

PROFESSIONAL LAW OF REAL ESTATE

THE NATIVE TITLE ACT 1993 (In plain English)

INTRODUCTION

The *Native Title Act (NTA)* became law on 1 January 1994.

It is important to remember that the Act is only a beginning. Native title will be explored and developed by courts, tribunals, governments and legislatures across Australia.

SUMMARY OF THE ACT

The NTA:

1. Recognises native title rights
2. Contains some basic principles about native title in Australia
3. Allows governments ways in which they can:

- * "validate" or make legal past acts such as leases which native title might have made invalid.
- * do things in the future and still protect native title rights.

4. Lets people get 'compensation' or something in return for loss of native title (generally money) if this happens because past acts have been made legal, or because of future acts.

5. Puts conditions on future acts which affect native title land and waters

6. Contains a process for:

- * finding out about who has native title rights
- * finding out which people might get compensation.
- * making decisions about whether governments can make future grants, such as grants of mining leases, or do acts over native title land and waters.

7. Creates a Land Fund with money to help Aboriginal and Torres Strait Islander peoples acquire and manage land.

MAIN FEATURES OF THE ACT

THE COMMONWEALTH APPROACH TO NATIVE TITLE

Recognition of native title: The main purpose of the Act is to recognise and protect native title (ss 3 and 10). Native title is the rights and interests in land and waters that Aboriginal and Torres Strait Islander peoples have under their traditional laws and customs and that are recognised by the common law (s223).

DETERMINATION OF NATIVE TITLE

The Act contains a process for "determining" or deciding about whether or not native title exists and what rights and interests native title holders have (ss 13 and 61). A determination of native title under the Act will decide whether the people who have title have "exclusive possession". Exclusive possession means they are the only people who have any rights to the land. If they do not have exclusive possession the person who makes the determination may say what kind of rights the title holders have (s225).

The traditions of Aboriginal and Torres Strait Islander peoples can change with time and sometimes people stop following a tradition. Therefore, the Act says that native title rights can

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change or even finish. The Act gives a way to change determinations where circumstances have changed (ss 13 and 61).

Section 12 says that what the common law of Australia says about native title is now Commonwealth law. Native title is subject to the general laws of Australia such as State or Territory laws. Those laws can apply to native title land or waters unless the Act says they cannot (s8). However, people may be able to hunt, fish and do other things that are part of their native title rights without a licence or permit when other people need a licence or permit to do those things (s211).

Some people who have land might want to find out if anyone has native title rights to that land. These people are "nonclaimants", they do not want to claim native title for themselves. The Act allows nonclaimants with an interest in land to ask for a determination about native title (ss 61 and 67). If no one opposes a nonclaimant application, future acts over the land or waters are valid (s 24).

The Act also says that there will be two public registers:

1. The Register of Native Title Claims where people can register a claim for native title (Part 7).
2. The National Native Title Register for native title determinations (Part 8).

PROTECTION OF NATIVE TITLE

The Act gives a lot of protection to native title. It says that native title is only "extinguished" or wiped out in a few cases where it is necessary to make past acts legal. Some future acts of governments can affect native title. The 'nonextinguishment principle' will apply to most future acts (s238). This means that those acts will not extinguish native title. If there is a conflict between the rights and interests under native title and those granted by a government, the act or grant will win. However, once the interests are finished native title can again have full effect.

The nonextinguishment principle will not apply when people choose to give up their native title (s21) or a government compulsorily acquires native title land (s23(3)b) and pays compensation. In those cases native title is 'extinguished' or lost forever.

BODIES CORPORATE

The Act recognises that native title rights are mainly group or community rights. It is likely that a number of people will be able to show that they have native title rights to a particular area. The people who have title will change over time. To take this into account the Act says there are two ways to organise control of native title:

1. Native title can be held in trust by a company controlled by those who are the native title holders from time to time (ss 56 and 57)
2. A company can represent the native title holders and act as their agent (ss 57 and 58).

In both cases, it is the native title holders who get the full benefit of their native title rights. The companies will provide a practical and legal point of contact for people who want to deal with native title holders.

REPRESENTATIVE ABORIGINAL & TORRES STRAIT ISLANDER BODIES

The Act says that some Aboriginal and Torres Strait Islander organisations may be named as representative Aboriginal and Torres Strait Islander bodies (Representative Bodies) to help people make native title claims (s202). They will help with:

1. Applications to determine native and compensation, and
2. Negotiations and proceedings.

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The Representative Bodies may be able to get financial help from the Commonwealth or ATSIC (s203). The Minister for Aboriginal and Torres Strait Islander Affairs made a determination that came into effect from 1 January 1994, that named some existing organisations as Representative Bodies. However, people claiming native title or compensation do not have to use a representative body.

SPECIAL MEASURE UNDER THE RACIAL DISCRIMINATION ACT (RDA)

The Act is a special measure under Article 1(4) of the Racial Discrimination Convention and s8 of the RDA. It gives important benefits to Aboriginal and Torres Strait Islander peoples. The Act does not affect the operation of the RDA (s7), but, all past acts made valid by the NTA are made certain by s7(2).

THE LAND ACQUISITION FUND

The Act recognises that many Aboriginal and Torres Strait Islander peoples will not be able to secure native title and to benefit directly from the High Court decision in *Mabo*. So that those people can get some benefit, the Act establishes a National Aboriginal and Torres Strait Islander Land Fund (s201). The fund will began operation on 1 July 1994.

The purpose of the Fund (s201(2)) is to help Aboriginal and Torres Strait Islander peoples:

1. to acquire land; and
2. to manage the acquired land in a way that provides economic, environmental, social or cultural benefits to them.

EXISTING RIGHTS

The Act does not affect rights held under Commonwealth land rights legislation such as the *Aboriginal Land Rights (Northern Territory) Act 1976* (s210). Governments can confirm (s212(2)):

1. Existing ownership of natural resources
2. Existing rights to water
3. That existing fishing rights override native title rights
4. Existing access to beaches and public places.

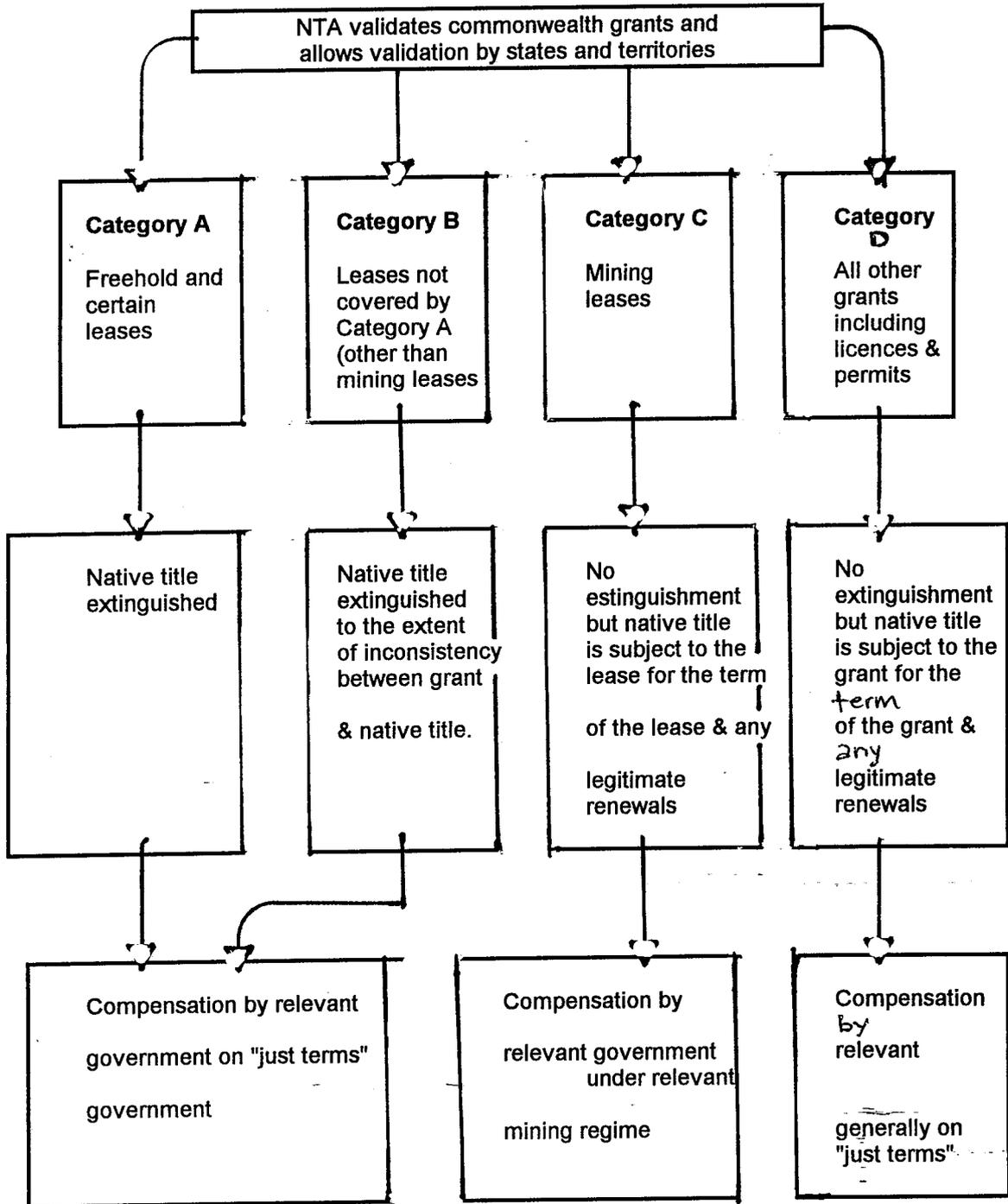
However, the confirmation will not affect the ability of native title holders to continue to exercise any rights they might still have (s212(3)).

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VALIDATION OF PAST ACTS

VALIDATION OF PAST GRANTS

Invalid grants prior to 1.1.94 due to existence of native title



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VALIDATION BY COMMONWEALTH, STATES AND TERRITORIES

S14 of the Act validates past Commonwealth acts and s19 lets States and Territories validate their past acts on the same terms. The Act does not stop States and Territories from attempting to validate their past acts on their own terms. However, they would do so at their own risk and they might find that their actions are not legal.

EFFECT OF VALIDATION OF NATIVE TITLE

Past acts which are or can be validated include the making of legislation, the grant of a lease, licence or permit and the exercise of executive power by governments, in relation to native title land or waters. When a past act or grant is validated it will only extinguish native title where there has been what the Act calls a Category A past act (ss 15 (1)(a) and (b) and 229). A Category A past act is a grant of freehold or of a commercial, agricultural, pastoral or residential lease (defined in ss 246 to 249) or the construction of a public work (defined in s253).

A Category B past act is a grant of a leasehold interest which is not covered by Category A, and is not a mining lease. When a Category B past act is validated it will only extinguish native title rights that cannot coexist with the rights and interests granted under that act (ss 15(1)(c) and 230).

The Act does not extinguish native title in cases where:

1. A freehold or leasehold grant ended before 1 January 1994
2. The grant which is validated was made under legislation for the benefit of Aboriginal or Torres Strait Islander peoples; or
3. A validated leasehold grant was held on 1 January 1994 under land rights legislation (ss 229(2), (3) and 230).

Category C past acts are mining leases and Category D past acts are all other grants including licenses and permits. Commonwealth validation of Categories C and D past acts (ss 15(1)(d), 231 and 232) will not extinguish native title and the nonextinguishment principle (defined in s238) will apply to the native title.

In particular, mining leases validated by the Act and those validated by States and Territories under the Act will not extinguish native title. The only acts that can be validated are:

1. Legislation passed before 1 July 1993
2. Other acts and grants made before 1 January 1994
3. Some acts that will take place in the future where those acts are linked to acts done in the past. These include the exercise of options and legally enforceable rights or the extension or renewal of grants made in the past (see definition of "past act" in s228).

PROTECTION OF RESERVATIONS

The validation exercise will not affect:

1. Any reservations or conditions for the benefit of Aboriginal or Torres Strait Islander peoples contained in any past grant or legislation.
2. Any other right or interest Aboriginal or Torres Strait Islander peoples may hold arising under law or by usage (s16).

Any extinguishment of native title that happens where a pastoral lease is validated does not give anyone the right to remove Aboriginal peoples from that land (s15(2)).

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ENTITLEMENT FOR COMPENSATION FOR VALIDATION

In the small number of cases where it is necessary to make acts legal by validating, native title holders are entitled to compensation for the loss of native title. Native title holders are entitled to compensation for the effect of the validation of past acts on their rights when the Act:

1. Extinguishes native title, for example, by the validation of a freehold grant. Compensation to native title holders will be on "just terms" (ss 17, 20 and 5)
2. "Impairs" or takes away some rights of native title but does not extinguish it on onshore land, for example by the validation of a mining lease over land. Compensation will be paid to native title holders where freeholders would have received compensation and this will be assessed in the same way as it is for freeholders (ss 17, 20, and 51(3), and the definition of the "similar compensable interest test" in section 240).
3. Impairs native title and the grant or act could not have been done over freehold land, or where the grant or act was over an offshore place.
4. Compensation to native title holders will be on "just terms" (ss 17, 20 and 51).'

The Act gives Commonwealth rights to compensation, even for the effect of State and Territory validations. These Commonwealth rights can be followed up in the National Native Title Tribunal (NNTT) and the Federal Court. States and Territories may also provide rights to compensation and a process for following up those rights (s20(4)).

When a court or tribunal makes a decision about giving people compensation under this Act they must take into account any compensation already given by a State or Territory under their own laws (s49(b)). In practice, this means that people will not get double compensation. Compensation is payable to native title holders by:

1. The Commonwealth Government for acts it has validated (s17(4))
2. A State or Territory government if it validates an act (s20(3)).

Native title holders also have a right to compensation for the effect of invalid acts where a State or Territory has not acted to validate those acts (s20(2)). If the RDA gives native title holders a right to compensation, instead of making a grant or act invalid, they can claim compensation under the NTA.

NON MONETARY COMPENSATION

Native title holders can negotiate nonmonetary compensation for the loss of their native title. This could include other property or goods and services (ss 51(6) and 79). In special circumstances the Commonwealth Minister may tell the NNTT to consider the effects of validation of particular past acts on Aboriginal and Torres Strait Islander peoples. The Minister can also tell the NNTT to consider the different kinds of compensation (s137).

THE FUTURE REGIME

The Commonwealth also knows that it is very important to have a process that will allow future grants and actions over lands and waters that are or might be affected by native title. Therefore, native title is recognised and made part of the national land management system.

FUTURE ACTS THAT CAN BE DONE

The Act says that future acts that affect native title can be done legally if they are 'permissible future acts' (defined in s235). It is important to recognise that the Act makes a distinction between 'offshore' and 'onshore' places. These terms are defined in s253. An 'onshore place' is land or waters located within the limits of a State or Territory. The waters off the coast of a State or a

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Territory (known as the coastal waters) are not included in this definition. They are 'offshore' places, which also includes any land (for example, reefs and islands) or waters to which the Act extends that are not within the limits of a State or Territory.

All future acts in offshore places are 'permissible' and can be done even if that place is subject to native title (s235(8)(a)). In the case of onshore places, the Act says that where an act can be done over ordinary title land then that act is also permitted over native title land (s235(5)). "Ordinary title land" means either freehold or, in the ACT and Jervis Bay; leasehold (s253).

There is also a test for where an act is proposed over onshore native title waters such as lakes, rivers and harbours. An act can be done to those waters if it could be done to the waters if the land beside or surrounding them was ordinary title land (s235(5)).

New legislation will only be permissible if it affects native title holders in the same way that it affects ordinary title holders or if it does not put native title holders in a worse position than ordinary title holders (s235(2)).

COMMENCEMENT OF "PERMISSIBLE FUTURE ACT" TEST

From 1 July 1993, new legislation must satisfy the "permissible future act" test. Other acts and grants must satisfy the test from 1 January 1994. However, the Act will validate some acts and grants that will take place after these dates as part of the process for validating 'past acts'. Those acts and grants will not need to satisfy the permissible future act test (ss 228(3), (4) and (9), and 233(1)(b)).

EXCEPTIONS TO THE "PERMISSIBLE FUTURE ACT" TEST

When a nonclaimant application is made over a piece of land and no native title claim is made to that land then any act over that land before a court or tribunal makes any determination of native title is valid (s24). Renewals of existing interests flowing from a legally enforceable right can occur without negotiation even if the renewals are over native title land or waters (s25). Other renewals or extensions of valid existing commercial, agricultural, pastoral or residential leases are permissible future acts (s235(7)).

GRANT OF MINING INTEREST PERMITTED

An example of a permissible future act is the grant of a mining interest. A mining interest means the right to do something to do with mining, either exploring or actually mining. Where a government can grant a mining interest over freehold land it can also make the same grant over native title land. Other permissible future acts are those made under general Compulsory Acquisition Acts (see definition in s253).

FUTURE EXTINGUISHMENT

In the future governments can only extinguish native title:

1. If the native title holders agree (s21); or
2. By using land for a purpose which it acquired under a Compulsory Acquisition Act (s23(3) and s11).

COMPENSATION FOR FUTURE ACTS

Native title holders will be entitled to 'just terms compensation' for any future extinguishment of their rights and interests. Just terms means something that is fair given the circumstances of a particular case. Each different case will have different just terms compensation. Where an act only impairs the native title rights:

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1. Onshore, native title holders can get compensation in the same way that ordinary title holders could (ss 23(4) and 51(3)); or
2. Offshore, the native title holders can get just terms compensation (ss 23(4) and 51(1)).

The Act provides a Commonwealth right to compensation for extinguishment of native title where it occurs because of a Compulsory Acquisition Act or for onshore impairment. However, this is only when native title holders do not have a right to compensation given by a State or Territory law (s23(3)(c), (4)(b)(ii)(C)).

PROCEDURAL RIGHTS FOR FUTURE ACTS

In the case of all future acts other than 'low impact future acts', native title holders are entitled to the same procedural rights as holders of ordinary title, such as the right to be notified and to object (ss 23(6) and 253).

The Act recognises the special attachment that Aboriginal and Torres Strait Islander peoples have to their land. It makes sure that registered native title holders and registered native title claimants have a right to negotiate before certain 'permissible future acts' happen (see Subdivision B of Division 3 of Part 2 for more detail about this). The right to negotiate applies to acts to do with mining, the compulsory acquisition of native title to make a grant to a third party and any other acts approved by the Commonwealth Minister (s26).

The right to negotiate does not apply if there are no registered native title holders or registered native title claimants within two months of notification of the proposed act (ss 28(1)(a) and 30). In this case the act can go ahead in the normal way. Certain types of grants which have minimal effect on native title can be excluded from the right to negotiate (sections 26(3) and (6)). Also, if a particular act will not involve major disturbance to native title land, the right to negotiate may not apply (ss 32 and 237).

The right to negotiate is not a 'veto' or right to reject. If the parties cannot come to an agreement after negotiation then any party can apply for a decision to the NNTT or the recognised State or Territory body, called the 'arbitral' or decision making body (s27). The arbitral body will make a decision about whether or not the act may go ahead and if so on what conditions (s35).

When it makes its decision, the arbitral body must take into account a number of things, such as the way in which the proposed act might affect the way of life, culture and traditions of the native title holders. It must also consider how important the act is to the economy of Australia and the relevant State or Territory (s39).

Where there is a State or Territory arbitral body, a State or Territory Minister may override the determination in the interest of the State or Territory (s42(1), (3)). If the NNTT is the arbitral body, the Commonwealth Minister may override the decision in the national or State or Territory interest (s42(2), (3)). The relevant Minister may set conditions on which the act may go ahead.

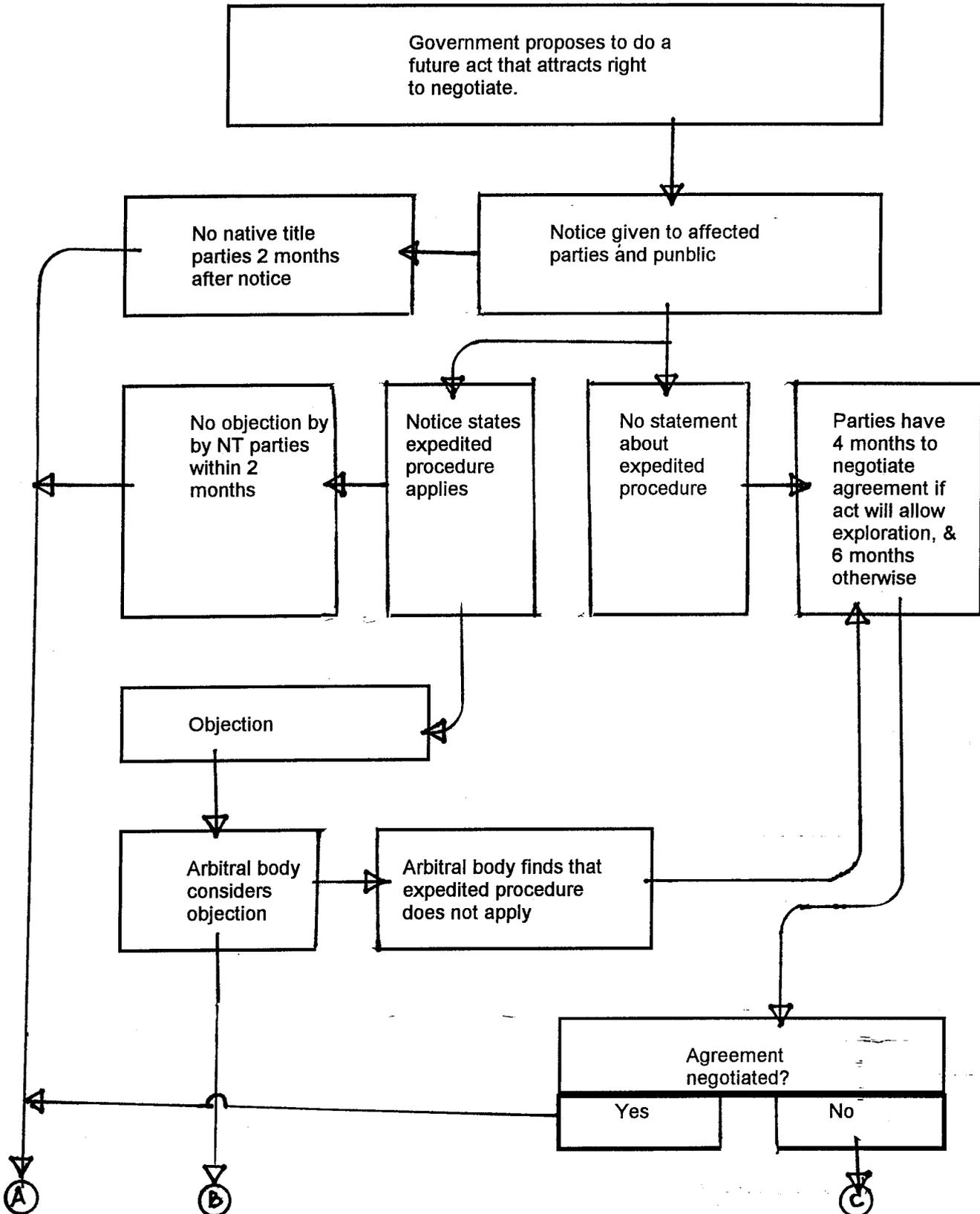
STATE & TERRITORIAL BODIES AND PROCESSES FOR RIGHT TO NEGOTIATE

Where a State or Territory body complies with the relevant criteria and the Commonwealth Minister has recognised it, that body will be the arbitral body for the State or Territory (ss 27 and 251). The Act also has a way in which a State or Territory system which has an equivalent right to negotiate can be approved (s43). Where there are such State or Territory systems then the Commonwealth system for determining whether acts may go ahead will not operate.

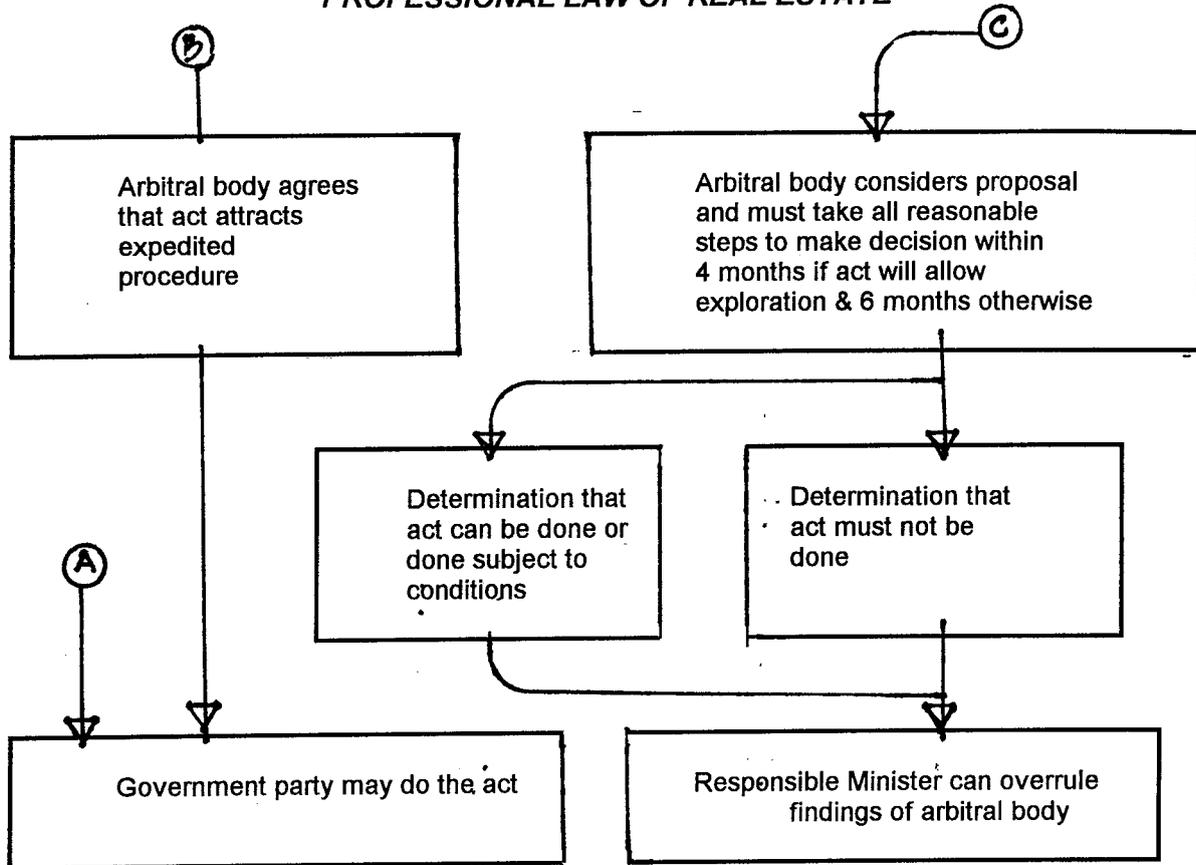
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RIGHT TO NEGOTIATE

FUTURE ACTS AND NATIVE TITLE - THE RIGHT TO NEGOTIATE



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LOW IMPACT FUTURE ACT

Certain future acts are defined as "low impact future acts" (s 234). These include the grant of minor licenses and permits (such as for beekeeping). Those acts can go ahead before native title is determined. However, they do not extinguish native title and there is no need to pay compensation. The acts may not continue if native title is later determined to exist (ss 23 and 235(8)(b)) unless the native title holders agree that they can continue.

SURRENDER OF NATIVE TITLE

Land which is held traditionally cannot not be bought and sold. Therefore, native title holders cannot "alienate" or give up their title except to governments. They can give up their title to the relevant government in exchange for 'statutory' title such as freehold or leasehold (s21(1)(a)). Native title holders can also agree to any acts taking place over their land (s21(1)(b3)). Negotiations of agreements on a local or regional basis can happen if appropriate (Preamble and s21(4)).

PASTORAL LEASES HELD BY NATIVE TITLE HOLDERS

The Act says that Aboriginal and Torres Strait Islander people who have a pastoral lease over an area of land may also be able to claim native title over that land, where they have maintained traditional links with it. Any determination that native title exists is on the basis that the pastoral lease remains valid and operative but the native title holders receive the benefit of the protection given by the Act (s47).

FUTURE ACTS WHERE NATIVE TITLE IS NOT KNOWN

A government can do an act in an area where it has applied to the NNTT for a determination of whether native title exists and no claims to native title are lodged within a specified time (ss 24 and 67). If the NNTT finds that native title does exist the act is not invalidated. However, the native title holders would be able to get compensation.

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THE TRIBUNAL AND COURT PROCESS

The Act establishes a new body called the National Native Title Tribunal (NNTT) and gives the Federal Court jurisdiction in native title matters (see Part 6 of the Act). This is to provide the most effective means of dealing with native title issues.

PLAIN ENGLISH GLOSSARY AND ABBREVIATIONS

Act	with a capital 'A' means the Native Title Act 1993, with a lower case 'a' means 'an act'.
acts	means acts done by governments, people or organisations, such as the granting of a mining lease, or the making of legislation.
Representative Aboriginal and Torres Strait Islander Bodies (Representative Bodies)	Aboriginal and Torres Strait Islander organisations which can help Aboriginal and Torres Strait Islander people making native title claims. They are determined by the Minister for Aboriginal and Torres Strait Islander Affairs under the Act.
arbitral body land,	a body which can decide whether acts may go ahead over native title for example, the NNTT.
ATSIC	The Aboriginal and Torres Strait Islander Commission
common law	laws which are made by courts; not legislation
compensation given	something you get in return when something you own is lost, taken or away.
compulsoronly acquire by	to take without giving anyone a choice. Only governments can take land compulsory acquisition and only with a good reason.
determine person	to make a decision. A determination is a final decision. However, a can appeal against a determination of a tribunal or court made under the NTA.
extinguish	to take away forever
freehold	the highest form of land title granted by governments
grants	a legal right to a piece of land which is given by governments
impair	to take away some rights
interest in land	any legal right to have or use a piece of land
just terms compensation tribunals	compensation that is fair based on each different case. Courts and - will decide this if parties cannot agree.
leasehold be	temporary land title, generally giving a right to exclude others, that may for a long or short period of time.
legislation	laws which are made by Commonwealth or State parliaments or Territory legislatures.
mining interest	the right to do things such as explore, prospect or mine

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National Aboriginal and Torres Strait Islanders Land Fund	a fund which will began operation on 1 July 1994. It will assist Aboriginal and Torres St islanders to purchase and manage land.
National Native Title Register	a public list of native title determinations
NNTT	the National Native Title Tribunal. The tribunal which may hear native title claims from all over Australia.
nonclaimants or	people or organisations who have an interest in land and do not want to cannot make a native title claim but want to ask for a determination about native title for the land in which they have an interest.
non extinguishment - principle	a principle in the Act. Where this applies to acts and grants they do not extinguish native title. The act or grant can have effect but when its period of operation has ended, native title may again have full effect.
permissible future land acts	acts which the Act allows people or organisations to do over native title
public work or a	something which is built by a government, for example, a school, a road dam.
RDA	the Racial Discrimination Act 1975

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Register of Native Title Claims	a public list of native title claims
statutory	something that is done under legislation
title to land	a legal right to some kind of ownership or use of a piece of land
title holders	the people or group of people which has title to an area of land
traditions	the customs and laws etc of people which have been passed down through generations. Traditions can change over time or be given up.
validate	.to make legal

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Native Title No. 110, 1993

Division 5--Determination of compensation for acts affecting native title etc

Compensation payable in accordance with Division

48. Compensation payable under Division 2, 3 or 4 in relation to an act is only payable in accordance with this Division.

No multiple compensation for essentially same act

49. Despite anything in Division 2, 3 or 4:

- (a) compensation is only payable under this Act once for acts that are essentially the same; and
- (b) the court, person or body determining compensation in accordance with this Division must take into account any compensation awarded under a law of a State or Territory, or under another Commonwealth law, for essentially the same act.

Bodies that may determine compensation

Section exhaustive

50.(1) A determination of the compensation may only be made in accordance with this section.

Applications to Registrar

(2) An application may be made to the Registrar under Part 3 for a determination of the compensation.

Jurisdiction to hear appeals, to review etc. not affected

(3) Nothing in this Division affects:

- (a) any jurisdiction of a court, person or body to hear appeals against, to review or otherwise to affect, a determination of compensation made in accordance with this Division; or
- (b) the jurisdiction of the High Court.

Criteria for determining compensation

Just compensation

51.(1) Subject to subsection (3), the entitlement to compensation under Division 2, 3 or 4 is an entitlement on just terms to compensate the native title holders for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

Acquisition under Compulsory Acquisition Act

(2) If the act is the acquisition under a Compulsory Acquisition Act of all or any of the native title rights and interests of the native title holders, the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria set out in that Act for determining compensation.

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Compensation where similar compensable interest test satisfied

(3) If:

(a) the act is not the acquisition under a Compulsory Acquisition Act of all or any of the native title rights and interests; and

(b) the similar compensable interest test is satisfied in relation to the act; the court, person or body making the determination of compensation must, subject to subsections (5) to (8), in doing so apply any principles or criteria for determining compensation (whether or not on just terms) set out in the law mentioned in section 240 (which defines "similar compensable interest").

Compensation not covered by subsection (2) or (3)

(4) If:

(a) neither subsection (2) nor (3) applies; and

(b) there is a Compulsory Acquisition Act for the Commonwealth (if the act giving rise to the entitlement is attributable to the Commonwealth) or for the State or Territory to which the act is attributable;

the court, person or body making the determination of compensation on just terms may, subject to subsections (5) to (8), in doing so have regard to any principles or criteria set out in that Act for determining compensation.

Monetary compensation

(5) Subject to subsection (6), the compensation may only consist of the payment of money.

Requests for non-monetary compensation

(6) If the person claiming to be entitled to the compensation requests that the whole or part of the compensation should consist of the transfer of property or the provision of goods or services, the court, person or body:

(a) must consider the request; and

(b) may, instead of determining the whole or any part of the compensation, recommend that the person liable to give the compensation should, within a specified period, transfer property or provide goods or services in accordance with the recommendation.

Where recommendation not complied with

(7) If the person does not transfer the property or provide the goods or services in accordance with the recommendation, the person claiming to be entitled to the compensation may request the court, person or body to determine instead that the whole or the part of the compensation concerned is to consist of the payment of money.

Where recommendation complied with

(8) If the person does transfer the property or provide the goods or services in accordance with the recommendation, the transfer of the property or provision of the goods or services constitutes full compensation for the act, and the entitlement to it is taken to have been determined in accordance with this Division.

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Compensation held in trust under "right to negotiate" procedures

When section applies

52.(1) This section applies if compensation (the "**negotiated compensation**") in respect of a proposed act is being held in trust in accordance with subsection 41(3) or paragraph 42(5)(b) and any of the following happens:

- (a) an approved determination of native title is made to the effect that there is no native title in relation to the area concerned immediately before the act takes place;
- (b) the Government party informs the trustee in writing that it no longer proposes to do the act;
- (c) the following requirements are satisfied:
 - (i) an approved determination of native title is made to the effect that the native title parties concerned are (disregarding any holding of the native title in trust under Division 6) the native title holders in relation to the area affected by the act; and
 - (ii) the registered native title body corporate advises the trustee that it wishes to accept the negotiated compensation instead of any compensation to which the native title holders may be entitled under Division 2, 3 or 4 for the act;
- (d) a determination is made, on a claim for compensation in respect of the act:
 - (i) in accordance with this Division; or
 - (ii) on just terms under a Compulsory Acquisition Act;

that a person is entitled to compensation, or that no compensation is payable to any person;

(e) none of paragraphs (a), (b), (c) and (d) applies and the Federal Court decides, on application by any person, that it would be just and equitable in all the circumstances to pay the negotiated compensation to that person or another person.

Paragraph (1)(a) or (b) case

(2) In a paragraph (1)(a) or (b) case, the trustee must:

- (a) repay the negotiated compensation to the person who paid it to the trustee; or
- (b) if that person no longer exists—apply to the Federal Court for a direction as to the payment of the negotiated compensation.

Paragraph (1)(c) case

(3) In a paragraph (1)(c) case:

- (a) the trustee must pay the negotiated compensation to the body corporate; and
- (b) subject to section 53, there is no entitlement to compensation under Division 2, 3 or 4 for the act.

Paragraph (1)(d) case where monetary compensation

(4) In a paragraph (1)(d) case where the determination is that a person is entitled to an amount of monetary compensation:

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- (a) if the negotiated compensation is the same as the amount determined--the trustee must pay the negotiated compensation to the person; or
- (b) if the negotiated compensation is less than the amount determined--the trustee must pay the negotiated compensation to the person and the Government party must pay the shortfall to the person;
- (c) if the negotiated compensation is more than the amount determined --the trustee must:
 - (i) pay the person so much of the negotiated compensation as equals the amount determined; and
 - (ii) refund the excess to the person who paid the negotiated compensation to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment.

Paragraph (l)(d) case where non-monetary compensation

(5) In a paragraph (l)(d) case where the transfer of property or the provision of goods or services constitutes some or all of the compensation, the trustee must apply to the Federal Court for a direction as to the payment of the negotiated compensation.

Paragraph (l)(d) case where no compensation

(6) In a paragraph (l)(d) case where the determination is that no compensation is payable or to be given to any person, the trustee must repay the negotiated compensation to the person who paid it to the trustee or, if that person no longer exists, apply to the Federal Court for a direction as to its payment.

Paragraph (l)(e) case

(7) In a paragraph (l)(e) case, the trustee must pay the negotiated compensation in accordance with the decision of the Federal Court mentioned in that paragraph.

"Just terms" compensation

Entitlement to "just terms" compensation

53.(1) Where, apart from this section:

- (a) the doing of any future act by the Commonwealth; or
- (b) the application of any of the provisions of this Act in any particular case;

would result in a paragraph 51(xxxi) acquisition of property of a person other than on paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by this Act, from the Commonwealth as is necessary to ensure that the acquisition is made on paragraph 51 (xxxi) just terms.