous Land Use Agreements....384
199B Contents of the Register etc....384
199C Removal of details of agreement from Register....385
199D Inspection of the Register....388
199E Parts of the Register to be kept confidential....388
199F Delegation by Registrar....388

Part 9—Financial assistance to States and Territories 389
200 Financial assistance to States and Territories....389

Part 11—Representative Aboriginal/Torres Strait Islander bodies 390

Division 1—Preliminary 390
201A Definitions....390
201B Eligible bodies....391

Division 2—Recognition of representative Aboriginal/Torres Strait Islander bodies 392
203A Inviting applications for recognition....392
203AA Revocation of invitations....393
203AAA Eligible body must notify the Commonwealth Minister if it decides not to apply for recognition etc. 394
203AB Application for recognition 394
203AC Dealing with applications....395
203AD Recognition of representative bodies 396
203AE Commonwealth Minister may vary an area for which a body is the representative body 398
203AF Notification requirements for the variation of an area on the Commonwealth Minister's own initiative....399
203AG Notice of decision on variation 401
203AH Withdrawal of recognition....402
203AI Matters to which Commonwealth Minister must have regard 404

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Functions and powers of representative bodies 405
203B Functions of representative bodies 405
203BA How functions of representative bodies are to be performed 406
203BB Facilitation and assistance functions 407
203BC How facilitation and assistance functions are to be performed 409
203BD Matters that overlap different representative body areas 410
203BE Certification functions 411
203BF Dispute resolution functions 413
203BG Notification functions 414
203BH Agreement making function 415
203BI Internal review functions 415
203BJ Other functions 416
203BK Powers of representative bodies 417
Division 4—Finance 418
203C Funding of representative bodies 418
203CA Conditions of funding 418
203CB Banking and investment 420
Division 5—Accountability 423
203DA Accounting records 423
203DB Payments to be properly made etc. 423
203DF Inspection and audit, or investigation, of a representative body 424
203DG Access to information 426
203DH Effect of withdrawal of recognition 428
Division 6—Conduct of directors and other executive officers 429
203E Application of Division 429
203EA Representative bodies that are not corporations 429
203EB Representative bodies registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* 430
Division 7—Miscellaneous 433
203F Secretary to inform Minister of certain matters 433
203FB Review of assistance decisions 433
203FBA External review 434
203FBB Review by Secretary of the Department 436
203FC Transfer of documents and records 438

Authorised Version C2024C00224 registered 19/06/2024

203FCA Representative body etc. to comply with wishes of traditional custodians....440
203FD Liability of executive officers etc....441
203FE Provision of funding by the Commonwealth....441
203FEA Application of this Act to persons and bodies funded under subsection 203FE(1)....443
203FEB Application of this Act to persons and bodies funded under subsection 203FE(2)....445
203FEC Certain provisions do not apply to persons and bodies funded under subsection 203FE(1) or (2)....447
203FED Liability....448
203FF Financial and accountability requirements imposed by other legislation....448
203FG False statements etc....448
203FH Conduct by directors, employees and agents....449
203FI Delegation....451

Part 12A—State/Territory bodies 452

207A Recognised State/Territory body....452
207B Equivalent State/Territory bodies....454

Part 13—Miscellaneous 459

208 Act not to apply so as to exceed Commonwealth power....459
209 Reports by Aboriginal and Torres Strait Islander Social Justice Commissioner....460
209A Evaluation of amendments made by the *Native Title Legislation Amendment Act 2021*....460
210 Operation of beneficial land rights laws not affected....461
211 Preservation of certain native title rights and interests....461
212 Confirmation of ownership of natural resources, access to beaches etc....462
213 Provisions relating to Federal Court jurisdiction....463
214 Application of amended rules of evidence in proceedings before the Federal Court....464
215 Regulations....464

Part 15—Definitions 467

Division 1—List of definitions 467

222 List of definitions....467

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Key concepts: Native title and acts of various kinds etc. 472
223 Native title 472
224 Native title holder 473
225 Determination of native title 473
226 Act 474
227 Act affecting native title 475
228 Past act 475
229 Category A past act 479
230 Category B past act 480
231 Category C past act 481
232 Category D past act 481
232A Intermediate period act 481
232B Category A intermediate period act 483
232C Category B intermediate period act 484
232D Category C intermediate period act 485
232E Category D intermediate period act 485
233 Future act 485
237 Act attracting the expedited procedure 487
237A Extinguish 487
238 Non-extinguishment principle 487
239 Act attributable to the Commonwealth, a State or a Territory 489
240 Similar compensable interest test 489
Division 3—Leases 490
241 Coverage of Division 490
242 Lease 490
243 Lessee 490
244 Permit 491
245 Mining lease 491
246 Commercial lease 493
247 Agricultural lease 493
247A Exclusive agricultural lease 494
247B Non-exclusive agricultural lease 494
248 Pastoral lease 494
248A Exclusive pastoral lease 494
248B Non-exclusive pastoral lease 495
249 Residential lease 495
249A Community purposes lease 495

Authorised Version C2024C00224 registered 19/06/2024

249B Perpetual lease 496
249C Scheduled interest 496
Division 4—Sundry definitions etc. 497
250 Application to things happening before commencement 497
251A Authorising the making of indigenous land use agreements 497
251B Authorising the making of applications 497
251BA Conditions on authority 498
251C Towns and cities 499
251D Land or waters on which a public work is constructed, established or situated 501
252 Notify the public in the determined way 501
253 Other definitions 501
Schedule 1—Scheduled interests 512
Part 1—New South Wales 512
1 *Crown Lands Occupation Act 1861* 512
2 *Crown Lands Act 1884* 512
3 *Western Lands Act 1901*, *Crown Lands Consolidation Act 1913* and other land Acts 513
4 *Returned Soldiers Settlement Act 1916* 517
5 *Closer Settlement Amendment (Conversion) Act 1943* 517
6 *Crown Lands Act 1989* 517
7 National Parks legislation 517
8 Various Acts 518
Part 2—Victoria 519
9 Land Acts etc. 519
10 Water Acts etc. 524
11 Forests Acts 524
12 National Parks Act 1975 525
13 Alpine Resorts Act 1983 525
14 Gardens Acts 526
15 Settlement Acts etc. 526
16 Crown Land (Reserves) Act 1978 527
17 Melbourne and Metropolitan Board of Works Acts 527
18 Port Acts etc. 528
19 Railway and Transport Acts 529

Authorised Version C2024C00224 registered 19/06/2024

20 Various Acts 529

Part 3—Queensland 531

21 Leases under various Land Acts etc. 531
22 Freeholding leases 535
23 Homestead interests 535
24 Settlement farm leases 536
25 Agricultural farms 536
26 Perpetual lease selections 536
27 Perpetual town leases 537
28 Perpetual suburban leases 537
29 Perpetual country leases 537
30 Prickly pear-related interests 538
31 Leases under agreements given the force of law 538
32 Various interests 539

Part 4—Western Australia 541

33 Legislation before 1898 541
34 *Land Act 1898* and *Land Act 1933* 541
35 Other legislation after 1898 547
36 Leases under certain mining-related and other Acts 547

Part 5—South Australia 550

37 Perpetual leases and leases for a term of years 550
38 Miscellaneous leases 551
39 Other interests 554

Part 6—Tasmania 557

40 Crown Lands Acts 557
41 *Closer Settlement Act 1929* 558

Part 7—Northern Territory 559

42 Town leases etc. 559
43 Agricultural leases etc. 559
44 Leases for special purposes etc. 561
45 Miscellaneous leases 563
46 Other leases 565

Endnotes 569

Endnote 1—About the endnotes 569

Endnote 2—Abbreviation key 571

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history 572
Endnote 4—Amendment history 582

Authorised Version C2024C00224 registered 19/06/2024

An Act about native title in relation to land or waters, and for related purposes

Preamble

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

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

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

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

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

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

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

The High Court has:

(a) rejected the doctrine that Australia was *terra nullius* (land belonging to no-one) at the time of European settlement; and

Authorised Version C2024C00224 registered 19/06/2024

(b) held that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional lands; and

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

The people of Australia intend:

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

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

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

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

(a) claims to land, or aspirations in relation to land, by Aboriginal peoples and Torres Strait Islanders; and

(b) proposals for the use of such land for economic purposes.

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

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

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

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

The Parliament of Australia therefore enacts:

Authorised Version C2024C00224 registered 19/06/2024

Part 1—Preliminary

1 Short title

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

2 Commencement

Commencement of provisions on Royal Assent

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

Commencement of provisions by Proclamation

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

Forced commencement of provisions

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

3 Objects

Main objects

The main objects of this Act are:

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

4 Overview of Act

Recognition and protection of native title

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

Topics covered

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

Kinds of acts affecting native title

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

Consequences of past acts and future acts

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

Authorised Version C2024C00224 registered 19/06/2024

Intermediate period acts

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

Confirmation of extinguishment of native title

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

Role of Federal Court and National Native Title Tribunal

(7) This Act also:

(a) provides for the Federal Court to make determinations of native title and compensation; and

(aa) provides for the Federal Court to refer native title and compensation applications for mediation; and

(ab) provides for the Federal Court to make orders to give effect to terms of agreements reached by parties to proceedings including terms that involve matters other than native title; and

(b) establishes a National Native Title Tribunal with power to:

(i) make determinations about whether certain future acts can be done and whether certain agreements concerning native title are to be covered by the Act; and

(ii) provide assistance or undertake mediation in other matters relating to native title; and

Authorised Version C2024C00224 registered 19/06/2024

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

5 Act binds Crown

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

6 Application to external Territories, coastal sea and other waters

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

7 Racial Discrimination Act

(1) This Act is intended to be read and construed subject to the provisions of the *Racial Discrimination Act 1975*.

(2) Subsection (1) means only that:

(a) the provisions of the *Racial Discrimination Act 1975* apply to the performance of functions and the exercise of powers conferred by or authorised by this Act; and

(b) to construe this Act, and thereby to determine its operation, ambiguous terms should be construed consistently with the *Racial Discrimination Act 1975* if that construction would remove the ambiguity.

(3) Subsections (1) and (2) do not affect the validation of past acts or intermediate period acts in accordance with this Act.

Authorised Version C2024C00224 registered 19/06/2024

8 Effect of this Act on State or Territory laws

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

8A Application of the *Criminal Code*

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

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

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

9 Definitions located in Part 15

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

Authorised Version C2024C00224 registered 19/06/2024

Part 2—Native Title

Division 1—Recognition and protection of native title

10 Recognition and protection of native title

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

11 Extinguishment of native title

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

Effect of subsection (1)

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

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

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

13 Approved determinations of native title

Applications to Federal Court

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

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

(b) to revoke or vary an approved determination of native title on the grounds set out in subsection (5).

Authorised Version C2024C00224 registered 19/06/2024

Native title determinations by Federal Court when determining compensation entitlements

(2) If:

(a) the Federal Court is making a determination of compensation in accordance with Division 5; and

(b) an approved determination of native title has not previously been made in relation to the whole or part of the area concerned;

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

Note: The compensation application must contain the information that would be required for a native title determination application for the area: see section 62.

Approved determinations of native title

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

(a) a determination of native title made on an application under paragraph (1)(a) or in accordance with subsection (2);

(b) an order, judgment or other decision of a recognised State/Territory body that involves a determination of native title in relation to an area within the jurisdictional limits of the State or Territory.

Variation or revocation of determinations

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

(a) the Federal Court, in determining an application under Part 3; or

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

Authorised Version C2024C00224 registered 19/06/2024

then:

(c) in the case of a variation—the determination as varied becomes an ***approved determination of native title*** in place of the original; and

(d) in the case of a revocation—the determination is no longer an approved determination of native title.

Grounds for variation or revocation

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

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

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

(c) that the determination relates to an area in relation to which the agreement required by paragraph 47C(1)(b) has been given.

Note: Section 47C provides for extinguishment of native title rights and interests in relation to certain areas such as national parks etc. to be disregarded.

Review or appeal

(6) If:

(a) a determination of the Federal Court; or

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

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

High Court determinations

(7) A determination of native title by the High Court is an ***approved determination of native title***.

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Validation of past acts

Subdivision AA—Overview of Division

13A Overview of Division

(1) In summary, this Division validates, or allows States and Territories to validate, certain acts that:

(a) took place before 1 January 1994; and

(b) would otherwise be invalid because of native title.

This Division also covers certain acts done after that day consisting of an extension or renewal etc. of an act done before that day.

(2) The acts validated are called ***past acts***; they are defined in section 228.

(3) This Division also sets out the effect of such validation on native title. The effect varies depending on the nature of the act. For this purpose, different categories of past act are defined by sections 229 to 232.

Subdivision A—Acts attributable to the Commonwealth

14 Validation of Commonwealth acts

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

Effect of validation of law

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

(a) the grant or issue of any lease, licence, permit or authority; or

(b) the creation of any interest in relation to land or waters;

under any legislation concerned, unless the grant, issue or creation is itself a past act attributable to the Commonwealth.

Authorised Version C2024C00224 registered 19/06/2024

15 Effect of validation on native title

(1) If a past act is an act attributable to the Commonwealth:

(a) if it is a category A past act other than one to which subsection 229(4) (which deals with public works) applies—the act extinguishes the native title concerned; and

(b) if it is a category A past act to which subsection 229(4) applies:

(i) in any case—the act extinguishes the native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and

(ii) if paragraph 229(4)(a) applies—the extinguishment is taken to have happened on 1 January 1994; and

(c) if it is a category B past act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned—the act extinguishes the native title to the extent of the inconsistency; and

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

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

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

16 Preservation of beneficial reservations and conditions

If:

(a) the act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or

Authorised Version C2024C00224 registered 19/06/2024

(b) the doing of the act would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage);

nothing in section 15 affects that reservation or condition or those rights or interests.

17 Entitlement to compensation

Extinguishment case

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

Non-extinguishment case

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

(a) the native title concerned is to some extent in relation to an onshore place and the act could not have been validly done on the assumption that the native title holders instead held ordinary title to:

(i) any land concerned; and

(ii) the land adjoining, or surrounding, any waters concerned; or

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

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

Compensation for partial effect of act

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

Authorised Version C2024C00224 registered 19/06/2024

Who pays compensation

(4) The compensation is payable by the Commonwealth.

18 Where *just terms* invalidity

Section applies if acquisition of property other than on just terms

(1) This section applies if the invalidity (disregarding section 14) of a past act attributable to the Commonwealth results from a paragraph 51(xxxi) acquisition of property by the Commonwealth from any person having been made otherwise than on paragraph 51(xxxi) just terms.

Entitlement to compensation

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

Subdivision B—Acts attributable to a State or Territory

19 State/Territory acts may be validated

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

Effect of validation of law

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

(a) the grant or issue of any lease, licence, permit or authority; or

Authorised Version C2024C00224 registered 19/06/2024

(b) the creation of any interest in relation to land or waters;

under any legislation concerned, unless the grant, issue or creation is itself a past act attributable to the State or Territory.

20 Entitlement to compensation

Compensation where validation

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

Compensation where no validation

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

Recovery of compensation

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

States or Territories may create compensation entitlement

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

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

Authorised Version C2024C00224 registered 19/06/2024

Division 2A—Validation of intermediate period acts etc.

Subdivision A—Overview of Division

21 Overview of Division

(1) In summary, this Division validates, or allows States and Territories to validate, certain acts that:

(a) took place on or after 1 January 1994 but on or before 23 December 1996; and

(b) would otherwise be invalid to any extent because they fail to pass any of the future act tests in Division 3 of Part 2 or for any other reason because of native title.

(2) The acts are called ***intermediate period acts***; they are defined in section 232A.

(3) For this validation to apply, before the act was done, there must have been:

(a) a grant of a freehold estate or a lease (other than a mining lease); or

(b) a public work;

over any of the land or waters concerned.

(4) The Division also sets out the effect of such validation on native title. The effect varies depending on the nature of the act. For this purpose, different categories of intermediate period act are defined by sections 232B to 232E.

(5) The structure of the Division is very similar to that of Division 2 (which deals with validation of past acts).

Authorised Version C2024C00224 registered 19/06/2024

Subdivision B—Acts attributable to the Commonwealth

22A Validation of Commonwealth acts

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

22B Effect of validation on native title

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

(a) if it is a category A intermediate period act to which subsection 232B(2), (3) or (4) (which deal with things such as the grant or vesting of freehold estates and certain leases) applies—the act extinguishes all native title in relation to the land or waters concerned; and

(b) if it is a category A intermediate period act to which subsection 232B(7) (which deals with public works) applies:

(i) the act extinguishes the native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and

(ii) the extinguishment is taken to have happened when the construction or establishment began; and

(c) if it is a category B intermediate period act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned—the act extinguishes the native title to the extent of the inconsistency; and

(d) if it is a category C intermediate period act or a category D intermediate period act—the non-extinguishment principle applies to the act.

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

Authorised Version C2024C00224 registered 19/06/2024

22C Preservation of beneficial reservations and conditions

If:

(a) an intermediate period act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(b) the doing of an intermediate period act attributable to the Commonwealth would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage);

nothing in section 22B affects that reservation or condition or those rights or interests.

22D Entitlement to compensation

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

Who pays compensation

(2) The compensation is payable by the Commonwealth.

22E Where "just terms" invalidity

Section applies if acquisition of property other than on just terms

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

Entitlement to compensation

(2) The person is entitled to compensation from the Commonwealth for the acquisition in accordance with Division 5 and, if that compensation does not ensure that the acquisition is made on

Authorised Version C2024C00224 registered 19/06/2024

paragraph 51(xxxi) just terms, to such additional compensation from the Commonwealth as is necessary to ensure that it is.

22EA Requirement to notify: mining rights

(1) If:

(a) an act that is attributable to the Commonwealth consists of:

(i) the creation of a right to mine; or

(ii) the variation of such a right to extend the area to which it relates; or

(iii) the extension of the period for which such a right has effect, other than under an option or right of extension or renewal created by the lease, contract or other thing whose grant or making created the right to mine; and

(b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and

(c) at any time before the act was done, either:

(i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or

(ii) a public work was constructed or established on any of the land or waters affected by the act;

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

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

(e) notify the public in the determined way of the details set out in subsection (2).

Details

(2) The details are:

(a) the date on which the act was done; and

Authorised Version C2024C00224 registered 19/06/2024

(b) the kind of mining involved; and
(c) sufficient information to enable the area affected by the act to be identified; and
(d) information about the way in which further details about the act may be obtained.

Subdivision C—Acts attributable to a State or Territory

22F State/Territory acts may be validated

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

22G Entitlement to compensation

Compensation where validation

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

Recovery of compensation

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

States or Territories may create compensation entitlement

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

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

Authorised Version C2024C00224 registered 19/06/2024

22H Requirement to notify: mining rights

(1) If:

(a) an act that is attributable to a State or Territory consists of:

(i) the creation of a right to mine; or

(ii) the variation of such a right to extend the area to which it relates; or

(iii) the extension of the period for which such a right has effect, other than under an option or right of extension or renewal created by the lease, contract or other thing whose grant or making created the right to mine; and

(b) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996; and

(c) at any time before the act was done, either:

(i) a grant of a freehold estate or a lease was made covering any of the land or waters affected by the act; or

(ii) a public work was constructed or established on any of the land or waters affected by the act;

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

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

(e) notify the public in the determined way of the details set out in subsection (2).

Details

(2) The details are:

(a) the date on which the act was done; and

(b) the kind of mining involved; and

Authorised Version C2024C00224 registered 19/06/2024

(c) sufficient information to enable the area affected by the act to be identified; and

(d) information about the way in which further details about the act may be obtained.

Authorised Version C2024C00224 registered 19/06/2024

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

22I Overview of Division

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

22J Validation of transfers

If:

(a) future acts consist of the transfer of lands under section 36 of the *Aboriginal Land Rights Act 1983* of New South Wales; and

(b) the claims for the lands were made before 28 November 1994; and

(c) the acts took place before or take place after the commencement of this section; and

(d) the acts are not intermediate period acts; and

(e) the acts are invalid to any extent because of Division 3 of Part 2 or for any other reason, but would be valid to that extent if native title did not exist in relation to the lands;

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

22K Effect of validation on native title

The non-extinguishment principle applies to the acts.

22L Entitlement to compensation

Compensation where validation

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

Authorised Version C2024C00224 registered 19/06/2024

Recovery of compensation

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

Compensation to take into account rights etc. conferred by transferee

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

NSW may create compensation entitlement

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

23A Overview of Division

(1) In summary, this Division provides that certain acts attributable to the Commonwealth that were done on or before 23 December 1996 will have completely or partially extinguished native title.

(2) If the acts were ***previous exclusive possession acts*** (involving the grant or vesting of things such as freehold estates or leases that conferred exclusive possession, or the construction or establishment of public works), the acts will have completely extinguished native title.

(3) If the acts were ***previous non-exclusive possession acts*** (involving grants of non-exclusive agricultural leases or non-exclusive pastoral leases), they will have extinguished native title to the extent of any inconsistency.

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

23B Previous exclusive possession act

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

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

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

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

(i) a Scheduled interest (see section 249C);

(ii) a freehold estate;

(iii) a commercial lease that is neither an agricultural lease nor a pastoral lease;

(iv) an exclusive agricultural lease (see section 247A) or an exclusive pastoral lease (see section 248A);

(v) a residential lease;

(vi) a community purposes lease (see section 249A);

(vii) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to "1 January 1994" were instead a reference to "24 December 1996";

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

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

(3) If:

(a) by or under legislation of a State or a Territory, particular land or waters are vested in any person; and

(b) a right of exclusive possession of the land or waters is expressly or impliedly conferred on the person by or under the legislation;

the vesting is taken for the purposes of paragraph (2)(c) to be the vesting of a freehold estate over the land or waters.

Construction of public works commencing on or before 23.12.1996

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

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

Authorised Version C2024C00224 registered 19/06/2024

(b) it consists of the construction or establishment of any public work that commenced to be constructed or established on or before 23 December 1996.

Exclusion of acts benefiting Aboriginal peoples or Torres Strait Islanders

(9) An act is not a ***previous exclusive possession act*** if it is:

(a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

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

Exclusion of national parks etc.

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

Exclusion of acts where legislation provides for non-extinguishment

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

Authorised Version C2024C00224 registered 19/06/2024

Exclusion of Crown to Crown grants etc.

(9C) If an act is the grant or vesting of an interest in relation to land or waters to or in the Crown in any capacity or a statutory authority, the act is not a ***previous exclusive possession act***:

(a) unless, apart from this Act, the grant or vesting extinguishes native title in relation to the land or waters; or

(b) if the grant or vesting does not, apart from this Act, extinguish native title in relation to the land or waters—

unless and until the land or waters are (whether before or after 23 December 1996) used to any extent in a way that, apart from this Act, extinguishes native title in relation to the land or waters.

Exclusion by regulation

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

Effect of exclusions

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

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

Acts other than public works

(1) If an act is a previous exclusive possession act under subsection 23B(2) (including because of subsection 23B(3)) and is attributable to the Commonwealth:

(a) the act extinguishes any native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned; and

(b) the extinguishment is taken to have happened when the act was done.

Authorised Version C2024C00224 registered 19/06/2024

Public works

(2) If an act is a previous exclusive possession act under subsection 23B(7) (which deals with public works) and is attributable to the Commonwealth:

(a) the act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and

(b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

Other extinguishment provisions do not apply

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

23D Preservation of beneficial reservations and conditions

If:

(a) a previous exclusive possession act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or

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

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

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

23F Previous non-exclusive possession act

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

Acts on or before 23.12.96

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

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

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

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

(c) it consists of the grant of a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B).

Acts after 23.12.96

(3) An act is also a ***previous non-exclusive possession act*** if:

(a) it takes place after 23 December 1996; and

(b) it would be a previous non-exclusive possession act under subsection (2) if that subsection were not limited in its application to acts taking place on or before 23 December 1996; and

(c) it takes place:

(i) in exercise of a legally enforceable right created by any act done on or before 23 December 1996; or

Authorised Version C2024C00224 registered 19/06/2024

(ii) in good faith in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith on or before 23 December 1996, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made.

Exclusion by regulation

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

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

(1) Subject to subsection (2), if a previous non-exclusive possession act (see section 23F) is attributable to the Commonwealth:

(a) to the extent that the act involves the grant of rights and interests that are not inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned, the rights and interests granted, and the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them; and

(b) to the extent that the act involves the grant of rights and interests that are inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned:

(i) if, apart from this Act, the act extinguishes the native title rights and interests—the native title rights and interests are extinguished; and

(ii) in any other case—the native title rights and interests are suspended while the lease concerned, or the lease as renewed, re-made, re-granted or extended, is in force; and

(c) any extinguishment under this subsection is taken to have happened when the act was done.

Authorised Version C2024C00224 registered 19/06/2024

Exclusion of certain acts

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

Effect on sections 15 and 22B

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

23H Preservation of beneficial reservations and conditions

If:

(a) a previous non-exclusive possession act attributable to the Commonwealth contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or

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

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

23HA Notification

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

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

Authorised Version C2024C00224 registered 19/06/2024

(b) they must be given an opportunity to comment on the act or class of acts.

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

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

23J Compensation

Entitlement

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

Commonwealth acts

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

State and Territory acts

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

23JA Attribution of certain acts

If:

(a) a previous exclusive possession act or a previous non-exclusive possession act took place before the

Authorised Version C2024C00224 registered 19/06/2024

establishment of a particular State, the Jervis Bay Territory, the Australian Capital Territory or the Northern Territory; and

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

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

(c) the State; or

(d) if the Territory is the Jervis Bay Territory—the Commonwealth; or

(e) if the Territory is the Australian Capital Territory or the Northern Territory—that Territory.

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

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Future acts etc. and native title

Subdivision A—Preliminary

24AA Overview

Future acts

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

Validity of future acts

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

Validity under indigenous land use agreements

(3) A future act will be valid if the parties to certain agreements (called indigenous land use agreements—see Subdivisions B, C and D) consent to it being done and, at the time it is done, details of the agreement are on the Register of Indigenous Land Use Agreements. An indigenous land use agreement, details of which are on the Register, may also validate a future act (other than an intermediate period act) that has already been invalidly done.

Other bases for validity

(4) A future act will also be valid to the extent covered by any of the following:

(a) section 24FA (future acts where procedures indicate absence of native title);

(b) section 24GB (acts permitting primary production on non-exclusive agricultural or pastoral leases);

Authorised Version C2024C00224 registered 19/06/2024

(c) section 24GD (acts permitting off-farm activities directly connected to primary production activities);
(d) section 24GE (granting rights to third parties etc. on non-exclusive agricultural or pastoral leases);
(e) section 24HA (management of water and airspace);
(f) section 24IA (acts involving renewals and extensions etc. of acts);
(fa) section 24JAA (public housing etc.);
(g) section 24JA (acts involving reservations, leases etc.);
(h) section 24KA (acts involving facilities for services to the public);
(i) section 24LA (low impact future acts);
(j) section 24MD (acts that pass the freehold test—but see subsection (5));
(k) section 24NA (acts affecting offshore places).

Right to negotiate

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

Extinguishment/non-extinguishment; procedural rights and compensation

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

Activities etc. prevail over native title

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

Authorised Version C2024C00224 registered 19/06/2024

Statutory access rights

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

24AB Order of application of provisions

Indigenous land use agreement provisions

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

Other provisions

(2) To the extent that a future act is covered by a particular section in the list in paragraphs 24AA(4)(a) to (k), it is not covered by a section that is lower in the list.

Note: It is important to know under which particular provision a future act is valid because the consequences in terms of compensation and procedural rights may be different.

(3) However, if, apart from subsection (2), a future act could be covered, to any extent, by both section 24JAA and section 24KA, then:

(a) if the act is notified in accordance with subsections 24JAA(10) to (12), it is not covered, to that extent, by section 24KA; and

(b) if the act is not notified in accordance with subsections 24JAA(10) to (12), it is not covered, to that extent, by section 24JAA.

Note: This allows for things, such as the construction of roads and electricity transmission or distribution facilities, to be done under either Subdivision JA or Subdivision K when done in connection with housing or facilities covered by Subdivision JA.

Authorised Version C2024C00224 registered 19/06/2024

24AC Regulations about notification

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

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

24BA Indigenous land use agreements (body corporate agreements)

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

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

24BB Coverage of body corporate agreements

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

(a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

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

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

(b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;

Authorised Version C2024C00224 registered 19/06/2024

(c) the relationship between native title rights and interests and other rights and interests in relation to the area;

(d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;

(e) extinguishing native title rights and interests in relation to land or waters in the area by the surrender of those rights and interests to the Commonwealth, a State or a Territory;

(eaa) providing a framework for the making of other agreements about matters relating to native title rights and interests;

(ea) compensation for any past act, intermediate period act or future act;

(f) any other matter concerning native title rights and interests in relation to the area.

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

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

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

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

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

(2) If:

(a) there is an approved determination of native title to the effect that native title does not exist in relation to part of the area; or

(b) part of the area was expressly excluded from the area covered by an approved determination of native title because of

Authorised Version C2024C00224 registered 19/06/2024

subsection 61A(2) (restrictions on making of certain applications);

it is not necessary for there to be a registered native title body corporate for that part of the area in order to satisfy subsection (1).

24BD Parties to body corporate agreements

Registered native title bodies corporate

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

Governments

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

Others

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

Procedure where no representative body party

(4) If there are any representative Aboriginal/Torres Strait Islander bodies for any of the area and none of them is proposed to be a party to the agreement, the registered native title body corporate, before entering into the agreement:

(a) must inform at least one of the representative Aboriginal/Torres Strait Islander bodies of its intention to enter into the agreement; and

(b) may consult any such representative Aboriginal/Torres Strait Islander bodies about the agreement.

Authorised Version C2024C00224 registered 19/06/2024

24BE Consideration and conditions

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

Consideration may be freehold grant or other interests

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

24BF Assistance to make body corporate agreements

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

(2) The NNTT must not use or disclose information to which it has had access only because it has provided assistance in negotiating the agreement for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

24BG Application for registration of body corporate agreements

Application

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

Things accompanying application

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

Authorised Version C2024C00224 registered 19/06/2024

Registrar may assist parties

(3) The Registrar may give such assistance as he or she considers reasonable to help a party to the agreement prepare the application and accompanying material.

24BH Notice of body corporate agreements

Notice to persons who are not parties to an agreement

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

(a) the Commonwealth Minister;

(b) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;

(c) any representative Aboriginal/Torres Strait Islander body for the area covered by the agreement;

(d) any local government body for the area covered by the agreement;

(e) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate.

Content of notice

(2) The notice under subsection (1) must:

(a) identify the area covered by the agreement, whether by including a map or otherwise; and

(b) state the name of each party to the agreement and the address at which the party can be contacted; and

(c) set out:

(i) any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b), (c) or (d) or 24EBA(1)(a); or

(ii) a summary of any statements included in the agreement that are of that kind, together with information about

Authorised Version C2024C00224 registered 19/06/2024

where further detail about the statements may be obtained.

Notice to specify day

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

Which days may be specified

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

Notice to parties to the agreement

(5) The Registrar must give notice to the parties to the agreement of the notification day for the agreement that was specified in the notice under subsection (1).

24BI Registration of body corporate agreements

(1) Subject to this section, the Registrar must register the agreement on the Register of Indigenous Land Use Agreements.

(2) The Registrar must not register the agreement if any of the parties to the agreement advises the Registrar, within 1 month after the notification day, that the party does not wish the agreement to be registered on the Register.

(3) The Registrar must not register the agreement if:

(a) a representative Aboriginal/Torres Strait Islander body for any of the area advises the Registrar, within 1 month after the notification day, that the requirements of paragraph 24BD(4)(a) were not complied with in relation to the agreement; and

Authorised Version C2024C00224 registered 19/06/2024

(b) the Registrar is satisfied that the requirements were not complied with.

Subdivision C—Indigenous land use agreements (area agreements)

24CA Indigenous land use agreements (area agreements)

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

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

24CB Coverage of area agreements

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

(a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

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

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

(b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;

(c) the relationship between native title rights and interests and other rights and interests in relation to the area;

(d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;

Authorised Version C2024C00224 registered 19/06/2024

(e) extinguishing native title rights and interests in relation to land or waters in the area by the surrender of those rights and interests to the Commonwealth, a State or a Territory;

(eaa) providing a framework for the making of other agreements about matters relating to native title rights and interests;

(ea) compensation for any past act, intermediate period act or future act;

(f) any other matter concerning native title rights and interests in relation to the area;

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

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

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

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

24CC Requirement that no bodies corporate for whole of area

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

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

24CD Parties to area agreements

Native title group to be parties

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

Authorised Version C2024C00224 registered 19/06/2024

Native title group where registered claimant or body corporate

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

(a) all registered native title claimants in relation to land or waters in the area; and

Note: The agreement will bind all members of the native title claim group concerned: see paragraph 24EA(1)(b).

(b) all registered native title bodies corporate in relation to land or waters in the area; and

(c) if, for any part (the ***non-claimed/determined part***) of the land or waters in the area, there is neither a registered native title claimant nor a registered native title body corporate—one or more of the following:

(i) any person who claims to hold native title in relation to land or waters in the non-claimed/determined part;

(ii) any representative Aboriginal/Torres Strait Islander body for the non-claimed/determined part.

(2A) The requirement that all registered native title claimants in relation to land or waters in the area be parties to the agreement is satisfied if, for each of those registered native title claimants:

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement—those persons are parties to the agreement.

(2B) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement as mentioned in paragraph (2A)(a). A failure to comply with this subsection does not invalidate the agreement.

Authorised Version C2024C00224 registered 19/06/2024

Native title group where no registered claimant or body corporate

(3) If subsection (2) does not apply, the ***native title group*** consists of one or more of the following:

(a) any person who claims to hold native title in relation to land or waters in the area;

(b) any representative Aboriginal/Torres Strait Islander body for the area.

Other native title parties

(4) If the native title group is covered by subsection (2), one or more of the following may also be parties to the agreement:

(a) any other person who claims to hold native title in relation to land or waters in the area;

(b) any representative Aboriginal/Torres Strait Islander body for the area.

Government parties

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

Other parties

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

Procedure where no representative body party

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

Authorised Version C2024C00224 registered 19/06/2024

(a) must inform at least one of the representative Aboriginal/Torres Islander bodies of its intention to enter into the agreement; and

(b) may consult any such representative Aboriginal/Torres Strait Islander bodies about the agreement.

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

24CE Consideration and conditions

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

Consideration may be freehold grant or other interests

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

24CF Assistance to make area agreements

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

(2) The NNTT must not use or disclose information to which it has had access only because it provided assistance in negotiating the agreement for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

Authorised Version C2024C00224 registered 19/06/2024

24CG Application for registration of area agreements

Application

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

Things accompanying application

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

Certificate or statement to accompany application in certain cases

(3) Also, the application must either:

(a) have been certified by all representative Aboriginal/Torres Strait Islander bodies for the area in performing their functions under paragraph 203BE(1)(b) in relation to the area; or

(b) include a statement to the effect that the following requirements have been met:

(i) all reasonable efforts have been made (including by consulting all representative Aboriginal/Torres Strait Islander bodies for the area) to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified;

(ii) all of the persons so identified have authorised the making of the agreement;

(iii) any conditions under section 251BA on the authority that relate to the making of the agreement have been satisfied;

together with a further statement briefly setting out the grounds on which the Registrar should be satisfied that the requirements are met.

Note: The word ***authorise*** is defined in section 251A.

Authorised Version C2024C00224 registered 19/06/2024

Registrar may assist parties

(4) The Registrar may give such assistance as he or she considers reasonable to help a party to the agreement prepare the application and accompanying material.

Certification not affected if Aboriginal/Torres Strait Islander body subsequently ceases to be recognised

(5) To avoid doubt, the certification of an application under Part 11 by a representative Aboriginal/Torres Strait Islander body is not affected merely because, after certification, the recognition of the body as the representative Aboriginal/Torres Strait Islander body for the area concerned is withdrawn or otherwise ceases to have effect.

24CH Notice of area agreements etc.

(1) If the Registrar is satisfied that an indigenous land use agreement that meets the requirements of sections 24CB to 24CE is in existence, the Registrar must:

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

(i) the Commonwealth Minister;

(ii) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;

(iii) any representative Aboriginal/Torres Strait Islander body for the area covered by the agreement;

(iv) any local government body for the area covered by the agreement;

(v) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate; and

(b) notify the public in the determined way of the agreement in accordance with subsection (2).

Authorised Version C2024C00224 registered 19/06/2024

Content of notice

(2) The notice under paragraph (1)(a) or (b) must:

(a) identify the area covered by the agreement, whether by including a map or otherwise; and

(b) state the name of each party to the agreement and the address at which the party can be contacted; and

(c) set out:

(i) any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b), (c) or (d) or 24EBA(1)(a); or

(ii) a summary of any statements included in the agreement that are of that kind, together with information about where further detail about the statements may be obtained; and

(d) include a statement that, within the period (the ***notice period***) of 3 months after the notification day (see subsection (3)):

(i) if the application was certified by representative Aboriginal/Torres Strait Islander bodies for the area (see paragraph 24CG(3)(a))—any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may object, in writing to the Registrar, against registration of the agreement on the ground that the requirements of paragraph 203BE(5)(a), (b) or (c) were not satisfied in relation to the certification; or

(ii) if the application contained a statement as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met (in summary, relating to identifying native title holders and ensuring that they have authorised the making of the agreement)—any person claiming to hold native title in relation to land or waters in the area covered by the agreement may wish, in response to the notice, to make a native title determination application or equivalent application under a law of a State or Territory.

Authorised Version C2024C00224 registered 19/06/2024

Notice to specify day

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

Which days may be specified

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

24CI Objections against registration

Making objections

(1) If the application was certified by representative Aboriginal/Torres Strait Islander bodies for the area (see paragraph 24CG(3)(a)), any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may object, in writing to the Registrar, against registration of the agreement on the ground that the requirements of paragraph 203BE(5)(a), (b) or (c) were not satisfied in relation to the certification.

Assistance in withdrawing objection

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

Information obtained to provide assistance not to be used or disclosed in other contexts

(3) The NNTT must not use or disclose information to which it has had access only because it provided assistance under subsection (2) for any purpose other than providing that assistance without the

Authorised Version C2024C00224 registered 19/06/2024

prior consent of the person who provided the NNTT with the information.

24CJ Decision about registration

The Registrar must, after the end of the notice period, decide whether or not to register an agreement covered by an application under this Subdivision on the Register of Indigenous Land Use Agreements. However, in a case where section 24CL is to be applied, the Registrar must not do so until all persons covered by paragraph (2)(b) of that section are known.

24CK Registration of area agreements certified by representative bodies

Registration only if conditions satisfied

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

First condition

(2) The first condition is that:
  (a) no objection under section 24CI against registration of the agreement was made within the notice period; or
  (b) one or more objections under section 24CI against registration of the agreement were made within the notice period, but they have all been withdrawn; or
  (c) one or more objections under section 24CI against registration of the agreement were made within the notice period, all of them have not been withdrawn, but none of the persons making them has satisfied the Registrar that the requirements of paragraph 203BE(5)(a), (b) or (c) were not satisfied in relation to the certification of the application by

Authorised Version C2024C00224 registered 19/06/2024

any of the representative Aboriginal/Torres Strait Islander bodies concerned.

Second condition

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

Matters to be taken into account

(4) In deciding whether he or she is satisfied as mentioned in paragraph (2)(c), the Registrar must take into account any information given to the Registrar in relation to the matter by:

(a) the persons making the objections mentioned in that paragraph; and

(b) the representative Aboriginal/Torres Strait Islander bodies that certified the application;

and may, but need not, take into account any other matter or thing.

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

Registration only if conditions satisfied

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

First condition

(2) The first condition is that the following are parties to the agreement:

Authorised Version C2024C00224 registered 19/06/2024

(a) any person who is, at the end of the notice period, a registered native title body corporate in relation to any of the land or waters in the area covered by the agreement; and

(aa) any applicant who is, at the end of the notice period, a registered native title claimant in relation to any of the land or waters in the area covered by the agreement; and

(b) any applicant who, after the end of the notice period, becomes a registered native title claimant in relation to any of the land or waters in the area covered by the agreement, where the application containing the claim was made before the end of the notice period and:

(i) the claim is accepted by the Registrar for registration under subsection 190A(6) or is (otherwise than on appeal or review) found to satisfy conditions equivalent to those set out in sections 190B and 190C under a law of a State or Territory; or

(ii) the claim is accepted by the Registrar for registration as a result of an application under subsection 190F(1), where the application was made not more than 28 days after the notice under subsection 190D(1) was given; or

(iia) the claim is accepted by the Registrar for registration as a result of notification given to the Registrar by the NNTT under section 190E on application under that section, where the application was made not more than 28 days after the notice under subsection 190D(1) was given; or

(iii) the claim is found to satisfy conditions equivalent to those set out in sections 190B and 190C under a provision of a law of a State or Territory to similar effect as section 190E or 190F, and the application under that provision was made within a time period corresponding to that set out in subparagraph (ii) of this paragraph.

(2A) The requirement that an applicant who is or becomes a registered native title claimant be a party to the agreement is satisfied if:

Authorised Version C2024C00224 registered 19/06/2024

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement—those persons are parties to the agreement.

(2B) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement as mentioned in paragraph (2A)(a). A failure to comply with this subsection does not invalidate the agreement.

Second condition

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

Matters to be taken into account

(4) In deciding whether the requirements have been met, the Registrar must take into account:

(a) the statements in the application; and

(b) any information the Registrar is given on the matter by any representative Aboriginal/Torres Strait Islander body or by any other body or person;

and may, but need not, take into account any other matter or thing.

Authorised Version C2024C00224 registered 19/06/2024

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

24DA Indigenous land use agreements (alternative procedure agreements)

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

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

24DB Coverage of alternative procedure agreements

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

(a) the doing, or the doing subject to conditions (which may be about procedural matters), of particular future acts, or future acts included in classes;

(aa) particular future acts (other than intermediate period acts), or future acts (other than intermediate period acts) included in classes, that have already been done;

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

(b) withdrawing, amending, varying or doing any other thing in relation to an application under Division 1 of Part 3 in relation to land or waters in the area;

(c) the relationship between native title rights and interests and other rights and interests in relation to the area;

(d) the manner of exercise of any native title rights and interests or other rights and interests in relation to the area;

(e) providing a framework for the making of other agreements about matters relating to native title rights and interests;

(ea) compensation for any past act, intermediate period act or future act;

(f) any other matter concerning native title rights and interests in relation to the area;

Authorised Version C2024C00224 registered 19/06/2024

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

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

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

24DC No extinguishment of native title

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

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

24DD Bodies corporate and representative bodies etc.

No bodies corporate for whole of area

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

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

Body corporate or representative body for area

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

Authorised Version C2024C00224 registered 19/06/2024

24DE Parties to alternative procedure agreements

Native title group and relevant governments to be parties

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

Native title group

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

Relevant government

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

Other parties

(4) Any of the following may also be a party to the agreement:
  (a) any registered native title claimant in relation to land or waters in the area;

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

    Note 2: The agreement will bind all members of the native title claim group concerned: see paragraph 24EA(1)(b).

  (b) any other person who claims to hold native title in relation to land or waters in the area;

Authorised Version C2024C00224 registered 19/06/2024

(c) any other person.

(5) A registered native title claimant is taken to be a party to the agreement if:

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement—those persons are parties to the agreement.

(6) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement as mentioned in paragraph (5)(a). A failure to comply with this subsection does not invalidate the agreement.

24DF Consideration and conditions

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

Consideration may be freehold grant or other interests

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

24DG Assistance to make alternative procedure agreements

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

Authorised Version C2024C00224 registered 19/06/2024

Information obtained in providing assistance not to be used or disclosed in other contexts

(2) The NNTT must not use or disclose information to which it has had access only because it provided assistance in negotiating the agreement for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

24DH Application for registration of alternative procedure agreements

Application

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

Things accompanying application

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

Registrar may assist parties

(3) The Registrar may give such assistance as he or she considers reasonable to help a party to the agreement prepare the application and accompanying material.

24DI Notice of alternative procedure agreements

Notice to be given

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

Authorised Version C2024C00224 registered 19/06/2024

(ii) if the agreement covers an area within the jurisdictional limits of a State or Territory—the State Minister or the Territory Minister for the State or Territory;

(iii) any local government body for the area covered by the agreement;

(iv) any other person whom the Registrar, having regard to the nature of the agreement, considers appropriate; and

(b) notify the public in the determined way of the agreement in accordance with subsection (2).

Content of notice

(2) The notice under paragraph (1)(a) or (b) must:

(a) identify the area covered by the agreement, whether by including a map or otherwise; and

(b) state the name of each party to the agreement and the address at which the party can be contacted; and

(c) set out:

(i) any statements included in the agreement that are of a kind mentioned in paragraph 24EB(1)(b) or (c) or 24EBA(1)(a); or

(ii) a summary of any statements included in the agreement that are of that kind, together with information about where further detail about the statements may be obtained; and

(d) include a statement that, within the period (the ***notice period***) of 3 months after the notification day (see subsection (3)), any person claiming to hold native title in relation to any of the land or waters in the area covered by the agreement may:

(i) obtain a copy of the agreement from the Registrar; and

(ii) object, in writing to the Registrar, against registration of the agreement on the ground that it would not be fair and reasonable to do so.

Authorised Version C2024C00224 registered 19/06/2024

Notice to specify day

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

Which days may be specified

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

Request for copy of agreement

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

24DJ Objections against registration

Making objections

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

Note: Section 77A sets out the material and fees that must accompany the application, and includes a requirement to state reasons why it would not be fair and reasonable to register the agreement.

Assistance in withdrawing objection

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

Authorised Version C2024C00224 registered 19/06/2024

Information obtained in providing assistance not to be used or disclosed in other contexts

(3) The NNTT must not use or disclose information to which it has had access only because it provided assistance under subsection (2) for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

24DK Decision about registration

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

24DL Registration of alternative procedure agreements

Registration only if conditions satisfied

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

Conditions

(2) The conditions are that:

(a) no objection against registration of the agreement was made within the notice period; or

(b) one or more objections against registration of the agreement were made within the notice period, but they have all been withdrawn; or

(c) one or more objections against registration of the agreement were made during the notice period, all of them have not been withdrawn, but none of the persons making them has satisfied the NNTT or a recognised State/Territory body that it would not be fair and reasonable to register the agreement, having regard to:

(i) the content of the agreement; and

Authorised Version C2024C00224 registered 19/06/2024

(ii) the effect of the agreement on native title rights and interests; and

(iii) any benefits provided under the agreement to current native title holders (whether or not identified at the time the agreement is made) and their successors, and the way in which those benefits are to be distributed; and

(iv) any other relevant circumstance.

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

24DM Other registration procedures and conditions

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

Subdivision E—Effect of registration of indigenous land use agreements

24EA Contractual effect of registered agreement

(1) While details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, in addition to any effect that it may have apart from this subsection, as if:

(a) it were a contract among the parties to the agreement; and

(b) all persons holding native title in relation to any of the land or waters in the area covered by the agreement, who are not already parties to the agreement, were bound by the agreement in the same way as the registered native title bodies corporate, or the native title group, as the case may be.

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

Authorised Version C2024C00224 registered 19/06/2024

Only certain persons bound by agreement

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

Legislation etc. to give effect to agreement not affected

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

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

Coverage of section

(1) The consequences set out in this section apply if:

(a) a future act is done; and

(b) when it is done, there are on the Register of Indigenous Land Use Agreements details of an agreement that includes a statement to the effect that the parties consent to:

(i) the doing of the act or class of act in which the act is included; or

(ii) the doing of the act, or class of act in which the act is included, subject to conditions; and

(c) if the act is, apart from this Subdivision, an act to which Subdivision P (which deals with the right to negotiate) applies—the agreement also includes a statement to the effect that Subdivision P is not intended to apply; and

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

Authorised Version C2024C00224 registered 19/06/2024

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

Validation of act

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

(2A) To avoid doubt, removal of the details of an agreement from the Register of Indigenous Land Use Agreements does not affect the validity of a future act done while the details were on the Register.

Non-extinguishment principle

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

Restriction on compensation where Subdivision B agreement

(4) In the case of an agreement under Subdivision B, the following are not entitled to any compensation for the act under this Act, other than compensation provided for in the agreement:

(a) any registered native title body corporate who is a party to the agreement;

(b) any common law holder of native title:

(i) for whom such a registered native title body corporate holds native title rights and interests on trust; or

(ii) of whom such a registered native title body corporate is the agent or representative;

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

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

Authorised Version C2024C00224 registered 19/06/2024

Restriction on compensation where Subdivision C agreement

(5) In the case of an agreement under Subdivision C, the following are not entitled to any compensation for the act under this Act, other than compensation provided for in the agreement:

(a) any native title holder who is entitled to any of the benefits provided under the agreement;

(b) any native title holder who authorised the making of the agreement as mentioned in:

(i) if the application was certified by representative Aboriginal/Torres Strait Islander bodies as mentioned in paragraph 24CG(3)(a)—paragraph 203BE(5)(b); or

(ii) if the application included statements as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met (in summary, relating to identifying all native title holders and ensuring that they have authorised the making of the agreement)—that paragraph.

Restriction on compensation where Subdivision D agreement

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

Compensation under Division 5

(7) If any native title holder in relation to the land or waters covered by the agreement (except one who, because of subsection (4), (5) or (6), is not entitled to compensation other than that provided for in the agreement) would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that subsection:

(a) he or she is entitled, in accordance with Division 5, to compensation for the act; and

(b) he or she may recover the compensation from:

Authorised Version C2024C00224 registered 19/06/2024

(i) if subparagraph (ii) does not apply—the Crown in right of the Commonwealth, a State or a Territory (according to whether the act is attributable to the Commonwealth, the State or the Territory); or

(ii) any person or persons who, under an agreement in writing with the Commonwealth, the State or the Territory, are liable to pay the compensation.

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

Coverage of section

(1) The consequences set out in this section apply if:

(a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to:

(i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or

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

(ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or of future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or

(iii) changing the effects, that are provided for by section 22B (which relates to native title rights and interests) or by a law of a State or Territory that contains provisions to the same effect, of an intermediate period act or of intermediate period acts included in classes; and

(b) whichever of the Commonwealth, the State or the Territory to which the act or class of acts is attributable is a party to the agreement; and

Authorised Version C2024C00224 registered 19/06/2024

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

Commonwealth future acts valid

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

State or Territory laws may validate their future acts

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

Non-extinguishment principle applies to future acts

(4) If subsection (2) applies or a law makes provision in accordance with subsection (3), the non-extinguishment principle applies to the act or class of acts unless:

(a) the act or class of acts is the surrender of native title; and

(b) the agreement includes a statement to the effect that the surrender is intended to have extinguished the native title rights and interests.

Compensation consequences of future acts

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

Authorised Version C2024C00224 registered 19/06/2024

Changing the effects of validated acts

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

Removal of agreement from the Register

(7) To avoid doubt, removal of the details of an agreement from the Register of Indigenous Land Use Agreements does not affect:
  (a) the validity of a future act validated by subsection (2) or a law of a State or Territory mentioned in subsection (3); or
  (b) the effects of an intermediate period act that have been changed under subsection (6).

24EC Agreements unrelated to future acts

The fact that this Subdivision deals with agreements with native title holders that relate to their native title rights and interests does not imply that the Commonwealth, a State or a Territory cannot:
  (a) make other agreements; or
  (b) legislate in relation to the making of other agreements;
with native title holders that relate to their native title rights and interests (other than agreements consenting to the doing of future acts).

24ED Amended agreements

(1) If the details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, for the purposes of this Act, as if the agreement included any amendments of the agreement that:
  (a) have been agreed to by the parties to the agreement; and
  (b) have been notified to the Registrar in writing by the parties;
but only so far as the amendments:
  (c) update property descriptions, but not so as to result in the inclusion of any area of land or waters not previously covered by the agreement; or

Authorised Version C2024C00224 registered 19/06/2024

(d) update a description identifying a party to the agreement, including where a party has assigned or otherwise transferred rights or liabilities under the agreement; or

(e) do a thing specified in a legislative instrument made under subsection (3).

(2) If the details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, for the purposes of this Act, as if it did not include any amendments other than those that have effect because of subsection (1).

Note: An application for registration of such an agreement as amended could be made under Subdivision B, C or D.

Instrument specifying a thing

(3) The Commonwealth Minister may, by legislative instrument, specify a thing that an amendment to an agreement may do for the purposes of paragraph (1)(e).

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

24FA Consequences if section 24FA protection applies

(1) If an area is subject to section 24FA protection (see sections 24FB, 24FC and 24FD) at a particular time:

(a) any future act by any person in relation to the area that is done at that time is valid; and

(b) if such an act extinguishes native title to any extent—the native title holders are entitled to compensation, in accordance with Division 5, for the act in so far as it has that effect; and

(c) if the act mentioned in paragraph (a) does not so extinguish native title and the native title holders would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that subsection—they are entitled, in accordance with Division 5, to compensation for the act.

Authorised Version C2024C00224 registered 19/06/2024

Who pays compensation

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

24FB When section 24FA protection arises—government applications

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

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

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

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

24FE Relevant native title claim

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

Authorised Version C2024C00224 registered 19/06/2024

(a) at that time, there is an entry covering that area on the Register of Native Title Claims; or

(b) after that time, an entry covering that area is included on the Register of Native Title Claims, provided the application containing the claim was made before that time and:

(i) the claim is accepted by the Registrar for registration under subsection 190A(6) or is (otherwise than on appeal or review) found to satisfy conditions equivalent to those set out in sections 190B and 190C under a law of a State or Territory; or

(ii) the claim is accepted by the Registrar for registration as a result of an application under subsection 190F(1) and the application was made not more than 28 days after the notice under subsection 190D(1) was given; or

(iia) the claim is accepted by the Registrar for registration as a result of notification given to the Registrar by the NNTT under section 190E on application under that section, where the application was made not more than 28 days after the notice under subsection 190D(1) was given; or

(iii) the claim is found to satisfy conditions equivalent to those set out in sections 190B and 190C under a provision of a law of a State or Territory to similar effect as section 190E or 190F, and the application under that provision was made within a time period corresponding to that set out in subparagraph (ii).

Subdivision G—Future acts and primary production

24GA Primary production activity

Primary production activity

(1) The expression ***primary production activity*** includes the following:

(a) cultivating land;

(b) maintaining, breeding or agisting animals;

(c) taking or catching fish or shellfish;

Authorised Version C2024C00224 registered 19/06/2024

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

Mining excluded

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

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

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

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

(c) the future act takes place after 23 December 1996; and
(d) the future act permits or requires the carrying on of any of the following while the lease (including as renewed on one or more occasions) is in force:
(i) a primary production activity (see section 24GA) on the area covered by the lease; or
(ii) another activity, on the area covered by the lease, that is associated with or incidental to a primary production activity covered by subparagraph (i), provided that, when the other activity is being carried on, the majority of the area covered by the lease is used for primary production activities; and

Authorised Version C2024C00224 registered 19/06/2024

(e) the future act could have been validly done or authorised at some time before 31 March 1998, if any native title in relation to the area covered by the lease had not then existed.

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

Farm tourism included

(2) This section applies to a future act that:

(a) takes place after 23 December 1996; and

(b) permits or requires a farm tourism activity in the area covered by a lease meeting the requirements of paragraphs (1)(a) and (b) while the lease is in force (including as renewed on one or more occasions).

Exception to subsection (2)

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

Certain acts not covered

(4) This section does not apply to a future act if:

(a) where the lease covered by paragraph (1)(a) is a non-exclusive pastoral lease covering an area greater than 5,000 hectares—the act has the effect that the majority of the area covered by the lease is required or permitted to be used for purposes other than pastoral purposes; or

(b) in any case—the act converts a lease covered by paragraph (1)(a) into a lease conferring a right of exclusive possession, or into a freehold estate, over any of the land or waters covered by the lease.

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

Authorised Version C2024C00224 registered 19/06/2024

Validation of act

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

Non-extinguishment principle

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

Compensation

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

Who pays compensation

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

Notification

(9) If:
  (a) the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is forest operations, a horticultural activity or an aquacultural activity; or
  (b) the lease mentioned in paragraph (1)(a) is a non-exclusive pastoral lease and the primary production activity mentioned in subparagraph (1)(d)(i) or (ii) is an agricultural activity;

before the future act is done, the person proposing to do the act must:
  (c) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the non-exclusive agricultural lease or non-exclusive pastoral lease that the act,

Authorised Version C2024C00224 registered 19/06/2024

or acts of that class, are to be done in relation to the particular land or waters; and

(d) give them an opportunity to comment on the act or class of acts.

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

(1) This section applies to an activity if:

(a) a non-exclusive agricultural lease (see section 247B) or non-exclusive pastoral lease (see section 248B) was granted on or before 23 December 1996; and

(b) the grant was valid (including because of Division 2 or 2A); and

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

(c) the activity is the carrying on, after 23 December 1996 and while the lease (including as renewed on one or more occasions) is in force, of any of the following:

(i) a primary production activity on the area covered by the lease; or

(ii) another activity, on the area covered by the lease, that is associated with or incidental to a primary production activity covered by subparagraph (i), provided that, when the other activity is being carried on, the majority of the area covered by the lease is used for primary production activities; and

(d) at some time before 31 March 1998, the activity could have been done under any legislation then in force, or under any lease, licence, permit or authority that could have then been issued, in relation to the area covered by the lease, if any native title in relation to the area covered by the lease had not then existed.

Authorised Version C2024C00224 registered 19/06/2024

Activities prevail over native title etc.

(2) To avoid doubt:

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

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

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

Compensation

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

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

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

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

(a) a freehold estate, an agricultural lease (see section 247) or a pastoral lease (see section 248) was granted on or before 23 December 1996; and

(b) the grant was valid (including because of Division 2 or 2A); and

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

(c) the future act takes place after 23 December 1996; and

(d) the future act is not:

(i) the grant of a lease; or

(ii) any act that confers a right of exclusive possession over land; and

Authorised Version C2024C00224 registered 19/06/2024

(e) the future act permits or requires the carrying on of grazing, or an activity consisting of or relating to gaining access to or taking water, that:

(i) takes place while the freehold estate exists or the agricultural lease or pastoral lease (including as renewed on one or more occasions) is in force; and

(ii) is directly connected to the carrying on of any primary production activity on the area covered by the freehold estate or the agricultural lease or pastoral lease; and

(iii) takes place in an area adjoining or near the area covered by the freehold estate or the agricultural lease or pastoral lease; and

(iv) does not prevent native title holders in relation to land or waters in the area in which the activity will be carried on from having reasonable access to the area; and

(f) if:

(i) before the future act is done, an approved determination of native title is made in relation to the land or waters on which any activity permitted or required by the future act takes place; and

(ii) the determination is that native title exists in relation to the land or waters and that the native title rights and interests confer exclusive possession of the land or waters on the native title holders;

the doing of the activity is not inconsistent with the exercise of the native title rights and interests.

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

Validation of act

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

Non-extinguishment principle

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

Compensation

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

Who pays compensation

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

Notification

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

(a) a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B) was granted on or before 23 December 1996; and

(b) the grant was valid (including because of Division 2 or 2A); and

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

(c) the future act takes place after 23 December 1996 and while the lease (including as renewed on one or more occasions) is in force; and

(d) the future act is not the grant of a lease; and

(e) the future act confers on any person (including the lessee) a right:

(i) to cut and remove timber; or

(ii) to extract, obtain or remove sand, gravel, rocks, soil or other resources (except so far as doing so constitutes mining);

from the area covered by the non-exclusive agricultural lease or non-exclusive pastoral lease; and

(f) before the future act is done, the person proposing to do the act:

(i) has notified, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the non-exclusive agricultural lease or non-exclusive pastoral lease that the act, or acts of that class, are to be done in relation to the particular land or waters; and

(ii) has given them an opportunity to comment on the act or class of acts.

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

Authorised Version C2024C00224 registered 19/06/2024

Validation of act

(2) The future act is valid.

Non-extinguishment principle

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

Compensation

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

Who pays compensation

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

Subdivision H—Management of water and airspace

24HA Management or regulation of water and airspace

Legislative acts

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

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

Authorised Version C2024C00224 registered 19/06/2024

Leases, licences etc.

(2) This section also applies to a future act consisting of the grant of a lease, licence, permit or authority under legislation that:

(a) is valid (including because of this Act); and

(b) relates to the management or regulation of:

(i) surface and subterranean water; or

(ii) living aquatic resources; or

(iii) airspace.

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

Validity of act

(3) The act is valid.

Non-extinguishment principle

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

Compensation

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

Who pays compensation

(6) The compensation is payable by:

(a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or

(b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

Notification

(7) Before an act covered by subsection (2) is done, the person proposing to do the act must:

Authorised Version C2024C00224 registered 19/06/2024

(a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act, or acts of that class, that the act, or acts of that class, are to be done; and

(b) give them an opportunity to comment on the act or class of acts.

Subdivision I—Renewals and extensions etc.

24IA Future acts to which this section applies

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

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

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

24IB Pre-existing right-based acts

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

(a) in exercise of a legally enforceable right created by any act done on or before 23 December 1996 that is valid (including because of Division 2 or 2A); or

(b) in good faith in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith on or before 23 December 1996, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made.

24IC Future acts that are permissible lease etc. renewals

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

(a) it is:

(i) the renewal; or

(ii) the re-grant or re-making; or

Authorised Version C2024C00224 registered 19/06/2024

(iii) the extension of the term;

of a lease, licence, permit or authority (the ***original lease etc.***) that is valid (including because of Division 2 or 2A); and

(b) any of the following subparagraphs applies:

(i) the original lease etc. was granted on or before 23 December 1996;

(ii) the grant of the original lease etc. was a permissible lease etc. renewal or a pre-existing right-based act;

(iii) the original lease etc. was created by an act covered by section 24GB, 24GD, 24GE or 24HA (which deal with certain acts in relation to primary production activities or involving management or regulation of water and airspace); and

(c) the future act does not:

(i) confer a right of exclusive possession over any of the land or waters covered by the original lease etc.; or

(ii) otherwise create a larger proprietary interest in the land or waters than was created by the original lease etc.; or

(iii) create a proprietary interest over any of the land or waters covered by the original lease etc., where the original lease etc. created only a non-proprietary interest; or

(iv) if the original lease etc. was a non-exclusive pastoral lease covering an area greater than 5,000 hectares and the majority of the area covered was not required or permitted to be used for purposes other than pastoral purposes—have the effect that the majority of the area covered by the renewed, re-granted, re-made or extended lease is required or permitted to be used for purposes other than pastoral purposes; and

(d) if the original lease etc. contains, or is subject to, a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders—the renewed, re-granted, re-made or extended lease, licence, permit or authority contains, or is subject to, the same reservation or condition; and

Authorised Version C2024C00224 registered 19/06/2024

(e) if the original lease etc. did not permit mining—the renewed, re-granted, re-made or extended lease, licence, permit or authority does not permit mining.

Replacement by 2 or more leases etc.

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

Replacing 2 or more leases etc. with a single lease etc.

(2A) If a single lease, licence, permit or authority is granted in place of, respectively, 2 or more leases, licences, permits or authorities (the ***original leases etc.***), then:

(a) for the purpose of subsection (1), the single grant is taken to be a renewal of the original leases etc.; and

(b) paragraphs (1)(b) to (e) apply as if a reference in those paragraphs to the original lease etc. were a reference to the original leases etc.

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

(3) The features listed in subsection (4) do not prevent:

(a) an act from being the renewal, re-grant, re-making, or extension of the term, of a lease, licence, permit or authority (the ***old authority***) for the purposes of subsection (1) (the renewed, re-granted, re-made or extended lease, licence, permit or authority being the ***new authority***); or

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

Features

(4) The features are as follows:

Authorised Version C2024C00224 registered 19/06/2024

(a) the new authority, or the new authorities together, cover a smaller area than the old authority;

(b) the term of the new authority, or of any of the new authorities, is longer than the term of the old authority;

(c) the new authority or any of the new authorities is a perpetual lease (other than a mining lease);

(d) if the new authority or any of the new authorities is a non-exclusive agricultural lease or a non-exclusive pastoral lease—the new authority permits or requires the carrying on of an activity that the old authority did not permit or require and that consists of:

(i) a primary production activity (see section 24GA); or

(ii) another activity, on the area covered by the new authority or of any of the new authorities, that is associated with or incidental to a primary production activity, provided that, when the other activity is being carried on, the use of the majority of the area covered by the new authority, or the new authorities together, will be for primary production activities.

24ID Effect of Subdivision applying to an act

(1) If this Subdivision applies to a future act:

(a) subject to Subdivision P (which deals with the right to negotiate), the act is valid; and

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

(b) if the act consists of the grant of a freehold estate, or the conferral of a right of exclusive possession, over particular land or waters—the act extinguishes any native title in relation to the land or waters; and

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

(c) in any other case—the non-extinguishment principle applies to the act; and

(d) in any case—the native title holders are entitled to compensation for the act in accordance with Division 5.

Authorised Version C2024C00224 registered 19/06/2024

Who pays compensation

(2) The compensation is payable by:

(a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or

(b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

Notification

(3) If paragraph (1)(b) applied in relation to the future act, then, before the act is done, the person proposing to do the act must:

(a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act that the act, or acts of that class, are to be done in relation to the land or waters concerned; and

(b) give them an opportunity to comment on the act or class of acts.

Other procedural rights

(4) If:

(a) the act is a permissible lease etc. renewal of a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B); and

(b) the act is covered by paragraph 24IC(4)(b) or (c);

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

(c) if the act is attributable to the Commonwealth—the Commonwealth; or

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

Authorised Version C2024C00224 registered 19/06/2024

Subdivision JA—Public housing etc.

24JAA Public housing etc.

Coverage of Subdivision

(1) This Subdivision applies to a future act if:

(a) it relates, to any extent, to an onshore place; and

(b) it relates to:

(i) an area over which a freehold estate exists or a lease is in force, or that is vested in any person, where the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(ii) an area that is held expressly for the benefit of, or held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; and

(c) it either:

(i) permits or requires the construction, operation, use, maintenance or repair by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities (the ***action body***), of any of the things listed in subsection (3); or

(ii) consists of the construction, operation, use, maintenance or repair by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities (the ***action body***), of any of the things listed in subsection (3); and

(d) it is done or commenced as follows:

(i) if the act is covered by subparagraph (c)(i)—it is done within the period of 20 years beginning on the day on which the *Native Title Amendment Act (No. 1) 2010* commences;

(ii) if the act is covered by subparagraph (c)(ii)—it is commenced within the period of 20 years beginning on

Authorised Version C2024C00224 registered 19/06/2024

the day on which the *Native Title Amendment Act (No. 1) 2010* commences; and

(e) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:

(i) in the area in which the act is done; and

(ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Compulsory acquisitions not covered

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

Public housing etc.

(3) For the purposes of paragraph (1)(c), the things are as follows:

(a) public housing provided for Aboriginal people or Torres Strait Islanders living in, or in the vicinity of, the area;

(b) any of the following that benefit those people:

(i) public education facilities;

(ii) public health facilities;

(iii) police facilities;

(iv) emergency facilities;

(c) staff housing provided in connection with housing or facilities covered by paragraph (a) or (b);

(d) any of the following provided in connection with housing or facilities covered by paragraph (a), (b) or (c):

(i) things listed in subsection 24KA(2);

(ii) sewerage treatment facilities;

(iii) things prescribed by the regulations.

Note: This subsection does not mean that facilities that benefit Aboriginal people or Torres Strait Islanders could not also benefit other people.

Authorised Version C2024C00224 registered 19/06/2024

Validation of act

(4) If this Subdivision applies to a future act, then, subject to subsections (5) and (6), the act is valid.

(5) An act to which this Subdivision applies is invalid to the extent that it affects native title unless:

(a) if the act is covered by subparagraph (1)(c)(i)—before it is done; or

(b) if the act is covered by subparagraph (1)(c)(ii)—before it is commenced;

the action body:

(c) gives notice of, and an opportunity to comment on, the act in accordance with subsections (10) to (12); and

(d) provides a report to the Commonwealth Minister in accordance with subsection (16).

(6) An act to which this Subdivision applies is invalid to the extent that it affects native title if:

(a) if the act is covered by subparagraph (1)(c)(i)—it is done before; or

(b) if the act is covered by subparagraph (1)(c)(ii)—it is commenced before;

the end of the consultation period.

Non-extinguishment principle

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

Compensation

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

Who pays compensation

(9) The native title holders may recover the compensation from:

Authorised Version C2024C00224 registered 19/06/2024

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

Notice

(10) The action body must:
(a) notify each of the following, in the way determined, by legislative instrument, by the Commonwealth Minister, that the act is to be done:
  (i) any registered native title claimant in relation to land or waters in the area;
  (ii) any registered native title body corporate in relation to land or waters in the area;
  (iii) any representative Aboriginal/Torres Strait Islander body in relation to land or waters in the area; and
(b) give them an opportunity to comment on the act.

(11) The notice must:
(a) specify a day as the ***notification day*** for the act; and
(b) contain statements to the effect that:
  (i) comments on the act; and
  (ii) requests under subsection (13) to be consulted about the act;

must be made within the period of 2 months that begins on the notification day.

(12) The notification day must be a day by which, in the action body's opinion, it is reasonable to assume that all notices under subsection (10) in relation to the act will have been received by, or

Authorised Version C2024C00224 registered 19/06/2024

will otherwise have come to the attention of, the persons who must be notified under that subsection.

Consultation

(13) Any registered native title claimant or registered native title body corporate may, in writing, request to be consulted about the doing of the act so far as it affects their registered native title rights and interests.

(14) If a request to be consulted is made within the time specified in paragraph (11)(b), the action body must consult with the claimant or body corporate about ways of minimising the act's impact on registered native title rights and interests in relation to land or waters in the area, and, if relevant, any access to the land or waters or the way in which any thing authorised by the act might be done.

(15) In consulting with a claimant or body corporate, the action body must comply with any requirements determined, by legislative instrument, by the Commonwealth Minister.

Report

(16) The action body must provide the Commonwealth Minister with a report on the things done under subsections (10) to (12) and (14) and (15) in relation to the act. The report:

(a) must be provided:

(i) in writing in accordance with any requirements determined, by legislative instrument, by the Commonwealth Minister; and

(ii) whether or not there were comments on, or requests to be consulted about, the act; and

(b) may be published by the Commonwealth Minister.

Note: The *Privacy Act 1988* contains provisions relevant to the use and disclosure of information.

Authorised Version C2024C00224 registered 19/06/2024

Multiple action bodies

(17) If there are 2 or more action bodies for the act, it is sufficient if only one of those bodies meets the requirements of subsections (10) to (12) and (14) to (16) in relation to the act.

Multiple acts

(18) Notice of 2 or more acts to which this Subdivision applies may be given in the same notice under subsection (10).

Definitions

(19) In this section:

consultation period means the period that:

(a) begins on the notification day; and

(b) ends:

(i) if no claimant or body corporate requests under subsection (13) to be consulted about the act—2 months later; or

(ii) if one or more claimants or bodies corporate request to be consulted about the act—4 months later, or at such earlier time after the time specified in paragraph (i) as each claimant and body corporate that requested to be consulted has notified, in writing, that they have been consulted.

registered native title rights and interests means native title rights and interests described in an entry on:

(a) the Register of Native Title Claims; or

(b) the National Native Title Register.

Authorised Version C2024C00224 registered 19/06/2024

Subdivision J—Reservations, leases etc.

24JA Acts covered by this Subdivision

Reservations etc.

(1) This Subdivision applies to a future act (the ***later act***) if:

(a) an act (the ***earlier act***) took place before the later act and on or before 23 December 1996; and

(b) the earlier act was valid (including because of Division 2 or 2A); and

(c) the earlier act:

(i) was done by the Crown in right of the Commonwealth, a State or Territory; or

(ii) consisted of the making, amendment or repeal of legislation by the Commonwealth, a State or Territory: and

(d) the earlier act contained, made or conferred a reservation, proclamation, dedication, condition, permission or authority (the ***reservation***) under which the whole or part of any land or waters was to be used for a particular purpose; and

(e) the later act is done in good faith:

(i) under or in accordance with the reservation; or

(ii) in the area covered by the reservation, so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the reservation would have had.

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

Leases

(2) This Subdivision also applies to a future act (the ***later act***) if:

(a) an act (the ***earlier act***) took place before the later act and on or before 23 December 1996; and

(b) the earlier act was valid (including because of Division 2 or 2A); and

(c) the earlier act was done by the Crown in right of the Commonwealth, a State or a Territory; and

(d) the earlier act consisted of the grant of a lease to a statutory authority of the Commonwealth, the State or the Territory, where:

(i) under the lease, the whole or part of any land or waters covered by the lease was to be used for a particular purpose; or

(ii) there is written evidence, created at any time on or before 23 December 1996 by the Commonwealth, the State or the Territory, that the whole or part of any land or waters covered by the lease was to be used for a particular purpose; and

(e) the later act is done in good faith and consists of the use, by the statutory authority or any person, of the land or waters for the particular purpose.

24JB Treatment of acts covered by section 24JA

Validation of act

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

Extinguishment consequences—public works

(2) If the act consists of the construction or establishment of a public work:

Authorised Version C2024C00224 registered 19/06/2024

(a) the act extinguishes any native title in relation to the land or waters on which the public work (on completion of its construction or establishment) is situated; and

(b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

Extinguishment consequences—not public works

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

Compensation

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

Who pays compensation

(5) The compensation is payable by:

(a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or

(b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

Notification of public works

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

(a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the reservation or lease that the act, or acts of that class, are to be done in relation to the land or waters; and

(b) give them an opportunity to comment on the act or class of acts.

Authorised Version C2024C00224 registered 19/06/2024

Notification of national, State and Territory park management plans

(7) If the act consists of the creation of a plan for the management of a national, State or Territory park intended to preserve the natural environment of an area, then, before the act is done, the person proposing to do the act must:

(a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the plan that the act is to be done in relation to the land or waters; and

(b) give them an opportunity to comment on the act.

Subdivision K—Facilities for services to the public

24KA Facilities for services to the public

Coverage of Subdivision

(1) This Subdivision applies to a future act if:

(a) it relates, to any extent, to an onshore place; and

(b) it either:

(i) permits or requires the construction, operation, use, maintenance or repair, by or on behalf of any person, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; or

(ii) consists of the construction, operation, use, maintenance or repair, by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities, of any of the things listed in subsection (2) that is to be operated, or is operated, for the general public; and

(c) it does not prevent native title holders in relation to land or waters on which the thing is located or to be located from

Authorised Version C2024C00224 registered 19/06/2024

having reasonable access to such land or waters in the vicinity of the thing, except:

(i) while the thing is being constructed; or

(ii) for reasons of health and safety; and

(d) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:

(i) in the area in which the act is done; and

(ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Compulsory acquisitions not covered

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

Facilities etc.

(2) For the purposes of paragraph (1)(b), the things are as follows:

(a) a road, railway, bridge or other transport facility (other than an airport or port);

(b) a jetty or wharf;

(c) a navigation marker or other navigational facility;

(d) an electricity transmission or distribution facility;

(e) lighting of streets or other public places;

(f) a gas transmission or distribution facility;

(g) a well, or a bore, for obtaining water;

(h) a pipeline or other water supply or reticulation facility;

(i) a drainage facility, or a levee or other device for management of water flows;

(j) an irrigation channel or other irrigation facility;

(k) a sewerage facility, other than a treatment facility;

(l) a cable, antenna, tower or other communication facility;

(la) an automatic weather station;

Authorised Version C2024C00224 registered 19/06/2024

(m) any other thing that is similar to any one or more of the things mentioned in the paragraphs above.

Validation of act

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

Non-extinguishment principle

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

Compensation

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

Who pays compensation

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

Procedural rights

(7) The native title holders, and any registered native title claimants in relation to land or waters in the area concerned, have the same procedural rights as they would have in relation to the act on the assumption that they instead held:

Authorised Version C2024C00224 registered 19/06/2024

(a) to the extent (if any) that the land concerned is covered by a non-exclusive agricultural lease (see section 247B) or a non-exclusive pastoral lease (see section 248B)—a lease of that kind; or

(b) to the extent (if any) that paragraph (a) does not apply—ordinary title;

covering any land concerned or covering the land adjoining, or surrounding, any waters concerned.

Native title rights and interests to be considered

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

Satisfying the right to be notified

(8) If:

(a) because of subsection (7) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give the required notification is by notifying, in the way determined, by legislative instrument, by the Commonwealth Minister for the purposes of this subsection the following that the act is to take place:

(c) any representative Aboriginal/Torres Islander bodies for that part of the area concerned for which there is no registered native title body corporate;

(d) any registered native title claimants in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate.

Authorised Version C2024C00224 registered 19/06/2024

Satisfying other procedural rights

(9) If:

(a) because of subsection (7) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give effect to the requirement is:

(c) by doing the thing in relation to any registered native title claimant in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate; or

(d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for that part of the area concerned for which there is no registered native title body corporate have an opportunity to comment on the doing of the act.

Subdivision L—Low impact future acts

24LA Low impact future acts

(1) This Subdivision applies to a future act in relation to particular land or waters if:

(a) the act takes place before, and does not continue after, an approved determination of native title is made in relation to the land or waters, if the determination is that native title exists; and

(b) the act does not consist of, authorise or otherwise involve:

(i) the grant of a freehold estate in any of the land or waters; or

(ii) the grant of a lease over any of the land or waters; or

Authorised Version C2024C00224 registered 19/06/2024

(iii) the conferral of a right of exclusive possession over any of the land or waters; or

(iv) the excavation or clearing of any of the land or waters; or

(v) mining (other than fossicking by using hand-held implements); or

(vi) the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or

(vii) the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.

Exclusion for public health or safety etc.

(2) Subparagraph (1)(b)(iv) does not apply to:

(a) excavation or clearing that is reasonably necessary for the protection of public health or public safety; or

(b) tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities.

Validation of act

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

Non-extinguishment

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

Subdivision M—Acts passing the freehold test

24MA Legislative acts

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

(a) the act applies in the same way to the native title holders concerned as it would if they instead held ordinary title to the

Authorised Version C2024C00224 registered 19/06/2024

land (or to the land adjoining, or surrounding, the waters) affected; or

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

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

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

24MB Non-legislative acts

Freehold test

(1) This Subdivision applies to a future act if:

(a) it is an act other than the making, amendment or repeal of legislation; and

(b) either:

(i) the act could be done in relation to the land concerned if the native title holders concerned instead held ordinary title to it; or

(ii) the act could be done in relation to the waters concerned if the native title holders concerned held ordinary title to the land adjoining, or surrounding, the waters; and

(c) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:

(i) in the area to which the act relates; and

(ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Authorised Version C2024C00224 registered 19/06/2024

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

Opal or gem mining

(2) This Subdivision also applies to a future act if:

(a) it is an act other than the making, amendment or repeal of legislation; and

(b) it is not covered by subsection (1); and

(c) it consists of the creation or variation of a right to mine for opals or gems; and

(d) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:

(i) in the area to which the act relates; and

(ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

24MC Only onshore places covered

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

24MD Treatment of acts that pass the freehold test

Validation of act

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

Extinguishment of native title by compulsory acquisition

(2) If:

Authorised Version C2024C00224 registered 19/06/2024

(a) the act is the compulsory acquisition of the whole or part of any native title rights and interests under a law of the Commonwealth, a State or a Territory that permits both:

(i) the compulsory acquisition by the Commonwealth, the State or the Territory of native title rights and interests; and

(ii) the compulsory acquisition by the Commonwealth, the State or the Territory of non-native title rights and interests in relation to land or waters; and

(b) the whole, or the equivalent part, of all non-native title rights and interests, in relation to the land or waters to which the native title rights and interests that are compulsorily acquired relate, is also acquired (whether compulsorily or by surrender, cancellation or resumption or otherwise) in connection with the compulsory acquisition of the native title rights and interests; and

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

then:

(c) the compulsory acquisition extinguishes the whole or the part of the native title rights and interests; and

(d) if compensation on just terms is provided under a law of the Commonwealth, a State or a Territory to the native title holders for the compulsory acquisition, and they request that the whole or part of any such compensation should be in a form other than money, the person providing the compensation must:

(i) consider the request; and

(ii) negotiate in good faith in relation to the request; and

(e) if compensation on just terms is not provided under a law of the Commonwealth, a State or Territory to the native title holders for the compulsory acquisition, they are entitled to

Authorised Version C2024C00224 registered 19/06/2024

compensation for the acquisition in accordance with Division 5.

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

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

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

(2A) If:

(a) notice of a proposed compulsory acquisition of native title rights and interests is given in accordance with section 29 or with an equivalent alternative provision applicable under section 43 or 43A; and

(b) an agreement arose out of negotiations in relation to the proposed compulsory acquisition of the native title rights and interests; and

(c) the agreement includes a statement to the effect that an act consisting of the surrender of the whole or part of the native title rights and interests is intended to extinguish the whole or the part of the native title rights and interests;

then:

(d) the surrender extinguishes the whole or the part of the native title rights and interests; and

(e) no native title holder who is entitled to any benefit provided under the agreement is entitled to any compensation for the act under this Act, other than compensation provided for in the agreement; and

(f) any other native title holder is entitled to compensation for the act in accordance with Division 5.

Authorised Version C2024C00224 registered 19/06/2024

Non-extinguishment and compensation

(3) In the case of any future act to which this Subdivision applies that is not covered by subsection (2) or (2A):

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

(b) if the following conditions are satisfied:

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

(ii) the law mentioned in section 240 (which defines ***similar compensable interest test***) does not provide for compensation to the native title holders for the act;

the native title holders are entitled to compensation for the act in accordance with Division 5.

Who pays compensation

(4) The native title holders may recover the compensation from:

(a) if the act is attributable to the Commonwealth:

(i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or

(ii) if not—the Crown in right of the Commonwealth; or

(b) if the act is attributable to a State or Territory:

(i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or

(ii) if not—the Crown in right of the State or Territory.

Exception for certain lessees

(5) If:

(a) the act is the compulsory acquisition of the whole or part of any native title rights and interests; and

(b) the land or waters concerned are to any extent the subject of a non-exclusive agricultural lease or a non-exclusive pastoral lease;

then, despite subsection (4):

Authorised Version C2024C00224 registered 19/06/2024

(c) the native title holders are not entitled to recover the compensation from the lessee; and

(d) if the act is attributable to the Commonwealth—the native title holders may recover the compensation from the Crown in right of the Commonwealth; and

(e) if the act is attributable to a State or Territory—the native title holders may recover the compensation from the Crown in right of the State or Territory.

Consequences of certain acts

(6) In the case of any future act to which this Subdivision applies, other than:

(a) an act to which Subdivision P (which deals with the right to negotiate) applies; or

(b) an act determined under section 26A to be an approved exploration etc. act; or

(c) an act determined under section 26B to be an approved gold or tin mining act; or

(d) an act covered by section 26C (which deals with opal or gem mining);

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

Procedural rights

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

Other consequences

(6B) If the act is:

(a) the compulsory acquisition of native title rights and interests for the purpose of conferring rights or interests in relation to the land or waters concerned on persons other than the

Authorised Version C2024C00224 registered 19/06/2024

Commonwealth, the State or the Territory to which the act is attributable; or

(b) the creation or variation of a right to mine for the sole purpose of the construction of an infrastructure facility (see section 253) associated with mining;

the following consequences also apply:

(c) the Commonwealth, the State or the Territory to which the act is attributable must notify each of the following:

(i) any registered native title claimant (a ***claimant***) in relation to the land or waters; and

(ii) any registered native title body corporate (a ***body corporate***), in relation to the land or waters; and

(iii) any representative Aboriginal/Torres Strait Islander body in relation to the land or waters; and

(iv) the Registrar;

that the act is to be done; and

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

(e) either:

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

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

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

(f) if:

(i) a claimant or body corporate objects, as mentioned in paragraph (d), to the doing of the act; and

(ii) 8 months after the notification mentioned in paragraph (c), the objection has not been withdrawn;

Authorised Version C2024C00224 registered 19/06/2024

the Commonwealth, the State or the Territory must ensure that the objection is heard by an independent person or body; and

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

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

(ii) the consultation is taken into account; and

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

Meaning of ***determination***

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

determination includes recommendation.

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

(a) for the social or economic benefit of the Commonwealth, the State or the Territory (including of Aboriginal peoples and Torres Strait Islanders); and

(b) in the interests of the relevant region or locality in the Commonwealth, the State or the Territory.

Satisfying the right to be notified

(7) If:

(a) because of subsection (6A) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and

Authorised Version C2024C00224 registered 19/06/2024

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give the required notification is by notifying, in the way determined, by legislative instrument, by the Commonwealth Minister for the purposes of this subsection, the following that the act is to take place:

(c) any representative Aboriginal/Torres Strait Islander bodies for that part of the area concerned for which there is no registered native title body corporate;

(d) any registered native title claimants in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate.

Satisfying other procedural rights

(8) If:

(a) because of subsection (6A) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give effect to the requirement is:

(c) by doing the thing in relation to any registered native title claimant in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate; or

(d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for that part of the area concerned for which there is no registered native title body corporate have an opportunity to comment on the doing of the act.

Authorised Version C2024C00224 registered 19/06/2024

Subdivision N—Acts affecting offshore places

24NA Acts affecting offshore places

Coverage of Subdivision

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

Validation of act

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

Extinguishment of native title by compulsory acquisition

(3) If:

(a) the act is the compulsory acquisition of the whole or part of any native title rights and interests under a law of the Commonwealth, a State or a Territory that permits both:

(i) the compulsory acquisition by the Commonwealth, the State or the Territory of native title rights and interests; and

(ii) the compulsory acquisition by the Commonwealth, the State or the Territory of non-native title rights and interests in relation to land or waters; and

(b) the whole, or the equivalent part, of all non-native title rights and interests, in relation to the land or waters to which the native title rights and interests that are compulsorily acquired relate, is also acquired (whether compulsorily or by surrender, cancellation or resumption or otherwise) in connection with the compulsory acquisition of the native title rights and interests; and

(c) the practices and procedures adopted in acquiring the native title rights and interests are not such as to cause the native title holders any greater disadvantage than is caused to the

Authorised Version C2024C00224 registered 19/06/2024

holders of non-native title rights and interests when their rights and interests are acquired;

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

Non-extinguishment principle

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

Compensation where compulsory acquisition

(5) If this Subdivision applies to a future act consisting of the compulsory acquisition of the whole or part of any native title rights and interests:

(a) if compensation on just terms is provided under a law of the Commonwealth, a State or a Territory to the native title holders for the acquisition, and they request that the whole or part of any such compensation should be in a form other than money, the person providing the compensation must:

(i) consider the request; and

(ii) negotiate in good faith in relation to the request; and

(b) if compensation on just terms is not provided under a law of the Commonwealth, a State or Territory to the native title holders for the acquisition, they are entitled to compensation for the acquisition in accordance with Division 5.

Compensation for other acts

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

Who pays compensation

(7) The native title holders may recover the compensation from:

(a) if the act is attributable to the Commonwealth:

Authorised Version C2024C00224 registered 19/06/2024

(i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or

(ii) if not—the Crown in right of the Commonwealth; or

(b) if the act is attributable to a State or Territory:

(i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or

(ii) if not—the Crown in right of the State or Territory.

Procedural rights

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

Satisfying the right to be notified

(9) If:

(a) because of subsection (8) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to notify them of the act; and

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give the required notification is by notifying, in the way determined, by legislative instrument, by the Commonwealth Minister for the purposes of this subsection, the following that the act is to take place:

(c) any representative Aboriginal/Torres Strait Islander bodies for that part of the area concerned for which there is no registered native title body corporate;

Authorised Version C2024C00224 registered 19/06/2024

(d) any registered native title claimants in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate.

Satisfying other procedural rights

(10) If:

(a) because of subsection (8) or any law of the Commonwealth, a State or a Territory, the native title holders have a procedural right that requires another person to do any thing in relation to the native title holders; and

(b) there is no registered native title body corporate, or there are no registered native title bodies corporate, in relation to the whole of the land or waters in the area concerned;

then one way in which the person may give effect to the requirement is:

(c) by doing the thing in relation to any registered native title claimant in relation to land or waters in that part of the area concerned for which there is no registered native title body corporate; or

(d) if there are no such registered native title claimants—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for that part of the area concerned for which there is no registered native title body corporate have an opportunity to comment on the doing of the act.

Subdivision O—Future acts invalid unless otherwise provided

24OA Future acts invalid unless otherwise provided

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

Authorised Version C2024C00224 registered 19/06/2024

Subdivision P—Right to negotiate

25 Overview of Subdivision

(1) In summary, this Subdivision applies to certain future acts done by the Commonwealth, a State or a Territory that are of any of the following kinds:

(aa) certain acts covered by section 24IC (which deals with permissible lease etc. renewals);

(a) certain conferrals of mining rights;

(b) certain compulsory acquisitions of native title rights and interests;

(c) other acts approved by the Commonwealth Minister.

(2) Before the future act is done, the parties must negotiate with a view to reaching an agreement about the act. However, in certain circumstances, the Commonwealth, State or Territory can limit its participation in negotiations if the other parties consent.

(3) If they do not reach agreement, an arbitral body, or a Minister, will make a determination about the act instead.

(4) If the procedures in this Subdivision are not complied with, the act will be invalid to the extent that it affects native title.

(5) States and Territories may make their own laws as alternatives to this Subdivision. The Commonwealth Minister must be satisfied as to certain matters before such laws can take effect.

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

26 When Subdivision applies

Subdivision applies to certain permissible lease etc. renewals

(1A) This Subdivision applies to a future act if:

Authorised Version C2024C00224 registered 19/06/2024

(a) section 24IC (which deals with permissible lease etc. renewals) applies to the act; and

(b) the act is done by the Commonwealth, a State or a Territory (the ***Government party***); and

(c) the renewal, re-grant, re-making or extension of the term of the lease, licence, permit or authority concerned creates a right to mine.

Subdivision also applies to certain future acts

(1) This Subdivision also applies to a future act if:

(a) Subdivision M (which deals with acts that pass the freehold test) applies to the act; and

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

(b) the act is done by the Commonwealth, a State or a Territory (the ***Government party***); and

(c) subject to this section, the act is:

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

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

(ii) the variation of such a right, to extend the area to which it relates; or

(iii) the compulsory acquisition of native title rights and interests, unless:

(A) the purpose of the acquisition is to confer rights or interests in relation to the land or waters concerned on the Government party and the Government party makes a statement in writing to that effect before the acquisition takes place; or

(B) the purpose of the acquisition is to provide an infrastructure facility; or

Authorised Version C2024C00224 registered 19/06/2024

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

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

Exclusions

(2) This Subdivision does not apply to the extent that the act is:

(a) an act covered by section 24EB (which deals with the effects of indigenous land use agreements) or by any of the sections listed in paragraphs 24AA(4)(a) to (i); or

(b) an act determined, by legislative instrument, by the Commonwealth Minister to be an approved exploration etc. act (see section 26A); or

(c) an act determined, by legislative instrument, by the Commonwealth Minister to be an approved gold or tin mining act (see section 26B); or

(d) an act excluded by section 26C (which deals with opal or gem mining) from the coverage of this Subdivision; or

(e) an act excluded by section 26D (which deals with renewals of valid mining leases etc.) from the coverage of this Subdivision; or

(f) an act that is the compulsory acquisition of native title rights and interests and that relates solely to land or waters wholly within a town or city (see section 251C).

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

Sea and intertidal zone excluded

(3) This Subdivision only applies to the act to the extent that the act relates to a place that is on the landward side of the mean

Authorised Version C2024C00224 registered 19/06/2024

high-water mark of the sea. A reference to an act to which this Subdivision applies is to be read as referring to the act to that extent only.

26A Approved exploration etc. acts

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

First condition

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

Second condition

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

Drilling and second condition

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

Third condition

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

Authorised Version C2024C00224 registered 19/06/2024

Fourth condition

(6) The fourth condition is that the Minister is satisfied that, if the determination is made:

(a) all:

(i) registered native title bodies corporate; and

(ii) registered native title claimants; and

(iii) representative Aboriginal/Torres Strait Islander bodies;

in relation to any of the land or waters that will be affected by the act or acts will have a right to be notified that the act or each act included in the class is to be done; and

(b) any such persons or bodies will have a right to be heard by an independent person or body about:

(i) whether the act is to be done; and

(ii) any matter relating to the doing of the act;

unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters; and

(c) either:

(i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body indicates that the person or body does not wish to be so consulted; or

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

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

Matters relevant to fourth condition

(7) The matters are:

Authorised Version C2024C00224 registered 19/06/2024

(a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs; and

(b) any access to the land or waters to which the native title rights and interests relate by:

(i) those persons; or

(ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and

(c) the way in which any other thing that:

(i) is authorised because of, results from, or otherwise relates to, the doing of the act; and

(ii) affects the native title rights and interests;

is to be done.

Revocation of determination

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

(a) if the act or acts are done by a State or Territory:

(i) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(ii) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfied—by legislative instrument, revoke the determination; or

(b) if the act or acts are done by the Commonwealth—by legislative instrument, revoke the determination.

Authorised Version C2024C00224 registered 19/06/2024

26B Approved gold or tin mining acts

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

First condition

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

Second condition

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

Third condition

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

Fourth condition

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

Fifth condition

(6) The fifth condition is that the Commonwealth Minister has:

Authorised Version C2024C00224 registered 19/06/2024

(a) notified any relevant representative Aboriginal/Torres Strait Islander bodies, and notified the public in the determined way, of the proposed determination; and

(b) invited submissions from them about the proposed determination; and

(c) considered any submissions made in response to the invitation.

Sixth condition

(7) The sixth condition is that the Commonwealth Minister is satisfied that, if the determination is made:

(a) all:

(i) registered native title bodies corporate; and

(ii) registered native title claimants; and

(iii) representative Aboriginal/Torres Strait Islander bodies;

in relation to any land or waters that will be affected by the acts will have a right to be notified that each act included in the class is to be done; and

(b) any such persons or bodies will have a right to be heard by an independent person or body about:

(i) whether the act is to be done; and

(ii) any matter relating to the doing of the act;

unless no other person would have such a right, assuming the person had an interest of any kind in relation to the land or waters; and

(c) either:

(i) the person, or one of the persons, who will do any thing authorised by the act will have a legal obligation to consult appropriately any person or body covered by subparagraph (a)(i) or (ii), unless the person or body indicates that the person or body does not wish to be so consulted; or

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

Authorised Version C2024C00224 registered 19/06/2024

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

Matters relevant to sixth condition

(8) The matters are:

(a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs; and

(b) any access to the land or waters to which the native title rights and interests relate by:

(i) those persons; or

(ii) any person who will do any thing that is authorised because of, results from, or otherwise relates to, the doing of the act; and

(c) the way in which any rehabilitation or other thing that is authorised because of, results from, or otherwise relates to, the doing of the act is to be done.

Revocation of determination

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

(a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(b) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfied—by legislative instrument, revoke the determination.

Authorised Version C2024C00224 registered 19/06/2024

26C Excluded opal or gem mining

Mining other than exploring or prospecting

(1) This Subdivision does not apply to an act consisting of the creation or variation of a right to mine, if the right, as so created or varied:

(a) is not a right to explore or prospect; and

(b) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and

(c) allows:

(i) mining (other than puddling) only for opals or gems; or

(ii) mining consisting of puddling in respect of opals or gems; and

(d) allows that mining only in an area no larger than 5 hectares; and

(e) is conferred for a period of no more than 5 years; and

(f) if the right is able to be renewed one or more times—is able to be renewed for no more than 5 years each time.

Exploring or prospecting

(1A) This Subdivision also does not apply to an act consisting of the creation or variation of a right to mine that is a right to explore or prospect, if the right, as so created or varied:

(a) relates solely to land or waters wholly within an approved opal or gem mining area (see subsection (2)); and

(b) allows exploration or prospecting only for opals or gems; and

(c) allows that exploration or prospecting in an area no larger than 500 hectares; and

(d) is conferred for a period of no more than 5 years; and

(e) if the right is able to be renewed one or more times—is able to be renewed for no more than 5 years each time.

Approved opal or gem mining area

(2) If the conditions in subsections (3) to (5A) are satisfied, the Commonwealth Minister may, by legislative instrument, determine

Authorised Version C2024C00224 registered 19/06/2024

that a specified area of land or waters within a particular State or Territory is an ***approved opal or gem mining area*** for the purposes of this section.

First condition

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

Second condition

(4) The second condition is that the Commonwealth Minister is satisfied, having regard to:

(a) any mining rights conferred in the past in the area; and

(b) any other relevant matter;

that in the future at least some rights will be conferred to mine in the area that will:

(c) allow:

(i) mining for opals or gems (other than mining consisting of exploring, prospecting or puddling) only in an area no larger than 5 hectares; or

(ii) mining consisting of puddling in respect of opals or gems only in an area no larger than 5 hectares; or

(iii) mining consisting of exploration or prospecting for opals or gems in an area no larger than 500 hectares; and

(d) be conferred for a period of no more than 5 years; and

(e) if the rights are renewed one or more times—be renewed for a period of no more than 5 years each time.

Authorised Version C2024C00224 registered 19/06/2024

Third condition

(5) The third condition is that, before making the request, the State Minister or Territory Minister:

(a) notified the public, and notified any registered native title bodies corporate, registered native title claimants and representative Aboriginal/Torres Strait Islander bodies in relation to any of the area, that he or she was intending to make the request in relation to the area; and

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

(c) considered any such submissions that were made.

Fourth condition

(5A) The fourth condition is that the Commonwealth Minister is satisfied, immediately before the determination is made, that mining for opals or gems is being carried on in the whole or a substantial part of:

(a) if paragraph (b) does not apply—the area; or

(b) if, immediately before the determination is made, any part of the area is an approved opal or gem mining area—so much of the area as is not already an approved opal or gem mining area.

Revocation of determination

(6) If, at any time after making the determination, the Commonwealth Minister considers that circumstances have changed to the extent that the conditions in subsections (3) to (5A) would not be satisfied if he or she were making the determination at that time, the Commonwealth Minister must:

(a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

Authorised Version C2024C00224 registered 19/06/2024

(b) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the conditions in this section would still not be satisfied—by legislative instrument, revoke the determination.

26D Excluded mining acts: earlier valid acts

Renewal of valid mining lease etc.

(1) This Subdivision does not apply to an act consisting of the creation of a right to mine if:

(a) the creation of the right is done by:

(i) the renewal; or

(ii) the re-grant or re-making; or

(iii) the extension of the term;

of an earlier right to mine; and

(b) the earlier right:

(i) was created on or before 23 December 1996 by an act that is valid (including because of Division 2 or 2A); or

(ii) was created by an act to which this Subdivision applied that was not invalid to any extent under section 28; and

(c) the area to which the earlier right relates is not extended; and

(d) the term of the right is not longer than the term of the earlier right; and

(e) no rights are created in connection with the right that were not created in connection with the earlier right.

Act contemplated by exploration or prospecting agreement etc.

(2) This Subdivision does not apply to an act (the ***later act***) consisting of the creation of a right to mine if:

(a) before the later act takes place, an act (the ***earlier act***) consisting of the creation of a right to explore or prospect took place; and

(aa) the earlier act took place after the commencement of this section; and

Authorised Version C2024C00224 registered 19/06/2024

(b) this Subdivision applied to the earlier act and, because:
  (i) an agreement of the kind mentioned in paragraph 31(1)(b) was made in relation to the earlier act; or
  (ii) a determination was made under section 38 that the earlier act might be done, or might be done subject to conditions being complied with;

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

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

(d) any such conditions that were required to be complied with before the later act is done are complied with before the later act is done.

27 Arbitral body

Arbitral bodies: recognised State/Territory bodies

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

Arbitral bodies: NNTT

(2) If:

Authorised Version C2024C00224 registered 19/06/2024

(a) a future act is done by the Commonwealth; or
(b) a future act is done by a State or Territory and there is no arbitral body under subsection (1) in respect of the act;

the National Native Title Tribunal is the ***arbitral body*** in respect of the act.

Arbitral body not to include holders of judicial offices

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

27A Relevant Minister

Commonwealth Minister

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

State or Territory Minister

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

27B Conditions under agreements or determinations etc.

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

Authorised Version C2024C00224 registered 19/06/2024

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

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

(a) by the end of the period of 4 months after the notification day for the act (see subsection 29(4)), there is no native title party in relation to any of the land or waters that will be affected by the act;

(b) after the end of that period, but immediately before the act is done, there is no native title party in relation to any of the land or waters that will be affected by the act;

(c) subsection 32(2) (which applies if no objection is made after the giving of a notice that the act attracts the expedited procedure) allows the act to be done;

(d) a determination is made under subsection 32(4) that the act is an act attracting the expedited procedure;

(e) native title parties have lodged one or more objections in relation to the act under subsection 32(3), but all such objections are withdrawn under subsection 32(6);

(f) an agreement of the kind mentioned in paragraph 31(1)(b) is made;

(g) a determination is made under section 36A or 38 that the act may be done, or may be done subject to conditions being complied with;

(h) a determination that the act must not be done is declared to be overruled in accordance with section 42.

Breach of undertaking to trustee

(2) Even if, before the act is done, the requirements of one of paragraphs (1)(c) to (h) are satisfied, the act is nevertheless invalid to the extent it affects native title if:

(a) in a case where an amount is to be secured by bank guarantee in favour of the Registrar in compliance with a condition of a

Authorised Version C2024C00224 registered 19/06/2024

determination made under section 36A or 38 or a declaration made under section 42:

(i) the Registrar is informed by the Government party as mentioned in item 2 of the table in subsection 52(2) that it no longer proposes to do the act; and

(ii) the Government party does the act without again complying with the requirements of this Subdivision; or

(b) in a case where a trustee is holding an amount in trust under this Subdivision in respect of the act until it is dealt with in accordance with section 52A:

(i) the trustee is informed by the Government party as mentioned in paragraph 52A(1)(b) that it no longer proposes to do the act; and

(ii) the Government party does the act without again complying with the requirements of this Subdivision.

29 Notification of parties affected

Notice in accordance with section

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

Persons to be given notice

(2) The Government party must give notice to:

(a) any registered native title body corporate (a ***native title party***) in relation to any of the land or waters that will be affected by the act; and

(b) unless there are one or more registered native title bodies corporate in relation to all of the land or waters that will be affected by the act:

(i) any registered native title claimant (also a ***native title party***); and

Note: A registered native title claimant is a person or group of persons whose name or names appear on the Register of Native Title Claims as the applicant in relation to a claim

Authorised Version C2024C00224 registered 19/06/2024

to hold native title: see the definition of ***registered native title claimant*** in section 253.

(ii) any representative Aboriginal/Torres Strait Islander body;

in relation to any land or waters that will be affected by the act; and

(c) if the doing of the act has been requested or applied for by a person (for example, where it is the issue of a licence or the grant of a lease for which the person has applied)—that person (a ***grantee party***); and

(d) the registrar or other proper officer of the arbitral body in relation to the act.

Public notification

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

Notice to specify day and include prescribed documents etc.

(4) The notice given under subsection (2) or (3) must:

(a) specify a day as the ***notification day*** for the act; and

(b) contain a statement to the effect that, under section 30, persons have until 3 months after the notification day to take certain steps to become native title parties in relation to the notice; and

(c) be accompanied by any prescribed documents and include any prescribed information.

Each notice to specify the same day

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

Authorised Version C2024C00224 registered 19/06/2024

Which days may be specified

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

Acts attracting the expedited procedure

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

Multiple acts

(8) The Commonwealth Minister may, by legislative instrument, determine the circumstances and manner in which notice to a person under subsection (2) of 2 or more acts to which this Subdivision applies may be given in the same notice.

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

Project acts

(9) If such a notice is given and:

(a) the notice identifies a project to be carried on in a specified area; and

(b) the 2 or more acts constitute or form part of the project (whether or not the notice separately specifies the area that each act will affect); and

(c) the arbitral body is the same for each of the acts; and

(d) the notice states that the acts are project acts for the purposes of this Subdivision;

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

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

Authorised Version C2024C00224 registered 19/06/2024

Project acts not to include statement about expedited procedure

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

30 Other native title parties etc.

(1) Each of the following is also a ***native title party***:

(a) any applicant who, 4 months after the notification day (see subsection 29(4)), is a registered native title claimant in relation to any of the land or waters that will be affected by the act, so long as:

(i) the application containing the claim was filed in the Federal Court, or given to the recognised State/Territory body, before the end of 3 months after the notification day; and

(ii) the claim related to any of the land or waters that will be affected by the act;

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

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

(c) any body corporate that becomes a registered native title body corporate in relation to any of the land or waters that will be affected by the act:

(i) after the end of that period of 3 months; and

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

Ceasing to be a native title party

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

Authorised Version C2024C00224 registered 19/06/2024

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

Registered native title rights and interests

(3) For the purposes of this Subdivision, the ***registered native title rights and interests*** of a native title party are:

(a) if the native title party is such because an entry has been made on the National Native Title Register—the native title rights and interests described in that entry; or

(b) if the native title party is such because an entry has been made on the Register of Native Title Claims—the native title rights and interests described in that entry.

Replacing a native title party

(4) If:

(a) an applicant (the ***old applicant***) in relation to a claimant application is a native title party; and

(b) the old applicant is replaced as the applicant in relation to the claimant application by another applicant (the ***new applicant***); and

(c) the new applicant becomes a registered native title claimant;

the new applicant also replaces the old applicant as the native title party.

30A Negotiation parties

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

(a) the Government party;

(b) any native title party;

(c) any grantee party.

31 Normal negotiation procedure

(1) Unless the notice includes a statement that the Government party considers the act attracts the expedited procedure:

Authorised Version C2024C00224 registered 19/06/2024

(a) the Government party must give all native title parties an opportunity to make submissions to it, in writing or orally, regarding the act; and

(b) the negotiation parties must negotiate in good faith with a view to obtaining the agreement of each of the native title parties to:

(i) the doing of the act; or

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

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

Government party does not need to participate in negotiations

(1A) Despite paragraph (1)(b), the Government party does not need to negotiate about matters that the Government party determines do not affect the Government party if the other negotiation parties give written consent.

(1B) However, the Government party must be a party to the agreement.

Registered native title claimants

(1C) The requirement that a native title party that is a registered native title claimant be a party to the agreement is satisfied if:

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement—those persons are parties to the agreement.

(1D) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement as mentioned in

Authorised Version C2024C00224 registered 19/06/2024

paragraph (1C)(a). A failure to comply with this subsection does not invalidate the agreement.

Negotiation in good faith

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

Arbitral body to assist in negotiations

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

Information obtained in providing assistance not to be used or disclosed in other contexts

(4) If the NNTT is the arbitral body, it must not use or disclose information to which it has had access only because it provided assistance under subsection (3) for any purpose other than:

(a) providing that assistance; or

(b) establishing whether a negotiation party has negotiated in good faith as mentioned in paragraph (1)(b);

without the prior consent of the person who provided the NNTT with the information.

32 Expedited procedure

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

Authorised Version C2024C00224 registered 19/06/2024

Act may be done if no objection

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

Kinds of objection

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

Objections against inclusion of statement

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

Act not attracting expedited procedure

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

Withdrawal of objection

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

Withdrawal of statement about expedited procedure

(7) At any time before the arbitral body makes a determination under subsection (4), the Government party may, by giving written notice to the negotiation parties, withdraw its statement that it considers the act is an act attracting the expedited procedure. If it does so,

Authorised Version C2024C00224 registered 19/06/2024

subsection 31(1) applies as if the notice did not include such a statement.

33 Negotiations to include certain things

Profits, income etc.

(1) Without limiting the scope of any negotiations, they may, if relevant, include the possibility of including a condition that has the effect that native title parties are to be entitled to payments worked out by reference to:

(a) the amount of profits made; or

(b) any income derived; or

(c) any things produced;

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

Existing rights, interests and use

(2) Without limiting the scope of any negotiations, the nature and extent of the following may be taken into account:

(a) existing non-native title rights and interests in relation to the land or waters concerned;

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

(c) the practical effect of the exercise of those existing rights and interests, and that existing use, on the exercise of any native title rights and interests in relation to the land or waters concerned.

34 No agreement if determination

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

Authorised Version C2024C00224 registered 19/06/2024

35 Application for arbitral body determination

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

(a) at least 6 months have passed since the notification day (see subsection 29(4)); and

(b) no agreement of the kind mentioned in paragraph 31(1)(b) has been made in relation to the act.

Withdrawal of application

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

Negotiations for an agreement

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

36 Arbitral body determination to be made as soon as practicable

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

Report to Commonwealth Minister

(3) If the arbitral body is the NNTT and it does not make the determination within the period of 6 months starting when the application is made, it must, as soon as is reasonably practicable after the end of the period, advise the Commonwealth Minister in writing of the reason for it not doing so and include in that advice an estimate of when a determination is likely to be made.

Relevant Minister may give arbitral body notice as to urgency

(4) At any time later than 4 months after a negotiation party has made an application under section 35 that has not been withdrawn, and before either:

(a) the negotiation parties have made an agreement of the kind mentioned in paragraph 31(1)(b); or

(b) the arbitral body has made a determination under section 38;

the relevant Minister may give a written notice to the arbitral body requesting the arbitral body to make such a determination within the period specified in the notice. The period must end at a time later than 6 months after the application under section 35 was made.

36A Ministerial determination if arbitral body determination delayed

Relevant Minister may make determination

(1) If:

(a) the arbitral body has not made a determination in relation to the act within the period specified in a notice under subsection 36(4); and

(b) no agreement of the kind mentioned in paragraph 31(1)(b) has been made in relation to the act; and

(d) the requirements of section 36B are met;

Authorised Version C2024C00224 registered 19/06/2024

the relevant Minister may, subject to this section, make a determination in relation to the act.

Requirement for State/Territory Minister to consult before making determination

(1A) If:

(a) the relevant Minister is a State Minister or a Territory Minister; and

(b) the determination is that the act may be done or may be done subject to conditions to be complied with by any of the parties;

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

Criteria for making determination

(2) The relevant Minister may only make the determination if the relevant Minister considers that:

(a) a determination under section 38 is unlikely to be made within a period that is reasonable having regard to all the circumstances; and

(b) if the relevant Minister is a State Minister or a Territory Minister—it is in the interests of the State or Territory to make the determination at the time; and

(c) if the relevant Minister is the Commonwealth Minister—it is in:

(i) in any case—the national interest; and

(ii) if the act concerned is an act attributable to a State or Territory—the interests of the State or Territory;

to make the determination at the time.

Relevant Minister may consider other matters

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

Authorised Version C2024C00224 registered 19/06/2024

36B Consultation prior to section 36A determination

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

Notice to arbitral body

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

Notice to negotiation parties

(3) The relevant Minister must give written notice to each negotiation party that the Minister is considering making the determination and that each negotiation party:

(a) may, by the end of the day specified in the notice, give the Minister any submission or other material that the negotiation party wants the Minister to take into account in deciding whether to make the determination and, if so, its terms; and

(b) if the negotiation party does so—must also give each of the other negotiation parties a copy of the submission or other material; and

(c) may, within 7 days after the specified day, in response to any submission or other material given by any other negotiation party or the arbitral body, give the Minister any further submission or other material that the negotiation party wants the Minister to take into account as mentioned in paragraph (a).

Specified day

(4) The day specified under subsection (2) or (3) must be the same in all of the notices given under the subsections. It must be a day by which, in the relevant Minister's opinion, it is reasonable to assume

Authorised Version C2024C00224 registered 19/06/2024

that all of the notices so given will have been received by, or will otherwise have come to the attention of, the persons who must be so notified.

Natural justice

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

Material etc. taken into account

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

Minister's power not limited

(7) The fact that no submission or other material of the kind mentioned in subsection (3) has been given to the Minister before the end of the day specified in the notice does not prevent the Minister from making the determination.

36C Section 36A determinations

Coverage of section

(1) This section:
  (a) sets out the kind of determination that may be made under section 36A; and

Authorised Version C2024C00224 registered 19/06/2024

(b) states the effect of such a determination; and
(c) contains other provisions relevant to such a determination.

Determination

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

Who makes determination

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

Kinds of determination

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

Bank guarantee condition

(5) If a condition to be complied with is that an amount is to be secured by bank guarantee:
(a) the arbitral body must:
(i) determine the amount; and
(ii) specify the person who must secure the amount in that way; and
(b) the condition is not complied with unless:

Authorised Version C2024C00224 registered 19/06/2024

(i) the guarantee is given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; and

(ii) the guarantee is secured in favour of the Registrar; and

(iii) regulations made under subsection (5A) are complied with.

(5A) The regulations may make provision in relation to the securing of an amount by bank guarantee in compliance with such a condition, and any other matter in relation to such a guarantee.

Trust condition

(5B) If a condition to be complied with is that an amount is to be paid and held in trust until it is dealt with in accordance with section 52A:

(a) the arbitral body must determine the amount; and

(b) the amount, when paid, must be held in trust in accordance with the regulations until it is dealt with in accordance with section 52A.

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

Conditions to have contractual effect

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

Copy of determination to be tabled

(7) The relevant Minister must, as soon as practicable after making a determination, and in any case within 15 sitting days, cause a copy

Authorised Version C2024C00224 registered 19/06/2024

of the determination, together with reasons for the determination, to be laid:

(a) if the relevant Minister is the Commonwealth Minister—before each House of the Parliament; or

(b) if the relevant Minister is a State Minister—before the House, or both of the Houses, of Parliament of the State concerned; or

(c) if the relevant Minister is a Territory Minister—before the Legislative Assembly of the Territory concerned.

37 No arbitral body determination if agreement or Ministerial determination

The arbitral body must not make a determination if:

(a) an agreement of the kind mentioned in paragraph 31(1)(b) has been made; or

(b) a determination under section 36A has been made.

38 Kinds of arbitral body determinations

(1) Except where section 37 applies, the arbitral body must make one of the following determinations:

(a) a determination that the act must not be done;

(b) a determination that the act may be done;

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

Determinations may cover other matters

(1A) A determination may, with the agreement of the negotiation parties, provide that a particular matter that:

(a) is not reasonably capable of being determined when the determination is made; and

(b) is not directly relevant to the doing of the act;

is to be the subject of further negotiations or to be determined in a specified manner.

Authorised Version C2024C00224 registered 19/06/2024

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

Matters to be determined by arbitration

(1B) If:

(a) the manner specified is arbitration (other than by the arbitral body); and

(b) the negotiation parties do not agree about the manner in which the arbitration is to take place;

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

Profit-sharing conditions not to be determined

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

(a) the amount of profits made; or

(b) any income derived; or

(c) any things produced;

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

39 Criteria for making arbitral body determinations

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

(a) the effect of the act on:

(i) the enjoyment by the native title parties of their registered native title rights and interests; and

(ii) the way of life, culture and traditions of any of those parties; and

(iii) the development of the social, cultural and economic structures of any of those parties; and

(iv) the freedom of access by any of those parties to the land or waters concerned and their freedom to carry out rites,

Authorised Version C2024C00224 registered 19/06/2024

ceremonies or other activities of cultural significance on the land or waters in accordance with their traditions; and

(v) any area or site, on the land or waters concerned, of particular significance to the native title parties in accordance with their traditions;

(b) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of land or waters in relation to which there are registered native title rights and interests, of the native title parties, that will be affected by the act;

(c) the economic or other significance of the act to Australia, the State or Territory concerned, the area in which the land or waters concerned are located and Aboriginal peoples and Torres Strait Islanders who live in that area;

(e) any public interest in the doing of the act;

(f) any other matter that the arbitral body considers relevant.

Existing non-native title interests etc.

(2) In determining the effect of the act as mentioned in paragraph (1)(a), the arbitral body must take into account the nature and extent of:

(a) existing non-native title rights and interests in relation to the land or waters concerned; and

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

Laws protecting sites of significance etc. not affected

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

Authorised Version C2024C00224 registered 19/06/2024

Agreements to be given effect

(4) Before making its determination, the arbitral body must ascertain whether there are any issues relevant to its determination on which the negotiation parties agree. If there are, and all of the negotiation parties consent, then, in making its determination, the arbitral body:

(a) must take that agreement into account; and

(b) need not take into account the matters mentioned in subsection (1), to the extent that the matters relate to those issues.

40 No re-opening of issues previously decided

If:

(a) the arbitral body is making a determination in relation to an act consisting of the creation of a right to mine in relation to an area; and

(b) an agreement, or a determination by an arbitral body, under this Subdivision involving the same negotiation parties was previously made in relation to a future act consisting of the creation of a right to mine in relation to the same area; and

(c) an issue was decided in the agreement or during the inquiry;

the negotiation parties must not, without leave of the arbitral body that is making the determination, seek to vary the decision on the issue.

41 Effect of determination or agreement

(1) Subject to this section:

(a) a determination by the arbitral body; or

(b) an agreement of the kind mentioned in paragraph 31(1)(b);

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

Authorised Version C2024C00224 registered 19/06/2024

Other negotiation parties

(2) If a native title party is a registered native title claimant, any other person included in the native title claim group concerned is taken to be a negotiation party for the purposes only of subsection (1).

Bank guarantee condition

(3) If, in the case of a determination by an arbitral body, a condition to be complied with is that an amount is to be secured by bank guarantee:
  (a) the arbitral body must:
    (i) determine the amount; and
    (ii) specify the person who must secure the amount in that way; and
  (b) the condition is not complied with unless:
    (i) the guarantee is given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; and
    (ii) the guarantee is secured in favour of the Registrar; and
    (iii) regulations made under subsection (4) are complied with.

(4) The regulations may make provision in relation to the securing of an amount by bank guarantee in compliance with such a condition, and any other matter in relation to such a guarantee.

Trust condition

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

Authorised Version C2024C00224 registered 19/06/2024

(b) the amount, when paid, must be held in trust in accordance with the regulations until it is dealt with in accordance with section 52A.

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

41A Copies of agreements and determinations

Negotiation parties

(1) The negotiation parties must:
(a) give a copy of any agreement mentioned in paragraph 31(1)(b) to the arbitral body; and
(b) advise the relevant Minister in writing of the making of any such agreement; and
(c) advise the arbitral body whether or not there is any other written agreement made between some or all of the negotiation parties in connection with the doing of the act.

Relevant Minister

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

Arbitral body

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

(4) The arbitral body must give a copy of any agreement or advice the arbitral body receives under subsection (1) of this section to the Registrar.

Authorised Version C2024C00224 registered 19/06/2024

41B Access to information about agreements

Registrar must keep records

(1) The Registrar must keep a record in relation to each agreement of the kind mentioned in paragraph 31(1)(b) that the Registrar receives under subsection 41A(4).

(2) The record must include the following information in relation to the agreement (to the extent known to the Registrar):
  (a) a description of the area of land or waters to which the agreement relates;
  (b) the name of each party to the agreement and the address at which the party can be contacted;
  (c) if the agreement specifies the period during which it will operate—that period;
  (d) whether or not there is any other written agreement made between some or all of the parties to the agreement in connection with the doing of the act to which the agreement relates.

Parties must notify Registrar of changes

(3) A party to the agreement must notify the Registrar in writing of any change to the information mentioned in subsection (2).

(4) The Registrar must update the records to reflect any changes notified under subsection (3).

Information from records may be made available

(5) The Registrar must make the information mentioned in subsection (2) available to a person on request.

(6) However, if a party to the agreement notifies the Registrar in writing that the party does not wish some or all of the information to be made available under subsection (5), the Registrar must not make available the information concerned.

Authorised Version C2024C00224 registered 19/06/2024

(7) If a party to the agreement notifies the Registrar in accordance with subsection (6), the party must notify each other party to the agreement.

Expired agreements

(8) The Registrar does not need to keep a record, or provide information, in relation to an agreement that has expired.

42 Overruling of determinations

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

Right of Commonwealth to overrule

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

Kinds of declaration

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

Authorised Version C2024C00224 registered 19/06/2024

Time limit for making declaration

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

Bank guarantee condition

(5) If a condition to be complied with is that an amount is to be secured by bank guarantee:

(a) the arbitral body must:

(i) determine the amount; and

(ii) specify the person who must secure the amount in that way; and

(b) the condition is not complied with unless:

(i) the guarantee is given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; and

(ii) the guarantee is secured in favour of the Registrar; and

(iii) regulations made under subsection (5A) are complied with.

(5A) The regulations may make provision in relation to the securing of an amount by bank guarantee in compliance with such a condition, and any other matter in relation to such a guarantee.

Trust condition

(5B) If a condition to be complied with is that an amount is to be paid and held in trust until it is dealt with in accordance with section 52A:

(a) the arbitral body concerned must determine the amount; and

(b) the amount, when paid, must be held in trust in accordance with the regulations until it is dealt with in accordance with section 52A.

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

Authorised Version C2024C00224 registered 19/06/2024

Conditions have contractual effect

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

Copy of declaration to be given to parties

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

42A Project acts—modified application of Subdivision

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

General rule—project acts treated as a single act

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

Conditions

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

43 Modification of Subdivision if satisfactory alternative State or Territory provisions

Determination about alternative provisions

(1) If:

Authorised Version C2024C00224 registered 19/06/2024

(a) a law of a State or Territory provides for alternative provisions to those contained in this Subdivision in relation to some or all acts to which this Subdivision applies that are attributable to the State or Territory; and

(b) the Commonwealth Minister determines, by legislative instrument, that the alternative provisions comply with subsection (2);

then, while the determination is in force, the alternative provisions have effect instead of this Subdivision.

Requirement to be satisfied

(2) The alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:

(a) contain appropriate procedures for notifying registered native title bodies corporate, representative bodies, registered native title claimants and potential native title claimants of the act; and

(b) require negotiation in good faith among the persons concerned; and

(c) provide for mediation by a person or body to assist in settling any dispute among the persons concerned regarding the act; and

(d) give registered native title bodies corporate and registered native title claimants the right to object against the act; and

(e) make provision on similar terms to section 30 and contain time limits similar to those applicable under this Subdivision; and

(f) provide that the body determining the objection consists of, or includes, persons enrolled for at least 5 years as legal practitioners of:

(i) the High Court; or

(ii) another federal court; or

(iii) the Supreme Court of a State or Territory; and

Authorised Version C2024C00224 registered 19/06/2024

(g) make provision to the same effect as section 39 in relation to matters that are required to be taken into account by the body determining the objection; and

(h) if the alternative provisions involve the hearing and determination of the objection by a person or body other than the NNTT or a recognised State/Territory body for the State or Territory—provide for a member of the recognised State/Territory body (if any) or of the NNTT to participate in the determination; and

(i) provide that any decision of the body determining the objection may only be overruled on grounds of State or Territory interest or of national interest; and

(j) make appropriate provision for compensation for the act, including provision for:

(i) bank guarantees on similar terms to those in subsections 36C(5), 41(3) and 42(5), and regulations made for the purposes of subsections 36C(5A), 41(4) and 42(5A); or

(ii) for trusts on similar terms to those in subsections 36C(5B), 41(5) and 42(5B); and

(k) if the alternative provisions allow a Minister to make a determination in relation to the act in circumstances other than those covered in paragraph (i)—provide for those circumstances to be similar to those set out in section 36A and for requirements similar to those in sections 36B and 36C to apply.

Effect of including conjunctive agreement/determination provisions and expedited procedure provisions

(2A) If the only reason for the Commonwealth Minister not being of the opinion that the alternative provisions comply with subsection (2) is that they include conjunctive agreement/determination provisions or expedited procedure provisions (see subsection (5)), the alternative provisions nevertheless comply with subsection (2).

Authorised Version C2024C00224 registered 19/06/2024

Revocation of determination

(3) If at any time the alternative provisions are amended so that they no longer comply with subsection (2), the Commonwealth Minister must:

(a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(b) if, at the end of 180 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply—by legislative instrument, revoke the determination made under paragraph (1)(b); and

(c) if:

(i) at the end of 180 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and

(ii) before the end of the 180 days, the Commonwealth Minister determined, by legislative instrument, that a further period should apply for the purposes of this paragraph; and

(iii) at the end of the further period, the alternative provisions still do not comply;

by legislative instrument, revoke the determination made under paragraph (1)(b).

(3A) If, at any time, the alternative provisions cease to have ongoing effect, the Commonwealth Minister must, by legislative instrument, revoke the determination made under paragraph (1)(b).

Regulations to make transitional provisions

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

Authorised Version C2024C00224 registered 19/06/2024

Meaning of certain expressions

(5) In this section:

conjunctive agreement/determination provisions means provisions that:

(a) are included in alternative provisions; and

(b) in the opinion of the Commonwealth Minister, have an effect, in combination with the other alternative provisions, that is similar to the effect that subsection 26D(2) of this Act has in combination with the other provisions of this Subdivision.

expedited procedure provisions means provisions that:

(a) are included in alternative provisions; and

(b) in the opinion of the Commonwealth Minister, have an effect, in combination with the other alternative provisions, that is similar to the effect that section 32 of this Act has in combination with the other provisions of this Subdivision.

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

Determination about alternative provisions

(1) If:

(a) a law or laws of a State or Territory provide for alternative provisions to those contained in this Subdivision in relation to some or all acts to which this Subdivision applies that:

(i) are attributable to the State or Territory; and

(ii) relate, to any extent, to an area of land or waters that is an alternative provision area (see subsection (2)); and

(b) the Commonwealth Minister determines, by legislative instrument, that the provisions comply with subsections (4) and (6) and that the requirements of subsection (7) are complied with;

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

Authorised Version C2024C00224 registered 19/06/2024

*Meaning of **alternative provision area***

(2) An ***alternative provision area*** is:

(a) an area:

(i) that is, or was (whether before or after this Act commenced), covered by a freehold estate in fee simple or by a lease (other than a mining lease); and

(ii) over which all native title rights and interests have not been extinguished; or

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

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

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

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

(ii) in use for public purposes, for the particular purpose or for a similar purpose; or

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

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

Notification of proposed determination

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

Authorised Version C2024C00224 registered 19/06/2024

(a) notify all representative Aboriginal/Torres Strait Islander bodies for the land or waters concerned of the proposed determination; and

(b) invite submissions from them about the proposed determination; and

(c) consider any submissions made in response to the invitation.

Requirement to be satisfied: procedures etc.

(4) For the purposes of paragraph (1)(b), the alternative provisions comply with this subsection if, in the opinion of the Commonwealth Minister, they:

(a) contain appropriate procedures for notifying each of the following that an act to which the provisions apply is to be done:

(i) any registered native title claimant (a ***claimant***) in relation to any of the land or waters to which the act relates;

(ii) any registered native title body corporate (a ***body corporate***) in relation to any of that land or waters;

(iii) any representative Aboriginal/Torres Strait Islander body in relation to any of that land or waters; and

(b) give any claimant or body corporate the right to object, within a specified period after the notification, to the doing of the act so far as it affects their registered native title rights and interests; and

(c) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions)—provide for consultation (including provide in relation to mediation) between:

(i) any claimants, and bodies corporate, who object; and

(ii) the State or Territory;

about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned; and

Authorised Version C2024C00224 registered 19/06/2024

(d) in any other case—provide for consultation (including provide in relation to mediation) between:

(i) any claimants, and bodies corporate, who object; and

(ii) the person who requested or applied for the doing of the act;

about ways of minimising the act's impact on registered native title rights and interests in relation to the land or waters concerned, including about any access to the land or waters or the way in which any thing authorised by the act might be done; and

(e) if any person objects as mentioned in paragraph (b), provide for the objection to be heard by an independent person or body; and

Example: The independent person or body could be a State or Territory tribunal which deals with acts of the kind concerned, for example, a mining warden where the act is the grant of a mining lease.

(f) provide for judicial review of the decision to do the act; and

Example: The judicial review could be by the Supreme Court of the State or Territory.

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

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

(ii) the consultation is taken into account; and

(iii) it is in the interests of the State or the Territory not to comply with the determination; and

(h) if the act is of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain compulsory acquisitions)—confer on each claimant and body corporate procedural rights that are not less favourable than those they would have on the assumption that they instead

Authorised Version C2024C00224 registered 19/06/2024

held ordinary title to any land concerned and to the land adjoining, or surrounding, any waters concerned.

*Meaning of **determination***

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

determination includes recommendation.

in the interests of the State or the Territory includes:

(a) for the social or economic benefit of the State or the Territory (including of Aboriginal peoples and Torres Strait Islanders); and

(b) in the interests of the relevant region or locality in the State or the Territory.

Requirement to be satisfied: compensation

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

Requirement to be satisfied: preservation of areas of significance

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

Different provisions for different kinds of land or waters

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

Authorised Version C2024C00224 registered 19/06/2024

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

Revocation of determination

(9) If at any time the alternative provisions are amended so that they no longer comply as mentioned in paragraph (1)(b), the Commonwealth Minister must:

(a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(b) if, at the end of 90 days after doing so, the alternative provisions do not comply and subparagraphs (c)(i) and (ii) do not apply—by legislative instrument, revoke the determination made under paragraph (1)(b); and

(c) if:

(i) at the end of 90 days after advising the State Minister or Territory Minister, the alternative provisions do not comply and the Commonwealth Minister is satisfied that the State Minister or the Territory Minister is using his or her best endeavours to ensure that the alternative provisions will comply; and

(ii) before the end of the 90 days, the Commonwealth Minister determined, by legislative instrument, that a further period should apply for the purposes of this paragraph; and

(iii) at the end of the further period, the alternative provisions still do not comply;

by legislative instrument, revoke the determination made under paragraph (1)(b).

(9A) If, at any time, the alternative provisions cease to have ongoing effect, the Commonwealth Minister must, by legislative instrument, revoke the determination made under paragraph (1)(b).

Exclusion of certain compulsory acquisitions

(10) The alternative provisions do not apply to an act of the kind mentioned in subparagraph 26(1)(c)(iii) (which deals with certain

Authorised Version C2024C00224 registered 19/06/2024

compulsory acquisitions) if the act involves the acquisition of native title rights and interests in relation to land or waters in both an alternative provision area and an area that is not an alternative provision area.

Regulations to make transitional provisions

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

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

If:

(a) a particular future act is the creation or variation of a right to mine in both an alternative provision area (as defined in subsection 43A(2)) and an area (the ***other area***) that is not an alternative provision area; and

(b) because of section 43A, provisions of a State or Territory law would, apart from this section, have effect in relation to the act;

then, for the purposes of this Subdivision:

(c) the act is taken to consist of 2 separate acts, as follows:

(i) one act consisting of the creation or variation of that right to mine, but only in the alternative provision area; and

(ii) the other act consisting of the creation or variation of that right to mine, but only in the other area; and

(d) the act mentioned in subparagraph (c)(ii) is taken to be done only when the right concerned is first exercised in the other area.

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

Authorised Version C2024C00224 registered 19/06/2024

44 Additional operation of Subdivision

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

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

44A Conditions for Subdivision to apply

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

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

(2) A person must be included in the native title claim group (see section 253) in relation to a claim:

(a) for which there is an entry on the Register of Native Title Claims; and

Note: Under paragraph 190(4)(d), entries on the Register must be removed when the application in question is withdrawn, dismissed or otherwise finalised.

(b) that relates to any extent to an area that is covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease.

Access for traditional activities

(3) Either:

(a) as at the end of 23 December 1996, the person included in the native title claim group must have regularly had physical access to the whole or part (the ***traditional access area***) of the area that is covered by both the claim and the lease for the

Authorised Version C2024C00224 registered 19/06/2024

purpose of carrying on one or more traditional activities (see subsection (4)) of the person; or

(b) the person included in the native title claim group must be a descendant of a person who, as at 23 December 1996, regularly had such physical access.

Traditional activity

(4) A ***traditional activity*** is an activity of any of the following kinds, but only if it is carried on for traditional purposes of Aboriginal people or Torres Strait Islanders:

(a) hunting, fishing, gathering or camping;

(b) performing rites or other ceremonies;

(c) visiting sites of significance.

44B Rights of access for traditional activities

Conferral of rights

(1) At all times while this Subdivision applies, the person included in the native title claim group has a right:

(a) to have access, in the same way and to the same extent as the access mentioned in subsection 44A(3), to the traditional access area for the purpose of carrying on the one or more traditional activities in that area in the same way and to the same extent as they were carried on pursuant to the access mentioned in that subsection; and

(b) to carry on those activities in that area in that way and to that extent.

Lessee etc. rights prevail

(2) The rights of:

(a) the lessee under the lease; or

(b) any person with non-native title rights or interests in relation to the traditional access area;

Authorised Version C2024C00224 registered 19/06/2024

prevail over the rights conferred by subsection (1). To avoid doubt, the existence and exercise of the rights conferred by subsection (1) do not prevent the doing of any thing in exercise of the rights of the lessee or person with the non-native title rights or interests.

Agreements about rights

(3) The lessee or any person with non-native title rights or interests in relation to the traditional access area may make an agreement with the person included in the native title claim group about:

(a) the manner of exercise of any of the rights conferred by subsection (1); or

(b) the variation of any of those rights.

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

Assistance in making agreements

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

Information obtained in providing assistance not to be used or disclosed in other contexts

(4A) The NNTT must not use or disclose information to which it has had access only because it provided assistance in negotiating the agreement for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

Statutory access rights do not amount to native title

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

Authorised Version C2024C00224 registered 19/06/2024

44C Suspension of native title rights

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

Other provisions not affected

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

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

44D Certain other laws not affected

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

(1) This Subdivision does not affect:

(a) any reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders contained:

(i) in any law of the Commonwealth, a State or a Territory; or

(ii) elsewhere; or

(b) the operation of any law of the Commonwealth, a State or a Territory that allows for the granting of access rights to Aboriginal peoples or Torres Strait Islanders; or

(c) the operation of any law of the Commonwealth, a State or Territory that relates to the preservation or protection of any area or site of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Authorised Version C2024C00224 registered 19/06/2024

Laws of general application

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

44E Federal Court jurisdiction

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

44F Request for mediation

(1) If all of the persons involved in any dispute about a right conferred by subsection 44B(1) agree, they may request the NNTT or a recognised State/Territory body to mediate in the dispute.

Note: Persons wishing to make an indigenous land use agreement about access in general may request assistance from the NNTT or a recognised State/Territory body in negotiating the agreement: see sections 24BF, 24CF and 24DG.

(2) The NNTT must not use or disclose information to which it has had access only because it mediated in the dispute for any purpose other than mediating the dispute without the prior consent of the person who provided the NNTT with the information.

44G Other mediation, arbitration and agreements not excluded by Subdivision

Nothing in this Subdivision prevents:

(a) mediation or arbitration by any person or body of any matter arising in relation to a right conferred by subsection 44B(1); or

(b) the making or enforcing of agreements about access to the area covered by the non-exclusive agricultural lease or the

Authorised Version C2024C00224 registered 19/06/2024

non-exclusive pastoral lease other than under rights conferred by subsection 44B(1).

Authorised Version C2024C00224 registered 19/06/2024

Division 4—Other provisions relating to native title

44H Rights conferred by valid leases etc.

To avoid doubt, if:

(a) the grant, issue or creation of a lease, licence, permit or authority is valid (including because of any provision of this Act); and

(b) the lease, licence, permit or authority requires or permits the doing of any activity (whether or not subject to any conditions); and

(ba) an activity is done in accordance with the lease, licence, permit or authority and any such conditions;

then:

(c) the requirement or permission, and the doing of the activity, prevail over any native title rights and interests and any exercise of those rights and interests, but do not extinguish them; and

(d) the existence and exercise of the native title rights and interests do not prevent the doing of the activity; and

(e) native title holders are not entitled to compensation under this Act for the doing of the activity.

Note 1: Any compensation to which the native title holders may be entitled under this Act for the grant of the lease, licence, permit or authority may take into account the doing of the activity.

Note 2: This section is not intended to imply that the person carrying on the activity is not subject to the laws of a State or Territory.

45 RDA compensation to be determined under this Act

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

Authorised Version C2024C00224 registered 19/06/2024

Recovery of compensation

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

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

The non-extinguishment principle applies to:

(a) the granting of the mineral leases and exploration licences validated by section 3 of the *McArthur River Project Agreement Ratification Amendment Act 1993* of the Northern Territory; and

(b) the granting of the mineral lease and exploration licence by section 4A of the *McArthur River Project Agreement Ratification Act 1992* of the Northern Territory.

47 Pastoral leases held by native title claimants

When section applies

(1) This section applies if:

(a) an application under section 61 is made in relation to an area; and

(b) when the application is made, a pastoral lease is held over the area by:

(i) any of the persons who made the application claiming to hold the native title or any other persons with whom they claimed to hold the title; or

(ii) a trustee, on trust for any of those persons; or

(iii) a company whose only shareholders or, in the case of a body corporate without shareholders, members are any of those persons.

Authorised Version C2024C00224 registered 19/06/2024

Prior extinguishment to be disregarded

(2) For all purposes under this Act in relation to the application, any extinguishment of the native title rights and interests by any of the following acts must be disregarded:

(a) the grant of the lease itself;

(b) the creation of any other interest itself in relation to the area;

(c) the doing of any act under the lease or by virtue of holding the interest.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

Effect of determination

(3) If the determination on the application is that the native title exists and is held by the persons mentioned in subparagraph (1)(b)(i), (ii) or (iii):

(a) the determination does not affect:

(i) the validity of the lease; or

(ii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and

(b) the non-extinguishment principle applies in relation to the grant of the lease and any other prior act affecting the native title; and

(c) any person, trustee or company holding the lease as mentioned in subparagraph (1)(b)(i), (ii) or (iii) has no procedural rights as holder of the lease in relation to any act, in relation to the land or waters, to which Subdivision P of Division 3 (which deals with the right to negotiate) applies.

47A Reserves etc. covered by claimant applications

When section applies

(1) This section applies if:

Authorised Version C2024C00224 registered 19/06/2024

(a) a claimant application is made in relation to an area; and

(b) when the application is made:

(i) a freehold estate exists, or a lease is in force, over the area or the area is vested in any person, if the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(ii) the area is held expressly for the benefit of, or is held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; and

(c) when the application is made, one or more members of the native title claim group occupy the area.

Prior extinguishment to be disregarded

(2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by any of the following acts must be disregarded:

(a) the grant or vesting mentioned in subparagraph (1)(b)(i) or the doing of the thing that resulted in the holding or reservation mentioned in subparagraph (1)(b)(ii);

(b) the creation of any other prior interest in relation to the area, other than, in the case of an area held as mentioned in subparagraph (1)(b)(ii), the grant of a freehold estate for the provision of services (such as health and welfare services).

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

Effect of determination

(3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:

(a) the determination does not affect:

(i) the validity of the grant or vesting or of the creation of the trust or reservation; or

Authorised Version C2024C00224 registered 19/06/2024

(ii) the validity of the creation of any other prior interest in relation to the area; or

(iii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and

(b) the non-extinguishment principle applies to the grant or vesting or the creation of the trust or reservation or any other prior interest.

Exclusion of Crown ownership of natural resources

(4) For the purposes of this section, a reference to the creation of an interest in relation to an area does not include a reference to the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity.

47B Vacant Crown land covered by claimant applications

When section applies

(1) This section applies if:

(a) a claimant application is made in relation to an area; and

(b) when the application is made, the area is not:

(i) covered by a freehold estate or a lease; or

(ii) covered by a reservation, proclamation, dedication, condition, permission or authority, made or conferred by the Crown in any capacity, or by the making, amendment or repeal of legislation of the Commonwealth, a State or a Territory, under which the whole or a part of the land or waters in the area is to be used for public purposes or for a particular purpose; or

(iii) subject to a resumption process (see paragraph (5)(b)); and

(c) when the application is made, one or more members of the native title claim group occupy the area.

Authorised Version C2024C00224 registered 19/06/2024

Prior extinguishment to be disregarded

(2) For all purposes under this Act in relation to the application, any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by the creation of any prior interest in relation to the area must be disregarded.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

Effect of determination

(3) If the determination on the application is that the native title claim group hold the native title rights and interests claimed:

(a) the determination does not affect:

(i) the validity of the creation of any prior interest in relation to the area; or

(ii) any interest of the Crown in any capacity, or of any statutory authority, in any public works on the land or waters concerned; and

(b) the non-extinguishment principle applies to the creation of any prior interest in relation to the area.

Renewals and extensions of leases

(4) For the purposes of paragraph (1)(b), if, after a lease covering an area expires or is terminated, the lease is bona fide renewed, or its term is bona fide extended, the area is taken to be covered by the lease during the period between the expiry or termination and the renewal or extension.

Defined expressions

(5) For the purposes of this section:

(a) the ***creation of a prior interest*** in relation to an area does not include the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity; and

Authorised Version C2024C00224 registered 19/06/2024

(b) an area is ***subject to a resumption process*** at a particular time (the ***test time***) if:

(i) all interests last existing in relation to the area before the test time were acquired, resumed or revoked by, or surrendered to, the Crown in any capacity; and

(ii) when that happened, the Crown had a bona fide intention of using the area for public purposes or for a particular purpose; and

(iii) the Crown still had a bona fide intention of that kind in relation to the area at the test time.

47C National parks etc. covered by native title applications

When section applies

(1) This section applies if:

(a) a claimant application or a revised native title determination application is made in relation to an area that is, or is part of, a park area (see subsection (3)); and

(b) the operation of this section in relation to an area (the ***agreement area***) that is in an onshore place, and comprises the whole or a part of the park area, has been agreed to in writing by:

(i) any registered native title body corporate concerned or the applicant for any native title claim group concerned; and

(ii) whichever of the Commonwealth, the State or the Territory by or under whose law the park area was set aside, or the interest over the park area was granted or vested, as mentioned in subsection (3); and

(c) the agreement area is:

(i) Crown land; or

(ii) covered by a freehold estate held by the Crown, or a statutory authority of the Crown, in any of its capacities; and

Authorised Version C2024C00224 registered 19/06/2024

(d) none of sections 47, 47A and 47B applies in relation to the agreement area.

(2) For the purposes of paragraph (1)(c), it is immaterial whether the land is:

(a) subject to a lease or licence; or

(b) covered by a dedication, reservation, proclamation, condition or declaration made or conferred by the Commonwealth, a State or a Territory; or

(c) covered by legislation of the Commonwealth, a State or a Territory under which the whole or a part of the land is to be used for a public purpose or public purposes; or

(d) held on trust for the benefit of another person; or

(e) subject to native title.

*Meaning of **park area***

(3) A ***park area*** means an area (such as a national, State or Territory park):

(a) that is set aside; or

(b) over which an interest is granted or vested;

by or under a law of the Commonwealth, a State or a Territory for the purpose of, or purposes that include, preserving the natural environment of the area, whether that setting aside, granting or vesting resulted from a dedication, reservation, proclamation, condition, declaration, vesting in trustees or otherwise.

Public works

(4) An agreement referred to in paragraph (1)(b) may include a statement by the Commonwealth, or the State or Territory concerned, that it agrees that the extinguishing effect of any of its relevant public works (see subsection (11)) in the agreement area is to be disregarded.

(5) If the agreement area contains one or more relevant public works, the application mentioned in paragraph (1)(a) may also be the subject of an agreement in writing between:

Authorised Version C2024C00224 registered 19/06/2024

(a) any registered native title body corporate concerned or the applicant for any native title claim group concerned; and

(b) the Commonwealth, the State or the Territory to which the relevant public work relates (see subsection (11));

that any extinguishment of native title by the construction or establishment of the relevant public work is to be disregarded.

Notice and time for comment

(6) Before making an agreement for the purposes of paragraph (1)(b) or subsection (5), the Commonwealth, or the State or Territory concerned, must:

(a) arrange for reasonable notification of the proposed agreement in the State or Territory in which the agreement area is located, whether on the internet, in a newspaper circulating generally in the State or Territory, on the radio or otherwise; and

(b) give interested persons an opportunity to comment on the proposed agreement.

The period for comment must be at least 3 months.

(7) The agreement must not be made before the end of the period for comment.

Prior extinguishment to be disregarded

(8) For all purposes under this Act in relation to the application, any extinguishment of the native title rights and interests in relation to the agreement area by any of the following acts must be disregarded:

(a) the setting aside, granting or vesting mentioned in subsection (3);

(b) the creation of any other prior interest in relation to the agreement area;

(c) if:

(i) the agreement under paragraph (1)(b) includes a statement of a kind mentioned in subsection (4); or

Authorised Version C2024C00224 registered 19/06/2024

(ii) there is an agreement under subsection (5);

the construction or establishment of any relevant public works that are the subject of the agreement concerned.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

Effect of determination

(9) If the determination on the application is that native title rights and interests exist in the agreement area:

(a) the determination does not affect:

(i) the validity of the setting aside, granting or vesting; or

(ii) the validity of the creation of any other prior interest in relation to the agreement area; or

(iii) any interest of the Crown in any capacity, or of any statutory authority, or of any other person, in any public works on the land or waters concerned (whether or not a relevant public work that is the subject of an agreement), or access to such public works; or

(iv) any existing public access to the agreement area; and

(b) the non-extinguishment principle applies to the setting aside, granting or vesting or the creation of any other prior interest in relation to the agreement area.

Exclusion of Crown ownership of natural resources

(10) For the purposes of this section, a reference to the creation of an interest in relation to an area does not include a reference to the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity.

Definitions

(11) In this section:

Crown land means:

Authorised Version C2024C00224 registered 19/06/2024

(a) land that has not been alienated from the Crown in right of the Commonwealth, a State or a Territory by a grant of an estate in fee simple; or

(b) land that has been so alienated, but has been resumed by, or has reverted to or been acquired by, the Crown.

relevant public work, in relation to the Commonwealth, a State or a Territory, means a public work:

(a) constructed or established directly by the Commonwealth, the State or the Territory; or

(b) constructed or established by another person on behalf of the Commonwealth, the State or the Territory.

Authorised Version C2024C00224 registered 19/06/2024

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

48 Compensation payable in accordance with Division

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

49 No multiple compensation for essentially same act

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

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

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

50 Bodies that may determine compensation

Division exhaustive

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

Note: Such compensation is generally for acts that are validated or valid. Native title holders would ordinarily be entitled to compensation or damages for invalid acts under the general law. The Federal Court may be able to award such compensation or damages in proceedings in relation to the invalidity of the act: see subsection 213(2).

Applications to Federal Court

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

Authorised Version C2024C00224 registered 19/06/2024

Jurisdiction to hear appeals, to review etc. not affected

(3) Nothing in this Division affects:
  (a) any jurisdiction of a court, person or body to hear appeals against, to review or otherwise to affect, a determination of compensation made in accordance with this Division; or
  (b) the jurisdiction of the High Court.

51 Criteria for determining compensation

Just compensation

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

Acquisition under compulsory acquisition law

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

Compensation where similar compensable interest test satisfied

(3) If:
  (a) the act is not the compulsory acquisition of all or any of the native title rights and interests; and
  (b) the similar compensable interest test is satisfied in relation to the act;

the court, person or body making the determination of compensation must, subject to subsections (5) to (8), in doing so apply any principles or criteria for determining compensation

Authorised Version C2024C00224 registered 19/06/2024

(whether or not on just terms) set out in the law mentioned in section 240 (which defines ***similar compensable interest test***).

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

(4) If:

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

(b) there is a compulsory acquisition law for the Commonwealth (if the act giving rise to the entitlement is attributable to the Commonwealth) or for the State or Territory to which the act is attributable;

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

Monetary compensation

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

Requests for non-monetary compensation

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

(a) must consider the request; and

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

Where recommendation not complied with

(7) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person claiming to be entitled to the compensation may request the court,

Authorised Version C2024C00224 registered 19/06/2024

person or body to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

Where recommendation complied with

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

51A Limit on compensation

Compensation limited by reference to freehold estate

(1) The total compensation payable under this Division for an act that extinguishes all native title in relation to particular land or waters must not exceed the amount that would be payable if the act were instead a compulsory acquisition of a freehold estate in the land or waters.

This section is subject to section 53

(2) This section has effect subject to section 53 (which deals with the requirement to provide "just terms" compensation).

52 Bank guarantee required under *right to negotiate* procedures

(1) This section applies if a condition to be complied with under:
  (a) a determination made under section 36A; or
  (b) a determination made under section 38; or
  (c) a declaration made under section 42;
in respect of an act is that an amount is to be secured by bank guarantee given by an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (an ***ADI***) in favour of the Registrar.

Authorised Version C2024C00224 registered 19/06/2024

Directions to ADI and payments to ultimate beneficiaries

(2) The Registrar must take the action set out in column 3 of the following table in the circumstances set out in column 2 of the table:

Directions to ADI and payments to ultimate beneficiaries		
Item	**If:**	**the Registrar must:**
1	an approved determination of native title is made to the effect that there is no native title in relation to the area concerned immediately before the act takes place	direct the ADI to cancel the bank guarantee.
2	the Government party informs the Registrar in writing that it is not going to do the act	direct the ADI to cancel the bank guarantee.
3	(a) an approved determination of native title is made to the effect that the native title parties concerned are (disregarding any holding of the native title in trust under Division 6) the native title holders in relation to the area affected by the act; and (b) the registered native title body corporate advises the Registrar that it wishes to accept the amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act; and (c) the person who secured the amount by bank guarantee advises the Registrar that the person agrees to the registered native title body	(a) direct the ADI to pay the amount secured to the Registrar; and (b) pay that amount to the registered native title body corporate in relation to the area concerned.

Authorised Version C2024C00224 registered 19/06/2024

Directions to ADI and payments to ultimate beneficiaries		
Item	**If:**	**the Registrar must:**
	corporate accepting the amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act	
4	(a) a determination is made, on a claim for compensation in respect of the act, that a person (the ***ultimate beneficiary***) is entitled to compensation: (i) in accordance with this Division; or (ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed; and (b) the amount secured is less than or equal to the amount determined	(a) direct the ADI to pay the amount secured to the Registrar; and (b) pay that amount to the ultimate beneficiary.
5	(a) a determination is made, on a claim for compensation in respect of the act, that a person (the ***ultimate beneficiary***) is entitled to compensation: (i) in accordance with this Division; or	(a) direct the ADI to pay an amount equal to the amount determined to the Registrar; and (b) pay that amount to the ultimate beneficiary; and (c) direct the ADI to cancel

Authorised Version C2024C00224 registered 19/06/2024

Directions to ADI and payments to ultimate beneficiaries		
Item	**If:**	**the Registrar must:**
	(ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed; and (b) the amount secured by bank guarantee is more than the amount determined	the guarantee.
6	a determination is made, on a claim for compensation in respect of the act: (a) in accordance with this Division; or (b) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed; that no person is entitled to compensation	direct the ADI to cancel the guarantee.
7	(a) the person who secured the amount by bank guarantee obtains an alternative bank guarantee from an ADI in favour of the Registrar; and (b) the alternative bank	direct the ADI to cancel the guarantee.

Authorised Version C2024C00224 registered 19/06/2024

Directions to ADI and payments to ultimate beneficiaries		
Item	**If:**	**the Registrar must:**
	guarantee complies with regulations made for the purposes of subsection 36C(5A), 41(4) or 42(5A) (as the case requires)	
8	(a) the Registrar applies to the Federal Court in accordance with subsection (3) for an order in relation to the amount secured; and (b) the court orders that an amount be paid to a person (the ***ultimate beneficiary***)	(a) direct the ADI to pay the secured amount (the ***original amount***) to the Registrar; and (b) pay an amount to the ultimate beneficiary equal to the amount the court orders to be paid; and (c) if the amount to be paid to the ultimate beneficiary is less than the original amount—pay the remainder to the person who secured the original amount by bank guarantee or, if that person no longer exists, the person to whom the Federal Court orders it to be paid.
9	(a) none of the other items apply; and (b) the Federal Court decides, on application by any person, that it would be just and equitable in all the circumstances to pay the amount secured by bank guarantee to a person (the ***ultimate beneficiary***)	(a) direct the ADI to pay the amount secured to the Registrar; and (b) pay that amount to the ultimate beneficiary.

Authorised Version C2024C00224 registered 19/06/2024

Application to the Federal Court where compensation includes transfer of property or provision of goods or services

(3) If:

(a) a determination is made, on a claim for compensation in respect of the act:

(i) in accordance with this Division; or

(ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed;

that a person is entitled to compensation; and

(b) some or all of the compensation is constituted by the transfer of property or the provision of goods or services;

the Registrar must apply to the Federal Court for a direction as to the payment of the amount secured.

Federal Court jurisdiction

(4) The Federal Court has jurisdiction in relation to the matters mentioned in:

(a) items 5, 8 and 9 of the table in subsection (2); and

(b) subsection (3).

Compensation payable is greater amount than that secured

(5) If:

(a) a determination is made, on a claim for compensation in respect of the act:

(i) in accordance with this Division; or

(ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed;

that a person is entitled to compensation; and

(b) the amount secured by the bank guarantee is less than the amount determined;

Authorised Version C2024C00224 registered 19/06/2024

the Government party must pay the shortfall to the person.

No compensation if already paid under bank guarantee

(6) Subject to section 53, if the Registrar pays an amount to a registered native title body corporate in accordance with item 3 of the table in subsection (2), there is no entitlement to compensation under Division 3 for the act.

52A Payment held in trust under *right to negotiate* procedures

When section applies

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

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

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

(c) the following requirements are satisfied:

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

(ii) the registered native title body corporate advises the trustee that it wishes to accept the trust amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act;

(iii) the person who paid the trust amount advises the trustee that the person agrees to the registered native title body corporate accepting the trust amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act;

Authorised Version C2024C00224 registered 19/06/2024

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

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

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

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

Paragraph (1)(c) case

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

Paragraph (1)(d) case where monetary compensation

(4) In a paragraph (1)(d) case where the determination is that a person is entitled to an amount of monetary compensation:
(a) if the trust amount is the same as the amount determined—the trustee must pay the trust amount to the person; or
(b) if the trust amount is less than the amount determined—the trustee must pay the trust amount to the person and the Government party must pay the shortfall to the person; or

Authorised Version C2024C00224 registered 19/06/2024

(c) if the trust amount is more than the amount determined—the trustee must:

(i) pay the person so much of the trust amount as equals the amount determined; and

(ii) refund the excess to the person who paid the trust amount to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment.

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

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

Paragraph (1)(d) case where no compensation

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

Paragraph (1)(e) case

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

53 *Just terms* compensation

*Entitlement to **just terms** compensation*

(1) Where, apart from this section:

(a) the doing of any future act; or

Authorised Version C2024C00224 registered 19/06/2024

(b) the application of any of the provisions of this Act in any particular case;

would result in a paragraph 51(xxxi) acquisition of property of a person other than on paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by this Act, from:

(c) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or

(d) in any other case—the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

Federal Court's jurisdiction

(2) The Federal Court has jurisdiction with respect to matters arising under subsection (1) and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

54 Commonwealth compensation payable from CRF

Amounts payable from CRF

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

(a) amounts of compensation payable by the Commonwealth in accordance with this Division;

(b) amounts to be spent by the Commonwealth in acquiring property or providing goods or services in order to comply with a recommendation under paragraph 51(6)(b) (which deals with requests for non-monetary compensation).

Appropriation

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

Authorised Version C2024C00224 registered 19/06/2024

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

55 Determinations by Federal Court

If:

(a) the Federal Court proposes to make an approved determination of native title; and

(b) the determination is that native title exists at the time of making the determination;

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

56 Determination whether native title to be held in trust

Trust determination

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

Steps in making determination

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

(b) secondly, if the common law holders give the nomination within the period, the Federal Court must determine that the prescribed body corporate is to hold the rights and interests from time to time comprising the native title in trust for the common law holders; and

(c) thirdly, if the common law holders do not give the nomination within the period, the Federal Court must determine that the rights and interests are to be held by the common law holders.

Native title held in trust

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

Other matters relating to the trust to be dealt with by regulation

(4) The regulations may also make provision in respect of:

(a) the following matters relating to the holding in trust of the native title rights and interests:

(i) the functions to be performed by the body corporate;

(ii) the nature of any consultation with, or other role for, the common law holders;

(iii) the circumstances in which the rights and interests may be surrendered, transferred or otherwise dealt with;

(iv) the determination of any other matter by the Federal Court;

(v) any other matter; and

(b) the replacement of the trustee where the common law holders wish the trustee to be replaced; and

(c) the determination by the Federal Court of a prescribed body corporate to replace the trustee, and any other matter in relation to the replacement of the trustee; and

Authorised Version C2024C00224 registered 19/06/2024

(d) the termination of the trust where:
(i) the common law holders wish the trust to be terminated; or
(ii) a liquidator is appointed for the body corporate; and
(e) the determination by the Federal Court of a prescribed body corporate to perform the functions mentioned in subsection 57(3) once the trust is terminated; and
(f) any matter in relation to the termination of the trust, the performance of those functions and the transition from the trust arrangement to the new arrangement, including the determination of those matters by the Federal Court.

Protection of native title from debt recovery processes etc.

(5) Subject to subsection (6), native title rights and interests held by the body corporate are not able to be:
(a) assigned, restrained, garnisheed, seized or sold; or
(b) made subject to any charge or interest; or
(c) otherwise affected;
as a result of:
(d) the incurring, creation or enforcement of any debt or other liability of the body corporate (including a debt or liability owed to the Crown in any capacity or to any statutory authority); or
(e) any act done by the body corporate.

Subsection (5) not applicable to dealings authorised by regulations

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

Where common law holders later wish a trust be determined

(7) The regulations may make provision in respect of:

Authorised Version C2024C00224 registered 19/06/2024

(a) the determination by the Federal Court of a prescribed body corporate to hold the rights and interests from time to time comprising the native title in trust for the common law holders where:

(i) a determination is made, either under this section or under regulations made for the purposes of this section, that the rights and interests are to be held by the common law holders; and

(ii) the common law holders wish a prescribed body corporate to instead hold those rights and interests in trust; and

(b) the functions to be performed by the prescribed body corporate, once determined; and

(c) the nature of any consultation with, or other role for, the common law holders; and

(d) the circumstances in which the rights and interests may be surrendered, transferred or otherwise dealt with; and

(e) any other matter in relation to the holding in trust of the native title rights and interests, and the transition from the former to the new arrangement, including the determination of the matter by the Federal Court.

57 Determination of prescribed body corporate etc.

Where trustee

(1) If the determination under section 56 is that the native title rights and interests are to be held in trust by a prescribed body corporate, the prescribed body corporate, after becoming a registered native title body corporate (see the definition of that expression in section 253), must also perform:

(a) any other functions given to it as a registered native title body corporate under particular provisions of this Act; and

(b) any functions given to it as a registered native title body corporate under the regulations (see section 58).

Authorised Version C2024C00224 registered 19/06/2024

Where not trustee

(2) If the determination under section 56 is not as mentioned in subsection (1) of this section, the Federal Court must take the following steps in determining which prescribed body corporate is, after becoming a registered native title body corporate, to perform the functions mentioned in subsection (3):

(a) first, it must request a representative of the common law holders to:

(i) nominate, in writing given to the Federal Court within a specified period, a prescribed body corporate for the purpose; and

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

(b) secondly, if a prescribed body corporate is nominated in accordance with the request, the Federal Court must determine that the body is to perform the functions;

(c) thirdly, if no prescribed body corporate is nominated in accordance with the request, the Federal Court must, in accordance with the regulations, determine which prescribed body corporate is to perform the functions.

Functions where not trustee

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

(a) any functions given to it as a registered native title body corporate under particular provisions of this Act; and

(b) any functions given to it under the regulations (see section 58).

58 Functions under regulations

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

(a) if it does not hold the native title on trust under section 56, or regulations made for the purposes of that section—to act as

Authorised Version C2024C00224 registered 19/06/2024

agent or representative of the common law holders in respect of matters relating to the native title;

(b) to perform in a specified way any functions in relation to the native title given to it under other provisions of this Act;

(ba) to perform in a specified way any functions, in relation to a compensation application, given to it under other provisions of this Act;

(c) to hold on trust, or perform functions in relation to, compensation under this Act;

(d) to consult with, and act in accordance with the directions of, the common law holders, or persons entitled to compensation under this Act, in performing any of its functions;

(e) if it does not hold the native title on trust—to enter into agreements in relation to the native title that are binding on the common law holders, provided the agreements have been made in accordance with processes set out in the regulations;

(f) to perform any other functions in relation to the native title, or compensation under this Act.

59 Kinds of prescribed bodies corporate may be determined

(1) The regulations may prescribe the kinds of body corporate that may be determined under paragraph 56(2)(b) or 57(2)(b).

(2) The regulations may prescribe the body corporate, or the kinds of body corporate, that may be determined under paragraph 57(2)(c).

(3) The regulations may prescribe the body corporate, or the kinds of body corporate, that may be determined under paragraph 56(4)(c) or (e), 56(7)(a) or 60(b).

59A Prescribed bodies corporate for subsequent determinations of native title

(1) If a prescribed body corporate holds native title rights and interests in trust for some common law holders, the Federal Court may determine under section 56 that the prescribed body corporate is to

Authorised Version C2024C00224 registered 19/06/2024

hold native title rights and interests in trust for other common law holders, so long as all of the common law holders mentioned consent to the determination.

(2) If a prescribed body corporate is an agent prescribed body corporate for some common law holders, the Federal Court may determine under paragraph 57(2)(b) that the prescribed body corporate is to be the agent prescribed body corporate for other common law holders, so long all of the common law holders mentioned consent to the determination.

(3) For the purposes of subsections (1) and (2), the regulations may prescribe the ways in which the consent of the common law holders may be obtained, and if the regulations do so, the common law holders must obtain the consent in that way.

60 Replacement of agent prescribed bodies corporate

The regulations may make provision for:

(a) the replacement of an agent prescribed body corporate (the ***original PBC***) with another prescribed body corporate (the ***replacement PBC***) to perform the functions mentioned in subsection 57(3) where:

(i) the common law holders wish the replacement to occur; or

(ii) a liquidator is appointed for the original PBC; and

(b) the determination by the Federal Court of the replacement PBC; and

(c) any matter in relation to the transition from the original PBC to the replacement PBC, including the determination of that matter by the Federal Court; and

(d) any other matters in relation to the replacement of the original PBC with the replacement PBC.

Authorised Version C2024C00224 registered 19/06/2024

60AAA Assistance in relation to registered native title bodies corporate

(1) A registered native title body corporate may request the NNTT to provide assistance in promoting agreement about matters relating to native title or the operation of this Act between:

(a) the registered native title body corporate and another registered native title body corporate; or

(b) the registered native title body corporate and one or more common law holders; or

(c) common law holders.

(2) A common law holder may request the NNTT to provide assistance in promoting agreement about matters relating to native title or the operation of this Act between:

(a) the common law holder and the registered native title body corporate; or

(b) the common law holder, the registered native title body corporate and one or more other common law holders.

(3) The NNTT may enter into an agreement with a registered native title body corporate or common law holder or both under which either or both of them are liable to pay the Commonwealth for assistance under subsection (1) or (2).

(4) The NNTT must not use or disclose information to which it has had access only because it provided assistance under subsection (1) or (2) for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

60AA Body corporate for Meriam people

(1) If:

(a) a body corporate is or becomes registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; and

Authorised Version C2024C00224 registered 19/06/2024

(b) all of the members of the body corporate are members of the Meriam people (see subsection (2)); and

(c) one of the objects of the body corporate is to become a registered native title body corporate in relation to native title held by the Meriam people; and

(d) a member of the Meriam people applies to the Federal Court for a determination under this section; and

(e) the Court is satisfied that the applicant represents the Meriam people;

then:

(f) this Act applies as if the body corporate were a prescribed body corporate nominated under subsection 56(2) or 57(2) in relation to those native title holders; and

(g) the Court may make a determination under section 56 or 57, in relation to that native title, as if the Court were doing so at the same time as making an approved determination of native title as mentioned in section 55; and

(h) if the Court makes such a determination under section 56 or 57—the Native Title Registrar must enter the name and address of the body corporate on the National Native Title Register; and

(i) while those details are on the Register, the body corporate is taken to be a ***registered native title body corporate*** for the purposes of this Act.

(2) In this section:

Meriam people means the people who were described by the High Court in its declaration in *Mabo v Queensland [No. 2]* (1992) 175 CLR 1 as the Meriam people.

Authorised Version C2024C00224 registered 19/06/2024

Division 7—Financial matters

60AB Fees for services provided by registered native title bodies corporate in performing certain functions

(1) A registered native title body corporate may charge a person, other than a person mentioned in subsection (4), a fee for costs the registered native title body corporate incurs when performing one or more of the following functions:

(a) negotiating an agreement under paragraph 31(1)(b);

(b) negotiating an agreement under alternative provisions provided for by a law of a State or Territory in respect of which the Commonwealth Minister has made a determination under paragraph 43(1)(b);

(c) negotiating indigenous land use agreements under Subdivisions B, C and D of Division 3 of this Part.

(2) The regulations may provide for a registered native title body corporate to charge a person, other than a person mentioned in subsection (4), a fee for costs the registered native title body corporate incurs when performing other functions specified in the regulations.

(3) A fee imposed under subsection (1), or under regulations made for the purposes of subsection (2), must not be such as to amount to taxation.

(4) For the purposes of this section, a registered native title body corporate may not charge the following persons a fee:

(a) the common law holders for whom the registered native title body corporate holds native title rights and interests in trust;

(b) the common law holders for whom the registered native title body corporate is an agent prescribed body corporate;

(c) another registered native title body corporate;

(d) a representative body;

Authorised Version C2024C00224 registered 19/06/2024

(e) a registered native title claimant or other person who claims to hold native title in relation to the land or waters in:

(i) an area affected by an act to which negotiations mentioned in subsection (1) relate; or

(ii) an area proposed to be covered by an indigenous land use agreement.

(5) A registered native title body corporate may not charge a person a fee for costs the registered native title body corporate incurs when performing functions:

(a) as a party to a proceeding or an inquiry in which:

(i) a determination that an act must not be done; or

(ii) a determination that an act may be done; or

(iii) a determination that an act may be done subject to conditions being complied with;

may be made in respect of an act to which negotiations mentioned in subsection (1) relate; and

(b) as a party to any court proceedings; and

(c) in any other circumstances prescribed by the regulations.

60AC Opinion of the Registrar of Aboriginal and Torres Strait Islander Corporations

(1) If a registered native title body corporate charges a person a fee in reliance on section 60AB, the person may, in writing, request the Registrar of Aboriginal and Torres Strait Islander Corporations (the ***Registrar***) to give an opinion on whether the fee is one that the body corporate may charge under that section.

(2) The Registrar may give an opinion, in writing, on whether the fee is one that the registered native title body corporate may charge under that section.

(3) If the Registrar gives the opinion that the fee is not one that the registered native title body corporate may charge under that section, the body corporate must withdraw the charge.

Authorised Version C2024C00224 registered 19/06/2024

(4) An opinion given by the Registrar under subsection (2) is not a legislative instrument.

(5) The regulations may make provisions dealing with:

(b) the process by which the request to the Registrar is made and considered; and

(c) the withholding of payment of the fee in relation to which a request is made; and

(d) any other matters in relation to the request, the consideration of the request, the giving of an opinion by the Registrar, and the consequences of the giving of that opinion.

Authorised Version C2024C00224 registered 19/06/2024

Part 3—Applications

Division 1AA—Overview of Part

60A Overview of Part

(1) This Part has the rules for making:

(a) applications to the Federal Court for native title determinations, revised native title determinations and compensation: see Division 1; and

(b) various other applications to the Federal Court: see Division 1A; and

(c) applications to the National Native Title Tribunal under the "right to negotiate" provisions in Subdivision P of Division 3 of Part 2: see Division 2;

(d) applications to the Native Title Registrar objecting against registration of certain indigenous land use agreements: see Division 2A.

There are also some general rules that apply to the various kinds of application: see Division 3.

(2) Basically, the provisions set out who may make the different kinds of application, what they must contain and what is to be done when they are made.

Authorised Version C2024C00224 registered 19/06/2024

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

61 Native title and compensation applications

Applications that may be made

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

Applications		
Kind of application	**Application**	**Persons who may make application**
Native title determination application	Application, as mentioned in subsection 13(1), for a determination of native title in relation to an area for which there is no approved determination of native title.	(1) A person or persons authorised by all the persons (the ***native title claim group***) who, according to their traditional laws and customs, hold the common or group rights and interests comprising the particular native title claimed, provided the person or persons are also included in the native title claim group; or Note 1: The person or persons will be the applicant: see subsection (2) of this section. Note 2: Section 251B states what it means for a person or persons to be ***authorised*** by all the persons in the native title claim group. (2) A person who holds a non-native title interest in relation to the whole of the area in relation to which the determination is sought; or (3) The Commonwealth Minister; or (4) The State Minister or the Territory Minister, if the determination is sought in relation to an area within the jurisdictional

Authorised Version C2024C00224 registered 19/06/2024

Applications		
Kind of application	**Application**	**Persons who may make application**
		limits of the State or Territory concerned.
Revised native title determination application	Application, as mentioned in subsection 13(1), for revocation or variation of an approved determination of native title, on the grounds set out in subsection 13(5).	(1) The registered native title body corporate; or (2) The Commonwealth Minister; or (3) The State Minister or the Territory Minister, if the determination is sought in relation to an area within the jurisdictional limits of the State or Territory concerned; or (4) The Native Title Registrar.
Compensation application	Application under subsection 50(2) for a determination of compensation.	(1) A registered native title body corporate, if the determination is sought in relation to an area of land or waters in relation to which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, the native title rights and interests; or (1A) A registered native title body corporate, on behalf of all the persons who claim to be entitled to the compensation, if: (a) the determination is sought in relation to an area of land or waters (the ***extinguished area***) that is within the external boundary of the area of land or waters covered by an approved determination of native title (the ***earlier determination***) under which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, native title rights and interests; and (b) either: (i) the earlier determination is that native title does not exist in

Authorised Version C2024C00224 registered 19/06/2024

Applications		
Kind of application	**Application**	**Persons who may make application**
		relation to the extinguished area; or (ii) the extinguished area was expressly excluded from the area covered by the earlier determination because of subsection 61A(2) (restrictions on making of certain applications); and (c) the persons who claim to be entitled to the compensation are the common law holders in relation to the earlier determination; or (2) A person or persons authorised by all the persons (the ***compensation claim group***) who claim to be entitled to the compensation, provided the person or persons are also included in the compensation claim group. Note 1: The person or persons will be the applicant: see subsection (2) of this section. Note 2: Section 251B states what it means for a person or persons to be ***authorised*** by all the persons in the compensation claim group.

Applicant in case of applications authorised by claim groups

(2) In the case of:

(a) a native title determination application made by a person or persons authorised to make the application by a native title claim group; or

(b) a compensation application made by a person or persons authorised to make the application by a compensation claim group;

Authorised Version C2024C00224 registered 19/06/2024

the following apply:

(c) the person is, or the persons are jointly, the ***applicant***; and

(d) none of the other members of the native title claim group or compensation claim group is the ***applicant***.

Applicant's name and address

(3) An application must state the name and address for service of the person who is, or persons who are, the applicant.

Applications authorised by persons

(4) A native title determination application, or a compensation application, that persons in a native title claim group or a compensation claim group authorise the applicant to make must:

(a) name the persons; or

(b) otherwise describe the persons sufficiently clearly so that it can be ascertained whether any particular person is one of those persons.

Form etc.

(5) An application must:

(a) be in the prescribed form; and

(b) be filed in the Federal Court; and

(c) contain such information in relation to the matters sought to be determined as is prescribed; and

(d) be accompanied by any prescribed documents and any prescribed fee.

61A Restrictions on making of certain applications

No native title determination application if approved determination of native title

(1) A native title determination application must not be made in relation to an area for which there is an approved determination of native title.

Authorised Version C2024C00224 registered 19/06/2024

Claimant applications not to be made covering previous exclusive possession act areas

(2) If:

(a) a previous exclusive possession act (see section 23B) was done in relation to an area; and

(b) either:

(i) the act was an act attributable to the Commonwealth; or

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in section 23E in relation to the act;

a claimant application must not be made that covers any of the area.

Claimant applications not to claim certain rights and interests in previous non-exclusive possession act areas

(3) If:

(a) a previous non-exclusive possession act (see section 23F) was done in relation to an area; and

(b) either:

(i) the act was an act attributable to the Commonwealth; or

(ii) the act was attributable to a State or Territory and a law of the State or Territory has made provision as mentioned in section 23I in relation to the act;

a claimant application must not be made in which any of the native title rights and interests claimed confer possession, occupation, use and enjoyment of any of the area to the exclusion of all others.

Section not to apply in section 47, 47A, 47B or 47C cases

(4) However, subsection (2) or (3) does not apply to an application if:

(a) the only previous exclusive possession act or previous non-exclusive possession act concerned was one whose extinguishment of native title rights and interests would be required by section 47, 47A, 47B or 47C to be disregarded were the application to be made; and

Authorised Version C2024C00224 registered 19/06/2024

(b) the application states that section 47, 47A, 47B or 47C, as the case may be, applies to it.

62 Information etc. in relation to certain applications

Claimant applications

(1) A claimant application (see section 253):

(a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (1A); and

(b) must contain the details specified in subsection (2); and

(c) may contain details of:

(i) if any member of the native title claim group currently has, or previously had, any traditional physical connection with any of the land or waters covered by the application—that traditional physical connection; or

(ii) if any member of the native title claim group has been prevented from gaining access to any of the land or waters covered by the application—the circumstances in which the access was prevented; and

(d) if the operation of section 47C (national parks etc. covered by native title applications) has been agreed to in writing in accordance with paragraph 47C(1)(b) in relation to the whole or any part of the area covered by the application—must be accompanied by a copy of the agreement, and if there is an agreement under subsection 47C(5), that agreement.

Note: The applicant will be the registered native title claimant in relation to the area claimed if and for so long as the claim is entered on the Register of Native Title Claims.

(1A) For the purposes of paragraph (1)(a), the matters are:

(a) that the applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application; and

Authorised Version C2024C00224 registered 19/06/2024

(b) that the applicant believes that none of the area covered by the application is also covered by an approved determination of native title; and

(c) that the applicant believes that all of the statements made in the application are true; and

(d) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and

(e) the details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it; and

(f) if there are no conditions under section 251BA on the authority that relate to the making of the application—that there are no such conditions; and

(g) if there are any conditions under section 251BA on the authority that relate to the making of the application:

(i) that the conditions have been satisfied; and

(ii) how the conditions have been satisfied.

Note: Section 251B states what it means for the applicant to be ***authorised*** by all the persons in the native title claim group.

Details required by paragraph (1)(b)

(2) For the purposes of paragraph (1)(b), the details required are as follows:

(a) information, whether by physical description or otherwise, that enables the boundaries of:

(i) the area covered by the application; and

(ii) any areas within those boundaries that are not covered by the application;

to be identified;

(b) a map showing the boundaries of the area mentioned in subparagraph (a)(i);

(c) details and results of all searches carried out by or on behalf of the native title claim group to determine the existence of

Authorised Version C2024C00224 registered 19/06/2024

any non-native title rights and interests in relation to the land or waters in the area covered by the application;

(d) a description of the native title rights and interests claimed in relation to particular land or waters (including any activities in exercise of those rights and interests), but not merely consisting of a statement to the effect that the native title rights and interests are all native title rights and interests that may exist, or that have not been extinguished, at law;

(e) a general description of the factual basis on which it is asserted that the native title rights and interests claimed exist and in particular that:

(i) the native title claim group have, and the predecessors of those persons had, an association with the area; and

(ii) there exist traditional laws and customs that give rise to the claimed native title; and

(iii) the native title claim group have continued to hold the native title in accordance with those traditional laws and customs;

(f) if the native title claim group currently carry on any activities in relation to the land or waters—details of those activities;

(g) details of any other applications to the High Court, Federal Court or a recognised State/Territory body, of which the applicant is aware, that have been made in relation to the whole or a part of the area covered by the application and that seek a determination of native title or a determination of compensation in relation to native title;

(ga) details of any notifications under paragraph 24MD(6B)(c), of which the applicant is aware, that have been given and that relate to the whole or a part of the area;

(h) details of any notices under section 29 (or under a corresponding provision of a law of a State or Territory), of which the applicant is aware, that have been given and that relate to the whole or a part of the area;

(i) if there are any conditions under section 251BA on the authority of the applicant to make the application and to deal

Authorised Version C2024C00224 registered 19/06/2024

with matters arising in relation to it—details of the conditions.

Note: Notices under paragraph 24MD(6B)(c) and section 29 are relevant to subsection 190A(2).

Compensation applications—compensation claim group

(3) In the case of a compensation application whose making was authorised by a compensation claim group, the application:

(a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (4); and

(b) must contain the details that would be required to be specified by paragraph (1)(b), and may contain the details that would be permitted under paragraph (1)(c), if the compensation application were instead a native title determination application in respect of the native title involved in the compensation application.

(4) For the purposes of paragraph (3)(a), the matters are:

(a) that the applicant believes that native title rights and interests exist or have existed in relation to the area; and

(b) that the applicant believes that all of the statements made in the application are true; and

(c) that the applicant is authorised by all the persons in the compensation claim group to make the application and to deal with matters arising in relation to it; and

(d) the details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it; and

(e) if there are no conditions under section 251BA on the authority that relate to the making of the application—that there are no such conditions; and

(f) if there are any conditions under section 251BA on the authority that relate to the making of the application:

(i) that the conditions have been satisfied; and

(ii) how the conditions have been satisfied.

Authorised Version C2024C00224 registered 19/06/2024

Note: Section 251B states what it means for the applicant to be ***authorised*** by all the persons in the compensation claim group.

Compensation applications—registered native title body corporate

(5) In the case of a compensation application by a registered native title body corporate, the application:
  (a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (6); and
  (b) must contain the details that would be required to be specified by paragraph (1)(b), and may contain the details that would be permitted under paragraph (1)(c), if the compensation application were instead a native title determination application in respect of the native title involved in the compensation application.

(6) For the purposes of paragraph (5)(a), the matters are:
  (a) that the applicant believes that native title rights and interests exist or have existed in relation to the area; and
  (b) that the applicant believes that all of the statements made in the application are true; and
  (c) either:
    (i) that the applicant holds, or is an agent prescribed body corporate in relation to, the native title rights and interests; or
    (ii) that the area is within the external boundary of the area of land or waters covered by an approved determination of native title under which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, native title rights and interests.

Revised native title determination applications

(7) A revised native title determination application that covers an area in relation to which the operation of section 47C (national parks etc. covered by native title applications) has been agreed to in writing in accordance with paragraph 47C(1)(b) must be

Authorised Version C2024C00224 registered 19/06/2024

accompanied by a copy of the agreement and, if there is an agreement under subsection 47C(5), that agreement.

62A Power of applicants where application authorised by group

(1) In the case of:

(a) a claimant application; or

(b) a compensation application whose making was authorised by a compensation claim group;

the applicant may deal with all matters arising under this Act in relation to the application.

Note: This section deals only with claimant applications and compensation applications. For provisions dealing with indigenous land use agreements, see Subdivisions B to E of Division 3 of Part 2.

(2) Subsection (1) is subject to any conditions under section 251BA on the authority of the applicant.

62B General law duties

Any obligation of the applicant under this Act does not relieve the applicant, or detract, from any other duty of the applicant at common law or in equity to persons in the native title claim group or compensation claim group.

62C Acting where persons are jointly the applicant etc.

(1) This section applies if:

(a) an applicant makes a native title determination application or a compensation application; and

(b) 2 or more persons (the ***authorised persons***) are jointly the applicant; and

(c) the applicant is required or permitted to do something under this Act, or for the purposes of this Act under another law of the Commonwealth; and

(d) apart from this section, for the applicant to do the thing, all of the authorised persons would need to do the thing.

Authorised Version C2024C00224 registered 19/06/2024

Default rule—applicant may act by majority

(2) The requirement mentioned in paragraph (1)(d) is satisfied if the thing is done by a majority of the authorised persons unless subsection (4) applies.

(3) The authorised persons who do the thing must, within a reasonable period, notify the other authorised persons that the thing has been done. A failure to comply with this subsection does not invalidate the thing done.

Default rule may be displaced

(4) If conditions under section 251BA on the authority of the authorised persons provide for the applicant to do the thing in a particular way, the requirement mentioned in paragraph (1)(d) is satisfied if the thing is done in that way.

Example: A condition may provide that all the authorised persons need to do something required by a provision of this Act.

Rule covers applicant acting in any capacity

(5) This section applies whether the provision imposing the requirement or giving the permission refers to the applicant as an applicant, a registered native title claimant, a native title party, a negotiation party, a party or otherwise.

Deceased authorised persons

(6) For the purposes of this section, the authorised persons include any who have died. However, subsection (3) does not require notice to be given to a person who has died.

Note: The applicant may be replaced where an authorised person has died: see section 66B.

Authorised Version C2024C00224 registered 19/06/2024

63 Reference of applications to Native Title Registrar

If an application under section 61 is filed in the Federal Court, the Federal Court Chief Executive Officer must, as soon as practicable, give the Native Title Registrar a copy of:

(a) the application; and

(b) any affidavit that accompanies the application under paragraph 62(1)(a), (3)(a) or (5)(a); and

(ba) any copy of an agreement that accompanies the application under paragraph 62(1)(d) or subsection 62(7); and

(c) any prescribed documents that accompany the application under paragraph 61(5)(d).

64 Amendment of applications

Application may be amended to reduce land or waters covered

(1A) An application may at any time be amended to reduce the area of land or waters covered by the application. (This subsection does not, by implication, limit the amendment of applications in any other way.)

Note: If such an amendment is made, the Court may make an appropriate costs order under section 85A.

Amendments taken to have been made in certain cases

(1B) An application is taken to have been amended to reduce the area of land or waters covered by the application if an order is made under section 87A by the Federal Court. The area of land or waters is reduced by the area in relation to which the order is made.

(1C) Subsection (1B) does not, by implication, limit the amendment of applications in any other way.

Amendment not to result in inclusion of additional areas

(1) An amendment of an application must not result in the inclusion of any area of land or waters that was not covered by the original application.

Authorised Version C2024C00224 registered 19/06/2024

Note: The Federal Court Rules provide for the amendment of applications.

Exceptions to subsection (1)

(2) However, if:

(a) the application is a claimant application (see section 253); and

(b) the amendment combines the application with another claimant application or claimant applications;

subsection (1) does not prevent the inclusion of any area of land or waters covered by the other application or applications.

(2A) In addition, subsection (1) does not prevent an amendment that results in the inclusion of any area of land or waters that was not covered by the original application, if the operation of section 47C has been agreed to in writing in accordance with paragraph 47C(1)(b) in relation to the area after the making of the original application.

Application may be amended despite current action by Registrar or Federal Court

(3) In the case of a claimant application, the fact that:

(a) the Registrar is, under section 190A, considering the claim made in the application; or

(b) the NNTT is, under section 190E, reconsidering the claim made in the application; or

(c) the Federal Court is, on the application of the applicant under subsection 190F(1), reviewing the decision of the Registrar in relation to the claim;

does not prevent amendment of the application.

Federal Court Chief Executive Officer to give copy of amended application to Native Title Registrar

(4) If an application is amended, the Federal Court Chief Executive Officer must, as soon as practicable, give a copy of the amended application to the Native Title Registrar.

Authorised Version C2024C00224 registered 19/06/2024

66 Notice of application

Registrar to comply with section

(1) If the Native Title Registrar is given a copy of an application under section 63, the Registrar must comply with the requirements of this section.

Copies to State/Territory Minister

(2) If any of the area covered by the application is within the jurisdictional limits of a State or Territory, the Registrar must, as soon as is reasonably practicable, give the State Minister or Territory Minister for the State or Territory a copy of:

(a) the application; and

(b) any other documents that the Federal Court Chief Executive Officer gives the Native Title Registrar under section 63 in relation to the application.

Copies to representative bodies

(2A) The Registrar must, as soon as is reasonably practicable, give the representative bodies for the area covered by the application a copy of:

(a) the application; and

(b) any other documents that the Federal Court Chief Executive Officer gives the Native Title Registrar under section 63 in relation to the application.

Notice to be given

(3) Subject to this section, the Registrar must:

(a) give notice containing details of the application to the following persons or bodies (other than the applicant in relation to the application):

(i) any registered native title claimant in relation to any of the area covered by the application; and

Authorised Version C2024C00224 registered 19/06/2024

(ii) any registered native title body corporate in relation to any of the area covered by the application; and

(iii) any representative Aboriginal/Torres Strait Islander body for any of the area covered by the application; and

(iv) subject to subsection (5), any person who when the notice is given, holds a proprietary interest, in relation to any of the area covered by the application, that is registered in a public register of interests in relation to land or waters maintained by the Commonwealth, a State or Territory; and

(v) the Commonwealth Minister; and

(vi) any local government body for any of the area covered by the application; and

(vii) if the Registrar considers it appropriate in relation to the person—any person whose interests may be affected by a determination in relation to the application; and

(b) give a copy of the notice to the Federal Court; and

(c) if any of the area covered by the application is within the jurisdictional limits of a State or Territory—give a copy of the notice to the State Minister or Territory Minister for the State or Territory; and

(d) notify the public in the determined way of the application.

Exception where application is struck out

(4) Subsection (3) does not apply if:

(a) the State or Territory Minister applies to the Federal Court under subsection 84C(1) or otherwise, within 28 days after the day on which the State or Territory Minister is given a copy of the application under subsection (2), to strike out the application; and

(b) the Court strikes out the application.

Exception to subparagraph (3)(a)(iv)

(5) If the Registrar considers that, in the circumstances, it would be unreasonable to give notice to a person in accordance with

Authorised Version C2024C00224 registered 19/06/2024

subparagraph (3)(a)(iv), the Registrar is not required to give notice to that person.

Notice etc. not to be given until claim registration decision made

(6) If the application is a claimant application:
  (a) the Registrar must not comply with subsection (3) until the Registrar has decided, in accordance with section 190A, whether or not to accept for registration the claim made in the application; and
  (b) the notice required to be given under subsection (3) must state whether or not the Registrar has accepted the claim for registration.

Federal Court order as to notice

(7) The Registrar may apply to the Federal Court for an order as to:
  (a) whether a particular person or class of persons must be given notice under paragraph (3)(a); or
  (b) how such notice must be given.

Notice to specify day

(8) A notice under paragraph (3)(a) or (d) must specify a day as the ***notification day*** for the application. Each such notice in relation to the application must specify the same day.

Which days may be specified

(9) That day must be a day by which, in the Registrar's opinion, it is reasonable to assume that all notices under paragraphs (3)(a) and (d) in relation to the application will have been received by, or will otherwise have come to the attention of, the persons who must be notified under those paragraphs.

Contents of notice

(10) A notice under paragraph (3)(a) or (d) must also include a statement to the effect that:

Authorised Version C2024C00224 registered 19/06/2024

(a) in the case of a non-claimant application (see section 253)—the area covered by the application may be subject to section 24FA protection unless, at the end of the period of 3 months starting on the notification day (as defined in subsection (8) of this section), the area is covered by a relevant native title claim (as defined in section 24FE); and

(b) in the case of any native title determination application—as there can be only one determination of native title for an area, if a person does not become a party in relation to the application, there may be no other opportunity for the Federal Court, in making its determination, to take into account the person's native title rights and interests in relation to the area concerned; and

(c) in any case—a person who wants to be a party in relation to the application must notify the Federal Court, in writing, within the period of 3 months starting on the notification day (as defined in subsection (8)), or, after that period, get the leave of the Federal Court under subsection 84(5) to become a party.

66A Notice of amended application

Native Title Registrar to notify parties etc.

(1) If:

(a) the Native Title Registrar is given a copy of an amended application under section 64; and

(b) the amendment concerned results in a change to the area of land or waters covered by the original application; and

(c) subsection (2) does not apply;

the Registrar must:

(d) give notice of the amended application to each person who, when the Registrar receives the copy, is a party to a proceeding under Part 4 in relation to the application; and

(e) if, when the Registrar receives the copy, the period specified in the notice in accordance with paragraph 66(10)(c) has not ended:

Authorised Version C2024C00224 registered 19/06/2024

(i) give notice of the amended application to all persons to whom the Registrar gave notice of the application in accordance with paragraph 66(3)(a); and

(ii) notify the public in the determined way of the amended application; and

(f) if the inclusion of any area of land or waters that was not covered by the original application occurs as mentioned in subsection 64(2A)—give notice to each other person to whom the Registrar would be obliged to give notice under subsections 66(3) and (5) if the application as amended were a new application, but to whom notice is not already required to be given under paragraph (d) or (e).

Amending claims to re-include area

(1A) If:

(a) the Registrar is given a copy of an amended application under section 64; and

(b) the amendment concerned is to re-include in the area covered by the application an area of land or waters that was covered by the original application;

the Registrar must:

(c) give notice of the amended application to each person who, when the Registrar receives the copy, is a party to a proceeding under Part 4 in relation to the application; and

(d) if, when the Registrar receives the copy, the period specified in the notice in accordance with paragraph 66(10)(c) has not ended:

(i) give notice of the amended application to all persons to whom the Registrar gave notice of the application in accordance with paragraph 66(3)(a); and

(ii) notify the public in the determined way of the amended application; and

(e) give notice of the amended application to each person whom the Registrar would, under subsections 66(3) and 66(5), be obliged to give notice if the application as amended were a

Authorised Version C2024C00224 registered 19/06/2024

new application, but to whom notice is not already required to be given under paragraph (c) or (d).

Notification day

(1B) A notice under paragraph (1)(f) or (1A)(e) must specify a day as the ***notification day*** for the amendment.

(1C) Each such notice in relation to the amendment must:

(a) specify the same day; and

(b) state that a person who wants to be a party in relation to the amended application must notify the Federal Court, in writing, within the period of 3 months starting on the notification day, or, after that period, get the leave of the Federal Court under subsection 84(5) to become a party.

Combined applications

(2) If an amended application of which the Registrar is given a copy under section 64 results from combining the application with one or more other applications, the Native Title Registrar must:

(a) give notice of the combining of the applications to each person who, immediately before the combining of the applications, was a party to a proceeding under Part 4 in relation to any of the applications; and

(b) if, when the Registrar receives the copy, the period specified in the notice in accordance with paragraph 66(10)(c) has not ended:

(i) give notice of the combining of the applications to all persons to whom the Registrar gave notice of the applications in accordance with paragraph 66(3)(a); and

(ii) notify the public in the determined way of the combining of the applications.

Federal Court order as to notice

(3) The Registrar may apply to the Federal Court for an order as to:

(a) whether a particular person or class of persons must be given notice under subsection (1) or (2); or

Authorised Version C2024C00224 registered 19/06/2024

(b) how such notice must be given.

Federal Court may direct Native Title Registrar to give notice

(4) The Federal Court may, if it considers it necessary, direct the Native Title Registrar to give such additional notice of the amended application as the Court considers appropriate.

Parties to original applications become parties to combined application

(5) If an amended application of which the Registrar is given a copy under section 64 results from combining the application with one or more other applications, each person who, immediately before the combining of the applications, was a party to a proceeding under Part 4 in relation to any of the applications becomes a party to a proceeding under Part 4 in relation to the combined application.

66B Replacing the applicant

Replacement in case of consent or absence of authority

(1) One or more members of the native title claim group (the ***claim group***) in relation to a claimant application, or of the compensation claim group (also the ***claim group***) in relation to a compensation application, may apply to the Federal Court for an order that the member, or the members jointly, replace the current applicant for the application on the grounds that:

(a) one or more of the following applies to a person who is, either alone or jointly with one or more other persons, the current applicant:

(i) the person consents to his or her replacement or removal;

(iii) the person is no longer authorised by the claim group to make the application and to deal with matters arising in relation to it;

Authorised Version C2024C00224 registered 19/06/2024

(iv) the person has exceeded the authority given to him or her by the claim group to make the application and to deal with matters arising in relation to it; and

(b) the member or members are authorised by the claim group to make the application and to deal with matters arising in relation to it.

Note: Section 251B states what it means for a person or persons to be authorised by all the persons in the claim group to deal with matters in relation to a claimant application or a compensation application.

(2) The Court may make the order if it is satisfied that the grounds are established.

Replacement in case of death or incapacity

(2A) One or more members (the ***applying members***) of the native title claim group in relation to a claimant application, or of the compensation claim group in relation to a compensation application, may apply to the Federal Court for an order under subsection (2B) if a person (the ***ceasing member***) who is, either alone or jointly with one or more other persons (the ***continuing members***), the current applicant for the claimant application or compensation application:

(a) dies; or

(b) is unable to act as an applicant because of physical or mental incapacity.

(2B) The Court may order that the following persons replace the current applicant for the application:

(a) if:

(i) a member of the claim group is authorised by the claim group to make the application and to deal with matters arising in relation to it because of the death or incapacity of the ceasing member; and

(ii) the authority of any continuing members continues despite the death or incapacity of the ceasing member;

that member and any continuing members;

Authorised Version C2024C00224 registered 19/06/2024

(b) unless the authority of any continuing members ceases on the death or incapacity of the ceasing member—the continuing members;

(c) if the applying members are authorised by the claim group to make the application and to deal with matters arising in relation to it—the applying members.

Note: Section 251B states what it means for a person or persons to be authorised by all the persons in the claim group to deal with matters in relation to a claimant application or a compensation application.

Replacement by more than one person

(2C) If the Court orders under this section that the current applicant is replaced by more than one person, the persons are jointly the ***applicant***.

Federal Court Chief Executive Officer to notify Native Title Registrar

(3) If the Court makes an order under this section, the Federal Court Chief Executive Officer must, as soon as practicable, notify the Native Title Registrar of the name and address for service of the person who is, or persons who are, the new applicant.

Register to be updated

(4) If the claim contained in the application is on the Register of Native Title Claims, the Registrar must amend the Register to reflect the order.

66C Registrar's role in relation to certain applications relating to future acts

(1) If:

(a) an application is of the kind mentioned in paragraph 94C(1)(a); and

(b) paragraph 94C(1)(b) is satisfied in relation to the application; and

Authorised Version C2024C00224 registered 19/06/2024

(c) paragraph 94C(1)(c) is satisfied for each future act identified in the future act notice referred to in that paragraph;

the Registrar may advise the Federal Court Chief Executive Officer of those facts.

(2) The Registrar may seek advice from the relevant governmental officials in the Commonwealth or in a State or Territory as to:

(a) whether all or part of an area specified in a future act notice is included in the area covered by an application; and

(b) whether paragraph 94C(1)(c) is satisfied for each future act identified in a future act notice;

and may advise the Federal Court Chief Executive Officer accordingly.

(3) In this section:

future act notice has the same meaning as in section 94C.

67 Overlapping native title determination applications

(1) If 2 or more proceedings before the Federal Court relate to native title determination applications that cover (in whole or in part) the same area, the Court must make such order as it considers appropriate to ensure that, to the extent that the applications cover the same area, they are dealt with in the same proceeding.

Splitting of application area

(2) Without limiting subsection (1), the order of the Court may provide that different parts of the area covered by an application are to be dealt with in separate proceedings.

68 Only one determination of native title per area

If there is an approved determination of native title (the ***first determination***) in relation to a particular area, the Federal Court must not:

(a) conduct any proceeding relating to an application for another determination of native title; or

Authorised Version C2024C00224 registered 19/06/2024

(b) make any other determination of native title;

in relation to that area or to an area wholly within that area, except in the case of:

(c) an application as mentioned in subsection 13(1) to revoke or vary the first determination; or

(d) a review or appeal of the first determination.

Note: Paragraph 13(1)(a) provides that no native title determination application can be made in relation to an area for which there is already an approved determination of native title.

Authorised Version C2024C00224 registered 19/06/2024

Division 1A—Other applications to the Federal Court

69 Applications that may be made

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

Applications		
Kind of application	**Application**	**Persons who may make application**
Claim registration application	Application as mentioned in subsection 190F(1) for review of a decision of the Registrar not to accept a claim for registration.	The applicant in relation to the application under section 61.
Application to remove agreement from Register	Application as mentioned in subsection 199C(2) for an order to remove the details of an agreement from the Register of Indigenous Land Use Agreements.	(1) A party to the agreement; or (2) A representative Aboriginal/Torres Strait Islander body for the area covered by the agreement.
Application about transfer of records	Application as mentioned in subsection 203FC(4) for orders to ensure that a representative Aboriginal/Torres Strait Islander body complies with directions under subsection 203FC(1).	A person affected by the body's non-compliance with the directions.

Other applications

(2) This Division also applies to any other application to the Federal Court in relation to a matter arising under this Act.

Authorised Version C2024C00224 registered 19/06/2024

70 Federal Court Rules about applications etc.

Federal Court Rules

(1) The application must be filed in the Federal Court and must comply with any Rules of the Federal Court about:
  (a) the form of the application; or
  (b) information to be contained in the application; or
  (c) documents that must accompany the application; or
  (d) any other matter relating to the application.

Prescribed fees

(2) The application must be accompanied by any prescribed fee.

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Applications to the National Native Title Tribunal: right to negotiate

75 *Right to negotiate* applications

The following table sets out applications that may be made to the National Native Title Tribunal under this Division and the persons who may make each of those applications:

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

76 Material and fees to accompany applications

An application must:

(a) be in the prescribed form; and

(b) be given to the Registrar; and

(c) contain such information in relation to the matters sought to be determined as is prescribed; and

(d) be accompanied by any prescribed documents and any prescribed fee.

Authorised Version C2024C00224 registered 19/06/2024

77 Action to be taken in relation to applications

If an application complies with section 76, the National Native Title Tribunal must accept the application.

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

Authorised Version C2024C00224 registered 19/06/2024

Division 2A—Applications to the Native Title Registrar: objections against registration of indigenous land use agreements

77A Material and fees to accompany applications

An application under subsection 24DJ(1) objecting against registration of an agreement on the ground that it would not be fair and reasonable to register it must:

(a) be in the prescribed form; and

(b) be given to the Registrar; and

(c) state reasons why it would not be fair and reasonable to register the agreement; and

(d) be accompanied by any prescribed documents and any prescribed fee.

77B Action to be taken in relation to applications

If an application complies with section 77A, the Registrar must accept the application.

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Miscellaneous

78 Assistance in relation to proceedings

Native Title Registrar may assist applicants, respondents etc.

(1) The Native Title Registrar may give such assistance as he or she considers reasonable to:

(a) help people prepare applications and accompanying material and to help them, at any stage of a proceeding, in matters related to the proceeding; and

(b) help other people, at any stage of a proceeding, in matters related to the proceeding.

Types of assistance

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

(a) providing research services; or

(b) conducting searches of registers or other records of current or former interests in land or waters.

No assistance to search own registers etc.

(3) Unless the Native Title Registrar considers there are special reasons for doing so, the Registrar must not give assistance to the Commonwealth, a State or a Territory by way of conducting searches of registers or other records maintained by the Commonwealth, the State or the Territory.

79 Requests for non-monetary compensation

Requests must be considered

(1) If, during negotiations in relation to a compensation application under this Part, a person or persons involved in the negotiations propose that the whole or part of the compensation should be in a

Authorised Version C2024C00224 registered 19/06/2024

form other than money, the other person or persons involved in the negotiations:

(a) must consider the proposal; and

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

Examples of non-monetary compensation

(2) The transfer of land or other property or the provision of goods or services is an example of compensation in a form other than money.

Authorised Version C2024C00224 registered 19/06/2024

Part 4—Determinations of the Federal Court

Division 1—Overview of Part

79A Overview of Part

This Part has the rules for processing Federal Court applications, and making determinations, relating to native title. Division 1A has the general rules, and the other Divisions of the Part deal with the following topics:

(a) referring applications for mediation (see Division 1B);
(b) agreements and unopposed applications (see Division 1C);
(c) conferences (see Division 2);
(d) orders (see Division 3);
(e) mediation (see Division 4).

Authorised Version C2024C00224 registered 19/06/2024

Division 1A—General

80 Operation of Part

The provisions of this Part apply in proceedings in relation to applications filed in the Federal Court that relate to native title.

81 Jurisdiction of the Federal Court

The Federal Court has jurisdiction to hear and determine applications filed in the Federal Court that relate to native title and that jurisdiction is exclusive of the jurisdiction of all other courts except the High Court.

82 Federal Court's way of operating

Rules of evidence

(1) The Federal Court is bound by the rules of evidence, except to the extent that the Court otherwise orders.

Concerns of Aboriginal peoples and Torres Strait Islanders

(2) In conducting its proceedings, the Court may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders, but not so as to prejudice unduly any other party to the proceedings.

Maximising use of video links, audio links and other appropriate means of giving testimony, appearing and making submissions

(3) The Court or a Judge must exercise the discretion under section 47B of the *Federal Court of Australia Act 1976* to allow a person to appear before the Court or Judge, or make a submission to the Court or Judge, by way of video link, audio link or other appropriate means if the Court or the Judge is satisfied that:

Authorised Version C2024C00224 registered 19/06/2024

(a) the conditions set out in section 47C of that Act in relation to the video link, audio link or other appropriate means are met; and
(b) it is not contrary to the interests of justice to do so.

83 Assessor assisting the Federal Court

Assessor to assist Court

(1) The Chief Justice may direct an assessor to assist the Federal Court in relation to a proceeding.

Assessor subject to Court's control

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

Assessor not to exercise judicial power

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

83A Federal Court may request searches to be conducted

Request to State Minister or Territory Minister

(1) If a State Minister or Territory Minister is a party to a proceeding, the Federal Court may, for the purposes of the proceeding, request that Minister to conduct searches of the State or Territory's registers or other records of current or former interests in land or waters and to report the results to the Court.

Request to Native Title Registrar

(2) However, if:
(a) no State Minister or Territory Minister is a party to the proceeding; or
(b) the Federal Court considers it appropriate;

Authorised Version C2024C00224 registered 19/06/2024

the Federal Court may, for the purposes of the proceeding, instead request the Native Title Registrar to conduct such searches and to report the results to the Court.

84 Parties

Coverage of section

(1) This section applies to proceedings in relation to applications to which section 61 applies.

Applicant

(2) The applicant is a party to the proceedings.

Affected persons

(3) Another person is a party to the proceedings if:
  (a) any of the following applies:
    (i) the person is covered by any of subparagraphs 66(3)(a)(i) to (vi);
    (ii) the person claims to hold native title in relation to land or waters in the area covered by the application;
    (iii) the person's interest, in relation to land or waters, may be affected by a determination in the proceedings; and
  (b) the person notifies the Federal Court, in writing, that the person wants to be a party to the proceeding:
    (i) within the period specified in the notice under section 66; or
    (ii) if notice of an amended application is given under paragraph 66A(1)(f) or (1A)(e)—within the period specified in the notice under that paragraph.

State or Territory Ministers

(4) If any of the area covered by the application is within the jurisdictional limits of a State or Territory, the State Minister or Territory Minister for the State or Territory is a party to the

Authorised Version C2024C00224 registered 19/06/2024

proceedings unless the Minister gives the Federal Court written notice, within the period specified in the notice under section 66, that the Minister does not want to be a party.

Joining parties

(5) The Federal Court may at any time join any person as a party to the proceedings, if the Court is satisfied that the person's interests may be affected by a determination in the proceedings and it is in the interests of justice to do so.

Persons wanting to exercise public right of access or use

(5A) If:

(a) a person wants to become a party to the proceedings; and

(b) the Federal Court is satisfied that the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application;

the Court:

(c) may make appropriate orders to ensure that the person's interests are properly represented in the proceedings; but

(d) need not allow more than one such person to become a party to the proceedings in relation to each area covered by such a public right of access or use.

Parties may withdraw before first hearing of proceeding

(6) In addition to any other rights to withdraw from the proceedings, any party to the proceedings, other than the applicant, may, at any time before the first hearing of the proceedings starts, cease to be a party by giving written notice to the Court.

(6A) In determining, for the purposes of subsection (6), when the first hearing of the proceedings starts, disregard directions hearings.

Authorised Version C2024C00224 registered 19/06/2024

Parties may withdraw with leave of Federal Court

(7) In addition to any other rights to withdraw from the proceedings, any party to the proceedings, other than the applicant, may, with the leave of the Federal Court, cease to be a party.

Dismissing parties

(8) The Federal Court may at any time order that a person, other than the applicant, cease to be a party to the proceedings.

Court to consider dismissing parties

(9) The Federal Court is to consider making an order under subsection (8) in respect of a person who is a party to the proceedings if the Court is satisfied that:

(a) the following apply:

(i) the person's interests may be affected by a determination in the proceedings merely because the person has a public right of access over, or use of, any of the area covered by the application; and

(ii) the person's interests are properly represented in the proceedings by another party; or

(b) the person never had, or no longer has, interests that may be affected by a determination in the proceedings.

84A Intervention by Commonwealth Minister

Commonwealth Minister may intervene

(1) The Commonwealth Minister may, at any time, on behalf of the Commonwealth, by giving written notice to the High Court or the Federal Court, intervene in a proceeding before the Court in a matter arising under this Act.

Authorised Version C2024C00224 registered 19/06/2024

Court may order costs against Commonwealth

(2) If the Commonwealth Minister intervenes in a proceeding before the Court, the Court may make an order as to costs against the Commonwealth.

Commonwealth Minister taken to be a party for purposes of appeal

(3) If the Commonwealth Minister intervenes in a proceeding before the Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Commonwealth Minister is taken to be a party to the proceeding.

Court may order costs against Commonwealth if Commonwealth Minister appeals

(4) If, under subsection (3), the Commonwealth Minister institutes an appeal from a judgment, a court hearing the appeal may make an order as to costs against the Commonwealth.

84B Parties may appoint an agent

(1) A party to a proceeding may appoint a society, organisation, association or other body to act as agent on behalf of the party in relation to the proceeding.

Body may act for 2 or more parties

(2) The same body may act as agent for 2 or more parties in the same proceeding.

Example: An industry body may act as agent for a number of its members who are parties to a particular proceeding.

Authorised Version C2024C00224 registered 19/06/2024

84C Striking out applications for failure to comply with requirements of this Act

Strike-out application

(1) If an application (the ***main application***) does not comply with section 61 (which deals with the basic requirements for applications), 61A (which provides that certain applications must not be made) or 62 (which requires applications to be accompanied by affidavits and to contain certain details), a party to the proceedings may at any time apply to the Federal Court to strike out the application.

Note: The main application may still be amended even after a strike-out application is filed.

Court must consider strike-out application before other proceedings

(2) The Court must, before any further proceedings take place in relation to the main application, consider the application made under subsection (1).

Federal Court Chief Executive Officer to advise Native Title Registrar of application etc.

(3) The Federal Court Chief Executive Officer must advise the Native Title Registrar of the making of any application under subsection (1) and of the outcome of the application.

Other strike-out applications unaffected

(4) This section does not prevent the making of any other application to strike out the main application.

84D Proceedings affected by possible defect in authorisation

(1) The Federal Court may make an order requiring:

Authorised Version C2024C00224 registered 19/06/2024

(a) a person who, either alone or jointly with another person, made an application under section 61, to produce evidence to the court that he or she was authorised to do so; or

(b) a person who has dealt with a matter, or is dealing with a matter, arising in relation to such an application, to produce evidence to the court that he or she is authorised to do so.

(2) An order under subsection (1) may be made:

(a) on the Federal Court's own motion; or

(b) on the application of a party to the proceedings; or

(c) on the application of a member of the native title claim group or compensation claim group in relation to the application.

(3) Subsection (4) applies if:

(a) an application does not comply with section 61 (which deals with the basic requirements for applications) because it was made by a person or persons who were not authorised by the native title claim group to do so; or

(b) a person who is or was, or one of the persons who are or were, the applicant in relation to the application has dealt with, or deals with, a matter arising in relation to the application in circumstances where the person was not authorised to do so.

Note: Section 251B states what it means for a person or persons to be authorised to make native title determination applications or compensation applications or to deal with matters arising in relation to them.

(4) The Federal Court may, after balancing the need for due prosecution of the application and the interests of justice:

(a) hear and determine the application, despite the defect in authorisation; or

(b) make such other orders as the court considers appropriate.

85 Representation before Federal Court

A party may appear in person or may be represented by a barrister, a solicitor or, with the leave of the Federal Court, another person.

Authorised Version C2024C00224 registered 19/06/2024

85A Costs

(1) Unless the Federal Court orders otherwise, each party to a proceeding must bear his or her own costs.

Unreasonable conduct

(2) Without limiting the Court's power to make orders under subsection (1), if the Federal Court is satisfied that a party to a proceeding has, by any unreasonable act or omission, caused another party to incur costs in connection with the institution or conduct of the proceeding, the Court may order the first-mentioned party to pay some or all of those costs.

86 Evidence and findings in other proceedings

(1) Subject to subsection 82(1), the Federal Court may:

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

(i) the Court; or

(ii) another court; or

(iii) the NNTT; or

(iv) a recognised State/Territory body; or

(v) any other person or body;

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

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

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

(2) Subject to subsection 82(1), the Federal Court:

(a) must consider whether to receive into evidence the transcript of evidence from a native title application inquiry; and

Authorised Version C2024C00224 registered 19/06/2024

(b) may draw any conclusions of fact from that transcript that it thinks proper; and

(c) may adopt any recommendation, finding, decision or determination of the NNTT in relation to the inquiry.

Authorised Version C2024C00224 registered 19/06/2024

Division 1B—Reference for mediation

86A Purpose of mediation

Proceeding not involving compensation

(1) The purpose of mediation in a proceeding that does not involve a compensation application is to assist the parties to reach agreement on some or all of the following matters:

(a) whether native title exists or existed in relation to the area of land or waters covered by the application;

(b) if native title exists or existed in relation to the area of land or waters covered by the application:

(i) who holds or held the native title;

(ii) the nature, extent and manner of exercise of the native title rights and interests in relation to the area;

(iii) the nature and extent of any other interests in relation to the area;

(iv) the relationship between the rights and interests in subparagraphs (ii) and (iii) (taking into account the effects of this Act);

(v) to the extent that the area is not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer or conferred possession, occupation, use and enjoyment of the land or waters on its holders to the exclusion of all others.

Note: The matters set out in paragraphs (a) and (b) are based on those that are required, under section 225, for a determination of native title.

Proceeding involving compensation

(2) The purpose of mediation in a proceeding that involves a compensation application is to assist the parties to reach agreement on some or all of the following matters:

Authorised Version C2024C00224 registered 19/06/2024

(a) the matters set out in paragraphs (1)(a) and (b) in relation to the area of land or waters covered by the application;
(b) the amount or kind of any compensation payable;
(c) the name of the person or persons entitled to any compensation or the method for determining the person or persons;
(d) the method (if any) for determining the amount or kind of compensation to be given to each person;
(e) the method for determining any dispute regarding the entitlement of a person to an amount of compensation.

Note: The matters set out in paragraphs (b) to (e) reflect the matters that, under section 94, must be set out in an order for compensation.

86B Referral of matters for mediation

Federal Court must refer applications for mediation

(1) Unless an order is made under subsection (3) that there be no mediation under this Act, the Federal Court must refer each application made under section 61 to an appropriate person or body for mediation, including the ascertaining of agreed facts, as soon as practicable after the end of the period specified in the notice under section 66.

(2) In deciding whether to refer the application to a particular person or body, the Court may take into account the training, qualifications and experience of the person who is to be, or is likely to be, the person conducting the mediation.

(2A) Without limiting subsection (1), the application may be referred to a Federal Court Registrar.

No mediation if it will be unnecessary etc.

(3) The Court, either on the application of a party or of its own motion, must order that there be no mediation under this Act in relation to the whole of the proceeding or a part of the proceeding if the Court considers that:

Authorised Version C2024C00224 registered 19/06/2024

(a) any mediation will be unnecessary in relation to the whole or that part, whether because of an agreement between the parties about the whole or the part of the proceeding or for any other reason; or

(b) there is no likelihood of the parties being able to reach agreement in the course of mediation under this Act on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2) in relation to the whole or that part; or

(c) the applicant in relation to the application under section 61 has not provided sufficient detail (whether in the application or otherwise) about the matters mentioned in subsection 86A(1) or (2) in relation to the whole or that part.

Factors to take into account

(4) In deciding whether to make an order that there be no mediation under this Act in relation to the whole of the proceeding or a part of the proceeding, the Court is to take the following factors into account:

(a) the number of parties;

(b) the number of those parties who have appointed the same agent under section 84B or same representative;

(c) how long it is likely to take to reach agreement on the matters set out in subsection 86A(1) or (2) in relation to the whole or the part of the proceeding;

(d) the size of the area involved;

(e) the nature and extent of any non-native title rights and interests in relation to the land and waters in the area;

(f) any other factor that the Court considers relevant.

Whole or part of a proceeding may be referred at any time

(5) In addition to referring a proceeding for mediation under subsection (1), the Court may, at any time in a proceeding, refer the whole or a part of the proceeding to an appropriate person or body for mediation if the Court considers that the parties will be

Authorised Version C2024C00224 registered 19/06/2024

able to reach agreement on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2).

(5A) In deciding whether to refer the whole or part of the proceeding to a particular person or body, the Court may take into account the training, qualifications and experience of the person who is to be, or is likely to be, the person conducting the mediation.

(5B) Without limiting subsection (5), the whole or part of the proceeding may be referred to a Federal Court Registrar.

Orders about how mediation is to be provided etc.

(5C) If the Court refers, under subsection (1) or (5), the whole or a part of a proceeding to a person or body for mediation, the Court may at any time after the referral make an order about the following matters:

(a) the way in which the mediation is to be provided;

(b) whether the person who is to conduct the mediation may be assisted by another individual;

(c) any other matter that the Court considers relevant.

No other referral for mediation etc.

(6) If the Court refers the whole or a part of a proceeding for mediation under subsection (1) or (5), then, unless the mediation ceases because an order is made under section 86C:

(a) no aspect of the proceeding is to be referred for mediation under the *Federal Court of Australia Act 1976*; and

(b) no order is to be made by the Federal Court requiring the parties to attend before a Federal Court Registrar for a conference with a view to satisfying the Registrar that all reasonable steps to achieve a negotiated outcome of the proceeding have been taken.

86BA Mediator may appear before the Court

(1) A mediator may appear before the Court at a hearing that relates to any matter that is currently before the mediator for mediation if the

Authorised Version C2024C00224 registered 19/06/2024

Court considers that the mediator may be able to assist the Court in relation to a proceeding.

(2) To avoid doubt, subsection 94D(4) applies to the mediator when appearing before the Court.

(3) Subsection 94D(5) does not prevent:
  (a) the mediator from appearing before the Court under subsection (1); or
  (b) if the mediator may appear before the Court under subsection (1) and the person conducting the mediation is not the mediator—that person from representing the mediator before the Court.

(4) This section does not give the mediator, or the person conducting the mediation, the right to become a party to the proceeding.

86C Cessation of mediation

Court may order mediation to cease

(1) The Court may, of its own motion, at any time in a proceeding, order that mediation by a mediator is to cease in relation to the whole or a part of the proceeding if the Court considers that:
  (a) any further mediation will be unnecessary in relation to the whole or that part; or
  (b) there is no likelihood of the parties being able to reach agreement in the course of mediation by the mediator on, or on facts relevant to, any of the matters set out in subsection 86A(1) or (2) in relation to the whole or that part; or
  (c) it is appropriate to do so for any other reason.

Party may seek cessation of mediation

(2) A party to a proceeding may, at any time after 3 months after the start of mediation by a mediator, apply to the Court for an order that the mediation cease in relation to the whole of the proceeding or a part of the proceeding.

Authorised Version C2024C00224 registered 19/06/2024

Where Court must order mediation to cease

(3) If the party making the application is:

(a) the applicant in relation to the application under section 61; or

(b) the Commonwealth, a State or a Territory;

the Court must make an order that mediation by the mediator is to cease unless the Court is satisfied that the mediation is likely to be successful in enabling the parties to reach agreement on any of the matters set out in subsection 86A(1) or (2) in relation to the whole or the part of the proceeding.

Where Court may order mediation to cease

(4) If the party making the application is any other person, the Court may make such an order unless the Court is satisfied that the mediation by the mediator is likely to be successful as mentioned in subsection (3).

Court to consider reports etc.

(5) The Court, in deciding whether to make an order under subsection (1), (3) or (4), must take into account any report or work plan provided to the Court under subsection 94N(2), (3), (4) or (5).

Court may make other orders

(6) If the Court makes an order under subsection (1), (3) or (4) in relation to a mediation, the Court may make any other orders that the Court considers are reasonably necessary or appropriate to deal with the cessation of the mediation.

Later referral for mediation

(7) The making of an order under subsection (1), (3) or (4) does not prevent a later referral for mediation under subsection 86B(5).

Authorised Version C2024C00224 registered 19/06/2024

86D Federal Court's powers

Court may determine fact or law

(1) The Court may, at any time during mediation by a mediator, determine a question of fact or law that is referred to it by the mediator.

Note: Under subsection 94H(1), the person conducting the mediation may refer to the Federal Court a question of fact or law that arises during mediation.

Court may adopt agreement on facts

(2) The Court may adopt any agreement on facts between the parties, reached during mediation by the mediator.

Directions to attend or produce documents for the purposes of mediation

(3) If a report is given to the Court under subsection 94N(5), the Court may make orders in similar terms to the directions that are the subject of the report.

Note: Under subsection 94N(5), the person conducting the mediation may provide a report to the Court if the person has given a direction to a party to appear at the conference, or produce documents, and that direction has not been complied with.

86E Federal Court may request reports from a mediator

(1) The Federal Court may request a mediator to provide reports on the progress of any mediation under this Division being undertaken by the mediator and may specify when the report is to be provided.

(2) The Federal Court may request one or more mediators to provide either or both of the following so as to assist the Court in progressing proceedings in a State, Territory or other region of Australia:

(a) a report on the progress of all mediations conducted by that mediator or those mediators in relation to areas within the

Authorised Version C2024C00224 registered 19/06/2024

State, Territory or region (a ***regional mediation progress report***);

(b) a work plan setting out the priority given to each mediation being conducted by that mediator or those mediators in relation to areas within the State, Territory or region (a ***regional work plan***).

The Court may specify when the report or plan is to be provided.

Authorised Version C2024C00224 registered 19/06/2024

Division 1C—Agreements and unopposed applications

86F Agreement to settle application etc.

Parties may negotiate for agreement

(1) Some or all of the parties to a proceeding in relation to an application may negotiate with a view to agreeing to action that will result in any one or more of the following:
  (a) the application being withdrawn or amended;
  (b) the parties to the proceeding being varied;
  (c) any other thing being done in relation to the application.

The agreement may involve matters other than native title.

Assistance by NNTT

(2) The parties may request assistance from the NNTT in negotiating the agreement.

Information obtained in providing assistance not to be used or disclosed in other contexts

(2A) The NNTT must not use or disclose information to which it has had access only because it provided assistance in negotiating the agreement except for the following purposes:
  (a) providing assistance in negotiating the agreement;
  (b) mediating in relation to the whole or any part of the proceeding;

without the prior consent of the person who provided the NNTT with the information.

Court may order adjournment to help negotiations

(3) The Federal Court may order an adjournment of the proceeding to allow time for the negotiations. It may do so on its own motion or on application by a party.

Authorised Version C2024C00224 registered 19/06/2024

Court may end adjournment

(4) The Federal Court may order that the adjournment end. It may do so:
  (a) on its own motion; or
  (b) on application by a party; or
  (c) if the NNTT reports that the negotiations are unlikely to succeed.

Court's powers not limited

(5) Subsection (3) does not limit the Federal Court's powers to order an adjournment.

86G Unopposed applications

Federal Court may make order

(1) If, at any stage of a proceeding in relation to an application under section 61, but after the end of the period specified in the notice given under section 66:
  (a) the application is unopposed; and
  (b) the Federal Court is satisfied that an order in, or consistent with, the terms sought by the applicant is within the power of the Court;

the Court may, if it appears appropriate to do so, make such an order without holding a hearing or, if a hearing has started, without completing the hearing.

Note: If the application involves making a determination of native title, the Court's order would need to comply with section 94A (which deals with the requirements of native title determination orders).

*Meaning of **unopposed***

(2) For the purpose of this section, an application is ***unopposed*** if the only party is the applicant or if each other party notifies the Federal Court in writing that he or she does not oppose an order in, or consistent with, the terms sought by the applicant.

Authorised Version C2024C00224 registered 19/06/2024

87 Power of Federal Court if parties reach agreement

Application

(1) This section applies if, at any stage of proceedings after the end of the period specified in the notice given under section 66:

(a) agreement is reached on the terms of an order of the Federal Court in relation to:

(i) the proceedings; or

(ii) a part of the proceedings; or

(iii) a matter arising out of the proceedings; and

(aa) all of the following are parties to the agreement:

(i) the parties to the proceedings;

(ii) the Commonwealth Minister, if the Commonwealth Minister is intervening in the proceedings at the time the agreement is made; and

(b) the terms of the agreement, in writing signed by or on behalf of the parties to the proceedings and, if subparagraph (aa)(ii) applies, the Commonwealth Minister, are filed with the Court; and

(c) the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court.

When a registered native title claimant is taken to be a party to the agreement

(1AA) The requirements that a party to the proceedings that is a registered native title claimant be a party to the agreement and sign the terms of the agreement are satisfied if:

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement and sign the terms, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement and sign the terms—those persons are parties to the agreement and sign the terms.

Authorised Version C2024C00224 registered 19/06/2024

(1AB) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement and signing the terms, as mentioned in paragraph (1AA)(a). A failure to comply with this subsection does not invalidate the agreement or any signature.

Power of Court

(1A) The Court may, if it appears to the Court to be appropriate to do so, act in accordance with:

(a) whichever of subsection (2) or (3) is relevant in the particular case; and

(b) if subsection (5) applies in the particular case—that subsection.

Agreement as to order

(2) If the agreement is on the terms of an order of the Court in relation to the proceedings, the Court may make an order in, or consistent with, those terms without holding a hearing or, if a hearing has started, without completing the hearing.

Note: If the application involves making a determination of native title, the Court's order would need to comply with section 94A (which deals with the requirements of native title determination orders).

Agreement as to part of proceedings

(3) If the agreement relates to a part of the proceedings or a matter arising out of the proceedings, the Court may in its order give effect to the terms of the agreement without, if it has not already done so, dealing at the hearing with the part of the proceedings or the matter arising out of the proceedings, as the case may be, to which the agreement relates.

Orders about matters other than native title

(4) Without limiting subsection (2) or (3), if the order under that subsection does not involve the Court making a determination of

Authorised Version C2024C00224 registered 19/06/2024

native title, the order may give effect to terms of the agreement that involve matters other than native title.

(5) Without limiting subsection (2) or (3), if the order under that subsection involves the Court making a determination of native title, the Court may also make an order under this subsection that gives effect to terms of the agreement that involve matters other than native title.

(6) The jurisdiction conferred on the Court by this Act extends to:
  (a) making an order under subsection (2) or (3) that gives effect to terms of the agreement that involve matters other than native title; and
  (b) making an order under subsection (5).

(7) The regulations may specify the kinds of matters other than native title that an order under subsection (2), (3) or (5) may give effect to.

Agreed statement of facts

(8) If some or all of the parties to the proceeding have reached agreement on a statement of facts, one of those parties may file a copy of the statement with the Court.

(9) Within 7 days after a statement of facts agreed to by some of the parties to the proceeding is filed, the Federal Court Chief Executive Officer must give notice to the other parties to the proceeding that the statement has been filed with the Court.

(10) In considering whether to make an order under subsection (2), (3) or (5), the Court may accept a statement of facts that has been agreed to by some or all of the parties to the proceedings but only if those parties include:
  (a) the applicant; and
  (b) the party that the Court considers was the principal government respondent in relation to the proceedings at the time the agreement was reached.

Authorised Version C2024C00224 registered 19/06/2024

(11) In considering whether to accept under subsection (10) a statement of facts agreed to by some of the parties to the proceedings, the Court must take into account any objections that are made by the other parties to the proceedings within 21 days after the notice is given under subsection (9).

(12) A reference in subsections (8) to (11) to the parties to the proceeding includes a reference to the Commonwealth Minister if the Commonwealth Minister is intervening in the proceeding at the time a statement of facts is agreed.

87A Power of Federal Court to make determination for part of an area

Application

(1) This section applies if:

(a) there is a proceeding in relation to an application for a determination of native title; and

(b) at any stage of the proceeding after the end of the period specified in the notice given under section 66, agreement is reached on a proposed determination of native title in relation to an area (the ***determination area***) that is part of, but not all of, the area covered by the application; and

(c) all of the following are parties to the agreement:

(i) the applicant;

(ii) each registered native title claimant in relation to any part of the determination area who is a party to the proceeding at the time the agreement is made;

(iv) each representative Aboriginal/Torres Strait Islander body for any part of the determination area who is a party to the proceeding at the time the agreement is made;

(v) each person who holds an interest in relation to land or waters in any part of the determination area at the time the agreement is made, and who is a party to the proceeding at the time the agreement is made;

Authorised Version C2024C00224 registered 19/06/2024

(vi) each person who claims to hold native title in relation to land or waters in the determination area and who is a party to the proceeding at the time the agreement is made;

(vii) the Commonwealth Minister, if the Commonwealth Minister is a party to, or is intervening in, the proceeding at the time the agreement is made;

(viii) if any part of the determination area is within the jurisdictional limits of a State or Territory, the State or Territory Minister for the State or Territory if the State or Territory Minister is a party to the proceeding at the time the agreement is made;

(ix) any local government body for any part of the determination area who is a party to the proceeding at the time the agreement is made; and

(d) the terms of the proposed determination are in writing and signed by or on behalf of each of those parties.

Note: For agreements reached in relation to the whole of the area covered by the application, see section 87.

When a registered native title claimant is taken to be a party to the agreement

(1A) The requirements that a registered native title claimant be a party to the agreement and sign the terms of the proposed determination are satisfied if:

(a) a majority of the persons who comprise the registered native title claimant are parties to the agreement and sign the terms, unless paragraph (b) applies; or

(b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement and sign the terms—those persons are parties to the agreement and sign the terms.

(1B) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement and signing the

Authorised Version C2024C00224 registered 19/06/2024

terms, as mentioned in paragraph (1A)(a). A failure to comply with this subsection does not invalidate the agreement or any signature.

Proposed determination may be filed with the Court

(2) A party to the agreement may file a copy of the terms of the proposed determination of native title with the Federal Court.

Certain parties to the proceeding to be given notice

(3) The Federal Court Chief Executive Officer must give notice to the other parties to the proceeding that the proposed determination of native title has been filed with the Court.

Orders may be made

(4) The Court may make an order in, or consistent with, the terms of the proposed determination of native title without holding a hearing, or if a hearing has started, without completing the hearing, if the Court considers that:

(a) an order in, or consistent with, the terms of the proposed determination would be within its power; and

(b) it would be appropriate to do so.

Note: As the Court's order involves making a determination of native title, the order needs to comply with section 94A (which deals with the requirements of native title determination orders).

(5) Without limiting subsection (4), if the Court makes an order under that subsection, the Court may also make an order under this subsection that gives effect to terms of the agreement that involve matters other than native title if the Court considers that:

(a) the order would be within its power; and

(b) it would be appropriate to do so.

(6) The jurisdiction conferred on the Court by this Act extends to making an order under subsection (5).

(7) The regulations may specify the kinds of matters other than native title that an order under subsection (5) may give effect to.

Authorised Version C2024C00224 registered 19/06/2024

Objections

(8) In considering whether to make an order under subsection (4) or (5), the Court must take into account any objections made by the other parties to the proceedings.

Agreed statement of facts

(9) If some or all of the parties to the proceeding have reached agreement on a statement of facts, one of those parties may file a copy of the statement with the Court.

(10) Within 7 days after a statement of facts agreed to by some of the parties to the proceeding is filed, the Federal Court Chief Executive Officer must give notice to the other parties to the proceeding that the statement has been filed with the Court.

(11) In considering whether to make an order under subsection (4) or (5), the Court may accept a statement of facts that has been agreed to by some or all of the parties to the proceedings but only if those parties include:

(a) the applicant; and

(b) the party that the Court considers was the principal government respondent in relation to the proceedings at the time the agreement was reached.

(12) In considering whether to accept under subsection (11) a statement of facts agreed to by some of the parties to the proceedings, the Court must take into account any objections that are made by the other parties to the proceedings within 21 days after the notice is given under subsection (10).

(13) A reference in subsections (9) to (12) to the parties to the proceeding includes a reference to the Commonwealth Minister if the Commonwealth Minister is intervening in the proceeding at the time a statement of facts is agreed.

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Conferences etc.

88 Conferences

Conference may be held

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

Assessor to preside

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

89 Right of appearance

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

90 Participation by telephone etc.

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

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of communication.

91 Conferences to be held in public except in special circumstances

Public conferences

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

Participation by telephone etc.

(2) If, when a conference is in public, a person participates by a means allowed under section 90, the assessor must take such steps as are

Authorised Version C2024C00224 registered 19/06/2024

reasonably necessary to ensure the public nature of the conference is preserved.

Private conferences

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

Concerns of Aboriginal peoples and Torres Strait Islanders

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

92 Federal Court may prohibit disclosure of evidence

Power of Court

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

Applications etc.

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

93 Powers of assessor to take evidence

Evidence on oath or affirmation

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

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Assessor may apply for summons

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

Witnesses

(3) A party may call witnesses.

Examination

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

Leave for cross-examination and re-examination

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

Participation by telephone etc.

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

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Orders

94 Order that compensation is payable

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

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

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

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

94A Order containing determination of native title

An order in which the Federal Court makes a determination of native title must set out details of the matters mentioned in section 225 (which defines ***determination of native title***).

94B Order relating to an application that has been referred for mediation

If an application under section 61 is referred for mediation under section 86B, the Federal Court must take into account:

(a) any report relating to the mediation that is provided to the Court under subsection 94N(1), (2) or (4); and

(b) any regional mediation progress report and any regional work plan that is provided to the Court under subsection 94N(3) that covers a State, Territory or region that includes the area covered by the application;

when it decides whether to make an order relating to the application.

Authorised Version C2024C00224 registered 19/06/2024

94C Order dismissing an application relating to a future act

(1) Subject to subsections (2) and (3), the Federal Court must, on the application of a party or on its own motion, dismiss an application made by a person under section 61 if:

(a) the application is for a determination of native title in relation to an area; and

(b) it is apparent from the timing of the application that it is made in response to a future act notice given in relation to land or waters wholly or partly within the area; and

(c) the future act requirements are satisfied in relation to each future act identified in the future act notice; and

(e) either:

(i) the person fails to produce evidence in support of the application despite a direction by the Court to do so, or to take other steps to have the claim sought in the application resolved despite a direction by the Court to do so; or

(ii) in a case to which subparagraph (i) does not apply, the Court considers that the person has failed, within a reasonable time, to take steps to have the claim sought in the application resolved.

(1A) For the purposes of paragraph (1)(b), it is apparent from the timing of an application by a person for a determination of native title in relation to an area that it is made in response to a future act notice to which the current law applies if:

(a) the future act notice is given in relation to land or waters wholly or partly within the area; and

(b) the application is made during the period of 3 months after the notification day specified in the future act notice; and

(c) the person becomes a registered native title claimant in relation to any land or waters that will be affected by the act, before the end of 4 months after the notification day specified in the future act notice.

Authorised Version C2024C00224 registered 19/06/2024

(1B) For the purposes of paragraph (1)(b), it is apparent from the timing of an application by a person for a determination of native title in relation to an area that it is made in response to a future act notice to which the pre-1998 law applies if:

(a) the future act notice is given in relation to land or waters wholly or partly within the area; and

(b) the person becomes a registered native title claimant in relation to any land or waters that will be affected by the act, within the period of 2 months starting when the notice is given.

(1C) The regulations may prescribe, for the purposes of paragraph (1)(b), other circumstances in which it is taken to be apparent from the timing of an application by a person for a determination of native title in relation to an area that it is made in response to a future act notice, including circumstances in which it is taken to be apparent in relation to a future act notice given under alternative provisions.

(1D) For the purposes of paragraph (1)(c), the ***future act requirements are satisfied*** in relation to a future act notice to which the current law applies if one of the following paragraphs is satisfied in relation to each future act identified in the notice:

(a) subsection 32(2) (which applies if no objection is made after the giving of a notice that the act attracts the expedited procedure) allows the act to be done;

(b) a determination is made under subsection 32(4) that the act is an act attracting the expedited procedure;

(c) native title parties have lodged one or more objections in relation to the act under subsection 32(3), but all such objections are withdrawn under subsection 32(6);

(d) an agreement of the kind mentioned in paragraph 31(1)(b) is made;

(e) a determination is made under section 36A or 38 that the act may be done, or may be done subject to conditions being complied with;

Authorised Version C2024C00224 registered 19/06/2024

(f) a determination is made under section 36A or 38 that the act must not be done;

(g) a determination that the act may be done, or may be done subject to conditions being complied with or must not be done, is declared to be overruled in accordance with section 42;

(h) a circumstance occurs in which, under the regulations, the future act requirements are satisfied.

(1E) For the purposes of paragraph (1)(c), the ***future act requirements are satisfied*** in relation to a future act notice to which the pre-1998 law applies if one of the following paragraphs is satisfied in relation to each future act identified in the notice:

(a) subsection 32(2) of the pre-1998 law (which applies if no objection is made after the giving of a notice that the act attracts the expedited procedure) allows the act to be done;

(b) a determination is made under subsection 32(4) of the pre-1998 law that the act is an act attracting the expedited procedure;

(c) a copy of an agreement that the act may be done, or may be done subject to conditions being complied with, is given to the arbitral body under section 34 of the pre-1998 law;

(d) a determination is made under section 38 of the pre-1998 law that the act may be done, or may be done subject to conditions being complied with;

(e) a determination is made under section 38 of the pre-1998 law that the act must not be done;

(f) a determination that the act may be done, or may be done subject to conditions being complied with or must not be done, is declared to be overruled in accordance with section 42 of the pre-1998 law;

(g) a circumstance occurs in which, under the regulations, the future act requirements are satisfied.

(1F) The regulations may prescribe, for the purposes of paragraphs (1D)(h) and (1E)(g), other circumstances in which ***future act requirements are satisfied***.

Authorised Version C2024C00224 registered 19/06/2024

(1G) The regulations may prescribe circumstances in which ***future act requirements are satisfied*** in relation to a future act notice given under alternative provisions.

(2) The Court must not dismiss the application without first ensuring that the person is given a reasonable opportunity to present his or her case about why the application should not be dismissed.

(3) The Court must not dismiss the application if there are compelling reasons not to do so. However, the fact that:

(a) a subsequent future act notice has been given that specifies all or part of an area that is included in the area covered by the application; and

(b) paragraph (1)(d) is not satisfied in relation to each future act identified in the subsequent future act notice;

is not, of itself, a compelling reason.

(4) To avoid doubt, the Court's dismissal of an application under this section does not affect any rights, liabilities or obligations of a person under:

(a) an agreement of the kind mentioned in paragraph 31(1)(b); or

(b) a determination made under subsection 32(4) or section 36A, 38 or 42; or

(c) an agreement made in accordance with, or a determination made under, any alternative provisions that are equivalent to the provisions mentioned in paragraphs (a) and (b).

(5) To avoid doubt, this section does not affect the Court's power to dismiss an application under the *Federal Court of Australia Act 1976*.

(6) In this section:

alternative provisions means provisions provided for by a law of a State or Territory in respect of which the Commonwealth Minister has made a determination under paragraph 43(1)(b).

future act notice means:

(a) a notice of a future act given under section 29; and

Authorised Version C2024C00224 registered 19/06/2024

(b) a notice of a future act given under alternative provisions.

future act notice to which the current law applies means a future act notice to which the provisions in Subdivision P of Division 3 of Part 2 of this Act apply.

future act notice to which the pre-1998 law applies means a future act notice to which the provisions in Subdivision B of Division 3 of Part 2 of the *Native Title Act 1993* apply, as in force immediately before the commencement of the *Native Title Amendment Act 1998* (including as it applies in accordance with Schedule 5 of that Act).

pre-1998 law means the *Native Title Act 1993*, as in force immediately before the commencement of the *Native Title Amendment Act 1998* (including as it applies in accordance with Schedule 5 of that Act).

Authorised Version C2024C00224 registered 19/06/2024

Division 4—Mediation

94D Mediation conferences

Mediator may hold conferences

(1) If the Federal Court refers the whole or a part of a proceeding under section 86B for mediation, the mediator may hold such conferences of the parties or their representatives as the mediator considers will help in resolving the matter.

Note: The person conducting the mediation may request the Federal Court to refer for review by the NNTT the issue of whether there are native title rights and interests: see subsections 136GC(2) and (3).

Who must conduct conferences

(2) A conference must be conducted by:
(a) if the mediator is an individual—the mediator; or
(b) if the mediator is the NNTT—a member of the NNTT; or
(c) in any other case—an individual nominated by the mediator.

Assistance

(3) Subject to an order made under subsection 86B(5C) in relation to the mediation, the person conducting the mediation may be assisted:
(a) if the person is a member of the NNTT—by another member of the NNTT or a member of the staff assisting the NNTT; and
(b) in any other case—by such other individuals as the person considers appropriate.

Statements at conference are without prejudice

(4) In a proceeding before the Court, unless the parties otherwise agree, evidence may not be given, and statements may not be made, concerning any word spoken or act done at a conference.

Authorised Version C2024C00224 registered 19/06/2024

Person conducting the mediation etc. not to take further part in relation to a proceeding

(5) Unless the parties otherwise agree or the Court gives leave, the person conducting the mediation, or another person who assists that person, may not, in any other capacity, take any further part in the proceeding before the Court.

Participation by telephone etc.

(6) The person conducting the mediation may allow a person to participate by:
  (a) telephone; or
  (b) closed-circuit television; or
  (c) any other means of communication.

Division applies as if consultant were a member

(7) If:
  (a) the mediator is the NNTT; and
  (b) a consultant is engaged under subsection 131A(1) to conduct mediation in relation to a particular matter under this Division;

this Division applies in relation to that matter as if the consultant were a member of the NNTT.

94E Parties at conferences

Requiring parties to attend conferences

(1) The person conducting the mediation may direct a party to attend at a conference.

Limiting parties at conferences

(2) The person conducting the mediation may direct that only one or some of the parties may attend, and be represented, at a conference.

Authorised Version C2024C00224 registered 19/06/2024

Excluding parties from conferences

(3) If the person conducting the mediation considers that:
   (a) a party, or a party's representative, at a conference is disrupting or hindering the conference; or
   (b) excluding a party, or a party's representative, from a conference would help to resolve matters;

the person may direct that the party or representative not attend at that conference or at other conferences.

Parties may be represented

(4) A party may be represented by a barrister, a solicitor or another person.

Mediation in good faith

(5) Each party, and each person representing a party, must act in good faith in relation to the conduct of the mediation.

94F Other persons attending or participating in conferences

The person conducting the mediation may, with the consent of all of the parties present at a conference:
   (a) direct that other persons be permitted to attend as observers of the conference; or
   (b) if he or she considers it would assist the parties to reach agreement on any of the matters mentioned in subsection 86A(1) or (2)—direct that other persons be permitted to participate in the conference.

94G Producing documents

The person conducting the mediation may, for the purposes of a conference, direct a party to produce a document to the person on or before a day specified in the direction, if the person considers that:

Authorised Version C2024C00224 registered 19/06/2024

(a) the document is in the possession, custody or control of the party; and
(b) the production of the document may assist the parties to reach agreement on any matters mentioned in subsection 86A(1) or (2).

94H Referral of questions of fact or law

Referral of questions to Federal Court

(1) Subject to subsections (2) and (3), if the person conducting the mediation considers that it would expedite the reaching of an agreement on any matter that is the subject of mediation, he or she may refer to the Federal Court a question of fact or law relating to a proceeding that arises during the mediation.

Note: Under subsection 86D(1), the Federal Court may determine a question of fact or law that a mediator refers to it.

Person conducting the mediation not a consultant

(2) If the person conducting the mediation is not a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
(a) on the initiative of the person; or
(b) at the request of a party.

Person conducting the mediation a consultant

(3) If the person conducting the mediation is a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
(a) on the initiative of the person, if a presidential member agrees; or
(b) at the request of a party.

Authorised Version C2024C00224 registered 19/06/2024

Mediation may continue

(4) If a question of fact or law arising during mediation has been referred to the Court under this section, the person conducting the mediation may continue mediation if he or she considers that it is appropriate.

94J Referral of questions about whether a party should be dismissed

Referral of questions to Federal Court

(1) Subject to subsections (3) and (4), if the person conducting the mediation considers that a party to a proceeding does not have a relevant interest in the proceeding, he or she may refer to the Federal Court the question of whether the party should cease to be a party to the proceeding.

(2) For the purposes of the determination by the Court of that question, subsection 94D(4) does not apply to the extent that words spoken or acts done at a conference under section 94D relate to that question.

Person conducting the mediation not a consultant

(3) If the person conducting the mediation is not a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
  (a) on the initiative of the person; or
  (b) at the request of a party, if the person agrees.

Person conducting the mediation a consultant

(4) If the person conducting the mediation is a consultant engaged under subsection 131A(1), the question may only be referred to the Court under subsection (1) of this section:
  (a) on the initiative of the person, if a presidential member agrees; or
  (b) at the request of a party, if both the person and a presidential member agree.

Authorised Version C2024C00224 registered 19/06/2024

Mediation may continue

(5) If a question has been referred to the Court under this section, the person conducting the mediation may continue mediation if he or she considers that it is appropriate.

*Meaning of **relevant interest***

(6) In this section, a person has a ***relevant interest*** in a proceeding if the person's interests may be affected by a determination in the proceeding.

94K Conferences to be held in private

A conference must be held in private, unless the person conducting the mediation directs otherwise and no party objects.

94L Person conducting the mediation may prohibit disclosure of information etc.

(1) The person conducting the mediation may direct that:

(a) any information given, or statements made, at a conference; or

(b) the contents of any document produced at a conference;

must not be disclosed, or must not be disclosed except in such manner, and to such other persons, as the person specifies.

Applications etc.

(2) The person conducting the mediation may make the direction on his or her own initiative or on an application by a party.

Person conducting the mediation may disclose information etc. if parties agree

(3) If the parties agree, the person conducting the mediation may, despite the direction, disclose things of the kind mentioned in paragraph (1)(a) or (b).

Authorised Version C2024C00224 registered 19/06/2024

Offence

(4) A person commits an offence if:
  (a) the person discloses any material in contravention of a direction made under subsection (1); and
  (b) the disclosure is not permitted by subsection (3).

Penalty: 40 penalty units.

(5) Subsection (4) is an offence of strict liability.

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

94M Person conducting the mediation etc. must not be required to give evidence or produce documents to a court

(1) The person conducting the mediation, or another person who assists that person, is not competent, and must not be required, to give evidence to a court relating to a matter if:
  (a) the giving of the evidence would be contrary to a direction under subsection 94L(1); or
  (b) an application has been made for a direction under that subsection concerning the matter to which the evidence would relate and the person conducting the mediation has not determined that application.

(2) The person conducting the mediation, or another person who assists that person, must not be required to produce in a court a document given in connection with a mediation if:
  (a) the production of the document would be contrary to a direction under subsection 94L(1); or
  (b) an application has been made for a direction under that subsection in relation to the document and the person conducting the mediation has not determined that application.

(3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

Authorised Version C2024C00224 registered 19/06/2024

produce includes permit access to.

94N Report etc. to be given to Federal Court

Report after mediation concludes

(1) The person conducting the mediation must, as soon as practicable after mediation is successfully concluded, provide a written report to the Federal Court setting out the results of the mediation.

Report requested under subsection 86E(1)

(2) The person conducting the mediation must provide a written report to the Federal Court setting out the progress of the mediation if requested to do so under subsection 86E(1).

Report or plan requested under subsection 86E(2)

(3) If one or more mediators have been requested under subsection 86E(2) to provide a regional mediation progress report or a regional work plan, that mediator or those mediators must provide the report or plan to the Federal Court.

Progress report

(4) The person conducting the mediation may provide a written report to the Federal Court setting out the progress of the mediation if the person considers that it would assist the Court in progressing the proceeding in relation to which the mediation is being undertaken.

Report about failure to comply with a direction

(5) If a direction made under subsection 94E(1) or section 94G has not been complied with, the person conducting the mediation may provide a written report to the Federal Court setting out:
  (a) the details of the direction; and
  (b) the reasons for giving the direction.

Authorised Version C2024C00224 registered 19/06/2024

Agreement on facts

(6) If the parties agree, a report provided under subsection (1), (2) or (4) must include any agreement on facts between the parties that was reached during the mediation concerned.

94P Reports about breaches of the requirement to act in good faith

Reports to government

(1) If the person conducting the mediation considers that a party mentioned in column 1 of the following table in relation to an item, or a person representing such a party, did not act or is not acting in good faith in relation to the conduct of the mediation, the person may report that failure to the person mentioned in column 2 of the table in relation to the item:

Reports about persons who do or did not act in good faith

Item	If the party is or a person represents ...	then, the person conducting the mediation may report the failure to act in good faith to ...
1	the Commonwealth	the Commonwealth Minister.
2	a State or Territory	the State Minister or the Territory Minister for the State or Territory.
4	a representative body that is provided with funds by the Secretary of the Department under section 203C	the Secretary of the Department.
5	a person or body performing functions of a representative body that is provided with funds by the Secretary of the Department under section 203FE	the Secretary of the Department.

Authorised Version C2024C00224 registered 19/06/2024

Reports to legal professional bodies

(2) If the person conducting the mediation considers that a legal practitioner did not act or is not acting in good faith in relation to the conduct of the mediation, the person may report that failure to the relevant State or Territory legal professional body that issued the legal practitioner with a practising certificate.

(3) For the purposes of a report made under subsection (2), subsection 94D(4) does not apply to the extent that words spoken or acts done at a conference under section 94D relate to the failure mentioned under subsection (2) of this section.

Reports to the Federal Court

(4) If the person conducting the mediation considers that a party, or the party's representative, did not act or is not acting in good faith in relation to the conduct of the mediation, the person may, despite subsection 94D(4), report that failure to the Federal Court (whether or not a report is also provided as mentioned in subsection (1) or (2) of this section).

What a report must include

(5) A report must include:
  (a) the details of the failure to act in good faith; and
  (b) the context in which the conduct took place.

Copy of report to be provided to the person to whom it relates

(6) At the time that a report is provided as mentioned in subsection (1), (2) or (4), a copy of the report must also be provided to the person to whom it relates.

Person conducting the mediation not a consultant

(7) If the person conducting the mediation is not a consultant engaged under subsection 131A(1), a report may only be provided under this section on the initiative of the person.

Authorised Version C2024C00224 registered 19/06/2024

Person conducting the mediation a consultant

(8) If the person conducting the mediation is a consultant engaged under subsection 131A(1), a report may only be provided under this section on the initiative of the person if a presidential member agrees.

Mediation may continue

(9) If a report is provided under this section, the person conducting the mediation may continue mediation if he or she considers that it is appropriate.

94Q Public reporting about breaches of the requirement to act in good faith

Scope

(1) This section applies if the person conducting a mediation is a member of the NNTT.

Annual report may include particulars of failure to act in good faith etc.

(2) If the person considers that a Government party, or that party's representative, did not act or is not acting in good faith in relation to the conduct of the mediation, the report prepared under section 133 may include particulars of that failure and the reasons why the person considers that the conduct was not in good faith.

(3) If it is proposed to make an inclusion in the report, the person must inform the Government party, or that party's representative, before doing so.

94R Protection of person conducting the mediation

A person conducting the mediation has, in the performance of his or her duties as a person conducting the mediation, the same protection and immunity as a Justice of the High Court.

Authorised Version C2024C00224 registered 19/06/2024

94S Regulations about mediation

(1) The regulations may make provision in relation to the way in which any mediation is provided under this Division.

(2) Such regulations must not be inconsistent with this Division.

Authorised Version C2024C00224 registered 19/06/2024

Part 5—Native Title Registrar

95 Appointment of Registrar

Registrar

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

Appointment by Governor-General

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

Qualifications

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

96 President may give directions to Registrar

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

96A Powers of Registrar—ILUAs and future act negotiations

The Registrar has the powers set out in Part 2.

Authorised Version C2024C00224 registered 19/06/2024

97 Powers of Registrar—applications

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

97A Searches for Federal Court etc.

The Registrar has the power to conduct, or arrange for the conducting of, searches:

(a) as requested by the Federal Court under section 83A; or

(b) for the purposes of section 190A or any other provision of this Act.

98 Powers of Registrar—registers

The Registrar has the powers set out in Parts 7, 8 and 8A in relation to the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements.

98AA Powers of Registrar—records of section 31 agreements

The Registrar has the powers set out in section 41B in relation to records of agreements of the kind mentioned in paragraph 31(1)(b).

98A Power of Registrar—other public records and information

Registrar may keep other records and information

(1) The Registrar has the power to keep such other records and information as he or she considers appropriate and to make those records or that information available to the public.

Certain information to be confidential

(2) The Registrar must not make particular information available to the public if the Registrar considers that it would not be in the public interest for the information to be available to the public.

Authorised Version C2024C00224 registered 19/06/2024

Concerns of Aboriginal peoples and Torres Strait Islanders

(3) In determining whether it would or would not be in the public interest for information to be available to the public, the Registrar must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

99 Delegation by Registrar

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

100 Remuneration and allowances

Determination by Remuneration Tribunal

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

Prescribed allowances

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

Appropriation

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

Subject to Remuneration Tribunal Act 1973

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

Authorised Version C2024C00224 registered 19/06/2024

101 Terms and conditions of appointment

Period for which office held

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

Terms and conditions

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

102 Leave of absence

Recreation leave

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

Other leave

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

103 Resignation

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

104 Termination of appointment

Misbehaviour or incapacity

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

Authorised Version C2024C00224 registered 19/06/2024

Termination for other reasons

(2) The Governor-General must terminate the appointment of the Registrar if:

(a) the Registrar:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

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

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

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

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

Retirement—incapacity

(3) If the Registrar is:

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

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

(c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

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

Retirement—invalidity—Superannuation Act 1976

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

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

Authorised Version C2024C00224 registered 19/06/2024

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

is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

Retirement—invalidity—Superannuation Act 1990

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

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

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

Retirement—invalidity—Superannuation Act 2005

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

(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

105 Outside employment

Consent of President required

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

Service in Defence Force

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

Authorised Version C2024C00224 registered 19/06/2024

106 Disclosure of interests by Registrar

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

(2) The Registrar must also give written notice to the President of all material personal interests that the Registrar has that relate to the affairs of the Tribunal.

(3) Section 29 of the *Public Governance, Performance and Accountability Act 2013* does not apply to the Registrar.

106A Appointment of acting Registrar

President may appoint acting Registrar

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

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Qualifications

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

Authorised Version C2024C00224 registered 19/06/2024

Part 6—National Native Title Tribunal

Division 1—Establishment, purpose and way of operating

107 Establishment of the National Native Title Tribunal

A National Native Title Tribunal is established.

108 Function of the Tribunal

Applications, inquiries and determinations

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

Mediation for Federal Court proceedings

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

Reconsideration of claims

(1AA) The Tribunal has the functions in relation to applications for the reconsideration of claims made to the Tribunal under section 190E that are given to it under that section.

Assistance and mediation generally

(1B) The Tribunal has the functions of:

(a) providing assistance, mediating or conducting a review in accordance with any provision of this Act; and

(b) entering into agreements in relation to assistance as mentioned in subsections 60AAA(3) and 203BK(3).

Authorised Version C2024C00224 registered 19/06/2024

Research

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

Matters for research

(3) Without limiting subsection (2), the Tribunal may carry out research under that subsection into:
  (a) the history of interests in relation to land or waters in Australia; or
  (b) anthropology; or
  (c) linguistics.

109 Tribunal's way of operating

Objectives

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

Concerns of Aboriginal peoples and Torres Strait Islanders

(2) The Tribunal, in carrying out its functions, may take account of the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders, but not so as to prejudice unduly any party to any proceedings that may be involved.

Tribunal not bound by technicalities etc.

(3) The Tribunal, in carrying out its functions, is not bound by technicalities, legal forms or rules of evidence.

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Membership of the National Native Title Tribunal

110 Membership of the Tribunal

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

MEMBERSHIP OF THE NATIONAL NATIVE TITLE TRIBUNAL			
Member	**Number to be appointed**	**Class of member**	**Persons who may be appointed**
President	One	Presidential	(1) A Judge of the Federal Court; or (2) A former judge; or (3) A person who is, and has been for at least 5 years, enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.
Deputy President	Any number or none		
Other member	Any number or none	Non-presidential	A person (other than a Judge or a former judge) who: (a) has, in the opinion of the Governor General, special knowledge in relation to: (i) Aboriginal or Torres Strait Islander societies; or (ii) land management; or (iii) dispute resolution; or (iv) any other class of matters considered by the Governor-General to have substantial relevance to the duties of such a member; or (b) is an assessor; or (c) is a member of a recognised State/Territory body.

Authorised Version C2024C00224 registered 19/06/2024

111 Appointment of members of Tribunal

Appointment by Governor-General

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

Full-time or part-time appointments

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

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

Judges

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

Assessors

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

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

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

Authorised Version C2024C00224 registered 19/06/2024

113 Delegation to members

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

114 Remuneration and allowances

Determination by Remuneration Tribunal

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

Prescribed allowances

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

Subject to Remuneration Tribunal Act 1973

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

115 Terms and conditions of appointment

Period for which office held

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

When Judge or assessor ceases to be member

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

Authorised Version C2024C00224 registered 19/06/2024

Terms and conditions

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

115A Acting appointments

President

(1) The Commonwealth Minister may, by written instrument, appoint a person to act as the President:
  (a) during a vacancy in the office of President (whether or not an appointment has previously been made to the office); or
  (b) during any period, or during all periods, when the President:
    (i) is absent from duty or from Australia; or
    (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Deputy President

(2) The Commonwealth Minister may, by written instrument, appoint a person to act as a Deputy President:
  (a) during a vacancy in the office of a Deputy President (whether or not an appointment has previously been made to the office); or
  (b) during any period, or during all periods, when a Deputy President:
    (i) is absent from duty or from Australia; or
    (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Authorised Version C2024C00224 registered 19/06/2024

Non-presidential members

(3) The Commonwealth Minister may, by written instrument, appoint a person to act as a member other than the President or a Deputy President:

(a) during a vacancy in the office of a member other than the President or a Deputy President (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when a member other than the President or a Deputy President:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Qualifications

(4) A person must not be appointed to act in an office under this section unless the person may be appointed to that office under section 110.

Terms and conditions

(5) A person (other than a Judge or an assessor) appointed to act in an office under this section is to act on such terms and conditions as the Minister determines in writing.

116 Oath or affirmation of office

Member to take oath or affirmation

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

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

Authorised Version C2024C00224 registered 19/06/2024

Or

"I, ..., do solemnly and sincerely promise and declare that (*as above, omitting the words* '*So Help Me God*').".

Who oath or affirmation is to be taken before

(2) The oath or affirmation must be taken before:
  (a) the Governor-General; or
  (b) a Justice of the High Court; or
  (c) a judge of another federal court; or
  (d) a judge of the Supreme Court of a State or Territory.

117 Leave of absence

Recreation leave

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

Other leave

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

118 Resignation

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

Authorised Version C2024C00224 registered 19/06/2024

119 Termination of appointment—members other than Judges or assessors

Misbehaviour or incapacity

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

Termination for other reasons

(2) The Governor-General must terminate the appointment of a member, other than a Judge or an assessor, if the member:

(a) becomes bankrupt; or

(b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(c) compounds with his or her creditors; or

(d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

Retirement—incapacity

(3) The Governor-General may, with the consent of a member other than a Judge or an assessor who is:

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

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

(c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the member from office on the ground of incapacity.

Retirement—invalidity—Superannuation Act 1976

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

Authorised Version C2024C00224 registered 19/06/2024

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

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

is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.

Retirement—invalidity—Superannuation Act 1990

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

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

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.

Retirement—invalidity—Superannuation Act 2005

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

(a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and

(b) is under 60 years of age;

is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

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

Misbehaviour or incapacity

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

Authorised Version C2024C00224 registered 19/06/2024

Statement of grounds

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

Resolution by a House of Parliament

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

Member's appointment to be terminated

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

Termination of suspension

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

Suspension not to affect entitlements

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

121 Outside employment

Consent of Commonwealth Minister required

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

Authorised Version C2024C00224 registered 19/06/2024

Service in Defence Force

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

122 Disclosure of interests

Member to disclose conflict of interest

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

Requirement for consent

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

Meaning of conflict of interest

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

(4) Without limiting subsection (3), a person has a conflict of interest at a particular time in relation to an application under Part 3, or an inquiry by the Tribunal, if:
  (a) at that time, the person is employed by, or engaged as a consultant to, an organisation that has an interest in the subject matter of the application or the inquiry; or

Authorised Version C2024C00224 registered 19/06/2024

(b) at any time in the 12 months immediately before that time, the person was so employed or engaged.

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Organisation of the Tribunal

123 Arrangement of business

President may give directions

(1) Subject to section 124, the President may give directions as to any of the following:
  (a) the arrangement of the business of the Tribunal;
  (b) the persons who are to:
    (i) conduct mediation in a particular proceeding; or
    (ii) provide any assistance under this Act; or
    (iii) conduct a review under this Act;
  (c) the persons who are to constitute the Tribunal for the purposes of a particular inquiry;
  (ca) the persons who may appear on behalf of the Tribunal under section 86BA;
  (cb) the person who is to constitute the Tribunal for the purposes of reconsidering a decision of the Registrar not to accept a claim;
  (d) the places at which the Tribunal is to sit;
  (e) the procedure of the Tribunal generally;
  (f) the procedure of the Tribunal at a particular place.

Factors to be considered

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

Authorised Version C2024C00224 registered 19/06/2024

124 Constitution of Tribunal for exercise of powers

Constitution of Tribunal

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

Constitution where 3 members

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

Constitution—inquiry into objection to registration of indigenous land use agreement

(3) The Tribunal must not be constituted by, or include, for the purposes of an inquiry in relation to a subsection 24DJ(1) objection application, a member who has assisted a party to the agreement to which the application relates in negotiations as mentioned in subsection 24DJ(2), unless the parties otherwise agree.

125 Reconstitution of the Tribunal

When section applies

(1) This section applies if a member (the ***unavailable member***) who constitutes the Tribunal, or who is one of the members who constitutes the Tribunal, for the purposes of a particular inquiry:
  (a) stops being a member; or
  (b) for any reason is not available for the purpose of the inquiry.

Authorised Version C2024C00224 registered 19/06/2024

Where unavailable member constituted Tribunal

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

Other cases

(3) If the unavailable member is one of the members who constitute the Tribunal, the President must either:
  (a) direct that the Tribunal is to be constituted for the purposes of finishing the inquiry by the remaining member or members; or
  (b) direct that the Tribunal is to be constituted for that purpose by the remaining member or members together with another member or members.

Member who is reappointed

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

Tribunal may have regard to previous proceedings

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

126 Member presiding

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

127 Places of sitting

Sittings of the Tribunal are to be held from time to time as required at the places at which the registries of the Tribunal are established,

Authorised Version C2024C00224 registered 19/06/2024

but the Tribunal may sit at any place in Australia or to which this Act extends.

Authorised Version C2024C00224 registered 19/06/2024

Division 4—Management of the Tribunal

Subdivision A—Management responsibilities etc. of President of Tribunal and Federal Court Chief Executive Officer

128 Management of administrative affairs of Tribunal

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

(2) However, the President is not responsible under subsection (1) for matters under:

(a) the *Public Governance, Performance and Accountability Act 2013*; or

(b) the *Public Service Act 1999*;

relating to the Tribunal.

Note 1: See Part IIB of the *Federal Court of Australia Act 1976* for provisions relating to the administrative affairs of the Tribunal.

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Native Title Registrar, the Deputy Registrars and the staff assisting the Tribunal are officials of the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees referred to in subsection 130(3) are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

129 Federal Court Chief Executive Officer

(1) In the management of the administrative affairs of the Tribunal in accordance with section 128, the President is to be assisted by the Federal Court Chief Executive Officer.

Authorised Version C2024C00224 registered 19/06/2024

Powers, when assisting President

(2) The Federal Court Chief Executive Officer may do all things necessary or convenient to be done for the purpose of assisting the President under subsection (1).

(3) In particular, the Federal Court Chief Executive Officer may act for the President in relation to the administrative affairs of the Tribunal for which the President is responsible in accordance with section 128.

President may give directions

(4) The President may give the Federal Court Chief Executive Officer directions regarding the exercise of the powers of the Federal Court Chief Executive Officer under subsection (2) or (3).

129A Delegation by Federal Court Chief Executive Officer

The Federal Court Chief Executive Officer may, by signed instrument, delegate all or any of the powers of the Federal Court Chief Executive Officer under this Division to any of the following:

(a) the Native Title Registrar;

(b) a Deputy Registrar of the Tribunal;

(c) a member of the staff assisting the Tribunal.

Note: For other powers of delegation, see section 110 of the *Public Governance, Performance and Accountability Act 2013* and section 78 of the *Public Service Act 1999*.

Subdivision B—Other officers, staff and consultants

130 Deputy Registrars and staff etc.

Deputy Registrars and staff

(1) There are to be such Deputy Registrars of the Tribunal, and staff assisting the Tribunal, as are necessary.

Authorised Version C2024C00224 registered 19/06/2024

(3) The Deputy Registrars and the staff assisting the Tribunal are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Federal Court Chief Executive Officer.

Secondment

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

Powers etc.

(5) The Deputy Registrars and the staff assisting the Tribunal have such duties, powers and functions as are given by this Act, by the President or by the Federal Court Chief Executive Officer.

131A President may arrange for consultants to be engaged

(1) The President may arrange with the Federal Court Chief Executive Officer for a person to be engaged as a consultant in relation to any assistance, mediation or review that the Tribunal provides under any provision of this Act.

Note: The Federal Court Chief Executive Officer may enter into contracts on behalf of the Commonwealth and has responsibilities under the *Public Governance, Performance and Accountability Act 2013* in relation to the Tribunal.

Consultants to have relevant skills or knowledge

(2) The Federal Court Chief Executive Officer may only engage a person under subsection (1) if:

(a) the person has, in the opinion of the President, particular skills or knowledge in relation to matters of substantial relevance to the assistance, mediation or review; and

Authorised Version C2024C00224 registered 19/06/2024

(b) so far as is reasonably practicable, the person has, in the opinion of the President, special knowledge in relation to Aboriginal or Torres Strait Islander societies.

Engagements to be in writing

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

Consultant subject to President's direction

(4) A consultant engaged under subsection (1) is subject to directions given by the President under subsection 123(1).

131B Disclosure of interests

Consultant to disclose conflict of interest

(1) A person engaged under subsection 131A(1) as a consultant in relation to any assistance, mediation or review being provided by the Tribunal who has a conflict of interest in relation to the assistance, mediation or review must disclose the matters giving rise to that conflict to:
(a) the President of the Tribunal; and
(b) the persons to whom the Tribunal is providing the assistance, mediation or review.

Requirement for consent

(2) The person must not perform his or her duties as a consultant in relation to the assistance, mediation or review unless the President and the persons to whom the Tribunal is providing the assistance, mediation or review consent.

Meaning of conflict of interest

(3) For the purposes of this section, a person engaged under subsection 131A(1) as a consultant in relation to any assistance,

Authorised Version C2024C00224 registered 19/06/2024

mediation or review being provided by the Tribunal has a conflict of interest in relation to the assistance, mediation or review if the person has any interest, pecuniary or otherwise, that could conflict with the proper performance of his or her duties as a consultant in relation to the assistance, mediation or review.

Conflict of interest at a particular time

(4) Without limiting subsection (3), a person engaged under subsection 131A(1) as a consultant in relation to any assistance, mediation or review being provided by the Tribunal has a conflict of interest at a particular time in relation to the assistance, mediation or review if:

(a) at that time, the person is employed by, or engaged as a consultant to, an organisation that has an interest in the matter in relation to which the assistance, mediation or review is being provided; or

(b) at any time in the 12 months immediately before that time, the person was so employed or engaged.

Subdivision C—Miscellaneous administrative matters

133 Annual report

(1) As soon as practicable after 30 June in each year, the President must prepare a report that relates to the Tribunal's activities during the year.

(2A) The report may include particulars of any failure to act in good faith and the reasons why the conduct was not in good faith, as allowed by section 94Q.

(3) The President must give the report to the Chief Justice, for inclusion in the report prepared for the relevant year under section 18S of the *Federal Court of Australia Act 1976*.

Authorised Version C2024C00224 registered 19/06/2024

136 Proceedings arising out of administrative affairs of Tribunal

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

Authorised Version C2024C00224 registered 19/06/2024

Division 4AA—Review on whether there are native title rights and interests

136GC Review on whether there are native title rights and interests

Referral by the Federal Court on its own motion

(1) The Federal Court may, on its own motion, refer for review by the Tribunal the issue of whether a native title claim group who is a party in a proceeding holds native title rights and interests, as defined in subsection 223(1), in relation to land or waters within the area that is the subject of the proceeding.

Referral by the Federal Court on request

(2) The Federal Court may refer for review by the Tribunal the issue of whether a native title claim group who is a party in a proceeding holds native title rights and interests, as defined in subsection 223(1), in relation to land or waters within the area that is the subject of the proceeding if:

(a) the issue arises in the course of mediation in relation to the proceeding; and

(b) the person conducting the mediation requests the Court to refer the issue for review by the Tribunal.

(3) The person conducting the mediation may only make the request if the person considers, after consultation with the parties to the proceeding, that a review of the issue would assist the parties to reach agreement on any of the matters mentioned in subsection 86A(1).

Member must conduct review

(4) A review must be conducted by a member of the Tribunal.

Authorised Version C2024C00224 registered 19/06/2024

Assistance for member conducting review

(5) The member conducting a review may be assisted by another member of the Tribunal or by a member of the staff assisting the Tribunal.

Parties may give documents and information

(6) A party in the proceeding may give documents or information to the member conducting the review for the purposes of the review. A party who gives documents or information is a ***participating party***.

Statements at review are without prejudice

(7) In a proceeding before the Court, unless the participating parties otherwise agree, evidence may not be given, and statements may not be made, concerning any word spoken or act done in the course of the review.

Member not to take further part in relation to a proceeding

(8) Unless the participating parties otherwise agree, a member who presides over, or assists in, the conduct of a review may not, in any other capacity, take any further part in the proceeding.

Mediation may continue

(9) If an issue has been referred for review under subsection (1), the person conducting the mediation may continue mediation if he or she considers that it is appropriate.

If mediation ceases, review must cease

(10) If mediation ceases by order of the Federal Court under section 86C, the review must cease.

Authorised Version C2024C00224 registered 19/06/2024

Consultants

(11) If a consultant is engaged under subsection 131A(1) to conduct the mediation in relation to the proceeding, this Division applies as if the consultant were a member of the Tribunal.

(12) If a consultant is engaged under subsection 131A(1) to conduct a review under this Division, this Division applies in relation to that review as if the consultant were a member of the Tribunal.

136GD Member conducting a review may prohibit disclosure of information

Power of member conducting the review

(1) The member conducting the review may direct that:
  (a) any information given, or statements made, in the course of the review; or
  (b) the contents of any document produced in the course of the review;

must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the member specifies.

Applications etc.

(2) The member conducting the review may make the direction on his or her own initiative or on an application by a participating party.

Member conducting the review may disclose if participating parties agree

(3) If the participating parties agree, the member conducting the review may, despite the direction, disclose things of the kind mentioned in paragraph (1)(a) or (b).

Authorised Version C2024C00224 registered 19/06/2024

136GE Reports

Report after review concludes

(1) The member conducting the review must, as soon as practicable after the review is concluded, provide a written report setting out the findings of the review to:

(a) the person conducting the mediation; and

(b) the participating parties.

However, the findings of the review are not binding on any of the participating parties.

Report may be given to Federal Court and other parties

(2) The member conducting the review may provide a copy of the report to:

(a) the Federal Court; and

(b) other parties in the proceeding.

Report to assist mediation

(3) The member conducting the review may provide a written report to the person conducting the mediation, setting out the progress of the review, if the member conducting the review considers that providing the report would assist in progressing the mediation.

Authorised Version C2024C00224 registered 19/06/2024

Division 4B—How assistance, mediation or review is to be provided

136H Regulations about assistance, mediation or review

(1) The regulations may make provision in relation to the way in which:

(a) any assistance is to be provided by the NNTT under any provision of this Act; or

(b) any mediation, that the NNTT is requested to provide, is to be provided under any provision of this Act; or

(c) any review under Division 4AA is to be conducted.

Regulations must be consistent with this Act

(2) Such regulations must not be inconsistent with Division 4 of Part 4, Division 4AA of this Part or any other provision of this Act.

Authorised Version C2024C00224 registered 19/06/2024

Division 5—Inquiries and determinations by the Tribunal

Subdivision A—Special inquiries

137 Special inquiries

Ministerial direction

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

Matters covered by inquiry

(2) Without limiting subsection (1), the matters that an inquiry may cover include:
  (a) the effect on Aboriginal peoples and Torres Strait Islanders of the validation of particular past acts or intermediate period acts; and
  (b) alternative forms of compensation that could be provided in relation to acts covered by this Act; and
  (c) action that could be taken to assist Aboriginal peoples and Torres Strait Islanders where native title has been extinguished.

138 Notice

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

Subdivision AA—Native title application inquiries

138A Application

This Subdivision applies if:
  (a) the Federal Court has referred the whole or a part of a proceeding for mediation under section 86B; and

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(b) the proceeding, or the part of the proceeding, raises a matter or an issue relevant to the determination of native title under section 225.

138B Native title application inquiries

(1) The Federal Court may:

(a) on its own motion; or

(b) at the request of a party to a proceeding; or

(c) at the request of the person conducting the mediation;

direct the Tribunal to hold an inquiry in relation to a matter or an issue relevant to the determination of native title under section 225.

(2) The Court may only direct that such an inquiry be held if:

(a) the Court is satisfied that resolution of the matter or issue concerned would be likely to:

(i) lead to agreement on findings of fact; or

(ii) lead to action that would resolve or amend the application to which the proceeding relates; or

(iii) lead to something being done in relation to the application to which the proceeding relates; and

(b) the applicant in relation to any application that is affected by the proposed inquiry agrees to participate in the inquiry.

(3) A request that an inquiry be held may be made before the Court refers the whole or a part of the proceeding for mediation.

138C Tribunal to hold inquiry

(1) The Tribunal must hold an inquiry into a matter or an issue relevant to the determination of native title under section 225 (a ***native title application inquiry***), if directed by the Federal Court to do so.

(2) Unless the parties otherwise agree, a member who conducts, or assists at, an inquiry may not, in any other capacity, take any further part in the proceeding.

Authorised Version C2024C00224 registered 19/06/2024

138D Notice to be given to certain persons before inquiry is held

(1) Before beginning the inquiry, the Tribunal must give written notice to the following persons:

(a) the Commonwealth Minister;

(b) the relevant State Minister or Territory Minister;

(d) the representative body, or a person or body performing functions of a representative body, for the area concerned;

(e) the applicant in relation to any application that is affected by the inquiry;

(f) any other person who is a party to the proceeding that relates to the application.

(2) The notice must:

(a) state that the Tribunal intends to hold an inquiry; and

(b) set out the matters or issues that the inquiry will examine; and

(c) set out the effect of subsection (3) of this section and subsection 141(5).

(3) An inquiry must not begin before the end of 7 days after the day on which notice was given, and if notice is given to different persons on different days, the later or latest of those days.

138E Relationship to mediation and reviews on whether there are native title rights and interests

Mediation may continue

(1) Subject to subsection 138F(1), if an inquiry is held, the person conducting the mediation may continue mediation if he or she considers that it is appropriate.

Authorised Version C2024C00224 registered 19/06/2024

Reviews on whether there are native title rights and interests cannot be held

(2) If an inquiry is held in relation to an area, the Tribunal may not conduct a review under section 136GC in relation to that area at the same time.

Note: Section 136GC allows the Federal Court to refer for review the issue of whether a native title claim group who is a party in a proceeding holds native title rights and interests in relation land or waters within the area that is the subject of the proceeding.

138F Cessation of inquiry

(1) An inquiry in relation to a proceeding must cease if the Federal Court makes an order under section 86C that mediation cease in relation to the whole of the proceeding.

(2) If the Federal Court makes an order under section 86C that mediation cease in relation to a part of the proceeding, an inquiry must cease if the inquiry relates to that part of the proceeding.

(3) The President may direct that an inquiry cease if a party to the inquiry no longer agrees to participate in the inquiry.

138G Inquiries may cover more than one proceeding

An inquiry may relate to more than one proceeding if section 138A is satisfied in relation to each proceeding, and this Division applies in relation to the inquiry as if each proceeding were a separate inquiry.

Subdivision B—Inquiries—General

139 Inquiries

The Tribunal must hold an inquiry into:

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

Authorised Version C2024C00224 registered 19/06/2024

(c) a matter or an issue covered by section 137 (a ***special matter***); or

(d) if a person has made an application under subsection 24DJ(1) objecting against registration of an indigenous land use agreement (a ***subsection 24DJ(1) objection application***) and not withdrawn the objection—whether the person satisfies the Tribunal that it would not be fair and reasonable to register the agreement having regard to the matters mentioned in paragraph 24DL(2)(c).

140 Inquiries may cover more than one matter

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

141 Parties

Right to negotiate applications

(2) The parties to an inquiry in relation to a right to negotiate application are the following:

(a) the Government party;

(b) the grantee parties;

(c) for an expedited procedure objection application—any native title party that has lodged an objection in accordance with subsection 32(3) and has not withdrawn the objection;

(d) for a future act determination application—the native title parties.

(2A) However, if:

(a) a native title party mentioned in paragraph (2)(c) (the ***original party***) is, at the time the objection is lodged, a registered native title claimant in relation to land or waters affected by the act to which the expedited procedure objection application relates; and

(b) the original party ceases to be a native title party; and

Authorised Version C2024C00224 registered 19/06/2024

(c) a body corporate (the ***replacement party***) becomes a registered native title body corporate in relation to the land or waters;

the replacement party becomes a party to the inquiry in place of the original party.

Special matters

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

Subsection 24DJ(1) objection applications

(4) The parties to an inquiry in relation to a subsection 24DJ(1) objection application are:

(a) the person; and

(b) the parties to the agreement; and

(c) any other person who satisfies the Tribunal that his or her interests are affected by the agreement.

Native title application inquiry

(5) The parties to a native title application inquiry are:

(a) the applicant in relation to any application that is affected by the inquiry; and

(b) the relevant State Minister or Territory Minister, if he or she notifies the Tribunal, in writing, that he or she wishes to be a party; and

(c) the Commonwealth Minister, if he or she notifies the Tribunal, in writing, that he or she wishes to be a party; and

(d) with leave of the Tribunal, any other person who notifies the Tribunal, in writing, that the person wishes to be a party to the inquiry.

Authorised Version C2024C00224 registered 19/06/2024

142 Opportunity to make submissions concerning evidence

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

143 Representation before Tribunal

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

144 Manner in which questions to be decided

Questions of law

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

Other questions

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

145 Reference of questions of law to the Federal Court

Referral to Federal Court

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

Authorised Version C2024C00224 registered 19/06/2024

Presiding member must agree

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

Jurisdiction of Federal Court

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

Tribunal to suspend inquiry

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

146 Evidence and findings in other proceedings

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

Authorised Version C2024C00224 registered 19/06/2024

147 Power of Tribunal where a proceeding is frivolous or vexatious

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

148 Power of Tribunal where no jurisdiction, failure to proceed etc.

The Tribunal may dismiss an application, at any stage of an inquiry relating to the application, if:

(a) the Tribunal is satisfied that it is not entitled to deal with the application; or

(b) the applicant fails within a reasonable time to proceed with the application or to comply with a direction by the Tribunal in relation to the application.

149 Power of Tribunal where applicant requests dismissal

The Tribunal may dismiss an application if:

(a) the applicant requests, in writing, that the application be dismissed; and

(b) the Tribunal is satisfied that it is appropriate to dismiss the application.

149A Power of Tribunal to reinstate application

If it appears to the Tribunal that an application has been dismissed in error, the Tribunal may, on the application of a party to the application or on its own initiative, reinstate the application and give such directions as appear to it to be appropriate in the circumstances.

Authorised Version C2024C00224 registered 19/06/2024

Subdivision C—Conferences and hearings

150 Conferences

Conference may be held

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

Member, officer or staff assisting to preside

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

Statements at conference are without prejudice

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

Member not to constitute Tribunal

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

151 Hearings

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

Determinations "on the papers"

(2) The Tribunal may:
  (a) decide for the purposes of paragraph 24DL(2)(c) whether it would be fair and reasonable to register an agreement; or
  (b) make a determination in relation to a right to negotiate application;

Authorised Version C2024C00224 registered 19/06/2024

by considering, without holding a hearing, the documents or other material lodged with or provided to the Tribunal. However, the Tribunal must hold a hearing if it appears to the Tribunal that the issues for determination cannot be adequately determined in the absence of the parties.

152 Right of appearance

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

153 Participation by telephone etc.

A person holding a conference mentioned in section 150, and the Tribunal in a hearing for the purposes of an inquiry, may allow a person to participate by:

(a) telephone; or

(b) closed-circuit television; or

(c) any other means of communication.

154 Hearings to be held in public except in special circumstances

Public hearings

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

Participation by telephone etc.

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

Private hearings

(3) The Tribunal may, on its own initiative or on the application of a party, if it is satisfied that it is appropriate to do so, direct that a

Authorised Version C2024C00224 registered 19/06/2024

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

Concerns of Aboriginal peoples or Torres Strait Islanders

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

Application to a native title application inquiry

(5) This section does not apply to a hearing held in the course of a native title application inquiry.

154A Exception—hearings to be held in private if held during course of a native title application inquiry

Private hearings

(1) Subject to subsection (3), if a hearing is held in the course of a native title application inquiry, the hearing must be held in private.

(2) The Tribunal may, on its own initiative or on the application of a party, if it is satisfied that it is appropriate to do so, give directions as to the persons who may be present at the hearing.

Public hearings

(3) The Tribunal may, on its own initiative or on the application of a party, if it is satisfied that it is appropriate to do so and the consent of the parties has been obtained, direct that a hearing, or part of a hearing, be held in public.

Participation by telephone etc.

(4) If a direction is made under subsection (3) and a person participates by a means allowed under section 153, the Tribunal must take such steps as are reasonably necessary to ensure the public nature of the hearing is preserved.

Authorised Version C2024C00224 registered 19/06/2024

Concerns of Aboriginal peoples or Torres Strait Islanders

(5) In making a direction under subsection (3), the Tribunal must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

155 Tribunal may prohibit disclosure of evidence

The Tribunal may direct that:

(a) any evidence given before it; or

(b) the contents of any document produced to it;

must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the Tribunal specifies. This section does not limit the Tribunal's powers under sections 154 and 154A.

156 Powers of Tribunal to take evidence

Evidence on oath or affirmation

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

Power to summon

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

Witnesses

(3) A party may call witnesses.

Examination of witnesses

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

Authorised Version C2024C00224 registered 19/06/2024

Leave required for cross-examination or re-examination

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

Participation by telephone etc.

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

Application to a native title application inquiry

(7) Subsection (2) does not apply in relation to a native title application inquiry.

157 Tribunal may authorise another person to take evidence

Who may exercise Tribunal's powers

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

Limitations apply

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

Powers of person taking evidence

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

Authorised Version C2024C00224 registered 19/06/2024

Written record to be made

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

Interpretation

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

158 Interpreters

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

159 Retention and copying of documents

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

Subdivision D—Determinations and reports

162 Determination of the Tribunal—right to negotiate applications

Tribunal to make determination

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

Tribunal must state findings of fact

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

Authorised Version C2024C00224 registered 19/06/2024

163 Reports after special inquiries

Tribunal to make report

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

Tribunal must state findings of fact

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

163AA Reports after inquiries into subsection 24DJ(1) objection applications

Tribunal to make report

(1) After holding an inquiry in relation to a subsection 24DJ(1) objection application, the Tribunal must make a report about the matters covered by the inquiry.

Tribunal must state findings of fact

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

163A Reports after native title application inquiries

Tribunal to make report

(1) After holding a native title application inquiry, the Tribunal must make a report about the matters or issues covered by the inquiry.

Report may contain recommendations

(2) The Tribunal may make recommendations in the report. However, any such recommendations are not binding between any of the parties to the inquiry.

Authorised Version C2024C00224 registered 19/06/2024

Tribunal must state findings of fact

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

164 Determinations and reports to be in writing

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

(2) If a determination and report relates to a native title application inquiry, the Tribunal must also give a copy of the determination and report to Federal Court.

Subdivision F—Appeals

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

Appeal from Tribunal determination or decision—right to negotiate applications

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

Subsection 24DJ(1) objection applications

(2) A party to an inquiry in relation to a subsection 24DJ(1) objection application before the Tribunal may appeal to the Federal Court, on a question of law, from any decision of the Tribunal in that proceeding.

How appeal is to be instituted

(4) An appeal is to be instituted:
(a) within the period of 28 days starting on the day on which the decision or determination of the Tribunal is given to the

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person or within such further time as the Court (whether before or after the end of that period) allows; and

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

Jurisdiction of Federal Court

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

Court to make order

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

Orders

(7) Without limiting subsection (6), the orders that may be made by the Court on an appeal include:

(a) an order affirming or setting aside the decision or determination of the Tribunal; or

(b) an order remitting the case to be heard and decided again, either with or without the hearing of further evidence, by the Tribunal in accordance with the directions of the Court.

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

Operation of decision or determination

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

Authorised Version C2024C00224 registered 19/06/2024

Court or Judge may make orders

(2) If an appeal is instituted in the Court from a decision or determination of the Tribunal, the Court or a Judge of the Court may make such order staying or otherwise affecting the operation or implementation of either or both of the following:

(a) the decision or determination of the Tribunal or a part of that decision or determination; and

(b) the decision or determination to which the proceeding before the Tribunal related or a part of that decision or determination;

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

Court or Judge may vary orders

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

Effect of orders

(4) An order:

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

(b) has effect until:

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

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

Authorised Version C2024C00224 registered 19/06/2024

Division 6—Offences

171 Failure of witness to attend

(1) A person who has been served in the prescribed way with a summons to appear before the Tribunal to give evidence and has been paid reasonable expenses must not:

(a) fail to attend as required by the summons; or

(b) fail to appear and report from day to day, unless excused, or released from further attendance, by the Tribunal.

Penalty: 20 penalty units.

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

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

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

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

172 Refusal to be sworn or to answer questions etc.

(1) A person appearing before the Tribunal to give evidence must not:

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

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

Penalty: 20 penalty units.

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

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

Authorised Version C2024C00224 registered 19/06/2024

173 Giving of false or misleading evidence

A person appearing before the Tribunal to give evidence must not intentionally give evidence that the person knows is false or misleading in a material particular.

Penalty: 40 penalty units.

174 Refusal to produce document

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

Penalty: 20 penalty units.

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

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

176 Contravention of direction prohibiting disclosure of evidence

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

Penalty: 40 penalty units.

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

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

177 Contempt of Tribunal

A person must not:

(a) obstruct or hinder the Tribunal, a member or a consultant engaged under subsection 131A(1) in the performance of the functions of the Tribunal; or

(b) disrupt the taking of evidence by the Tribunal; or

Authorised Version C2024C00224 registered 19/06/2024

(c) do any other act or thing that would, if the Tribunal were a court of record, constitute a contempt of that court.

Penalty: 40 penalty units.

Authorised Version C2024C00224 registered 19/06/2024

Division 7—Miscellaneous

178 Sending of documents to the Federal Court

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

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

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

179 Return of documents etc. at completion of proceeding

If no appeal to Federal Court

(1) If:

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

(b) either:

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

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

has expired without an appeal being made;

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

Documents etc. returned by Federal Court

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

Authorised Version C2024C00224 registered 19/06/2024

180 Protection of members and persons giving evidence

Protection of members

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

Protection of consultants

(1A) A person engaged under subsection 131A(1) as a consultant has, in performing duties under the engagement, the same protection and immunity as a Justice of the High Court.

Protection of representatives

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

Protection of witnesses

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

181 Confidential information not to be disclosed

Persons to whom section applies

(1) This section applies to a person who is a member, an officer of the Tribunal, a member of the staff assisting the Tribunal or a consultant engaged under subsection 131A(1).

Persons not competent etc. to give evidence

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

Authorised Version C2024C00224 registered 19/06/2024

(a) the giving of the evidence would be contrary to a direction of the Tribunal in force under section 155; or

(b) an application has been made to the Tribunal for a direction under section 155 concerning the matter to which the evidence would relate and the Tribunal has not determined that application.

Persons not required to produce documents

(3) A person to whom this section applies must not be required to produce in a court a document given to the Tribunal in connection with a proceeding if:

(a) the production of the document would be contrary to a direction of the Tribunal in force under section 155; or

(b) an application has been made to the Tribunal for a direction under section 155 in relation to the document and the Tribunal has not determined that application.

Persons not required to give evidence

(4) A person to whom this section applies must not be required to give evidence to a court in relation to any proceedings before the Tribunal or any mediation required under subsection 31(3).

Definitions

(5) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to.

Authorised Version C2024C00224 registered 19/06/2024

182 Fees for persons giving evidence

Prescribed fees etc.

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

Who must pay fees etc.

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

Authorised Version C2024C00224 registered 19/06/2024

Part 7—Register of Native Title Claims

184 Claims to native title

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

185 Register of Native Title Claims

Establishment

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

Registrar to establish and keep

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

Register may be kept by computer

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

Register may consist of 2 or more registers

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

186 Contents of the Register

Information to be included

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

Authorised Version C2024C00224 registered 19/06/2024

(a) whether the application was filed in the Federal Court or lodged with a recognised State/Territory body;
(b) if the application was lodged with a recognised State/Territory body—the name of that body;
(c) the date on which the application was filed or lodged;
(ca) the date on which the claim is entered on the Register;
(d) the name and address for service of the applicant;
(e) the area of land or waters covered by the claim;
(f) a description of the persons who it is claimed hold the native title;
(g) a description of the native title rights and interests in the claim that:
(i) the Registrar or the NNTT in applying subsection 190B(6); or
(ii) a recognised State/Territory body in applying provisions equivalent to that subsection;
considered, prima facie, could be established;
(h) whether or not there are any conditions under section 251BA on the authority of the applicant.

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

Other information

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

187 Inspection of the Register

Register to be available during business hours

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

Authorised Version C2024C00224 registered 19/06/2024

If register kept on computer

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

188 Parts of the Register may be kept confidential

Public interest test

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

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

Concerns of Aboriginal peoples and Torres Strait Islanders

(3) In determining whether it would or would not be in the public interest for information in that part of the Register to be available to the public, the Registrar must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

189 Senior Registrar of the High Court to notify Registrar

The Senior Registrar of the High Court must, as soon as is practicable, notify the Registrar of the details of any decision or determination made by the High Court that covers a claim.

189A Federal Court Chief Executive Officer to notify Native Title Registrar

The Federal Court Chief Executive Officer must, as soon as practicable, notify the Native Title Registrar of:

(a) the withdrawal of an application that contains a claim (whether or not covered by an entry on the Register); and

Authorised Version C2024C00224 registered 19/06/2024

(b) the details of any decision or determination of the Federal Court that covers a claim (whether or not covered by an entry on the Register).

190 Keeping the Register

Registrar to include claims

(1) The Native Title Registrar must, as soon as practicable, include in the Register:

(a) details of any claims accepted for registration by the Registrar under section 190A or in response to notification by the NNTT under section 190E; and

(b) details of any claims that have been found to satisfy conditions equivalent to those set out in sections 190B and 190C, being claims of which the Registrar is notified by a recognised State/Territory body.

Amending Register after amendment of claims: recognised bodies

(2) If a recognised State/Territory body notifies the Registrar of an amendment of an application containing a claim that is on the Register, the Registrar must, as soon as practicable:

(a) if the claim as set out in the amended application has been found to satisfy conditions equivalent to those set out in sections 190B and 190C—amend the Register to reflect the amendment; or

(b) if the claim as set out in the amended application has been found not to satisfy conditions equivalent to those set out in sections 190B and 190C—amend the Register to remove any entry relating to the claim.

Amending Register after amendment of claims: other cases

(3) If the Registrar is given a copy of an amended application under subsection 64(4) that contains a claim or amends a claim, the Registrar must, as soon as practicable:

(a) amend the Register to reflect the amendment if:

Authorised Version C2024C00224 registered 19/06/2024

(i) the claim is accepted for registration under section 190A; or

(ii) the claim is accepted for registration on reconsideration under section 190E; or

(iii) the claim is accepted for registration under section 190A but, because subsection 190A(1A) applies, the Registrar need not consider the claim made in an amended application; or

(b) if the claim is not accepted for registration under section 190A or in response to notification by the NNTT under section 190E—amend the Register to remove any entry relating to the claim.

Amending Register where additional information provided

(3A) If:

(a) the Registrar accepts for registration a claim made in an application under section 63 or an amended application under subsection 64(4); and

(b) in accordance with this section, the Registrar includes in the Register details of the claim and a description of the nature and extent of the native title rights and interests concerned; and

(c) afterwards, but before a native title determination in relation to the application or amended application is made, the applicant provides to the Registrar further information relating to any native title rights and interests that were claimed in the application but whose details and description were not included in the Register; and

(d) the Registrar considers that, if the information had been provided before the claim had been accepted for registration, the details and description would have been included in the Register;

the Registrar must amend the Register to include the details and description.

Authorised Version C2024C00224 registered 19/06/2024

Entries removed or amended after determination, decision or withdrawal

(4) If:

(a) the Registrar is notified under section 189 or 189A of a decision or determination covering a claim; or

(b) the Registrar is notified by a recognised State/Territory body of a decision or determination covering a claim; or

(c) the Registrar is notified that an application that contained a claim has been withdrawn;

the Registrar must, as soon as practicable:

(d) if the application in question has been withdrawn, dismissed or otherwise finalised—remove the entry on the Register that relates to the claim; or

(da) if an approved determination of native title is made to the effect that native title exists in relation to an area:

(i) but no determination has yet been made under section 56; or

(ii) a determination has been made under section 56 that the native title rights and interests are to be held by the common law holders, but no determination has yet been made under subsection 57(2) of which prescribed body corporate is to perform the functions mentioned in subsection 57(3);

amend the entry on the Register that relates to the claim so that it reflects that fact; or

(e) in any other case—amend the entry on the Register that relates to the claim so that it only relates to the matters in relation to which the application has not been finalised.

Note: If an application has been finalised in relation to part of the area claimed, the Register would be amended to remove references to that area. If the application has been finalised by an approved determination of native title, that determination would be entered on the National Native Title Register.

Authorised Version C2024C00224 registered 19/06/2024

190A Registrar to consider claims

Claims made to Federal Court

(1) If the Registrar is given a copy of a claimant application under section 63 or subsection 64(4), the Registrar must, in accordance with this section, consider the claim made in the application.

Note: Unless subsection (1A) applies, in the case of an amended application (under subsection 64(4)), the Registrar would be required to consider the claim in the amended application even if the Registrar had already accepted for registration the claim in the original application. In such a case, if the claim in the amended application were then accepted for registration, the Registrar would be required under subsection 190(3) to amend the Native Title Register to reflect the amendment.

Exception for certain amended claims

(1A) Despite subsection (1), if:

(a) the Registrar is given a copy of an amended application under subsection 64(4) that amends a claim; and

(b) the application was amended because an order was made under section 87A by the Federal Court; and

(c) the Registrar has already considered the claim, as it stood before the application was amended;

the Registrar need not consider the claim made in the amended application.

Effect of certain notices

(2) If, either before the Registrar begins to do so or while he or she is doing so, a notice is given in accordance with:

(a) paragraph 24MD(6B)(c); or

(b) section 29; or

(c) a provision of a law of a State or Territory that corresponds to section 29 and is covered by a determination in force under section 43; or

Authorised Version C2024C00224 registered 19/06/2024

(d) a provision of a law of a State or Territory that corresponds to section 29 and is covered by a determination in force under section 43A;

in relation to an act affecting any of the land or waters in the area covered by the application, the Registrar must use his or her best endeavours to finish considering the claim by the end of:

(e) in a paragraph (a) case—2 months after the notice is given; or

(f) in a paragraph (b) case—4 months after the notification day specified in the notice; or

(g) in a paragraph (c) case—the period, in the law of the State or Territory, that corresponds to the period of 4 months mentioned in paragraph 30(1)(a); or

(h) in a paragraph (d) case—the period at the end of which any registered native title claimant or registered native title body corporate has a right to be consulted about the act, to object to the act or to participate in negotiations about the act.

Otherwise, claim to be considered as soon as is practicable

(2A) In any other case, the Registrar must finish considering the claim as soon as is practicable.

Information to be considered

(3) In considering a claim under this section, the Registrar must have regard to:

(a) information contained in the application and in any other documents provided by the applicant; and

(b) any information obtained by the Registrar as a result of any searches conducted by the Registrar of registers of interests in relation to land or waters maintained by the Commonwealth, a State or a Territory; and

(c) to the extent that it is reasonably practicable to do so in the circumstances—any information supplied by the Commonwealth, a State or a Territory, that, in the Registrar's opinion, is relevant to whether any one or more of the

Authorised Version C2024C00224 registered 19/06/2024

conditions set out in section 190B or 190C are satisfied in relation to the claim;

and may have regard to such other information as he or she considers appropriate.

Information about other rights and interests

(4) Without limiting subsection (3), information mentioned in that subsection may include information about current or previous non-native title rights and interests in, or in relation to, the land or waters in the area covered by the application.

Effect of paragraph (3)(b)

(5) The fact that no information of the kind referred to in paragraph (3)(b) has been supplied at a particular time does not prevent the Registrar accepting a claim for registration under this section.

Notification about amending application

(5A) Before the Registrar has decided whether or not to accept the claim for registration, he or she may notify the applicant that the application may be amended under the Federal Court Rules.

Test for registration

(6) The Registrar must accept the claim for registration if:

(a) either:

(i) the claim was made in an application given to the Registrar under section 63; or

(ii) the claim was made in an amended application given to the Registrar under subsection 64(4) and subsection (6A) of this section does not apply; and

(b) the claim satisfies all of the conditions in:

(i) section 190B (which deals mainly with the merits of the claim); and

Authorised Version C2024C00224 registered 19/06/2024

(ii) section 190C (which deals with procedural and other matters).

(6A) The Registrar must accept the claim (the ***later claim***) for registration if:

(a) a claim (the ***earlier claim***) was made in an application given to the Registrar under section 63 or subsection 64(4) (the ***earlier application***); and

(b) the Registrar accepted the earlier claim for registration under subsection (6) of this section; and

(c) the later claim was made in an application given to the Registrar under subsection 64(4) that amends the earlier application; and

(d) the Registrar is satisfied that the only effect of the amendment is to do one or more of the following:

(i) reduce the area of land or waters covered by the application, in circumstances where the information and map contained in the application, as amended, are sufficient for it to be said with reasonable certainty whether native title rights and interests are claimed in relation to particular land or waters;

(ii) remove a right or interest from those claimed in the application;

(iia) give effect to the operation of section 47C in relation to the application as mentioned in subsection 64(2A);

(iii) change the name in the application of the representative body, or one of the representative bodies, recognised for the area covered by the application, in circumstances where the body's name has been changed or the body has been replaced with another representative body or a body to whom funding is made available under section 203FE;

(iv) change the name in the application of the body to whom funding was made available under section 203FE in relation to all or part of the area covered by the application, in circumstances where the body's name

Authorised Version C2024C00224 registered 19/06/2024

has been changed or the body has been replaced by another such body or a representative body;

(v) alter the address for service of the person who is, or persons who are, the applicant.

(6B) If neither subsection (6) nor (6A) applies, the Registrar must not accept the claim for registration.

Note: The fact that the Registrar is considering the claim under this section does not mean that the application cannot be amended: see subsection 64(3).

Effect of withdrawal etc. of application

(7) If:

(a) before the Registrar has decided whether or not to accept the claim for registration; or

(b) after the Registrar has decided to accept the claim for registration but before the Registrar has included details of the claim in the Register of Native Title Claims;

the Registrar is notified under section 189 or 189A of a decision or determination to the effect that the application has been dismissed or otherwise finalised, or is notified that the application has been withdrawn, the Registrar must not:

(c) decide whether or not to accept the claim for registration; or

(d) enter the details in the Register;

as the case requires.

190B Registration: conditions about merits of the claim

(1) This section contains the conditions mentioned in subparagraph 190A(6)(b)(i).

Identification of area subject to native title

(2) The Registrar must be satisfied that the information and map contained in the application as required by paragraphs 62(2)(a) and (b) are sufficient for it to be said with reasonable certainty whether

Authorised Version C2024C00224 registered 19/06/2024

native title rights and interests are claimed in relation to particular land or waters.

Identification of native title claim groups

(3) The Registrar must be satisfied that:

(a) the persons in the native title claim group are named in the application; or

(b) the persons in that group are described sufficiently clearly so that it can be ascertained whether any particular person is in that group.

Identification of claimed native title

(4) The Registrar must be satisfied that the description contained in the application as required by paragraph 62(2)(d) is sufficient to allow the native title rights and interests claimed to be readily identified.

Factual basis for claimed native title

(5) The Registrar must be satisfied that the factual basis on which it is asserted that the native title rights and interests claimed exist is sufficient to support the assertion. In particular, the factual basis must support the following assertions:

(a) that the native title claim group have, and the predecessors of those persons had, an association with the area; and

(b) that there exist traditional laws acknowledged by, and traditional customs observed by, the native title claim group that give rise to the claim to native title rights and interests; and

(c) that the native title claim group have continued to hold the native title in accordance with those traditional laws and customs.

Prima facie case

(6) The Registrar must consider that, prima facie, at least some of the native title rights and interests claimed in the application can be established.

Authorised Version C2024C00224 registered 19/06/2024

Note: If the claim is accepted for registration, the Registrar must, under paragraph 186(1)(g), enter on the Register of Native Title Claims details of only those claimed native title rights and interests that can, prima facie, be established. Only those rights and interests are taken into account for the purposes of subsection 31(2) (which deals with negotiation in good faith in a "right to negotiate" process) and subsection 39(1) (which deals with criteria for making arbitral body determinations in a "right to negotiate" process).

Physical connection

(7) The Registrar must be satisfied that at least one member of the native title claim group:

(a) currently has or previously had a traditional physical connection with any part of the land or waters covered by the application; or

(b) previously had and would reasonably have been expected currently to have a traditional physical connection with any part of the land or waters but for things done (other than the creation of an interest in relation to land or waters) by:

(i) the Crown in any capacity; or

(ii) a statutory authority of the Crown in any capacity; or

(iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease.

No failure to comply with section 61A

(8) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that, because of section 61A (which forbids the making of applications where there have been previous native title determinations or exclusive or non-exclusive possession acts), the application should not have been made.

No extinguishment etc. of claimed native title

(9) The application and accompanying documents must not disclose, and the Registrar must not otherwise be aware, that:

(a) to the extent that the native title rights and interests claimed consist of or include ownership of minerals, petroleum or

Authorised Version C2024C00224 registered 19/06/2024

gas—the Crown in right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas; or

(b) to the extent that the native title rights and interests claimed relate to waters in an offshore place—those rights and interests purport to exclude all other rights and interests in relation to the whole or part of the offshore place; or

(c) in any case—the native title rights and interests claimed have otherwise been extinguished (except to the extent that the extinguishment is required to be disregarded under subsection 47(2), 47A(2), 47B(2) or 47C(8)).

190C Registration: conditions about procedural and other matters

(1) This section contains the conditions mentioned in subparagraph 190A(6)(b)(ii).

Information etc. required by sections 61 and 62

(2) The Registrar must be satisfied that the application contains all details and other information, and is accompanied by any affidavit or other document, required by sections 61 and 62.

No previous overlapping claim groups

(3) The Registrar must be satisfied that no person included in the native title claim group for the application (the ***current application***) was a member of the native title claim group for any previous application, if:

(a) the previous application covered the whole or part of the area covered by the current application; and

(b) an entry relating to the claim in the previous application was on the Register of Native Title Claims when the current application was made; and

(c) the entry was made, or not removed, as a result of consideration of the previous application under section 190A.

Authorised Version C2024C00224 registered 19/06/2024

Identity of claimed native title holders

(4) The Registrar must be satisfied that either of the following is the case:

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

Note: An application can be certified under section 203BE, or may have been certified under the former paragraph 202(4)(d). A representative Aboriginal/Torres Strait Islander body may certify the application, even if it is only the representative body for part of the area claimed.

(b) the requirements mentioned in subsection (4AA) are met.

(4AA) For the purposes of paragraph (4)(b), the requirements are:

(a) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and

(b) either:

(i) there are no conditions under section 251BA on the authority that relate to the making of the application; or

(ii) any conditions under section 251BA on the authority that relate to the making of the application have been satisfied.

Note: The word ***authorise*** is defined in section 251B.

Certification not affected if Aboriginal/Torres Strait Islander body subsequently ceases to be recognised

(4A) To avoid doubt, the certification of an application under Part 11 by a representative Aboriginal/Torres Strait Islander body is not affected merely because, after certification, the recognition of the body as the representative Aboriginal/Torres Strait Islander body for the area concerned is withdrawn or otherwise ceases to have effect.

Authorised Version C2024C00224 registered 19/06/2024

Requirements for uncertified applications

(5) If the application has not been certified as mentioned in paragraph (4)(a), the Registrar cannot be satisfied that the condition in subsection (4) has been satisfied unless the application:

(a) includes statements to the effect that the requirements mentioned in subsection (4AA) have been met; and

(b) briefly sets out the grounds on which the Registrar should consider that they have been met (other than in relation to subparagraph (4AA)(b)(i)).

190D If the claim cannot be registered—notice of decision

(1) If the Registrar does not accept the claim for registration, the Registrar must, as soon as practicable, give the applicant and the Federal Court written notice of his or her decision not to accept the claim, including:

(a) if the Registrar does not accept the claim because the Registrar is notified by the NNTT under section 190E that he or she should not do so—a copy of the NNTT's statement of reasons for its decision; or

(b) otherwise—a statement of the Registrar's reasons for his or her decision.

Content of notice where failure to satisfy physical connection test

(2) If the only reason why the claim is not accepted for registration is that the condition in subsection 190B(7) (which is about a physical connection with the claim area) is not satisfied, the notice must advise the applicant of the applicant's right to make an application to the Federal Court under section 190F and of the power of the Court to make an order in accordance with that section in respect of the application.

Authorised Version C2024C00224 registered 19/06/2024

Statements of reasons must specify whether section 190B satisfied

(3) If the Registrar's decision not to accept the claim is not in response to notification by the NNTT under section 190E, the Registrar's statement of reasons for the decision must include a statement on:

(a) whether, in the opinion of the Registrar, the claim for registration satisfies all of the conditions in section 190B; and

(b) whether, in the opinion of the Registrar, it is not possible to determine whether the claim for registration satisfies all of the conditions in section 190B because of a failure to satisfy section 190C.

190E If the claim cannot be registered—reconsideration by the NNTT

Application to reconsider a claim

(1) If the Registrar gives the applicant a notice under subsection 190D(1), then, subject to subsections (3) and (4), the applicant may apply to the NNTT to reconsider the claim made in the application.

(2) The application must:

(a) be in writing; and

(b) be made within 42 days after the notice under subsection 190D(1) is given; and

(c) state the basis on which the reconsideration is sought.

(3) The applicant may not make an application to the NNTT for reconsideration of the claim if the applicant has already made an application to the Federal Court under subsection 190F(1) for review of the decision.

(4) The applicant may apply to the NNTT for reconsideration of the claim no more than once.

Authorised Version C2024C00224 registered 19/06/2024

Constitution of NNTT for purposes of reconsidering the claim

(5) For the purposes of reconsidering the claim, the NNTT must be constituted by a single member.

(6) The member of the NNTT who reconsiders the claim may not take any part in the proceeding in relation to the claim (including any review or inquiry in relation to the claim), unless the parties to the proceeding otherwise agree.

NNTT's reconsideration of the claim

(7) In reconsidering the claim:
   (a) the NNTT must have regard to any information to which the Registrar was required to have regard under subsections 190A(3) to (5) in considering the claim; and
   (b) the NNTT may have regard to any other information which the NNTT regards as appropriate in reconsidering the claim.

Effect of certain notices

(8) If, either before the NNTT begins to do so or while it is doing so, a notice is given in accordance with:
   (a) paragraph 24MD(6B)(c); or
   (b) section 29; or
   (c) a provision of a law of a State or Territory that corresponds to section 29 and is covered by a determination in force under section 43; or
   (d) a provision of a law of a State or Territory that corresponds to section 29 and is covered by a determination in force under section 43A;

in relation to an act affecting any of the land or waters in the area covered by the application, the member reconsidering the claim must use his or her best endeavours to finish reconsidering the claim by the end of:
   (e) in a paragraph (a) case—2 months after the notice is given; or
   (f) in a paragraph (b) case—4 months after the notification day specified in the notice; or

Authorised Version C2024C00224 registered 19/06/2024

(g) in a paragraph (c) case—the period, in the law of the State or Territory, that corresponds to the period of 4 months mentioned in paragraph 30(1)(a); or

(h) in a paragraph (d) case—the period at the end of which any registered native title claimant or registered native title body corporate has a right to be consulted about the act, to object to the act or to participate in negotiations about the act.

Otherwise, claim to be reconsidered as soon as is practicable

(9) In any other case, the NNTT must finish reconsidering the claim as soon as is practicable.

Notifying the Registrar of the NNTT's decision

(10) The NNTT must notify the Registrar that the Registrar should accept the claim for registration if the claim satisfies all of the conditions in:

(a) section 190B (which deals mainly with the merits of the claim); and

(b) section 190C (which deals with procedural and other matters).

(11) In any other case, the NNTT must notify the Registrar that the Registrar should not accept the claim, and include in that notice a statement of the NNTT's reasons for its decision. The statement of reasons for the decision must include a statement on:

(a) whether, in the opinion of the member who reconsidered the claim, the claim for registration satisfies all of the conditions in section 190B; and

(b) whether, in the opinion of the member who reconsidered the claim, it is not possible to determine whether the claim for registration satisfies all of the conditions in section 190B because of a failure to satisfy section 190C.

(12) For the purposes of subsection (10), sections 190B and 190C apply as if a reference to the Registrar in those sections were a reference to the NNTT.

Authorised Version C2024C00224 registered 19/06/2024

(13) The Registrar must comply with a notice given to the Registrar under subsection (10) or (11).

190F If the claim cannot be registered—review by Federal Court

Applicant may apply to Federal Court for review

(1) If the Registrar gives the applicant a notice under subsection 190D(1), the applicant may apply to the Federal Court for a review of the Registrar's decision not to accept the claim, provided the NNTT is not reconsidering the claim under section 190E at the time the application is made.

Federal Court has jurisdiction

(2) The Court has jurisdiction to hear and determine an application made to it under subsection (1).

Court order where physical connection test failed

(3) If, on an application under subsection (1) in a case to which subsection 190D(2) applies, the Court is satisfied that:

(a) prima facie, at least some of the native title rights and interests claimed in the application can be established; and

(b) at some time in his or her lifetime, at least one parent of one member of the native title claim group had a traditional physical connection with any part of the land or waters and would reasonably have been expected to have maintained that connection but for things done (other than the creation of an interest in relation to land or waters) by:

(i) the Crown in any capacity; or

(ii) a statutory authority of the Crown in any capacity; or

(iii) any holder of a lease over any of the land or waters, or any person acting on behalf of such a holder of a lease;

the Court may order the Registrar to accept the claim for registration.

Authorised Version C2024C00224 registered 19/06/2024

Opportunity to be heard

(4) Before making an order under subsection (3), the Court must give to any person who is a party to the proceedings in the Court under Part 4 in relation to the application an opportunity to be heard in relation to the making of the order.

Where no application for review, or Court does not make order under subsection (4) on review

(5) Subsection (6) applies in a case where:

(a) the Registrar does not accept the claim for registration either because, in the opinion of the Registrar or, if the claim is reconsidered under section 190E, of the member of the NNTT reconsidering the claim:

(i) it does not satisfy all of the conditions in section 190B; or

(ii) it is not possible to determine whether all of the conditions in section 190B have been satisfied because of a failure to satisfy section 190C; and

(b) the Court is satisfied that the avenues for:

(i) the reconsideration under section 190E of the Registrar's decision; and

(ii) the review under this section of the Registrar's decision; and

(iii) the review of orders made in the determination of an application under this section; and

(iv) the review of the Registrar's decision under any other law;

have all been exhausted without the registration of the claim.

(6) The Court may, either on the application of a party or on its own motion, dismiss the application in which the claim was made (the ***application in issue***) if:

(a) the Court is satisfied that the application in issue has not been amended since consideration by the Registrar, and is not

Authorised Version C2024C00224 registered 19/06/2024

likely to be amended in a way that would lead to a different outcome once considered by the Registrar; and

(b) in the opinion of the Court, there is no other reason why the application in issue should not be dismissed.

191 Delegation by Registrar to recognised State/Territory body

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

Authorised Version C2024C00224 registered 19/06/2024

Part 8—National Native Title Register

192 National Native Title Register

Establishment

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

Registrar to establish and keep

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

Register may be kept by computer

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

Register may consist of 2 or more registers

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

193 Contents of the Register

Determinations to be included

(1) The Register must contain the information set out in subsection (2) in relation to the following:
  (a) approved determinations of native title by the Federal Court or the High Court;
  (b) approved determinations of native title by recognised State/Territory bodies.

Authorised Version C2024C00224 registered 19/06/2024

Information to be included

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

(a) the name of the body that made the determination;

(b) the date on which the determination was made;

(c) the area of land or waters covered by the determination;

(d) the matters determined, including:

(i) whether or not native title exists in relation to the land or waters covered by the determination; and

(ii) if it exists—who the common law holders of the native title are and a description of the nature and extent of the native title rights and interests concerned;

(e) in the case of an approved determination of native title by the Federal Court, where the determination is that native title exists—the name and address of any prescribed body corporate that:

(i) holds the native title rights and interests concerned on trust; or

(ii) is an agent prescribed body corporate in relation to the native title rights and interests concerned;

(f) in the case of an approved determination of native title by a recognised State/Territory body, where the determination is that native title exists—the name and address of any body corporate that holds the native title rights and interests concerned on trust or that is determined in relation to the native title under a provision of a law of the State or Territory concerned that corresponds to section 57.

Other information

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

Registrar to reflect changes to prescribed bodies corporate

(4) If:

Authorised Version C2024C00224 registered 19/06/2024

(a) a prescribed body corporate that holds the native title rights and interests on trust is replaced with another prescribed body corporate as trustee; or

(b) the trust under which a prescribed body corporate holds native title rights and interests is terminated and an agent prescribed body corporate is determined; or

(c) an agent prescribed body corporate in relation to native title rights and interests is replaced with another agent prescribed body corporate in relation to those interests; or

(d) a prescribed body corporate ceases to be an agent prescribed body corporate in relation to native title rights and interests and a prescribed body corporate is determined to be trustee in relation to those rights and interests;

the Registrar must update the Register to reflect the change.

(5) The Registrar may also include in the Register details of other determinations of, or in relation to, native title decisions of courts or tribunals.

194 Inspection of the Register

Register to be available during business hours

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

If register kept on computer

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

Authorised Version C2024C00224 registered 19/06/2024

195 Parts of the Register may be kept confidential

Public interest test

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

Concerns of Aboriginal peoples or Torres Strait Islanders

(2) In determining whether it would or would not be in the public interest for information in that part of the Register to be available to the public, the Registrar must have due regard to the cultural and customary concerns of Aboriginal peoples and Torres Strait Islanders.

197 Keeping the Register

(1) The Registrar must, as soon as is practicable:
  (a) include in the Register details of determinations or decisions covered by subsection 193(1); and
  (b) update the Register in accordance with subsection 193(4).

198 Delegation by Registrar to recognised State/Territory body

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

199 Registrar to notify land titles office

Registrar to notify

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

Authorised Version C2024C00224 registered 19/06/2024

Definition

(2) In this section:

relevant land titles office means the body responsible for keeping a register of interests in real estate under the law of the State or Territory within whose jurisdictional limits the land or waters covered by the determination or decision are located.

Authorised Version C2024C00224 registered 19/06/2024

Part 8A—Register of Indigenous Land Use Agreements

199A Register of Indigenous Land Use Agreements

Establishment

(1) There is to be a Register known as the Register of Indigenous Land Use Agreements.

Registrar to establish and keep

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

Register may be kept by computer

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

199B Contents of the Register etc.

Information to be included

(1) If the Registrar is required by Subdivision B, C or D of Division 3 of Part 2 to register an agreement, the Registrar must enter in the Register the following details of the agreement:
   (a) a description of the area covered by the agreement; and
   (b) the name of each party to the agreement and the address at which the party can be contacted; and
   (c) if the agreement specifies the period during which it will operate—that period; and
   (d) if the agreement includes any of the statements mentioned in subsection 24EB(1) or 24EBA(1) or (4)—a reference to the fact, setting out any such statement.

Authorised Version C2024C00224 registered 19/06/2024

Other information

(2) The Registrar may also enter in the Register any other details of the agreement that the Registrar considers appropriate.

Notification of Commonwealth, State or Territory

(3) If the agreement relates to any future act, as soon as reasonably practicable after entering the details, the Registrar must give notice in writing:

(a) advising that the details have been entered; and

(b) setting out the details;

to any person or body to which the Registrar gave notice of the agreement under subsection 24BH(1) or paragraph 24CH(1)(a) or 24DI(1)(a).

Updating parties' contact details

(4) If a party to an agreement notifies the Registrar of a change in the address at which the party can be contacted, the Registrar must update the Register to reflect the change.

Amendments to agreements

(5) If an amendment of an agreement changes any detail of the agreement that is entered in the Register, the Registrar must update the Register to reflect the change.

Note: Only certain amendments to agreements have effect for the purposes of this Act: see section 24ED.

199C Removal of details of agreement from Register

Cases requiring removal

(1) Subject to subsection (1A), the Registrar must remove the details of an agreement from the Register if:

(a) in the case of an agreement under Subdivision B of Division 3 of Part 2—an approved determination of native title is made in relation to any of the area covered by the

Authorised Version C2024C00224 registered 19/06/2024

agreement, and the persons who, under the determination, hold native title in relation to the area are not the same as those who had previously been determined to hold it; or

(b) in the case of an agreement under Subdivision C of Division 3 of Part 2—an approved determination of native title is made in relation to any of the area covered by the agreement, and any of the persons who, under the determination, hold native title in relation to the area is not a person who authorised the making of the agreement as mentioned in:

(i) if the application relating to the agreement was certified by representative Aboriginal/Torres Strait Islander bodies as mentioned in paragraph 24CG(3)(a)—paragraph 203BE(5)(b); or

(ii) if the application relating to the agreement included a statement as mentioned in paragraph 24CG(3)(b) to the effect that certain requirements have been met—that paragraph; or

(c) in any case:

(i) a party advises the Registrar in writing that the agreement has expired, and the Registrar believes, on reasonable grounds, that the agreement has expired; or

(ii) all the parties advise the Registrar in writing that they wish to terminate the agreement; or

(iii) the Federal Court, under subsection (2), orders the details to be removed.

Note 1: If the details of an agreement are removed from the Register, the agreement will cease to have effect under this Act from the time the details are removed: see subsection 24EA(1) and paragraph 24EB(1)(b).

Note 2: Removal of the details of an agreement from the Register does not affect the validity of a future act that has already been done: see subsections 24EB(1) and (2A) and 24EBA(7).

Authorised Version C2024C00224 registered 19/06/2024

Federal Court order not to remove details

(1A) If:

(a) the Registrar is or will be required to remove the details of an agreement from the Register in a case covered by paragraph (1)(a) or (b); and

(b) the persons who, under the approved determination of native title mentioned in that paragraph, hold native title apply to the Federal Court for an order under this subsection; and

(c) the Federal Court is satisfied that those persons accept the terms of the agreement, in accordance with the process by which they would authorise the making of such an agreement;

the Federal Court may order the Registrar not to remove the details of the agreement from the Register.

Federal Court order to remove details

(2) The Federal Court may, if it is satisfied on application by a party to the agreement, or by a representative Aboriginal/Torres Strait Islander body for the area covered by the agreement, that the ground in subsection (3) has been made out, order the Registrar to remove the details of the agreement from the Register.

Ground for order

(3) The ground is that a party would not have entered into the agreement but for fraud, undue influence or duress by any person (whether or not a party to the agreement).

Compensation order

(4) If the Court orders the Registrar to remove the details, the Court may also order the person who committed the fraud, exerted the influence or applied the duress to pay compensation to any party to the agreement who will suffer loss or damage as a result of the removal of the details.

Authorised Version C2024C00224 registered 19/06/2024

199D Inspection of the Register

Register to be available during business hours

(1) Subject to section 199E, the Registrar must ensure that the Register is available for inspection by any member of the public during normal business hours.

If register kept on computer

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

199E Parts of the Register to be kept confidential

(1) If the parties to an agreement whose details are entered on the Register advise the Registrar in writing that they do not wish some or all of the details to be available for inspection by the public, section 199D does not apply to the part of the Register containing the details concerned.

Exception for basic information

(2) Subsection (1) does not apply to details required to be entered in the Register under subsection 199B(1).

199F Delegation by Registrar

The Registrar may, by signed instrument, delegate all or any of his or her powers under:

(a) this Part; or

(b) Subdivision B, C or D of Division 3 of Part 2 (which also deals with indigenous land use agreements);

to the holder of an office, or to a body, established by or under a law of a State or Territory, if the State or Territory agrees to the delegation.

Authorised Version C2024C00224 registered 19/06/2024

Part 9—Financial assistance to States and Territories

200 Financial assistance to States and Territories

Financial assistance that may be given

(1) The Commonwealth may enter into a written agreement with the State or Territory for the provision of financial assistance to that State or Territory in relation to:

(a) the satisfaction of any liability to pay compensation for acts affecting native title; or

(b) the satisfaction of any liability to pay any costs incidental to any claim for such compensation or determination of liability for such compensation; or

(c) costs and expenses of establishing and administering any recognised State/Territory body, or equivalent body (within the meaning of subsection 207B(1)), of that State or Territory; or

(d) costs and expenses of administering any provisions having effect under subsection 43(1).

Conditions

(2) The financial assistance is to be provided on such conditions as are determined by the Commonwealth Minister and set out in the agreement.

Authorised Version C2024C00224 registered 19/06/2024

Part 11—Representative Aboriginal/Torres Strait Islander bodies

Division 1—Preliminary

201A Definitions

In this Part, unless the contrary intention appears:

director, in relation to a representative body, means a member of the governing body of the representative body.

executive officer means:

(a) in relation to a representative body:
  (i) a director of the representative body; or
  (ii) any other person who is concerned in, or takes part in, the management of the representative body at a senior level; or

(b) in relation to a body to whom funding is made available under subsection 203FE(1) or (2):
  (i) if the body is a body corporate—a director of the body; or
  (ii) in any case—a person who is concerned in, or takes part in, the management of the body at a senior level.

functions, in relation to a representative body, means the functions conferred on the body by this Act and includes the obligations imposed on the body by this Act, whether or not any of those functions or obligations are also conferred or imposed on the body under a law of a State or Territory.

governing body, in relation to a representative body, means the group of persons (by whatever name called) who are responsible for the executive decisions of the representative body.

Authorised Version C2024C00224 registered 19/06/2024

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

officer, in relation to a representative body that is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, has the same meaning as in that Act.

powers, in relation to a representative body, means the powers conferred on the body by this Act, whether or not any of those powers are also conferred on the body under a law of a State or Territory.

201B Eligible bodies

(1) For the purposes of this Part, an ***eligible body*** is:

(a) a body corporate, registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, the objects of which enable the body to perform the functions of a representative body under Division 3 of this Part; or

(b) a body corporate that is a representative body; or

(ba) a company incorporated under the *Corporations Act 2001*; or

(c) a body corporate established by or under a law of the Commonwealth, a State or a Territory, or a part of such a law, prescribed for the purposes of this paragraph.

However, a registered native title body corporate cannot be an eligible body.

(2) A regulation prescribing a law, or a part of a law, for the purposes of paragraph (1)(c) may be limited in its application to bodies corporate included in a specified class or classes of bodies corporate.

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Recognition of representative Aboriginal/Torres Strait Islander bodies

203A Inviting applications for recognition

Commonwealth Minister may invite applications

(1) The Commonwealth Minister may, in writing:
  (a) invite applications from eligible bodies for recognition as the representative body for an area; or
  (b) invite an eligible body to make an application for recognition as the representative body for an area.

Invitations may specify an area for which there is a representative body

(1A) The invitation may specify an area for which there is a representative body.

Note: An eligible body must not be recognised as the representative body for an area with effect from a particular day if the recognition of a body as the representative body for all or part of the area will be in effect on that day: see subsection 203AD(4).

Invitations may cover more than one area

(2) The invitation may specify more than one area for which an application or applications are invited.

Invitations to specify application period

(3) The invitation must specify the period (of at least 28 days) within which the application or applications are to be given to the Commonwealth Minister.

Authorised Version C2024C00224 registered 19/06/2024

Invitations to specify information that must be included in applications

(4) The invitation must specify the information that must be included in the application or applications that are given to the Commonwealth Minister.

Invitations to contain statement about revocation of invitations

(5) The invitation must contain a statement setting out the effect of section 203AA (which deals with the revocation of invitations).

Invitations to contain statement about notification requirement

(6) If the invitation is made under paragraph (1)(b), the invitation must contain a statement setting out the effect of section 203AAA (which requires an eligible body to notify the Commonwealth Minister if it decides not to apply for recognition etc.).

Invitations may be general

(7) For the purposes of paragraph (1)(a), the Commonwealth Minister may arrange for the publication of general invitations and need not make a separate invitation to each eligible body.

203AA Revocation of invitations

(1) The Commonwealth Minister may, in writing, revoke an invitation made under subsection 203A(1) if:
  (a) the Commonwealth Minister considers it appropriate to do so; and
  (b) the period that applies under subsection 203AB(2) has not expired.

(2) If:
  (a) an eligible body, to whom the invitation was made, has made an application under section 203AB; and
  (b) at the time of revocation, the application has not been determined;

Authorised Version C2024C00224 registered 19/06/2024

then the application is taken never to have been made.

(3) If the invitation was made under paragraph 203A(1)(a), the Commonwealth Minister may arrange for the publication of the revocation and need not give a separate document to each eligible body to whom the invitation was made.

203AAA Eligible body must notify the Commonwealth Minister if it decides not to apply for recognition etc.

Scope

(1) This section applies if an eligible body is invited under paragraph 203A(1)(b) to apply for recognition.

Notification of decision not to apply for recognition

(2) If the eligible body decides not to apply for recognition, the eligible body must, in writing, notify the Commonwealth Minister of that decision before the end of the period specified in the invitation under subsection 203A(3).

Deemed notification

(3) If the eligible body does not:
  (a) give a notification under subsection (2); or
  (b) make an application before the end of the period that applies under subsection 203AB(2);

the eligible body is taken to have given a notification under subsection (2) of this section at the end of that period.

203AB Application for recognition

Eligible bodies may apply

(1) An eligible body may apply to the Commonwealth Minister for recognition as the representative body for the area, or for one or more of the areas, in respect of which:

Authorised Version C2024C00224 registered 19/06/2024

(a) the body has been invited under section 203A to make an application; or

(b) eligible bodies have been invited under section 203A to make applications.

Application period

(2) The application must be given to the Commonwealth Minister within the period specified under subsection 203A(3), or within such further period as the Commonwealth Minister allows (whether or not the initial period has expired).

203AC Dealing with applications

(1A) The Commonwealth Minister must determine applications under section 203AB as soon as practicable after whichever of the following periods ends last:

(a) the period specified under subsection 203A(3);

(b) if a further period applies under subsection 203AB(2) in relation to one or more of those applications—the last such further period;

(c) if the Commonwealth Minister has, in relation to one or more of those applications, given to a body a notice under subsection (1) of this section requiring the body to give further information within a specified period—the last such period.

(1) The Commonwealth Minister may give to a body that has made an application under section 203AB a notice requiring the body to give further information relating to the application within a period specified in the notice.

(2) The period specified:

(a) must not begin before the day on which the notice was given; and

(b) must be a period of at least 21 days.

Authorised Version C2024C00224 registered 19/06/2024

(3) The fact that no further information has been given to the Commonwealth Minister as at the end of the period specified in the notice does not prevent the Commonwealth Minister from determining the application.

(4) The notice must contain a statement setting out the effect of subsection (3).

203AD Recognition of representative bodies

Commonwealth Minister may recognise representative bodies

(1) The Commonwealth Minister may, by legislative instrument, recognise, as the representative body for an area or areas, an eligible body that has applied under section 203AB to be the representative body for the area or areas if the Commonwealth Minister is satisfied that:

(c) if the body is already a representative body—the body satisfactorily performs its existing functions; and

(d) the body would be able to perform satisfactorily the functions of a representative body.

Period of recognition

(2) The recognition of the body as a representative body:

(a) takes effect on the day specified in the instrument of recognition; and

(b) subject to subsection (3), ceases to have effect at the end of the day specified in that instrument unless the body's recognition is earlier withdrawn under section 203AH.

(3) If an area for which a body is recognised as the representative body is varied under subsection 203AE(1) so as to reduce the area to zero, the recognition of the body ceases immediately after the variation takes effect.

(3A) The period of recognition specified in the instrument of recognition must be at least 1 year but not more than 6 years.

Authorised Version C2024C00224 registered 19/06/2024

(3B) In deciding the period of recognition to specify in the instrument of recognition, the Commonwealth Minister must consider the following:

(a) whether the body is under external administration;

(b) whether a person is currently appointed, under a condition imposed by the Secretary in compliance with paragraph 203CA(1)(e), to deal with funds provided under Division 4 of this Part to the body;

(c) what period of recognition would, in the opinion of the Commonwealth Minister, promote the efficient performance of the functions mentioned in subsection 203B(1).

(3C) In deciding the period of recognition to specify in the instrument of recognition, the Commonwealth Minister may consider any information in the possession of the Minister or the Department that is relevant to that decision.

(3D) Subsections (3B) and (3C) do not limit any other matters that the Minister may take into account in deciding the period of recognition.

Commonwealth Minister not to recognise more than one body for an area

(4) The Commonwealth Minister must not, under this section, recognise a body as the representative body for an area, with effect from a particular day, if a body has already been recognised as the representative body for all or part of the area, and that recognition will still be in effect on that day.

Notifying unsuccessful applicants

(5) If the Commonwealth Minister decides not to recognise as the representative body for an area or areas a body that applied for that recognition, the Commonwealth Minister must notify the body, in writing, of the decision and the reasons for the decision.

Authorised Version C2024C00224 registered 19/06/2024

203AE Commonwealth Minister may vary an area for which a body is the representative body

(1) Subject to this section, the Commonwealth Minister may, by legislative instrument, vary an area for which a body is the representative body if the Commonwealth Minister is satisfied that, after the variation, the body will satisfactorily perform its functions in relation to the varied area.

Variation to add the whole or a part of another area

(2) The Commonwealth Minister must not vary an area (the ***original area***) under subsection (1) to add the whole or a part of another area (the ***additional area***) unless the boundary of the original area adjoins the boundary of the additional area.

Reduction of area

(3) Without limiting subsection (1), the Commonwealth Minister may vary an area under that subsection so as to reduce the area, including reduce the area to zero.

(4) In deciding whether to vary an area so as to reduce it to zero, the Commonwealth Minister need not be satisfied of the matter mentioned in subsection (1).

Variation on application or on the Commonwealth Minister's own initiative

(5) The Commonwealth Minister may vary an area under subsection (1) for which a body is the representative body:
  (a) on application, in writing, by the body; or
  (b) subject to section 203AF, on the Commonwealth Minister's own initiative.

(6) If an application is made under paragraph (5)(a) in relation to an area, the Commonwealth Minister may vary the area as the Commonwealth Minister considers appropriate.

Authorised Version C2024C00224 registered 19/06/2024

Consideration of reports etc.

(7) In deciding whether to vary the area, the Commonwealth Minister may consider the following:

(a) any reports under section 203DF of audits or investigations of the body;

(c) any notices that the Secretary of the Department has given to the Commonwealth Minister under section 203F in relation to the body;

(d) any information in the possession of the Minister or Department that is relevant to the variation.

(8) Subsection (7) does not limit any other matters that the Commonwealth Minister may take into account in deciding whether to vary the area.

Consideration of submissions

(9) In deciding whether to vary the area, the Commonwealth Minister must consider any submissions made by a body or person within the period mentioned in subsection 203AF(6).

When the variation takes effect

(10) The variation of the area takes effect on:

(a) the day on which the instrument varying the area is made; or

(b) if a later day is specified in that instrument—that day.

203AF Notification requirements for the variation of an area on the Commonwealth Minister's own initiative

Notification requirements

(1) Subject to subsection (7), the Commonwealth Minister must not vary an area under subsection 203AE(1) on his or her own initiative unless the Minister complies with subsection (2) of this section.

(2) The Commonwealth Minister must:

Authorised Version C2024C00224 registered 19/06/2024

(a) notify, in writing, each of the following that the variation of the area (the ***initial area***) is being considered:
  (i) the body that is the representative body for the initial area;
  (ii) if there is a representative body for another area (the ***other area***) that has a boundary that the Commonwealth Minister proposes to vary as result of varying the initial area—that body;
  (iii) the Aboriginal peoples or Torres Strait Islanders who live in the initial area and, if subparagraph(ii) applies, who live in the other area; and
(b) arrange for the publication in a newspaper (if any) circulating generally in the initial area of a notice that states that the variation is being considered; and
(c) if the newspaper mentioned in paragraph (b) does not also circulate generally in the other area—arrange for the publication of the notice mentioned in paragraph (b) in a newspaper (if any) circulating generally in the other area.

(3) For the purposes of subparagraph (2)(a)(iii), the Commonwealth Minister may arrange for the publication of a general notification and need not give a separate notification to the persons mentioned in that subparagraph.

Content of notice

(4) The notice to a body mentioned in subparagraph (2)(a)(i) or (ii) must:
(a) identify the proposed variation; and
(b) state the reasons why the Minister is considering varying the initial area; and
(c) state that the body may make submissions to the Commonwealth Minister, within the period specified in the notice, about whether the initial area should be varied.

(5) The notice to a person mentioned in subparagraph (2)(a)(iii) must state that the person may make submissions to the Commonwealth

Authorised Version C2024C00224 registered 19/06/2024

Minister, within the period specified in the notice, about whether the initial area should be varied.

(6) The period specified in the notice under paragraph (4)(c) or subsection (5) must not begin before the day on which the notice is given to the body or person concerned and must be a period of at least 60 days.

Exception to notification requirements

(7) The Commonwealth Minister need not comply with subsection (2) in relation to the variation of the other area if:
  (a) the variation is to be made as a result of the variation of the initial area; and
  (b) notification under that subsection of the variation of the initial area has been previously given to the representative body for the other area.

203AG Notice of decision on variation

(1) As soon as practicable after deciding whether to vary an area under subsection 203AE(1), the Commonwealth Minister must:
  (a) notify, in writing, each of the following of the decision and the reasons for the decision:
    (i) the body that is the representative body for the area;
    (ii) the Aboriginal peoples or Torres Strait Islanders who live in the area to which the decision relates; and
  (b) arrange for the publication in a newspaper (if any) circulating generally in the area of a notice setting out the decision and the reasons for the decision.

(2) For the purposes of subparagraph (1)(a)(ii), the Commonwealth Minister may arrange for the publication of a general notification and need not give a separate notification to the persons mentioned in that subparagraph.

Authorised Version C2024C00224 registered 19/06/2024

203AH Withdrawal of recognition

Mandatory grounds for withdrawing recognition

(1) The Commonwealth Minister must, by legislative instrument, withdraw the recognition of a body as the representative body for an area if:

(a) the body has ceased to exist; or

(b) the body makes a written request to the Commonwealth Minister for the recognition to be withdrawn.

(1A) A request under paragraph (1)(b) must be accompanied by a signed statement that the request has been authorised by the members of the body in accordance with the body's processes.

Discretionary grounds for withdrawing recognition

(2) The Commonwealth Minister may, by legislative instrument, withdraw the recognition of a body as the representative body for an area if satisfied that:

(a) the body is not satisfactorily performing its functions; or

(b) there are serious or repeated irregularities in the financial affairs of the body.

Notice that withdrawal of recognition is being considered

(3) The Commonwealth Minister must not decide to withdraw the recognition under subsection (2) unless the Minister notifies the body that withdrawal of the recognition is being considered. The notice must be in writing and must:

(a) state the reasons why the Minister is considering withdrawal of the recognition; and

(b) state that the body may make submissions to the Commonwealth Minister, within the period specified in the notice, about whether the recognition should be withdrawn.

The period specified must not begin before the day on which the notice was given, and must be a period of at least 30 days.

Authorised Version C2024C00224 registered 19/06/2024

(3A) The Commonwealth Minister may, in writing, extend the period specified in the notice under subsection (3) if:

(a) the body applies, in writing, for an extension; and

(b) the application is made before that period ends.

Consideration of reports etc.

(4) In deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister may consider the following:

(a) any reports under section 203DF of audits or investigations of the body;

(c) any notices that the Secretary of the Department has given to the Minister under section 203F in relation to the body;

(d) any information in the possession of the Minister or Department that is relevant to the matter mentioned in paragraph (2)(a) or (b) of this section.

Commonwealth Minister's consideration of other matters unaffected

(5) Subsection (4) does not limit any other matters that the Commonwealth Minister may take into account in making a decision under subsection (2).

Consideration of submissions

(6) In deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister must consider any submissions made by the body:

(a) within the period specified in the notice under subsection (3); or

(b) if that period has been extended under subsection (3A)—within the extended period.

Authorised Version C2024C00224 registered 19/06/2024

Notice of decision

(7) As soon as practicable after deciding whether to withdraw the recognition under subsection (2), the Commonwealth Minister must notify the body, in writing, of:
  (a) the decision; and
  (b) if the decision is that the recognition be withdrawn—the reasons for the decision.

(8) The withdrawal of the recognition takes effect:
  (a) on the day on which the instrument withdrawing recognition is made; or
  (b) if a later day is specified in that instrument—that day.

203AI Matters to which Commonwealth Minister must have regard

(1) In considering, for the purposes of making a decision under this Division in relation to a particular area, whether a body will satisfactorily perform, or is satisfactorily performing, its functions as a representative body, the Commonwealth Minister must take into account whether, in the Commonwealth Minister's opinion, the body will comply with, or is complying with, section 203BA (which deals with how functions of representative bodies are to be performed).

(3) This section does not limit any other matters that the Commonwealth Minister may take into account in making a decision under this Division.

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Functions and powers of representative bodies

203B Functions of representative bodies

General

(1) A representative body has the following functions:
  (a) the ***facilitation and assistance functions*** referred to in section 203BB;
  (b) the ***certification functions*** referred to in section 203BE;
  (c) the ***dispute resolution functions*** referred to in section 203BF;
  (d) the ***notification functions*** referred to in section 203BG;
  (e) the ***agreement making function*** referred to in section 203BH;
  (f) the ***internal review functions*** referred to in section 203BI;
  (g) the functions referred to in section 203BJ and such other functions as are conferred on representative bodies by this Act.

Other laws may confer functions

(2) The functions conferred on a representative body by this Act are in addition to, and not instead of, any functions conferred on the representative body (whether in its capacity as a representative body or otherwise) by or under:
  (a) any other law of the Commonwealth; or
  (b) a law of a State or Territory.

Representative bodies to perform functions

(3) Except as mentioned in section 203BB, 203BD or 203BK, a representative body must not enter into an arrangement with another person under which the person is to perform the functions of the representative body.

Authorised Version C2024C00224 registered 19/06/2024

Priorities of representative bodies

(4) A representative body:
   (a) must from time to time determine the priorities it will give to performing its functions under this Part; and
   (b) may allocate resources in the way it thinks fit so as to be able to perform its functions efficiently;

but must give priority to the protection of the interests of native title holders.

203BA How functions of representative bodies are to be performed

Functions to be performed in a timely manner

(1) A representative body must use its best efforts to perform its functions in a timely manner, particularly in respect of matters affected by:
   (a) the time limits under this Act; or
   (b) time limits, under another law of the Commonwealth or a law of a State or Territory, that are relevant to the performance of its functions.

Maintenance of organisational structures and processes

(2) A representative body must perform its functions in a manner that:
   (a) maintains organisational structures and administrative processes that promote the satisfactory representation by the body of native title holders and persons who may hold native title in the area for which it is the representative body; and
   (b) maintains organisational structures and administrative processes that promote effective consultation with Aboriginal peoples and Torres Strait Islanders living in the area for which it is the representative body; and
   (c) ensures that the structures and processes operate in a fair manner, having particular regard to:

Authorised Version C2024C00224 registered 19/06/2024

(i) the opportunities for the Aboriginal peoples or Torres Strait Islanders for whom it might act to participate in its processes; and

(ii) the extent to which its processes involve consultation with those Aboriginal peoples or Torres Strait Islanders; and

(iii) its procedures for making decisions and for reviewing its decisions; and

(iv) its rules or requirements relating to the conduct of its executive officers; and

(v) the nature of its management structures and management processes; and

(vi) its procedures for reporting back to persons who hold or may hold native title in the area, and to the Aboriginal peoples or Torres Strait Islanders living in the area.

203BB Facilitation and assistance functions

General

(1) The ***facilitation and assistance functions*** of a representative body are:

(a) to research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications; and

(b) to assist registered native title bodies corporate, native title holders and persons who may hold native title (including by representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to the following:

(i) native title applications;

(ii) future acts;

(iii) indigenous land use agreements or other agreements in relation to native title;

(iv) rights of access conferred under this Act or otherwise;

Authorised Version C2024C00224 registered 19/06/2024

(v) any other matters relating to native title or to the operation of this Act.

Facilitation and assistance functions only exercisable on request

(2) A representative body must not perform its facilitation and assistance functions in relation to a particular matter unless it is requested to do so.

Facilitation and assistance functions only exercisable within a representative body's area

(3) A representative body can only perform its facilitation and assistance functions in relation to a matter that relates to land or waters:

(a) that are wholly within the area for which the body is the representative body; or

(b) that are partly within that area.

If paragraph (b) applies, the body must not perform the functions for the part of the land or waters that is outside that area except in accordance with section 203BD.

Consent required if matters relate to same land or waters

(4) If:

(a) a registered native title body corporate or a person who holds or may hold native title requests that a representative body represent the body or the person (the ***new body or person***) in relation to a particular matter that relates to particular land or waters; and

(b) the representative body is already representing another body or person (the ***original body or person***) in relation to one or more other matters that relate wholly or partly to that land or those waters;

the representative body must not represent the new body or person unless the representative body has obtained consent, from the original body or person, for the representative body also to

Authorised Version C2024C00224 registered 19/06/2024

represent the new body or person to the extent that the other matters relate to the land or waters.

"Briefing out" matters that relate to the same land or waters

(5) Subsection (4) does not prevent a representative body from facilitating the representation of a body or person, in relation to a particular matter, by entering into an arrangement with another person under which the other person represents the body or person in relation to that matter.

Definition

(6) In this section and section 203BC:

matter means a native title application, or a consultation, mediation, negotiation or proceeding of a kind referred to in paragraph (1)(b).

203BC How facilitation and assistance functions are to be performed

General

(1) In performing its facilitation and assistance functions in relation to any matter, a representative body must:

(a) consult with, and have regard to the interests of, any registered native title bodies corporate, native title holders or persons who may hold native title who are affected by the matter; and

(b) if the matter involves the representative body representing such bodies corporate, native title holders or persons—be satisfied they understand and consent to any general course of action that the representative body takes on their behalf in relation to the matter.

Authorised Version C2024C00224 registered 19/06/2024

Consent of native title holders etc.

(2) For the purposes of paragraph (1)(b), a native title holder or a person who may hold native title is taken to have consented to action if:

(a) where there is a process of decision-making that, under the traditional laws and customs of the group to which he or she belongs, must be complied with in relation to giving consent of that kind—the consent was given in accordance with that process; or

(b) where there is no such process of decision-making—the consent was given in accordance with a process of decision-making agreed to and adopted by the members of the group to which he or she belongs in relation to giving the consent or giving consent of that kind.

Streamlining of applications process

(3) In performing its facilitation and assistance functions in relation to an application under section 61 in relation to land or waters wholly or partly within the area for which the body is the representative body, the representative body must:

(a) act in a way that promotes an orderly, efficient and cost-effective process for making such applications; and

(b) if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware—make all reasonable efforts to minimise the number of applications covering the land or waters.

203BD Matters that overlap different representative body areas

If:

(a) a native title application covers land or waters partly within the area for which a body is the representative body and partly within an adjoining area for which another body is the representative body; or

Authorised Version C2024C00224 registered 19/06/2024

(b) a consultation, mediation, negotiation or proceeding relates to:

(i) a native title application; or

(ii) a future act; or

(iii) an indigenous land use agreement or other agreement in relation to native title; or

(iv) a right of access conferred under this Act or otherwise; or

(v) any other matter relating to native title or to the operation of this Act;

in respect of the areas referred to in paragraph (a);

the first-mentioned representative body may perform its facilitation and assistance functions, in relation to the application, consultation, mediation, negotiation or proceeding, for the part of the land or waters within the adjoining area, if it is acting in accordance with a written arrangement entered into with the other representative body.

203BE Certification functions

General

(1) The ***certification functions*** of a representative body are:

(a) to certify, in writing, applications for determinations of native title relating to areas of land or waters wholly or partly within the area for which the body is the representative body; and

(b) to certify, in writing, applications for registration of indigenous land use agreements relating to areas of land or waters wholly or partly within the area for which the body is the representative body.

Certification of applications for determinations of native title

(2) A representative body must not certify under paragraph (1)(a) an application for a determination of native title unless it is of the opinion that:

Authorised Version C2024C00224 registered 19/06/2024

(a) all the persons in the native title claim group have authorised the applicant to make the application and to deal with matters arising in relation to it; and

(aa) any conditions under section 251BA on the authority that relate to the making of the application have been satisfied; and

(b) all reasonable efforts have been made to ensure that the application describes or otherwise identifies all the other persons in the native title claim group.

Note: Section 251B deals with ***authority*** to make the application.

Overlapping applications for determinations of native title

(3) If the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which the representative body is aware, the representative body must make all reasonable efforts to:

(a) achieve agreement, relating to native title over the land or waters, between the persons in respect of whom the applications are, or would be, made; and

(b) minimise the number of applications covering the land or waters.

However, a failure by the representative body to comply with this subsection does not invalidate any certification of the application by the representative body.

Statement to be included in certifications of applications for determinations of native title

(4) A certification of an application for a determination of native title by a representative body must:

(a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (2)(a), (aa) and (b) have been met; and

(b) briefly set out the body's reasons for being of that opinion; and

Authorised Version C2024C00224 registered 19/06/2024

(c) where applicable, briefly set out what the representative body has done to meet the requirements of subsection (3).

Certification of applications for registration of indigenous land use agreements

(5) A representative body must not certify under paragraph (1)(b) an application for registration of an indigenous land use agreement unless it is of the opinion that:

(a) all reasonable efforts have been made to ensure that all persons who hold or may hold native title in relation to land or waters in the area covered by the agreement have been identified; and

(b) all the persons so identified have authorised the making of the agreement; and

(c) any conditions under section 251BA on the authority that relate to the making of the agreement have been satisfied.

Note: Section 251A deals with ***authority*** to make the agreement.

Statement to be included in certifications of applications for registration of indigenous land use agreements

(6) A certification of an application for registration of an indigenous land use agreement by a representative body must:

(a) include a statement to the effect that the representative body is of the opinion that the requirements of paragraphs (5)(a), (b) and (c) have been met; and

(b) briefly set out the body's reasons for being of that opinion.

203BF Dispute resolution functions

Dispute resolution functions

(1) The ***dispute resolution functions*** of a representative body are:

(a) to assist in promoting agreement between its constituents about:

(i) the making of native title applications; or

Authorised Version C2024C00224 registered 19/06/2024

(ii) the conduct of consultations, mediations, negotiations or proceedings about native title applications, future acts, indigenous land use agreements, rights of access conferred under this Act or otherwise or about any other matter relating to native title or the operation of this Act; and

(b) to mediate between its constituents about the making of such applications or the conduct of such consultations, mediations, negotiations or proceedings.

Meaning of constituent

(2) In this section:

constituent means:

(a) a person on whose behalf the representative body is acting or may act; or

(b) a registered native title body corporate in relation to native title in the area in respect of which the representative body is recognised; or

(c) a native title holder in relation to native title in that area; or

(d) a person who may hold native title in that area.

203BG Notification functions

The ***notification functions*** of a representative body are:

(a) to ensure that, as far as reasonably practicable, notices:

(i) that are given to the representative body (whether under this Act or otherwise); and

(ii) that relate to land or waters wholly or partly within the area for which the body is a representative body;

are brought to the attention of any person who the representative body is aware holds or may hold native title in relation to the land or waters, where the representative body considers that the notices would be unlikely to come to the attention of the person by some other means; and

Authorised Version C2024C00224 registered 19/06/2024

(b) as far as is reasonably practicable, to identify and notify other persons who hold or may hold native title in relation to the land or waters about notices of the kind mentioned in paragraph (a); and

(c) as far as is reasonably practicable, to advise the persons referred to in paragraphs (a) and (b) of relevant time limits under this Act or another law of the Commonwealth or a law of a State or a Territory, if the person would not otherwise be notified of those time limits.

Note 1: Subsection 203BA(1) requires a representative body to make its best efforts to perform its functions in a timely manner, particularly in respect of matters affected by time limits.

Note 2: This Act also imposes notification obligations on other persons.

203BH Agreement making function

(1) The ***agreement making function*** of a representative body is to be a party to indigenous land use agreements.

(2) In performing its agreement making function in respect of an area, a representative body must, as far as practicable, having regard to the matters proposed to be covered by the agreement, consult with, and have regard to the interests of, persons who hold or may hold native title in relation to land or waters in that area.

203BI Internal review functions

The ***internal review functions*** of a representative body are:

(a) to provide a process for registered native title bodies corporate, native title holders and persons who may hold native title to seek review by the representative body of its decisions and actions, made or taken in the performance of its functions or the exercise of its powers, that affect them; and

(b) to publicise that process appropriately.

Authorised Version C2024C00224 registered 19/06/2024

203BJ Other functions

In addition to the functions referred to in sections 203BB to 203BI, a representative body must:

(a) as far as is reasonably practicable, enter into written arrangements with other representative bodies so that the representative body can exercise its facilitation and assistance functions in relation to a matter of a kind referred to in paragraph 203BD(a) or (b); and

(b) as far as is reasonably practicable, identify persons who may hold native title in the area for which the body is the representative body; and

(c) as far as is reasonably practicable, take such action as the body considers appropriate to promote understanding, among Aboriginal people and Torres Strait Islanders living in the area, about matters relevant to the operation of this Act; and

(d) as far as is reasonably practicable, inform such of the following as the representative body knows are, in relation to the area:

(i) registered native title bodies corporate;

(ii) native title holders;

(iii) persons who may hold native title;

of any matter that the representative body considers may relate to, or may have an impact upon, native title in the area; and

(e) whenever the body considers it necessary in the performance of its functions—consult with Aboriginal or Torres Strait Islander communities that might be affected by the matters with which the body is dealing; and

(f) as far as is reasonably practicable, co-operate with other representative bodies for the purpose of promoting the effective and efficient exercise of the functions and powers of representative bodies.

Authorised Version C2024C00224 registered 19/06/2024

203BK Powers of representative bodies

(1) A representative body has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting subsection (1), a representative body has power to enter into arrangements and contracts to obtain services to assist in the performance by the representative body of its functions.

Assistance in performing dispute resolution functions

(3) Without limiting subsection (1), in performing its dispute resolution functions in a particular case, a representative body may be assisted by the NNTT, but only if the representative body and the NNTT have entered into an agreement under which the representative body is liable to pay the Commonwealth for the assistance.

Information obtained in providing assistance not to be used or disclosed in other contexts

(4) The NNTT must not use or disclose information to which it has had access only because it provided assistance under subsection (3) for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

Authorised Version C2024C00224 registered 19/06/2024

Division 4—Finance

203C Funding of representative bodies

Representative body may apply for funding

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

Provision of funds

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

(3) The provision of funding may be:
  (a) in respect of a financial year; or
  (b) in respect of a part of a financial year; or
  (c) in respect of any other period not exceeding 3 years.

203CA Conditions of funding

Conditions of funding

(1) Funds provided to a representative body under this Division, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate. However, the Secretary must impose conditions relating to:
  (a) the purposes for which the money may be spent; and
  (b) the period within which the money is to be spent; and
  (c) the acquittal of money spent; and
  (d) the giving of information relating to the expenditure of the money, including the production and publication of financial statements; and

Authorised Version C2024C00224 registered 19/06/2024

(e) the appointment of a person, in cases where the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided, otherwise than in accordance with the conditions of the funding; and

(f) the representative body's continuing satisfactory performance of its functions and continuing compliance with this Act; and

(g) the giving of information relating to the performance of the body's functions and its compliance with this Act.

Repayment of part of funding provided on withdrawal of recognition

(1A) The provision of funding, however achieved, is also subject to a condition that if:

(a) the representative body's recognition as a representative body is withdrawn under section 203AH; and

(b) the withdrawal takes effect during the period for which funding is provided;

the representative body must repay to the Commonwealth an amount equal to so much (if any) of the funding provided as is uncommitted at the time the recognition is withdrawn.

Uncommitted amount of funding provided

(1B) For the purposes of subsection (1A), the amount of funding provided that is uncommitted is the difference (if any) between:

(a) the portion (if any) of funding provided that has, at the time the recognition is withdrawn, been paid to the representative body by the Commonwealth; and

(b) the sum of:

(i) the portion (if any) of funding provided that has, at that time, been spent by the representative body in connection with the performance of its functions and the exercise of its powers; and

Authorised Version C2024C00224 registered 19/06/2024

(ii) the portion (if any) of funding provided that the representative body is, at that time, liable to pay to other persons in connection with the performance of its functions and the exercise of its powers.

Bodies must comply with conditions of funding

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

Serious or repeated breaches of conditions

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

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

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

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

Certain instruments not to be legislative instruments

(6) An instrument that:

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

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

is not a legislative instrument.

203CB Banking and investment

Payment into bank account

(1) A representative body must pay all money received by it under this Division into an account maintained by it with a bank.

Authorised Version C2024C00224 registered 19/06/2024

Investment

(2) The representative body may invest money received by it under this Division if:

(a) the money is not immediately required for the purposes of the body; and

(b) the money is invested:

(i) on deposit with a bank, including a deposit evidenced by a certificate of deposit; or

(ii) in securities of, or securities guaranteed by, the Commonwealth, a State or a Territory; or

(iii) in any other manner approved by the Finance Minister in writing.

(2A) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under this section to an official (within the meaning of the *Public Governance, Performance and Accountability Act 2013*) of a non-corporate Commonwealth entity (within the meaning of that Act). In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

Restrictions on entering into contracts

(3) A provision of the law by or under which the representative body is incorporated to the effect that the body must not enter into a contract involving expenditure or payment of more than a specified amount of money without a specified person's approval does not apply to a contract for the investment of money under subsection (2), unless the provision expressly states that it applies to such a contract.

Definitions

(4) In this section:

bank has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Authorised Version C2024C00224 registered 19/06/2024

Finance Minister means the Minister who administers the *Public Governance, Performance and Accountability Act 2013*.

Authorised Version C2024C00224 registered 19/06/2024

Division 5—Accountability

203DA Accounting records

Proper accounts and records to be kept

(1) A representative body must keep accounting records that properly record and explain its transactions and financial position, to the extent that its transactions and financial position relate to the performance of its functions or the exercise of its powers. It must keep those records in a way that allows them to be conveniently and properly audited in accordance with this Division.

Accounting records to be separate from others

(2) The body must keep accounts and records required to be kept by subsection (1) separate from any other accounts and records kept by the body.

Retention of accounting records

(3) The body must retain those records for at least 7 years after completion of the transactions to which they relate.

Availability of accounting records

(4) The body must make those records available at all reasonable times for inspection by any director of the body.

203DB Payments to be properly made etc.

A representative body must do all things necessary to ensure that payments out of the money of the body are correctly made and properly authorised, and that adequate control is maintained over:

(a) the assets of, or in the custody of, the body; and

(b) the incurring of liabilities by the body;

to the extent that the payments, or the assets or liabilities, relate to the performance of its functions or the exercise of its powers.

Authorised Version C2024C00224 registered 19/06/2024

203DF Inspection and audit, or investigation, of a representative body

Appointment of person to conduct inspection and audit or investigation

(1) The Commonwealth Minister may appoint a person who, in the Commonwealth Minister's opinion, has skills or knowledge in relation to matters of substantial relevance to the conduct of an inspection and audit or investigation under this section to:

(a) inspect and audit the accounts and records kept by a representative body under section 203DA; or

(b) investigate the body's performance of its functions and exercise of its powers.

Circumstances in which auditor or investigator can be appointed

(2) The Commonwealth Minister must not appoint a person under subsection (1) to conduct an inspection and audit, or an investigation, of a representative body unless the Commonwealth Minister is of the opinion that there is, or may be:

(a) serious or repeated irregularities in the financial affairs of the representative body; or

(b) a failure to satisfactorily perform its functions.

Notice requirements

(3) If the Commonwealth Minister decides that an inspection and audit, or an investigation, is to be undertaken under this section, the Commonwealth Minister must give written notice of that decision to the representative body concerned. The notice must name the person who is to carry out the inspection and audit or the investigation.

Report to Commonwealth Minister

(4) A person appointed under subsection (1) to conduct an inspection and audit or an investigation must give to the Commonwealth

Authorised Version C2024C00224 registered 19/06/2024

Minister a report on the results of that inspection and audit or investigation.

Irregularity to be disclosed

(5) A report under subsection (4) must draw attention to:
  (a) any irregularity in the financial affairs of the body disclosed by the inspection and audit or the investigation; or
  (b) any failure by the body to perform its functions disclosed by the inspection and audit or the investigation.

Report not to contain matters subject to legal professional privilege

(6) A report under subsection (4) must not contain any information, or include any document or record, that is subject to legal professional privilege or that is derived from information that is subject to legal professional privilege.

Legal professional privilege must be claimed

(7) For the purposes of subsection (6), information, or a document or record, is not taken to be subject to legal professional privilege unless, at or before the time it was obtained by the person appointed under subsection (1), it was claimed to be subject to legal professional privilege by a person entitled to make such a claim.

Auditor or investigator taken to be a Commonwealth public official

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

Authorised Version C2024C00224 registered 19/06/2024

203DG Access to information

General

(1) For the purpose of conducting an inspection and audit, or an investigation, of a representative body under section 203DF, the person appointed under subsection 203DF(1):

(a) is entitled at all reasonable times to full and free access to documents relating to the representative body; and

(b) may make copies, or take extracts from, any such document; and

(c) may require a representative body:

(i) to answer such questions; and

(ii) to produce such documents in the representative body's possession or to which the representative body has access;

as the person so appointed considers necessary for that purpose.

Use of legally professionally privileged documents

(2) A representative body must produce a document or record or disclose information as required under paragraph (1)(c), whether or not the document, record or information is the subject of legal professional privilege.

Production does not affect legal professional privilege

(3) A document, record or information does not cease to be the subject of legal professional privilege merely because it is produced under paragraph (1)(c).

Failure to comply with paragraph (1)(c)

(4) A representative body who refuses or fails to comply with the requirement under paragraph (1)(c) commits an offence punishable upon conviction by a fine not exceeding 20 penalty units.

Authorised Version C2024C00224 registered 19/06/2024

Reasonable excuse for non-compliance

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

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

Self-incrimination

(5) For the purposes of subsection (4A), it is not a reasonable excuse for a representative body to refuse or fail:

(a) to give information; or

(b) to produce a record or document;

in accordance with a requirement under paragraph (1)(c), on the ground that the information or the production of the document or record, as the case may be, might tend to incriminate the representative body or make the representative body liable to a penalty.

Admissibility in criminal proceedings

(6) Despite subsection (5):

(a) giving the information or producing the document or record; or

(b) any information, document, record or thing obtained as a direct or indirect consequence of the giving of the information or production of the document or record;

is not admissible in evidence against the person in any criminal proceedings, other than proceedings against, or arising out of, subsection (4) or (7).

Making a statement that is false or misleading

(7) A representative body who, in purported compliance with the requirement under paragraph (1)(c), makes a statement that it knows to be false or misleading in a material particular, commits an offence punishable on conviction by a fine not exceeding 20 penalty units.

Authorised Version C2024C00224 registered 19/06/2024

203DH Effect of withdrawal of recognition

(1) A withdrawal of the body's recognition under section 203AH does not affect the undertaking of an inspection and audit, or investigation, under section 203DF.

(2) The fact that the recognition of a body as a representative body for a particular area ceases to have effect does not affect the undertaking of an inspection and audit, or investigation, under section 203DF.

Authorised Version C2024C00224 registered 19/06/2024

Division 6—Conduct of directors and other executive officers

203E Application of Division

This Division does not apply to anything that is not related to the performance of the functions of a representative body or the exercise of its powers.

203EA Representative bodies that are not corporations

(1) This section applies to a representative body that is neither:
  (a) registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; nor
  (b) a company incorporated under the *Corporations Act 2001*.

(3) A director of the representative body who has a material personal interest in a matter that is being considered by the body's governing body:
  (a) must not be present during any deliberation by the governing body on the matter; and
  (b) must not take part in any decision of the governing body on the matter.

(4) However, a contravention of this provision does not affect the validity of any resolution.

(5) Subsection (3) applies instead of any rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* which deal with the consequences of having a material personal interest in a matter that is being considered at a meeting of a governing body.

(6) To avoid doubt, this section does not otherwise affect the obligations imposed by the *Public Governance, Performance and Accountability Act 2013* or any rules made for the purposes of that

Authorised Version C2024C00224 registered 19/06/2024

Act on a representative body that is a Commonwealth entity (within the meaning of that Act).

203EB Representative bodies registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*

(1) This section applies in relation to a representative body that is registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

Power to indemnify officers

(2) Except as provided in this section, a representative body may indemnify a person who is or has been an officer of the body from any liability incurred by the person as an officer of the body.

Exemptions not allowed

(3) A representative body, or a subsidiary of a representative body, must not exempt a person (whether directly or through an interposed entity) from a liability to the body incurred as an officer of the body.

When indemnity for liability (other than for legal costs) not allowed

(4) A representative body, or a subsidiary of a representative body, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer of the body:

(a) a liability owed to the body or a subsidiary of the body;

(b) a liability for:

(i) a civil penalty order under section 386-10 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or

(ii) a compensation order under section 386-15 of that Act;

Authorised Version C2024C00224 registered 19/06/2024

made in relation to a breach of subsection 265-1(1), 265-5(1) or (2), 265-10(1) or (2) or 265-15(1) or (2) of that Act;

(c) a liability that is owed to someone other than the body or a subsidiary of the body and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

(5) A representative body, or a subsidiary of a representative body, must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer of the body if the costs are incurred:

(a) in defending or resisting a proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (4) of this section; or

(b) in defending or resisting criminal proceedings in which the person is found guilty; or

(c) in defending or resisting proceedings brought by the Registrar of Aboriginal and Torres Strait Islander Corporations under section 386-20 or subsection 386-55(8) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* for a court order if the grounds for making the order are found by the court to have been established; or

(d) in connection with proceedings for relief to the person under section 386-60 of that Act against an application under section 386-20 of that Act, or for relief to the person under section 576-1 of that Act, in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by the Registrar of Aboriginal and Torres Strait Islander Corporations as part of an investigation before commencing proceedings for the court order.

(6) For the purposes of subsection (5), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

Authorised Version C2024C00224 registered 19/06/2024

Insurance for certain liabilities of officers

(7) Except as provided in subsection (8), a representative body may insure a person who is or has been an officer against liabilities incurred by the person as an officer.

(8) A representative body, or a subsidiary of a representative body, must not pay, or agree to pay, a premium for a contract insuring a person who is, or has been, an officer of the body against a liability (other than one for legal costs) arising out of:

(a) conduct involving a wilful breach of duty in relation to the body; or

(b) a contravention of sections 265-10 and 265-15 respectively of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

This section applies to a premium whether it is paid directly or through an interposed entity.

Penalty: 5 penalty units.

(9) An offence based on subsection (8) is an offence of strict liability.

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

Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

(10) This section does not authorise anything that would otherwise be unlawful.

(11) Anything that purports to indemnify or insure a person against a liability or exempt them from a liability is void to the extent that it contravenes this section.

Authorised Version C2024C00224 registered 19/06/2024

Division 7—Miscellaneous

203F Secretary to inform Minister of certain matters

If the Secretary of the Department is of the opinion that:

(c) a representative body is not satisfactorily performing its functions; or

(d) there may be serious or repeated irregularities in the financial affairs of a representative body;

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

Note: The Secretary must also give written notice of breaches of grant conditions to the Commonwealth Minister—see subsection 203CA(5).

203FB Review of assistance decisions

Persons may apply for review

(1) An Aboriginal person or Torres Strait Islander affected by a decision of a representative body not to assist him or her in the performance of its facilitation and assistance functions under section 203BB may apply to the Secretary of the Department for review of the decision.

Note: The Aboriginal person or Torres Strait Islander is able to obtain a statement of reasons etc. for the decision from the representative body under section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.

Appointment of person to conduct the review

(2) As soon as practicable after receiving the application, the Secretary must:

(a) review the representative body's decision; or

(b) appoint to conduct the review a person who, in the Secretary's opinion, has skills or knowledge in relation to matters of substantial relevance to the conduct of the review.

Authorised Version C2024C00224 registered 19/06/2024

203FBA External review

This section applies to external review

(1) This section applies if the Secretary of the Department appoints a person under paragraph 203FB(2)(b) to conduct the review.

Review of decision

(2) Subject to subsection (4), the person appointed must review the representative body's decision and report to the Secretary whether:
  (a) the decision should be affirmed; or
  (b) the Secretary should make funding available under section 203FE to a person or body for the purpose of performing specified facilitation and assistance functions of a representative body in relation to the matter to which the representative body's decision relates.

Matters to be taken into account when conducting review

(3) In reviewing the representative body's decision, the person appointed must have regard to:
  (a) whether it would be consistent with priorities determined by the representative body under paragraph 203B(4)(a) to provide the assistance sought; and
  (b) whether, to provide the assistance sought, the representative body would need to allocate or re-allocate resources in a way that interferes with the efficient performance of its functions; and
  (c) whether the representative body would breach a condition imposed under section 203CA if the representative body were to provide the assistance sought; and
  (d) if the assistance sought was in relation to an application under section 61:
    (i) whether the provision of that assistance would promote an orderly, efficient and cost-effective process for making such applications; and

Authorised Version C2024C00224 registered 19/06/2024

(ii) in a case where one or more other applications have been made or are proposed to be made in relation to land or waters covered by the application—whether the provision of the assistance sought would be reasonable given the need to minimise the number of applications covering the land or waters; and

(e) any other matter relevant to the merits of the decision.

Failure to use internal review procedures

(4) The person appointed must refuse to review the representative body's decision if satisfied that the applicant did not, before applying for the review, make all reasonable efforts to seek a review by the representative body of its decision.

Report to be given within 60 days

(5) The person appointed must give the report referred to in subsection (2) to the Secretary within 60 days after the day on which he or she was appointed, or within such other period as the Secretary allows (whether or not the 60 days have expired).

Inviting submissions

(6) Before reviewing the representative body's decision, the person appointed must invite the representative body to make a submission in relation to the decision. The invitation must specify a period of not less than 14 days within which submissions must be made.

Action to be taken by the Secretary

(7) The Secretary must, within one month after the end of the period referred to in subsection (5):

(a) affirm the representative body's decision; or

(b) make funding available under section 203FE as mentioned in paragraph (2)(b) of this section.

Authorised Version C2024C00224 registered 19/06/2024

Notice of decision on review

(8) The Secretary must give the applicant and the representative body written notice of the Secretary's decision under subsection (7). The notice must include the reasons for that decision.

203FBB Review by Secretary of the Department

This section applies to review by Secretary

(1) This section applies if the Secretary of the Department conducts the review.

Review of decision

(2) Subject to subsection (4), the Secretary must review the representative body's decision and decide whether:
  (a) the representative body's decision should be affirmed; or
  (b) the Secretary should make funding available under section 203FE to a person or body for the purpose of performing specified facilitation and assistance functions of a representative body in relation to the matter to which the representative body's decision relates.

Matters to be taken into account when conducting review

(3) In reviewing the representative body's decision, the Secretary must have regard to:
  (a) whether it would be consistent with priorities determined by the representative body under paragraph 203B(4)(a) to provide the assistance sought; and
  (b) whether, to provide the assistance sought, the representative body would need to allocate or re-allocate resources in a way that interferes with the efficient performance of its functions; and
  (c) whether the representative body would breach a condition imposed under section 203CA if the representative body were to provide the assistance sought; and

Authorised Version C2024C00224 registered 19/06/2024

(d) if the assistance sought was in relation to an application under section 61:

(i) whether the provision of that assistance would promote an orderly, efficient and cost-effective process for making such applications; and

(ii) in a case where one or more other applications have been made or are proposed to be made in relation to land or waters covered by the application—whether the provision of the assistance sought would be reasonable given the need to minimise the number of applications covering the land or waters; and

(e) any other matter relevant to the merits of the decision.

Failure to use internal review procedures

(4) The Secretary must refuse to review the representative body's decision if satisfied that the applicant did not, before applying for the review, make all reasonable efforts to seek a review by the representative body of its decision.

Inviting submissions

(5) Before reviewing the representative body's decision, the Secretary must invite the representative body to make a submission in relation to the decision. The invitation must specify a period of not less than 14 days within which submissions must be made.

Secretary to decide matter within 60 days

(6) The Secretary must make his or her decision under subsection (2) within 60 days after the day on which the application for review is made.

Notice of decision on review

(7) The Secretary must give the applicant and the representative body written notice of the Secretary's decision under subsection (2). The notice must include the reasons for that decision.

Authorised Version C2024C00224 registered 19/06/2024

203FC Transfer of documents and records

Commonwealth Minister may issue directions

(1) The Commonwealth Minister may, by written instrument, issue directions requiring, or relating to, either or both of the following:

(a) a former representative body returning documents and records, relating to the performance of its functions or the exercise of its powers in respect of its former area, to the person or persons who provided them to the body;

(b) the former representative body allowing access to, giving or giving copies of documents and records held by the former representative body to a body (the ***replacement body***) that has become the representative body for all or part of the former representative body's former area, where the documents and records are reasonably necessary for the performance of the functions, or the exercise of the powers, of the replacement body.

Directions take effect on the day on which they are issued.

(1A) An instrument made under subsection (1) is not a legislative instrument.

Limit on directions

(2) Directions must not require the former representative body to:

(a) allow the replacement body access to documents and records of any kind mentioned in paragraph (1)(b) that relate to a claim made in a claimant application or a compensation application; or

(b) give the replacement body documents and records of any kind mentioned in paragraph (1)(b) that relate to a claim made in a claimant application or a compensation application, or give copies of such documents or records;

unless the replacement body gives the Commonwealth Minister notice, in writing, that the replacement body has been requested to perform a representative body function in relation to the claim.

Authorised Version C2024C00224 registered 19/06/2024

(2A) Directions must not require the former representative body to:

(a) allow the replacement body access to documents and records of any kind mentioned in paragraph (1)(b) that relate to native title rights and interests that are the subject of a determination of native title; or

(b) give the replacement body documents and records of any kind mentioned in paragraph (1)(b) that relate to native title rights and interests that are the subject of a determination of native title, or give copies of such documents or records;

unless the replacement body gives the Commonwealth Minister notice, in writing, that the replacement body has been requested to perform a representative body function in relation to those native title rights and interests.

Bodies must comply with directions

(3) A body to which directions apply must comply with those directions.

Orders by the Federal Court

(4) If a body fails to comply with subsection (3), the Federal Court may, on the application of a person affected by the non-compliance, make such orders as it thinks fit to ensure the body's compliance.

Former representative body under external administration

(4A) To avoid doubt, the Commonwealth Minister may make a direction under subsection (1), and the former representative body to which the direction applies must comply with the direction, even if the former representative body is under external administration.

Definitions

(5) In this section:

Authorised Version C2024C00224 registered 19/06/2024

former area, in relation to a former representative body, means the area, or the part of an area, for which the body is no longer a representative body.

former representative body means a body that:

(a) has ceased to be a representative body; or

(b) has ceased to be a representative body for a particular area; or

(c) has had the area for which it is a representative body reduced.

203FCA Representative body etc. to comply with wishes of traditional custodians

(1) If:

(a) a representative body, in performing its functions and exercising its powers; or

(b) a former representative body (as defined in subsection 203FC(5)), in complying with directions in accordance with subsection 203FC(3);

deals with traditional materials, or any information contained in them, the body must make all reasonable efforts to comply with the wishes of the traditional custodians of the traditional materials about the way in which the traditional materials or information is to be dealt with.

Definitions

(2) In this section:

traditional custodian of traditional materials means a person who, according to the traditional laws and customs concerned, is responsible for the traditional materials.

traditional materials means documents, records or other things that are of significance to Aboriginal peoples or Torres Strait Islanders according to their traditional laws and customs.

Authorised Version C2024C00224 registered 19/06/2024

203FD Liability of executive officers etc.

An executive officer or a member of a representative body is not personally liable to an action or other proceeding for damages in relation to an act done or omitted to be done in good faith:

(a) by the representative body; or

(b) by the person in the capacity of executive officer or member;

in connection with the performance of the representative body's functions or the exercise of its powers.

203FE Provision of funding by the Commonwealth

Funding to perform functions of a representative body

(1) The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate, for the purpose of enabling the person or body to perform, in respect of a specified area:

(a) all the functions of a representative body; or

(b) specified functions of a representative body;

either generally or in relation to one or more specified matters.

Funding following certain decisions under section 203FB

(2) The Secretary of the Department may make funding available to a person or body, by way of a grant or in any other way the Secretary considers appropriate, for the purpose of enabling the person or body to perform specified facilitation and assistance functions of a representative body in relation to a matter to which a decision under paragraph 203FBA(7)(b) or 203FBB(2)(b) relates.

Conditions of funding

(3) Funds provided to a person or body under this section, whether provided by grant or otherwise, may be so provided on whatever conditions the Secretary considers appropriate. However, the Secretary of the Department must impose conditions relating to:

(a) the purposes for which the money may be spent; and

Authorised Version C2024C00224 registered 19/06/2024

(b) the period within which the money is to be spent; and
(c) the acquittal of money spent; and
(d) the giving of information relating to expenditure of the money; and
(e) the appointment of a person, in cases where the Secretary considers that money from funds provided has not been spent in accordance with the conditions of the funding, with the power to prevent expenditure of further money from funds provided otherwise than in accordance with the conditions of the funding; and
(f) the person's or body's continuing satisfactory performance of its functions referred to in subsection (1) or (2), as the case requires; and
(g) the giving of information relating to the performance of the functions referred to in subsection (1) or (2), as the case requires, including the production and publication of financial statements.

Certain instruments not to be legislative instruments

(3A) An instrument that determines conditions of funding for the purposes of subsection (3) is not a legislative instrument.

Funding period to be specified

(4) The Secretary of the Department must determine the period during which the person or body may spend the money.

Funding period may be extended

(5) If the Secretary of the Department considers it appropriate, the Secretary may determine that the period during which the person or body may spend the money is extended for a specified further period.

Persons or bodies must comply with conditions etc.

(6) The person or body must comply with the conditions of funding, and with any determinations under subsection (4) or (5).

Authorised Version C2024C00224 registered 19/06/2024

203FEA Application of this Act to persons and bodies funded under subsection 203FE(1)

Subsection 203FE(1) body has the same obligations and powers as a representative body

(1) A person or body to whom funding is made available under subsection 203FE(1) to perform a function in respect of a particular area has the same obligations and powers in relation to the performance of that function as a body recognised as the representative body for that area would have in relation to the performance of that function.

Third parties should treat subsection 203FE(1) bodies in the same way as representative bodies

(2) A person (the ***third party***) has the same obligations and powers, in relation to a person or body to whom funding is made available under subsection 203FE(1) to perform a function in respect of a particular area, as the third party would have in relation to a body recognised as the representative body for that area who is performing, or has performed, that function.

Effect of certain provisions on subsection 203FE(1) bodies

(3) Without limiting subsection (1) or (2), the following provisions apply in the following ways:
   (a) subsection 24DD(2) applies as if a person or body to whom funding is made available under subsection 203FE(1) to perform all of the functions of a representative body in respect of a specified area were the representative body for the area;
   (b) section 203BD applies as if a person or body to whom funding is made available under subsection 203FE(1) to perform the facilitation and assistance functions in respect of a particular area were the representative body for the area;
   (c) section 203FC applies in relation to a person or body to whom funding was made available under

Authorised Version C2024C00224 registered 19/06/2024

subsection 203FE(1) to perform some or all of the functions of a representative body in respect of a particular area, but who has ceased to perform those functions in respect of that area, in the same way as it would apply in relation to a former representative body (as defined for the purposes of that section) who had performed those functions in respect of that area;

(d) section 203FCA applies:

(i) in relation to a person or body to whom funding is made available under subsection 203FE(1) to perform some or all of the functions of a representative body in respect of a particular area—in the same way as it applies in relation to a representative body performing those functions in respect of that area; and

(ii) in relation to a person or body to whom funding was made available under subsection 203FE(1) to perform some or all of the functions of a representative body in respect of a particular area, but who has ceased to perform those functions in respect of that area—in the same way as it would apply in relation to a former representative body (as defined for the purposes of section 203FC) who had performed that function in respect of that area.

Inspection, audit and investigation under section 203DF not affected by funding ceasing

(4) The fact that:

(a) the period within which funding made available under subsection 203FE(1) is to be spent has expired; or

(b) funding under that subsection has otherwise ceased to be available;

does not affect the undertaking of an inspection and audit, or investigation, under section 203DF.

Authorised Version C2024C00224 registered 19/06/2024

Further application may be prescribed

(5) Without limiting the other provisions of this section, the regulations may prescribe the way in which other provisions of this Act are to apply in relation to a person or body to whom funding is made available under subsection 203FE(1).

203FEB Application of this Act to persons and bodies funded under subsection 203FE(2)

Obligations and powers of persons and bodies to whom funding is made available

(1) A person or body to whom funding is made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to a matter has the same obligations and powers in relation to the performance of those functions in relation to that matter as a body recognised as the representative body for that area would have in relation to the performance of those functions in relation to that matter.

Obligations and powers of third parties in relation to those bodies

(2) A person (the ***third party***) has the same obligations and powers, in relation to a person or body to whom funding is made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to a matter, as the third party would have in relation to a body recognised as the representative body for the relevant area who is performing, or has performed, those functions in relation to that matter.

Section 203BD arrangements ineffective during funding period

(3) Subsection (4) applies if, as a result of a review under section 203FB of a refusal by a representative body for an area (the ***original body***) to perform facilitation and assistance functions in relation to a matter, funding is made available to a person or body under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to the matter.

Authorised Version C2024C00224 registered 19/06/2024

(4) Despite section 203BD, the representative body for an adjoining area cannot perform those functions in relation to that matter during the period within which the funding is to be spent, even if that body enters into an arrangement with the original body to do so.

Effect of certain other provisions on subsection 203FE(2) bodies

(5) Without limiting subsection (1) or (2), the following provisions apply in the following ways:

(a) section 203FC applies in relation to a person or body to whom funding was made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to a matter, but who has ceased to perform those functions in relation to that matter, in the same way as it would apply in relation to a former representative body (as defined for the purposes of that section) who had performed those functions in relation to that matter;

(b) section 203FCA applies:

(i) in relation to a person or body to whom funding is made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to a matter—in the same way as it would apply in relation to a representative body performing those functions in relation to that matter; and

(ii) in relation to a person or body to whom funding was made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to a matter, but who has ceased to perform those functions in relation to that matter—in the same way as it would apply in relation to a former representative body (as defined for the purposes of section 203FC) who had performed those functions in relation to that matter.

Authorised Version C2024C00224 registered 19/06/2024

Inspection, audit and investigation under section 203DF not affected by funding ceasing

(6) The fact that:

(a) the period within which funding made available under subsection 203FE(2) is to be spent has expired; or

(b) funding under that subsection has otherwise ceased to be available;

does not affect the undertaking of an inspection and audit, or investigation, under section 203DF.

Further application may be prescribed

(7) Without limiting the other provisions of this section, the regulations may prescribe the way in which other provisions of this Act are to apply in relation to a person or body to whom funding is made available under subsection 203FE(2).

203FEC Certain provisions do not apply to persons and bodies funded under subsection 203FE(1) or (2)

(1) Section 203C does not apply in relation to the performance of a function, or the exercise of a power in relation to the performance of a function, by a person or body if funding is made available to the person or body under subsection 203FE(1) or (2) to perform the function.

(2) Section 203F does not apply in relation to:

(a) the performance of a function by a person or body; or

(b) serious or repeated irregularities in the financial affairs of a person or body in relation to the performance of a function by the person or body;

if funding is made available to the person or body under subsection 203FE(1) or (2) to perform the function.

(3) Section 203FB does not apply in relation to a person or body to whom funding is made available under subsection 203FE(2) to perform specified facilitation and assistance functions in relation to

Authorised Version C2024C00224 registered 19/06/2024

a matter, to the extent that the section would otherwise apply to the performance of those functions in relation to that matter by that person or body.

203FED Liability

(1) A person to whom funding is made available under subsection 203FE(1) or (2) to perform a function is not personally liable to an action or other proceeding for damages in relation to an act done or omitted to be done in good faith by the person in connection with the performance of the function, or the exercise of the person's powers in relation to the performance of the function.

(2) An executive officer or a member of a body to whom funding is made available under subsection 203FE(1) or (2) to perform a function is not personally liable to an action or other proceeding for damages in relation to an act done or omitted to be done in good faith by:

(a) the body; or

(b) the person in the capacity of executive officer or member of the body;

in connection with the performance of the function, or the exercise of powers in relation to the performance of the function.

203FF Financial and accountability requirements imposed by other legislation

Obligations under other laws unaffected

(1) The obligations imposed on a representative body by Divisions 4 and 5 are in addition to, and not instead of, requirements imposed by any other law of the Commonwealth, a State or Territory.

203FG False statements etc.

A person commits an offence if the person:

Authorised Version C2024C00224 registered 19/06/2024

(a) makes a statement or presents a document in or in connection with an application to the Secretary of the Department for funding under section 203C; and

(b) does so knowing that the statement is, or that the document contains information that is, false or misleading in a material particular.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

203FH Conduct by directors, employees and agents

State of mind of directors, employees or agents of bodies corporate

(1) If, for the purposes of this Part, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

(a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and

(b) that the director, employee or agent had the state of mind.

Conduct of directors, employees or agents of bodies corporate

(2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of this Part, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

State of mind of employees or agents of persons other than bodies corporate

(3) If, for the purposes of this Part, it is necessary to establish the state of mind of a person other than a body corporate in relation to a particular conduct, it is sufficient to show:

Authorised Version C2024C00224 registered 19/06/2024

(a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) that the employee or agent had the state of mind.

Conduct of employees or agents of persons other than bodies corporate

(4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of this Part, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to avoid the conduct.

Other persons not to be punished by imprisonment

(5) If:

(a) a person other than a body corporate is convicted of an offence; and

(b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

Meaning of state of mind

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

Meaning of director

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate

Authorised Version C2024C00224 registered 19/06/2024

incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

Failing etc. to engage in conduct

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

203FI Delegation

The Secretary of the Department may, by written instrument, delegate to an SES employee, to an acting SES employee or to another person of equivalent rank, all or any of the Secretary's powers under sections 203C, 203CA, 203DC, 203F, 203FB, 203FBA, 203FBB and 203FE.

Note 1: The expressions ***SES employee***, and ***acting SES employee*** are defined in section 2B of the *Acts Interpretation Act 1901*.

Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

Authorised Version C2024C00224 registered 19/06/2024

Part 12A—State/Territory bodies

207A Recognised State/Territory body

Determination

(1) The Commonwealth Minister may, by legislative instrument, determine that a court, office, tribunal or body (which court, office, tribunal or body is called the ***body***) established by or under a law of a State or Territory is a ***recognised State/Territory body*** if the State Minister for the State, or Territory Minister for the Territory, nominates the body to the Commonwealth Minister for the purposes of this section.

Criteria to be satisfied

(2) In order to ensure that there is a nationally consistent approach to the recognition and protection of native title, the Commonwealth Minister must not make the determination unless the Commonwealth Minister is satisfied that:

(a) any procedures under the law of the State or Territory for:

(i) approved determinations of native title by the body; and

(ii) determinations of compensation for acts affecting native title;

will be consistent with those set out in this Act; and

(aa) any procedures under the law of the State or Territory for determinations whether acts affecting native title may be done will be consistent with those set out in this Act; and

(ab) the law of the State or Territory will require a decision to be made whether a claim in respect of native title satisfies conditions equivalent to those set out in sections 190B and 190C; and

(b) any procedures that will apply under the law of the State or Territory for the registration and notification of any claims in

Authorised Version C2024C00224 registered 19/06/2024

respect of native title that may be made to the body will be efficient; and

(c) the body will have available to it, through its membership or otherwise, appropriate expertise (including expertise in matters relating to Aboriginal peoples and Torres Strait Islanders) for performing its functions in relation to native title; and

(d) the procedures of the body under the law of the State or Territory in performing its functions in relation to native title will be informal, accessible and expeditious; and

(e) the body will, under the law of the State or Territory, be able to mediate matters in appropriate cases; and

(f) the body will have adequate resources to enable it to perform its functions in relation to native title; and

(h) provisions under the law of the State or Territory to similar effect as those in Division 6 of Part 2 (which deals with the holding of native title etc. by bodies corporate) will apply in relation to any approved determination of native title by the body; and

(i) the law of the State or Territory will require the Native Title Registrar to be informed of:

(i) any applications for decisions, orders or judgments of the body that involve an approved determination of native title; and

(ia) any claims contained in any such applications (including amended applications) that have been found to satisfy conditions equivalent to those set out in sections 190B and 190C; and

(ib) any amendments of applications covered by subparagraph (ia), if the claims contained in the application as amended have been found not to satisfy conditions equivalent to those set out in sections 190B and 190C; and

(ic) any withdrawal or dismissal of applications covered by subparagraph (i); and

(ii) the making of any such determination by the body; and

Authorised Version C2024C00224 registered 19/06/2024

(j) any other requirement that the Commonwealth Minister considers relevant will be satisfied.

More than one body

(3) The Commonwealth Minister may determine more than one body in respect of the same State or Territory.

De-recognition

(4) If the Commonwealth Minister at any time is not satisfied as mentioned in subsection (2) in relation to a recognised State/Territory body, he or she must:

(a) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(b) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the Commonwealth Minister is still not satisfied—by legislative instrument, revoke the determination in relation to the body.

Regulations to make transitional provisions

(5) The regulations may prescribe any modifications of this Act that are necessary or convenient to deal with transitional matters arising from the revocation of determinations under this section.

Effect of recognition

(6) The making of a determination in relation to a body under this section does not affect any functions of the NNTT under Division 1 of Part 6 or jurisdiction of the Federal Court under Division 1A of Part 4.

207B Equivalent State/Territory bodies

Equivalent bodies

(1) This section applies if the State Minister for a State, or the Territory Minister for a Territory, nominates to the Commonwealth

Authorised Version C2024C00224 registered 19/06/2024

Minister one or more offices, tribunals or bodies (each of which is an ***equivalent body***), established by or under a law of the State or Territory, for the purpose of each performing specified functions or exercising specified powers of the NNTT or the Native Title Registrar, in specified circumstances, under specified equivalent body provisions (see subsection (9)).

Different functions/powers etc.

(2) To avoid doubt, the nomination may specify:
  (a) different functions or powers in relation to different equivalent bodies; or
  (b) different functions or powers in different circumstances.

Determination

(3) The Commonwealth Minister may, by legislative instrument, determine that the one or more equivalent bodies are to perform the specified functions or exercise the specified powers in the specified circumstances, under the specified equivalent body provisions.

Criteria to be satisfied

(4) In order to ensure that there is a nationally consistent approach to the recognition and protection of native title, the Commonwealth Minister must not make the determination unless the Commonwealth Minister is satisfied that:
  (a) the one or more equivalent bodies will have available to them, through the bodies' membership, appropriate expertise (including expertise in matters relating to Aboriginal peoples and Torres Strait Islanders) for performing their functions or exercising their powers under the determination; and
  (b) under the law of the State or Territory, the procedures of the one or more equivalent bodies in performing those functions or exercising those powers will be fair, just, informal, accessible and expeditious; and

Authorised Version C2024C00224 registered 19/06/2024

(c) the one or more equivalent bodies will have adequate resources to enable them to perform those functions or exercise those powers; and

(ca) members of the one or more equivalent bodies will enjoy security of tenure no less favourable than that enjoyed by members of the NNTT or the Native Title Registrar, as the case requires; and

(d) the law of the State or Territory will enable and require the one or more equivalent bodies to perform those functions or exercise those powers if the Commonwealth Minister makes the determination; and

(e) if any of the functions or powers that the one or more equivalent bodies will perform or exercise under the determination involves the maintenance of any register under this Act—the law of the State or Territory will require the functions to be performed or the powers to be exercised in a way that ensures that the register will be maintained in a nationally integrated and accessible manner; and

(f) if any of the functions or powers that will be performed or exercised under the determination are those of the NNTT—the law of the State or Territory will require the member or at least one of the members of the equivalent body to be a member of the NNTT; and

(g) any other requirement that the Commonwealth Minister considers relevant will be satisfied.

Modified application of Act etc.

(5) While the determination is in force, this Act, and Schedule 5 to the *Native Title Amendment Act 1998*, have effect, in relation to a function or power of the NNTT or Native Title Registrar specified in the determination, as if, in the specified circumstances:

(a) the one or more equivalent bodies had the functions or powers, instead of the NNTT or the Registrar; and

(b) if one of the powers specified in the determination is the power to make determinations under Subdivision P of Division 3 of Part 2 of this Act—for the purposes of

Authorised Version C2024C00224 registered 19/06/2024

sections 36A, 36B, 36C and 42 of this Act, the State Minister or the Territory Minister of the relevant State or Territory had the powers of the Commonwealth Minister under that section, instead of the Commonwealth Minister.

Note: The *Administrative Decisions (Judicial Review) Act 1977* will apply to decisions that an equivalent body or a State or Territory Minister may, because of this section, make under this Act to the same extent to which it applies to corresponding decisions of the NNTT, the Native Title Registrar or the Commonwealth Minister under this Act.

Vesting of functions and powers in equivalent bodies

(6) While the determination is in force, the functions and powers specified in the determination are vested in the one or more equivalent bodies, in the circumstances set out in the determination.

Revocation of determination

(7) If, at any time:

(a) the law of the State or Territory is amended; and

(b) as a result, the Commonwealth Minister ceases to be satisfied as mentioned in subsection (4) in relation to any or all of the equivalent bodies;

he or she must:

(c) advise the State Minister or the Territory Minister concerned in writing of the fact; and

(d) if at the end of 90 days, or such longer period as the Commonwealth Minister allows, after doing so, the Commonwealth Minister is still not satisfied as mentioned in subsection (4)—by legislative instrument, revoke the determination.

Regulations to make transitional provisions

(8) The regulations may prescribe any modifications of this Act that are necessary or convenient to deal with transitional matters arising from the making or revocation of determinations under this section.

Authorised Version C2024C00224 registered 19/06/2024

Equivalent body provisions

(9) The ***equivalent body provisions*** are:

(a) all of the provisions of this Act, except the following:

(i) this section;

(ia) the provisions of Division 4 of Part 4, other than subsection 94H(1);

(ii) Part 5;

(iii) the provisions of Part 6, other than sections 139, 145, 169, 178 and 179; and

(b) Schedule 5 to the *Native Title Amendment Act 1998*.

Authorised Version C2024C00224 registered 19/06/2024

Part 13—Miscellaneous

208 Act not to apply so as to exceed Commonwealth power

Intention of Parliament

(1) Unless the contrary intention appears, if a provision of this Act:
   (a) would, apart from this section, have an invalid application; and
   (b) also has at least one valid application;

it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.

When provision not to have valid operation

(2) Despite subsection (1), the provision is not to have a particular valid application if:
   (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
   (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.

Where contrary intention

(3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).

Authorised Version C2024C00224 registered 19/06/2024

Definitions

(4) In this section:

application means an application in relation to:

(a) one or more particular persons, things, matters, places, circumstances or cases; or

(b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

invalid application, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power.

valid application, in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

209 Reports by Aboriginal and Torres Strait Islander Social Justice Commissioner

The Commonwealth Minister may, by written notice, direct the Aboriginal and Torres Strait Islander Social Justice Commissioner to report to the Commonwealth Minister about:

(a) the operation of this Act; or

(b) the effect of this Act on the exercise and enjoyment of human rights of Aboriginal peoples and Torres Strait Islanders.

Note: The Aboriginal and Torres Strait Islander Social Justice Commissioner is appointed under the *Australian Human Rights Commission Act 1986.*

209A Evaluation of amendments made by the *Native Title Legislation Amendment Act 2021*

(1) Before the end of the period of 5 years after the commencement of Schedule 6 to the *Native Title Legislation Amendment Act 2021*, the Commonwealth Minister must cause to be conducted an evaluation of the operation of the amendments made by that Act.

Authorised Version C2024C00224 registered 19/06/2024

(2) The Commonwealth Minister must cause to be prepared a report of an evaluation under subsection (1).

(3) The Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

210 Operation of beneficial land rights laws not affected

Nothing in this Act affects the rights or interests of any person under:

(a) the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*; or

(b) the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*; or

(c) the *Aboriginal Land Rights (Northern Territory) Act 1976*.

211 Preservation of certain native title rights and interests

Requirements for removal of prohibition etc. on native title holders

(1) Subsection (2) applies if:

(a) the exercise or enjoyment of native title rights and interests in relation to land or waters consists of or includes carrying on a particular class of activity (defined in subsection (3)); and

(b) a law of the Commonwealth, a State or a Territory prohibits or restricts persons from carrying on the class of activity other than in accordance with a licence, permit or other instrument granted or issued to them under the law; and

(ba) the law does not provide that such a licence, permit or other instrument is only to be granted or issued for research, environmental protection, public health or public safety purposes; and

(c) the law is not one that confers rights or interests only on, or for the benefit of, Aboriginal peoples or Torres Strait Islanders.

Authorised Version C2024C00224 registered 19/06/2024

Removal of prohibition etc. on native title holders

(2) If this subsection applies, the law does not prohibit or restrict the native title holders from carrying on the class of activity, or from gaining access to the land or waters for the purpose of carrying on the class of activity, where they do so:

(a) for the purpose of satisfying their personal, domestic or non-commercial communal needs; and

(b) in exercise or enjoyment of their native title rights and interests.

Note: In carrying on the class of activity, or gaining the access, the native title holders are subject to laws of general application.

*Definition of **class of activity***

(3) Each of the following is a separate ***class of activity***:

(a) hunting;

(b) fishing;

(c) gathering;

(d) a cultural or spiritual activity;

(e) any other kind of activity prescribed for the purpose of this paragraph.

212 Confirmation of ownership of natural resources, access to beaches etc.

Confirmation of ownership of natural resources etc.

(1) Subject to this Act, a law of the Commonwealth, a State or Territory may confirm:

(a) any existing ownership of natural resources by the Crown in right of the Commonwealth, the State or the Territory, as the case may be; or

(b) any existing right of the Crown in that capacity to use, control and regulate the flow of water; or

(c) that any existing fishing access rights prevail over any other public or private fishing rights.

Authorised Version C2024C00224 registered 19/06/2024

Confirmation of access to beaches etc.

(2) A law of the Commonwealth, a State or a Territory may confirm any existing public access to and enjoyment of:

(a) waterways; or

(b) beds and banks or foreshores of waterways; or

(c) coastal waters; or

(d) beaches; or

(da) stock-routes; or

(e) areas that were public places at the end of 31 December 1993.

Effect of confirmation

(3) Any confirmation under this section does not extinguish any native title rights and interests and does not affect any conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.

213 Provisions relating to Federal Court jurisdiction

Native title to be determined in accordance with this Act

(1) If, for the purpose of any matter or proceeding before the Federal Court, it is necessary to make a determination of native title, that determination must be made in accordance with the procedures in this Act.

Matters arising under this Act

(2) Subject to this Act, the Federal Court has jurisdiction in relation to matters arising under this Act.

Authorised Version C2024C00224 registered 19/06/2024

214 Application of amended rules of evidence in proceedings before the Federal Court

Scope

(1) This section applies to a proceeding before the Federal Court that relates to a matter arising under this Act if:

(a) the hearing of the proceeding began before the commencement of Schedule 1 to the *Evidence Amendment Act 2008*; and

(b) evidence has been adduced or admitted in relation to the proceeding.

Application of amendments

(2) Despite item 95 of that Schedule, the amendments of the *Evidence Act 1995* made by that Schedule apply in relation to the proceeding if:

(a) the parties to the proceeding consent to the amendments applying in relation to the proceeding; or

(b) the Court orders, after taking into account the views of the parties to the proceedings, that it is in the interests of justice that the amendments apply in relation to the proceedings.

215 Regulations

General

(1) The Governor-General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Prescribed fees

(2) Without limiting subsection (1):

(a) the regulations may make provision:

Authorised Version C2024C00224 registered 19/06/2024

(i) prescribing fees to be paid for inspecting the Register of Native Title Claims, the Register of Indigenous Land Use Agreements or the National Native Title Register; and

(ii) for or in relation to the waiver or refund, in whole or in part, of such fees; and

(aa) the regulations may make provision:

(i) prescribing fees to be paid to obtain access to, or information from, records or information kept by the Native Title Registrar as mentioned in section 41B or 98A; and

(ii) for or in relation to the waiver or refund, in whole or part, of such fees; and

(b) the regulations may make provision:

(i) prescribing fees to be paid in relation to applications to the Native Title Registrar; and

(ia) the waiver, in whole or in part, of those fees; and

(ii) for or in relation to the refund, in whole or in part, of fees so paid where proceedings on the applications terminate in a manner favourable to the applicants; and

(c) regulations prescribing fees may:

(i) prescribe fees in relation to a particular class or classes of applications only; and

(ii) prescribe different fees in relation to different classes of applications.

Registers

(3) Without limiting subsection (1), the regulations may make provision, not inconsistent with this Act, relating to the way in which:

(a) the Register of Native Title Claims; or

(b) the Register of Indigenous Land Use Agreements; or

(c) the National Native Title Register;

is to be established and kept, or relating to any other matter concerning such a register.

Authorised Version C2024C00224 registered 19/06/2024

Transitional or saving provisions

(4) Without limiting subsection (1), the regulations may make such transitional or saving provisions as are necessary or convenient as a result of the recognition of representative Aboriginal/Torres Strait Islander bodies being withdrawn under section 203AH.

Authorised Version C2024C00224 registered 19/06/2024

Part 15—Definitions

Division 1—List of definitions

222 List of definitions

The following table lists the definitions in this Part and shows their location:

List of Definitions	
Expression	**Section**
Aboriginal peoples	253
Aboriginal/Torres Strait Islander land or waters	253
act	226
act attracting the expedited procedure	237
affect	227
agent prescribed body corporate	253
agricultural lease	247
applicant	253
approved determination of native title	253
arbitral body	253
assessor	253
attributable	239
authorise	253
category A intermediate period act	232B
category A past act	229
category B intermediate period act	232C
category B past act	230
category C intermediate period act	232D
category C past act	231
category D intermediate period act	232E

Authorised Version C2024C00224 registered 19/06/2024

Section 222

List of Definitions	
Expression	**Section**
category D past act	232
Chief Justice	253
claimant application	253
coastal sea	253
commercial lease	246
common law holders	253
Commonwealth Minister	253
community purposes lease	249A
CSC	253
determination of native title	225
exclusive agricultural lease	247A
exclusive pastoral lease	248A
explore	253
extinguish	237A
Federal Court	253
Federal Court Chief Executive Officer	253
Federal Court Registrar	253
forest operations	253
former judge	253
future act	233
Government party	253
grantee party	253
horticulture	253
indigenous land use agreement	253
infrastructure facility	253
interest	253
intermediate period act	232A
Judge	253
jurisdictional limits	253

Authorised Version C2024C00224 registered 19/06/2024

List of Definitions	
Expression	**Section**
land	253
land or waters on which a public work is constructed, established or situated	251D
lease	242
lessee	243
major earthworks	253
member	253
mine	253
mining lease	245
National Native Title Register	253
National Native Title Tribunal	253
native title	223
native title application inquiry	253
native title claim group	253
native title group	24CD, 24DE
native title holder	224
native title party	253
Native Title Registrar	253
native title rights and interests	223
negotiation party	253
NNTT	253
non-claimant application	253
non-exclusive agricultural lease	247B
non-exclusive pastoral lease	248B
non-extinguishment principle	238
non-presidential member	253
notify the public in the determined way	252
offshore place	253
onshore place	253

Authorised Version C2024C00224 registered 19/06/2024

Section 222

List of Definitions	
Expression	**Section**
ordinary title	253
paragraph 51(xxxi) acquisition of property	253
paragraph 51(xxxi) just terms	253
past act	228
pastoral lease	248
permit	244
perpetual lease	249B
prescribed	253
President	253
presidential member	253
previous exclusive possession act	23B
previous non-exclusive possession act	23F
primary production activity	24GA
procedural right	253
public education facilities	253
public health facilities	253
public housing	253
public work	253
recognised State/Territory body	253
Register of Indigenous Land Use Agreements	253
Register of Native Title Claims	253
registered native title body corporate	253
registered native title claimant	253
Registrar	253
representative Aboriginal/Torres Strait Islander body	253
representative body	253
residential lease	249
right to negotiate application	253
Scheduled interest	249C

Authorised Version C2024C00224 registered 19/06/2024

List of Definitions	
Expression	**Section**
similar compensable interest test	240
special matter	253
State Minister	253
statutory authority	253
subject to section 24FA protection	253
subsection 24DJ(1) objection application	253
Territory Minister	253
Torres Strait Islander	253
town or city	251C
traditional activity	44A
Tribunal	253
valid	253
waters	253

Authorised Version C2024C00224 registered 19/06/2024

Division 2—Key concepts: Native title and acts of various kinds etc.

223 Native title

Common law rights and interests

(1) The expression ***native title*** or ***native title rights and interests*** means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

(a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and

(b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and

(c) the rights and interests are recognised by the common law of Australia.

Hunting, gathering and fishing covered

(2) Without limiting subsection (1), ***rights and interests*** in that subsection includes hunting, gathering, or fishing, rights and interests.

Statutory rights and interests

(3) Subject to subsections (3A) and (4), if native title rights and interests as defined by subsection (1) are, or have been at any time in the past, compulsorily converted into, or replaced by, statutory rights and interests in relation to the same land or waters that are held by or on behalf of Aboriginal peoples or Torres Strait Islanders, those statutory rights and interests are also covered by the expression ***native title*** or ***native title rights and interests***.

Authorised Version C2024C00224 registered 19/06/2024

Note: Subsection (3) cannot have any operation resulting from a future act that purports to convert or replace native title rights and interests unless the act is a valid future act.

Subsection (3) does not apply to statutory access rights

(3A) Subsection (3) does not apply to rights and interests conferred by Subdivision Q of Division 3 of Part 2 of this Act (which deals with statutory access rights for native title claimants).

Case not covered by subsection (3)

(4) To avoid any doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title rights and interests):

(a) in a pastoral lease granted before 1 January 1994; or

(b) in legislation made before 1 July 1993, where the reservation or condition applies because of the grant of a pastoral lease before 1 January 1994.

224 Native title holder

The expression ***native title holder***, in relation to native title, means:

(a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interests on trust—the prescribed body corporate; or

(b) in any other case—the person or persons who hold the native title.

225 Determination of native title

A ***determination of native title*** is a determination whether or not native title exists in relation to a particular area (the ***determination area***) of land or waters and, if it does exist, a determination of:

(a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and

(b) the nature and extent of the native title rights and interests in relation to the determination area; and

Authorised Version C2024C00224 registered 19/06/2024

(c) the nature and extent of any other interests in relation to the determination area; and

(d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and

(e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease—whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

Note: The determination may deal with the matters in paragraphs (c) and (d) by referring to a particular kind or particular kinds of non-native title interests.

226 Act

*Section affects meaning of **act** in references relating to native title*

(1) This section affects the meaning of ***act*** in references to an act affecting native title and in other references in relation to native title.

Certain acts included

(2) An ***act*** includes any of the following acts:

(a) the making, amendment or repeal of any legislation;

(b) the grant, issue, variation, extension, renewal, revocation or suspension of a licence, permit, authority or instrument;

(c) the creation, variation, extension, renewal or extinguishment of any interest in relation to land or waters;

(d) the creation, variation, extension, renewal or extinguishment of any legal or equitable right, whether under legislation, a contract, a trust or otherwise;

(e) the exercise of any executive power of the Crown in any of its capacities, whether or not under legislation;

(f) an act having any effect at common law or in equity.

Authorised Version C2024C00224 registered 19/06/2024

Acts by any person

(3) An ***act*** may be done by the Crown in any of its capacities or by any other person.

227 Act affecting native title

An act ***affects*** native title if it extinguishes the native title rights and interests or if it is otherwise wholly or partly inconsistent with their continued existence, enjoyment or exercise.

228 Past act

Definition

(1) This section defines ***past act***.

Acts before 1 July 1993 or 1 January 1994

(2) Subject to subsection (10), if:

(a) either:

(i) at any time before 1 July 1993 when native title existed in relation to particular land or waters, an act consisting of the making, amendment or repeal of legislation took place; or

(ii) at any time before 1 January 1994 when native title existed in relation to particular land or waters, any other act took place; and

(b) apart from this Act, the act was invalid to any extent, but it would have been valid to that extent if the native title did not exist;

the act is a ***past act*** in relation to the land or waters.

Options exercised on or after 1 January 1994 etc.

(3) Subject to subsection (10), an act that takes place on or after 1 January 1994 is a ***past act*** if:

Authorised Version C2024C00224 registered 19/06/2024

(a) it would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and

(b) it takes place:

(i) in exercise of a legally enforceable right created by the making, amendment or repeal of legislation before 1 July 1993 or by any other act done before 1 January 1994; or

(ii) in giving effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith before 1 July 1993, and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made; and

(c) the act is not the making, amendment or repeal of legislation.

Extensions, renewals etc.

(4) Subject to subsections (6) and (10), an act (the ***later act***) that takes place on or after 1 January 1994 is a ***past act*** if:

(a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and

(b) an act (the ***earlier act***) that is a past act because of any subsection of this section (including because of another application of this subsection) took place before the later act; and

(c) the earlier act created interests in a person and the later act creates interests in:

(i) the same person; or

(ii) another person who has acquired the interests of the first person (by assignment, succession or otherwise);

in relation to the whole or part of the land or waters to which the earlier act relates; and

(d) the interests created by the later act take effect before or immediately after the interests created by the earlier act cease to have effect; and

Authorised Version C2024C00224 registered 19/06/2024

(e) the interests created by the later act permit activities of a similar kind to those permitted by the earlier act.

Examples of similar and dissimilar acts for the purposes of paragraph (4)(e)

(5) The following are examples for the purposes of paragraph (4)(e):

(a) the grant of a lease that permits mining only for a particular mineral followed by the grant of a lease that permits similar mining for another mineral is an example of a case where interests created by an earlier act permit activities that are of a similar kind to those permitted by a later act;

(b) the grant of a lease that permits only grazing followed by the grant of a lease that permits mining is an example of a case where interests created by an earlier act permit activities that are not of a similar kind to those permitted by a later act.

Cases excluded from subsection (4)

(6) Subsection (4) does not apply if:

(a) the earlier act was the creation of a non-proprietary interest in relation to land or waters and the later act is the creation of a proprietary interest in land or waters; or

(b) the earlier act was the creation of a proprietary interest in land or waters and the later act is the creation of a larger proprietary interest in land or waters; or

(c) if the earlier act contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders—the later act does not contain the same reservation or condition; or

(d) the earlier act or the later act is the making, amendment or repeal of legislation.

Example of earlier and later acts for the purposes of paragraph (6)(a)

(7) For the purposes of paragraph (6)(a), the issue of a licence followed by the grant of a lease is an example of an earlier act that

Authorised Version C2024C00224 registered 19/06/2024

is the creation of a non-proprietary interest in relation to land and a later act that is the creation of a proprietary interest in land.

Example of earlier and later acts for the purposes of paragraph (6)(b)

(8) For the purposes of paragraph (6)(b), the grant of a lease followed by the grant of a freehold estate is an example of an earlier act that is the creation of a proprietary interest in land and a later act that is the creation of a larger proprietary interest in land.

Other extensions, and developments, of earlier acts

(9) Subject to subsection (10), an act (the ***later act***) that takes place on or after 1 January 1994 is a ***past act*** if:

(a) the later act would be a past act under subsection (2) if that subsection were not limited in its application to acts taking place before a particular day; and

(b) an act (the ***earlier act***) that is a past act because of any subsection of this section took place before the later act; and

(c) the earlier act contained or conferred a reservation, condition, permission or authority under which the whole or part of the land or waters to which the earlier act related was to be used at a later time for a particular purpose (for example, a reservation for forestry purposes); and

(d) the later act is done in good faith under or in accordance with the reservation, condition, permission or authority (for example, the issue in good faith of a licence to take timber under a reservation for forestry purposes); and

(e) the later act is not the making, amendment or repeal of legislation.

Excluded acts

(10) An act is not a ***past act*** if it is:

(a) the *Queensland Coast Islands Declaratory Act 1985* of Queensland; or

Authorised Version C2024C00224 registered 19/06/2024

(b) any other act declared by the regulations to be an excluded act for the purposes of this paragraph.

229 Category A past act

Section defines expression

(1) This section defines the expression ***category A past act***.

Grant of certain freehold estates

(2) A past act consisting of the grant of a freehold estate is a ***category A past act*** if:

(a) either:

(i) the grant was made before 1 January 1994 and the estate existed on 1 January 1994; or

(ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or 228(9) (which deals with other extensions etc. of earlier acts) applies; and

(b) the grant is not:

(i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or

(ii) a grant made by or under legislation that grants freehold estates only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

Grant of certain leases

(3) A past act consisting of the grant of:

(a) a commercial lease, an agricultural lease, a pastoral lease or a residential lease; or

(b) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a

Authorised Version C2024C00224 registered 19/06/2024

separate lease in respect of land or waters mentioned in paragraph (a) of that subsection;

is a ***category A past act*** if:

(c) either:

(i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or

(ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) or (9) applies; and

(d) the grant is not:

(i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or

(ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

Construction of public works

(4) A past act consisting of the construction or establishment of any public work is a ***category A past act*** if:

(a) the work commenced to be constructed or established before 1 January 1994 and the construction or establishment had not been completed by that day; or

(b) the work was constructed or established before 1 January 1994 and still existed on that day; or

(c) the work was constructed or established on or after 1 January 1994 and the construction or establishment is a past act because subsection 228(9) applies.

230 Category B past act

A ***category B past act*** is a past act consisting of the grant of a lease where:

Authorised Version C2024C00224 registered 19/06/2024

(a) the grant is not a category A past act; and
(b) the lease is not a mining lease; and
(c) either:
(i) the grant was made before 1 January 1994 and the lease was in force on 1 January 1994; or
(ii) the grant was made on or after 1 January 1994 and it is a past act because subsection 228(3) (which deals with such things as the exercise of options) or (9) (which deals with other extensions etc. of earlier acts) applies; and
(d) the grant is not:
(i) a grant by the Crown in any capacity to the Crown, or to a statutory authority of the Crown, in any capacity; or
(ii) a grant made by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
(iii) a grant of a prescribed kind to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
(iv) a grant over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters.

231 Category C past act

A ***category C past act*** is a past act consisting of the grant of a mining lease.

232 Category D past act

A ***category D past act*** is any past act that is not a category A past act, a category B past act or a category C past act.

232A Intermediate period act

(1) This section defines ***intermediate period act***.

Note: Intermediate period acts may be validated under Division 2A of Part 2.

Authorised Version C2024C00224 registered 19/06/2024

Acts between 1.1.94 and 23.12.96

(2) Subject to subsection (3), an act is an ***intermediate period act*** if:

(a) the act took place at any time during the period from the beginning of 1 January 1994 until the end of 23 December 1996 when native title existed in relation to particular land or waters; and

(b) the act did not consist of the making, amendment or repeal of legislation, other than legislation that affects the native title by:

(i) creating a freehold estate, lease or licence over the land or waters; or

(ii) containing, making or conferring a reservation, proclamation or dedication under which the whole or part of the land or waters is to be used for a particular purpose; and

Note: An intermediate period act, such as the grant of a lease, may be validated under Division 2A of Part 2 even if the legislation under which the act was done is not so validated.

(c) the act was invalid to any extent because of Division 3 of Part 2 (disregarding section 24EBA) or for any other reason, but it would have been valid to that extent if the native title did not exist; and

(d) the act was not a past act (see section 228); and

(e) at any time before the act was done, either:

(i) a grant of a freehold estate or a lease (other than a mining lease) was made covering any of the land or waters affected by the act; or

(ii) a public work was constructed or established on any of the land or waters affected by the act; and

(f) the grant, or the construction or establishment, mentioned in paragraph (e) was valid (including because of any provision of this Act).

Authorised Version C2024C00224 registered 19/06/2024

Exclusion by regulation

(3) The regulations may provide that an act is not an ***intermediate period act***.

232B Category A intermediate period act

(1) This section defines the expression ***category A intermediate period act***.

Grant of freehold estates

(2) An intermediate period act consisting of the grant or vesting of a freehold estate is a ***category A intermediate period act***.

Grant of certain leases etc.

(3) An intermediate period act consisting of the grant or vesting of:

(a) a Scheduled interest (see section 249C); or

(b) a commercial lease that is neither an agricultural lease nor a pastoral lease; or

(c) an exclusive agricultural lease (see section 247A) or an exclusive pastoral lease (see section 248A); or

(d) a residential lease; or

(e) a community purposes lease (see section 249A); or

(f) what is taken by subsection 245(3) (which deals with the dissection of mining leases into certain other leases) to be a separate lease in respect of land or waters mentioned in paragraph (a) of that subsection, assuming that the reference in subsection 245(2) to "1 January 1994" were instead a reference to "24 December 1996"; or

(g) any lease (other than a mining lease) that confers a right of exclusive possession over particular land or waters;

is a ***category A intermediate period act***.

Vesting of certain land or waters

(4) If:

Authorised Version C2024C00224 registered 19/06/2024

(a) an intermediate period act is done by or under legislation of a State or a Territory; and

(b) the intermediate period act consists of the vesting of particular land or waters in any person; and

(c) a right of exclusive possession of the land or waters is expressly or impliedly conferred on the person by or under the legislation;

the intermediate period act is a ***category A intermediate period act***.

Construction of public works

(7) An intermediate period act consisting of the construction or establishment of any public work is a ***category A intermediate period act***.

(8) An intermediate period act is not a ***category A intermediate period act*** if it is:

(a) the grant or vesting of any thing that is made or done by or under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(b) the grant or vesting of any thing expressly for the benefit of, or to or in a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(c) the grant or vesting of any thing over particular land or waters, if at the time a thing covered by paragraph (a) or (b) is in effect in relation to the land or waters.

Exclusion by regulation

(9) The regulations may provide that an act is not a ***category A intermediate period act***.

232C Category B intermediate period act

A ***category B intermediate period act*** is an intermediate period act consisting of the grant of a lease if:

(a) the grant is not a category A intermediate period act; and

Authorised Version C2024C00224 registered 19/06/2024

(b) the lease is not:

(i) a mining lease; or

(ii) a lease granted by or under legislation that grants leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(iii) a lease granted expressly for the benefit of, or to a person to hold on trust expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; or

(iv) any other lease granted over particular land or waters, if at the time a lease covered by subparagraph (ii) or (iii) is in force over the land or waters.

232D Category C intermediate period act

A ***category C intermediate period act*** is an intermediate period act consisting of the grant of a mining lease.

232E Category D intermediate period act

A ***category D intermediate period act*** is any intermediate period act that is not a category A intermediate period act, a category B intermediate period act or a category C intermediate period act.

233 Future act

Definition

(1) Subject to this section, an act is a ***future act*** in relation to land or waters if:

(a) either:

(i) it consists of the making, amendment or repeal of legislation and takes place on or after 1 July 1993; or

(ii) it is any other act that takes place on or after 1 January 1994; and

(b) it is not a past act; and

(c) apart from this Act, either:

Authorised Version C2024C00224 registered 19/06/2024

(i) it validly affects native title in relation to the land or waters to any extent; or

(ii) the following apply:

(A) it is to any extent invalid; and

(B) it would be valid to that extent if any native title in relation to the land or waters did not exist; and

(C) if it were valid to that extent, it would affect the native title.

Validation and extinguishment legislation excluded

(2) If:

(a) the act consists of the making, amendment or repeal of legislation; and

(b) the act purports to:

(i) validate any past act or intermediate period act; or

(ii) extinguish native title, or extinguish native title rights and interests to an extent; and

(c) the act is done or permitted to be done by Division 2, 2A or 2B of Part 2;

subsection (1) does not apply to the extent that the act purports to validate the act, or to extinguish the native title or the native title rights and interests.

Acts creating or affecting Aboriginal/Torres Strait Islander land or waters excluded

(3) Subsection (1) does not apply to any of the following acts:

(a) an act that causes land or waters to be held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under a law mentioned in the definition of ***Aboriginal/Torres Strait Islander land or waters*** in section 253;

(b) any act affecting Aboriginal/Torres Strait Islander land or waters.

Authorised Version C2024C00224 registered 19/06/2024

237 Act attracting the expedited procedure

A future act is an ***act attracting the expedited procedure*** if:

(a) the act is not likely to interfere directly with the carrying on of the community or social activities of the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of native title in relation to the land or waters concerned; and

(b) the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are the holders (disregarding any trust created under Division 6 of Part 2) of the native title in relation to the land or waters concerned; and

(c) the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

237A Extinguish

The word ***extinguish***, in relation to native title, means permanently extinguish the native title. To avoid any doubt, this means that after the extinguishment the native title rights and interests cannot revive, even if the act that caused the extinguishment ceases to have effect.

238 Non-extinguishment principle

Effect of references

(1) This section sets out the effect of a reference to the non-extinguishment principle applying to an act.

Native title not extinguished

(2) If the act affects any native title in relation to the land or waters concerned, the native title is nevertheless not extinguished, either wholly or partly.

Authorised Version C2024C00224 registered 19/06/2024

Rights and interests wholly ineffective

(3) In such a case, if the act is wholly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act.

Rights and interests partly ineffective

(4) If the act is partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title continues to exist in its entirety, but the rights and interests have no effect in relation to the act to the extent of the inconsistency.

Who the native title holders are

(5) Despite the fact that the native title rights and interests have no effect (as mentioned in subsection (3)) or have only limited effect (as mentioned in subsection (4)) in relation to the act, the persons who are entitled in accordance with the traditional laws and customs, as applying from time to time, to possess those rights and interests continue to be the native title holders, subject to Division 6 of Part 2 (which deals with the holding of native title on trust).

Complete removal of act or its effects

(6) If the act or its effects are later wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect.

Partial removal of act or its effects

(7) If the act or its effects are later removed only to an extent, or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent.

Authorised Version C2024C00224 registered 19/06/2024

Example of operation of section

(8) An example of the operation of this section is its application to a category C past act consisting of the grant of a mining lease that confers exclusive possession over an area of land or waters in relation to which native title exists. In such a case the native title rights and interests will continue to exist but will have no effect in relation to the lease while it is in force. However, after the lease concerned expires (or after any extension, renewal or re-grant of it to which subsection 228(3), (4) or (9) applies expires), the rights and interests again have full effect.

239 Act attributable to the Commonwealth, a State or a Territory

An act is ***attributable*** to the Commonwealth, a State or a Territory if the act is done by:

(a) the Crown in right of the Commonwealth, the State or the Territory; or

(b) the Parliament or Legislative Assembly of the Commonwealth, the State or the Territory; or

(c) any person under a law of the Commonwealth, the State or the Territory.

240 Similar compensable interest test

The ***similar compensable interest test*** is satisfied in relation to a past act, an intermediate period act or a future act if:

(a) the native title concerned relates to an onshore place; and

(b) the compensation would, apart from this Act, be payable under any law for the act on the assumption that the native title holders instead held ordinary title to any land or waters concerned and to the land adjoining, or surrounding, any waters concerned.

Authorised Version C2024C00224 registered 19/06/2024

Division 3—Leases

241 Coverage of Division

This Division contains definitions relating to leases.

242 Lease

(1) The expression ***lease*** includes:

(a) a lease enforceable in equity; or

(b) a contract that contains a statement to the effect that it is a lease; or

(c) anything that, at or before the time of its creation, is, for any purpose, by a law of the Commonwealth, a State or a Territory, declared to be or described as a lease.

References to mining lease

(2) In the case only of references to a mining lease, the expression ***lease*** also includes a licence issued, or an authority given, by or under a law of the Commonwealth, a State or a Territory.

243 Lessee

(1) Subject to subsection (2), the expression ***lessee*** includes any person who, by assignment, succession, sub-lease or otherwise, acquires, enjoys or is entitled to exercise any of the interests under the lease of a lessee (including of a person who is a lessee because of another application or applications of this section).

Lessee of certain mining leases

(2) In the case of a lease that is a mining lease because of subsection 242(2) (which covers licences and authorities given by or under laws), the expression ***lessee*** means:

(a) the person to whom the licence mentioned in that subsection was issued, or the authority so mentioned was given; or

Authorised Version C2024C00224 registered 19/06/2024

(b) any person who, by assignment, succession or otherwise, acquires or enjoys the licence or authority or is entitled to exercise rights under the licence or the authority.

244 Permit

Definition

(1) The expression ***permit***, in a reference to a lease permitting a thing, means permit:

(a) expressly by the terms of the lease; or

(b) by implication from the terms of the lease; or

(c) otherwise (including expressly, or by implication, from the operation of legislation).

Example of implication from legislation

(2) An example of a thing permitted by implication from the operation of legislation is where the legislation states that, if a lease is not renewed, compensation is payable for any building constructed on the land subject to the lease. The construction of the building is permitted by implication from the statement.

245 Mining lease

Definition

(1) A ***mining lease*** is a lease (other than an agricultural lease, a pastoral lease or a residential lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for mining.

Mining leases to which subsection (3) applies

(2) Subject to subsection (4), subsection (3) applies to a mining lease if the lease was in force at the beginning of 1 January 1994 (the ***test time***) and either or both of the following paragraphs apply:

(a) the following conditions are satisfied:

Authorised Version C2024C00224 registered 19/06/2024

(i) a city, town or private residences had been wholly or partly constructed at the test time on a part of the land or waters covered by the lease;

(ii) the construction was permitted by the lease;

(iii) in the case of any private residences—they had been, or were being, constructed as fixtures and it was reasonably likely at the test time that, if mining under the lease were to cease at any later time, they would continue to be used as private residences;

(b) the following conditions are satisfied:

(i) other buildings or works had been wholly or partly constructed as fixtures at the test time, on a part of the land or waters covered by the lease, for carrying on an activity in connection with any city, town or private residences covered by paragraph (a);

(ii) the construction was permitted by the lease;

(iii) it was reasonably likely at the test time that, if mining under the lease were to cease at any later time, the buildings or works would continue to be used to carry on the same activity, or a similar activity, in connection with any city, town or private residences mentioned in paragraph (a).

Dissection of mining lease

(3) If this subsection applies to a mining lease, the lease is taken instead to consist of separate leases in respect of:

(a) the part of the land or waters in respect of which paragraph (2)(a) or (b), or both paragraphs, are satisfied; and

(b) the remainder of the land or waters.

Exclusion of certain cities, towns etc.

(4) The Commonwealth Minister may, by legislative instrument, determine that a specified city, town, private residence, building or works is not to be taken into account for the purposes of subsection (3).

Authorised Version C2024C00224 registered 19/06/2024

246 Commercial lease

Definition

(1) A ***commercial lease*** is a lease (other than a mining lease) that permits the lessee to use the land or waters covered by the lease solely or primarily for business or commercial purposes. The defining of ***agricultural lease***, ***pastoral lease*** and ***residential lease*** in sections 247, 248 and 249 is not intended to limit the coverage of ***commercial lease***.

Examples of a commercial lease

(2) For the purposes of subsection (1):
  (a) construction on land of a building to be used for business or commercial purposes, or of a hotel, motel or tourist resort, is an example of use of the land for business or commercial purposes; and
  (b) use of a building on land for business or commercial purposes, or operation of a hotel, motel or tourist resort on land, is an example of use of the land for business or commercial purposes.

247 Agricultural lease

(1) An ***agricultural lease*** is a lease that:
  (a) permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural purposes (which includes the planting and growing in the land of trees, vines or vegetables); or
  (b) contains a statement to the effect that it is solely or primarily an agricultural lease or that it is granted solely or primarily for agricultural purposes.

Aquaculture

(2) Except in so far as the expression is used in or in relation to Division 2 of Part 2, ***agricultural lease*** also includes a lease that

Authorised Version C2024C00224 registered 19/06/2024

permits the lessee to use the land or waters covered by the lease solely or primarily for aquacultural purposes.

247A Exclusive agricultural lease

An ***exclusive agricultural lease*** is an agricultural lease that:

(a) confers a right of exclusive possession over the land or waters covered by the lease; or

(b) is a Scheduled interest.

247B Non-exclusive agricultural lease

A ***non-exclusive agricultural lease*** is an agricultural lease that is not an exclusive agricultural lease.

Note: In practice, there might be few, or no, non-exclusive agricultural leases.

248 Pastoral lease

A ***pastoral lease*** is a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for:

(i) maintaining or breeding sheep, cattle or other animals; or

(ii) any other pastoral purpose; or

(b) contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes.

248A Exclusive pastoral lease

An ***exclusive pastoral lease*** is a pastoral lease that:

(a) confers a right of exclusive possession over the land or waters covered by the lease; or

(b) is a Scheduled interest.

Authorised Version C2024C00224 registered 19/06/2024

248B Non-exclusive pastoral lease

A ***non-exclusive pastoral lease*** is a pastoral lease that is not an exclusive pastoral lease.

249 Residential lease

Definition

(1) A ***residential lease*** is a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for constructing or occupying a private residence.

Examples of residential lease

(2) For the purposes of subsection (1):
  (a) construction of a house or unit on land for a person to live in is an example of use of the land for constructing a private residence; and
  (b) use of a house or unit on land that is leased out to a person to live in is an example of use of the land for occupying a private residence; and
  (c) use of a hotel, motel, caravan or tent on land is an example of something that is not use of the land for occupying a private residence.

249A Community purposes lease

A ***community purposes lease*** is a lease that:
  (a) permits the lessee to use the land or waters covered by the lease solely or primarily for community, religious, educational, charitable or sporting purposes; or
  (b) contains a statement to the effect that it is solely or primarily a community purposes lease or that it is granted solely or primarily for community, religious, educational, charitable or sporting purposes.

Authorised Version C2024C00224 registered 19/06/2024

249B Perpetual lease

A ***perpetual lease*** is a lease with the following features:

(a) the lease is in perpetuity;

(b) the lease may be forfeited, cancelled or otherwise cease to have effect for failure to pay rent or for contravention of a condition or conditions.

249C Scheduled interest

(1) A ***Scheduled interest*** is:

(a) anything set out in Schedule 1, other than a mining lease or anything whose grant or vesting is covered by subsection 23B(9), (9A), (9B), (9C) or (10) (which provide that certain acts are not previous exclusive possession acts); or

(b) an interest, in relation to land or waters, of a type declared by a regulation for the purposes of this paragraph to be a Scheduled interest.

Regulations to cover single type of interest only

(2) A particular regulation only has effect for the purposes of paragraph (1)(b) if it covers a single type of interest.

Regulations to cover exclusive possession interests only

(3) Before the Governor-General makes a regulation for the purposes of paragraph (1)(b) declaring a particular interest to be a Scheduled interest, the Minister must be satisfied that the interest confers a right of exclusive possession that extinguishes all native title rights and interests over the land or waters concerned.

Authorised Version C2024C00224 registered 19/06/2024

Division 4—Sundry definitions etc.

250 Application to things happening before commencement

The use of the present tense in any provision of this Act does not imply that the provision does not apply to things happening before the commencement of the provision.

251A Authorising the making of indigenous land use agreements

For the purposes of this Act, persons holding native title in relation to land or waters in the area covered by an indigenous land use agreement ***authorise*** the making of the agreement if:

(a) where there is a process of decision-making that, under the traditional laws and customs of the persons who hold or may hold the common or group rights comprising the native title, must be complied with in relation to authorising things of that kind—the persons authorise the making of the agreement in accordance with that process; or

(b) where there is no such process—the persons authorise the making of the agreement in accordance with a process of decision-making agreed to and adopted, by the persons who hold or may hold the common or group rights comprising the native title, in relation to authorising the making of the agreement or of things of that kind.

251B Authorising the making of applications

For the purposes of this Act, all the persons in a native title claim group or compensation claim group ***authorise*** a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, if:

(a) where there is a process of decision-making that, under the traditional laws and customs of the persons in the native title claim group or compensation claim group, must be complied with in relation to authorising things of that kind—the persons in the native title claim group or compensation claim

Authorised Version C2024C00224 registered 19/06/2024

group authorise the person or persons to make the application and to deal with the matters in accordance with that process; or

(b) where there is no such process—the persons in the native title claim group or compensation claim group authorise the other person or persons to make the application and to deal with the matters in accordance with a process of decision-making agreed to and adopted, by the persons in the native title claim group or compensation claim group, in relation to authorising the making of the application and dealing with the matters, or in relation to doing things of that kind.

251BA Conditions on authority

(1) The persons who authorise:

(a) the making of an indigenous land use agreement under section 251A; or

(b) a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, under section 251B;

may impose conditions on the authority.

(2) The conditions must be imposed:

(a) where there is a process of decision-making that, under the traditional laws and customs of the persons, must be complied with in relation to authorising things of that kind—in accordance with that process; or

(b) where there is no such process—in accordance with a process of decision-making agreed to and adopted, by the persons, in relation to authorising things of that kind.

Note 1: Consequences of a failure to comply with a condition may include:

(a) replacement of the applicant (see subparagraph 66B(1)(a)(iv)); and

(b) a Federal Court order (see section 84D).

Note 2: Conditions that may be imposed include:

(a) a requirement that something required to be done under this Act be done by the authorised persons unanimously, instead of by majority (see section 62C); and

Authorised Version C2024C00224 registered 19/06/2024

(b) a condition setting out what happens if an authorised person dies or is unable to act as an applicant because of physical or mental incapacity (see section 66B).

(3) A person or persons authorised to make an application under section 61 must seek leave to amend the application to reflect any imposition, variation or revocation of conditions on the authority that occurs after the application is made.

251C Towns and cities

Areas in Western Australia

(1) Subject to subsection (4), a particular area in Western Australia is a ***town or city*** if, as at 23 December 1996, it was gazetted as a townsite or as suburban lands under section 10 of the *Land Act 1933* of Western Australia.

Areas in South Australia

(2) Subject to subsection (4), a particular area in South Australia is a ***town or city*** if, as at 23 December 1996, it was:

(a) within the boundaries of a town constituted under section 5(g) of the *Crown Lands Act 1929* of South Australia; or

(b) set apart as town lands, or suburban lands, by notice under section 5(h) of that Act; or

(c) town lands, park lands, or suburban lands, within the meaning of section 4 of that Act; or

(d) gazetted in the South Australian Government Gazette, or proclaimed by the Governor of South Australia, as suburban lands, where the gazettal took place, or the proclamation was made, before the enactment of the *Crown Lands Act 1929* of South Australia; or

(e) a township within the meaning of section 5(1) of the *Local Government Act, 1934* of South Australia; or

(f) park land, within the meaning of section 5(1) of that Act, that was within or adjacent to a township within the meaning of that section; or

Authorised Version C2024C00224 registered 19/06/2024

(g) the area in relation to which a municipal council was constituted under section 6 of that Act; or

(h) a township within the meaning of section 319 of that Act; or

(i) a township allotment within the meaning of section 5 of the *Renmark Irrigation Trust Act 1936* of South Australia; or

(j) town lands within the meaning of section 5 of the *Water Conservation Act 1936* of South Australia.

Areas in the Northern Territory

(3) Subject to subsection (4), a particular area in the Northern Territory is a ***town or city*** if, as at 23 December 1996, it was:

(a) gazetted as a town (other than the town of Darwin, Hatches Creek, Brocks Creek, Burrundie or Urapunga) under subsection 95(1) of the *Crown Lands Act 1992* (NT); or

(b) the area in the Schedule to the *Darwin Lands Acquisition Act 1945* of the Commonwealth; or

(c) within a municipality within the meaning of the *Local Government Act 1993* (NT).

Exclusion of areas in Western Australia, South Australia or Northern Territory

(4) A particular area is not a ***town or city*** under subsection (1), (2) or (3) if the Commonwealth Minister, by legislative instrument, so determines.

Other areas

(5) A particular area in any State or Territory is a ***town or city*** if the Commonwealth Minister determines, by legislative instrument, that, in his or her opinion, the area was a town or a city as at 23 December 1996.

Exclusion of ordinary meaning

(6) Except as mentioned in this section, an area is not a ***town or city***.

Authorised Version C2024C00224 registered 19/06/2024

251D Land or waters on which a public work is constructed, established or situated

In this Act, a reference to land or waters on which a public work is constructed, established or situated includes a reference to any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

252 Notify the public in the determined way

Definition

(1) The expression ***notify the public in the determined way*** means give notice in the way determined, by legislative instrument, by the Commonwealth Minister for the purposes of the provision in which the expression is used.

Examples of ways that may be determined

(2) Without limiting the ways that the Commonwealth Minister may determine, he or she may determine that the notice may be given:
  (a) in newspapers (including newspapers catering mainly or exclusively for the interests of Aboriginal peoples or Torres Strait Islanders); or
  (b) by radio broadcasts or television transmissions.

253 Other definitions

Unless the contrary intention appears:

Aboriginal peoples means peoples of the Aboriginal race of Australia.

Aboriginal/Torres Strait Islander land or waters means land or waters held by or for the benefit of Aboriginal peoples or Torres Strait Islanders under:
  (a) any of the following laws of the Commonwealth:

Authorised Version C2024C00224 registered 19/06/2024

(i) the *Aboriginal Land and Waters (Jervis Bay Territory) Act 1986*;
(ii) the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987*;
(iii) the *Aboriginal Land Rights (Northern Territory) Act 1976*; or

(b) any of the following laws of South Australia:
(i) the *Aboriginal Lands Trust Act 1966*;
(ii) the *Maralinga Tjarutja Land Rights Act 1984*;
(iii) the *Pitjantjatjara Land Rights Act 1981*; or

(c) any other law, or part of a law, prescribed for the purposes of the provision in which the expression is used.

agent prescribed body corporate, in relation to native title rights and interests, means:

(a) a prescribed body corporate that is determined under section 57 in relation to the native title; or

(b) a prescribed body corporate that, under regulations made for the purposes of paragraph 56(4)(e), is to perform the functions referred to in subsection 57(3) in relation to the native title; or

(c) a prescribed body corporate that replaces, under regulations made for the purposes of section 60:
(i) a prescribed body corporate referred to in paragraph (a) or (b); or
(ii) a prescribed body corporate that is an agent prescribed body corporate in relation to the native title because of an earlier application of this paragraph.

applicant has a meaning affected by subsections 61(2) and 66B(2C).

approved determination of native title has the meaning given by subsections 13(3), (4) and (7).

arbitral body has the meaning given by section 27.

Authorised Version C2024C00224 registered 19/06/2024

assessor means an assessor appointed under Part VA of the *Federal Court of Australia Act 1976*.

authorise:

(a) in relation to the making of indigenous land area agreements—has the meaning given by section 251A; and

(b) in relation to the making of native title determination applications or compensation applications, and dealing with matters arising in relation to such applications—has the meaning given by section 251B.

Chief Justice means the Chief Justice of the Federal Court of Australia.

claimant application means a native title determination application that a native title claim group has authorised to be made, and, unless the contrary intention appears, includes such an application that has been amended.

coastal sea has the meaning given by subsection 15B(4) of the *Acts Interpretation Act 1901*.

common law holders has the meaning given by section 56.

Commonwealth Minister means the Minister applicable, in relation to the provision in which the expression is used, under section 19 of the *Acts Interpretation Act 1901*.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

explore includes:

(a) conduct a geological, geophysical or geochemical survey; or

(b) take samples for the purpose of analysis.

Federal Court means the Federal Court of Australia.

Federal Court Chief Executive Officer means the Chief Executive Officer and Principal Registrar of the Federal Court.

Authorised Version C2024C00224 registered 19/06/2024

Federal Court Registrar means the Federal Court Chief Executive Officer or a Registrar, District Registrar or Deputy District Registrar of the Federal Court.

forest operations means:

(a) the planting or tending, in a plantation or forest, of trees intended for felling; or

(b) the felling of such trees.

former judge means a person who has been a Justice of the High Court or a judge of another federal court or of the Supreme Court of a State or Territory.

Government party has the meaning given by subsection 26(1).

grantee party has the meaning given by paragraph 29(2)(c).

horticulture includes:

(a) propagation or maintenance, as well as cultivation; or

(b) propagation, maintenance or cultivation of seeds, bulbs, spores or similar things; or

(c) propagation, maintenance or cultivation of fungi; or

(d) propagation, maintenance or cultivation in environments other than soil, whether natural or artificial.

indigenous land use agreement has the meaning given by sections 24BA, 24CA and 24DA.

infrastructure facility includes any of the following:

(a) a road, railway, bridge or other transport facility;

(b) a jetty or port;

(c) an airport or landing strip;

(d) an electricity generation, transmission or distribution facility;

(e) a storage, distribution or gathering or other transmission facility for:

(i) oil or gas; or

(ii) derivatives of oil or gas;

Authorised Version C2024C00224 registered 19/06/2024

(f) a storage or transportation facility for coal, any other mineral or any mineral concentrate;

(g) a dam, pipeline, channel or other water management, distribution or reticulation facility;

(h) a cable, antenna, tower or other communication facility;

(i) any other thing that is similar to any or all of the things mentioned in paragraphs (a) to (h) and that the Commonwealth Minister determines, by legislative instrument, to be an infrastructure facility for the purposes of this paragraph.

interest, in relation to land or waters, means:

(a) a legal or equitable estate or interest in the land or waters; or

(b) any other right (including a right under an option and a right of redemption), charge, power or privilege over, or in connection with:

(i) the land or waters; or

(ii) an estate or interest in the land or waters; or

(c) a restriction on the use of the land or waters, whether or not annexed to other land or waters.

Judge means a Judge of the Federal Court.

jurisdictional limits means:

(a) in relation to a State—the area within:

(i) the limits of the State; or

(ii) the coastal waters of the State (within the meaning of the *Coastal Waters (State Powers) Act 1980*); or

(b) in relation to the Northern Territory—the area within:

(i) the limits of the Territory; or

(ii) the coastal waters of the Territory (within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980*); or

(c) in relation to any other Territory—the area within the limits of the Territory.

Authorised Version C2024C00224 registered 19/06/2024

land includes the airspace over, or subsoil under, land, but does not include waters.

Note 1: Because of the definition of ***waters***, not only rivers and lakes etc., but also such things as the bed or subsoil under, and airspace over, rivers and lakes etc. will not be included in ***land***.

Note 2: Because of the definition of ***waters***, the area between high water and low water will not be included in ***land***.

major earthworks means earthworks (other than in the course of mining) whose construction causes major disturbance to the land, or to the bed or subsoil under waters.

mediator means:

(a) in relation to an application—the person or body to which the application has been referred under subsection 86B(1) for mediation; or

(b) in relation to the whole or a part of a proceeding—the person or body to which the whole or the part of the proceeding has been referred under subsection 86B(5) for mediation.

member means a member of the Tribunal.

mine includes:

(a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c)); or

(b) extract petroleum or gas from land or from the bed or subsoil under waters; or

(c) quarry;

but does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, for a purpose other than:

(d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or

(e) processing the sand, gravel, rocks or soil by non-mechanical means.

Authorised Version C2024C00224 registered 19/06/2024

National Native Title Register means the register established and maintained under Part 8.

National Native Title Tribunal or ***NNTT*** means the National Native Title Tribunal established under Part 6.

native title application inquiry has the meaning given by section 138C.

native title claim group means:

(a) in relation to a claim in an application for a determination of native title made to the Federal Court—the native title claim group mentioned in relation to the application in the table in subsection 61(1); or

(b) in relation to a claim in an application for an approved determination of native title made to a recognised State/Territory body—the person or persons making the claim, or on whose behalf the claim is made.

native title party has the meaning given by paragraphs 29(2)(a) and (b) and section 30.

Native Title Registrar means the Native Title Registrar appointed under Part 5.

negotiation party has the meaning given by section 30A.

non-claimant application means a native title determination application that is not a claimant application.

non-presidential member means a member who, in accordance with the table in subsection 110(1), is of the non-presidential class.

offshore place means any land or waters to which this Act extends, other than land or waters in an onshore place.

onshore place means land or waters within the limits of a State or Territory to which this Act extends.

ordinary title, in relation to an onshore place that is land, means:

Authorised Version C2024C00224 registered 19/06/2024

(a) if the land is not in the Australian Capital Territory or the Jervis Bay Territory—a freehold estate in fee simple in the land other than such an estate granted by or under a law that grants such estates only to or for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(b) if the land is in the Australian Capital Territory or the Jervis Bay Territory—a lease over the land granted by or on behalf of the Commonwealth under a law of the Commonwealth or of the Territory, other than a lease granted by or under a law that grants such leases only to or for the benefit of Aboriginal peoples or Torres Strait Islanders.

paragraph 51(xxxi) acquisition of property means an acquisition of property within the meaning of paragraph 51(xxxi) of the Constitution.

paragraph 51(xxxi) just terms means just terms within the meaning of paragraph 51(xxxi) of the Constitution.

person conducting the mediation means the person mentioned in subsection 94D(2) who conducts a conference under section 94D in relation to the mediation concerned.

prescribed means prescribed by the regulations.

President means the President of the Tribunal.

presidential member means a member who, in accordance with the table in section 110, is of the presidential class.

procedural right, in relation to an act, means:

(a) a right to be notified of the act; or

(b) a right to object to the act; or

(c) any other right that is available as part of the procedures that are to be followed when it is proposed to do the act.

public education facilities means education facilities operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

Authorised Version C2024C00224 registered 19/06/2024

public health facilities means health facilities operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

public housing means housing operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

public work means:

(a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
  (i) a building, or other structure (including a memorial), that is a fixture; or
  (ii) a road, railway or bridge; or
  (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2—a stock-route; or
  (iii) a well, or bore, for obtaining water; or
  (iv) any major earthworks; or
(b) a building that is constructed with the authority of the Crown, other than on a lease.

Note: In addition, section 251D deals with land or waters relating to public works.

recognised State/Territory body means a court, office, tribunal or body in relation to which a determination under section 207A is in force.

registered native title body corporate means:

(a) a prescribed body corporate whose name and address are registered on the National Native Title Register under paragraph 193(2)(e) or subsection 193(4); or
(b) a body corporate whose name and address are registered on the National Native Title Register under paragraph 193(2)(f).

registered native title claimant, in relation to land or waters, means a person or group of persons whose name or names appear in an entry on the Register of Native Title Claims as the applicant in

Authorised Version C2024C00224 registered 19/06/2024

relation to a claim to hold native title in relation to the land or waters.

Register of Indigenous Land Use Agreements means the register established and maintained under Part 8A.

Register of Native Title Claims means the Register established and maintained in accordance with Part 7.

Registrar means the Native Title Registrar.

representative Aboriginal/Torres Strait Islander body means a body that is recognised under section 203AD.

representative body means a representative Aboriginal/Torres Strait Islander body.

right to negotiate application has the meaning given by paragraph 139(b).

special matter has the meaning given by paragraph 139(1)(c).

State Minister, in relation to a State, means:

(a) if there is no nomination under paragraph (b)—the Premier of the State; or

(b) a Minister of the Crown of the State nominated in writing given to the Commonwealth Minister by the Premier for the purposes of this definition.

statutory authority, in relation to the Crown in right of the Commonwealth, a State or a Territory, means any authority or body (including a corporation sole) established by a law of the Commonwealth, the State or Territory other than a general law allowing incorporation as a company or body corporate.

subject to section 24FA protection has the meaning given by Subdivision F of Division 3 of Part 2.

subsection 24DJ(1) objection application has the meaning given by paragraph 139(d).

Authorised Version C2024C00224 registered 19/06/2024

Territory Minister, in relation to a Territory, means:

(a) if there is no nomination under paragraph (b)—the Chief Minister of the Territory; or

(b) a Minister of the Territory nominated in writing given to the Commonwealth Minister by the Chief Minister for the purposes of this definition.

Torres Strait Islander means a descendant of an indigenous inhabitant of the Torres Strait Islands.

Tribunal means the National Native Title Tribunal.

valid includes having full force and effect.

waters includes:

(a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or

(b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph (a)); or

(c) the shore, or subsoil under or airspace over the shore, between high water and low water.

Authorised Version C2024C00224 registered 19/06/2024

Schedule 1—Scheduled interests

Note: This Schedule lists things that are covered by the expression ***Scheduled interest*** (see section 249C).

Part 1—New South Wales

1 *Crown Lands Occupation Act 1861*

A lease for special purposes under section 30 of the *Crown Lands Occupation Act 1861*.

2 *Crown Lands Act 1884*

(1) A conditional lease under the *Crown Lands Act 1884*.

(2) A special lease under section 89 of the *Crown Lands Act 1884*.

(3) A special lease under section 90 of the *Crown Lands Act 1884* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture; bakery; bee and poultry farm; boiling down works; brick-kiln; bridge; building or repairing ships or boats; construction of a drainage canal; construction of an irrigation canal; cricket; cultivation of eucalyptus; dairying; dam; erection of machinery; factory; ferry; freezing works; graving dock; inn; irrigation or drainage canal; lime-kiln; mail station; night soil depot; nursery garden; patent slip; pig and poultry farm; punt-house; residence; saw-mill; sericulture; sheep and cattle yard; show ground; site for storage of explosives; skin drying and skin packing; slaughterhouse; slaughterhouse accommodation paddock; smelting works; smithy; storage; store; tank; tannery; tobacco growing; tramway; vegetable garden; wattle growing; well; wharf; wool washing establishment.

(4) A special lease under section 92 of the *Crown Lands Act 1884* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

Authorised Version C2024C00224 registered 19/06/2024

(a) irrigation or drainage canals;
(b) forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.

3 *Western Lands Act 1901*, *Crown Lands Consolidation Act 1913* and other land Acts

(1) A residential lease (whether an original or an additional holding) under section 48 of the *Crown Lands Act 1889*, section 50 of the *Crown Lands Act 1895* or section 80 of the *Crown Lands Consolidation Act 1913*.

(2) A homestead selection or grant (whether an original or an additional holding) under the *Crown Lands Act 1895* or the *Crown Lands Consolidation Act 1913*.

(3) A settlement lease (whether an original or an additional holding) under the *Crown Lands Act 1895* or the *Crown Lands Consolidation Act 1913*, other than a lease that:
(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(4) A lease under section 23 of the *Western Lands Act 1901* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; mixed farming or any similar purpose other than grazing.

(5) A conditional lease under the *Western Lands Act 1901* or the *Crown Lands Consolidation Act 1913*.

(6) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the

Authorised Version C2024C00224 registered 19/06/2024

lease solely or primarily for a business purpose of any of the following:

accommodation building; bus depot; cafe; caravan and camping park; concrete batching plant; factory; feedlot; fish marketing and processing; fuel depot; garage; holiday accommodation; hospital; hotel; kiosk; manufacturing works; marina; motel; motor repair facility; nursing home; office accommodation; oyster depuration; oyster processing; processing plant; restaurant; retail shop; retirement village; service station; showroom; storage; tourist accommodation and facilities; workshop.

(7) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for a waterfront business of a marina, slipway, retail shop or food sales.

(8) A special lease under section 28A of the *Western Lands Act 1901* or section 75 or 75B of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoirs accommodation paddock; abattoirs and resting paddock; accommodation house; aerodrome; agriculture; agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; archery ground; bakery; basketball court; bee and poultry farm; boatshed; boiling down works; bowling green; brick kiln; bridge; building and repairing boats; building and repairing boats or ships; building or repairing of ships; bushfire brigade facilities; cable station; church and school site; community centre; construction of drainage canal; construction of irrigation canal; council chambers; council depot; council office; coursing ground and plumpton; cricket; cultivation; cultivation of eucalyptus; Country Women's Association rest rooms; dairying; dam; dam, weir or tank; day care centre; depot; dog and animal pound; dog racing course; domestic garden; driver training ground; equestrian grounds; erection of building; erection of coke oven; erection of dwelling; erection of machinery; factory; feedlot; ferries; freezing works; golf course; graving dock; gymnasium; horse racing course; horticulture; inn; kindergarten; land-based aquaculture; library; lime-kiln; mail station; manufacture of eucalyptus oil; market

Authorised Version C2024C00224 registered 19/06/2024

garden; mixed farming or any similar purpose other than grazing; motel; motor car and bike racing track; motor sports activities and facilities; neighbourhood depot; night soil depot; nursery garden; orchard; parking area; patent slip; pig and poultry farm; piggery; planting; poultry farm; power house, engine house, boiler house, bathroom, loading facilities or coal washery in connection with coal mining; pre-school; punt house; railway siding; railway station and depot; reclamation; refreshment room; refuse tip site; research centre; residence; residential development; residential subdivision; retirement village; rifle and pistol range; sale yard; sawmill; school and church site; school or other educational institution; septic tank; sericulture; sewage farm; sheep and cattle yard; showground; site for storage of explosives; skin drying and skin packing; slaughterhouse or abattoirs accommodation paddock; slaughterhouse; slip; smelting works; smithy; sporting club building; sporting ground; sporting ground and facilities; stable; storage of explosives; storage purposes; store; sugar cane growing; surf life saving club; swimming pool; tank; tannery; telecommunications or broadcasting tower, mast or building; tobacco growing; tramway; tree farming; vegetable garden; vegetable garden and nursery; velodrome; vineyard; volunteer rescue facilities; waste depot; water race; water storage; wattle growing; weighbridge; well; whaling station; wharf; wool washing establishment.

(9) A conditional purchase lease (whether an original or an additional holding) under the *Crown Lands (Amendment) Act 1905* or the *Crown Lands Consolidation Act 1913*.

(10) A Crown lease (whether an original or an additional holding) under the *Crown Lands (Amendment) Act 1912* or the *Crown Lands Consolidation Act 1913*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(11) A suburban holding (whether an original or an additional holding), a town land lease within an irrigation area, a homestead farm

Authorised Version C2024C00224 registered 19/06/2024

(whether an original or an additional holding), an irrigation farm lease or a non-irrigable lease, under the *Crown Lands (Amendment) Act 1912* or the *Crown Lands Consolidation Act 1913*.

(12) A week-end lease under the *Crown Lands Consolidation Act 1913*.

(13) A special conditional purchase lease (whether an original or an additional holding) under the *Crown Lands Consolidation Act 1913*.

(14) A lease under section 69A of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

army depot; artillery range; beacon site; bombing range; firing range; lighthouse; naval facilities; pilot station; pistol range; quarantine station; rifle range; Royal Australian Air Force base; telecommunications or broadcasting tower, mast or building; training facility.

(15) A special lease under section 74 of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

artificial reef; boatshed; building and repairing boats; dam; erection of a building; erection of machinery; floating dock; jetty; pier; reclamation; waterfront business for the purpose of a marina, retail shop, restaurant or boat repairs; whaling station; wharf.

(16) A special lease under section 76 of the *Crown Lands Consolidation Act 1913* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

irrigation or drainage canal; forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.

(17) A lease of town land under section 82A of the *Crown Lands Consolidation Act 1913*.

Authorised Version C2024C00224 registered 19/06/2024

4 *Returned Soldiers Settlement Act 1916*

A lease under section 4 of the *Returned Soldiers Settlement Act 1916*.

5 *Closer Settlement Amendment (Conversion) Act 1943*

A group purchase lease, closer settlement lease or settlement purchase lease, under the *Closer Settlement Amendment (Conversion) Act 1943*.

6 *Crown Lands Act 1989*

A lease under section 34 of the *Crown Lands Act 1989* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture; aquatic centre; boatshed; building for the use of charitable or community service organisation; bushfire brigade facilities; cafe; caravan and camping area; childcare facilities; commercial retail purposes; community centre; council depot; day care centre; equestrian centre; factory; feedlot; golf course; hotel; industrial depot; kindergarten; kiosk; library; marina; motel; office accommodation; registered club; residential purposes; restaurant; rifle and pistol range; sporting club; sporting ground; sporting ground and facilities; storage area; telecommunications or broadcasting tower, mast or building; tennis court; tourist accommodation and facilities; volunteer rescue facilities; youth organisation facilities.

7 National Parks legislation

(1) A lease under subsection 11(3) of the *Kosciusko State Park Act 1944*.

(2) A lease under paragraph 30(1)(a) or (b) of the *National Parks and Wildlife Act 1967*.

(3) A lease under paragraph 151(1)(a), (b), (c), (d) or (e) of the *National Parks and Wildlife Act 1974*.

Authorised Version C2024C00224 registered 19/06/2024

8 Various Acts

A lease under section 5 of the *Public Parks Act 1854*, section 6 of the *Public Parks Act 1884*, section 7 of the *Public Parks Act 1902*, Part IIIA or Division 3 of Part IIIB of the *Crown Lands Consolidation Act 1913*, Schedule 9A to the *National Parks and Wildlife Act 1974* or Division 5 of Part 5 of the *Crown Lands Act 1989* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

accommodation house; amusement centre; art gallery; boat storage; boatshed; bowling green; building for use by community and charitable bodies; cafe; caravan park and camping ground; craft centre; day care centre; dog racing course and facilities; driver training ground; entertainment centre; football; golf course; Guide hall; historic building, structure and display; horse racing course and facilities; jetty; kindergarten; kiosk; launching ramp; marina; museum; restaurant; retail shop; retirement village; Scout hall; sporting club; sporting ground; sporting ground and facilities; sports stadium; swimming pool; tea room; telecommunications or broadcasting tower, mast or building; tourist information centre; volunteer rescue organisation; wharf; wharf and jetty; youth club; youth organisation facilities.

Authorised Version C2024C00224 registered 19/06/2024

Part 2—Victoria

9 Land Acts etc.

(1) A lease under section XXI, XXIII or XLVII of the **Land Act 1862**.

(2) A lease under section L of the **Land Act 1862** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection 3, 5, 8 or 9 of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(3) A lease under section 13 or 38 of the **Amending Land Act 1865**.

(4) A lease under section 37 of the **Amending Land Act 1865** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection 3, 5, 8 or 9 of section L of the **Land Act 1862** or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(5) A lease under section 20, 31, 33 or 46 of the **Land Act 1869**.

(6) A lease under section 45 of the **Land Act 1869** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (III), (V), (VIII) or (IX) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(7) A lease under section 18, 44, 92 or 94 of the **Land Act 1884**.

(8) A lease under the **Land Act 1884** in accordance with the conditions contained in a non-residence licence under section 49 of that Act.

(9) A lease under section 91 of the **Land Act 1884** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or

Authorised Version C2024C00224 registered 19/06/2024

(9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(10) A lease of an agricultural allotment, or an agricultural lease, under the **Land Act 1884**, the **Land Act 1890**, the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1941** or the **Land Act 1958**.

(11) A lease of drained and reclaimed swamp land under section 85 of the **Land Act 1884**, section 85 of the **Land Act 1890**, section 131 of the **Land Act 1901**, section 110 of the **Land Act 1915**, section 110 of the **Land Act 1928** or section 110 of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural or residential purposes.

(12) A lease under section 18 or 100 of the **Land Act 1890**.

(13) A lease under section 97 of the **Land Act 1890** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(14) A lease under the **Land Act 1890** in accordance with the conditions contained in a non-residence licence under section 49 of that Act or section 51 of the **Land Act 1898**.

(15) A lease of a village community allotment under the **Settlement on Lands Act 1893** or the **Land Act 1901**.

(16) A lease of a township allotment under the **Settlement on Lands Act 1893** or the **Land Act 1901**.

(17) A lease of a homestead section under the **Settlement on Lands Act 1893** or the **Land Act 1901**.

(18) A lease under section 2 of the **Land Act 1896**.

(19) A perpetual lease under the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Land Act**

Authorised Version C2024C00224 registered 19/06/2024

1904, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1941**, the **Land Settlement Act 1953**, the **Land Settlement Act 1958** or the **Land Act 1958**, other than a perpetual lease under Division 3 of Part II of the **Land Act 1958**.

(20) A conditional purchase lease under the **Land Act 1898**, the **Land Act 1900**, the **Land Act 1900 (No. 2)**, the **Land Act 1901**, the **Murray Settlements Act 1907**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1928**, the **Land Act 1933**, the **Land Act 1941** or the **Land Act 1958**.

(21) A lease of a grazing allotment under section 61 of the **Land Act 1898** or section 56 of the **Land Act 1901**.

(22) A lease under section 19 of the **Land Act 1900**.

(23) A lease under section 18, 143, 144, 309, 311, 402 or 411 of the **Land Act 1901**.

(24) A lease under the **Land Act 1901** in accordance with the conditions contained in a non-residence licence under section 50 of that Act.

(25) A lease under section 142 of the **Land Act 1901** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(26) A residential lease of a selection purchase allotment, non-residential lease of a selection purchase allotment, or selection purchase lease, under the **Land Act 1901**, the **Land Act 1911**, the **Land Act 1915**, the **Land Act 1915 (No. 2)**, the **Land Act 1928**, the **Land Act 1941** or the **Land Act 1958**.

(27) A lease under section 28 of the **Land Act 1904**.

(28) A lease under section 73 of the **Land Act 1911**.

(29) A lease under section 125 of the **Land Act 1915** that permits the lessee to use the land or waters covered by the lease solely or

Authorised Version C2024C00224 registered 19/06/2024

primarily for the purposes mentioned in subsection (3), (5), (8) or (9) of that section, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(30) A lease under section 127 or 128 of the **Land Act 1915**.

(31) A lease under section 4 of the **Land Act 1915 (No. 2)**.

(32) A lease under subsection 126(2) or section 127, 128 or 356 of the **Land Act 1928**.

(33) A lease under section 125 or 352 of the **Land Act 1928** or subsection 7(2) or section 14 of the **Land Act 1941** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph 125(1)(c), (e), (h) or (i) of the **Land Act 1928**, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(34) A right to occupy a residence area under the **Land (Residence Areas) Act 1935** or the **Land Act 1958**.

(35) A lease under section 14 of the **Land Act 1941** to or by the holder of a lease under subsection 126(2) or section 127, 128 or 356 of the **Land Act 1928**.

(36) A development lease under the **Land (Development Leases) Act 1951** or the **Land Act 1958**.

(37) An improvement purchase lease under the **Land (Improvement Purchase Lease) Act 1956** or the **Land Act 1958**.

(38) A cultivation lease under section 133B of the **Land Act 1958**.

(39) A lease under section 134 of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)(c), (e), (h) or (i) of that section or for any of the following:

Aboriginal health services centre; accommodation and facilities for tourists; ambulance station; amusement park; bathing house; bowling club; bowling club and car park; bowls; bridge; car parking; caravan park; caravan park and camping ground; chair lift;

Authorised Version C2024C00224 registered 19/06/2024

church; clubhouse; clubroom; communications tower; Country Women's Association centre; craft centre; creative arts communication centre; depositing materials; depot; equestrian events; factory; ferry; ferry terminal; film and performing arts centre; fire station; fish freezing works; fish processing and freezing; fish processing works; football club; gas regulating and metering station; Girl Guides hall; gliding club; gliding field; golf; golf club; golf club house; golf course; golf driving range; grain testing facility; Guide hall; gun club; hall; harness racing club; health and fitness club and restaurant; holiday accommodation and agricultural farming; industrial purposes; industrial storage; jetty pens; lawn tennis club; line depot; manufacture of industrial accessories; manufacture of salt; manufacturing and storage; marina; marine education centre; marine operations terminal; marine workshop and sales; maritime industry warehouse; mobile telecommunications tower; motor car club; motor cycle club; museum and interpretive centre; office accommodation; office; pistol club; pistol range; processing and storage of petrol; processing, freezing and retailing fish; production of salt; punt house; purification plant; quay; radio relay station; radio repeater station; radio station; radio telephone and repeaters; radio transmission tower; radio transmitting station; relay station; retail shopping centre; rifle range; Returned Services League club; salt extraction; sawmill; school; Scout hall; sea pilot's station and amenities; shooting range; site for a line depot; stadium; storage of materials; telecommunications tower; television transmitting station; tennis court; tennis courts and clubroom; toll house; transmission tower; vehicular ferry terminal; warehouse; waste transfer station; water industry training centre and accommodation; yacht club; yacht clubhouse and yard.

(40) A lease under subsection 135(2) or section 136, 137, 151E, 222A, 222B of the **Land Act 1958**.

(41) A lease under Subdivision 1 of Division 9 of Part I of the **Land Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial purposes or for the generation of electricity for supply or sale.

Authorised Version C2024C00224 registered 19/06/2024

(42) An industrial lease, industrial purchase lease, or industrial development lease, under the **Land Act 1958**.

10 Water Acts etc.

(1) A lease under section 75 of the **Victorian Water Conservation Act 1881**.

(2) A lease under section 118 of the **Irrigation Act 1886**.

(3) A lease under section 68, 243 or 292 of the **Water Act 1890**, section 299 of the **Water Act 1905**, section 299 of the **Water Act 1915**, section 299 of the **Water Act 1928**, section 324 of the **Water Act 1958** or section 132 of the **Water Act 1989**, that permits the lessee to use the land or waters covered by the lease solely or primarily for:

(a) agricultural or residential purposes; or

(b) an angling club or the storage and launching of boats.

(4) A lease under section 277 of the **Water Act 1890**.

(5) A lease under section 213 of the **Water Act 1905**.

(6) A lease under section 184 of the **Water Act 1915**.

(7) A lease under section 184 of the **Water Act 1928**.

(8) A lease under section 200 of the **Water Act 1958**.

11 Forests Acts

(1) A lease under section 39 of the **Forests Act 1918** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of a dwelling-house or business premises.

(2) A lease under section 51 of the **Forests Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

cabin accommodation; caravan park; dwelling house; hotel; mobile

Authorised Version C2024C00224 registered 19/06/2024

communications base station; nursery; preservation of an historic building; rifle range; saw mill; ski lodge; softwood production; steel tower and storage shed; telecommunications tower; television transmitter station; training and research centre; transmission tower.

(3) A lease under section 51 of the **Forests Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph 134(1)(c), (e), (h) or (i) of the **Land Act 1958**, or for a bathing house, bridge, ferry, punt house or quay or for depositing materials.

(4) A lease under section 57B of the **Forests Act 1958**.

12 National Parks Act 1975

(1) A lease or tenancy under paragraph 19(2)(a) or section 30AA, 32AB or 32B of the **National Parks Act 1975**.

(2) A tenancy of a building under paragraph 19(2)(b) of the **National Parks Act 1975**.

(3) A lease under section 31AA of the **National Parks Act 1975** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (2)(a) or (c) of that section.

(4) A tenancy under section 32C of the **National Parks Act 1975** that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes or for erecting, providing or using particular structures, facilities or equipment in connection with the keeping of horses or the conduct of a riding school.

13 Alpine Resorts Act 1983

(1) A lease under subsection 28(2) of the **Alpine Resorts Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (a) or (b) of that subsection.

Authorised Version C2024C00224 registered 19/06/2024

(2) A lease under paragraph 28(2)(c) of the **Alpine Resorts Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for a fire station, telecommunications relay station or telephone exchange.

(3) A lease under section 28A of the **Alpine Resorts Act 1983**.

14 Gardens Acts

(1) A lease under subsection 24(2) of the **Royal Botanic Gardens Act 1991** that permits the lessee to use the land or waters covered by the lease solely or primarily for a kiosk, cafe, restaurant, shop or other outlet providing refreshment services.

(2) A lease under subsection 24(3A) of the **Royal Botanic Gardens Act 1991**.

(3) A lease under paragraph 33(2)(a) of the **Zoological Parks and Gardens Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for a kiosk, cafe, restaurant, shop or other outlet providing refreshment services.

15 Settlement Acts etc.

(1) A settlement interim lease, settlement purchase lease or purchase lease under the **Soldier Settlement Act 1946**, the **Soldier Settlement Act 1958**, the **Land Act 1958**, the **Land Settlement Act 1959** or the **Rural Finance Act 1988**.

(2) A perpetual lease under the **North-West Mallee Settlement Areas Act 1948** or Division 3 of Part II of the **Land Act 1958**, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

Authorised Version C2024C00224 registered 19/06/2024

(3) A lease under section 43 of the **Soldier Settlement Act 1958** pending the grant of an interim lease under that Act.

(4) A temporary lease under the **Land Settlement Act 1959**.

(5) A lease under section 47 of the **Land Settlement Act 1959**.

16 Crown Land (Reserves) Act 1978

(1) A lease under section 14D, 16, 17C or 17D of the **Crown Land (Reserves) Act 1978** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

antenna; caravan park; caravan park and camping ground; clubhouse; curtilage to a dwelling; curtilage to a private club; environmental education centre; fire tower; golf club; golf course; historic society; house encroachment; houseboat hire and servicing; kiosk, tea room, fish shop and jetty; marine research laboratory; mobile communications base station; museum; museum and interpretative centre; pistol range; pre-school centre; preserving historic building; public hall; radio transmission tower; rescue station; residence; sailing school; theatre; water filtration plant; water pump and underground tank.

(2) A lease under section 22 or 23 of the **Crown Land (Reserves) Act 1978**.

(3) A lease under section 29A of the **Crown Land (Reserves) Act 1978** that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)(b) of that section.

17 Melbourne and Metropolitan Board of Works Acts

(1) A lease under section 147 of the **Melbourne and Metropolitan Board of Works Act 1890**, section 209 of the **Melbourne and Metropolitan Board of Works Act 1915**, section 209 of the **Melbourne and Metropolitan Board of Works Act 1928** or section 235 of the **Melbourne and Metropolitan Board of Works Act 1958** that permits the lessee to use the land or waters covered

Authorised Version C2024C00224 registered 19/06/2024

by the lease solely or primarily for industrial or residential purposes.

(2) A building or improving lease under section 148 of the **Melbourne and Metropolitan Board of Works Act 1890**, section 210 of the **Melbourne and Metropolitan Board of Works Act 1915**, section 210 of the **Melbourne and Metropolitan Board of Works Act 1928** or section 236 of the **Melbourne and Metropolitan Board of Works Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial or residential purposes.

18 Port Acts etc.

(1) A lease under section 35 of the **Harbor Boards Act 1958**, paragraph 24(2)(b) or 26B(1)(a) or subsection 46(1) of the **Port of Geelong Authority Act 1958**, paragraph 50(2)(b) or 56A(1)(a) or section 50A of the **Port of Melbourne Authority Act 1958**, paragraph 17A(2)(b) or 17E(1)(a) or subsection 19(2) of the **Port of Portland Authority Act 1958** or paragraph 65(4)(d) of the **Port Services Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

berthing and mooring facilities; jetty; loading and unloading of commercial shipping; pier and associated rock wall; storage of cargo or storage and operation of equipment and machinery for shipping operations or launching boats; wharf.

(2) A lease under paragraph 24(2)(b) or 26B(1)(a) or subsection 46(1) of the **Port of Geelong Authority Act 1958** that permits the lessee to use the land or waters covered by the lease for any of the purposes mentioned in subsection 46(1) of that Act.

(3) A lease under subsection 20(2) or 24(1) of the **Docklands Authority Act 1991** that permits the lessee to use the land or waters covered by the lease solely or primarily for a shipping terminal, workshop, port services headquarters or the operation of the Port of Melbourne, or for industrial purposes.

Authorised Version C2024C00224 registered 19/06/2024

19 Railway and Transport Acts

(1) A lease under section 76 of the **Railways Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for cultivation, for grazing and cultivation, or for residential purposes.

(2) A lease under paragraph 41(1)(a) of the **Emerald Tourist Railway Act 1977** of a refreshment room, shed, office, shop, house, stall or other building, of a site for the erection of a refreshment room, shed, office, shop, house, stall or other building, or for storage.

(3) A lease under subparagraph 21(1)(f)(i) of the **Railway Construction and Property Board Act 1979** that permits the lessee to use the land or waters covered by the lease solely or primarily for industrial or residential purposes.

(4) A lease or tenancy under subsection 25(3) or 26(1) of the **Railway Construction and Property Board Act 1979**.

(5) A lease under paragraph 47(2)(b) of the **Transport Act 1983** that permits the lessee to use the land or waters covered by the lease solely or primarily for cultivation, for grazing and cultivation, or for residential purposes.

20 Various Acts

(1) A lease under section 17 or 20A of the **Education Act 1958** that permits the lessee to use the land or waters covered by the lease solely or primarily for a cultural centre, sports ground, school or other educational institution.

(2) A lease under section 3 of the **Land (Surf Life Saving Association) Act 1967**.

(3) A lease under subsection 7(2) or paragraph 15(1)(f) of the **Albury-Wodonga Agreement Act 1973** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural or residential purposes.

Authorised Version C2024C00224 registered 19/06/2024

Clause 20

(4) A lease or tenancy under paragraph 6(2)(a) of the **Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977** or paragraph 7(2)(a) of the **Melbourne Market Authority Act 1977** that permits the lessee to use the land or waters covered by the lease solely or primarily for storing, distributing or selling vegetables, fruit, flowers or other produce.

(5) A lease under paragraph 13(1)(i) of the **Government Employee Housing Authority Act 1981**.

(6) A lease under section 128K of the **Casino Control Act 1991**.

(7) A lease under paragraph 24(1)(b) of the **Melbourne Sports and Aquatic Centre Act 1994**, or a lease deemed to be granted under subsection 24(2) of that Act, that permits the lessee to use the land or waters covered by the lease solely or primarily for sport or gaming activities or an entertainment centre.

(8) A lease under section 7 of the **Australian Food Industry Science Centre Act 1995** that permits the lessee to use the land or waters covered by the lease solely or primarily for agricultural research.

Authorised Version C2024C00224 registered 19/06/2024

Part 3—Queensland

21 Leases under various Land Acts etc.

(1) A lease under section XII of the *Alienation of Crown Lands Act 1860*.

(2) A lease under section 51 of the *Crown Lands Alienation Act 1868*.

(3) A special lease under section 69 of the *Crown Lands Alienation Act 1868*, section 70 of the *Crown Lands Alienation Act 1876* or section 188 of the *Land Act 1897*.

(4) A lease under the *Gold Fields Town Lands Act 1869*.

(5) A lease under section 28 of the *Crown Lands Alienation Act 1876*.

(6) A perpetual town allotment lease under the *Land Act 1897*.

(7) A perpetual suburban allotment lease under the *Land Act 1897*.

(8) A lease under section 119A of the *Land Act 1910*.

(9) A lease under subsection 185(2) of the *Land Act 1910*, section 343 of the *Land Act 1962* or subsection 57(1) of the *Land Act 1994*, a special lease under the *Land Act 1910* or the *Land Act 1962*, a lease for a term of years or a perpetual lease under section 22B of the *State Housing Act 1945*, or a term lease or perpetual lease under the *Land Act 1994*, that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; accommodation; accommodation paddock adjoining an abattoir; aerodrome; aeromodellers club; aged persons' home; agricultural and horticultural society showground; agriculture; air traffic control facilities; aircraft hangar site; aircraft hangar, repair and administration building; aircraft landing ground; airfield; airstrip; airstrip and terminal; all sports complex; amphitheatre; amusement and entertainment park and pub; animal refuge boarding kennel; animal refuge home; Apex club; archery club; archery

Authorised Version C2024C00224 registered 19/06/2024

range; arts and craft centre; automatic telephone exchange; aviation building; band hall site; bank; basketball; basketball club; basketball court; beacon; boat building; boat hire; boat pilot base and wharf; boat ramp; boat repair; boat sales; boat shed; boating and fishing club; bowhunting; bowhunting club; bowhunting range; bowling club; bowling green; bowls club; Boy Scouts hall; Boys Brigade hall; British Australian club; broadcasting tower, mast or facility; building encroachment; building or repairing boats; bulk fuel depot; bulk storage; bulk storage depot; burning of sawmill waste; bus depot; butchery; cafe; cafeteria; cane employees' accommodation; car parking; car storage; car wrecking yard; caravan park; catamaran club; cattle transport depot or yard; causeway; change rooms and associated facilities; charitable organisation; child care centre; church; church and church hall; church school; city band hall; civil aviation anemometer site; civil aviation visual omni range; clubhouse; clubhouse for the Grand Lodge of the Royal Antediluvian Order of Buffaloes; coast guard facilities; coffee growing; coffee shop; coke works; commercial building development; communal bore; communal dam; communal storage building; communal tank; community centre; compressor station site; concrete batching plant; concrete manufacturing and storage of earthmoving equipment; conservatorium of music; coral art display and sales shop and residence; coral art display and sales shop or centre; crane hire; cricket; cricket club; cricket ground; cricket ground and grandstand; crocodile farm; croquet club; croquet pitch; culture centre; dairy; dam; dam site and agriculture; dance hall; dart playing hall; delicatessen-snack bar; depot; development office; dining hall; dip site; dog training; drive-in picture theatre; driver training; drug and alcohol rehabilitation centre; dry dock; educational institution; electricity generator and depot; electricity substation; electricity transmission tower; elevated passenger cable way pylons and building; Endeavour workshop; engineering workshop; equestrian and general sporting purposes; equestrian club; equestrian field; equestrian or pony field; explosive magazine; explosive manufacture, testing and storage; export game meat receival and kangaroo pet food depot; fast food outlet; feed lot; ferry terminal; fertiliser storage depot; fibre board plant; field archery range; fire brigade station; fire observation tower; fish depot; fishing club; flood mitigation dam or canal; flying field and soaring/gliding building; football; football club; football ground;

Authorised Version C2024C00224 registered 19/06/2024

freight terminal and barge ramp; fruit growing; fruit storage; fuel and garage facilities; fuel depot; fuel storage; game collection centre; game fishing club; garage; gas compressor; gas offtake and pressure regulating system; gas storage tank; gas treatment plant; general engineering workshop; general store; Girl Guides hall; golf club; golf course; golf links; grain handling facilities; grain storage depot; gravel treatment; grazing and horticulture; grocery shop; gun club; heavy engineering and fabrication; helipad site; historical museum; hockey club; hockey pitch; holiday unit; home unit; horse and pony club; horse stabling; horticulture; hostel; hotel; hotel-casino; housing purposes; indoor sports centre; industrial development; industrial purposes; Jaycees room; jetty; judo; kindergarten; kiosk; knackery; land-based aquaculture; land-based aquaculture inlet canal; land-based mariculture; licensed club; light industrial purposes; lighthouse; line depot; log storage; lot feeding; machinery shed; machinery storage; maintenance depot; manufacturing; marina; marine stadium; marine workshop and slipway; market garden; market gardening; Masonic lodge; mechanical workshop; medical centre; memorial club; metal fabrication; microwave radio feeder station; microwave radio tower, mast or building; microwave repeater station; milk depot; mobile telecommunications tower, mast or building; mobile two way radio tower, mast or building; monorail train operation; motel; motocross track; motorbike sales and service; motorbike track; motor club; motorcycle club; motorcycle raceway; motor raceway; motor racing; motor sports; multi-unit residential development; multi-purpose family centre; music hall; netball; netball club; netball court; newsagency; nursery; office; offtake and pressure regulating station; oil depot; on-shore boat house; optical fibre repeater station; orchard; pharmacy; piggery; pine plantation; pipe band hall; pistol club; pistol range; plant nursery; playground; Police Citizens Youth Club; polocrosse; polocrosse club; polocrosse field; pony club; pony field; post office; pottery club; power and sailing boat club and launching, storage and preparation area; power station; power substation; prawn receiving depot; pre-school; preparation and distribution of meals; private school; produce store; professional fishing base, building and wharf; Progress Association hall; pump site and agriculture; pump station; pumping plant; pumping station; quarry depot; racecourse; racecourse and showground; radio communication tower, mast or

Authorised Version C2024C00224 registered 19/06/2024

Clause 21

building; radio station; radio telephone station; radio transmitter; radio-telephone transmitter; rail transport infrastructure; railway; railway loop and train loading facilities; reclamation; repeater station; residential building development; residential flats; residential purposes; restaurant; restoration of historical structure and tourist accommodation and facilities; retail liquor outlet; retail shopping; retail shops and/or commercial office; retirement village; Returned Services League club; rice growing and small crops; rifle club; rifle range; roadhouse; roadside stall; rodeo ground; rowing club; rugby league clubhouse; rural training school; rural youth hall; sailing club; saleyard; salt production; sand blasting workshop; sawmill; sawmill products storage; school; school playground; sea cadets hall; secondary school; seed storage; service and maintenance depot; service station; settling pond; sewage disposal; sewage treatment plant; sewage treatment works; shed; shooting range; shop premises; shopping centre; shopping complex; shop; show society and associated sporting ground; showground; showroom; single person's quarters; skating rink; skeet shooting range; ski club; slaughterhouse; sleeper sawmill; slipway and associated facilities; small bore rifle range; soccer club; speedway and associated purposes; sporting complex; sporting field; sports club or complex; sports ground, field, pitch, stadium or oval; spray painting and mechanical repair; spraypainting; squash court; State Emergency Service purposes; stockpiling gravel; stockpiling sand and gravel; stock trucking yard; storage and milling of rice; storage of boats; storage of containers; storage of electrical equipment; storage of ilmenite; storage of plant and machinery; storage shed; sugar cane growing; sugar mill pumping site; sugar storage; supermarket; surf life saving facility; swimming club; swimming pool; tank site; tannery; tannery and knackery; target bowhunting; telecommunications tower, mast or building; telephone optical fibre repeater site; television tower site; television translator; television transmitting tower, mast or building; tennis club; tennis court; theatre; theatre or hall; timber storage; timber yard; tobacco growing; toll bridge; tourist accommodation; tourist accommodation and facilities; train loading facilities; tramway; tramway loading siding; transformer site; translator broadcasting station; transport depot; transport terminal; travel agency; tropical science field station; truck and machinery depot; trucking depot; trucking yard; union office and associated facilities; vehicle

Authorised Version C2024C00224 registered 19/06/2024

parking; vehicle service and maintenance; vehicle traffic ramp and loading dock; vehicle wrecking yard; vehicles and machinery depot; vineyard; voltage regulator site; war graves; war veterans' home; warehouse; warehouse storage; water activity centre for Scouts; water bore site; water dissipation plant; water pumping station; water ski club; water storage facilities; waterfront shop; weighbridge; welding workshop; well site; wheat storage and handling depot; wheat storage shed or silo; wholesale plant nursery; workers' accommodation and marshalling yard; workshop; workshop for handicapped persons; yacht club; youth hall.

(10) A development lease under the *Crown Land Development Act 1959* or the *Land Act 1962* that permits the lessee to use the land or waters covered by the lease solely or primarily for manufacturing, business, industrial, residential or tourist and recreational purposes.

22 Freeholding leases

(1) A freeholding lease under the *State Housing Act 1945*.

(2) A grazing homestead freeholding lease under the *Land Act 1962* or the *Land Act 1994*.

(3) A freeholding lease as defined in Schedule 6 to the *Land Act 1994*.

23 Homestead interests

(1) A homestead lease under the *Gold Fields Homestead Act 1870*, the *Gold Fields Homestead Leases Act 1886* or the *Mineral Homesteads Leases Act 1891*.

(2) A homestead selection under the *Homestead Areas Act 1872* or the *Crown Lands Alienation Act 1876*.

(3) An agricultural homestead under the *Land Act 1897*, the *Special Agricultural Homesteads Act 1901* or the *Land Act 1910*.

(4) A free homestead under the *Land Act 1897* or the *Land Act 1910*.

(5) A miner's homestead perpetual lease under the *Miners' Homestead Leases Act 1913*.

Authorised Version C2024C00224 registered 19/06/2024

(6) A miner's homestead lease under the *Miners' Homestead Leases Act 1913*, the *Mining Act 1898* or any Act repealed by the *Mining Act 1898*.

(7) A grazing homestead under the *Upper Burnett and Callide Land Settlement Act 1923*.

(8) A grazing homestead perpetual lease under the *Land Act 1962*.

24 Settlement farm leases

(1) A settlement farm lease under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Land Act 1962* or the *Irrigation Areas (Land Settlement) Act 1962*.

(2) A designed settlement farm lease under the *Land Act 1910*.

25 Agricultural farms

An agricultural farm under the *Crown Lands Act 1884*, the *Agricultural Lands Purchase Act 1894*, the *Agricultural Lands Purchase Act 1897*, the *Land Act 1897*, the *Special Agricultural Selections Act 1901*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

26 Perpetual lease selections

A perpetual lease selection under the *Land Act 1897*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Upper Burnett and Callide Land Settlement Act 1923*, the *Sugar Workers' Perpetual Lease Selections Act 1923*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

Authorised Version C2024C00224 registered 19/06/2024

27 Perpetual town leases

(1) A perpetual town lease, including an auction perpetual lease that is a perpetual town lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

(2) A perpetual town lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1962* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.

(3) A perpetual town lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

28 Perpetual suburban leases

(1) A perpetual suburban lease, including an auction perpetual lease that is a perpetual suburban lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

(2) A perpetual suburban lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1962* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.

(3) A perpetual suburban lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

29 Perpetual country leases

(1) A perpetual country lease, including an auction perpetual lease that is a perpetual country lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Tully Sugar Works Area Land Regulations*

Authorised Version C2024C00224 registered 19/06/2024

Ratification Act 1924, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

(2) A perpetual country lease without competition under the *Land Act 1910* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.

(3) A perpetual country lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

30 Prickly pear-related interests

(1) A prickly pear frontage selection under the *Land Act 1897*.

(2) A prickly pear infested selection under the *Land Act 1897*.

(3) A prickly-pear selection under the *Prickly Pear Selections Act 1901* or the *Land Act 1910*.

(4) A perpetual lease prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.

(5) A prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.

31 Leases under agreements given the force of law

(1) Any special lease granted to Amoco Australia Pty Limited under clause 3 of the Agreement that is given the force of law by section 3 of the *Amoco Australia Pty Limited Agreement Act 1961*.

(2) The lease granted to Austral-Pacific Fertilizers Limited under clause 4(b) or 4(c) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.

(3) Any special lease granted to Austral-Pacific Fertilizers Limited under clause 4(d) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilizers Limited Agreement Act 1967*.

Authorised Version C2024C00224 registered 19/06/2024

(4) The special lease granted to the Gateway Bridge Company Limited under clause 1(5) of Part III of the Agreement that is given the force of law by section 4 of the *Gateway Bridge Agreement Act 1980*.

(5) The special lease granted to the Sunshine Motorway Company Limited under clause 1(4) of Part III of the Agreement that is given the force of law by section 4 of the *Motorways Agreements Act 1987*.

32 Various interests

(1) A lease under the *Leasing Act 1866*.

(2) A lease under the *Gold Fields Homestead Act Amendment Act 1880*.

(3) An unconditional selection under the *Crown Lands Act 1891*, the *Land Act 1897*, the *Closer Settlement Act 1906* or the *Land Act 1910*.

(4) A designed agricultural selection under the *Land Acts Amendment Act 1952*.

(5) A perpetual lease under section 8 of the *Clermont Flood Relief Act 1917*.

(6) A sugar workers' agricultural farm under the *Tully Sugar Works Area Land Regulations Ratification Act 1924*.

(7) A lease under section 64A of the *Harbours Act 1955*.

(8) A purchase lease under the *Brigalow and Other Lands Development Act 1962*.

(9) An auction purchase freehold under the *Land Act 1962*, including a lease under section 176 of that Act.

(10) A special lease purchase freehold under the *Land Act 1962*, including a lease under subsection 207(7) of that Act.

Authorised Version C2024C00224 registered 19/06/2024

Clause 32

(11) A sub-lease under subsection 6A(2) of the *Industrial Development Act 1963*.

(12) A lease under paragraph 24(b) of the *Industrial Development Act 1963*.

(13) A mining titles freeholding lease under the *Mining Titles Freeholding Act 1980*.

Authorised Version C2024C00224 registered 19/06/2024

Part 4—Western Australia

33 Legislation before 1898

(1) A lease of town land under the *Land Regulations 1829* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.

(2) A lease of special occupation land under the *Land Regulations 1872*.

(3) A conditional purchase lease under clause 46, 47, 48, 49, 50, 52 or 53 of the *Land Regulations 1887*.

(4) A lease under subsection 12(5) of the *Mineral Lands Act 1892*.

(5) A homestead farm under the *Homesteads Act 1893*.

(6) A homestead lease under the *Homesteads Act 1893*.

(7) A lease under the *Agricultural Lands Purchase Act 1896*.

34 *Land Act 1898* and *Land Act 1933*

(1) A lease under section 41a of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture; artificial limb factory; bakehouse and store; boarding house; boat repairing and shed for crews; bowling green; brickmaking; brine evaporation plant; cultivation; dairying; experimental cultivation; experimental gardening purposes; fish curing, canning and manufacture of by-products; fruit and confectionary shop; golf links; hospital site; manure and cement factory; market garden; pig and poultry farm; post office; residential purposes; sandalwood stack and store; slaughter yard; stable and storage yard; stacking firewood; stacking telegraph poles; store and dwelling; tramway and timber yard; tropical agriculture; vegetable growing; veterinary hospital.

Authorised Version C2024C00224 registered 19/06/2024

(2) A lease under section 152 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8), (12) or (13) of that section.

(3) A lease under section 152 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

artificial lake; bathing house; billiard room; blacksmith and wheelwright shop; boarding house; boat building, fish canning and horse paddock; boat shed; bone crushing mill; brick kiln; bridge; building and repairing boats; butchering and slaughtering; canning and preserving works; cement works; chemical works; church site; clayhole and brick kiln; collection in catchment ditches and manufacture of salt; cultivation; cultivation of tobacco; dairying; depositing of materials; depot for sponge fishery; explosives magazine; factory site; ferry; fertiliser factory; fire brick manufacture; fishing station; foundry; gardening; growing cotton; hotel site; inn and general store; jetty site; land base for pearling activities; landing and packing pearl shell; laying up, repairing and fitting pearling vessels; lime burning; lime kiln; machinery depot; manufacturing aerated water; manufacturing plaster of paris and manure; manufacturing white lead; market garden; mixed gardening; monumental site; news and general agent; permanent pearling camp accommodation; piggery; poultry farm; preserving fish; private hospital; pumping station; punt house; quay; repairing luggers; residence; residential purposes; rope and twine factory; sanitary plant and stable; school; sheep dip; site for stores, dwelling or jetty; skating rink; slaughter yard; slipway for boats; stock yard; storage of fodder; storage of sandalwood; store and garden; store site; storing brewery requisites; tea and refreshment rooms; tennis club; tile factory; toll house; tramway siding; whaling factory; whaling station; wharf; wood shed; wool scouring shed; yacht clubhouse; yard for horses.

(4) A lease of town or suburban land under section 153 of the *Land Act 1898* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.

(5) A lease under section 153a of the *Land Act 1898*.

Authorised Version C2024C00224 registered 19/06/2024

(6) A homestead farm under the *Land Act 1898* or the *Land Act 1933*.

(7) A conditional purchase lease under Part V or VI of the *Land Act 1898* or Part V of the *Land Act 1933*.

(8) A lease of special settlement land under the *Land Act 1898* or the *Land Act 1933*.

(9) A lease of a working man's block under the *Land Act 1898* or the *Land Act 1933*.

(10) A lease under subsection 32(1) of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

aerodrome; agriculture; angling clubhouse; aviary; boat shed; building; bulk wheat storage; caravan park; children's playground; concrete batching plant and stockpiling metal products; constructed stock and domestic water supply facility; cropping; cultivation; field laboratory for rock lobster research; fishing depot, building, repairing and hiring of boats, and petrol service station; fishing station; freezer works and residence; fuel depot; garage and building; garden and parking area; garden and poultry raising; golf links; holiday campsite consisting of residential buildings; hotel; land-based experimental aquaculture; lighthouse; market garden; monumental works; office extension; plant for treatment of mineral bearing earth; pound; radio translator; residence; residence, garden and apiary; rest room; rifle range; road train access and turn around area; sawmill; service station; shore whaling station; siding for delivery of wheat; slaughter yard; stock holding paddock adjoining transport facilities for stock awaiting transportation; stock holding paddock for abattoir; storage; storage of implements and vehicles; storage of manganese ore; storage of ore; taxi rank; timber mill; timber storage; transport depot; trotting racecourse; vehicle parking; weighbridge; woodyard.

(11) A lease under subsection 33(3) of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

aerial landing ground; aged persons' home; bulk grain terminal; church; foreshore amusement park; livestock sales and produce

Authorised Version C2024C00224 registered 19/06/2024

processing; play group facilities; residential purposes; restaurant; rifle range; surf life saving club.

(12) A lease under section 116 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection (3), (5), (8), (12) or (13) of that section.

(13) A lease under section 116 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; accommodation; accommodation and other buildings associated with the cultured pearl industry; aerial landing ground; agriculture; airstrip; airstrip and fishing base; angling clubhouse; aquatic centre; arboretum; auto repair business; automotive metal product fabrication; aviary; base for offshore petroleum operations; bistro-brasserie; boat pen and jetty site; boat shed; bombing range; brick kiln; brickworks; brine catchment ditches; broadcasting and television tower and associated buildings; bulk fuel depot; bulk oil installation; bus depot; cafe; camel farm; camping and caravan park; car club; caravan and chalet park; caravan park; caravan park extension; church; church and church hall; church site; collection in catchment ditches and manufacture of salt; commercial snail farming; commercial tropical agriculture or horticulture; community theatre; company housing and recreation; company housing or accommodation; concrete batching and stockpiling of metal products; concrete batching plant; contractors' accommodation; conveyor belt; crocodile farm; cropping; cropping and grazing; cropping, grazing and private airstrip; cultivation and grazing; cultivation of plants for pharmaceutical purposes; dam; depositing of materials; depot; depot or storage; dwelling; effluent disposal; equestrian centre; explosive storage and manufacture; extension to commercial premises; extension to timber mill; factory; ferry; field laboratory associated with marine research; fire station; fish processing; fishing base; fishing holiday accommodation; garden; garden and tennis court; garden nursery; gas processing plant; gas production facility; general industry and staff accommodation; grain receival depot; grain storage; grazing and agriculture; group housing; hall; hall and place of worship; heated swimming pool; holiday and tourist resort fishing station;

Authorised Version C2024C00224 registered 19/06/2024

homestead and tourist facility; homestead tourist facilities; horse stable; horse yard; hotel; hotel extension; hotel, motel and service station; housing for workforce; hydroponic vegetable garden; industrial purposes; industrial storage; intensive horticulture; jetty; land base associated with pearl oyster hatchery or pearling activities; land base associated with pearling; land base for fishing industry; land-based aquaculture; land-based experimental aquaculture or oyster hatchery; land-based oyster nursery; land-based pearl farming; land-based scallop/oyster farm; landing ground for aircraft; landscape gardening supplies business; light industrial purposes; light industry; lighthouse; lime burning; lime crushing; loading and unloading stock; lobster receival depot; manganese road train assembly area; manse; manufacture and storage of concrete products; manufacture of salt; market garden; market garden and residence; mechanical workshop; meteorological station; mill; motel; motel and service station; motel unit development; motor cross speedway; motorcycle clubhouse; non-irrigated agriculture; noxious industry; office accommodation; office accommodation and storage; office and employee accommodation; oil storage depot; parking; parking and maintenance of vehicles; parking and spraying of machinery; parking and storage; permanent mining camp accommodation; pig farm; pistol club; plant nursery; potato growing; poultry farm; processing of crayfish; production of algae derivatives; professional fisherman's permanent camp accommodation; propagation of wildflowers; pumping station; quarantine station; quay; radio mast; radio station; radio translator site; radio transmitter receiving site; recreational game fishing accommodation and facilities; residence; residence and agriculture; residence and depot; residence and dog kennel; residence and garden; residence and market garden; residence and storage; residence and storage of mining equipment; residence, cropping and grazing; restoration and occupation of historical building; retail shop for coffee and light meals; retail shop for gifts, souvenirs and food; rifle clubhouse; rifle range; road train parking; road transport depot; roadhouse; roadhouse, service station and general store; roadhouse, service station and restaurant; rubbish and effluent disposal; sandblasting; sawmill; school; service station; sewage pond, generator shed and landscaping; sewage treatment pond; shearing team quarters; sheep dips; ship or boat building; showroom and workshop; single person's quarters; slaughterhouse

Authorised Version C2024C00224 registered 19/06/2024

and holding paddock; slaughter yard; small bore pistol clubhouse; souvenir shop; speedway clubhouse and motor racing track; sporting complex; sportsground; stabling of horses; staff accommodation; staff quarters; stock sale yard; stock yard; stockpiling of river sand; storage and display of machinery; storage of cereal grain and bulk storage facility; storage of chemical spraying equipment; storage of machinery; storage yard and depot; store; sugar refinery; tailings dam; tannery; tavern; tea garden; telephone exchange; television station and translator facilities; tourist accommodation and facilities; tourist and travel shop; tourist facility associated with emus; tourist mine; tourist railway; trades hall and offices; transport terminal; tree farming; tropical garden; trotting course; truck depot; warehouse; water storage; water storage and garden; water tank; weather station; weighbridge; wharf; wool shed; workshop vehicle and machinery parking; workshop; workshop and storage of drilling materials; zoo.

(14) A lease of town land under section 117 of the *Land Act 1933*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for the purpose of a yacht harbour or mine buffer zone; or

(b) both:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

access; communications; grazing or pastoral purposes; nature trail; pipeline; prawning; quarry; recreation; utilities; water supply;

and

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose, or solely or primarily for any of the following:

accommodation; amusement park; archery range; basketball court; bowhunting; bowling green; caravan park; car park; cropping; croquet pitch; dam; depot; golf course; industrial purposes; jetty; land-based aquaculture; manufacturing; motorbike

Authorised Version C2024C00224 registered 19/06/2024

track; motor racing track; racecourse; residence; rifle range; shop; skating rink; sports centre; sports club; sports field; sports ground; storage; swimming pool; tennis court; theatre; tree farming.

(15) A lease of town land under section 117 of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for a communications tower, mast or building.

(16) A lease under section 117A of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for the construction and maintenance of a subway or bridge.

(17) A lease under Part IV of the *Land Act 1933* that permits the lessee to use the land or waters covered by the lease solely or primarily for residential purposes.

35 Other legislation after 1898

(1) A lease under the *Agricultural Lands Purchase Act 1909*.

(2) A miner's homestead lease under Part VIII of the *Mining Act 1904*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(3) A lease of a worker's dwelling house under Part V of the *State Housing Act 1946-1974*.

(4) A perpetual lease under the *War Service Land Settlement Scheme Act 1954*.

36 Leases under certain mining-related and other Acts

A lease (other than a mineral lease) under the Agreement a copy of which is set out in the Schedule to any of the following Acts:

Authorised Version C2024C00224 registered 19/06/2024

the *Oil Refinery Industry (Kwinana Agreement) Act 1952*; the *Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960*; the *Iron Ore (Hamersley Range) Agreement Act 1963*; the *Iron Ore (Hamersley Range) Agreement Act 1963-1968*; the *Iron Ore (Robe River) Agreement Act 1964*; the *Iron Ore (Mount Goldsworthy) Agreement Act 1964*; the *Iron Ore (Mount Newman) Agreement Act 1964*; the *Leslie Solar Salt Industry Agreement Act 1966*; the *Dampier Solar Salt Industry Agreement Act 1967*; the *Evaporites (Lake MacLeod) Agreement Act 1967*; the *Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968*; the *Irrigation (Dunham River) Agreement Act 1968*; the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968*; the *Alumina Refinery (Pinjarra) Agreement Act 1969*; the *Nickel Refinery (Western Mining Corporation Limited) Agreement Act Amendment Act 1970*; the *Poseidon Nickel Agreement Act 1971*; the *Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972*; the *Iron Ore (McCamey's Monster) Agreement Authorization Act 1972*; the *Iron Ore (Mount Bruce) Agreement Act 1972*; the *Alumina Refinery (Worsley) Agreement Act 1973*; the *Nickel (Agnew) Agreement Act 1974*; the *Mineral Sands (Eneabba) Agreement Act 1975*; the *Alumina Refinery (Wagerup) Agreement and Acts Amendment Act 1978*; the *Collie Coal (Griffin) Agreement Act 1979*; the *Collie Coal (Western Collieries) Agreement Act 1979*; the *North West Gas Development (Woodside) Agreement Act 1979*; the *Diamond (Argyle Diamond Mines) Agreement Act 1981*; the *Shark Bay Solar Salt Industry Agreement Act 1983*; the *Camballin Farms (AIL Holdings Pty Ltd) Agreement Act 1985*; the *Western Mining Limited (Throssell Range) Agreement Act 1985*; the *Iron Ore (Channar Joint Venture) Agreement Act 1987*; the *Iron Ore (Marillana Creek) Agreement Act 1991*;

that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

accommodation for employees and visitors; aerial landing ground; agriculture; airport; airstrip; ballast stockpile; ballast stockpile site; berthing and loading facilities and stockpiling salt; bulk handling and shipping terminal; bulk handling facilities; bulk loading facilities; camp comprising residential buildings; causeway; caustic soda farm; caustic soda train loader and pumping station; chalet; collection in catchment ditches and manufacture of salt;

Authorised Version C2024C00224 registered 19/06/2024

commissioning and operating of pilot plant for metallurgical research purposes; communications tower; communications tower and associated buildings; construction and maintenance of worker accommodation; construction and operation of branch lines and marshalling yard; construction and operation of railway; construction and use of causeway; contractor's accommodation; contractor's laydown area; dam site; dog pound; domestic television transmitter site; employee housing; extension to townsite for residential accommodation; heavy industry; heliport; housing; industrial area; industrial purposes; industrial site and associated facilities, installations and works; industrial stockpiling; irrigated agriculture; jetty with berthing and loading facilities; loading and stockpiling; maintenance and construction of workers' accommodation; market garden; marshalling yard; materials offloading facility; mine service area comprising contractor accommodation; offloading construction materials; permanent construction camp accommodation for employees; permanent mining camp accommodation; permanent railway construction camp accommodation; permanent way store; plant nursery; plant site area; port industrial area; power station cooling water intake system; produce loading jetty; production plant; pumping installation and reservoir; radio repeater station site; railway; railway and ancillary installations, works and facilities; railway shunting; railway shunting and marshalling; railway spur line; red mud pond; refinery, power station, water storage and buffer zone; residential purposes; sewage disposal site; sewage treatment plant and radio and television transmitter tower; ship loading; shunting lines; stockpile area; stockpile site; stockpile site and shiploading facilities; stockpiling site for railway ballast; storage and maintenance of quarry equipment; storage of railway equipment; supply base; supply base and laydown area; tailing area; transmission mast; treatment plant; treatment plant and administration building; waste disposal site; waste material dump; water tank; wharf; workers' construction camp accommodation; workforce housing and welfare services; yard or site for ship-building, boat-building, storing of timber, coal, merchandise, goods or other property, or for the erection of a workshop or foundry.

Authorised Version C2024C00224 registered 19/06/2024

Part 5—South Australia

37 Perpetual leases and leases for a term of years

(1) A perpetual lease, or a lease for a term of years, of a working man's block, or a homestead block, (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under Part XI of the *Crown Lands Consolidation Act 1886*, Part VII of the *Crown Lands Act 1888*, Part IX of the *Crown Lands Act 1903*, Part IX of the *Crown Lands Act 1915* or Part IX of the *Crown Lands Act 1929*.

(2) A perpetual lease under the *Crown Lands Act 1888*, the *Crown Lands Amendment Act 1893*, the *Closer Settlement Act 1897*, the *Crown Lands, Closer Settlement, and Blockholders' Loans Amendment Act 1901*, the *Crown Lands Act 1903*, the *Crown Lands Act 1915*, the *Returned Soldiers Settlement Act 1915*, the *Discharged Soldiers Settlement Act 1917*, the *Agricultural Graduates Land Settlement Act 1922*, the *Discharged Soldiers Settlement Act 1934*, Part V or section 66A or 199 of the *Crown Lands Act 1929*, the *Marginal Lands Act 1940*, the *Crown Lands Development Act 1943-1973* or the Agreement a copy of which is set out in the Schedule to the *War Service Land Settlement Agreement Act 1945*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(3) A perpetual lease under section 8 of the *Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act 1900* or section 5 of the *Hummock Hill to Iron Knob Tramway Extension Act 1927*.

Authorised Version C2024C00224 registered 19/06/2024

(4) A perpetual lease of a block of horticultural or commonage land under Part IV of the *Village Settlements Act 1901*, Part VIII of the *Crown Lands Act 1915*, the *Lyrup Village Association (District Extension) Act 1921* or Part VIII of the *Crown Lands Act 1929*.

(5) A perpetual lease, or a lease for a term of years, of a block within an irrigation area under the *Irrigation and Reclaimed Lands Act 1908*, the *Irrigation and Reclaimed Lands Act 1914*, the *Irrigation Act 1922* or the *Irrigation (Land Tenure) Act 1930*.

(6) A lease for a term of years under the *Returned Soldiers Settlement Act 1915*, the *Discharged Soldiers Settlement Act 1917* or the *Discharged Soldiers Settlement Act 1934*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(7) A perpetual lease, or a lease for a term of years, of a town allotment within an irrigation area under the *Irrigation Act 1922* or the *Irrigation (Land Tenure) Act 1930*.

38 Miscellaneous leases

(1) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 1 of the *Miscellaneous Leases Act 1872*, section 92 of the *Crown Lands Consolidation Act* (No. 86, 1877), section 159 of the *Crown Lands Consolidation Act 1886*, section 118 of the *Crown Lands Act 1888*, section 11 of the *Closer Settlement Act 1897*, section 11 of the *Closer Settlement Act 1902*, section 80 or 126 of the *Crown Lands Act 1903*, section 24 of the *Irrigation and Reclaimed Lands Act 1908*, section 26 of the *Irrigation and Reclaimed Lands Act 1914*, section 83 or 128 of the *Crown Lands Act 1915*, section 48 of the *Irrigation Act 1922*, section 77 or 182 of the *Crown Lands Act 1929* or section 27 or 44 of the *Irrigation (Land Tenure) Act 1930* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

Authorised Version C2024C00224 registered 19/06/2024

Clause 38

accommodation; aerodrome; agriculture; airstrip and living quarters; amusement centre; bakery; bathing-house; boat building or repairing; boat hire depot; boat landing; boatshed; brick or lime kiln; bridge; building; building for business purposes; building for the use of charitable or community service organisations; bulk fuel agency; bulk fuel agency, transport depot and residence; camel holding for tourists; car park; caravan and camping park; caravan park; cereal growing; church; clubhouse; communications tower; cooling pond and pump house; deposit of materials or produce; drive-in theatre; factory; fellmongering establishment; firearms shooting; fishermen's residences and drying ground; Girl Guide accommodation cabin; Girl Guide hall; golf club; government building; grazing and cultivation; grazing, cultivation and nursery; hall; holiday accommodation; holiday home; horse training; horticulture; hostel; houseboat marina; houseboat mooring and car parking; industrial purposes; inn; irrigated forest and disposal of winery effluent and waste water; jetty; kindergarten; land-based aquaculture and grazing; land-based aquaculture development; land-based fish farming; land-based oyster cultivation; legal chambers; life saving club; light industrial development; lodge; mail station; manse; manufactory; manufacture of salt; manufacturing; marine research facility; motel; motorcycle track; nursery; operating and maintaining a tramway; paper-mill; parking; parking, effluent disposal, water storage and power house; piggery; pine plantation; plant for ore reduction, manufacture of sulphuric acid and chemical manure; pony club; poultry farming; preservation of historic building; punt house; quay; radio tower; railway; railway station and jetty; residence; residence and kiosk; residence and storage depot; restaurant and kiosk; retail shop; retirement village; rifle range; road house, petrol reselling, motel and caravan park; rubbish dump; salt evaporation pond; sawmill; school or other educational institution; Scout accommodation cabin; Scout hall; shack site; ship building or repairing; showground; site for the depositing of materials or produce; site for wharf, quay, jetty; slaughterhouse; slaughterhouse and agriculture; slaughterhouse and associated yard; smelting works; smithy; sporting car club; sporting club; sporting ground; staff accommodation; stock sale yard; storage; storage and loading facilities; store; tannery; theatre; timber plantation, sawmill and timber processing; toilet block; toll house; tourist accommodation and facilities; tourist facilities; tourist information centre; tourist

Authorised Version C2024C00224 registered 19/06/2024

mine; tramway; transport depot; vegetable and fodder growing and grazing; vegetable growing; vegetable growing, fodder production and pig raising; water ski club; weather station; weighbridge; wharf; working men's club; working men's homestead block; worm-growing; wrecking yard and garage; youth cabin accommodation.

(2) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 92 of the *Crown Lands Consolidation Act* (No. 86, 1877) that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection II or III of section 94 of that Act.

(3) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 159 of the *Crown Lands Consolidation Act 1886* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection II or III of section 162 of that Act.

(4) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 118 of the *Crown Lands Act 1888* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII or IX of that section or subsection I or II of section 123 of that Act.

(5) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 80 of the *Crown Lands Act 1903* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V or VII of that section or paragraph II(a) or (b) of section 203 of that Act.

(6) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 83 of the *Crown Lands Act 1915* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes

Authorised Version C2024C00224 registered 19/06/2024

mentioned in subsection III, V or VII of that section or paragraph II(a) or (b) of section 245 of that Act.

(7) A miscellaneous lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 77 of the *Crown Lands Act 1929* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in paragraph (1)III, IV, V or VII of that section or paragraph II(a) or (b) of section 244 of that Act.

(8) A miscellaneous lease under section 78B of the *Crown Lands Act 1929* that permits the lessee to develop or use the land or waters covered by the lease solely or primarily for the purpose of holiday accommodation or a shack site.

39 Other interests

(1) A lease with a right of purchase under the *Scrub Lands Act 1866*, the *Scrub Lands Act Amendment Act 1867*, the *Scrub Lands Act Extension Act 1870-71*, section 58 of the *Crown Lands Consolidation Act* (No. 86, 1877), section 20 of the *Crown Lands Amendment Act 1882*, Part II of the *Agricultural Crown Lands Amendment Act 1884*, Part II of the *Crown Lands Consolidation Act 1886*, Part III of the *Crown Lands Amendment Act 1887* or Part II of the *Crown Lands Act 1888*.

(2) A credit agreement, or an agreement of sale and purchase on credit, under the *Waste Lands Amendment Act 1868-9*, the *Waste Lands Alienation Act 1872*, the *Crown Lands Consolidation Act* (No. 86, 1877), the *Crown Lands Amendment Act 1880*, the *Crown Lands Amendment Act 1881*, the *Crown Lands Amendment Act 1882*, the *Agricultural Crown Lands Amendment Act 1884* or the *Crown Lands Consolidation Act 1886*.

(3) A lease with a right of purchase under section 39 of the *Waste Lands Alienation Act 1872* or Part III (other than section 58) of the *Crown Lands Consolidation Act* (No. 86, 1877) that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of agriculture or cultivation.

Authorised Version C2024C00224 registered 19/06/2024

(4) A selector's lease under Part III of the *Agricultural Crown Lands Amendment Act 1884* or Part III of the *Crown Lands Consolidation Act 1886*.

(5) A lease (other than a lease of land or waters forming the whole or part of an Aboriginal reserve) under section 29 of the *Crown Lands Amendment Act 1885*.

(6) A grazing and cultivation lease, or a lease of grazing and cultivation lands, under Part II of the *Crown Lands Consolidation Act 1886* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes of agriculture or cultivation.

(7) A lease with a right of purchase under the *Crown Lands Act 1888* or the *Crown Lands Amendment Act 1893*, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(8) A villager's lease under section 80 of the *Crown Lands Amendment Act 1893*.

(9) An agreement under Part IX of the *Crown Lands Act 1903*.

(10) A lease under clause 11 of the Indenture a copy of which is set out in the Schedule to the *Broken Hill Proprietary Company's Indenture Act 1937* that permits the lessee to use the land or waters covered by the lease solely or primarily for the purpose of constructing or extending a tramway.

(11) A lease under section 35 of the *National Parks and Wildlife Act 1972* that permits the lessee to develop or use the land or waters covered by the lease solely or primarily for any of the following:

airstrip; archery clubhouse and archery range; cabin accommodation; canoe clubhouse; caravan park; cottage accommodation for residents, visitors or guests; employee accommodation in huts or other buildings; field station cabin accommodation; fish factory;

Authorised Version C2024C00224 registered 19/06/2024

garden; golf course; golf driving range; grazing and cropping; gymnasium; holiday house; horse and pony riding club; indoor health centre; jetty; kiosk and restaurant; lighthouse; model aircraft flying clubhouse; occupation and maintenance of historic or heritage building; optical fibre repeater building and solar panel; pistol club and shooting range; radio tower; radio/telephone tower and building; research centre; research station; residential accommodation; Scout or Guide hall; shack accommodation; storage of mining equipment; storage, take-off and landing of aircraft; tennis court; tourist accommodation; tourist accommodation, camping facilities, food and fuel outlet and licensed premises; youth hostel.

Authorised Version C2024C00224 registered 19/06/2024

Part 6—Tasmania

40 Crown Lands Acts

(1) A lease under section 81 or 82 of the *Crown Lands Act 1890*.

(2) A lease under section 24 of the *Crown Lands Act 1890*, section 24 of the *Crown Lands Act 1903* or section 11 of the *Crown Lands Act 1911* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

children's playground; cycling track; dam or weir; fire station; golf club; hospital; monument; public hall; public pound; showground; sports ground; town hall; war memorial; wharf.

(3) A lease under subsection 128(1) or section 129 of the *Crown Lands Act 1903*.

(4) A lease under subsection 128(2) of the *Crown Lands Act 1903*, subsection 108(2) of the *Crown Lands Act 1911* or subsection 77(4) of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

bowling green; cool store; council works depot; erecting or working any manufactory, mill or other such work; fish hatchery; fuel depot; golf club; grain elevator; Hydro-Electric Commission substation; hotel; jetty; land-based aquaculture; marina; petrol depot; port facilities; refuse area; rowing club clubhouse; Scout accommodation; senior citizens' club; sewerage plant; ship building; showground; slipway; tennis court; water pumping station; wharf; yacht club.

(5) A lease under subsection 108(1) or section 109 of the *Crown Lands Act 1911*.

(6) A building lease under the *Crown Lands Act 1935*.

(7) A lease under subsection 7(2) of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

Authorised Version C2024C00224 registered 19/06/2024

aged persons' home; ambulance centre; aqueduct; bridge; club; communications tower, mast or building; community care institution; construction of a drain; construction of a water course; construction of an irrigation canal; crematorium; dam; fire station; hall; hospital; landing-place; library; literary or scientific institution; museum; quay; reservoir; sports club; sports facilities; sports ground; theatre; trigonometrical station; wharf.

(8) A lease under section 23 of the *Crown Lands Act 1935* that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

air force base; army base; army depot; bombing range; naval base; rifle range.

(9) A lease under subsection 77(1) or section 78 of the *Crown Lands Act 1935*.

(10) A lease under section 29 of the *Crown Lands Act 1976* that permits the lessee to use the land or waters covered by the lease solely or primarily for the any of the following:

agriculture; dairying; erection of residential building; growing of trees for commercial or industrial purposes; horticulture; industrial purposes; piggery; poultry farm; viticulture.

41 *Closer Settlement Act 1929*

A lease under Part V of the *Closer Settlement Act 1929*, other than:

(a) a lease under section 41 or 42 of that Act; or

(b) a lease that:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

Authorised Version C2024C00224 registered 19/06/2024

Part 7—Northern Territory

42 Town leases etc.

(1) A lease of town land under Division 4 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, Division 4 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 25CF, 74A or 74D or Division 4 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for a harbour; or

(b) both:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(2) A town land subdivision lease under Division 6 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory.

43 Agricultural leases etc.

(1) A lease of agricultural land, or an agricultural lease, under Division 3 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 3 of Part III of the *Crown Lands*

Authorised Version C2024C00224 registered 19/06/2024

Ordinance 1927 (Territory of North Australia) of the Commonwealth, Division 3 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth, section 25CG, 25DAA, 74A or 74D or Division 3 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory or section 14 of the *Agricultural Development Leases Ordinance 1956* of the Commonwealth, or under the Agreement a copy of which is set out in the Schedule to the *Rice Development Agreement Ordinance 1956* of the Commonwealth, other than:

(a) an agricultural (mixed farming and grazing) lease; or

(b) a lease that:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(2) An agricultural lease of an experimental farm under section 16A of the *Crown Lands Act 1931-1991* of the Northern Territory, other than a lease that:

(a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

(b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

(3) An agricultural development lease under the *Agricultural Development Leases Ordinance 1956* of the Commonwealth or under the Agreement a copy of which is set out in the Schedule to the *Rice Development Agreement Ordinance 1956* of the Commonwealth, other than:

(a) an agricultural (mixed farming and grazing) lease; or

(b) a lease that:

(i) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

Authorised Version C2024C00224 registered 19/06/2024

(ii) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.

44 Leases for special purposes etc.

(1) A lease for special purposes, or a special purposes lease, under section 83 of the *Northern Territory Land Act 1872* of South Australia, section 79 of the *Northern Territory Crown Lands Consolidation Act 1882* of South Australia, section 77 or 78 of the *Northern Territory Crown Lands Act 1890* of South Australia or section 4 of the *Special Purposes Leases Act 1953* (NT) that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; Aboriginal hostel; accommodation; aerodrome; aged home; aged persons' flats; agricultural farm and garden; agriculture and mixed farming; airstrip; ambulance headquarters; ambulance station; amphitheatre; animal husbandry centre; animal shelter; archery club; archery range; art gallery; aviary; bakery; banana plantation; barge landing; barge terminal; basketball club; basketball court; bathing house; benevolent social work centre; blood centre and meeting rooms; blood transfusion centre; board headquarters; boatyard; botanic gardens; bowhunting club; bowhunting range; bowling club; bowling green; brick factory; brick yard; building or repairing boats; bulk cargo wharf; butcher; cafe; cannery; canteen; car parking; caravan park; caravan park and camping ground; cargo handling; cargo storage; carparking; cattle holding yard; centre for the spiritual and social welfare of children; child care; child minding centre; children's home; children's hostel; church; church hall; church manse; church rectory; cinema; civic centre; clinic; club building; club house; club room; college; community creche; community hall; community storage; community welfare centre; company headquarters; convent; convention centre; cooperative society; court house; craft complex; creche; crematorium; cricket club; cricket ground; croquet club; croquet pitch; dairy; depositing materials or produce; disposal of red mud; drive-in theatre; dry cleaners; educational institution; elderly persons' home; engineering workshop; equestrian club; equestrian field; erection of a wharf, berth, storehouse or slip for building or repairing ships and other

Authorised Version C2024C00224 registered 19/06/2024

vessels; explosive storage; factory; feed lot yard; ferry terminal; fish processing; food processing; football club; football ground; funeral home; game fishing club; game safari base; garage; gas storage facility; general store; Girl Guide accommodation cabin; Girl Guide hall; gliding club; golf club; golf course; greyhound racing; greyhound track; guest house; Guide hall; gun club; hall; headquarters of Australian Red Cross; hockey club; hockey pitch; holiday accommodation and facilities; holiday cabin; horse and pony club; horse stable; horse yard; horticulture; hostel; hotel; hotel/motel; housing units; industrial area; industrial purposes; inflammable materials storage; inn; institute of linguistics; jetty; kennel; kiln; landscaping supply depot; leadership centre; library; light industry; lime works; lodge hall; lodge room; lodge temple; mail station; manufacture of stockfood; marina; marina workshop; Masonic hall; meat packaging; meatwork effluent disposal; meatworks; meeting room; motel; motocross circuit; motorcycle racing; motor racing circuit; motor sports; municipal depot; museum; museum and art gallery; netball club; netball court; nursery; office; office of the Northern Territory Electricity Commission; on-shore tour boat base; on-shore trawler base; ore stockpile; orphanage; patrol headquarters; pearl culture land base; pearling depot; permanent construction camp accommodation; petrol depot; petrol station; pistol club; pistol range; police station; police youth club; polocrosse club; polocrosse field; pony club; pony field; post office; poultry farm; pound; power station; pre-school; preservation and protection of artillery museum; preservation and restoration of well site; private sport site; private sports club; public swimming pool; punt house; quay; racecourse; racing club; radio communications building; radio communications tower; radio receiver station; radio transmitter; rail line; railway spurline; religious centre; research centre; research institute; residence; residential purposes; rest rooms; restaurant; retail store; rice growing; rifle club; rifle range; road house; road transport depot; rural residence; Salvation Army centre; sawmill; sawmilling depot; school; scientific research centre; Scout hall; seafarers' centre; seed processing plant; service station; sewage treatment; sheltered workshop; ship's chandlery; ship maintenance facility; shooting range; shore base for oyster cultivation; show ground; showroom; slaughter yard; slipway; speedway; sporting arena; sporting oval; sports club; sports complex; sports field, pitch, stadium or oval;

Authorised Version C2024C00224 registered 19/06/2024

sports ground; sports training ground; stockpiling and loading ore; storage; storage depot; storage of boats; store; studio; surgery; swimming club; swimming pool; television studio; tennis club; tennis court; theatre; toll house; tour base; tourist accommodation; tourist lodge; tourist theme park or facility; training centre; transport depot; warehouse; water treatment plant; watersports; wayside cafe; wayside inn; welfare centre; wharf; wholesale outlet; windmill; windmill servicing depot; wireless aerial site; workshop; youth services centre; zoo.

(2) A special purposes lease under section 6 of the *Mining (Gove Peninsula Nabalco Agreement) Act 1968* (NT) or subclause 4(2) of the Agreement a copy of which is set out in the Schedule to that Act that permits the lessee to use the land or waters covered by the leases solely or primarily for any of the following:

bulk cargo wharf; disposing of red mud and other effluents; general cargo wharf; industrial purposes; intake and discharge canal associated with plant cooling system; permanent construction camp accommodation; plant cooling system; sewage treatment plant; water reticulation plant.

45 Miscellaneous leases

(1) A miscellaneous lease under Division 5 of Part III of the *Crown Lands Ordinance 1912* (No. 3 of 1912) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1912* (No. 8 of 1912) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1924* of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, Division 5 of Part III of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 25DAA, 74D or 74E or Division 5 of Part III of the *Crown Lands Act 1931-1991* of the Northern Territory that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoir; Aboriginal hostel; accommodation; agricultural and mixed farming; agricultural farm and garden; agriculture; airstrip; amphitheatre; amusement hall; animal husbandry centre; archery club; archery range; art gallery; aviary; bakery; banana plantation;

Authorised Version C2024C00224 registered 19/06/2024

Clause 45

basketball club; basketball court; board and lodging house; board headquarters; boatbuilding; boatyard; bowhunting club; bowhunting range; bowling club; bowling green; brewery; brick factory; brick yard; brickmaking; Buffalo temple site; building or repairing boats; butchering; cafe; cannery; cargo storage; cinema; club; club house; club room; convalescent home; convent; convention centre; cotton farming; court house; crematorium; cricket club; cricket ground; croquet club; croquet pitch; cultivation; curing and storage of buffalo hides; dairy; depot; drive-in theatre; dry cleaners; dwelling house; engineering workshop; equestrian club; equestrian field; factory; feed lot yard; ferry terminal; fishing depot; flower seed plantation; football club; football ground; fruit growing; funeral home; game fishing club; game safari base; garage; garden; gas storage facility; general store; golf club; golf course; goods shed; guest house; hangar; hay production; hay shed; hockey club; hockey pitch; holding ground for cattle slaughtering; holiday accommodation and facilities; homestead; horse stable; horse yard; hostel; hotel; hotel store; industrial purposes; irrigation farming; kennel; kiln; kindergarten; landscaping supply depot; laundry; library; lodge room; market garden; motocross circuit; motor racing circuit; netball club; netball court; office; old men's home; on-shore tour boat base; orchard; orchid garden; pasture seed plantation; permanent construction camp accommodation petrol depot; pig yard; piggery; pistol club; pistol range; plant nursery; plantation; polocrosse club; polocrosse field; pony club; pony field; poultry farm; pound; power station; racecourse; radio communications building; radio communications tower; radio transmission tower; rail line; recreation centre for women; religious centre; repair shop; research centre; residence; rice growing; rifle club; rifle range; rural residence; sawmilling; seafarers' centre; service station; ship's chandlery; ship maintenance facility; shop; showroom; slaughter yard; slipway; sports club; sports complex; sports field, pitch, stadium or oval; sports ground; stockyard; storage of boats; store; studio; surgery; swimming club; swimming pool; tank sinking plant; tannery; tennis club; tennis court; theatre; tour base; tourist camel farm; tourist theme park or facility; transport depot; tree farming; tropical agriculture; vineyard; viticulture; warehouse; water treatment plant; welfare centre; wholesale outlet; wireless station; wood yard; wool scouring; workshop.

Authorised Version C2024C00224 registered 19/06/2024

(2) A miscellaneous lease of garden land under section 73A of the *Crown Lands Ordinance 1924* of the Commonwealth, section 69 of the *Crown Lands Ordinance 1927* (Territory of North Australia) of the Commonwealth, section 69 of the *Crown Lands Ordinance 1927* (Territory of Central Australia) of the Commonwealth or section 70 of the *Crown Lands Act 1931-1991* of the Northern Territory.

46 Other leases

(1) A lease under section 30 or 81 of the *Northern Territory Land Act 1872* of South Australia.

(2) A lease under section 30 or 77 of the *Northern Territory Crown Lands Consolidation Act 1882* of South Australia.

(3) A lease under Part II of the *Northern Territory Crown Lands Act 1890* of South Australia.

(4) A lease under section 54 of the *Northern Territory Crown Lands Act 1890* of South Australia.

(5) A lease under section 78 of the *Northern Territory Crown Lands Act 1890* of South Australia that permits the lessee to use the land or waters covered by the lease solely or primarily for the purposes mentioned in subsection III, V, VIII, IX or X of that section or subsection II or III of section 81 of that Act.

(6) A lease under section 6A of the *Crown Lands Act 1931-1991* of the Northern Territory.

(7) A lease under paragraph 23(b) or 23(c) of the *Crown Lands Act 1931-1991* of the Northern Territory, or a Crown lease under paragraph 26(a) or (b) of the *Crown Lands Act 1992* (NT), that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following purposes:

aerial sports academy; agricultural and mixed farming; agricultural development and marketing; agricultural farm and garden; agriculture; aircraft landing strip; airstrip; ambulance headquarters; amphitheatre; animal husbandry centre; aquatic entertainment

Authorised Version C2024C00224 registered 19/06/2024

Clause 46

centre; archery club; archery complex; archery range; art gallery; ash disposal pond; aviary; aviation; aviation historical society; banana plantation; basketball club; basketball court; beacon site; bitumen plant; boat landing facility; boatyard; bombing range; bowhunting club; bowhunting range; bowling club; bowling green; brick factory; brick yard; building or repairing boats; bus depot; bus terminal; cannery; car park; car repair shop; car sales yard; car storage and parking; caravan park; cargo storage; cashew production; cement plant; cereal crops; child care centre; children's playground; church; church hall; cinema; club; club hall; club room; clubhouse; coach terminal; college; commercial building development; commercial cropping; commercial property subdivision; community centre; community hall; community storage; compressor station; convention centre; council complex; council depot; council office; council works yard; court house; creche; crematorium; cricket club; cricket ground; crocodile research facility; cropping; crops; croquet club; croquet pitch; crushing plant; cultivation; cultural centre; Country Women's Association rest rooms; dairy; dam; day care centre; depot; development of tourist accommodation and facilities; disposal of dangerous goods; dog breeding; dressage-safe riding area; drive-in theatre; dry cleaners; dump; effluent disposal; equestrian centre; equestrian club; equestrian field; factory; feed hay agriculture; feed lot yard; fire station; fodder mill; football club; football ground; freight storage; fuel depot; funeral home; funeral parlour; game fishing club; game safari base; gaol; garbage dump; gas storage facility; Girl Guides cabin accommodation; Girl Guides hall; golf club; golf course; guest house; Guide hall; hall; hay production; hazardous industrial development; headquarters; health centre; health clinic; helicopter base; herb farm; Hindu temple; historic railway; hockey club; hockey pitch; holiday accommodation and facilities; homestead; horse and pony club; horse stable; horse yard; horticulture; hospital; hostel; hotel; indoor recreation; industrial development; industrial development on waterfront; industrial purposes; industrial subdivision; inn; Islamic centre; kennel; kiln; laboratory; land-based aquaculture; land-based commercial prawn farm; land-based fish culture; landscaping supply depot; library; lodge room; mango farm; manufacturing; marina; market gardening; medical centre; meeting room; motel; motor racing circuit; motor sports; motorcross circuit or track; municipal depot; museum; netball club; netball court; nursery; nursing home;

Authorised Version C2024C00224 registered 19/06/2024

office; on-shore fishing base; on-shore houseboat base; on-shore tour boat base; optical fibre regenerator site; orchard; orchid nursery; oval; permanent construction camp accommodation; pharmacy; picture theatre; pistol club; pistol range; polocrosse club; polocrosse field; pony club; pony field; port-related industry; post office; pound; private sports club; protection of heritage building; public car park; racecourse; racing club; radio broadcast aerial station; radio repeater; radio tower; radio transmission tower; railway; rail line; Red Cross centre; refuse tip; research centre; residential development; residential purposes; residential subdivision; resource centre; restaurant; restoration of police station; retail shop; retirement village; rice growing; rifle club; rifle range; roadhouse; rural residence; sailing club; satellite receiving station; school; scientific research centre; Scout hall; seafarers' centre; seed production; senior citizens' centre; service station; sheltered workshop; ship's chandlery; ship maintenance facility; shop; shopping complex; showground; showroom; silviculture; slipway; social club; solid waste disposal facility; sports club; sports complex; sports field, pitch, stadium or oval; sports ground; sports training ground; stable; stock fodder production; stockyard; storage; storage of boats; studio; supermarket; surf life saving club; surgery; swimming club; swimming pool; table grape growing; tavern; temple; tennis club; tennis court; theatre; timber mill; tour base; tourist camel farm; tourist facilities; tourist information centre; tourist lodge; tourist theme park or facility; tower construction; transport depot; transport terminal; trucking yard; units for aged persons; university; vegetable production; vehicle sales yard; vehicle storage; warehouse; water retention basin; water treatment plant; wayside inn; weather station; wharf; wholesale outlet; women's refuge; workshop; yacht association; yacht club; youth centre; youth club; zoo.

(8) A lease under section 68A, 68B, 68C, 68D, 68E, 68F, 68G or 68H of the *Crown Lands Act 1931-1991* of the Northern Territory.

(9) A lease under section 112A of the *Crown Lands Act 1931-1991* of the Northern Territory.

Authorised Version C2024C00224 registered 19/06/2024

(10) A lease under section 2 of the *Darwin Leases (Special Purposes) Ordinance 1946* of the Commonwealth or section 3 of the *Darwin Short Term Leases Ordinance 1946* of the Commonwealth.

(11) A lease under section 3 of the *Church Lands Leases Ordinance 1947* of the Commonwealth.

(12) A lease under section 4 or 29A of the *Darwin Town Area Leases Act 1947-1979* of the Northern Territory.

(13) A lease under section 16A, 16AA, 16B, 16C or 16D of the *Darwin Town Area Leases Act 1947-1979* of the Northern Territory.

(14) A lease under section 5 of the *Crown Lands Act 1992* (NT).

Authorised Version C2024C00224 registered 19/06/2024

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

Authorised Version C2024C00224 registered 19/06/2024

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Authorised Version C2024C00224 registered 19/06/2024

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Native Title Act 1993	110, 1993	24 Dec 1993	s 3–200 and 202–253: 1 Jan 1994 (s 2(2) and gaz 1993, No S402) s 201: 1 July 1994 (s 2(2) and gaz 1993, No S402) Remainder: 24 Dec 1993 (s 2(1))	
Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995	20, 1995	29 Mar 1995	Sch: 1 June 1995 (s 2(1) and gaz 1995, No GN18)	—
Workplace Relations and Other Legislation Amendment Act 1996	60, 1996	25 Nov 1996	Sch 16 (items 56–58): 25 May 1997 (s 2(3))	—
as amended by				
Workplace Relations and Other Legislation Amendment Act (No. 2) 1996	77, 1996	19 Dec 1996	Sch 3 (items 1, 2): 25 Nov 1996 (s 2(4))	—
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Sch 2 (item 1054): 1 Jan 1998 (s 2(2))	—
Native Title Amendment (Tribunal Appointments) Act 1997	170, 1997	16 Nov 1997	16 Nov 1997 (s 2)	—

Authorised Version C2024C00224 registered 19/06/2024

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Native Title Amendment Act 1998	97, 1998	27 July 1998	Sch 1, Sch 2 (items 1–101), Sch 4 and 5: 30 Sept 1998 (s 2(5) and gaz 1998, No. S428) Sch 3 (items 1–13): 30 Oct 1998 (s 2(2) and gaz 1998, No S428) Sch 3 (items 14–37): 1 July 2000 (s 2(4)(b) and gaz 1999, No S484)	Sch 5 (items 1–43)
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 16): 30 Sept 1998 (s 2(1) item 45)	—
Native Title Amendment (Technical Amendments) Act 2007	125, 2007	20 July 2007	Sch 4 (items 34–36): 1 Sept 2007 (s 2(1) item 11)	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 676–682): 5 Dec 1999 (s 2(1), (2))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 289, 290, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s 4(1), (2) and Sch 37: 24 May 2001 (s 2(1)(a))	s 4(1) and (2)

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	Sch 1 (items 76, 97): 29 Oct 2001 (s 2(1))	Sch 1 (item 97)
Extension of Sunset of Parliamentary Joint Committee on Native Title Act 2004	13, 2004	11 Mar 2004	11 Mar 2004 (s 2)	—
Law and Justice Legislation Amendment Act 2004	62, 2004	26 May 2004	Sch 1 (items 51–53): 27 May 2004 (s 2(1) item 13)	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4, Sch 1 (items 208–210, 496) and Sch 2 (item 135): 22 Feb 2005 (s 2(1) items 1, 2, 10, 12)	s 4 and Sch 1 (item 496)
Aboriginal and Torres Strait Islander Commission Amendment Act 2005	32, 2005	22 Mar 2005	Sch 4 (items 30–79): 24 Mar 2005 (s 2(1) item 4)	Sch 4 (items 40, 44, 48, 64, 75)
as amended by				
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (items 1, 2): 24 Mar 2005 (s 2(1) items 18, 19)	—
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 30): 1 June 1995 (s 2(1) item 19)	—
Financial Framework Legislation Amendment Act (No. 1) 2006	30, 2006	6 Apr 2006	Sch 3 (items 7–9, 11): 7 Apr 2006 (s 2(1) items 4, 6) Sch 3 (item 10): 24 Mar 2005 (s 2(1) item 5)	Sch 3 (item 11)

Authorised Version C2024C00224 registered 19/06/2024

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Corporations (Aboriginal and Torres Strait Islander) Consequential, Transitional and Other Measures Act 2006	125, 2006	4 Nov 2006	Sch 1: 1 July 2007 (s 2(1) item 2)	—
Native Title Amendment Act 2007	61, 2007	15 Apr 2007	Sch 1 (items 1–42, 44–47, 48–62), Sch 2, Sch 3 (items 1–4) and Sch 4: 15 Apr 2007 (s 2(1) items 2, 3, 5) Sch 3 (item 5): 1 July 2007 (s 2(1) item 4)	Sch 1 (items 48–62), Sch 2 (items 76–90) and Sch 4 (item 2)
as amended by				
Native Title Amendment (Technical Amendments) Act 2007	125, 2007	20 July 2007	Sch 1 (items 118, 119, 120, 137) and Sch 5: 1 Sept 2007 (s 2(1) items 4C, 12)	Sch 1 (items 120, 137) and Sch 5

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Native Title Amendment (Technical Amendments) Act 2007	125, 2007	20 July 2007	Sch 1 (items 1–83, 84–89, 91F–117, 120–139), Sch 4 (items 1–33) and Sch 5: 1 Sept 2007 (s 2(1) items 2, 4, 4C, 11, 12) Sch 1 (items 83A–83C, 91A–91E), Sch 2 (items 1–3, 5–12) and Sch 3 (items 1–6, 8–10, 11, 12): 21 July 2007 (s 2(1) items 3, 4B, 5, 7, 8, 10, 10B) Sch 1 (items 90, 91): 15 Apr 2007 (s 2(1) item 4A) Sch 2 (item 4) and Sch 3 (item 10A): 1 July 2007 (s 2(1) items 6, 10A) Sch 3 (item 7): 1 July 2008 (s 2(1) item 9)	Sch 1 (items 120–139), Sch 2 (items 10–12), Sch 3 (items 11, 12) and Sch 5
as amended by				
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 2 (items 15, 16): 1 Sept 2007 (s 2(1) item 18)	—
Families, Housing, Community Services and Indigenous Affairs and Other Legislation Amendment (Miscellaneous Measures) Act 2010	33, 2010	13 Apr 2010	Sch 3 (items 4, 5): 21 July 2007 (s 2(1) item 5)	—

Authorised Version C2024C00224 registered 19/06/2024

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 90–97): 23 June 2008 (s 2(1) item 4)	—
Disability Discrimination and Other Human Rights Legislation Amendment Act 2009	70, 2009	8 July 2009	Sch 3 (items 45, 46): 5 Aug 2009 (s 2(1) item 7)	—
Native Title Amendment Act 2009	83, 2009	17 Sept 2009	Sch 1–6: 18 Sept 2009 (s 2(1) items 2–5)	Sch 1 (items 69–73), Sch 4 (item 3), Sch 5 (items 12, 39) and Sch 6 (items 18, 19)
Federal Justice System Amendment (Efficiency Measures) Act (No. 1) 2009	122, 2009	7 Dec 2009	Sch 3 (items 4, 5(1) item 4): 7 Dec 2009 (s 2(1) item 2)	Sch 3 (item 5(1) item 4)
Native Title Amendment Act (No. 1) 2010	144, 2010	15 Dec 2010	16 Dec 2010 (s 2)	Sch 1 (item 8)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 1 (item 69): 22 Mar 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 865–868) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 7, 12)	Sch 3 (items 10, 11)

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 119–122): 1 July 2011 (s 2(1) item 2)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 6 (item 49): 22 Sept 2012 (s 2(1) item 37)	—
Courts and Tribunals Legislation Amendment (Administration) Act 2013	7, 2013	12 Mar 2013	Sch 1 (items 1–28): 12 Mar 2013 (s 2(1) item 2)	Sch 1 (items 26–28)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 1 (items 52–54): 29 June 2013 (s 2(1) item 2)	—

Authorised Version C2024C00224 registered 19/06/2024

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (items 289–303) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 278): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 450, 451): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 220, 221): 10 Mar 2016 (s 2(1) item 6)	—
Courts Administration Legislation Amendment Act 2016	24, 2016	18 Mar 2016	Sch 4: 1 July 2016 (s 2(1) item 6) Sch 6: 18 Mar 2016 (s 2(1) item 9)	Sch 6
Human Rights Legislation Amendment Act 2017	32, 2017	12 Apr 2017	Sch 3: 13 Apr 2017 (s 2(1) item 1)	—
Native Title Amendment (Indigenous Land Use Agreements) Act 2017	53, 2017	22 June 2017	22 June 2017 (s 2(1) item 1)	Sch 1 (items 8–14)
National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018	67, 2018	29 June 2018	Sch 2 (item 24): 29 Dec 2018 (s 2(1) item 3)	—
Native Title Amendment (Infrastructure and Public Facilities) Act 2020	113, 2020	8 Dec 2020	9 Dec 2020 (s 2(1) item 1)	—
Native Title Legislation Amendment Act 2021	6, 2021	16 Feb 2021	Sch 1 (items 1–24) and Sch 2–7: 25 Mar 2021 (s 2(1) items 2, 4–10) Sch 1 (items 25–62): 25 Sept 2021 (s 2(1) item 3)	Sch 1 (items 24, 55, 62), Sch 2 (items 4, 11), Sch 3 (items 16, 19), Sch 4 (item 10), Sch 5 (items 8, 11) and Sch 6 (items 3, 12)

Authorised Version C2024C00224 registered 19/06/2024

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land and Governance Provisions) Act 2023	57, 2023	21 Aug 2023	Sch 1 (items 43, 44): 22 Aug 2023 (s 2(1) item 1)	—
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023	74, 2023	20 Sept 2023	Sch 3 (items 7–12): 18 Oct 2023 (s 2(1) item 3)	—
Attorney-General's Portfolio Miscellaneous Measures Act 2024	41, 2024	11 June 2024	Sch 4 (items 8–10): 12 June 2024 (s 2(1) item 5)	Sch 4 (item 10)

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Preamble	am No 70, 2009
Part 1	
s 3	am No 97, 1998
s 4	am No 20, 1995
	rs No 97, 1998
	am No 83, 2009
s 5	am No 59, 2015
s 7	rs No 97, 1998
s 8A	ad No 24, 2001
Part 2	
Division 1	
s 11	am No 97, 1998
s 12	rep No 97, 1998
s 13	am No 97, 1998
	rs No 125, 2007
	am No 6, 2021
Division 2	
Division 2 heading	rs No 97, 1998
Subdivision AA	
Subdivision AA	ad No 97, 1998
s 13A	ad No 97, 1998
Subdivision A	
s 15	am No 97, 1998
Division 2A	
Division 2A	ad No 97, 1998
Subdivision A	
s 21	rs No 97, 1998
s 22	rep No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
Subdivision B	
s 22A–22E	ad No 97, 1998
s 22EA	ad No 97, 1998
Subdivision C	
s 22F–22H	ad No 97, 1998
Division 2AA	
Division 2AA	ad No 97, 1998
s 22I–22L	ad No 97, 1998
s 23	rep No 97, 1998
Division 2B	
Division 2B	ad No 97, 1998
s 23A–23D	ad No 97, 1998
s 23DA	ad No 97, 1998
s 23E–23H	ad No 97, 1998
s 23HA	ad No 97, 1998
	am No 125, 2007
s 23I, 23J	ad No 97, 1998
s 23JA	ad No 97, 1998
s 24	rep No 97, 1998
Division 3	
Division 3	rs No 97, 1998
Subdivision A	
s 24AA	ad No 97, 1998
	am No 125, 2007; No 144, 2010
s 24AB	ad No 97, 1998
	am No 144, 2010
s 24AC	ad No 97, 1998
Subdivision B	
s 24BA	ad No 97, 1998
s 24BB	ad No 97, 1998
	am No 125, 2007

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 24BC	ad No 97, 1998
	am No 6, 2021
s 24BD	ad No 97, 1998
s 24BE	ad No 97, 1998
s 24BF–24BI	ad No 97, 1998
	am No 125, 2007
Subdivision C	
s 24CA	ad No 97, 1998
s 24CB	ad No 97, 1998
	am No 125, 2007
s 24CC	ad No 97, 1998
s 24CD	ad No 97, 1998
	am No 53, 2017; No 6, 2021
s 24CE	ad No 97, 1998
s 24CF	ad No 97, 1998
	am No 125, 2007
s 24CG	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 53, 2017; No 6, 2021
s 24CH	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 6, 2021
s 24CI	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 6, 2021
s 24CJ	ad No 97, 1998
s 24CK	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 6, 2021
s 24CL	ad No 97, 1998
	am No 125, 2007; No 6, 2021
Subdivision D	
s 24DA	ad No 97, 1998
s 24DB	ad No 97, 1998
s 24DC	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 24DD	ad No 97, 1998
s 24DE	ad No 97, 1998
	am No 6, 2021
s 24DF	ad No 97, 1998
s 24DG–24DJ	ad No 97, 1998
	am No 125, 2007
s 24DK–24DM	ad No 97, 1998
Subdivision E	
s 24EA	ad No 97, 1998
s 24EB	ad No 97, 1998
	am No 97, 1998; No 6, 2021
s 24EBA	ad No 97, 1998
	am No 6, 2021
s 24EC	ad No 97, 1998
s 24ED	ad No 6, 2021
Subdivision F	
s 24FA–24FD	ad No 97, 1998
s 24FE	ad No 97, 1998
	am No 125, 2007
Subdivision G	
s 24GA	ad No 97, 1998
s 24GB	ad No 97, 1998
	am No 125, 2007
s 24GC	ad No 97, 1998
s 24GD, 24GE	ad No 97, 1998
	am No 125, 2007
Subdivision H	
s 24HA	ad No 97, 1998
	am No 125, 2007
Subdivision I	
s 24IA, 24IB	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 24IC, 24ID	ad No 97, 1998
	am No 125, 2007
Subdivision JA	
Subdivision JA	ad No 144, 2010
s 24JAA	ad No 144, 2010
	am No 113, 2020
Subdivision J	
s 24JA	ad No 97, 1998
s 24JB	ad No 97, 1998
	am No 125, 2007
Subdivision K	
s 24KA	ad No 97, 1998
	am No 125, 2007
Subdivision L	
s 24LA	ad No 97, 1998
Subdivision M	
s 24MA–24MC	ad No 97, 1998
s 24MD	ad No 97, 1998
	am No 61, 2007; No 125, 2007; No 6, 2021
Subdivision N	
s 24NA	ad No 97, 1998
	am No 125, 2007
Subdivision O	
s 24OA	ad No 97, 1998
Subdivision P	
s 25	rs No 97, 1998
	am No 6, 2021
s 26	rs No 97, 1998
	am No 125, 2007
s 26A–26C	ad No 97, 1998
	am No 125, 2007

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 26D	ad No 97, 1998
s 27	rs No 97, 1998
s 27A, 27B	ad No 97, 1998
s 28	rs No 97, 1998
	am No 125, 2007; No 83, 2009
s 29	rs No 97, 1998
	am No 125, 2007; No 6, 2021
s 30	rs No 97, 1998
	am No 6, 2021
s 30A	ad No 97, 1998
s 31	rs No 97, 1998
	am No 125, 2007; No 6, 2021
s 32	rs No 97, 1998
	am No 100, 2005
s 33	rs No 97, 1998
s 34	rs No 97, 1998
s 35	rs No 97, 1998
s 36	rs No 97, 1998
	am No 6, 2021
s 36A, 36B	ad No 97, 1998
s 36C	ad No 97, 1998
	am No 125, 2007; No 83, 2009
s 37–40	rs No 97, 1998
s 41	rs No 97, 1998
	am No 125, 2007; No 83, 2009
s 41A	ad No 97, 1998
	am No 6, 2021
s 41B	ad No 6, 2021
s 42	rs No 97, 1998
	am No 125, 2007; No 83, 2009
s 42A	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 43	rs No 97, 1998
	am No 125, 2007; No 83, 2009
s 43A	ad No 97, 1998
	am No 125, 2007
s 43B	ad No 97, 1998
s 44	rs No 97, 1998
Subdivision Q	
s 44A	ad No 97, 1998
s 44B	ad No 97, 1998
	am No 125, 2007
s 44C–44E	ad No 97, 1998
s 44F	ad No 97, 1998
	am No 125, 2007
s 44G	ad No 97, 1998
Division 4	
s 44H	ad No 97, 1998
s 47	am No 97, 1998; No 6, 2021
s 47A, 47B	ad No 97, 1998
s 47C	ad No 6, 2021
Division 5	
s 48, 49	am No 97, 1998
s 50	am No 97, 1998
s 51	am No 97, 1998
s 51A	ad No 97, 1998
s 52	am No 97, 1998
	rs No 125, 2007
	am No 83, 2009
s 52A	ad No 83, 2009
s 53	am No 97, 1998
Division 6	
s 55	am No 97, 1998; No 83, 2009

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 56, 57	am No 97, 1998; No 125, 2007
s 58	am No 97, 1998; No 61, 2007; No. 125, 2007; No 6, 2021
s 59	am No 97, 1998
	rs No 125, 2007
s 59A	ad No 61, 2007
s 60	rs No 125, 2007
s 60AAA	ad No 6, 2021
s 60AA	ad No 97, 1998
	am No 125, 2006
Division 7	
Division 7	ad No 125, 2007
s 60AB, 60AC	ad No 125, 2007
Part 3	
Part 3	rs No 97, 1998
Division 1AA	
s 60A	ad No 97, 1998
Division 1	
s 61	rs No 97, 1998
	am No 6, 2021
s 61A	ad No 97, 1998
	am No 6, 2021
s 62	rs No 97, 1998
	am No 125, 2007; No 6, 2021
s 62A	ad No 97, 1998
	am No 125, 2007; No 6, 2021
s 62B	ad No 6, 2021
s 62C	ad No 6, 2021
s 63	rs No 97, 1998
	am No 24, 2016; No 6, 2021
s 64	rs No 97, 1998
	am No 61, 2007; No 125, 2007; No 24, 2016; No 6, 2021

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 65	rep No 97, 1998
s 66	rs No 97, 1998
	am No 125, 2007; No 24, 2016
s 66A	ad No 97, 1998
	am No 125, 2007; No 6, 2021
s 66B	ad No 97, 1998
	am No 125, 2007; No 24, 2016; No 6, 2021
s 66C	ad No 61, 2007
	am No 125, 2007; No 83, 2009; No 24, 2016
s 67, 68	rs No 97, 1998
Division 1A	
s 69	rs No 97, 1998
	am No 125, 2007
s 70	rs No 97, 1998
s 71–74	rep No 97, 1998
Division 2	
s 75–77	rs No 97, 1998
Division 2A	
s 77A, 77B	ad No 97, 1998
Division 3	
s 78, 79	rs No 97, 1998
Part 4	
Division 1	
Division 1	rs No 97, 1998
s 79A	ad No 97, 1998
	am No 83, 2009
Division 1A	
Division 1A	ad No 97, 1998
s 80, 81	rs No 97, 1998
s 82	rs No 97, 1998
	am No 125, 2007; No 6, 2021

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 83	am No 60, 1996
	rs No 97, 1998
s 83A	ad No 97, 1998
s 84	rs No 97, 1998
	am No 61, 2007; No 125, 2007; No 6, 2021
s 84A	ad No 97, 1998
	am No 6, 2021
s 84B	ad No 97, 1998
s 84C	ad No 97, 1998
	am No 24, 2016
s 84D	ad No 125, 2007
s 85	rs No 97, 1998
s 85A	ad No 97, 1998
s 86	rs No 97, 1998
	am No 61, 2007
Division 1B	
Division 1B heading	rs No 83, 2009
Division 1B	ad No 97, 1998
s 86A	ad No 97, 1998
	am No 61, 2007; No 83, 2009
s 86B	ad No 97, 1998
	am No 61, 2007; No 83, 2009; No 24, 2016
s 86BA	ad No 61, 2007
	rs No 83, 2009
s 86C, 86D	ad No 97, 1998
	am No 61, 2007; No 83, 2009
s 86E	ad No 97, 1998
	am No 61, 2007; No 83, 2009
Division 1C	
Division 1C	ad No 97, 1998
s 86F	ad No 97, 1998

Endnote 4—Amendment history

Provision affected	How affected
	am No 125, 2007
s 86G	ad No 97, 1998
s 87	rs No 97, 1998
	am No 61, 2007; No 125, 2007; No 83, 2009; No 24, 2016; No 6, 2021
s 87A	ad No 61, 2007
	am No 125, 2007; No 83, 2009; No 24, 2016; No 6, 2021
Division 3	
s 94A	ad No 97, 1998
s 94B	ad No 61, 2007
	am No 83, 2009
s 94C	ad No 61, 2007
	am No 125, 2007
Division 4	
Division 4	ad No 83, 2009
s 94D	ad No 83, 2009
	am No 7, 2013
s 94E	ad No 83, 2009
s 94F	ad No 83, 2009
s 94G	ad No 83, 2009
s 94H	ad No 83, 2009
s 94J–94N	ad No 83, 2009
s 94P	ad No 83, 2009
	am No 41, 2024
s 94Q–94S	ad No 83, 2009
Part 5	
s 95	am No 170, 1997
s 96	rs No 7, 2013
s 96A	ad No 125, 2007
s 97A	ad No 97, 1998
s 98	rs No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 98AA	ad No 6, 2021
s 98A	ad No 97, 1998
s 99	am No 7, 2013
s 101	am No 159, 2001
s 102	am No 146, 1999
s 104	am No 26, 2008; No 58, 2011
s 106	am No 62, 2014
s 106A	ad No 170, 1997
	am No 46, 2011
Part 6	
Division 1	
s 108	am No 97, 1998; No 61, 2007; No 125, 2007; No 83, 2009; No 6, 2021
s 109	am No 97, 1998
Division 2	
s 110	am No 97, 1998
s 115A	ad No 6, 2021
s 117	am No 146, 1999
s 119	am No 26, 2008; No 58, 2011
s 122	am No 170, 1997; No 97, 1998
Division 3	
s 123	am No 97, 1998; No 61, 2007; No 125, 2007; No 83, 2009; No 6, 2021
s 124	am No 97, 1998; No 125, 2007
Division 4	
Subdivision A	
Subdivision A heading	rs No 24, 2016
Subdivision A	rs No 7, 2013
s 128	am No 122, 2009
	rs No 7, 2013
	am No 62, 2014; No 24, 2016

Endnote 4—Amendment history

Provision affected	How affected
s 129	rs No 7, 2013
	am No 24, 2016
s 129A	ad No 7, 2013
	am No 24, 2016; No 62, 2014
Subdivision B	
Subdivision B heading	rs No 97, 1998; No 7, 2013
s 130	am No 146, 1999; No 7, 2013; No 24, 2016
s 131	rs No 146, 1999
	rep No 7, 2013
s 131A	ad No 97, 1998
	am No 61, 2007; No 7, 2013; No 62, 2014; No 24, 2016
s 131B	ad No 97, 1998
	am No 61, 2007
s 132	am No 97, 1998; No 7, 2013
	rep No 24, 2016
Subdivision C	
s 133	rs No 152, 1997
	am No 61, 2007; No 83, 2009; No 7, 2013; No 62, 2014
s 134, 135	rep No 152, 1997
s 136	am No 7, 2013; No 24, 2016
Division 4A	ad No 97, 1998
	rep No 83, 2009
s 136A	ad No 97, 1998
	rep No 83, 2009
s 136B	ad No 97, 1998
	am No 61, 2007
	rep No 83, 2009
s 136C	ad No 97, 1998
	rep No 83, 2009
s 136CA	ad No 61, 2007
	rep No 83, 2009

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 136D	ad No 97, 1998
	rep No 83, 2009
s 136DA	ad No 61, 2007
	rep No 83, 2009
s 136E, 136F	ad No 97, 1998
	rep No 83, 2009
s 136G	ad No 97, 1998
	am No 61, 2007
	rep No 83, 2009
s 136GA, 136GB	ad No 61, 2007
	rep No 83, 2009
Division 4AA	
Division 4AA	ad No 61, 2007
s 136GC	ad No 61, 2007
	am No 83, 2009; No 7, 2013
s 136GD	ad No 61, 2007
s 136GE	ad No 61, 2007
	am No 83, 2009
Division 4B	
Division 4B heading	rs No 61, 2007
Division 4B	ad No 97, 1998
s 136H	ad No 97, 1998
	am No 61, 2007; No 83, 2009
Division 5	
Subdivision A	
s 137	am No 97, 1998
Subdivision AA	
Subdivision AA	ad No 61, 2007
s 138A–138E	ad No 61, 2007
	am No 83, 2009
s 138F, 138G	ad No 61, 2007

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Subdivision B	
s 139	am No 97, 1998; No 125, 2007
s 141	am No 97, 1998; No 61, 2007; No 125, 2007; No 6, 2021
s 142	am No 97, 1998; No 61, 2007
s 148	rs No 97, 1998
s 149A	ad No 97, 1998
Subdivision C	
s 150	am No 7, 2013
s 151	am No 97, 1998
s 152	am No 61, 2007
s 154	am No 97, 1998 (as am by No 63, 2002); No 61, 2007
s 154A	ad No 61, 2007
s 155, 156	am No 61, 2007
Subdivision D	
s 160, 161	rep No 97, 1998
s 163AA	ad No 125, 2007
s 163A	ad No 61, 2007
s 164	am No 61, 2007
s 165	rep No 97, 1998
Subdivision E	rep No 97, 1998
s 166–168	rep No 97, 1998
Subdivision F	
s 169	am No 97, 1998; No 125, 2007
Division 6	
s 171–174	am No 24, 2001; No 83, 2009
s 175	rep No 24, 2001
s 176	am No 97, 1998; No 24, 2001; No 61, 2007; No 83, 2009
s 177	am No 97, 1998; No 83, 2009
Division 7	
s 178	am No 97, 1998
s 180	am No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 181	rs No 97, 1998
	am No 83, 2009; No 7, 2013
s 183	rs No 97, 1998
	am No 146, 1999; No 61, 2007
	rep No 83, 2009
Part 7	
s 184, 185	am No 97, 1998
s 186	am No 97, 1998; No 125, 2007; No 6, 2021
s 187	am No 62, 2004
s 188	am No 97, 1998
s 189	rs No 97, 1998
s 189A	ad No 97, 1998
	am No 24, 2016
s 190	rs No 97, 1998
	am Nos 61 and 125, 2007
s 190A	ad No 97, 1998
	am No 61, 2007; No 125, 2007; No 6, 2021
s 190B	ad No 97, 1998
	am No 125, 2007; No 6, 2021
s 190C	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 6, 2021
s 190D	ad No 97, 1998
	am No 61, 2007
	rs No 125, 2007
s 190E	ad No 125, 2007
	am No 6, 2021
s 190F	ad No 125, 2007
s 191	am No 97, 1998; No 24, 2016
Part 8	
s 192	am No 97, 1998
s 193	am No 97, 1998; No 125, 2006; No 125, 2007

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 194	am No 62, 2004
s 196	rep No 97, 1998
s 197	rs No 125, 2007
s 199	am No 125, 2007
Part 8A	
Part 8A	ad No 97, 1998
s 199A	ad No 97, 1998
s 199B	ad No 97, 1998
	am No 125, 2007; No 6, 2021
s 199C	ad No 97, 1998
	am No 97, 1998; No 125, 2007; No 6, 2021
s 199D	ad No 97, 1998
	am No 62, 2004
s 199E, 199F	ad No 97, 1998
Part 9	
s 200	am No 97, 1998
Part 10	rep No 20, 1995
s 201	rep No 20, 1995
Part 11	
Division 1	
Division 1	ad No 97, 1998
s 201A	ad No 97, 1998
	am No 97, 1998; No 32, 2005; Nos 61 and 125, 2007; No 83, 2009; No 62, 2014
s 201B	ad No 97, 1998
	am No 125, 2006; No 61, 2007; No 83, 2009
s 201C	ad No 61, 2007
	rep No 83, 2009
Division 1A heading	ad No 97, 1998 rep No 97, 1998
Division 1A	rep No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 202	am No 97, 1998
	rep No 97, 1998
s 202A	ad No 97, 1998
	rep No 97, 1998
s 203	am No 97, 1998
	rep No 97, 1998
Division 2	
Division 2	ad No 97, 1998
s 203A	ad No 97, 1998
	am No 61, 2007; No 83, 2009
s 203AA	ad No 97, 1998
	rs No 61, 2007; No 83, 2009
s 203AAA	ad No 83, 2009
s 203AB, 203AC	ad No 97, 1998
	am No 61, 2007; No 83, 2009
s 203AD	ad No 97, 1998
	am Nos 61 and 125, 2007; No 83, 2009
s 203AE	ad No 97, 1998
	am No 103, 2013
s 203AF	ad No 97, 1998
	rs No 61, 2007; No 83, 2009
s 203AG	ad No 97, 1998
	am No 32, 2005; No 61, 2007
	rs No 83, 2009
s 203AH	ad No 97, 1998
	am No 32, 2005; No 61, 2007; No 83, 2009; No 103, 2013
s 203AI	ad No 97, 1998
	am No 97, 1998; No 61, 2007; No 83, 2009
Division 3	
Division 3	ad No 97, 1998
s 203B	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 203BA	ad No 97, 1998
	am No 83, 2009
s 203BB, 203BC	ad No 97, 1998
s 203BD	ad No 97, 1998
	am No 61, 2007
s 203BE	ad No 97, 1998
	am No 6, 2021
s 203BF	ad No 97, 1998
s 203BG	ad No 97, 1998
s 203BH	ad No 97, 1998
s 203BI	ad No 97, 1998
s 203BJ	ad No 97, 1998
s 203BK	ad No 97, 1998
	am No 125, 2007; No 7 ,2013
Division 4	
Division 4	ad No 97, 1998
s 203C	ad No 97, 1998
	am No 32, 2005
s 203CA	ad No 97, 1998
	am No 32, 2005; No 61, 2007; No 126, 2015
s 203CB	ad No 97, 1998
	am No 30, 2006; No 125, 2007; No 62, 2014
Division 5	
Division 5	ad No 97, 1998
s 203D	ad No 97, 1998
	am No 32, 2005
	rep No 61, 2007
s 203DA	ad No 97, 1998
	am No 61, 2007
s 203DB	ad No 97, 1998
s 203DC	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
	am No 32, 2005
	rep No 61, 2007
s 203DD, 203DE	ad No 97, 1998
	rep No 61, 2007
s 203DF	ad No 97, 1998
	am No 137, 2000; No 32, 2005; No 61, 2007; No 103, 2013; No 67, 2018
s 203DG	ad No 97, 1998
	am No 24, 2001; No 4, 2016
s 203DH	ad No 97, 1998
	am No 61, 2007
Division 6	
Division 6	ad No 97, 1998
	rs No 125, 2007
s 203E	ad No 97, 1998
	rs No 125, 2007
s 203EA	ad No 97, 1998
	rs No 125, 2007
	am No 62, 2014
s 203EB	ad No 97, 1998
	rs No 125, 2007
	am No 62, 2014
s 203EC	ad No 97, 1998
	rs No 125, 2007
	rep No 62, 2014
Division 7	
Division 7	ad No 97, 1998
s 203F	ad No 97, 1998
	am No 32, 2005; No 61, 2007
s 203FA	ad No 97, 1998
	rep No 32, 2005

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
s 203FB	ad No 97, 1998
	am No 32, 2005; No 61, 2007
	rs No 125, 2007
s 203FBA, 203FBB	ad No 125, 2007
s 203FC	ad No 97, 1998
	am Nos 61 and 125, 2007; No 83, 2009
s 203FCA	ad No 97, 1998
s 203FD	ad No 97, 1998
s 203FE	ad No 97, 1998
	am No 32, 2005; No 61, 2007; No 125, 2007; No 126, 2015
s 203FEA–203FED	ad No 61, 2007
s 203FF	ad No 97, 1998
	am No 61, 2007
s 203FG	ad No 97, 1998
	am No 32, 2005; No 4, 2016
s 203FH	ad No 97, 1998
s 203FI	ad No 32, 2005
	am No 61, 2007; No 125, 2007 (as am by No 33, 2010); No 46, 2011
Part 12 heading	rs No 20, 1995; No 8, 2005
	rep No 5, 2011
Part 12	rep No 5, 2011
s 204	am No 20, 1995; No 8, 2005
	rep No 5, 2011
s 205	rep No 5, 2011
s 206	am No 20, 1995; No 97, 1998; Nos 8, 32 and 100, 2005; No 30, 2006
	rep No 5, 2011
s 207	am No 97, 1998; No 13, 2004
	rep No 5, 2011

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
Part 12A	
Part 12A	ad No 97, 1998
s 207A (prev s 251)	am No 125, 2007
s 207B	ad No 97, 1998
	am No 125, 2007; No 83, 2009
Part 13	
s 209	am No 70, 2009
	rs No 32, 2017
s 209A	ad No 6, 2021
s 210	am No 57, 2023
s 211	am No 97, 1998
Note to s 211(2)	ad No 97, 1998
Subhead to s 212(3)	am No 97, 1998
s 212	am No 97, 1998
s 213A	ad No 83, 2009
	rep No 41, 2024
s 214	rs No 97, 1998
	am No 97, 1998
	rep No 125, 2007
	ad No 83, 2009
s 215	am No 97, 1998; No 6, 2021
Part 14	rep No 136, 2012
s 216	rep No 136, 2012
s 217	rep No 136, 2012
s 218	rep No 136, 2012
s 219	rep No 136, 2012
s 220	rep No 136, 2012
s 221	rep No 136, 2012

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Part 15	
Division 1	
s 222	am No 60, 1996; No 97, 1998; No 125, 2006; Nos 61 and 125, 2007; No 144, 2010; No 58, 2011; No 24, 2016
Division 2	
s 223	am No 97, 1998; No 125, 2007
s 225	rs No 97, 1998
s 226	am No 97, 1998
s 232A–232E	ad No 97, 1998
s 233	am No 97, 1998
s 234–236	rep No 97, 1998
s 237	am No 97, 1998
s 237A	ad No 97, 1998
s 240	am No 97, 1998
Division 3	
s 245	am No 125, 2007
s 247	am No 97, 1998
s 247A, 247B	ad No 97, 1998
s 248A, 248B	ad No 97, 1998
s 249A–249C	ad No 97, 1998
Division 4	
s 251	am No 97, 1998
	reloc and renum No 97, 1998
s 251A	ad No 97, 1998
	am No 53, 2017; No 6, 2021
s 251B	ad No 97, 1998
s 251BA	ad No 6, 2021
	am No 6, 2021
s 251C	ad No 97, 1998
	am No 125, 2007 (as am by No 8, 2010); No 74, 2023
s 251D	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Provision affected	How affected
s 252	am No 125, 2007
s 253	am No 60, 1996; No 97, 1998; No 125, 2006; No 61, 2007; No 125, 2007; No 83, 2009; No 144, 2010; No 58, 2011; No 126, 2015; No 24, 2016; No 53, 2017
	ed C46
	am No 6, 2021; No 57, 2023
Schedule 1	
Schedule 1	ad No 97, 1998
Part 1	
c 1	ad No 97, 1998
c 2	ad No 97, 1998
c 3	ad No 97, 1998
c 4	ad No 97, 1998
c 5	ad No 97, 1998
c 6	ad No 97, 1998
c 7	ad No 97, 1998
c 8	ad No 97, 1998
Part 2	
c 9	ad No 97, 1998
c 10	ad No 97, 1998
c 11	ad No 97, 1998
c 12	ad No 97, 1998
c 13	ad No 97, 1998
c 14	ad No 97, 1998
c 15	ad No 97, 1998
c 16	ad No 97, 1998
c 17	ad No 97, 1998
c 18	ad No 97, 1998
c 19	ad No 97, 1998
c 20	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Part 3	
c 21	ad No 97, 1998
c 22	ad No 97, 1998
c 23	ad No 97, 1998
c 24	ad No 97, 1998
c 25	ad No 97, 1998
c 26	ad No 97, 1998
c 27	ad No 97, 1998
c 28	ad No 97, 1998
c 29	ad No 97, 1998
c 30	ad No 97, 1998
c 31	ad No 97, 1998
c 32	ad No 97, 1998
Part 4	
c 33	ad No 97, 1998
c 34	ad No 97, 1998
c 35	ad No 97, 1998
c 36	ad No 97, 1998
Part 5	
c 37	ad No 97, 1998
c 38	ad No 97, 1998
c 39	ad No 97, 1998
Part 6	
c 40	ad No 97, 1998
c 41	ad No 97, 1998
Part 7	
c 42	ad No 97, 1998
c 43	ad No 97, 1998
c 44	ad No 97, 1998
	am No 74, 2023
c 45	ad No 97, 1998

Authorised Version C2024C00224 registered 19/06/2024

Endnote 4—Amendment history

Provision affected	How affected
c 46	ad No 97, 1998
	am No 74, 2023

Authorised Version C2024C00224 registered 19/06/2024