

South Australia



ANNO QUADRAGESIMO NONO  
ELIZABETHAE II REGINAE  
A.D. 2000

**NATIVE TITLE (SOUTH AUSTRALIA) (MISCELLANEOUS)  
AMENDMENT ACT 2000**

No. 46 of 2000

[Assented to 13 July 2000]

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An Act to amend the Native Title (South Australia) Act 1994.

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**The Parliament of South Australia enacts as follows:****Short title**

1. (1) This Act may be cited as the *Native Title (South Australia) (Miscellaneous) Amendment Act 2000*.

(2) The *Native Title (South Australia) Act 1994* is referred to in this Act as "the principal Act".

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Amendment of s. 3—Interpretation of Acts and statutory instruments**

3. Section 3 of the principal Act is amended—

(a) by inserting in subsection (1) before the definition of "Aboriginal peoples" the following definition:

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

(b) by inserting in subsection (1) after the definition of "Aboriginal peoples" the following definitions:

**"affect"**—an act or activity affects native title if it extinguishes native title or it is wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights deriving from native title<sup>1</sup>;

<sup>1</sup> Cf. s. 227 of the Commonwealth Act.

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

(c) by striking out from subsection (1) the definition of "native title declaration" and substituting the following definition:

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

(d) by striking out the definition of "native title holder" in subsection (1) and substituting the following definition:

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

(a) if a body corporate is registered on a native title register as holding the native title on trust—the Aboriginal group for whom the native title is held on trust;

(b) in any other case—the Aboriginal group recognised at common law as holding the native title;;

(e) by inserting in subsection (1) after the definition of "**native title land**" the following definition:

**"native title party"** in relation to land means—

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

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

(f) by striking out paragraph (c) of the definition of "**native title question**" and substituting the following paragraph:

(c) compensation payable for an act extinguishing or otherwise affecting native title; or;

(g) by inserting in subsection (1) after the definition of "**native title question**" the following definitions:

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

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

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

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

(h) by striking out from subsection (1) the definition of "**registered representative**" of persons who are registered under the law of the Commonwealth or the State as claimants to native title in the land and substituting the following definition:

**"registered representative"** of claimants to native title means—

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

(b) the person registered in the *State Native Title Register* as the registered representative of the claimants;;

- (i) by striking out from subsection (1) the definition of "representative Aboriginal body" and substituting the following definition:

"representative Aboriginal body" means—

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

- (j) by striking out subsection (2) and substituting:

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

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

- (k) by striking out from subsection (3) the definition of "mining tenement" and substituting the following definition:

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

- (l) by inserting in subsection (3) after the definition of "Registrar" the following definitions:

"relevant Act" means—

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

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

#### Amendment of s. 4—Native title

4. Section 4 of the principal Act is amended—

- (a) by striking out from subsection (3) "subsection (4)" and substituting "subsections (3a) and (4)";

(b) by inserting after subsection (3) the following subsection:

(3a) Subsection (3) does not apply to rights and interests conferred by Part 2 Division 3 Subdivision Q of the Commonwealth Act (which deals with statutory access rights for native title claimants).;

(c) by striking out subsection (5);

(d) by striking out the explanatory note and the footnote and substituting the following explanatory note:

*Explanatory note—*

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

**Insertion of s. 4A**

5. The following section is inserted after section 4 of the principal Act:

**Registered representative**

**4A.** (1) A registered representative of native title holders or native title claimants represents the Aboriginal group that holds or claims to hold native title in the land so that (for example)—

- (a) a notice is given to the Aboriginal group by giving it to the registered representative; and
- (b) a person negotiates with the Aboriginal group by negotiating with the registered representative; and
- (c) an agreement lawfully negotiated by the registered representative with respect to the land in which the native title is claimed or held is binding on the Aboriginal group.

(2) The above examples are not intended to be an exhaustive statement of the ways in which a registered representative might act on behalf of the Aboriginal group nor are they intended to suggest that the group may only act through the registered representative.

**Amendment of s. 13—Principles governing proceedings**

6. Section 13 of the principal Act is amended—

(a) by striking out paragraph (b);

(b) by inserting after its present contents (now to be designated as subsection (1)) the following subsections:

(2) The Court is not bound by the rules of evidence and may inform itself as it thinks fit.

(3) However, in informing itself about a native title question, the Court must, if there is an established evidentiary practice in the Federal Court for dealing with similar questions, follow the practice of the Federal Court.

**Substitution of Part 3 Division 5**

7. Division 5 of Part 3 of the principal Act is repealed and the following Divisions are substituted:

**DIVISION 5—NOTIFICATION****Registrar to be informed in relation to native title questions**

15. The Court must ensure that the Registrar is informed of—

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

**Registrar to give notice in relation to native title questions**

16. (1) The Registrar must give notice of—

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

in accordance with the regulations.

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

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

**DIVISION 6—MISCELLANEOUS****Joinder of parties**

16A. (1) The Court may, at any time, order that a person who appears to have a proper interest in proceedings involving a native title question be joined as a party to the proceedings.

(2) An order may be made under this section even though the person to be joined as a party was given notice of the proceedings and failed to apply to be joined as a party within the period allowed in the notice.

**Costs**

**16B.** (1) Unless the Court otherwise orders, each party to proceedings is to bear its own costs of the proceedings to the extent the proceedings involve a native title question.

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

**Amendment of s. 17—Register**

**8.** Section 17 of the principal Act is amended—

(a) by striking out paragraph (c) of subsection (2) and substituting the following paragraph:

(c) all claims to native title in land registered under this Part and, in each case, a description of the rights claimed to be conferred by the native title and which the Registrar in registering the claim considered could, *prima facie*, be established; and;

(b) by inserting after paragraph (d) of subsection (2) the following paragraph:

(da) the name and address for service of the registered representative of native title holders; and;

(c) by striking out paragraph (b) of subsection (4);

(d) by inserting after subsection (4) the following subsection:

(5) The Registrar must ensure that the entries in the register properly reflect the status of the claims, and decisions by the Registrar or the Court affecting claims, by making, as soon as practicable, any additions, amendments and deletions necessary for that purpose.

**Substitution of ss. 18, 19 and 20**

**9.** Sections 18, 19 and 20 of the principal Act and the headings to Division 2 and Division 3 of Part 4 are repealed and the following sections and headings are substituted:

**DIVISION 2—APPLICATION FOR NATIVE TITLE DECLARATIONS****Applications**

**18.** (1) An application for a native title declaration in respect of land may be made to the Court by an interested person.

(2) The following are interested persons:

(a) a member of an Aboriginal group claiming native title in the land who is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group;

(b) a person whose interests would be affected by the existence of native title in the land (including a person who proposes to carry out mining operations on the land);



- (c) the State Minister;
  - (d) the Commonwealth Minister.
- (3) However—
- (a) an application cannot be made in relation to land that is already the subject of a native title declaration;
  - (b) if a previous exclusive possession act attributable to the State<sup>1</sup> or the Commonwealth has been done in relation to the land, a claimant application cannot be made in relation to the land unless—
    - (i) the extinguishing effect of the act is to be disregarded under section 47, 47A or 47B of the Commonwealth Act; and
    - (ii) the application includes a statement to that effect;
  - (c) if a previous non-exclusive possession act attributable to the State<sup>2</sup> or the Commonwealth has been done in relation to the land, a claimant application for a native title declaration establishing a right to exclusive possession of the land cannot be made unless—
    - (i) the extinguishing effect of the act is to be disregarded under section 47, 47A or 47B of the Commonwealth Act; and
    - (ii) the application includes a statement to that effect.
- (4) In this section—

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

*Explanatory note—*

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

**Form and content of applications**

**18A.** (1) An application for a native title declaration must (whether the application is a claimant application or a non-claimant application)—

- (a) be lodged with the Registrar in writing; and
- (b) state the nature of the declaration sought by the applicant; and
- (c) define the land to which the application relates with sufficient particularity to enable the boundaries of the area covered by the application and any areas within those boundaries that are not covered by the application to be readily identified; and
- (d) include a map showing the boundaries of the area covered by the application.

## (2) A claimant application must—

- (a) name the persons comprising the Aboriginal group claiming native title or otherwise define the Aboriginal group sufficiently clearly so that it can be ascertained whether any particular person is a member of the group; and
- (b) state the nature of the rights conferred by the native title claimed and the nature of activities that may be carried out pursuant to those rights; and
- (c) state the factual basis on which native title is asserted and, in particular, the factual basis on which it is asserted that—
  - (i) the Aboriginal group has, and its predecessors had, an association with the area; and
  - (ii) there exist traditional laws acknowledged by, and traditional customs observed by, the Aboriginal group that give rise to the native title; and
  - (iii) the Aboriginal group has continued to hold the native title in accordance with those traditional laws and customs; and

(The statement may include details of circumstances in which access to the area by a member or a parent of a member of the Aboriginal group has been prevented.)

- (d) give details of any activities currently carried on in relation to the land by the Aboriginal group; and
- (e) give details and results of all searches carried out to determine the existence of any non-native title rights and interests in relation to the land; and
- (f) give details of notices, of which the applicant is aware, about matters that may be the subject of negotiation with the applicant if the claim is registered; and

*Examples—*

- A notice under section 29 of the Commonwealth Act.
  - A notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*.
  - A notice of the intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies.
- (g) give details of any other application, of which the applicant is aware, for a judicial determination of native title in the land or a determination of compensation in relation to native title in the land; and
  - (h) state the name and address for service of the applicant; and
  - (i) contain the information, and be accompanied by the documents, required by regulation; and
  - (j) state the factual basis on which it is asserted that the applicant is a member of the Aboriginal group authorised as required under section 18(2)(a); and

- (k) be accompanied by a statutory declaration verifying—
- (i) the information contained in the application; and
  - (ii) that the applicant is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to the application on behalf of the group; and
  - (iii) that the applicant believes that the native title claimed has not been extinguished and that none of the area covered by the application is the subject of a native title declaration.

(3) A claimant application may be accompanied by a certificate of the representative Aboriginal body for the area covered by the application (or, if the body is not the representative body for the whole of the area, certificates of representative Aboriginal bodies that together are representative bodies for the whole of the area) certifying that the applicant is a member of the Aboriginal group and is authorised by the group to make the application and to deal with matters arising in relation to the application on behalf of the group.

(4) A non-claimant application must—

- (a) state the grounds on which the declaration is sought; and
- (b) contain all information known to the applicant about the title to, and tenure of, the land and the history of the title to, and tenure of the land, including information about present and former association by Aboriginal peoples with the land; and
- (c) state the name and address for service of the applicant; and
- (d) contain the information, and be accompanied by the documents, required by regulation; and
- (e) be accompanied by a statutory declaration verifying the information contained in the application.

#### **DIVISION 2A—REGISTRATION OF CLAIMS**

##### **Registrar to determine whether claim is to be registered**

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

##### **Registration of claims**

**19A.** (1) The Registrar must register the claim if, and only if, the Registrar is satisfied—

- (a) if the application is not accompanied by a certificate as referred to in section 18A(3)—the applicant is authorised to make the application by the relevant Aboriginal group; and

- (b) the application is made in accordance with Division 2; and
- (c) the factual basis on which it is asserted that native title exists is sufficient to support the assertion (including the particular assertions referred to in section 18A(2)(c)); and
- (d) at least some of the rights conferred by the native title claimed can, *prima facie*, be established; and
- (e) either—
  - (i) at least one member of the Aboriginal group currently has, or previously had, a traditional physical connection with part of the land covered by the application; or
  - (ii) at least one parent of one member of the Aboriginal group had a traditional physical connection with part of the land and would (according to reasonable expectation) have maintained that connection but for things done (other than the creation of an interest in relation to land) by the Crown, or a statutory authority of the Crown, in any capacity or the holder of a lease over any of the land, or any person acting on behalf of such a holder; and
- (f) at the time of the application there were no entries (made or not removed as a result of consideration under this Act or the Commonwealth Act on or after 30 September 1998) in the *State Native Title Register* or the *Register of Native Title Claims* (kept under the Commonwealth Act) relating to a claim by the Aboriginal group, or by another Aboriginal group that includes one or more of the members of the Aboriginal group, to native title in land covered by the application.

(2) The Registrar must not register a claim if the application or accompanying documents disclose, or the Registrar is otherwise aware, that—

- (a) if the rights conferred by the native title claimed consist of or include ownership of minerals, petroleum or gas—the Crown in right of the Commonwealth, a State or a Territory wholly owns the minerals, petroleum or gas; or
- (b) if the native title claimed is in waters in an offshore place—the rights claimed to be conferred by the native title purportedly exclude all other rights and interests in relation to the whole or part of the offshore place; or
- (c) the native title claimed has been extinguished (except to the extent that the extinguishment is required to be disregarded under section 47(2), 47A(2) or 47B(2) of the Commonwealth Act).

(3) In considering a claim, the Registrar—

- (a) must have regard to information contained in the application and in any other documents provided by the applicant and, to the extent that it is reasonably practicable to do so in the circumstances, to relevant information provided by the State or the Commonwealth; but

(b) is not limited to that information and may (but need not) obtain and have regard to other information.

(4) If a claimant application containing a claim that has been registered is amended, the Registrar must reconsider the registration of the claim.

(5) On reconsideration of the registration of a claim, the Registrar must—

(a) if satisfied that the claim, assuming it had been made in its amended form, would not have been registered—deregister the claim; or

(b) if satisfied that the information recorded in the register in relation to the claim would, assuming it had been made in its amended form, have differed from the information actually recorded in some way—vary the register to reflect the amendment.

(6) If—

(a) the Registrar is aware that a notice has been issued about matters that may be the subject of negotiation with an applicant; and

(b) the applicant's right to participate in the negotiations is dependent on the claim being registered within a particular period after the date of service of the notice,

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

*Examples—*

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

(7) The Registrar must give the applicant and the Court to which the application is made notice of his or her decision on the application and, if the Registrar makes a decision adverse to the interests of the applicant, a statement of the reasons for his or her decision.

(8) On registering a claim, the Registrar must register the applicant for registration as the registered representative of the claimants.

(9) In this section—

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

**Review of decision in relation to registration of claim**

**19B.** (1) A decision by the Registrar in relation to the registration (or de-registration) of a claim is reviewable by the Court on application by the applicant or the person registered (or formerly registered) as representative of the claimants.

(2) On a review, the Court—

- (a) must examine the decision of the Registrar on the evidence or material before the Registrar but may, as it thinks fit, allow further evidence or material to be presented to it;
- (b) may affirm the Registrar's decision or direct the Registrar to register, or re-register, the claim.

(3) On a review, the Court is to apply the same principles as are binding on the Registrar.

### **DIVISION 3—NATIVE TITLE DECLARATIONS**

#### **Court to hear application for native title declaration**

**20.** (1) An application for a native title declaration is to be heard by the ERD Court.

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

#### **Amendment of s. 21 and relocation of ss. 21 and 22**

**10.** (1) Section 21 of the principal Act is amended by striking out the explanatory note from subsection (1).

(2) Sections 21 and 22 are redesignated as sections 26A and 26B and relocated so as to follow section 26.

#### **Amendment of s. 23—Hearing and determination of application for native title declaration**

**11.** Section 23 of the principal Act is amended—

(a) by inserting after paragraph (e) of subsection (2) the following paragraph:

- (ea) the council (within the meaning of the *Local Government Act 1999*) of the area in which the land to which the proceedings relate is situated; and;

(b) by striking out subsection (3) and substituting the following subsection:

(3) If, after hearing the evidence and submissions, the Court is satisfied that native title exists in the land or a particular part of the land, the Court must—

- (a) define the land in which the native title exists; and
- (b) define the Aboriginal group in which native title is vested so that it is possible to determine whether a particular person is, or is not, a member of the group; and
- (c) define the nature and extent of the rights and interests conferred by the native title and, in particular, state whether the native title confers a right to exclusive possession of the land;<sup>1</sup> and
- (d) state the nature and extent of other interests in the land; and

- (e) define the relationship between the native title and other interests in the land.

*Explanatory note—*

- <sup>1.</sup> Such a right cannot be found to exist in respect of land covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease. Cf. s. 225(e) of the Commonwealth Act.;

- (c) by striking out from subsection (4) ", subject to any qualification stated in the declaration,".

**Amendment of s. 24—Registration of representative**

12. Section 24 of the principal Act is amended by striking out from subsection (1)(b) "on their behalf" and substituting "on trust".

**Insertion of s. 24A**

13. The following section is inserted after section 24 of the principal Act:

**Native title declaration in proceedings for compensation**

24A. (1) This section applies to proceedings based on a claim made to the Court for compensation for an act extinguishing or otherwise affecting native title in relation to land for which a native title declaration has not been made.

(2) The Court must conduct the proceedings as if they involved concurrent applications as follows:

- (a) the claim for compensation; and
- (b) an application for a native title declaration establishing whether native title currently exists at the date of the Court's decision.

(3) The Court must, at the conclusion of the proceedings, make a native title declaration.

(4) Divisions 2 and 2A do not apply in relation to a presumptive application for a native title declaration under subsection (2)(b).

**Insertion of heading**

14. The following heading is inserted before section 26:

**DIVISION 4—MISCELLANEOUS**

**Substitution of s. 26**

15. Section 26 of the principal Act is repealed and the following section is substituted:

**Merger of proceedings**

26. (1) If the Court has separate proceedings before it in which native title declarations are sought in relation to the same land, the proceedings must be heard together to the extent that they relate to the same area of land.

(2) For the purposes of subsection (1), the Court may make appropriate orders for either or both of the following—

- (a) the division of claims into separate claims;

- (b) the amalgamation or separation of proceedings.

**Amendment of s. 27—Protection of native title from encumbrance and execution**

16. Section 27 of the principal Act is amended by striking out "this Division" and substituting "Division 3".

**Insertion of Part 4A**

17. The following Part is inserted after section 27 of the principal Act:

**PART 4A  
COMPENSATION FOR ACTS EXTINGUISHING OR OTHERWISE  
AFFECTING NATIVE TITLE**

**Claims for compensation for acts extinguishing or otherwise affecting native title**

27A. (1) This section applies to claims for compensation for an act extinguishing or otherwise affecting native title.

(2) If a claim is made to the Court by a person other than the registered representative of the native title holders, the statement of claim—

- (a) must have annexed to it a schedule setting out the information classified in the regulations as mandatory information; and
- (b) may have annexed to it a further schedule setting out information classified in the regulations as permissible additional information; and
- (c) must be accompanied by an affidavit sworn by the person bringing the claim (the representative)—
  - (i) stating that the representative believes that native title exists or existed in relation to the area to which the claim relates; and
  - (ii) stating that the representative believes that all of the statements made in the statement of claim are true; and
  - (iii) stating that the representative is authorised by the Aboriginal group to make the application and to deal with matters arising in relation to it and stating the basis of the authorisation.

(3) In determining compensation, the Court is to apply the same principles as would be applicable if the compensation were determined under the Commonwealth Act.

(4) If the Court makes an order for compensation, the order must set out—

- (a) the name of the person or persons entitled to the compensation or a method for determining their identity; and
- (b) if the compensation is to be distributed between 2 or more persons—the basis of the distribution; and
- (c) a method for determining disputes regarding entitlement to compensation.



**Amendment of s. 30—Service where existence of native title, or identity of native title holders, uncertain****18. Section 30 of the principal Act is amended—**

(a) by striking out subsection (1) and substituting the following subsection:

(1) A notice or other document is validly served on all who hold or may hold native title in land as follows:

(a) in the case of a right to negotiate notice, if—

(i) notice of the nature and effect of the notice or other document is given as required by regulation; and

(ii) a copy of the notice or other document is given personally or by post or by some other agreed method to—

(A) all registered representatives of claimants to or holders of native title in the land, as at the date notice was last given as required under subparagraph (i); and

(B) the relevant representative Aboriginal body; and

(C) the State Minister;

(b) in any other case, if a copy of the notice or other document is given personally or by post or by some other agreed method to—

(i) all registered representatives of claimants to or holders of native title in the land; and

(ii) the relevant representative Aboriginal body.;

(b) by striking out from subsection (2)(b) "or, if there is, the possibility that unregistered native title may concurrently exist in the same land has not been excluded by declaration of a court of competent jurisdiction".;

(c) by inserting after subsection (3) the following subsection:

(4) In this section—

**"right to negotiate notice" means—**

(a) a notice of the initiation of negotiations under Part 9B of the *Mining Act 1971* or Part 7 of the *Opal Mining Act 1995*;

(b) a notice of intention to acquire land under the *Land Acquisition Act 1969* in a case to which Part 4 Division 1 of that Act applies;

(c) any other notice declared by regulation to be a right to negotiate notice.

**Insertion of s. 39A**

19. The following section is inserted in Part 8 of the principal Act before section 40:

**Content of orders for compensation to Aboriginal group**

39A. If the Court makes an order for the payment of compensation to an Aboriginal group, the order must set out—

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

**Transitional provision—Previous registration or application for registration of claim to native title**

20. (1) If, at the commencement of this Act, an application for registration of a claim to native title has been made but not determined under the principal Act, the Registrar is to consider the application as if it had been made on or after that commencement.

(2) If, at the commencement of this Act, there are registered claims to native title under the principal Act, the Registrar is, as soon as practicable, to reconsider each of those claims as if an application for registration of the claim had been made on or after that commencement (and the Native Title Registrar appointed under Part 5 of the *Native Title Act 1993* (Cwth) must be informed of the outcome of the reconsideration of each claim).

(3) If, at the commencement of this Act, an application for review of a decision of the Registrar to reject an application for registration of a claim to native title has been made but not determined, the application must be determined as if the application for registration had been made on or after that commencement.