

South Australia

Native Title (South Australia) Act 1994

An Act relating to native title.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Native Title (South Australia) Act 1994*.

Part 2—Basic concepts

3—Interpretation of Acts and statutory instruments

- (1) In this Act and in every other Act or statutory instrument, unless the contrary intention appears—

Aboriginal group—an Aboriginal group consists of all the persons who hold, or claim to hold, according to a particular body of traditional laws and customs, native title in a particular area of land and, if there is only one such person, that person constitutes the group;

Aboriginal peoples means peoples of the Aboriginal race of Australia;

affect—an act or activity affects native title if it extinguishes native title or it is wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title¹;

claimant application means an application for a native title declaration that native title exists in land made on behalf of an Aboriginal group claiming to hold native title in the land;

native title—see section 4;

native title declaration means a declaration under this Act or a determination under the *Native Title Act 1993* (Cwth) that land is subject to, or not subject to, native title;

native title holder (or any other expression referring to a person or persons who hold native title in land) means—

- (a) if a body corporate is registered on a native title register as holding the native title on trust—the Aboriginal group for whom the native title is held on trust;
- (b) in any other case—the Aboriginal group recognised at common law as holding the native title;

native title land means land in respect of which native title exists or might exist but does not include—

- (a) land found or declared by the Supreme Court or the Environment, Resources and Development Court not to be subject to native title; or
- (b) land found or declared by a competent authority under a law of the Commonwealth not to be subject to native title;

native title party in relation to land means—

- (a) an Aboriginal group registered under this Act or the *Native Title Act 1993* (Cwth) as the holder of native title in the land; or
- (b) an Aboriginal group registered under this Act or the *Native Title Act 1993* (Cwth) as a claimant to native title in the land;

native title question means a question about—

- (a) the existence of native title in land; or
- (b) the nature of the rights conferred by native title in a particular instance; or
- (c) compensation payable for an act extinguishing or otherwise affecting native title; or
- (d) acquisition of native title in land, or entry to and occupation, use or exploitation of, native title land under powers conferred by an Act of the Parliament; or
- (e) any other matter related to native title,

(but does not include a question arising in criminal proceedings);

native title register means the *State Native Title Register* kept under this Act or the *National Native Title Register* or the *Register of Native Title Claims* kept under the *Native Title Act 1993* (Cwth);

non-claimant application means an application for a native title declaration that is not a claimant application;

registered—an Aboriginal group is taken to be registered as holders of, or claimants to, native title in land if identified or described in a native title register as holders of, or claimants to, native title in the land (as the case requires);

registered native title rights of a native title party means the party's native title rights and interests (held or claimed to be held by the party) as described in the relevant entry in a native title register;

registered representative of native title holders means—

- (a) the body corporate that is the registered native title body corporate in relation to the native title under the law of the Commonwealth; or
- (b) the body corporate registered in the register of native title kept under the law of the State as the registered representative of the native title holders;²

registered representative of claimants to native title means—

- (a) the person registered under the *Native Title Act 1993* (Cwth) in the *Register of Native Title Claims* as the registered native title claimant; or
- (b) the person registered in the *State Native Title Register* as the registered representative of the claimants;

representative Aboriginal body means—

- (a) a body determined under section 202(1) of the *Native Title Act 1993* (Cwth) to be a representative body for the relevant area; or
- (b) a body recognised under section 203AD of the *Native Title Act 1993* (Cwth) as the representative body for the relevant area.

(2) In this Act and in every other Act or statutory instrument—

- (a) a reference to native title extends (unless the context otherwise indicates or requires) to rights and interests comprised in, deriving from, or conferred by native title;
- (b) a reference to rights or interests (or rights and interests) deriving from or conferred by native title is a reference to rights or interests (or rights and interests) comprised in, deriving from or conferred by native title.

(3) In this Act—

Commonwealth Act means the *Native Title Act 1993* (Cwth);

Commonwealth Registrar means the Native Title Registrar appointed under Part 5 of the *Native Title Act 1993* (Cwth);

Commonwealth Minister means the Minister of State for the Commonwealth designated by regulation as the Commonwealth Minister for the purposes of this Act;

Court means the Supreme Court or the ERD Court;

ERD Court means the Environment, Resources and Development Court;

mining tenement means a licence, lease or other authority under a relevant Act authorising exploration for, or recovery or exploitation of, minerals, petroleum or other underground resources;

proceedings does not include criminal proceedings;

Registrar means the Registrar of the ERD Court;

relevant Act means—

- (a) the *Mining Act 1971*; or
- (b) the *Opal Mining Act 1995*; or
- (c) the *Petroleum Act 1940*;

right to exclusive possession of land means a right to possession, occupation, use and enjoyment of land to the exclusion of all others;

State Minister means the Minister designated by regulation as the State Minister for the purposes of this Act.

- (4) An explanatory note to a provision of this Act forms part of the provision to which it relates.

Notes—

- 1 Cf section 227 of the Commonwealth Act.
- 2 See Part 4.

4—Native title

- (1) The expression **native title** means the communal, group or individual rights and interests of Aboriginal peoples 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; and
 - (b) the Aboriginal peoples, 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; and
 - (d) the rights and interests have not been extinguished or have revived.¹
- (2) Without limiting subsection (1), **rights and interests** in that subsection includes hunting, gathering, or fishing, 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, those statutory rights and interests are also covered by the expression **native title**.
- (3a) Subsection (3) does not apply to rights and interests conferred by Part 2 Division 3 Subdivision Q of the Commonwealth Act (which deals with statutory access rights for native title claimants).
- (4) To avoid doubt, subsection (3) does not apply to rights and interests created by a reservation or condition (and which are not native title):
 - (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.

Explanatory note—

- 1 If sections 47, 47A and 47B of the Commonwealth Act are valid enactments of the Commonwealth Parliament, it is possible that native title may revive in certain circumstances under those sections.

4A—Registered representative

- (1) A registered representative of native title holders or native title claimants represents the Aboriginal group that holds or claims to hold native title in the land so that (for example)—
- (a) a notice is given to the Aboriginal group by giving it to the registered representative; and
 - (b) a person negotiates with the Aboriginal group by negotiating with the registered representative; and
 - (c) an agreement lawfully negotiated by the registered representative with respect to the land in which the native title is claimed or held is binding on the Aboriginal group.
- (2) The above examples are not intended to be an exhaustive statement of the ways in which a registered representative might act on behalf of the Aboriginal group nor are they intended to suggest that the group may only act through the registered representative.

Part 3—Native title questions**Division 1—Jurisdiction****5—Jurisdiction of Supreme Court and ERD Court**

- (1) The Supreme Court and the ERD Court each have jurisdiction to determine native title questions.¹
- (2) However, if it is clear before proceedings are commenced that they involve a native title question, the proceedings should be commenced in the ERD Court.
- (3) If proceedings are commenced in the ERD Court because of subsection (2), the Court has jurisdiction to decide not only the native title questions but also the other questions raised in the proceedings.
- (4) The same procedural and other rules apply to both the Supreme Court and the ERD Court in exercising the jurisdiction to determine native title questions.

Explanatory note—

For example, the same rules about costs would be applied by both Courts.²

Notes—

- 1 The jurisdiction includes power to make a native title declaration ie a declaration that particular land is subject to or not subject to native title.
- 2 See section 29 of the *Environment, Resources and Development Court Act 1993*.

6—Reference of proceedings between courts

- (1) The Supreme Court may, and other courts of the State must, refer proceedings involving a native title question to the ERD Court for hearing and determination.
- (2) If proceedings are referred under this section to the ERD Court for hearing and determination, the ERD Court has jurisdiction to hear and determine the native title question and the other questions involved in the proceedings that might, if it were not for the reference, have been determined by the court from which the proceedings were referred.
- (3) The ERD Court may, on application by a party or on its own initiative, refer proceedings involving a native title question to the Supreme Court for hearing and determination.
- (4) The Supreme Court may, on the application by a party or on its own initiative, remove proceedings involving a native title question from the ERD Court into the Supreme Court for hearing and determination.
- (5) In deciding whether proceedings involving a native title question should be heard by the Supreme Court or the ERD Court, the following matters must be taken into consideration:
 - (a) the importance of the questions involved in the proceedings; and
 - (b) the complexity of the legal and factual questions involved in the proceedings.

Division 2—Native title commissioners

7—Native title commissioners

In proceedings involving a native title question, the Court must make use of the expert assistance of native title commissioners appointed under the *Environment, Resources and Development Court Act 1993*.

Division 3—Conferences

8—Conferences

- (1) Before the Court proceeds to a formal hearing of contested proceedings involving a native title question, it must call a conference of the parties to the proceedings to explore the possibility of resolving the matters in dispute by agreement and without resorting to a formal hearing.
- (2) However, the Court may dispense with a conference if the Court is of the opinion that no useful purpose would be served by a conference between the parties before the hearing of the matter or there is some other adequate reason for dispensing with a conference.

9—Mediator

- (1) A mediator selected by the Court from among the Judges of the Court and the native title commissioners in accordance with the rules of the Court will preside at the conference.

- (1a) A member of the Court may be appointed to assist a mediator in the conduct of the conference and a member so appointed is entitled to be present at the conference and to provide advice to the mediator.
- (2) The mediator may adjourn or reconvene the conference from time to time.
- (3) The mediator may allow a person to participate in the conference by—
 - (a) telephone; or
 - (b) closed-circuit television; or
 - (c) other means of communication.
- (4) The mediator may exercise powers of the Court delegated by the rules.

10—Conclusion of conference

- (1) If a settlement is reached at a conference, the Court may make orders to give effect to the terms of agreement.
- (2) If it appears that there is no reasonable prospect of reaching a negotiated settlement within a reasonable time, the mediator must close the conference and report the failure to reach agreement to the Court.

11—Evidence

Evidence of anything said or done in a conference under this Division is inadmissible in proceedings before the Court unless all parties to the proceedings consent.

12—Disqualification

Unless all parties agree to the contrary, a member of the Court who has acted as mediator, or assisted a mediator, at a conference under this Division is disqualified from taking further part in the proceedings.

Division 4—Hearings

13—Principles governing proceedings

- (1) On the hearing of proceedings involving a native title question—
 - (a) the Court will proceed with the minimum of formality; and
 - (c) the Court must act according to equity, good conscience and the substantial merits of the case and without regard to legal technicalities and forms.
- (2) The Court is not bound by the rules of evidence and may inform itself as it thinks fit.
- (3) However, in informing itself about a native title question, the Court must, if there is an established evidentiary practice in the Federal Court for dealing with similar questions, follow the practice of the Federal Court.

14—Court to take into account matters of concern to Aboriginal people

- (1) The Court must, in conducting proceedings involving a native title question, take account of the cultural and customary concerns of Aboriginal peoples.
- (2) However, the Court is not required to inquire into matters of which there is no evidence before the Court.

Division 5—Notification

15—Registrar to be informed in relation to native title questions

The Court must ensure that the Registrar is informed of—

- (a) applications, and amendments of applications, involving native title questions; and
- (b) proceedings in the Court involving native title questions; and
- (c) decisions of the Court on native title questions.

16—Registrar to give notice in relation to native title questions

- (1) The Registrar must give notice of—

- (a) applications, and amendments of applications, involving native title questions; and
- (b) proceedings in the Court involving native title questions; and
- (c) decisions of the Court on native title questions,

in accordance with the regulations.

- (2) The regulations may include provisions for any one or more of the following purposes:

- (a) fixing the time for giving a notice;
- (b) requiring in specified cases notice of an application for a native title declaration to be given both before and after the Registrar has determined whether the claim should be registered;
- (c) regulating the contents of a notice and requiring, in specified cases, that a notice be accompanied by specified documents;
- (d) regulating the way in which the notice is to be given and requiring, in particular, the giving of public notice in specified cases.

Division 6—Miscellaneous

16A—Joinder of parties

- (1) The Court may, at any time, order that a person who appears to have a proper interest in proceedings involving a native title question be joined as a party to the proceedings.
- (2) An order may be made under this section even though the person to be joined as a party was given notice of the proceedings and failed to apply to be joined as a party within the period allowed in the notice.

16B—Costs

- (1) Unless the Court otherwise orders, each party to proceedings is to bear its own costs of the proceedings to the extent the proceedings involve a native title question.

- (2) For example, if a party has, by an unreasonable act or omission, caused another party to incur costs in connection with the proceedings, the Court may (in the exercise of its power to make an exception to the general principle that each party is to bear its own costs) order the party at fault to pay some or all the costs incurred by the other.

Part 4—Claims and determinations of native title

Division 1—State Native Title Register

17—Register

- (1) The Registrar must keep a register¹ of native title and claims to native title in land in the State.
- (2) The Registrar must record in the register—
- (a) all decisions by the courts of the State on questions about the existence of native title in land or the nature of the rights conferred by native title; and
 - (b) all decisions by competent authorities under the law of the Commonwealth about the existence of native title in land in the State or the nature of rights conferred over land in the State by native title; and
 - (c) all claims to native title in land registered under this Part and, in each case, a description of the rights claimed to be conferred by the native title and which the Registrar in registering the claim considered could, *prima facie*, be established; and
 - (d) the name and address for service of the registered representative of the claimants; and
 - (da) the name and address for service of the registered representative of native title holders; and
 - (e) the information required by regulation.
- (3) The register must be available for inspection during normal business hours on payment of the fee fixed by the regulations.
- (4) However—
- (a) a part of the register must be set aside for the inclusion of information and materials of a nature that cannot be publicly disclosed without contravening Aboriginal tradition; and
 - (c) the Court or the Registrar may direct that specified information or materials be included in that part of the register; and
 - (d) that part of the register may only be inspected as authorised by the Court or the Registrar.
- (5) The Registrar must ensure that the entries in the register properly reflect the status of the claims, and decisions by the Registrar or the Court affecting claims, by making, as soon as practicable, any additions, amendments and deletions necessary for that purpose.

Note—

- 1 The register may be referred to as the *State Native Title Register*.

Division 2—Application for native title declarations

18—Applications

- (1) An application for a native title declaration in respect of land may be made to the Court by an interested person.
- (2) The following are interested persons:
 - (a) a member of an Aboriginal group claiming native title in the land who is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group;
 - (b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land);
 - (c) the State Minister;
 - (d) the Commonwealth Minister.
- (3) However—
 - (a) an application cannot be made in relation to land that is already the subject of a native title declaration;
 - (b) if a previous exclusive possession act attributable to the State¹ or the Commonwealth has been done in relation to the land, a claimant application cannot be made in relation to the land unless—
 - (i) the extinguishing effect of the act is to be disregarded under section 47, 47A or 47B of the Commonwealth Act; and
 - (ii) the application includes a statement to that effect;
 - (c) if a previous non-exclusive possession act attributable to the State² or the Commonwealth has been done in relation to the land, a claimant application for a native title declaration establishing a right to exclusive possession of the land cannot be made unless—
 - (i) the extinguishing effect of the act is to be disregarded under section 47, 47A or 47B of the Commonwealth Act; and
 - (ii) the application includes a statement to that effect.
- (4) In this section—

previous exclusive possession act and ***previous non-exclusive possession act*** have the same meanings as in the Commonwealth Act.

Explanatory notes—

- 1 Paragraph (b) is of no effect in relation to acts attributable to the State unless the State has made provision as mentioned in section 23E of the Commonwealth Act in relation to the act.
- 2 Paragraph (c) is of no effect in relation to acts attributable to the State unless the State has made provision as mentioned in section 23I of the Commonwealth Act in relation to the act.

18A—Form and content of applications

- (1) An application for a native title declaration must (whether the application is a claimant application or a non-claimant application)—
- (a) be lodged with the Registrar in writing; and
 - (b) state the nature of the declaration sought by the applicant; and
 - (c) define the land to which the application relates with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified; and
 - (d) include a map showing the boundaries of the area covered by the application.
- (2) A claimant application must—
- (a) name the persons comprising the Aboriginal group claiming native title or otherwise define the Aboriginal group sufficiently clearly so that it can be ascertained whether any particular person is a member of the group; and
 - (b) state the nature of the rights conferred by the native title claimed and the nature of activities that may be carried out pursuant to those rights; and
 - (c) state the factual basis on which native title is asserted and, in particular, the factual basis on which it is asserted that—
 - (i) the Aboriginal group has, and its predecessors had, an association with the area; and
 - (ii) there exist traditional laws acknowledged by, and traditional customs observed by, the Aboriginal group that give rise to the native title; and
 - (iii) the Aboriginal group has continued to hold the native title in accordance with those traditional laws and customs; and

(The statement may include details of circumstances in which access to the area by a member or a parent of a member of the Aboriginal group has been prevented.)
 - (d) give details of any activities currently carried on in relation to the land by the Aboriginal group; and
 - (e) give details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land; and
 - (f) give details of notices, of which the applicant is aware, about matters that may be the subject of negotiation with the applicant if the claim is registered; and

Examples—

- A notice under section 29 of the Commonwealth Act.
- A notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*.
- A notice of the intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies.

- (g) give details of any other application, of which the applicant is aware, for a judicial determination of native title in the land or a determination of compensation in relation to native title in the land; and
 - (h) state the name and address for service of the applicant; and
 - (i) contain the information, and be accompanied by the documents, required by regulation; and
 - (j) state the factual basis on which it is asserted that the applicant is a member of the Aboriginal group authorised as required under section 18(2)(a); and
 - (k) be accompanied by a statutory declaration verifying—
 - (i) the information contained in the application; and
 - (ii) that the applicant is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group; and
 - (iii) that the applicant believes that the native title claimed has not been extinguished and that none of the area covered by the application is the subject of a native title declaration.
- (3) A claimant application may be accompanied by a certificate of the representative Aboriginal body for the area covered by the application (or, if the body is not the representative body for the whole of the area, certificates of representative Aboriginal bodies that together are representative bodies for the whole of the area) certifying that the applicant is a member of the Aboriginal group and is authorised by the group to make the application and to deal with matters arising in relation to the application on behalf of the group.
- (4) A non-claimant application must—
- (a) state the grounds on which the declaration is sought; and
 - (b) contain all information known to the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of the land, including information about present and former association by Aboriginal peoples with the land; and
 - (c) state the name and address for service of the applicant; and
 - (d) contain the information, and be accompanied by the documents, required by regulation; and
 - (e) be accompanied by a statutory declaration verifying the information contained in the application.

Division 2A—Registration of claims

19—Registrar to determine whether claim is to be registered

Unless the applicant who makes a claimant application indicates in the application that the Aboriginal group for which the native title declaration is sought does not seek registration of the claim made in the application, the Registrar must determine whether the claim should be registered.

19A—Registration of claims

- (1) The Registrar must register the claim if, and only if, the Registrar is satisfied—
- (a) if the application is not accompanied by a certificate as referred to in section 18A(3)—the applicant is authorised to make the application by the relevant Aboriginal group; and
 - (b) the application is made in accordance with Division 2; and
 - (c) the factual basis on which it is asserted that native title exists is sufficient to support the assertion (including the particular assertions referred to in section 18A(2)(c)); and
 - (d) at least some of the rights conferred by the native title claimed can, *prima facie*, be established; and
 - (e) either—
 - (i) at least one member of the Aboriginal group currently has, or previously had, a traditional physical connection with part of the land covered by the application; or
 - (ii) at least one parent of one member of the Aboriginal group had a traditional physical connection with part of the land and would (according to reasonable expectation) have maintained that connection but for things done (other than the creation of an interest in relation to land) by the Crown, or a statutory authority of the Crown, in any capacity or the holder of a lease over any of the land, or any person acting on behalf of such a holder; and
 - (f) at the time of the application there were no entries (made or not removed as a result of consideration under this Act or the Commonwealth Act on or after 30 September 1998) in the *State Native Title Register* or the *Register of Native Title Claims* (kept under the Commonwealth Act) relating to a claim by the Aboriginal group, or by another Aboriginal group that includes one or more of the members of the Aboriginal group, to native title in land covered by the application.
- (2) The Registrar must not register a claim if the application or accompanying documents disclose, or the Registrar is otherwise aware, that—
- (a) if the rights conferred by the native title claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas; or
 - (b) if the native title claimed is in waters in an offshore place—the rights claimed to be conferred by the native title purportedly exclude all other rights and interests in relation to the whole or part of the offshore place; or
 - (c) the native title claimed has been extinguished (except to the extent that the extinguishment is required to be disregarded under section 47(2), 47A(2) or 47B(2) of the Commonwealth Act).

- (3) In considering a claim, the Registrar—
- (a) must have regard to information contained in the application and in any other documents provided by the applicant and, to the extent that it is reasonably practicable to do so in the circumstances, to relevant information provided by the State or the Commonwealth; but
 - (b) is not limited to that information and may (but need not) obtain and have regard to other information.
- (4) If a claimant application containing a claim that has been registered is amended, the Registrar must reconsider the registration of the claim.
- (5) On reconsideration of the registration of a claim, the Registrar must—
- (a) if satisfied that the claim, assuming it had been made in its amended form, would not have been registered—deregister the claim; or
 - (b) if satisfied that the information recorded in the register in relation to the claim would, assuming it had been made in its amended form, have differed from the information actually recorded in some way—vary the register to reflect the amendment.
- (6) If—
- (a) the Registrar is aware that a notice has been issued about matters that may be the subject of negotiation with an applicant; and
 - (b) the applicant's right to participate in the negotiations is dependent on the claim being registered within a particular period after the date of service of the notice,

the Registrar must use his or her best endeavours to finish considering the claim as soon as practicable and, if possible, before the end of that period.

Examples—

- A notice under section 29 of the Commonwealth Act.
 - A notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*.
 - A notice of the intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies.
- (7) The Registrar must give the applicant and the Court to which the application is made notice of his or her decision on the application and, if the Registrar makes a decision adverse to the interests of the applicant, a statement of the reasons for his or her decision.
- (8) On registering a claim, the Registrar must register the applicant for registration as the registered representative of the claimants.
- (9) In this section—

offshore place has the same meaning as in the Commonwealth Act.

19B—Review of decision in relation to registration of claim

- (1) A decision by the Registrar in relation to the registration (or de-registration) of a claim is reviewable by the Court on application by the applicant or the person registered (or formerly registered) as representative of the claimants.

- (2) On a review, the Court—
 - (a) must examine the decision of the Registrar on the evidence or material before the Registrar but may, as it thinks fit, allow further evidence or material to be presented to it;
 - (b) may affirm the Registrar's decision or direct the Registrar to register, or re-register, the claim.
- (3) On a review, the Court is to apply the same principles as are binding on the Registrar.

Division 3—Native title declarations

20—Court to hear application for native title declaration

- (1) An application for a native title declaration is to be heard by the ERD Court.
- (2) However, the ERD Court may, on its own initiative, and must, if directed to do so by the Supreme Court, refer an application for a native title declaration to the Supreme Court for hearing and determination.

23—Hearing and determination of application for native title declaration

- (1) On the hearing of an application for a native title declaration, the Court may allow an interested person who desires to be heard on the application to introduce evidence, and to make submissions, relevant to the subject matter of the application.
- (2) The following are interested persons—
 - (a) the registered representative of claimants to native title in the land; and
 - (b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land); and
 - (c) a representative Aboriginal body; and
 - (d) the State Minister; and
 - (e) the Commonwealth Minister; and
 - (ea) the council (within the meaning of the *Local Government Act 1999*) of the area in which the land to which the proceedings relate is situated; and
 - (f) any other person who, in the Court's opinion, may be in a position to contribute to the proper resolution of the questions at issue.
- (3) If, after hearing the evidence and submissions, the Court is satisfied that native title exists in the land or a particular part of the land, the Court must—
 - (a) define the land in which the native title exists; and
 - (b) define the Aboriginal group in which native title is vested so that it is possible to determine whether a particular person is, or is not, a member of the group; and
 - (c) define the nature and extent of the rights and interests conferred by the native title and, in particular, state whether the native title confers a right to exclusive possession of the land; and

Explanatory note—

Such a right cannot be found to exist in respect of land covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease. Cf section 225(e) of the Commonwealth Act.

- (d) state the nature and extent of other interests in the land; and
 - (e) define the relationship between the native title and other interests in the land.
- (4) A declaration that native title exists in land is to be regarded as a comprehensive declaration of all native title in the land and hence excludes the possible existence of other native title in the same land.
- (5) A native title declaration is, subject to any qualification stated in the declaration, conclusive except in proceedings by way of appeal from the declaration or for variation or revocation of the declaration.¹
- (6) After hearing the evidence and submissions, the Court may, if satisfied that native title does not exist in the land, or a particular part of the land, to which the application relates, make a declaration to that effect.

Note—

- 1 See section 25.

24—Registration of representative

- (1) If the Court proposes to declare land subject to native title, the Court must invite a representative of the persons recognised at common law as holders of the native title (the *common law holders*), within a specified period—
- (a) to nominate a body corporate to be the registered representative of the holders of native title in the land; and
 - (b) to indicate whether holders of native title in the land want the registered representative to hold the native title on trust.
- (2) A body corporate—
- (a) is not eligible for nomination as the registered representative of the holders of native title in land unless it complies with the principles of eligibility prescribed by regulation; but
 - (b) if it does comply with the principles of eligibility—may be the registered representative of different groups of Aboriginal people who hold different rights and interests in the same land or who hold rights and interests in different land.
- (3) A body corporate nominated to be the registered representative of holders of native title in land—
- (a) must be recorded in the register as the registered representative; and
 - (b) must carry out functions assigned by or under an Act to the registered representative.
- (4) If a body corporate that is eligible for nomination under this section is not nominated within the period specified by the Court, the Court must select an eligible body corporate to be the registered representative of the holders of native title in accordance with the regulations.

- (5) If—
- (a) the representative of holders of native title in the land indicate that they want the body corporate nominated to hold the native title on their behalf; and
 - (b) the body corporate consents to hold the native title in trust,
- the Court must make an order vesting the native title in the body corporate to be held in trust for the common law holders.
- (6) The terms on which the native title is to be held on trust are to be as prescribed by regulation and the trustee must carry out functions given to it by regulation.
- (7) The Court may on application by a representative of the persons who are recognised at common law as the holders of native title in land, order that the registered representative of, or trustee for, the native title holders be changed by substituting a nominated body corporate for the one previously recognised as the registered representative or trustee.

24A—Native title declaration in proceedings for compensation

- (1) This section applies to proceedings based on a claim made to the Court for compensation for an act extinguishing or otherwise affecting native title in relation to land for which a native title declaration has not been made.
- (2) The Court must conduct the proceedings as if they involved concurrent applications as follows:
- (a) the claim for compensation; and
 - (b) an application for a native title declaration establishing whether native title currently exists at the date of the Court's decision.
- (3) The Court must, at the conclusion of the proceedings, make a native title declaration.
- (4) Divisions 2 and 2A do not apply in relation to a presumptive application for a native title declaration under subsection (2)(b).

25—Revision of declaration

- (1) An application may be made for variation or revocation of a native title declaration by—
- (a) the registered representative of the holders of native title in the land to which the declaration relates; or
 - (b) the Commonwealth Minister; or
 - (c) the State Minister; or
 - (d) the Registrar.
- (2) An application may only be made under this section on the ground that—
- (a) the declaration is no longer correct because of events that have taken place since it was made; or
 - (b) the interests of justice require the variation or revocation of the declaration.

Division 4—Miscellaneous

26—Merger of proceedings

- (1) If the Court has separate proceedings before it in which native title declarations are sought in relation to the same land, the proceedings must be heard together to the extent that they relate to the same area of land.
- (2) For the purposes of subsection (1), the Court may make appropriate orders for either or both of the following:
 - (a) the division of claims into separate claims;
 - (b) the amalgamation or separation of proceedings.

26A—Concurrent proceedings

- (1) If a non-claimant application is made under this Act, and there is a concurrent claimant application under the Commonwealth Act (accepted before or after the non-claimant application is made)—
 - (a) the non-claimant application under this Act is, to the extent that it relates to the same land as the claimant application, stayed while proceedings based on the claimant application continue; and
 - (b) to the extent that the non-claimant application relates to land that becomes subject to a native title declaration under the Commonwealth Act, is permanently stayed.
- (2) However if a native title declaration under the Commonwealth Act is varied or revoked, the application revives to the extent that it relates to land that ceases to be subject to the declaration.

26B—Cross-vesting scheme

- (1) For the purpose of avoiding multiplicity of proceedings, the State Minister and the Commonwealth Minister may enter into an arrangement (a ***cross-vesting scheme***) providing reciprocal powers for the transfer of proceedings involving native title questions between the Court and Commonwealth authorities with power to adjudicate on native title questions.
- (2) If proceedings are transferred to a Commonwealth authority under a cross-vesting scheme, the Commonwealth authority has, subject to the conditions of the scheme, jurisdiction to decide native title questions and also other questions arising in the proceedings.

27—Protection of native title from encumbrance and execution

If native title is held on trust under Division 3, the native title—

- (a) cannot be dealt with except as authorised by regulation; and
- (b) cannot be taken in execution under the judgment of a court unless the native title is, under the terms of a dealing authorised by regulation, liable to be taken in execution under the judgment of a court.

Part 4A—Compensation for acts extinguishing or otherwise affecting native title

27A—Claims for compensation for acts extinguishing or otherwise affecting native title

- (1) This section applies to claims for compensation for an act extinguishing or otherwise affecting native title.
- (2) If a claim is made to the Court by a person other than the registered representative of the native title holders, the statement of claim—
 - (a) must have annexed to it a schedule setting out the information classified in the regulations as mandatory information; and
 - (b) may have annexed to it a further schedule setting out information classified in the regulations as permissible additional information; and
 - (c) must be accompanied by an affidavit sworn by the person bringing the claim (the representative)—
 - (i) stating that the representative believes that native title exists or existed in relation to the area to which the claim relates; and
 - (ii) stating that the representative believes that all of the statements made in the statement of claim are true; and
 - (iii) stating that the representative is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to it and stating the basis of the authorisation.
- (3) In determining compensation, the Court is to apply the same principles as would be applicable if the compensation were determined under the Commonwealth Act.
- (4) If the Court makes an order for compensation, the order must set out—
 - (a) the name of the person or persons entitled to the compensation or a method for determining their identity; and
 - (b) if the compensation is to be distributed between 2 or more persons—the basis of the distribution; and
 - (c) a method for determining disputes regarding entitlement to compensation.

Part 5—Service on native title holders

28—Service on native title holder where title registered

- (1) If native title is registered under the law of the Commonwealth or the State, a notice or other document is validly served on the holders of the native title if the notice or other document is given personally or by post to—
 - (a) their registered representative; and
 - (b) the relevant representative Aboriginal body for the land.

(2) If—

- (a) an Act provides for the service of notices or other documents on persons with an interest in land, but does not specifically prescribe a method of service on native title holders; and
- (b) native title is registered under the law of the Commonwealth or the State in the relevant land and the possibility that unregistered native title may concurrently exist in the same land has been excluded by declaration of a court of competent jurisdiction,

the Act is taken to provide for service on native title holders in accordance with this section (which applies to service on native title holders under the Act to the exclusion of provisions of the Act about how service is to be effected).

29—Service on native title claimants

- (1) If a claim to native title is registered under the law of the Commonwealth or the State, a notice or other document is validly served on the claimants to that native title if the notice or other document is given personally or by post to—
 - (a) their registered representative; and
 - (b) the relevant representative Aboriginal body for the land.

30—Service where existence of native title, or identity of native title holders uncertain

- (1) A notice or other document is validly served on all who hold or may hold native title in land as follows:
 - (a) in the case of a right to negotiate notice, if—
 - (i) notice of the nature and effect of the notice or other document is given as required by regulation; and
 - (ii) a copy of the notice or other document is given personally or by post or by some other agreed method to—
 - (A) all registered representatives of claimants to or holders of native title in the land, as at the date notice was last given as required under subparagraph (i); and
 - (B) the relevant representative Aboriginal body; and
 - (C) the State Minister;
 - (b) in any other case, if a copy of the notice or other document is given personally or by post or by some other agreed method to—
 - (i) all registered representatives of claimants to or holders of native title in the land; and
 - (ii) the relevant representative Aboriginal body.
- (2) If—
 - (a) an Act provides for the service of notices or other documents on persons with an interest in land, but does not specifically prescribe a method of service on native title holders; and

- (b) the land in question is native title land but there is no registered native title in the relevant land,

the Act is taken to provide for service on native title holders in accordance with this section (which applies to service on native title holders under the Act to the exclusion of provisions of the Act about how service is to be effected).

- (3) Service of a notice or other document is effected when all requirements of this section for its service are completed.
- (4) In this section—

right to negotiate notice means—

- (a) a notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*;
- (b) a notice of intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies;
- (c) any other notice declared by regulation to be a right to negotiate notice.

Part 6—Validation and effect of certain acts

Division 1—Preliminary

31—Interpretation

- (1) In this Part—

NTA means the *Native Title Act 1993* of the Commonwealth.

- (2) Unless the contrary intention appears, a word or expression used in the NTA has the same meaning in this Part as it has in the NTA.

Division 2—Validation

32—Validation of past acts attributable to the State

Every past act attributable to the State is valid and is taken always to have been valid.¹

Note—

- 1 See section 19 NTA. An act *attributable* to the State is defined in section 239 NTA. *Valid* is defined in section 253 NTA.

32A—Validation of intermediate period acts attributable to the State

Every intermediate period act attributable to the State is valid and is taken always to have been valid.¹

Note—

- 1 See section 22F NTA. An *intermediate period act* is defined in section 232A NTA. The term covers certain acts that took place between 1 January 1994 and 23 December 1996. An act *attributable* to the State is defined in section 239 NTA. *Valid* is defined in section 253 NTA.

32B—Validation by agreement of future acts attributable to State

(1) If—

- (a) an indigenous land use agreement to which the State is a party provides for the retrospective validation or conditional validation of a future act, or a class of future acts, attributable to the State; and
- (b) the requirements of section 24EBA(1) of the NTA are satisfied in relation to the agreement,

the future act or class of future acts is valid and is taken always to have been valid.¹

(2) In this section—

future act does not include an intermediate period act.

Note—

- 1 See sections 24EBA(1) and (3) NTA. *Indigenous land use agreements* are defined in sections 24BA, 24CA and 24DA NTA. A *future act* is defined in section 233 NTA. An act *attributable* to the State is defined in section 239 NTA. *Valid* is defined in section 253 NTA.
Section 24EBA(1) NTA requires—

- details of the agreement to be on the Register of Indigenous Land Use Agreements (see Part 8A NTA); and
- any person (other than the Crown in right of the Commonwealth, a State or a Territory) who is or may become liable under the agreement or otherwise to pay compensation in relation to the act or class of acts to be a party to the agreement.

Division 3—Past acts

32C—Application of Division 3

- (1) This Division does not apply to a previous exclusive possession act.¹
- (2) This Division does not apply to a previous non-exclusive possession act unless the act is a category A past act consisting of the grant of a pastoral lease or an agricultural lease.²

Notes—

- 1 See sections 23E and 23C(3) NTA.
2 See sections 23I and 23G(2) and (3) NTA.

33—Effect of validation—category A past acts that are not public works

A category A past act (except a past act to which section 229(4) of the NTA applies) extinguishes the native title concerned.¹

Note—

- 1 See sections 19 and 15(1)(a) NTA. A *category A past act* is defined in section 229 NTA. This category covers certain freehold grants, certain leasehold grants (commercial, agricultural, pastoral and residential leases and those parts of mining leases that are taken to be "dissected" under section 245 NTA, such as lands on which there are city, town or private residences) and public works. *Lease, permit* and various types of leases are defined in sections 242 to 249 NTA. Section 229(4) NTA applies to certain past acts consisting of the construction or establishment of a public work. *Public work* is defined in section 253 NTA.

34—Effect of validation—category A past acts that are public works

- (1) A category A past act to which section 229(4) of the NTA applies 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.¹
- (2) If section 229(4)(a) of the NTA applies to the past act, the extinguishment is taken to have happened on 1 January 1994.²

Notes—

- 1 See sections 19 and 15(1)(b) NTA.
- 2 Section 229(4)(a) NTA applies to a past act consisting of the construction or establishment of any public work if the work commenced to be constructed or established before 1 January 1994 and the construction or establishment had not been completed by that day.

35—Effect of validation—inconsistent category B past acts

A category B past act wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights conferred by the native title concerned extinguishes the native title to the extent of the inconsistency.¹

Note—

- 1 See sections 19 and 15(1)(c) NTA. A *category B past act* is defined in section 230 NTA. This category covers leasehold grants (other than leases that are category A past acts and mining leases.)

36—Effect of validation—category C and D past acts

The non-extinguishment principle applies to all category C and D past acts.¹

Note—

- 1 See sections 19 and 15(1)(d) NTA. A *category C past act* is defined in section 231 NTA. This category deals with the grant of mining leases. *Mining lease* is defined in section 245 NTA and *mine* in section 253 NTA. A *category D past act* is defined in section 232 NTA. It is the residual category of past acts. The effect of the *non-extinguishment principle* is set out in section 238 NTA.

Division 4—Intermediate period acts**36A—Application of Division 4**

This Division does not apply to a previous exclusive possession act or a previous non-exclusive possession act.¹

Note—

- 1 See sections 23E and 23C(3) NTA and sections 23I and 23G(3) NTA.

36B—Effect of validation—category A intermediate period acts that are not public works

A category A intermediate period act (except such an act consisting of the construction or establishment of a public work) extinguishes the native title concerned.¹

Note—

- 1 See sections 22F and 22B(a) NTA. A *category A intermediate period act* is defined in section 232B NTA. This category covers freehold estates, certain leasehold grants (Scheduled interests, commercial, exclusive agricultural, exclusive pastoral, residential and community purposes leases and those parts of mining leases that are taken to be "dissected" under section 245 NTA, such as lands on which there are city, town or private residences), certain vestings and public works. *Lease, permit* and various types of leases are defined in sections 242 to 249B NTA. *Scheduled interest* is defined in section 249C NTA. *Public work* is defined in section 253 NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see section 24EBA(1)(a)(iii) and (6) NTA.

36C—Effect of validation—category A intermediate period acts that are public works

- (1) A category A intermediate period act consisting of the construction or establishment of a public work extinguishes native title in relation to the land or waters on which the public work (on completion of its construction or establishment) was or is situated.¹
- (2) The extinguishment is taken to have happened when the construction or establishment began.²

Notes—

- 1 See sections 22F and 22B(b)(i) NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see section 24EBA(1)(a)(iii) and (6) NTA.
- 2 See section 22B(b)(ii) NTA.

36D—Effect of validation—inconsistent category B intermediate period acts

A category B intermediate period act wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights conferred by the native title concerned extinguishes the native title to the extent of the inconsistency.¹

Note—

- 1 See sections 22F and 22B(c) NTA. A *category B intermediate period act* is defined in section 232C NTA. This category covers leasehold grants (other than leases that are category A intermediate period acts and mining leases). An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see section 24EBA(1)(a)(iii) and (6) NTA.

36E—Effect of validation—category C and D intermediate period acts

The non-extinguishment principle applies to all category C and D intermediate period acts.¹

Note—

- 1 See sections 22F and 22B(d) NTA. A *category C intermediate period act* is defined in section 232D NTA. This category covers mining leases. *Mining lease* is defined in section 245 NTA and *mine* in section 253 NTA. A *category D intermediate period act* is defined in section 232E NTA. It is the residual category of intermediate period acts. The effect of the *non-extinguishment principle* is set out in section 238 NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see section 24EBA(1)(a)(iii) and (6) NTA.

Division 5—Previous exclusive and non-exclusive possession acts

36F—Effect of previous exclusive possession acts attributable to the State (other than public works)

- (1) A previous exclusive possession act (apart from an excepted act) attributable to the State extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned.¹
- (2) The extinguishment is taken to have happened when the act was done.²
- (3) However, no implication is to be drawn from this section that Parliament intends to alter the effect of an excepted act if its effect, apart from this section, was to extinguish native title.
- (4) In this section—

excepted act means—

- (a) a previous exclusive possession act consisting of the construction or establishment of a public work; or
- (b) a previous exclusive possession act consisting of the grant or vesting of an interest under a lease that was acquired by the Indigenous Land Corporation before the date of assent to the *Native Title (South Australia) (Validation and Confirmation) Amendment Act 2000*; or
- (c) a previous exclusive possession act that was subject to a reservation or condition expressly for the benefit of Aboriginal people; or
- (d) a previous exclusive possession act consisting of the grant or vesting of a Scheduled interest if—
 - (i) the interest had ceased to exist by 23 December 1996; or
 - (ii) the interest arose under a miscellaneous lease granted solely or primarily for any of the following:
 - grazing and cultivation;
 - grazing, cultivation and nursery;
 - land based aquaculture and grazing;
 - vegetable and fodder growing and grazing;
 - fellmongering establishment; or
 - (iii) the interest arose under a lease granted under section 35 of the *National Parks and Wildlife Act 1972* solely or primarily for any of the following—

- garden;
- grazing and cropping.

Notes—

- 1 See sections 23E and 23C(1)(a) NTA. A *previous exclusive possession act* is defined in section 23B NTA. The term covers certain grants of freehold estates or leases on or before 23 December 1996 and public works if construction or establishment commenced on or before 23 December 1996. An act *attributable* to the State is defined in section 239 NTA and, for certain purposes, section 23JA NTA. Various types of *leases* are defined in sections 242 to 249B NTA. *Scheduled interest* is defined in section 249C NTA. *Public work* is defined in section 253 NTA.
- 2 See section 23C(1)(b) NTA.

36G—Effect of previous exclusive possession acts that are public works attributable to the State

- (1) A previous exclusive possession act attributable to the State consisting of the construction or establishment of a public work 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.¹
- (2) The extinguishment is taken to have happened when the construction or establishment of the public work began.²

Notes—

- 1 See sections 23E and 23C(2)(a) NTA. An act *attributable* to the State is defined in section 239 NTA and, for certain purposes, section 23JA NTA.
- 2 See section 23C(2)(b) NTA.

36H—Confirmation of validity of use of certain land held by Crown etc

To avoid doubt, if an act consisting of 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 becomes a previous exclusive possession act when the land or waters are used to any extent in a way that extinguishes native title in relation to the land or waters, the use of the land or waters in that way is valid.¹

Note—

- 1 See sections 23E and 23DA NTA.

36I—Effect of previous non-exclusive possession acts attributable to the State

- (1) Subject to subsection (2), if a previous non-exclusive possession act is attributable to the State—
 - (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.¹
- (2) This section does not apply to a previous non-exclusive possession act that is a category A past act consisting of the grant of a pastoral lease or an agricultural lease.²

Notes—

1 See sections 23I and 23G(1) NTA. A *previous non-exclusive possession act* is defined in section 23F NTA. An act *attributable* to the State is defined in section 239 NTA and, for certain purposes, section 23JA NTA.

2 See section 23G(2) NTA.

36J—Notification of certain non-exclusive agricultural or pastoral leases

- (1) Before granting a non-exclusive agricultural lease or non-exclusive pastoral lease to give 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)—
- (a) notice of the proposed grant must be given to—
 - (i) all registered representatives of holders of native title in the land concerned; and
 - (ii) all registered representatives of persons who are registered under the law of the Commonwealth or the State as claimants to native title in the land concerned; and
 - (iii) the relevant representative Aboriginal body; and
 - (b) those persons must be given an opportunity to comment.¹
- (2) A notice under subsection (1)—
- (a) may relate to a number of different leases proposed to be granted over a specified period;
 - (b) must be given in the way determined in writing by the Commonwealth Minister for the purposes of the NTA.²

Notes—

1 See sections 23I and 23HA NTA. A *non-exclusive agricultural lease* is defined in section 247B NTA and a *non-exclusive pastoral lease* in section 248B NTA.

2 See sections 23I and 23HA NTA.

Division 6—Miscellaneous

37—Extinguishment does not confer right to eject or remove Aboriginal peoples

An extinguishment of native title effected by this Act does not by itself confer a right to eject or remove Aboriginal people 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 this Act.¹

Note—

- 1 See sections 19 and 15(2) NTA.

38—Preservation of beneficial reservations and conditions

If—

- (a) a past act, intermediate period act, previous exclusive possession act, or previous non-exclusive possession act, attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples; or
- (b) the doing of the act would affect rights or interests (other than rights conferred by native title) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage),

nothing in this Act affects that reservation or condition or those rights or interests.¹

Note—

- 1 See sections 19 and 16 NTA; sections 22F and 22C NTA; 23E and 23D NTA; sections 23I and 23H NTA. An act *attributable* to the State is defined in section 239 NTA and, for certain purposes, section 23JA NTA.

Part 7—Confirmation of Crown and other rights

39—Confirmation

- (1) The existing ownership of natural resources by the Crown is confirmed.
- (2) All existing rights of the Crown to use, control and regulate the flow of water are confirmed.
- (3) All existing fishing access rights under the law of the State prevail over any other public or private fishing rights.
- (4) Existing public access to and enjoyment of the following places is confirmed:
 - (a) waterways;
 - (b) beds and banks or foreshores of waterways;
 - (c) coastal waters;
 - (d) beaches;
 - (da) stock-routes;
 - (e) areas that were public places at 31 December 1993.

- (5) Nothing in this section—
- (a) extinguishes native title; or
 - (b) affects land or an interest in land held by Aboriginal peoples under a law that confers benefits only on Aboriginal peoples.

Part 8—Miscellaneous

39A—Content of orders for compensation to Aboriginal group

If the Court makes an order for the payment of compensation to an Aboriginal group, the order must set out—

- (a) the name of the persons entitled to the compensation or how they are to be identified; and
- (b) if the compensation is to be divided between the members of the group—
 - (i) how it is to be divided; and
 - (ii) how any dispute between members of the group about their respective entitlements to the compensation is to be determined.

40—Regulations

The Governor may make regulations for the purposes of this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Native Title (South Australia) Act 1994* amended the following:

Acts Interpretation Act 1915

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|------|----|--|------------|---|
| 1994 | 92 | <i>Native Title (South Australia) Act 1994</i> | 15.12.1994 | 15.12.1994 (<i>Gazette 15.12.1994 p2129</i>) except Pt 5—9.5.1996 and except Pts 3 & 4— 17.6.1996 (<i>Gazette 9.5.1996 p2440</i>) |
| 1998 | 23 | <i>Statutes Amendment (Native Title) Act 1998</i> | 2.4.1998 | Pt 3 (ss 9 & 10)—21.5.1998 (<i>Gazette 21.5.1998 p2199</i>); Pt 3 (s 11)—2.4.2000 (s 7(5) <i>Acts Interpretation Act 1915</i>) |
| 2000 | 46 | <i>Native Title (South Australia) (Miscellaneous) Amendment Act 2000</i> | 13.7.2000 | 27.8.2001 (<i>Gazette 9.8.2001 p2878</i>) |
| 2000 | 84 | <i>Native Title (South Australia) (Validation and Confirmation) Amendment Act 2000</i> | 14.12.2000 | 22.1.2001 (<i>Gazette 18.1.2001 p68</i>) |

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

| Provision | How varied | Commencement |
|------------|--|--------------|
| Long title | amended under <i>Legislation Revision and Publication Act 2002</i> | .. |
| Pt 1 | | |
| s 2 | omitted under <i>Legislation Revision and Publication Act 2002</i> | .. |
| Pt 2 | | |
| s 3 | | |
| s 3(1) | | |

| | | |
|---------------------------------------|--|-----------|
| Aboriginal group | inserted by 46/2000 s 3(a) | 27.8.2001 |
| affect | inserted by 46/2000 s 3(b) | 27.8.2001 |
| claimant applicant | inserted by 46/2000 s 3(b) | 27.8.2001 |
| native title declaration | substituted by 46/2000 s 3(c) | 27.8.2001 |
| native title holder | substituted by 46/2000 s 3(d) | 27.8.2001 |
| native title party | inserted by 46/2000 s 3(e) | 27.8.2001 |
| native title question | amended by 46/2000 s 3(f) | 27.8.2001 |
| native title register | inserted by 46/2000 s 3(g) | 27.8.2001 |
| non-claimant application | inserted by 46/2000 s 3(g) | 27.8.2001 |
| registered native title rights | inserted by 46/2000 s 3(g) | 27.8.2001 |
| registered representative | substituted by 46/2000 s 3(h) | 27.8.2001 |
| representative Aboriginal body | substituted by 46/2000 s 3(i) | 27.8.2001 |
| s 3(2) | substituted by 46/2000 s 3(j) | 27.8.2001 |
| s 3(3) | | |
| mining tenement | substituted by 46/2000 s 3(k) | 27.8.2001 |
| relevant Act | inserted by 46/2000 s 3(l) | 27.8.2001 |
| right to exclusive possession of land | inserted by 46/2000 s 3(l) | 27.8.2001 |
| s 4 | | |
| s 4(3) | amended by 46/2000 s 4(a) | 27.8.2001 |
| s 4(3a) | inserted by 46/2000 s 4(b) | 27.8.2001 |
| s 4(5) | <i>deleted by 46/2000 s 4(c)</i> | 27.8.2001 |
| explanatory note | substituted by 46/2000 s 4(d) | 27.8.2001 |
| s 4A | inserted by 46/2000 s 5 | 27.8.2001 |
| Pt 3 | | |
| s 9 | | |
| s 9(1) | amended by 23/1998 s 9(a) | 21.5.1998 |
| s 9(1a) | inserted by 23/1998 s 9(b) | 21.5.1998 |
| s 12 | substituted by 23/1998 s 10 | 21.5.1998 |
| s 13 | | |
| s 13(1) | s 13(b) deleted by 46/2000 s 6(a) | 27.8.2001 |
| | s 13 redesignated as s 13(1) by 46/2000 s 6(b) | 27.8.2001 |
| s 13(2) and (3) | inserted by 46/2000 s 6(b) | 27.8.2001 |
| Pt 3 Div 5 | amended by 23/1998 s 11 | 2.4.2000 |
| | substituted by 46/2000 s 7 | 27.8.2001 |
| Pt 3 Div 6 | inserted by 46/2000 s 7 | 27.8.2001 |
| Pt 4 | | |
| s 17 | | |
| s 17(2) | amended by 46/2000 s 8(a), (b) | 27.8.2001 |

Native Title (South Australia) Act 1994—27.8.2001

Legislative history

| | | |
|----------------|---|-----------|
| s 17(4) | (b) deleted by 46/2000 s 8(c) | 27.8.2001 |
| s 17(5) | inserted by 46/2000 s 8(d) | 27.8.2001 |
| Pt 4 Div 2 | heading substituted by 46/2000 s 9 | 27.8.2001 |
| s 18 | substituted by 46/2000 s 9 | 27.8.2001 |
| s 18A | inserted by 46/2000 s 9 | 27.8.2001 |
| Pt 4 Div 2A | heading inserted by 46/2000 s 9 | 27.8.2001 |
| s 19 | substituted by 46/2000 s 9 | 27.8.2001 |
| ss 19A and 19B | inserted by 46/2000 s 9 | 27.8.2001 |
| Pt 4 Div 3 | heading substituted by 46/2000 s 9 | 27.8.2001 |
| s 20 | substituted by 46/2000 s 9 | 27.8.2001 |
| s 21—see s 26A | | |
| s 22—see s 26B | | |
| s 23 | | |
| s 23(2) | amended by 46/2000 s 11(a) | 27.8.2001 |
| s 23(3) | substituted by 46/2000 s 11(b) | 27.8.2001 |
| s 23(4) | amended by 46/2000 s 11(c) | 27.8.2001 |
| s 24 | | |
| s 24(1) | amended by 46/2000 s 12 | 27.8.2001 |
| s 24A | inserted by 46/2000 s 13 | 27.8.2001 |
| Pt 4 Div 4 | heading inserted by 46/2000 s 14 | 27.8.2001 |
| s 26 | substituted by 46/2000 s 15 | 27.8.2001 |
| s 26A | s 21 amended by 46/2000 s 10(1) | 27.8.2001 |
| | s 21 redesignated as s 26A by 46/2000 s 10(2) | 27.8.2001 |
| s 26B | s 22 redesignated as s 26B by 46/2000 s 10(2) | 27.8.2001 |
| s 27 | amended by 46/2000 s 16 | 27.8.2001 |
| Pt 4A | inserted by 46/2000 s 17 | 27.8.2001 |
| Pt 5 | | |
| s 30 | | |
| s 30(1) | substituted by 46/2000 s 18(a) | 27.8.2001 |
| s 30(2) | amended by 46/2000 s 18(b) | 27.8.2001 |
| s 30(4) | inserted by 46/2000 s 18(c) | 27.8.2001 |
| Pt 6 | heading substituted by 84/2000 s 3 | 22.1.2001 |
| Pt 6 Div 1 | heading inserted by 84/2000 s 3 | 22.1.2001 |
| Pt 6 Div 2 | heading inserted by 84/2000 s 4 | 22.1.2001 |
| ss 32A and 32B | inserted by 84/2000 s 5 | 22.1.2001 |
| Pt 6 Div 3 | heading inserted by 84/2000 s 5 | 22.1.2001 |
| s 32C | inserted by 84/2000 s 5 | 22.1.2001 |
| Pt 6 Div 4 | heading inserted by 84/2000 s 6 | 22.1.2001 |
| ss 36A—36E | inserted by 84/2000 s 6 | 22.1.2001 |
| Pt 6 Div 5 | heading inserted by 84/2000 s 6 | 22.1.2001 |
| ss 36F—36J | inserted by 84/2000 s 6 | 22.1.2001 |
| Pt 6 Div 6 | heading inserted by 84/2000 s 6 | 22.1.2001 |
| s 38 | substituted by 84/2000 s 7 | 22.1.2001 |

Pt 7

s 39

s 39(4) amended by 84/2000 s 8(a) 22.1.2001

s 39(5) amended by 84/2000 s 8(b) 22.1.2001

Pt 8

s 39A inserted by 46/2000 s 19 27.8.2001

Sch omitted under *Legislation Revision and Publication Act 2002*

Transitional etc provisions associated with Act or amendments

Native Title (South Australia) (Miscellaneous) Amendment Act 2000

20—Previous registration or application for registration of claim to native title

- (1) If, at the commencement of this Act, an application for registration of a claim to native title has been made but not determined under the principal Act, the Registrar is to consider the application as if it had been made on or after that commencement.
- (2) If, at the commencement of this Act, there are registered claims to native title under the principal Act, the Registrar is, as soon as practicable, to reconsider each of those claims as if an application for registration of the claim had been made on or after that commencement (and the Native Title Registrar appointed under Pt 5 of the *Native Title Act 1993* (Cwth) must be informed of the outcome of the reconsideration of each claim).
- (3) If, at the commencement of this Act, an application for review of a decision of the Registrar to reject an application for registration of a claim to native title has been made but not determined, the application must be determined as if the application for registration had been made on or after that commencement.

Historical versions

Reprint No 1—21.5.1998

Reprint No 2—2.4.2000

Reprint No 3—22.1.2001