

**NATIVE TITLE PROCEDURES**

**MINERAL RESOURCES ACT 1989**

**Parts 12, 14, 18 and 19**

**MANUAL FOR APPLICANTS FOR**

**MINING CLAIMS**

**APRIL 2001 EDITION**

**DEPARTMENT OF NATURAL RESOURCES AND MINES**

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## PREFACE TO APRIL 2001 EDITION

This Manual has been prepared to assist intending applicants for Mining Claims under the *Mineral Resources Act 1989* to become familiar with the procedures for dealing with native title in the application process.

These procedures (the ‘alternative State provisions’) replace those previously required under the Commonwealth *Native Title Act 1993*, chiefly those known as the ‘right-to-negotiate’ provisions. They are now included in the *Mineral Resources Act 1989* and they commenced on 18 September 2000. The Commonwealth ‘right to negotiate’ provisions can no longer be used.

The Manual has been prepared on the basis of the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* after they were amended by the *Native Title Resolution Act 2000* in September 2000. This followed approval of the alternative State provisions by the Commonwealth Attorney-General under the *Native Title Act 1993* in June 2000 and scrutiny by the Commonwealth Parliament through disallowance motions in the Senate in August 2000.

The native title procedures for mining claims now included in the *Mineral Resources Act 1989* are essentially a State-based ‘right-to-negotiate’ process, with the advantages of being integrated with other provisions of the *Mineral Resources Act 1989*, and of using the Queensland Land and Resources Tribunal to resolve disputes at the same time as other tenement matters are being heard.

This edition of the Manual differs from the Commencement Edition issued in September 2000 in that some additional clarifications are provided resulting from use of the procedures in practice. The additions in this Edition are shown in a different font.

***Disclaimer: This Manual is not a legal document and is issued as a general guide only. It does not replace the detailed provisions of the legislation with which you must comply. You should become familiar with the legislation pertaining to your situation and if necessary seek your own legal advice.***

## 1. INTRODUCTION

This manual is designed to assist applicants for Mining Claims on land where native title may exist, to comply with the procedures now required by the new Parts 12 and 14, 18 and 19 of the *Mineral Resources Act 1989* (MRA). These procedures, which allow native title rights and interests to be taken into account, are additional to the normal procedures of Part 4 of the MRA.

These procedures are the ‘alternative State provisions’ for mining permitted under Section 43 of the Commonwealth *Native Title Act 1993* (NTA). They were inserted into the MRA by the *Native Title (Queensland) State Provisions Amendment Act (No 2) 1998*, the *Native Title (Queensland) State Provisions Amendment Act 1999*. They were approved by the Commonwealth Attorney-General on 1 June 2000 and after some amendments survived a disallowance motion in the Senate on 30 August 2000. The amendments were incorporated in the *Native Title Resolution Act 2000*. The alternative State provisions commenced on 18 September 2000.

Some of the procedures involve the Land and Resources Tribunal which replaces the previous Wardens Court.

### ON WHICH LAND DO THE NATIVE TITLE PROCEDURES APPLY ?

#### **Land where compliance is necessary**

Compliance with the native title procedures is necessary on all land where native title may still exist (**‘non-exclusive’ tenures**), except in certain particular circumstances as described below. It is irrelevant whether or not a native title claim has been lodged over the area.

Main categories of such land of significance to exploration and mining are:

1. Pastoral Leases
2. Reserves, State Forests
3. Aboriginal Freehold Land and Torres Strait Islander Freehold Land
4. Some freehold land held by the State (previously a non-exclusive tenure and still undeveloped)
5. Occupation Licences
6. Permits to Occupy
7. Unallocated State Land
8. Beds and banks of boundary water courses
9. Roads not mentioned in ‘extinguishing tenures’ below.

#### **Land where compliance is *not* necessary**

Compliance is not necessary on land where native title is taken to have been extinguished, (**‘extinguishing’ tenures**), predominantly land which is:

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

2. Certain leasehold land tenures that have given exclusive possession to the lessees, (ie ‘**exclusive tenures**’ as set out in Part 3 of Schedule 1 of the *Native Title Act 1993*). Land tenures in this category important in mineralised areas are Grazing Homestead Perpetual Leases (GHPLs), Grazing Homestead Freeholding Leases (GHFLs), Mining Homestead Perpetual Leases (MHPLs), Agricultural Farms (AFs), various other agricultural leases and certain term or special leases; or
3. Areas that can be shown to have once been covered by freehold or exclusive tenures but are now under a lesser form of tenure. Examples are areas of freehold, GHPL etc that have been converted to State Forest or other State reserves, or areas that have reverted to un-allocated State land (note however that land with this history which is now held or set aside for the benefit of Aboriginal or Torres Strait Islanders or is occupied by Aboriginal people or Torres Strait Islanders is not included);or
4. Certain roads\* that have been dedicated and:
  - are less than 120.7m wide and entirely surrounded by freehold or exclusive land tenures; or
  - are less than 120.7m wide not surrounded by freehold or exclusive tenures but which have been constructed and established; or
  - are greater than 120.7m wide and have been constructed and established – native title is taken to be extinguished to the extent of 60.35m from the centre line; or
  - have been created entirely from previously existing freehold or exclusive tenures; or
5. Other public infrastructure such as railways, pipelines, fully developed reserves (eg for schools) etc; or
6. Areas of actual disturbance old Mining Leases and other mining tenures validly granted before 1975.

Considerable tenure examination and tenure history research is needed to identify land mentioned in paragraphs 3-6 above.

(\* as set out in the policies of Native Title Services in the Department of the Premier and Cabinet- see that Department’s web site)

## **OVERVIEW OF THE PROCEDURES FOR MINING AND EXPLORATION TENEMENTS**

The following is an overview of the procedures for all exploration and mining tenements, to set those for Mining Claims in perspective.

The procedures are designed to run parallel with all other requirements of the Mineral Resources Act.

Applications for all tenements over non-exclusive tenures require the notification of three categories of native title parties either before or shortly after lodgement of an application.

The three categories are as follows. 1. Registered Native Title Bodies Corporate are the representatives of individual native title holders whose native title has been confirmed (‘determined’) by the Federal Court. There are only a few such bodies in Queensland to date. 2. Registered Native Title Claimants are individuals whose claims have been acknowledged

(‘registered’) by the National Native Title Tribunal as complying with the initial steps of the claim process, but whose claims have not yet been determined by the Federal Court. (Note: there are some claims that are not registered, either because they are new or have not met the registration test). 3. Representative Aboriginal/Torres Strait Islander Bodies are regional organisations assisting native title claimants. The Cape York Land Council is an example.

Consultation or negotiation is required with Registered Native Title Parties. These are those Registered Native Title Bodies Corporate and Registered Native Title Claimants existing at the time a procedure is required.

For prospecting permits allowing prospecting, and low-impact exploration tenements, the procedures require consultation with registered native title parties on the protection of native title rights and interests and the reaching of an access agreement before entry onto the land.

For high-impact exploration tenements, consultation and negotiation with registered native title parties is required to enable the grant of the tenement. Native title parties are entitled to object. If agreement for grant cannot be negotiated, the matter is heard by the Land and Resources Tribunal. The Minister may overrule the Tribunal only in limited circumstances.

For Mining Leases and Mining Claims, consultation and negotiation with registered native title parties is required for the grant of the tenement. Native title parties are entitled to object. If agreement for grant cannot be negotiated, the matter is heard by the Land and Resources Tribunal in conjunction with any other hearing necessary under the Mineral Resources Act. Again, the Minister may overrule the Tribunal only in limited circumstances.

Mining Leases solely for infrastructure purposes are not subject to the alternative State provisions, but must comply with section 24MD (6B)(b) of the NTA as well as the MRA.

Mediation is available if requested in the consultation and negotiation phases of all processes, usually from the Mining Registrar or the Land and Resources Tribunal in the first instance.

Settling of compensation for disturbance to native title interests is required before the grant of a Mining Lease or Mining Claim on land where native title has been recognised (ie where there is a registered native title body corporate), either by agreement or a determination by the Tribunal. Where native title has not yet been recognised but there are native title claimants, if agreement with the claimants is not possible, the Tribunal determines an amount to be paid into trust. If the grant of a Mining Claim or Mining Lease needs to be heard by the Tribunal, and there is no agreement on compensation at that stage, the Tribunal must determine the compensation, or decide an amount to be paid into trust as the case may be, at the same hearing rather than at a later date.

When there are no registered bodies corporate or registered claimants at the time of grant but these become registered later, they may request a compensation agreement or apply to the Tribunal for compensation to be determined or an amount to be paid into trust at any time after grant.

Settling of compensation is not required before the grant of Prospecting Permits, Exploration Permits, Mineral Development Licences, but registered native title parties may request a compensation agreement or apply to the Tribunal for compensation or an amount to be paid into trust, as the case may be, at any time after grant.

## MINING CLAIMS

Mining Claims are small tenures for commercial hand mining. Activities are restricted to mining with hand tools and approved minor ancillary machinery. A Prospecting Permit is a prerequisite for applications for Mining Claims.

A Mining Claim can only be granted over an area of 1 ha, or less where prescribed by regulation, and can only be for a term of 10 years or less, and may be renewed for further periods of 10 years. A Mining Claim is granted by the Mining Registrar, but there is a right of notification and objection, with objections heard in the Land and Resources Tribunal which may instruct the Mining Registrar to grant or reject the claim.

### ARE ANY MINING CLAIMS EXEMPT FROM THE PROCEDURES?

#### **Mining Claims in areas subject to a registered indigenous land use agreement (ILUA)**

If an ILUA applies to the grant of the relevant type of Mining Claim, the procedures required by that ILUA apply instead of those in Part 14 of the MRA. MRA Section 420

Any ILUA should have also addressed the matters of compensation and renewal.

Mining Registrars can advise you if there is a relevant ILUA in an area of mining interest.

If an ILUA is reached and registered by the National Native Title Tribunal after the native title procedures of the MRA are commenced, the provisions of the ILUA then apply and the native title procedures of the MRA are then discontinued.

#### **Mining Claims in ‘approved opal and gem mining areas’**

Under section 26C of the NTA the Commonwealth Minister may approve certain areas used predominantly for opal or gem mining as ‘approved opal and gem mining areas’ where lesser procedures are required.

The native title procedures of Part 14 of the MRA are not required for applications for Mining Claims in these areas **provided that they are conditioned so that:**

- mining is permitted over no more than 5ha (all Mining Claims are less than this);
- the term is for no longer than 5 years; and
- the mining is for opal or gems only.

Section 440

There are no such approved areas at the time of compilation of this manual, (because of the difficulty of complying with the Commonwealth criteria and other issues) but Mining Registrars can advise if any are approved in the future.

#### **Mining Claims in areas subject to a 'right to negotiate' agreement under the Commonwealth NTA.**

The procedures also do not apply in cases where a ‘right-to-negotiate’ process for the grant of a Mining Claim under section 26 of the Commonwealth Native Title Act has been completed or is being undertaken. Section 419

### **Mining Claims solely below the high water mark.**

The procedures do not apply to Mining Claims solely below the high water mark as the original 'right to negotiate' of the Commonwealth *Native Title Act 1993* does not apply in such circumstances.

NTA Section 26(3)

### **Some Mining Claims resulting from the conditional surrender of existing Mining Claims**

Some Mining Claims resulting from the conditional surrender of old granted claims and over the same area may not require the use of the native title procedures, depending on the circumstances of the original grant and the surrender conditions. Head Office of the Department should be contacted for advice on individual situations.

### **WHICH MINING CLAIMS MUST COMPLY WITH THE PROCEDURES?**

All Mining Claims over non-exclusive land other than those above must comply with the native title procedures.

The Commonwealth NTA requires the 'right-to-negotiate' process for the grant of Mining Claims unless alternative State provisions have been approved under Section 43 of the NTA. The alternative State provisions which have been approved by the Commonwealth for such Mining Claims are set out in Parts 14 and 18 of the MRA and are outlined in chapters 2 and 5 below.

### **ARE THERE ANY DEALINGS WITH MINING CLAIMS APART FROM GRANTS THAT REQUIRE THE NATIVE TITLE PROCEDURES?**

Certain **renewals** of Mining Claims require compliance with the native title procedures. The requirements are set out in chapter 3 below.

Certain other **subsidiary approvals** also require compliance with the native title procedures. These are applications for:

- adding other minerals to a Mining Claim.

The requirements for these approvals are set out in chapter 4 below.

Conditional surrenders of Mining Claims to allow new Mining Claims (or Mining Leases) may require compliance with the procedures as they create new 'rights to mine'. This depends on the circumstances of the original grant and the surrender conditions. Head Office of the Department should be contacted for advice on individual situations. If the procedures are required they must be followed as for the grant of new Mining Claims or Mining Leases.

Assignments or transfers of Mining Claims are exempt from the procedures, but on approval of an assignment by the Mining Registrar, the assignee must notify any native title bodies corporate or registered native title claimants as for other land holders. Section 96(10), as amended

**NOMINATING ON APPLICATION**

In your initial application for a Mining Claim, you should :-

- (1) state whether you believe the application is entirely over extinguishing tenures, or includes at least some non-exclusive tenures;
- (2) if the latter is the case you should state:
  - whether the land is subject to a relevant ILUA;
  - whether the land is within an approved opal or gem mining area;

If none of these in (2) apply, you must use the procedures in chapter 2 below.

## **2. NATIVE TITLE PROCEDURES FOR MINING CLAIMS ON NON-EXCLUSIVE LAND**

### **Part 14 (Div.4) and Part 18 of the Mineral Resources Act**

The procedures for applications for these Mining Claims comply with section 43 of the NTA. They are the same as for Mining Leases under Part 17 of the MRA, with a number of necessary changes, and provide for notification, consultation and negotiation in good faith for the grant of the tenure, objections to the grant if desired, and hearing by the Tribunal of objections or failure of the negotiations toward grant.

The provisions with the necessary changes are as follows:

#### ***Notification***

Within a period of 3 months before lodging your application for the Mining Claim, or within 28 days after the certificate of application for the Mining Claim is endorsed by the Mining Registrar, you must notify in writing all registered native title bodies corporate, registered native title claimants and representative Aboriginal/Torres Strait Islander bodies for the land involved as at that time (the native title notification parties), and the Registrar of the National Native Title Tribunal, of your intention to lodge the application or that you have lodged it.

The Mining Registrar or the National Native Title Tribunal can help you with the addresses and contacts for the native title notification parties, and you should find out these in advance so that you are ready to issue the notices as soon as the certificate of application is issued. The Mining Registrar can supply a standard form for the notification.

You must also at the same time insert a public notice to the same effect in a newspaper circulating generally in the area of the application, and in a relevant special interest publication (eg an Aboriginal newspaper). The Mining Registrar can assist with names of suitable publications.

Section 652

Within 2 days of giving the notice to the native title notification parties and inserting the public notices, you must give the Mining Registrar notice of your compliance with the above (there is a standard form for this). To do this you must attach a copy of the notice you gave to the notification parties, and copies of the pages of the newspaper and special interest publication containing the public notices as soon as these become available. If the Mining Registrar considers that any of the notices are defective, you may be directed to re-issue them within a certain period.

Section 654

In this notification you must nominate a 'notification day (native title issues)', by which it can be reasonably assumed that the above notices have been received and the advertisement has come to the notice of the native title parties, and a 'closing day (native title issues)', by which any new native title claims must be lodged. This must be at least 3 months from the notification day (native title issues).

Section 653

**Notification Details**

Section 653

*The written notice must include the following:*

- *the name and postal address of the applicant (and for convenience, the phone number);*
- *the notification day (native title issues)- ie the day by which it can be reasonably assumed that the notices of the application will have been received or come to the attention of the relevant people;*
- *the closing day (native title issues)-this must be at least 3 months after the notification day;*
- *how a person may become a registered native title party;*
- *that registered native title parties have a right-*
  - to be consulted about the proposed Mining Claim;*
  - to object to the granting of the proposed Mining Claim; and*
  - to negotiate with a view to reaching agreement about the granting of the proposed Mining Claim;*
- *that objections must:*
  - be made in writing in the approved form; and*
  - be lodged with the Mining Registrar at any time before a Negotiated Agreement is reached or before the application is referred to the Tribunal for a Native Title Issues Decision; and*
  - state the facts and circumstances relied upon in support of the ground of objection;*
- *a clear description of the land, and its location (for the written notices, this should include a topographic map);*
- *a description of the nature of the proposed Mining Claim;*
- *that the proposed Mining Claim, if granted, will be granted by the Mining Registrar;*
- *how further information about the proposed Mining Claim can be obtained from you and the Mining Registrar.*

As soon as practicable after the closing day, you must give the Mining Registrar a form with a list of the names and addresses of all registered native title parties at that time (ie all registered native title bodies corporate or registered native title claimants), and any entities that may become registered (ie groups who have lodged claims but are not yet registered native title claimants).

Section 656(1)

If any entities become such registered native title parties within one month after the closing day, you must give the Mining Registrar a second form with a list of their names and addresses also.

Section 656(2)

The Mining Registrar may be able to assist with these names, but for up to date information you may need to contact the National Native Title Tribunal or the Federal Court. The Mining Registrar can assist with contact details for these bodies.

### ***Early ending of native title procedures***

If after the closing day there are no registered native title parties or entities that may become so, or if the registered native title parties and any entities that may become so in the 1 month after the closing day advise the Mining Registrar in the approved form that they do not object to the grant of the Mining Claim and do not wish to be consulted about it, the Mining Claim can then proceed to grant in the usual manner. Section 657

### ***Compensation***

Despite the above, the Mining Claim cannot be granted until compensation is settled with any registered native title bodies corporate and registered native title claimants for the land either by agreement or determination by the Tribunal. Sections 707-715

### ***Notice of grant***

Within 28 days of receiving notice of the grant of a Mining Claim, you should give written notice to the registered native title parties advising of the grant of the Mining Claim and stating its conditions.

### ***Consultation and negotiation in good faith***

Unless early ending of the native title procedures applies, you are obliged to consult and negotiate *in good faith* with any registered native title parties, including any which become registered within 1 month after the closing day with a view to obtaining their agreement to the grant of the Mining Claim (a Negotiated Agreement) and any conditions to be complied with if it is granted.

The State is also a party to this consultation and negotiation process, unless you, the registered native title parties and the State advise, in a form to the Mining Registrar, that the State is not to be a party, or is to take only a specified role. Sections 658-660

The time for consultation and negotiation lasts for 6 months from the notification day (the pre-referral period), unless the parties agree within the 6 months for it to be extended, and advise the Mining Registrar of the new date. Section 669 modified by Section 464(3)

### ***Mediation***

At any time before a Negotiated Agreement is reached or the Mining Claim is referred to the Tribunal for a Native Title Issues Decision, you or another consultation and negotiation party may ask for mediation to help in resolving issues relevant to the consultation.

The mediation may be carried out by a mediator chosen by you and the native title parties together, or if agreement on this cannot be reached, you or the other parties may ask the Tribunal for mediation by the Tribunal or a mediator chosen by it.

The mediation must be carried out in the pre-referral period unless all parties agree for it to be extended. The mediation may end at any time by a decision of the mediator or by agreement of all parties. Section 662

**Matters for Consultation and Negotiation in Good Faith**

Sections 659-665

*As part of the consultation and negotiation in good faith, you must consult the registered native title parties about ways of minimising the effect of the grant of the Mining Claim on their registered native title rights and interests in relation to the land, including any access to the land and the way in which anything authorised by the Mining Claim may be done.*

*The registered native title parties must consult the other parties about the effect of the grant of the Mining Claim on their registered native title rights and interests.*

*The consultation must have regard to the Guidelines set out below.*

*Negotiation is not limited to the above matters, but you are not required to negotiate on matters unrelated to the impact of the grant on the registered native title rights and interests, or on matters unrelated to the Mining Claim.*

*The consultation and negotiation can take into account the nature and extent of non-native title rights and interests, existing use of the land by other parties, and the practical effects of the exercise of the non-native title rights and interests and the existing uses of the land on the exercise of native title rights and interests.*

*You must make every reasonable effort to reach a negotiated agreement for the grant of the Mining Claim and any conditions to be complied with. However failure of another party to negotiate in good faith as required cannot be held against you in this respect.*

**Guidelines for Consultation**

Sections 663, 664

**For you as applicant**

*The consultation should start as soon as is practicable.*

*You should give each registered native title party a copy of the application for the Mining Claim (excluding any statement about your financial and technical resources).*

*You should convene at least one meeting to provide a reasonable opportunity for all registered native title parties to be given a presentation about the proposed Mining Claim. The presentation should be directed at providing an understanding of the anticipated nature, extent and impact of the mining project.*

*This meeting or meetings may be at a place agreed by you and the native title parties, or in a town or city where there is an office of the representative Aboriginal/Torres Strait Islander body, or in the town or city where the Mining Registrar's office is located. However it should be at a time and place to maximise attendance. If you have convened the meeting properly but the other parties do not attend, you are taken to have complied with your obligations.*

*You should complete this phase of the consultation and negotiation process within 4 months of the notification day.*

**For the registered native title parties**

*As soon as possible after you as applicant have completed the consultation above, each registered native title party should advise all the other parties about the impact the proposed Mining Claim is likely to have on the party's registered native title rights and interests.*

***Objections***

At any time before a Negotiated Agreement is reached or the Mining Claim is referred to the Tribunal for a Native Title Issues Decision, a registered native title party may lodge with the Mining Registrar an objection to the proposed Mining Claim on the ground that it would affect the party's registered native title rights and interests, or on any other matter relating to the grant.

The native title party must give you a copy of the objection and accompanying material on which it is based.

An objection can be withdrawn at any time during the consultation and negotiation period, with a notice of this being sent to you.

Section 668

### ***Agreement from consultation and negotiation in good faith***

If you and the other consultation and negotiation parties reach an agreement (a Negotiated Agreement) for the grant of the Mining Claim as a result of the consultation and negotiation, you and the other parties must give a certificate to the Mining Registrar stating that an agreement has been obtained for the grant of the claim, and provide a copy of the agreement. You must also give a copy of the certificate to the Tribunal. There is a standard form for this certificate.

If the agreement contains conditions, the conditions have the effect of the terms of a contract between you and the other consultation and negotiation parties.

If possible the Negotiated Agreement should also contain agreements about compensation and about renewal, to avoid the necessity for separate compensation and renewal processes (see below).

If a Negotiated Agreement is reached, the native title parties must withdraw any objections they have lodged.

Once an agreement has been reached the Mining Claim will then proceed to grant in the usual manner.

Sections 666, 667, 668

### ***Compensation***

Despite the above, the Mining Claim cannot be granted until compensation is settled with any registered native title bodies corporate and registered native title claimants for the land either by agreement or determination by the Tribunal.

Sections 707-715

### ***Notice of grant***

Within 28 days of receiving notice of the grant of a Mining Claim, you should give written notice to the registered native title parties advising of the grant of the Mining Claim and stating its conditions.

Section 688

### ***Referral of application for Mining Claim to the Tribunal***

If 6 months or a longer agreed period have passed since the notification day and a Negotiated Agreement has not been reached, you or another consultation and negotiation party may refer the application to the Tribunal for a decision (a Native Title Issues Decision). This must be done in a standard form lodged with the Mining Registrar, and copies given to the other parties.

If no referral form has been lodged but there is an objection from a native title party that has not been withdrawn, the application is taken to have been referred to the Tribunal, who will be notified accordingly by the Mining Registrar.

If there is no referral within 3 months of the end of the pre-referral period described above, the Mining Registrar may reject the application.

Section 669

### ***Continued negotiation and mediation***

Despite a Mining Claim application being referred to the Tribunal, you and the other consultation and negotiation parties may continue trying to reach a Negotiated Agreement up until the Tribunal makes a Native Title Issues Decision. If an Agreement is reached, all referrals to the Tribunal are taken to be withdrawn and objections must also be withdrawn.

Section 670

### ***Combined hearing by Tribunal***

Where a referral has been made to the Tribunal or an objection lodged by a registered native title party, the hearing of the Mining Claim under Part 4 of the MRA takes the form of a combined hearing, consisting of:

- a) the hearing of objections and other matters mentioned in section 77 of Part 4; and
- b) the hearing for a Native Title Issues Decision, including the hearing of objections from native title parties under part 14.

Section 671 modified by Section 464(4)

The Mining Registrar may decide to defer fixing a date for the hearing until it is clear whether the application will be referred to the Tribunal. Alternatively, if the application has been referred but it is not yet possible to set a date for the hearing of matters in a) above, the Mining Registrar must wait until this is possible before setting a date for the combined hearing.

Section 672 modified by Section 464(5)

At any time after the referral of a Mining Claim application to the Tribunal, the Tribunal may give directions to the consultation and negotiation parties, including directions for the producing and giving of:

- a statement by you as applicant including a copy of the material you provided to the native title parties in consultation;
- a statement from each registered native title party stating the anticipated effect of the grant of the Mining Claim on the party's registered native title rights and interests; and
- submissions on the matters the Tribunal will be required to take into account in making its Native Title Issues Decision.

Section 673

### ***Native Title Issues Decision by Tribunal***

The Native Title Issues Decision will be one of the following:

- a) that the proposed Mining Claim may be granted;
- b) that the proposed Mining Claim may be granted but subject to conditions, which may be either conditions of the grant, or contract conditions, or both types;
- c) that the proposed Mining Claim should not be granted.

Section 675

**Matters Taken into Account by Tribunal**

Section 677

*In making its Native Title Issues Decision the Tribunal must take into account the following:*

- a) *The effect of the grant of the Mining Claim on:*
- *the enjoyment by the registered native title parties of their registered native title rights and interests; and*
  - *the way of life, culture and traditions of any of the registered native title parties; and*
  - *the development of social, cultural and economic structures of any of the registered native title parties; and*
  - *the freedom of access by any of the registered native title parties to the land; and*
  - *the freedom of any of the registered native title parties to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions; and*
  - *any area or site on the land of particular significance to the registered native title parties in accordance with their traditions;*
- b) *The interests, proposals, opinions or wishes of the registered native title parties in relation to the management, use or control of the land that will be affected by the grant of the Mining Claim;*
- c) *The economic or other significance of the grant of the Mining Claim to Australia, Queensland, the area in which it is situated, and to Aboriginal and Torres Strait Islanders who live in the area;*
- d) *Any public interest in the granting of the Mining Claim;*
- e) *Any other matter the Tribunal considers relevant.*

*In deciding the effect of the grant of the Mining Claim on the above matters, the Tribunal must also take into account the nature and extent of the existing non-native title rights and interests in relation to the land, and the existing use of the land by persons other than registered native title parties.*

*The Tribunal must also take into account all objections lodged under the native title provisions and any other documents lodged.*

*The Tribunal must also establish whether there are any issues relevant to its decision on which the parties are in agreement, and must take these issues into account in making its decision.*

If at the end of the combined hearing you have not reached a compensation agreement with the registered native title parties, the Tribunal will proceed to also make a compensation decision for the application (if there are registered native title claimants involved compensation for them will be in monetary form and must be paid into trust).

Section 675

The Native Title Issues Decision should be made within 6 months of the referral of the application to the Tribunal.

Section 679

Any contract conditions in the Native Title Issues Decision have effect as if they were included in the terms of a contract between the parties.

Sections 675, 687

### ***Compliance with Native Title Issues Decision***

The Native Title Issues Decision must be complied with by the Mining Registrar.

Section 680 modified by Section 464(6)

### ***Compensation***

Compensation must be settled with registered native title bodies corporate and registered native title claimants, as well as with other land owners, before the grant of the Mining Claim, either by agreement or determination of the Tribunal.

If you reach a Negotiated Agreement with the registered native title bodies corporate and registered native title claimants as above, it is advantageous for it to include agreement about compensation, otherwise a separate compensation agreement or a determination by the Tribunal is necessary.

If a Negotiated Agreement is not possible and a hearing by the Tribunal is necessary, and if by the end of a hearing you have not reached a compensation agreement with the native title parties, the Tribunal must determine compensation for them (any compensation determined for registered native title claimants is paid into trust).

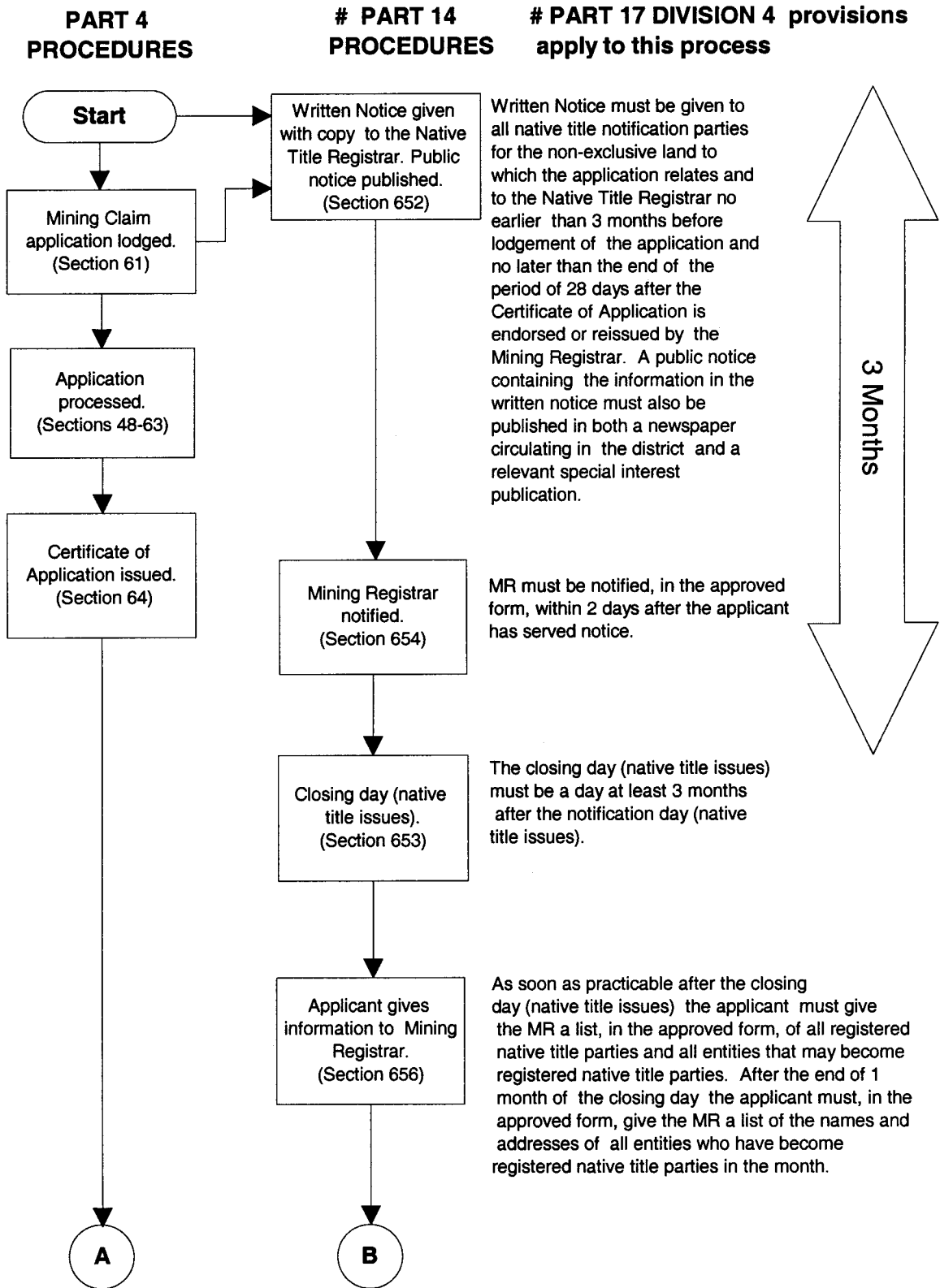
Sections 707-715

### ***Notification of grant***

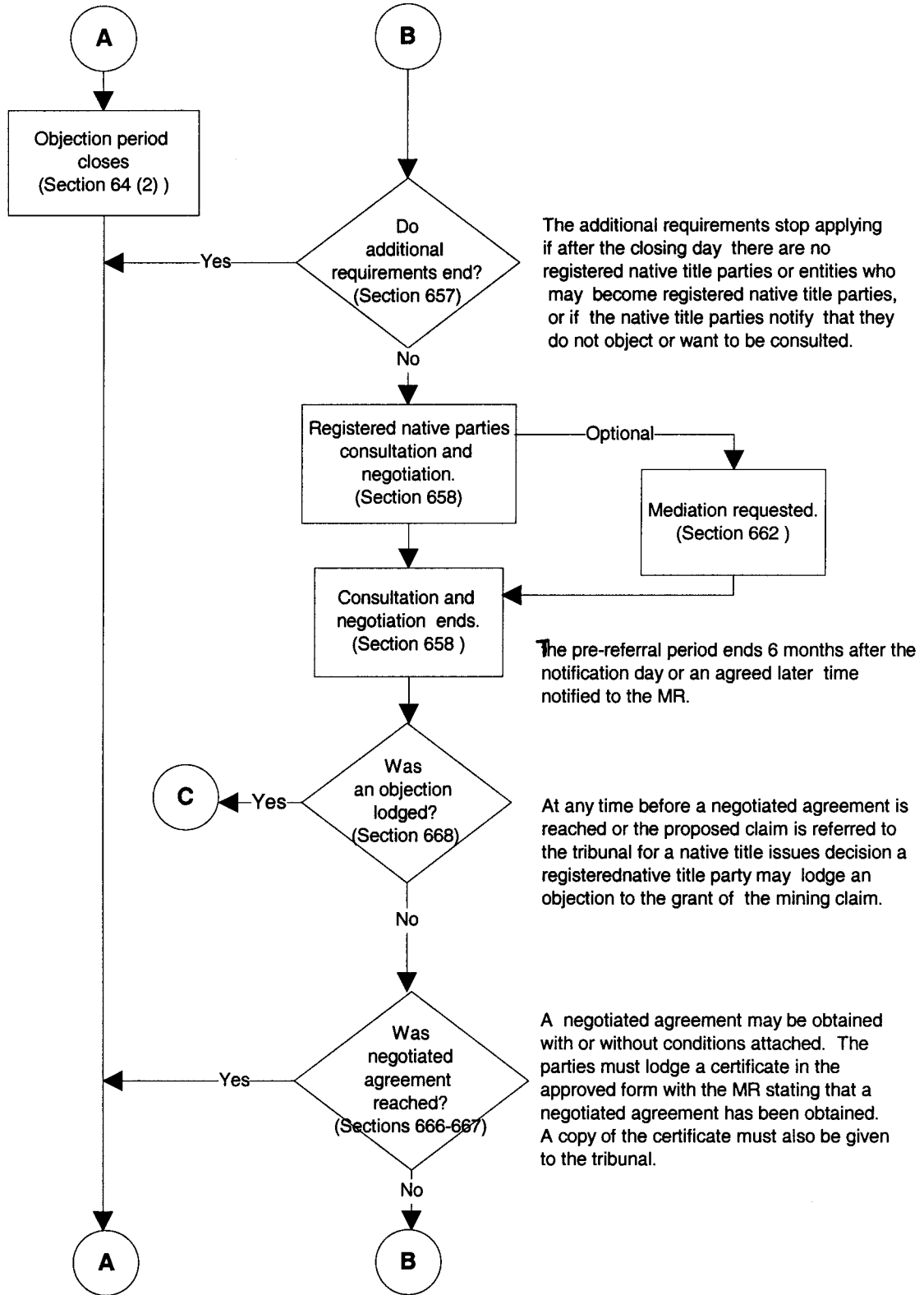
Within 28 days of receiving notice of the grant of a Mining Claim, you must give written notice to the registered native title parties advising of the grant of the Mining Claim and stating its conditions and any contract conditions.

Failure to comply with this requirement is an offence for which there is a penalty. Section 649

**FLOW CHART  
Mining Claim Application  
MC over non-exclusive land**

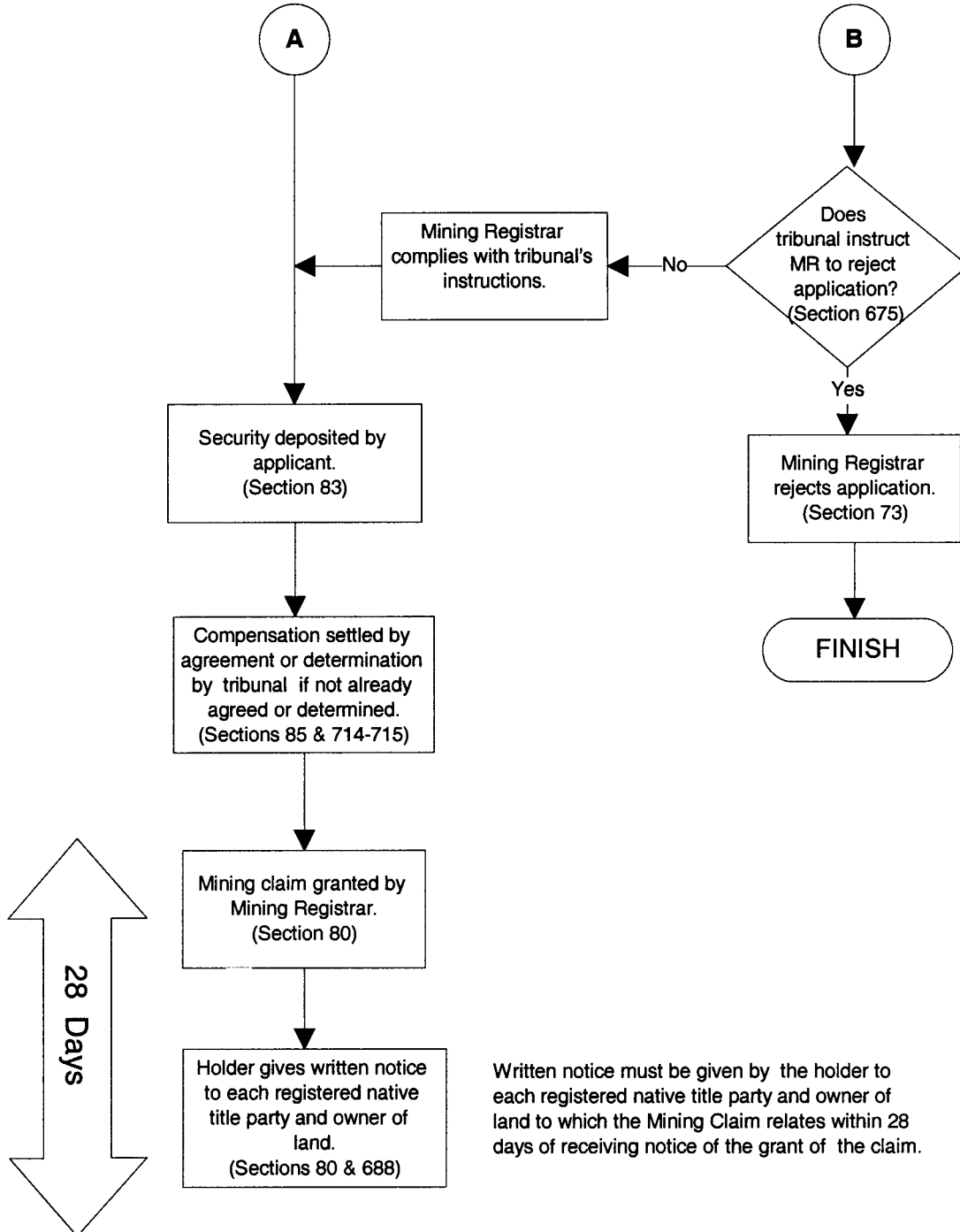


**FLOW CHART  
Mining Claim Application  
MC over non-exclusive land**





**FLOW CHART  
Mining Claim Application  
MC over non-exclusive land**



### **3. NATIVE TITLE PROCEDURES FOR RENEWALS OF MINING CLAIMS. Part 14 (Div. 5) of the Mineral Resources Act**

Renewals of Mining Claims granted over non-exclusive land before 23 December 1996 can proceed without any native title procedures, provided the renewal is for a like term and does not authorise any additional activities. NTA Section 26D(1)(b)(i)

Renewals contemplated in ILUAs and Right to Negotiate agreements under the NTA can also proceed under the conditions in those agreements.

Renewals of other Mining Claims granted over non-exclusive land since 1996 are subject to the procedures in chapter 2 above as if they were new grants.

Use of the native title procedures for renewals is necessary because the NTA does not permit State procedures to allow an agreement or determination for grant to include similar provisions for renewals.

Whilst the requirement can introduce delays, there are strategies to minimise these. It is possible to discuss renewal during the initial consultation and negotiation, before grant. If agreement on renewal can be reached at that stage, when the time comes for renewal, native title parties have the option of not objecting to the application after being notified of it, and quickly reaching a new Negotiated Agreement (preferably also dealing with compensation), which would then allow the application for renewal to proceed without further native title requirements.

However any advance understandings with the native title parties of this nature are not binding (unless incorporated into an ILUA).

For renewal of **Mining Claims on non exclusive land** the procedures of chapter 2 with some necessary changes apply.

You must notify the native title parties and arrange for the public notices to be published between 3 months before lodging the application for the renewal with the Mining Registrar and 28 days after lodging it. There is a standard form for the notification of such a renewal application to the native title parties. Section 652 modified by Section 471(4)

The pre-referral period during which you must consult and negotiate is a period of 6 months starting on the notification day, or a longer period agreed by the parties which has been advised to the Mining Registrar.

If a hearing in the Tribunal is required, it is not a combined hearing, but a hearing for a Native Title Issues Decision. The Mining Registrar will within 14 days of the end of the pre-referral period fix a day for the tribunal to hear the application for renewal. Section 471(5)

In such a hearing the Tribunal must ask the Mining Registrar about the extent to which you are in compliance with the covenants and conditions of the Mining Claim and the MRA itself, and whether the Mining Claim still contains workable quantities of mineral (ie the matters in section 98(3) of the MRA). The Tribunal must take into account the information provided by the Mining Registrar. The Mining Registrar must comply with the Native Title Issues Decision. Sections 471(6) and (7)

**4. NATIVE TITLE PROCEDURES FOR  
SUBSIDIARY APPROVALS FOR MINING CLAIMS**  
**Part 14 (Div. 6) of the Mineral Resources Act**

**Adding additional minerals to a Mining Claim**

If you wish to apply under section 105 of the MRA to add specified minerals to a Mining Claim, you must apply to the Mining Registrar. There is a standard form for these applications.

Generally you must then comply with procedures of chapter 2 with some necessary changes. However there may be some circumstances when the addition of a new mineral is not changing the right to mine and would not trigger the Commonwealth right to negotiate provisions, and hence the alternative State provisions will not then be necessary. If you think this may be the case you should contact the Department for advice.

If you are required to use the procedures, you must notify the native title parties and arrange for the public notices to be published between 3 months before lodging the application for the approval with the Mining Registrar and 28 days after lodging it. There is a standard form for the notification of such an approval application to the native title parties.

Section 652 modified by Section 478(4)

The pre-referral period during which you must consult and negotiate is a period of 6 months starting on the notification day, or a longer period agreed by the parties which has been advised to the Mining Registrar.

If a hearing in the Tribunal is required, it is not a combined hearing, but a hearing for a Native Title Issues Decision. The Mining Registrar will within 14 days of the end of the pre-referral period fix a day for the tribunal to hear the application for approval. Sections 478(5) and (6)

The Mining Registrar must comply with the Native Title Issues Decision.

## 5. COMPENSATION PROVISIONS FOR MINING CLAIMS

### Part 18 of the Mineral Resources Act

Under the Commonwealth *Native Title Act 1993*, native title holders are entitled to compensation for the effect of any act on their native title rights and interests, including grants, renewals and other acts relating to exploration and mining tenements. This compensation is payable by the State making the grant or other approval, unless a law of the State provides for other parties to pay the compensation.

#### WHEN IS COMPENSATION REQUIRED?

There is an entitlement for compensation for the following acts:

1) The **grant** and **renewal** of, and **subsidiary approvals** for:

- Mining Claims under the native title provisions of Part 14 of the MRA;
- the above tenements on the seaward side of the mean high water mark (where the alternative State provisions of Part 14 of the MRA or Commonwealth 'right to negotiate' process do not apply);
- the above tenements in approved opal or gem mining areas determined under section 26C of the Commonwealth NTA (where the alternative State provisions of Part 14 of the MRA or Commonwealth 'right to negotiate' process do not apply) (No such areas have been determined at the time of writing of this Manual).
- the above tenements the subject of an Indigenous Land Use Agreement (ILUA) if the ILUA does not provide for compensation;

2) The **renewal** also of:

- Mining Claims granted as a result of an 'right to negotiate' agreement or determination of the National Native Title Tribunal under the Commonwealth NTA and for which compensation on renewal has not been previously agreed.

Section 706

#### HOW AND WHEN IS COMPENSATION SETTLED?

Part 18 of the *Mineral Resources Act 1989* sets out how such compensation is to be settled in different circumstances. These provisions largely parallel the compensation entitlements of other land holders, but with modifications to cater for the fact that the actual native title holders may not have been determined and there are only claimants at present.

Compensation is payable by the applicant or the holder of the tenement, except in limited special circumstances where the State is liable. It is payable by agreement or after determination by the Tribunal (as with other land holders).

Agreements on compensation can be about any matter and are payable in money or non monetary form. They must be in writing, signed by all parties, and lodged with the Mining Registrar to have force and effect. If an agreement is reached with a claimant but it later turns out that they were not the true native title holders, and the eventual registered native title body

corporate requests the tribunal to determine compensation, the State will pay this second compensation.

If the Tribunal is required to make a determination on compensation where there is a registered native title body corporate, it makes a 'compensation decision' which takes effect immediately. This compensation must be in money, but the body corporate can ask the Tribunal to recommend that all or some of the compensation be paid in a non-monetary form. If there are only registered native title claimants the Tribunal makes a 'compensation trust decision' for money to be paid into trust until a determination of native title is made and a registered native title body corporate is established.

For **Mining Claims** compensation must be settled with any registered native title bodies corporate and registered native title claimants *before* the grant, renewal or other approval for the tenement.

If agreement on compensation is not possible, you or a registered native title body corporate or a registered native title claimant for the land can apply to the Tribunal for a determination on compensation. If the matter of grant, renewal or other approval of the tenement is already before the Tribunal for a Native Title Issues Decision because a negotiated agreement for the grant etc cannot be obtained, the Tribunal will determine the compensation at the same time.

If agreement for grant etc has been reached, but it does not contain agreement about compensation, and compensation has not been settled or referred to the Tribunal within 3 months of the agreement, the Mining Registrar will apply to the Tribunal for a determination.

Sections 714-715

If there are no registered native title bodies corporate or registered native title claimants at the time of grant, renewal or approval, but bodies corporate or claimants are registered later, they may approach you for an agreement on compensation or seek a determination in the Tribunal for a 'compensation decision' or 'compensation trust decision as the case may be.

Section 716

## **6. SPECIAL PROVISIONS APPLYING TO APPLICATIONS FOR MINING CLAIMS OUTSTANDING AT THE TIME OF COMMENCEMENT OF THE NATIVE TITLE PROCEDURES**

### **Part 19 of the Mineral Resources Act**

Special transitional provisions are required for applications for tenements which are outstanding over non-exclusive land at the time of commencement of the native title procedures.

Regardless of the stage they have reached towards grant under Part 4 of the MRA, applicants for Mining Claims will have to comply with the native title procedures of Parts 14 of the MRA before grant.

However, commencement of the notification, consultation and negotiation processes required by this Part in a random fashion by the large numbers of individual applicants involved would lead to chaos, as the native title claimants and representative Aboriginal/Torres Strait Islander bodies would not be in a position to respond.

The legislation provides that the Department of Mines and Energy will determine when the initial notification process can start for each tenement (and hence also when subsequent consultation and negotiation can start).

One option to regulate the situation is for the Department to batch similar applications (eg for Mining Claims) in similar geographical areas or over the same native title claim area, so that consultation or negotiation can be carried out on similar matters at the same time with the same people.

Under this option the Mining Registrar would notify you of a day *after which* you can notify the native title notification parties. You must then issue the relevant notifications under section 652 within 4 months of that day. Note that the Mining Registrar is only telling you that you are now free to notify the native title parties, and has not done that in your stead.

Sections 729, 730, 731,732

Applicants in a batch may be well advised to try to co-ordinate their notices and consult and negotiate together, at least initially. The Department will assist in providing names and addresses of members of a batch.