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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time

Native Title Amendment Bill 1995

No. , 1995

(Prime Minister)

**A Bill for an Act to amend the *Native Title Act*
1993, and for related purposes**

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A Bill for an Act to amend the *Native Title Act 1993*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Native Title Amendment Act 1995*.

2 Commencement

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (4), the remaining provisions of this Act (other than item 103 of Schedule 1) commence on a day to be fixed by Proclamation.
- (3) Subject to subsection (4), item 103 of Schedule 1 commences on a day to be fixed by Proclamation.
- (4) If a provision referred to in subsection (2) or (3) does not commence within the period of 9 months beginning on the day on which this Act receives the Royal Assent, that provision commences on the first day after the end of that period.

3 Schedules

The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

Schedule 1—Amendments of the *Native Title Act 1993*

Part 1—Amendments relating to applications

1 Section 4 (table, entry relating to Part 6, after paragraph (d))

Insert:

- (da) Division 4A contains provisions dealing with mediation conferences;

2 Subsection 13(1)

Omit “Registrar”, substitute “Federal Court”.

Note: The heading to subsection 13(1) is altered by omitting “*Native Title Registrar*” and substituting “*Federal Court*”.

3 Paragraph 13(2)(a)

Omit “the NNTT or”.

Note: The heading to subsection 13(2) is altered by omitting “*NNTT or*”.

4 Subsection 13(2)

Omit “NNTT or”.

5 Paragraphs 13(4)(a) and (6)(a)

Omit “the NNTT or”.

6 Subsection 24(1)

Omit all of the words and paragraphs before paragraph (d), substitute:

If an area is subject to section 24 protection at a particular time:

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

Note: The heading to section 24 is replaced by the heading “**Future acts where section 24 applies**”.

Note: The heading to subsection 24(1) is altered by omitting “*applications*” and substituting “*section 24 protection*”.

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7 Paragraph 24(1)(d)

Add at the end “and”.

8 Section 24

Add at the end:

When section 24 protection arises—government applications

- (3) An area is subject to section 24 protection at a particular time if:
- (a) before that time, a non-claimant application, or a corresponding application for an approved determination of native title under a law of a State or Territory, has been made by or on behalf of a Minister, the Crown in any capacity, or a statutory authority; and
 - (b) the area is the whole of the area covered by the application and the application has not been amended as to area; and
 - (c) the period specified in the notice given under section 66, or under a corresponding provision of a law of the State or Territory, has ended; and
 - (d) at the end of that period, there is no relevant native title claim (see subsection (6)) covering the area or a part of the area; and
 - (e) the application has not been withdrawn, dismissed or otherwise finalised; and
 - (f) at that time, there is no entry on the National Native Title Register, included under paragraph 193(1)(a) or (b), specifying that native title exists in relation to the area or a part of the area.

When section 24 protection arises—non-government applications

- (4) An area is subject to section 24 protection at a particular time if:
- (a) before that time, a non-claimant application, or a corresponding application for an approved determination of native title under a law of a State or Territory, has been made; and
 - (b) the application is not covered by paragraph (3)(a); and
 - (c) the area is the whole or a part of the area covered by the application; and

- (d) the period specified in the notice given under section 66, or under a corresponding provision of a law of the State or Territory, has ended; and
- (e) either:
 - (i) at the end of that period, there is no relevant native title claim (see subsection (6)) covering the area; or
 - (ii) after the end of the period, but before the particular time, all entries that covered the area (as mentioned in subsection (6)) at the end of the period are removed from the Register of Native Title Claims or cease to cover the area; and
- (f) the application, in so far as it relates to that area, has not been withdrawn, dismissed or otherwise finalised; and
- (g) at that time, there is no entry on the National Native Title Register, included under paragraph 193(1)(a) or (b), specifying that native title exists in relation to the area.

When section 24 protection arises—entry in National Native Title Register

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

Relevant native title claim

- (6) For the purposes of this section, there is a **relevant native title claim** covering an area at the end of the period referred to in paragraph (3)(d) or (4)(e) if:
 - (a) at that time, there is an entry covering that area on the Register of Native Title Claims; or
 - (b) after that time, an entry covering that area is included on the Register of Native Title Claims, where the application containing the claim was made before that time and:
 - (i) the claim is accepted by the Registrar for registration under subsection 190A(3) or is accepted for determination (otherwise than on appeal or review) under a law of a State or Territory; or
 - (ii) the claim is accepted by the Registrar for registration as a result of an application under subsection 190A(5) (but

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not subsection 190A(6)) or is accepted for determination under a provision of a law of a State or Territory to similar effect to subsection 190A(5).

9 After paragraph 28(1)(a)

Insert:

- (aa) after the end of that period, but immediately before the act is done, there is no native title party in relation to any of the land or waters that will be affected by the act; or

10 Subsection 29(1)

Add at the end:

The notice must specify the day on which it is taken to have been given, which cannot be earlier than 14 days after the last day on which notice under subsection (2) is dispatched.

11 Paragraph 29(2)(e)

Before “arbitral body”, insert “registrar or other proper officer of the”.

12 Section 29

Add at the end:

- (5) A notice under subsection (2) is taken to be *dispatched* to a natural person on the day on which it is:
 - (a) delivered to the person personally; or
 - (b) left at, or posted by pre-paid post to, the address of the place of residence or business of the person last known to the Government party.
- (6) A notice under subsection (2) is taken to be *dispatched* to a body corporate on the day on which it is left at, or posted by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

13 Section 30:

Add at the end:

- ; (c) any body corporate that, after the end of that period of 2 months, becomes a registered native title body corporate in relation to any of the land or waters that will be affected by the act, as a result of a claim the details of which were

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entered on the Register of Native Title Claims before the end of that period of 2 months.

- (2) A person ceases to be a native title party if the person ceases to be a registered native title claimant.

Note: Where a native title claim is successful, the registered native title claimant will be succeeded as a native title party by the registered native title body corporate.

Note: The heading to section 30 is altered by omitting “**Additional**” and substituting “**Other**”.

14 Subsection 50(2)

Omit “Registrar”, substitute “Federal Court”.

Note: The heading to subsection 50(2) is altered by omitting “*Registrar*” and substituting “*Federal Court*”.

15 Section 55

Omit “the NNTT or” (wherever occurring).

Note: The heading to section 55 is altered by omitting “**NNTT and**”.

16 Subsections 56(1) and (4)

Omit “the NNTT or”.

17 Subsection 56(2)

Omit “NNTT or the” (wherever occurring).

18 Subsection 57(2)

Omit “the NNTT or” (wherever occurring).

19 Subsection 61(1)

Omit “Native Title Registrar”, substitute “Federal Court”.

20 Subsection 61(1) (table headed **APPLICATIONS**, column dealing with Persons who may make application, row dealing with Revised native title determination application)

Before “Registrar”, insert “Native Title”.

21 Subsection 61(2)

Omit “Registrar”, substitute “Federal Court”.

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22 Before paragraph 62(1)(a)

Insert:

- (aa) state the name and the address of the person who is to be taken to be the claimant; and

23 Paragraph 62(1)(a)

Omit “applicant that the applicant”, substitute “claimant that he or she”.

24 Paragraph 62(1)(b)

Omit “applicant”, substitute “claimant”.

25 Paragraph 62(1)(d)

Omit the paragraph, substitute:

- (d) give brief details of any other applications to the High Court, Federal Court or a recognised State/Territory body, of which the claimant is aware, that have been made in relation to the whole or a part of the area.

26 Subsection 62(1) (note)

Omit the note, substitute:

Note: The person whose name is given under paragraph (1)(aa) will be the registered native title claimant while the claim is entered on the Register of Native Title Claims.

27 Section 63

Repeal the section, substitute:

63 Reference of applications to Native Title Registrar

If an application that complies with sections 61 and 62 is made to the Federal Court, the Federal Court must, as soon as is practicable, give a copy of the application to the Native Title Registrar.

63A Amendment of applications

- (1) An amendment of an application cannot result in the area covered by the application as amended including any area that is not covered by the original application.

- (2) If an application is amended, the Federal Court must, as soon as is practicable, give a copy of the amended application to the Native Title Registrar.
- (3) The Federal Court may, if it considers it necessary, direct the Native Title Registrar to give such notice of the amended application as the Court considers appropriate.

28 Sections 64 and 65

Repeal the sections.

29 Subsection 66(1)

Omit the subsection, substitute:

Notification by Native Title Registrar

- (1) If the Native Title Registrar is given a copy of an application under section 63, the Registrar must give notice of the application to all persons whose interests may be affected by a determination in relation to the application. The Registrar may also give notice to such other persons as the Registrar considers appropriate.

Note: The heading to section 66 is altered by omitting “**Action to be taken in relation to accepted**” and substituting “**Notification of**”.

30 After subsection 66(2)

Insert:

Notice to specify date

- (2A) The notice must also specify the date on which it is taken to have been given, which cannot be earlier than 14 days after the last day on which notice under paragraph (2)(a) is dispatched.

31 Paragraph 66(3)(a)

Omit the paragraph, substitute:

- (a) if the application is a non-claimant application—the area covered by the application may be subject to section 24 protection unless, at the end of the period of 2 months starting on the day the notice is given, the area is covered by a relevant native title claim (see subsection 24(6)); and

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32 Paragraph 66(3)(b)

Omit “other”.

33 Paragraph 66(3)(b)

Omit “Registrar”, substitute “Federal Court”.

34 Subsection 66(4)

Omit the subsection.

35 Section 66

Add at the end:

- (5) A notice under paragraph (2)(a) is taken to be *dispatched* to a natural person on the day on which it is:
 - (a) delivered to the person personally; or
 - (b) left at, or posted by pre-paid post to, the address of the place of residence or business of the person last known to the Registrar.
- (6) A notice under paragraph (2)(a) is taken to be *dispatched* to a body corporate on the day on which it is left at, or posted by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

36 Subsection 67(2)

Omit the subsection, substitute:

Effect of an application by native title claimant to Federal Court

- (2) If a person or persons claiming to hold native title give to the Federal Court a native title determination application (the *claimant application*) that covers any part of the area covered by the non-claimant application, the claimant application and the non-claimant application may be combined, in accordance with the Rules of Court, into the same matter.

Note: The heading to section 67 is altered by omitting “**Special procedure in relation to**” and substituting “**Combining**”.

37 Subsection 67(3)

Omit “paragraph (2)(a) to the Registrar”, substitute “subsection (2) to the Federal Court”.

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38 Subsection 67(3)

Add at the end “for registration under section 190A”.

39 Subsection 67(4)

Omit the subsection.

40 Sections 68 to 74

Repeal the sections.

41 Subsection 78(1)

Omit the subsection, substitute:

Native Title Registrar may give assistance

(1) The Native Title Registrar may give such assistance as he or she considers reasonable to:

(a) help people prepare applications and accompanying material;

or

(b) help people in matters related to applications.

Note: The heading to section 78 is altered by omitting “to potential applicants” and substituting “in relation to applications”.

42 Paragraph 78(2)(b)

Omit “referred to in subparagraph 62(1)(a)(i)”, substitute “of registers of current or former interests in land or waters”.

43 Subsection 79(1)

Omit “(whether or not during a conference under section 72)”.

44 Section 80

Omit “lodged with the Federal Court under section 74”, substitute “in the Federal Court that relate to native title”.

45 Section 81

Omit “lodged with it under section 74”, substitute “in the Federal Court that relate to native title”.

46 After section 83

Insert:

83A Native Title Registrar to conduct searches

The Federal Court may, for the purposes of proceedings, request the Native Title Registrar to conduct searches of registers of current or former interests in land or waters and to report the results to the Court.

47 Subsection 84(1)

Omit the subsection, substitute:

Applicant

- (1) The applicant is a party.

Affected persons

- (1A) Another person is a party to proceedings in relation to an application if:
- (a) the person is covered by any of subparagraphs 66(2)(a)(i), (ii), (iv), (v) or (vi), or the person's interests may be affected by a determination in the proceedings; and
 - (b) the person notifies the Federal Court, in writing, within the period specified in the notice under section 66, that the person wants to be a party to the proceedings.

State or Territory Ministers

- (1B) If any of the area covered by the application is within the jurisdictional limits of a State or Territory, the State Minister or Territory Minister for the State or Territory is a party unless the Minister gives the Federal Court written notice, within the period specified in the notice under section 66, that the Minister does not want to be a party.

Commonwealth Minister may become party to compensation application at any time

- (1C) The Commonwealth Minister may, at any time, become a party to a compensation application under section 61.

48 Section 84

Add at the end:

Parties may withdraw

- (3) In addition to any other rights to withdraw from proceedings, any party to a proceeding, other than the applicant, may, at any time before a date is first fixed for a hearing in relation to the proceeding, cease to be a party by giving written notice to the Federal Court.

49 After section 84

Insert:

84A Intervention by Commonwealth Minister

- (1) The Commonwealth Minister may, at any time, on behalf of the Commonwealth, by giving written notice to the Federal Court, intervene in a proceeding before the Court in a matter arising under this Act.
- (2) If the Commonwealth Minister intervenes in a proceeding before the Court, the Court may make an order as to costs against the Commonwealth.
- (3) If the Commonwealth Minister intervenes in a proceeding before the Court, then, for the purposes of the institution and prosecution of an appeal from a judgment given in the proceeding, the Commonwealth Minister is taken to be a party to the proceeding.
- (4) If, under subsection (3), the Commonwealth Minister institutes an appeal from a judgment, a court hearing the appeal may make an order as to costs against the Commonwealth.

50 After section 86

Insert:

Division 1A—Reference to NNTT for mediation

86A Referral of matters to NNTT for mediation

Federal Court must refer proceedings to mediation

- (1) Unless an order is made under subsection (4), the Federal Court must refer every application under section 61 to the NNTT for the

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purpose of mediation as soon as practicable after the end of the period specified in the notice under section 66.

Whole or part of proceedings may be referred at any time

- (2) In addition, the Federal Court may, at any time in proceedings, refer the whole or a part of the proceedings to the NNTT for the purpose of mediation.

Referral even if parties not determined

- (3) A referral may be made even if all of the parties to the proceedings have not been determined.

Party may seek no mediation or cessation of mediation

- (4) A party to the proceedings may apply to the Federal Court for an order that there be no mediation, or that mediation cease, in relation to the whole of the proceedings or a part of the proceedings.

Referral unless mediation will be unsuccessful or unnecessary

- (5) The Federal Court is not to order that there be no mediation, or that mediation cease, unless the Court considers that any mediation will be unsuccessful or unnecessary.

NNTT's views on success of mediation

- (6) Before making an order that there be no mediation or that mediation cease, the Federal Court must request the NNTT to provide a report setting out the NNTT's views on whether mediation would result in agreement or partial agreement within a reasonable time.

Federal Court may determine law or fact

- (7) The Federal Court may, at any time during mediation, determine a question of law or fact that is referred to it by the NNTT.

86B Federal Court may request reports from NNTT

The Federal Court may request the NNTT to provide reports on any matter related to mediation under this Division being

undertaken by the NNTT and may specify when the report is to be provided.

Division 1B—Agreements and unopposed applications

86C Unopposed applications

Federal Court may make order

- (1) If, at any stage of proceedings in relation to an application under section 61 but after the end of the period specified in the notice given under section 66:
 - (a) the application is unopposed; and
 - (b) the Federal Court is satisfied that an order in, or consistent with, the terms sought by the applicant is within the power of the Court;the Court may, if it appears appropriate to do so, make such an order.

Meaning of unopposed application

- (2) For the purpose of this section, an application is an ***unopposed application*** if the only party is the applicant or each other party notifies the Federal Court in writing that he or she does not oppose the application.

51 Subsection 87(1)

After “stage of proceedings”, insert “in relation to an application under section 61 but after the end of the period specified in the notice given under section 66”.

52 After section 97

Insert:

97A Searches for Federal Court

The Registrar has the power to conduct, or arrange for the conducting of, searches as requested by the Federal Court under section 83A.

53 After section 98

Insert:

98A Power of Registrar—other public records and information

The Registrar has the power to keep such other records or information as he or she considers appropriate and to make those records or that information available to the public.

54 After section 106

Insert in Part 5:

106A Appointment of acting Registrar

President may appoint acting Registrar

- (1) The President may appoint a person to act as the Registrar:
 - (a) if there is a vacancy in the office of Registrar; or
 - (b) during any period, or during all periods, when the Registrar is absent from duty or absent from Australia or is, for any reason, unable to perform the duties of the office.A person appointed to act during the vacancy is not to continue so to act for more than 12 months.

Qualifications

- (2) A person is not to be appointed to act as Registrar unless the person is, and has been for at least 5 years, enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.

Validation

- (3) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in, or in connection with, the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

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Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to acting appointments.

55 After subsection 108(1)

Insert:

Mediation for Federal Court proceedings

(1A) The Tribunal also has the functions in relation to Federal Court proceedings given to the Tribunal by Division 4A.

56 Subsection 109(2)

Omit “conducting inquiries”, substitute “carrying out its functions”.

57 Subsection 109(3)

Omit “conducting an inquiry”, substitute “carrying out its functions”.

58 Section 110 (table of membership of the National Native Title Tribunal, column dealing with Persons who may be appointed, row dealing with Presidential members)

Add at the end:

; or

(3) A person who is, and has been for at least 5 years, enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.

59 Subsection 123(1)

Omit “sections 69 and”, substitute “section”.

60 Paragraph 123(1)(b)

Omit the paragraph, substitute:

(b) the persons who are to conduct mediation in particular proceedings;

61 Paragraph 123(1)(c)

Omit “, or for the purposes of making a decision under section 69”.

62 Subsection 124(1)

Omit “Subject to section 69, the”, substitute “The”.

63 After section 136

Insert:

Division 4A—Mediation conferences

136A Mediation conferences

President to direct conference to be held

- (1) If the Federal Court refers the whole or a part of proceedings to the NNTT under section 86A for the purpose of mediation, the President must direct the holding of such conferences of the parties or their representatives as the President considers will help in resolving the matter.

Member must preside

- (2) A conference must be presided over by a member of the Tribunal.

Assistance for presiding member

- (3) The member presiding at a conference may be assisted by another member of the Tribunal or by a member of the staff of the Tribunal.

Statements at conference are without prejudice

- (4) In proceedings before the Federal Court, unless the parties otherwise agree, evidence may not be given, and statements may not be made, concerning any word spoken or act done at a conference.

Member not to take further part in relation to proceedings

- (5) Unless the parties otherwise agree, a member who presides over, or assists at, a conference in relation to proceedings may not, in any other capacity, take any further part in the proceedings.

Participation by telephone etc.

- (6) The presiding member may allow a person to participate by:
 - (a) telephone; or
 - (b) closed-circuit television; or

- (c) any other means of communication.

136B Parties at conferences

Parties may be excluded

- (1) The presiding member may direct that one or some of the parties not attend, and not be represented, at a conference.

Basis for excluding parties

- (2) The presiding member may do this only if he or she considers it would assist the resolution of a matter that is the subject of the mediation.

136C Other persons attending or participating in conferences

Other persons may attend or participate if parties consent

- (1) The presiding member may, with the consent of all of the parties present at a conference, direct that other persons be permitted to attend or participate in the conference.

Basis for allowing participation

- (2) The presiding member may do this only if he or she considers it would assist the resolution of a matter that is the subject of the mediation.

136D Referral of questions of law or fact

- (1) A question of law or fact relating to the proceedings that arises during mediation may only be referred to the Federal Court:
- (a) on the initiative of the presiding member; or
 - (b) at the request of a party, if the presiding member agrees.

Jurisdiction of Federal Court

- (2) The Federal Court has jurisdiction to hear and determine a question of law or fact referred to it under this section.

Mediation may continue

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- (3) If a question of law or fact arising during mediation has been referred to the Federal Court under this section, the presiding member may continue mediation if he or she considers that it is appropriate.

136E Conferences to be held in private

A conference must be held in private.

136F Presiding member may prohibit disclosure of evidence

Power of presiding member

- (1) The presiding member may direct that:
- (a) any evidence given, or statements made, at a conference; or
 - (b) the contents of any document produced at a conference;
- must not be disclosed, or must not be disclosed except in such manner, and to such persons, as the presiding member specifies.

Applications etc.

- (2) The presiding member may make the direction on his or her own initiative or on an application by a party.

64 Paragraph 139(a)

Omit the paragraph.

65 Subsection 141(1)

Omit the subsection.

66 Sections 160, 161 and 165

Repeal the sections.

67 Subdivision E of Division 5 of Part 6

Repeal the Subdivision.

68 Subsections 169(2) and (3)

Omit the subsections.

69 Section 176

After “section 92”, insert “, 136F”.

70 Section 178

Omit “a determination of the Tribunal is lodged with the Federal Court under section 166,”.

71 Subsection 183(1)

Omit all of the words and paragraphs before “may”, substitute “A person who is a party, or who intends to apply to be a party, to an inquiry, mediation or proceedings, related to native title”.

72 Subsection 183(1)

After “inquiry”, insert “, mediation”.

73 Subsection 183(2)

After “inquiry” (wherever occurring), insert “, mediation”.

74 After subsection 183(4)

Insert:

Assistance not to be provided to applicants

- (4A) The Attorney-General cannot authorise the provision of assistance under this section to a person claiming, in an inquiry, mediation or proceedings, to hold native title to an area.

75 Subsection 183(5)

Omit “the holder of an office in the Senior Executive Service of the Australian Public Service”, substitute “a person occupying a specified office in the Department”.

76 Section 184

Omit “Registrar”, substitute “Federal Court”.

77 Subsection 185(2)

Before “Registrar”, insert “Native Title”.

78 Subsection 186(1)

After “each claim”, insert “covered by subsection 190(1)”.

79 Paragraph 186(1)(a)

Omit “Registrar”, substitute “Federal Court”.

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80 After paragraph 186(1)(c)

Insert:

(ca) the date that the claim is entered on the Register;

81 Section 189

Before “Registrar of the High Court”, insert “Senior”.

Note: The heading to section 189 is altered by inserting “Senior” before “Registrar of the High Court”.

82 After paragraph 189(a)

Insert:

(aa) the details of any amendment or withdrawal of such a claim;
and

83 After section 189:

Insert:

189A Registrar of the Federal Court to notify Registrar

A Registrar of the Federal Court must, as soon as is practicable, notify the Native Title Registrar of:

- (a) the withdrawal of an application that contains a claim that is covered by an entry on the Register; and
- (b) the details of any decision or determination covering a claim (whether or not covered by an entry on the Register) made by the Federal Court.

84 Subsection 190(1)

Omit “after becoming aware of them”.

85 Paragraph 190(1)(a)

Omit “contained in applications given to the Registrar”, substitute “accepted for registration by the Registrar under section 190A”.

86 Paragraph 190(1)(b)

After “section 189”, insert “that are accepted for registration by the Registrar under section 190A”.

87 Paragraph 190(1)(c)

After “claims”, insert “contained in applications that are accepted for determination”.

88 After subsection 190(1)

Insert:

Amending Register after amendment of claims

(1A) If a recognised State/Territory body notifies the Registrar of an amendment of a claim that is on the Register, the Registrar must, as soon as is practicable, amend the Register to reflect the amendment.

(1B) If:

- (a) the Registrar is given a copy of an amended application under subsection 63A(2); or
 - (b) the Registrar is notified under section 189 of an amendment of a claim that is on the Register;
- the Registrar must, as soon as is practicable:
- (c) if the claim contained in the application is accepted for registration under section 190A—amend the Register to reflect the amendment; or
 - (d) if the claim contained in the application is not accepted for registration under section 190A—amend the Register to remove the entry relating to the claim that was contained in the application that is amended.

89 Paragraph 190(2)(a)

Omit the paragraph.

90 Paragraph 190(2)(b)

Omit “196”, substitute “189A”.

91 After paragraph 190(2)(c)

Insert:

- or (d) the Registrar is notified that an application that contained a claim has been withdrawn;

92 Subsection 190(2)

Omit all the words after “must,”, substitute:

as soon as practicable:

- (e) if the application in question has been withdrawn, dismissed or otherwise finalised—remove the entry in the Register that relates to the claim; or
- (f) in any other case—amend the entry in the Register that relates to the claim so that it only relates to the matters in relation to which the application has not been finalised.

Note: If an application has been finalised in relation to part of the area claimed, the Register would be amended to remove references to that area. If the application has been finalised by an approved determination of native title stating that native title exists, that determination would be entered on the National Native Title Register.

Note: The heading to subsection 190(2) is replaced by the heading “*Entries removed or amended after determination, decision or withdrawal*”.

93 After section 190

Insert:

190A Registrar to consider claims

- (1) If the Registrar is given a copy of an application under section 63, or an amended application under subsection 63A(2), in which a person or persons claim to hold native title, the Registrar must consider the claim.
- (2) The Registrar must also consider any claim of which he or she is notified under paragraph 189(aa) or (a).
- (3) Unless the Registrar considers that, *prima facie*, the claim cannot be made out, the Registrar must accept the claim for registration.
- (4) If the Registrar considers that, *prima facie*, the claim cannot be made out, the Registrar must, as soon as is practicable, give the claimant written notice, including reasons, to that effect.

Claimant may apply to Federal Court

- (5) If the Registrar gives the claimant a notice under subsection (4), the claimant may, within 28 days, apply to the Federal Court for an order directing the Registrar to accept the claim for registration on the Register. The Federal Court may not extend the period in which the application may be made.

- (6) The claimant may, at any time after the end of the 28 day period, apply to the Federal Court for an order directing the Registrar to accept the claim for registration on the Register.

Note: Even if a claim is accepted as a result of a direction under this subsection, section 24 protection can still apply in relation to the area covered.

- (7) In considering a claim under this section, the Registrar must have regard to information contained in the application and may have regard to such other information as he or she considers appropriate.
- (8) The Federal Court, in deciding whether to make an order under subsection (5) or (6) is to apply the test set out in subsection (3).

Federal Court has jurisdiction

- (9) The Federal Court has jurisdiction to hear and determine an application made to it under subsection (5) or (6).

94 Subsection 192(2)

Before “Registrar”, insert “Native Title”.

95 Paragraph 193(1)(a)

Omit “the NNTT,”.

96 Section 196

Repeal the section.

97 After paragraph 215(2)(a)

Insert:

- (aa) the regulations may make provision:
- (i) prescribing fees to be paid to obtain access to, or information from, records or information kept by the Native Title Registrar as mentioned in section 98A; and
 - (ii) for or in relation to the waiver or refund, in whole or part, of such fees; and

98 Section 222 (table of list of definitions, after entry relating to *Judge*)

Insert:

Schedule 1—Amendments of the Native Title Act 1993

	Judicial Registrar	253
99	Section 222 (Table of list of definitions, after entry relating to Registrar) Insert: Registrar of the Federal Court	253
100	Section 222 (Table of list of definitions, after entry relating to right to negotiate application) Insert: Section 24 protection	253
101	Section 222 (Table of list of definitions, entry relating to unopposed application) Omit the entry.	
102	Paragraph 251(2)(a) After “this Act”, insert “as in force either before or after the commencement of section 3 of the <i>Native Title Amendment Act 1995</i> ”.	
103	After subparagraph 251(2)(i)(i) Insert: (ia) any such applications that are accepted for determination; and (ib) any amendments of applications covered by subparagraph (ia) that are accepted for determination; and (ic) any withdrawal or dismissal of applications covered by subparagraph (ia); and	
104	Section 253 (definition of <i>registered native title claimant</i>) Omit “(other than an entry amended under subsection 190(2) to include details of a decision or determination)”.	
105	Section 253 Insert the following definitions: <i>Judicial Registrar</i> means a Judicial Registrar within the meaning of Part IIAA of the <i>Federal Court of Australia Act 1976</i> .	

Schedule 1—Amendments of the Native Title Act 1993

Registrar of the Federal Court means a Registrar of the Federal Court within the meaning of section 35A of the *Federal Court of Australia Act 1976*, other than a Judicial Registrar.

section 24 protection has the meaning given by section 24.

Part 2—Other amendments

106 Section 12

Repeal the section.

107 Section 22

Omit “and 25”, substitute “, 25 and 25A”.

108 Subsection 23(1)

Omit “or 25”, substitute “, 25 or 25A”.

109 Paragraph 23(4)(b)

Before “either”, insert “if”.

110 Subsection 23(4)

Align the text beginning with “the native title holders” and ending with “Division 5” with the paragraph (b) margin.

111 After section 25

Insert in Subdivision A of Division 3 of Part 2:

25A Where agreement to surrender native title

When this section applies

- (1) This section applies if:
- (a) an approved determination of native title in relation to an area has been made; and
 - (b) the registered native title body corporate, or the common law holders of the native title, make an agreement covered by subsection 21(1); and
 - (c) a later approved determination of native title is made that determines that persons other than those previously determined hold, or also hold, native title in relation to the area.

Effect of this section

- (2) If this section applies:
- (a) if the agreement is under paragraph 21(1)(a)—any future act by any person in relation to the area that is done before the making of the later approved determination of native title is valid; and
 - (b) if the agreement is under paragraph 21(1)(b)—any future act by any person in relation to the area that is authorised by the agreement and that is done before the making of the later approved determination of native title is valid; and
 - (c) if the act mentioned in paragraph (a) or (b) extinguishes native title that is held by the persons mentioned in paragraph (1)(c) to any extent—those persons are entitled to compensation for the act in so far as it has that effect; and
 - (d) if the act mentioned in paragraph (a) or (b) does not so extinguish native title and the persons mentioned in paragraph (1)(c) would be entitled to compensation under subsection 17 (2) for the act on the assumption that it was a past act referred to in that subsection—they are entitled, in accordance with Division 5, to compensation for the act.

Who is to pay compensation

- (3) The persons mentioned in paragraph (1)(c) may recover the compensation from:
- (a) if the act is attributable to the Commonwealth—the Crown in right of the Commonwealth; or
 - (b) if the act is attributable to a State or Territory—the Crown in right of the State or Territory.

112 Before paragraph 26(3)(a)

Insert:

- (aa) an act covered by an agreement under section 21; or

Note: The heading to section 48 is altered by omitting “in accordance with Division” and substituting “under Division 2, 3 or 4”.

113 Section 55

Omit “sections”, substitute “section”.

114 Section 55

Omit “and 57”, substitute “or 57”.

Schedule 1—Amendments of the Native Title Act 1993

115 Paragraph 58(d)

Omit “their”, substitute “its”.

116 Section 59

Omit all of the words and paragraphs after “or 57”.

117 Subsections 122(1) and (3)

Omit “Part 4”, substitute “Part 3”.

118 After subsection 193(2)

Insert:

- (2A) The Register is also to contain details of any agreement under paragraph 21(1)(a) of which the Registrar is notified.

119 Subsection 209(1)

Omit “Aboriginal and Torres Strait Islander Social Justice Commissioner (appointed under the *Human Rights and Equal Opportunity Commission Act 1986*)”, substitute “Human Rights and Equal Opportunity Commission”.

Note: The heading to section 209 is altered by omitting “by Aboriginal and Torres Strait Islander Social Justice Commissioner”.

120 Subsection 209(2)

Omit “Commissioner”, substitute “Commission”.

121 Section 209

Add at the end:

Commissioner to prepare and submit reports

- (3) The preparation and submission of reports under subsections (1) and (2) is to be carried out by the Aboriginal and Torres Strait Islander Social Justice Commissioner (appointed under the *Human Rights and Equal Opportunity Commission Act 1986*) on behalf of the Commission.

Commonwealth Minister must table reports

- (4) The Commonwealth Minister must cause a copy of each report received by the Minister under subsection (1) or (2) to be laid

before each House of the Parliament within 15 sitting days of that House after the report is received by the Minister.

Note: The heading to subsection 212(3) is altered by omitting “*under subsection (2)*”.

122 Subparagraph 215(2)(b)(i)

Before “Registrar”, insert “Native Title”.

123 Subparagraph 215(2)(b)(ii)

Before “refund”, insert “waiver or”.

124 Section 225

Repeal the section, substitute:

225 Determination of native title

A *determination of native title* is a determination whether or not native title exists in relation to a particular area of land or waters and, if it does exist, a determination of:

- (a) who holds it; and
- (b) whether the native title rights and interests confer possession, occupation, use and enjoyment of the land or waters on its holders to the exclusion of all others; and
- (c) if the native title rights and interests do not confer such exclusive rights—those native title rights and interests that the maker of the determination considers to be of importance; and
- (d) the nature and extent of any other interests in relation to the land or waters that may affect the native title rights and interests.

125 Subsection 226(2)

Omit “Subject to subsection (4), ‘act’ includes”, substitute “An *act* includes”.

126 Subsection 226(3)

Omit “Subject to subsection (4), an”, substitute “An”.

127 Section 253 (definition of *land*)(after the note)

Insert:

Schedule 1—Amendments of the Native Title Act 1993

Note 2: Because of the definition of *waters*, the area between high water and low water will not be included in *land*.

128 Section 253 (definition of *unopposed application*)

Omit the definition.

129 Section 253 (definition of *waters*)

Add at the end:

; or (c) the shore, or subsoil under or airspace over the shore,
between high water and low water.

Schedule 2—Amendments of other Acts

Part 1—*Federal Court of Australia Act 1976*

1 After Part II

Insert:

Part IIAA—Judicial Registrars

18AA Judicial Registrars

The Governor-General may appoint one or more Judicial Registrars of the Court.

18AB Powers of Judicial Registrars

- (1) The Judges, or a majority of them, may make Rules of Court delegating to the Judicial Registrars all or any of the following powers of the Court:
 - (a) to determine parties to proceedings under the *Native Title Act 1993*;
 - (b) to make orders under sections 86C and 87 of that Act.
- (2) A power delegated to the Judicial Registrars is, when exercised by a Judicial Registrar, taken to have been exercised by the Court or a Judge, as the case requires.
- (3) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.
- (4) The provisions of this Act, the regulations and the Rules of Court, and other laws of the Commonwealth, that relate to the exercise by the Court of a power that is, under a delegation made under subsection (1), exercisable by a Judicial Registrar, apply in relation to an exercise of the power by a Judicial Registrar as if references to the Court were references to a Judicial Registrar.

18AC Review of decisions of Judicial Registrars

- (1) A party to proceedings in which a Judicial Registrar has exercised a power delegated under subsection 18AB(1) may, within the time prescribed by, or within such further time as is allowed in accordance with, Rules of Court made by the Judges or a majority of them, apply to the Court to review the exercise of the power.
- (2) The Court may, on application made under subsection (1) or of its own motion, review the exercise by a Judicial Registrar of a power delegated under subsection 18AB(1), and may make such orders as it considers appropriate in relation to the matter in relation to which the power was exercised.
- (3) The Court may, on the application of a party or of its own motion, refer an application under subsection (1) to a Full Court of the Court.

18AD Exercise of delegated powers by Court

- (1) If:
 - (a) an application for the exercise of a power delegated under subsection 18AB(1) is to be, or is being, heard by a Judicial Registrar; and
 - (b) the Judicial Registrar considers that it is not appropriate for the application to be determined by a Judicial Registrar; the Judicial Registrar must not hear, or continue to hear, the application, and must make appropriate arrangements for the application to be heard by the Court.
- (2) If:
 - (a) a power delegated under subsection 18AB(1) is proposed to be exercised in a particular case by a Judicial Registrar; but
 - (b) the Judicial Registrar has not commenced to exercise the power in that case;a Judge may, on application by a person who would be a party to the proceedings, order that the power be exercised in that case by a Judge.
- (3) Where an application is made to a Judge under subsection (2), the Judicial Registrar must not commence to exercise the power in that case until the application has been determined.

18AE Independence of Judicial Registrars

Despite any provision of this Act or any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under subsection 18AB(1).

18AF Judicial Registrars hold office on full-time or part-time basis

A Judicial Registrar may be appointed on a full-time or part-time basis.

18AG Qualifications for appointment

A person is not to be appointed as a Judicial Registrar unless:

- (a) the person is or has been a Judge of a court created by the Parliament or of a court of a State or Territory; or
- (b) the person has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years.

18AH Terms and conditions of appointment

- (1) A Judicial Registrar:
 - (a) is to be appointed with effect from the day specified in the instrument of appointment; and
 - (b) holds office for the period (not longer than 7 years) specified in the instrument of appointment, but is eligible for re-appointment.
- (2) A Judicial Registrar holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Governor-General.
- (3) The appointment of a Judicial Registrar of the Court as a Judicial Registrar of another federal court, or service by a Judicial Registrar of the Court as a Judicial Registrar of another federal court, does not affect:
 - (a) the Judicial Registrar's tenure of office as a Judicial Registrar of the Court; or

Schedule 2—Amendments of other Acts

- (b) the Judicial Registrar's salary, annual or other allowances or other rights or privileges as the holder of his or her office of Judicial Registrar of the Court.
- (4) Service by a Judicial Registrar of the Court as a Judicial Registrar of another federal court is taken for all purposes to be service as a Judicial Registrar of the Court.

18AI Remuneration and allowances

- (1) A Judicial Registrar is to be paid the remuneration determined by the Remuneration Tribunal. If there is no determination in force, the Judicial Registrar is to be paid such remuneration as is prescribed.
- (2) A Judicial Registrar is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18AJ Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, a person appointed as a full-time Judicial Registrar has the recreation leave entitlements determined by the Remuneration Tribunal.
- (2) The Chief Judge may grant a person appointed as a full-time Judicial Registrar leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Chief Judge, with the approval of the Attorney-General, determines.

18AK Resignation

- (1) A Judicial Registrar may resign by giving a signed notice of resignation to the Governor-General.
- (2) The resignation takes effect on:
 - (a) the day on which it is received by the Governor-General; or
 - (b) a later day specified in the resignation document.

18AL Termination of appointment

Misbehaviour or incapacity

- (1) The Governor-General may terminate the appointment of a Judicial Registrar for misbehaviour or physical or mental incapacity.

Termination for other reasons

- (2) The Governor-General must terminate the appointment of a Judicial Registrar if the Judicial Registrar:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.

Retirement—incapacity

- (3) If a Judicial Registrar is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;the Governor-General may, with the Judicial Registrar's consent, retire the Judicial Registrar from office on the ground of incapacity.

Retirement—invalidity—Superannuation Act 1976

- (4) Despite anything contained in this Act, a Judicial Registrar who:
 - (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached his or her retiring age within the meaning of that Act;is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.

Schedule 2—Amendments of other Acts

Retirement—invalidity—Superannuation Act 1990

- (5) Despite anything contained in this Act, a Judicial Registrar who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

18AM Oath or affirmation of office

A person who is appointed or re-appointed as a Judicial Registrar must, before beginning to discharge the duties of the office, take, before the Chief Judge or a Judge of the Court, an oath or affirmation in the following form:

“I,, do swear that I will well and truly serve in the office of Judicial Registrar of the Federal Court and that I will do right to all manner of people according to law, without fear or favour, affection or ill will, So Help Me God!”

Or

I,, do solemnly and sincerely promise and declare that I will well and truly serve in the office of Judicial Registrar of the Federal Court and that I will do right to all manner of people according to law, without fear or favour, affection or ill will.”.

2 Subsection 35A(8)

After “means”, insert “a Judicial Registrar,”.

3 Subsections 59(3) and (4)

After “this section”, insert “or section 18AB or 18AC”.

**Part 2—*Human Rights and Equal Opportunity
Commission Act 1986***

4 Subsection 46C(1)

Add at the end the following note:

Note: Functions are also conferred on the Commission under section 209 of the *Native Title Act 1993*.

Schedule 3—Transitional

Part 1—Contents of Schedule

1 Contents of this Schedule

This Schedule:

- (a) sets out various situations that may exist in relation to an application that was given to the Native Title Registrar under the old Act, and the consequences of the commencement of this Act (see Part 2); and
- (b) defines terms used in this Schedule (see Part 3).

Part 2—Transitional provisions

2 Table of situations and consequences

The following table sets out various situations that may exist in relation to an application that was given to the Native Title Registrar under the old Act at or before the commencement of this Act, and the consequences of the commencement of this Act.

Case	Situation at the commencement of this Act	Consequences
1	Application is being processed.	Application is taken to have been made to Federal Court. Item 3 applies to registration of claims.
2	Application is being reviewed by a court.	Application is taken to have been made to Federal Court. Old law is to apply to non-acceptance appeals. Item 4 applies to registration of claims.
3	Application has been accepted but the Registrar has not started giving notification.	Application is taken to have been made to Federal Court. For claimant applications, Native Title Registrar is taken to have accepted claim for registration under subsection 190A(3).
4	Registrar has given, or is giving, notification but section 66 period not completed.	Application is taken to have been made to Federal Court. For claimant applications, Native Title Registrar is taken to have accepted claim for registration under subsection 190A(3). Any notification is taken to be for that application and the same people are the parties.

Schedule 3—Transitional

5	Notification given by Registrar, section 66 period for the application is completed and application is unopposed. Application not finalised.	Application is taken to have been made to Federal Court. For claimant applications, Native Title Registrar is taken to have accepted claim for registration under subsection 190A(3). Any notification is taken to be for that application and the same people are the parties. Native Title Registrar must remove any relevant entry from National Native Title Register. Any determination is taken not to have been an approved determination of native title. Any determination is taken never to have been registered under section 166 of the old Act. For non-claimant applications, item 7 applies in relation to section 24 protection.
6	Notification given by Registrar, section 66 period for the application is completed and application is not unopposed. Application not finalised.	Application is taken to have been made to Federal Court. For claimant applications, Native Title Registrar is taken to have accepted claim for registration under subsection 190A(3). Any notification is taken to be for that application and the same people are the parties. Item 5 or 6 applies in relation to mediation. Native Title Registrar must remove any relevant entry from National Native Title Register. Any determination is taken not to have been an approved determination of native title. Any determination is taken never to have been registered under section 166 of the old Act.

7	<p>NNTT has made, or has purported to make, a determination under the old Act that there is no native title in relation to an area.</p> <p>The normal application and review period defined in subsection 167(10) of the old Act has finished, and neither case 5 nor case 6 applies.</p>	<p>Native Title Registrar must remove any relevant entry from National Native Title Register.</p> <p>Any determination is taken not to have been an approved determination of native title.</p> <p>Any determination is taken never to have been registered under section 166 of the old Act.</p> <p>Item 8 applies in relation to section 24 protection.</p> <p>A further native title determination application may be made.</p>
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3 Case 1—removal of claims from Register of Native Title Claims

- (1) If:
 - (a) at the commencement of this Act there is an entry on the Register of Native Title Claims that records details of a claim contained in an application made under the old Act; and
 - (b) the application is covered by case 1 in the table in item 2;
 the Native Title Registrar must consider the claim under section 190A.
- (2) If the Registrar forms the opinion mentioned in subsection 190A(4):
 - (a) the Registrar must remove the claim from the Register and give written notice in relation to that opinion as required by subsection 190A(4); and
 - (b) the other provisions of section 190A apply as if the notice mentioned in paragraph (a) were given under subsection 190A(4).
- (3) After the Registrar has complied with subitems (1) and (2), he or she is taken to have complied with section 190A.

4 Case 2—removal of claims from Register of Native Title Claims

- (1) If:
 - (a) at the commencement of this Act there is an entry on the Register of Native Title Claims that records details of a claim contained in an application made under a provision of the old Act; and

Schedule 3—Transitional

- (b) the application is covered by case 2 in the table in item 2;
and
- (c) at a later time the application is no longer being reviewed by
a court;

the Native Title Registrar must remove the claim from the Register unless the applicant has been successful in a non-acceptance appeal.

- (2) After the Registrar has complied with subitem (1), he or she is taken to have complied with section 190A, but no application can be made under subsection 190A(5) in relation to the removal of a claim from the Register under subitem (1).

5 Previously directed mediation conference

If:

- (a) an application that was made to the Native Title Registrar under section 61 of the old Act is taken to have been made to the Federal Court; and
- (b) at or before the commencement of this Act, the President has directed the holding of a conference of the parties or their representatives under subsection 72(1) of the old Act, in respect of the whole or a part of the proceedings; and
- (c) the Tribunal has not made a determination under section 73 or 160 of the old Act; and
- (d) the Native Title Registrar has not lodged the application with the Federal Court under section 74 of the old Act;

then, for the purposes of the new Act, the Federal Court is taken to have referred the proceedings, or the part of the proceedings, to mediation under section 86A of the new Act.

6 Application already with Federal Court

If:

- (a) an application that was made to the Native Title Registrar under section 61 of the old Act is taken to have been made to the Federal Court; and
- (b) the Native Title Registrar has lodged the application with the Federal Court under section 74 of the old Act;

the Federal Court is taken to have made an order, under subsection 86A(4) of the new Act, that mediation cease in relation to the whole of the proceedings.

7 Case 5—effect of section 24 protection

If case 5 in the table in item 2 applies to a non-claimant application covering an area, the area:

- (a) is taken to be subject to section 24 protection (within the meaning of the new Act) unless and until:
 - (i) the area is covered by an entry in the National Native Title Register specifying that native title exists in relation to the area; or
 - (ii) the non-claimant application (if any) is withdrawn or dismissed; and
- (b) is taken to have been subject to section 24 protection (within the meaning of the new Act) at all times since the end of the period of 2 months worked out under section 66 of the old Act.

8 Case 7—effect of section 24 protection

If case 7 in the table in item 2 applies to an area, any part of the area:

- (a) is taken to be subject to section 24 protection (within the meaning of the new Act) unless and until that part of the area is covered by an entry in the National Native Title Register specifying that native title exists in relation to that part of the area; and
- (b) is taken to have been subject to section 24 protection (within the meaning of the new Act) at all times since the end of the period of 2 months worked out under section 66 of the old Act.

9 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made for transitional measures in relation to the transition from the old Act to the new Act.

Part 3—Interpretation

10 Contents of this Part

This Part defines terms used in this Schedule.

11 Meaning of *commencement of this Act*

The *commencement of this Act* is the commencement under section 2 of the provisions of this Act other than sections 1 and 2 and item 103 of Schedule 1.

12 Meaning of *new Act* and *old Act*

- (1) The *new Act* is the *Native Title Act 1993*, as amended at the commencement of this Act.
- (2) The *old Act* is the *Native Title Act 1993*, as in force immediately before the commencement of this Act.

13 Meaning of *application is being processed*

- (1) An *application is being processed* if:
 - (a) the application has been given to the Native Title Registrar under subsection 61(1) of the old Act; and
 - (b) the application is still being reviewed by the Registrar (see subsection (2)) or a presidential member (see subsection (3)).
 - (2) An application is being *reviewed by the Registrar* if:
 - (a) the Registrar has not yet completed consideration of the application; or
 - (b) the Registrar has completed consideration of the application and:
 - (i) has formed an opinion mentioned in paragraph 63(1)(a) or (1)(b) or subsection 64(1) of the old Act; but
 - (ii) has not referred the application to a presidential member under subsection 63(2) or 64(1) of the old Act.
 - (3) An application is being *reviewed by a presidential member* if:
 - (a) the Registrar has referred the application to a presidential member under subsection 63(2) or 64(1) of the old Act; and
-

- (b) the presidential member has not completed consideration of the application.

14 *Meaning of application is being reviewed by a court*

An application is being *reviewed by a court* if:

- (a) the presidential member has made a direction under paragraph 63(3)(c) or 64(2)(c) of the old Act; and
- (b) either:
 - (i) the direction is the subject of proceedings under the old Act before a court; or
 - (ii) the period during which an application for some form of review of the direction, or of a decision made on review of the direction, may be made has not yet finished.

15 *Meaning of application has been accepted*

An *application has been accepted* if it has been accepted under section 63 or 64 of the old Act.

16 *Meaning of application is taken to have been made to Federal Court*

If an *application is taken to have been made to Federal Court*:

- (a) the application is to be treated as if it were made to the Federal Court under the relevant provisions of the new Act; and
- (b) if the application complies with sections 61 and 62 of the old Act—it is taken to comply with sections 61 and 62 of the new Act; and
- (c) the Native Title Registrar must give the application to the Federal Court.

17 *Meaning of non-acceptance appeal*

A *non-acceptance appeal* is an appeal under subsection 169(2) of the old Act or an appeal from a decision on such an appeal.

18 *Meaning of old law is to apply*

If the *old law is to apply* to an appeal, the court hearing the appeal, and any subsequent appeal, is to disregard the amendments made by this Act.

19 *Meaning of Registrar is giving notification*

The ***Registrar is giving notification*** if he or she has given notice of the application to a person whose interests may be affected by a determination but has not given, and is not taken to have given, notice to all such persons.

20 *Meaning of Registrar has given notification*

The ***Registrar has given notification*** if he or she has given, or is taken to have given, notice of the application to all persons whose interests may be affected by a determination in relation to the application, under section 66 of the old Act.

21 *Meaning of section 66 period*

The ***section 66 period***, for an application, means the period of 2 months worked out under section 66 of the old Act in relation to the application.

22 *Meaning of notification is taken to be for that application*

If, in relation to an application, ***notification is taken to be for that application***, the notification is to be treated as if it were notice of the application given, or taken to have been given, under section 66 of the new Act, that contained details of the application.

23 *Meaning of unopposed*

An application is ***unopposed*** if the application is unopposed for the purposes of section 70 of the old Act.

24 *Meaning of not finalised*

An application is ***not finalised*** if:

- (a) the application is the subject of proceedings before the NNTT, the Federal Court or the High Court; or
- (b) a determination has been made in respect of the application but the normal application and review period defined in subsection 167(10) of the old Act has not finished.

25 *Meaning of same people are the parties*

If the ***same people are the parties***:

- (a) any people who were parties to the application that was made to the Registrar under section 61 of the old Act are taken to be the parties to the application that is taken to have been made to the Federal Court under the relevant provisions of the new Act; and
- (b) a person who notifies the Registrar under paragraph 68(2)(b) of the old Act, after the commencement of the new Act but within the period of 2 months worked out under section 66 of the old Act, is also a party.

Note: Other people may also become parties (see section 84).

