

Queensland Land and Resources Tribunal

Jurisdiction Overview

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*Original version prepared by Catherine Dineen in 2001
This version prepared by Matt Black in July/August 2004*

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Introduction

This manual

The purpose of this manual is to provide a single source of information on the Land and Resource Tribunal's jurisdiction, although it does not purport to definitively determine whether any matter falls within the Tribunal's jurisdiction. Each part of this manual deals with a different Act or set of Acts, providing an overview of the jurisdiction conferred on the Tribunal by each relevant Act.

The Land and Resources Tribunal

The Land and Resources Tribunal was established under the *Land and Resources Tribunal Act 1999* (LRT Act) on 30 April 1999. It is a court of record with the power to punish contempt (ss 62-63).

The Tribunal consists of presiding members and non-presiding members, namely members of the Land Court, the Land Tribunal and those appointed as non-presiding members or referee non-presiding members (ss 6, 7 and 15). The presiding members are the President, whose appointment is equivalent to a Supreme Court judge, and the Deputy Presidents, whose appointments are equivalent to District Court judges.

The LRT Act also provides for the appointment of a Registrar and Deputy Registrars. A Deputy Registrar can be a member of the staff of the Tribunal or what is termed a "Deputy Registrar (Additional Office)" (DRAO) (s 33). DRAOs have been appointed and are, in the main, the mining registrars or clerks of the court in various regional centres throughout Queensland.

The Tribunal has a limited, rather than general jurisdiction. Specifically, it has that jurisdiction conferred on it by the LRT Act and other Acts. The jurisdiction of the Tribunal can not be ousted merely because a proceeding before it is about claims or interests of an equitable nature or involves making a decision about title to land (s 51).

In exercising the jurisdiction conferred on it, the Tribunal has all the powers of the Supreme Court and may, in the same way and to the same extent as the Supreme Court, issue any relief or remedy, make any order and give effect to every ground of defence, whether equitable or legal (s 65). This specifically includes the power to make declarations of rights of parties, issue injunctions, stay proceedings and appoint receivers.

Constitution of the Tribunal

The constitution of the Tribunal is a matter for the President, subject to specific requirements of the LRT Act or another Act. The constitution of the Tribunal for the particular matters outlined in this manual is that which is stated in brackets and reflects the requirements of Schedule 1 of the LRT Act (ss 39 and 40).

Tribunal Proceedings

Parties before the Tribunal can appear in person or be represented by a lawyer or someone else (s 47). When conducting a proceeding, the Tribunal must observe natural justice and act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the issues under consideration (s 49). The hearings are to be open to the public unless the Tribunal orders otherwise. This can be done only if it is necessary in the interests of justice or to allow culturally sensitive issues to be appropriately dealt with (s 48).

List of Acts conferring jurisdiction

As at 1 July 2004, the following 14 Acts conferred jurisdiction on the Tribunal:

- *Aboriginal Cultural Heritage Act 2003*
- *Alcan Queensland Pty Limited Agreement Act 1965*
- *Central Queensland Coal Associates Agreement Act 1968*
- *Environmental Protection Act 1994*
- *Fossicking Act 1994*
- *Land and Resources Tribunal Act 1999*
- *Mineral Resources Act 1989*
- *Offshore Minerals Act 1998*
- *Petroleum Act 1923*
- *Queensland Nickel Agreement Act 1970*
- *State Development and Public Works Organisation Act 1971*
- *Thiess Peabody Coal Pty Ltd Agreement Act 1962*
- *Torres Strait Islander Cultural Heritage Act 2003*
- *Water Act 2000*

The following legislation is expected to commence and affect the Tribunal's jurisdiction by 2005:

- *Geothermal Exploration Act 2004* (operative provisions not yet proclaimed)
- *Petroleum and Gas (Production and Safety) Bill 2004* (not yet passed)
- *Petroleum and Other Legislation Amendment Bill 2004* (being drafted)

Land and Resources Tribunal Act 1999

Negotiated Agreements

A party to a negotiated agreement may apply to the Tribunal and only the Tribunal (s 52) for an order:

- for the enforcement of a negotiated agreement;
- deciding a matter arising under a negotiated agreement; or
- making a declaration about the interpretation of a negotiated agreement.

Negotiated agreements are defined as (schedule 2):

- access agreements under Part 13 MRA (native title provisions for prospecting permits)⁰¹
- access agreements under Part 15 MRA (native title provisions for exploration permits), division 2 (low impact exploration permits)
- access agreements under Part 16 MRA (native title provisions for mineral development licences), division 2 (low impact mineral development licences).
- negotiated agreements under Part 17 MRA (native title provisions for mining leases), division 4 (mining leases)
- agreements about payment of compensation mentioned in Part 18 MRA (compensation provisions)

Commonwealth Native Title independent body

If under the Commonwealth *Native Title Act 1993* (NTA) a claimant or body corporate objects to the doing of any future act and the State is required to ensure that an independent person or body hears the objection, the Tribunal has jurisdiction to hear the objection (LRT Act, s 51A).

The *State Development and Public Works Organisation Act 1971* also specifically provides that for the taking of land under that Act, the Tribunal is the independent body for the purposes of s 24MD(6B) of the Commonwealth NTA (hearing of objections to compulsory acquisition of native title rights and interests). The determination of the Tribunal must be complied with unless such compliance is not in the interests of the State.

Indigenous Land Use Agreements

If there is:

- a registered Indigenous land use agreement under the NTA; and
- the State is a party to the agreement; and
- the agreement provides for a matter arising under the agreement to be referred to the Tribunal, the Tribunal has jurisdiction to:
 - mediate the matter;
 - make recommendations about the matter; or
 - make decisions about those matters (LRT Act, s 51B).

Cultural heritage injunctions

The Tribunal has exclusive jurisdiction to decide applications for cultural heritage injunctions (s 53). This is discussed later under the Cultural Heritage Acts.

Transitional provisions

Where there are proceedings currently before the Wardens Court under the *Fossicking Act 1994*, the MRA and the *Petroleum Act 1923*, the Tribunal has jurisdiction to complete those proceedings (s 83). However, appeals against Mining Warden's previous decisions are to be completed under the previous legislative regime.

Assumption of role of mining warden

A reference to a warden or the Wardens Court under the MRA or under the following Acts (and any instruments made or entered into under the Act) is taken to be a reference to the Tribunal (s 86):

- *Alcan Queensland Pty Limited Agreement Act 1965*
- *Central Queensland Coal Associates Agreement Act 1968*
- *Offshore Minerals Act 1998*
- *Petroleum Act 1923*
- *Queensland Nickel Agreement Act 1970*
- *Theiss Peabody Coal Pty Ltd Agreement Act 1962*

The *Offshore Minerals Act 1998* and *Petroleum Act 1923* are covered in this document. The remaining Acts contain only minor references to the warden and are unlikely to result in hearings before the Tribunal.

Mineral Resources Act 1989

Introduction

The *Mineral Resources Act 1989* (MRA) confers a broad jurisdiction upon the Tribunal in relation to mining matters. This source of jurisdiction provides the bulk of the Tribunal's workload.

This part of the manual summarises the Tribunal's general jurisdiction under the MRA in relation to mining, its jurisdiction in relation to prospecting permits, mining claims, exploration permits, mineral development licences, mining leases and notifiable road usage. It also addresses the relevant native title provisions.

General Mining Jurisdiction

Section 363 gives the Tribunal jurisdiction to hear and determine actions, suits and proceedings arising in relation to prospecting, exploration or mining or to any permit, claim, licence or lease granted or issued under the MRA or any other Act relating to mining. Without limiting the generality of the above, the Tribunal has jurisdiction to hear and determine actions, suits and proceedings with respect to –

- The right to possession of or other interest or share in any mining claim, exploration permit, mineral development licence or mining lease; and
- The rights and entitlements to minerals mined under mining tenement or other authority granted under the MRA or any other Act relating to mining and to the products of mining; and
- The area, dimensions and boundaries of land (including the surface area of land) the subject of a mining tenement; and
- Any encroachment or trespass upon or interference with or damage to land the subject of a prospecting permit, mining claim, exploration permit, mineral development licence, mining lease or other authority granted under this Act or the buildings, plant, machinery or equipment thereon; and
- Any matter arising between applicants or holders in relation to prospecting, exploring or mining, or arising between applicants or holders and owners of land in relation to prospecting, exploring or mining; and
- Any dispute or other matter arising between persons identified in native title protection conditions as an explorer or a native title party, if the conditions –
 - under s25AA are included in the conditions imposed on a prospecting permit; or
 - under s141AA are included in the conditions determined for an exploration permit;or
 - under s194AAA are included in the conditions determined for a mineral development licence; and
- Any determination or review of compensation as provided for under the MRA or any other Act relating to mining; and
- The enforcement of any agreement or determination as to compensation under the MRA or any other Act relating to mining; and
- Any assessment of damage, injury or loss arising from activities purported to have been carried on under the authority of the MRA or any other Act relating to mining; and

- Any application required by the MRA or any Act relating to mining to be made or heard in the Tribunal.

The Tribunal also has jurisdiction to hear and determine actions, suits and proceedings with respect to any demand for debt or damages arising out of or made in respect of the carrying on of prospecting, exploring or mining and any agreement relating to prospecting, exploring or mining.

The MRA expressly excludes the conferring of jurisdiction on the Tribunal in relation to the recovery of wages or amounts owing under an industrial award or agreement.

Urgent applications

Procedures:

When such an application is made, the mining registrar is to advise the Tribunal forthwith (by telephone, radio, telex, facsimile transmission etc):

- of the application; and
- of all relevant details; and
- any supporting evidence produced to the mining registrar in respect of the application.

The Tribunal (presiding member) can then make any order it could have made had the application been made in its presence.

The Tribunal must then inform the mining registrar forthwith (by telephone, radio, telex, facsimile transmission etc) of the order and the mining registrar must, as soon as practicable, give each party a copy of the order. The order is to state the day and place that the order was made (s 364).

Where because of distance, urgency or other circumstances, it is impracticable for a party to apply to the Tribunal for the detention or preservation of any property that is the subject matter of the litigation, the party may apply to the mining registrar in the district where the property is located in the same manner that the application can be made to the Tribunal.

Deposit of property

At any time after proceedings are commenced, the Tribunal may, upon application by a party, direct a party to that proceeding having possession, custody or control of any money, mineral, chattel, ore or other thing (or which may later come into their possession) to deposit it in accordance with the order with such person at the place and upon the terms specified in the order to abide the determination of the proceeding or in the event of an appeal from that determination, the judgment on the appeal.

Procedures:

The applicant is required to give relevant parties at least 12 hours notice of the application (s 378).

Surveys

At any time before or during the hearing for a proceeding, the Tribunal may order any party to cause a survey to be made of any land, water, stack or other accumulation of ore, buildings or any other thing. The costs of or incidental to the survey shall be costs in the proceeding and shall be paid as the Tribunal orders (s 380).

Delivery of property

Upon determining a proceeding before it, the Tribunal may order that a person who has been ordered to pay any amount in respect of a debt, damages or costs shall (within a stated time) deliver to another party or to the Tribunal itself (for delivery to such party) any ore or mineral in their possession in satisfaction or part satisfaction of the amount ordered to be paid and for this purpose may fix a value of that which is ordered to be delivered (s 381).

Review of Registrar's Decision

A person dissatisfied with a direction or requirement given or made by a mining registrar, field officer or other authorised officer, or any road use direction may, if no other right of appeal against the direction or requirement is given under the MRA, apply to the Tribunal for a review of the direction or requirement (s406).

Procedures:

The application must be in writing and set out the grounds for review and be filed at the office of the mining registrar for the mining district in which the direction or requirement was given or made. The mining registrar must give a copy of the application to the decision-maker.

The Tribunal may:

- confirm,
- amend; or
- revoke the direction or requirement

and must notify the decision to:

- the person dissatisfied; and
- the person that gave the direction or requirement (s 406).

Eviction and Removal Orders

Where a person is alleged:

- to be in occupation of or upon any land; or
- to have erected or possess or control any building or structure; or
- to have made any other improvement to land that is the subject of a mining claim or the surface area of a mining lease

without proper authority, the person may be summonsed to appear before the Tribunal to show cause why:

- they should not be removed from the land; or
- ordered to remove any building, structure or other improvement.

If the person fails to appear or fails to show sufficient cause, the Tribunal may order:

- the remove of the person from the land in question,

- the removal, disposal or destruction of any building, structures or other improvements on the land; and/or
- the removal, seizure or disposal of any machinery or equipment upon the land that is or is capable of being used.

When making that order the Tribunal may issue a warrant addressed to the person who commenced proceedings and to all police officers requiring the appropriate action to be taken and the warrant is sufficient authority for the person or police officer to execute the warrant.

Procedures:

Upon the making of:

- any decision or
- other order by any court or the Tribunal exercising jurisdiction in Queensland upon any matter relating to prospecting, exploring or mining or to the MRA or any other Act relating to mining; the registrar shall forthwith forward a copy of that decision or order to the chief executive of the Department of Natural Resources, Mines and Energy (s 415).

The costs incurred by the mining registrar can be recovered in the Tribunal as a debt owed to the Crown (s 409).

Prospecting Permits

Prospecting permits are dealt with in Part 3 of the MRA. The Tribunal (presiding member or mining referee) hears appeals against decisions of mining registrars about prospecting permits (ss38-42).

Procedures:

The aggrieved party files a written notice of appeal with the mining registrar within 28 days after receiving notice of the decision (subject to request for statement of reasons and power of Tribunal to extend period for filing notice of appeal). The notice of appeal must state the grounds of appeal.

Tribunal has power to stay decision.

Mining Claims

Mining claims are dealt with in Part 4 of the MRA. The holder of a claim who has been notified by the mining registrar that the claim exceeds the prescribed area may apply to the Tribunal (presiding member or mining referee) for a determination as to whether the subject area exceeds the prescribed area or to determine the variation thereof to reduce the area to the prescribed area (s 53).

If a person agrees to attend a conference called by the mining registrar but fails to attend, the attending party can apply to the Tribunal (presiding member or mining referee) for an order requiring the person who did not attend to pay their costs of attending (s 70).

A mining registrar may refer an application for the grant of a mining claim to the Tribunal for determination even if there is no objection (s 75).

Procedures:

Where there is an objection or where the mining registrar is not satisfied that the reserve's owner has consented to the application, the mining registrar:

- sets a hearing date for the Tribunal within 7 days after last date for objections or after the conference; and
- gives notice to relevant parties (sections 72 and 76).

Objections

The Tribunal (presiding member or mining referee) hears and decides all issues and any objections to the application (s 77(1)).

The Tribunal then instructs the mining registrar to reject the application or grant the mining claim (with or without conditions) (s 78).

Where the owner of the reserve has not consented to the application, the Tribunal can recommend to the Minister that the Governor in Council consent to the granting of the mining claim (with or without conditions) (s 78).

Tribunal has limited cost awarding powers (s 78(5)).

Tribunal can determine amount of security to be deposited by the holder of the mining claim (s 83(4)), subject to any determination by the Governor in Council.

Compensation

The Tribunal (presiding member, mining referee or Land Court non-presiding member) hears and determines matters about the amount of compensation and the terms, conditions and times of payment thereof in the absence of any agreement between the parties.

The mining registrar has an obligation to refer the question of compensation to the Tribunal (in the absence of agreement) –

- where there is no objection, after 3 months from the last date for the receipt of objections; or
- where the Tribunal has instructed the mining registrar to grant the claim, after 3 months from the date of that instruction; or
- where the Governor in Council consents to the grant of the mining claim, after 3 months from the date of the giving of the consent (s 85).

Appeal from Tribunal decision

A party aggrieved by a determination of the Tribunal under s 85 may appeal within 28 days to the Tribunal (appeal), being the Tribunal constituted as a panel (1 or more presiding members and 2 or more non-presiding members).

The Tribunal (appeal) has power to extend the time to appeal (s 86).

Renewal

The Tribunal can consent to the renewal of a mining claim where the Tribunal imposed a condition on the mining claim that it could not be renewed (renewal is granted by the mining registrar) (s 93).

Caveats

The Tribunal can order that:

- a caveat remain in force for the period ordered by the Tribunal; and
- that a caveator can lodge another caveat (where the first one has lapsed or been removed or withdrawn) claiming the same or substantially the same right or interest (s 99).

The Tribunal (presiding member or mining referee) can order the removal of a caveat. If the Tribunal orders that a caveat be removed, the mining registrar is to give effect to that order.

Procedures:

Caveator is summonsed to attend the Tribunal to show cause why the caveat should not be removed.

Tribunal can make orders *ex parte* or otherwise as deems just (s 101).

Appeals against decision of mining registrar

A person aggrieved can appeal a decision of a mining registrar to refuse to grant a mining claim to the Tribunal (presiding member or mining referee - other than where schedule 1 of the LRT Act requires appeal to a panel) and can appeal:

- a decision to impose a condition on a mining claim
- a decision to require an applicant for, or holder of, a mining claim to deposit security
- a decision to give a direction to a mining claim holder about rehabilitating the land covered by the claim
- a decision to renew a mining claim (s 116).

A person aggrieved cannot appeal against a decision of the mining registrar made in accordance with the consent of the Governor in Council or decision of the Tribunal (s 116(3)).

Procedures:

Appeals are to be filed with the mining registrar within 28 days of receiving notice of the decision (subject to giving a statement of reasons).

Tribunal can extend time for filing notice of appeal (s 117).

The Tribunal can stay decisions (s 118) and appeals are by way of rehearing (s 119).

Variation of access to mining claim land

A mining claim holder may apply to the mining registrar for a variation in the land used or proposed to be used as access in relation to the mining claim land (s125(1)). Where the mining registrar is not satisfied that the owner of the land consents to the variation, the mining registrar must fix a date for a consideration of the matter by the Tribunal.

The Tribunal must hear and determine the matter by determining:

- that consent to the proposed variation should or should not be given; and
- if consent should be given, the amount (if any) of compensation payable in respect of the proposed use of the land for access.

Exploration Permits

Exploration permits are covered by Part 5 of the MRA. The Crown or an owner may recover compensation in the Tribunal (panel) in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of an exploration permit (s 145).

Upon the surrender of an exploration permit or a reduction in area to which the permit applies, the Minister may approve adjustments to the rental payable and security deposited in relation thereto. Any moneys payable to the Crown under such adjustments may be recovered as a debt due and owing to the Crown by action in the Tribunal (s162).

Caveats

The Tribunal can order that:

- a caveat remain in force for the period ordered by the Tribunal (s 154); and
- that a caveator can lodge another caveat (where the first one has lapsed or been removed or withdrawn) claiming the same or substantially the same right or interest (s 155).
- The Tribunal (presiding member or mining referee) can order the removal or a caveat.

If the Tribunal orders that a caveat be removed, the chief executive is to give effect to that order.

Procedure:

Caveator is summonsed to attend the Tribunal to show cause why the caveat should not be removed.

The Tribunal can make orders *ex parte* or otherwise as deems just (s 156).

Mining registrar's conference

Where a person fails to attend a mining registrar's conference to address concerns, the other party can apply to the Tribunal (presiding member or mining referee) for an order that the non-attending party pay the attending party's costs of attendance (s 174).

Mineral Development Licences

Compensation

The Crown or an owner is entitled to recover, from time to time, in the Tribunal (panel) compensation in respect of damage or injury suffered or loss incurred by reason of a person acting or purporting to act under the authority of a mineral development licence (s 191).

At Risk Agreement

The Tribunal (Land Court non-presiding member) has jurisdiction to hear and decide a proceeding about :

- whether hardship, as defined, exists; and
- the fair market value of a property for the purposes of the agreement

under a condition of a mineral development licence requiring compliance with the At Risk agreement (s 194A).

Caveats

The Tribunal can order that:

- a caveat remain in force for the period ordered by the Tribunal (s 201); and
- that a caveator can lodge another caveat (where the first one has lapsed or been removed or withdrawn) claiming the same or substantially the same right or interest (s 202).

The Tribunal (presiding member or mining referee) can order the removal of a caveat (s 203). If the Tribunal orders that a caveat be removed, the chief executive is to give effect to that order.

Procedure:

Caveator is summonsed to attend the LRT to show cause why the caveat should not be removed.

The Tribunal can make orders *ex parte* or otherwise as deems just.

Attendance Costs

If a person agrees to attend a conference called by the mining registrar to address concerns and then fails to attend, the attending party can apply for an order of the Tribunal (presiding member or mining referee) for an order that the non-attending party pay their costs of attendance (s 222).

Mining Leases

Appeal from mining registrar's rejection of application

An applicant for a mining lease can appeal the rejection of their application for a mining lease to the Tribunal.

Procedures:

The appeal is commenced by lodging a written notice of appeal with the registrar of the Tribunal within 28 days of the rejection of the application for a mining lease.

Unless the applicant asks for the Tribunal to be constituted as a panel, it will be constituted by a presiding member or mining referee. The Tribunal's decision on the appeal is final (s 250).

Attendance costs

Where:

- a person agrees to attend a conference set up by the mining registrar; and
- then fails to attend,

the attending party can apply to the Tribunal for an order requiring the non-attending person to pay the attending party's costs of attendance (s 259).

Tribunal hearings

The Tribunal has jurisdiction to hear applications for the grant of mining leases and any objections thereto. The Tribunal cannot take evidence in a hearing of an application for the grant of a mining lease until the results of any study into the environmental impact of such a grant requested by the Minister are available to the Tribunal.

The Tribunal has the power to award costs in certain circumstances.

Procedures:

For the hearing, the Tribunal will be constituted by a panel, unless:

- all the parties ask that it not be constituted by a panel; and
 - the president agrees to such a request,
- in which case it will be heard by the presiding member or mining referee (section 268).

Tribunal Recommendation

Procedures:

Upon hearing the matters, the Tribunal is to forward to the Minister

- any objections lodged in relation to the application,
- the evidence adduced at the hearing, any exhibits; and
- the Tribunal's recommendation.

Where the Tribunal has recommended to the Minister that the application be rejected in whole or in part, the Tribunal is to give the Minister the reasons for that recommendation (s 269).

Ministerial Direction

Procedures:

The mining registrar is to:

- fix time and date for hearing; and
- notify parties at least 7 days before.

For the hearing, the Tribunal is to be constituted in the same way as it was constituted for deciding its recommendation about the grant of the mining lease.

At the end of the hearing, the Tribunal is to forward the evidence and any exhibits to the Minister and any recommendation made (s 271).

The

Minister can direct the Tribunal to hold a hearing or further hearing into the application for the mining lease generally or limited to such matter as the Minister specifies.

At Risk Agreement

The Tribunal (Land Court non-presiding member) has jurisdiction to hear and decide a proceeding about hardship and fair market value of a property under the At Risk agreement (s 278A).

Compensation decision

A person who could be a party to a compensation agreement can apply in writing to the mining registrar to have the Tribunal (presiding member, mining referee or Land Court non-presiding member) determine the amount of compensation and the terms, conditions and times of payment thereof.

Procedures:

The Tribunal is to give written notice of its determination to all parties and may make such order as to costs between the parties to the determination, as it thinks fit (s 281).

Appeal against compensation decision

A party aggrieved by a compensation decision may, within 28 days of the date of the determination (or within such further period as the Tribunal (panel) determines on the application of that party prior to the lodgement of the appeal) appeal against the determination under s 281.

Procedures:

The appeal is to be instituted by lodging in the Tribunal a written notice of appeal, including grounds of appeal, and serving copies of the notice on:

- the mining registrar and
- each other party

and giving security, approved by the registrar of the Tribunal, for the costs of the appeal (s 282).

Review of compensation by Tribunal

Where compensation has been agreed or determined for a mining lease and there has subsequently been a material change in circumstances for the mining lease, the lease holder or land owner may apply to the Tribunal for review of the original compensation (s283B). The Tribunal, upon conducting a review, may confirm or amend the original compensation as it considers appropriate.

Consolidation of mining leases

A holder of mining leases for contiguous land may apply to the mining registrar for the consolidation of the mining leases.

If the mining registrar is not satisfied that the land is adjoining, the holder may apply to the Tribunal (presiding member or mining referee) for an order declaring the land to be adjoining land for this section (s 299).

Caveats

The Tribunal can order that:

- a caveat remain in force for the period ordered by the Tribunal (s 303); and
- that a caveator can lodge another caveat (where the first one has lapsed or been removed or withdrawn) claiming the same or substantially the same right or interest (s 304).

The Tribunal (presiding member or mining referee) can order the removal of a caveat (s 305). If the Tribunal orders that a caveat be removed, the mining registrar is to give effect to that order.

Procedures:

Caveator is summonsed to attend the Tribunal to show cause why the caveat should not be removed. The Tribunal can make orders *ex parte* or otherwise as deems just.

Variation of access

Procedures:

Where the mining registrar is not satisfied that the owner of the land proposed to be used as access consents thereto, the mining registrar will:

- fix a date for the consideration of the matter by the Tribunal (presiding member or mining referee); and
- notify the owner and the applicant of the date.

The holder of a mining lease may apply to the mining registrar for a variation of the land used or proposed to be used as access in relation to the land the subject of the mining lease.

The Tribunal shall hear and determine whether consent to the variation of access should be given, and if it is given, the amount, if any, of compensation payable by the holder in respect of the proposed use of that land as access. The Tribunal's determination is final and conclusive (s 317).

Surrender of mining lease

Upon surrender of a mining lease, all adjustments between the holder and the Crown in respect of the payment of rental, fees and other moneys is at the discretion of the Minister. The Crown may recover any such unpaid moneys by an action in the Tribunal (s309(10)).

Notifiable Road Usage (Part 7A)

Part 7A governs notifiable road usage, but does not apply to projects declared under the *State Development and Public Works Organisation Act 1971* s26 to be a significant project. A notifiable road use, for a mining tenement, is use of a road to haul loads at more than the following rate if the haulage relates to the transport of minerals on or from tenement land (s318C):

- for a State controlled road – 50 000 t a year;
- for another road – 10 000 t a year.

A tenement holder must not use a road for a notifiable road use unless notice of the proposed use is first given to the road authority (s318D). The road authority may give the tenement holder a written road use direction about preserving the condition of the road or the safety of the public (s318E).

Appeals

A person who is dissatisfied with a road use direction may apply to the Tribunal for review of the direction (s406). The application must set out the grounds for review and be filed at the office of the mining registrar for the relevant mining district.

Compensation

A tenement holder is liable to compensate a road authority for damage caused by notifiable road usage (s318G). Either the tenement holder or the road authority may apply to the Tribunal for it to decide the holder's compensation liability (s318I).

Where there has been a material change in circumstances since a compensation decision or agreement, either party may apply to the Tribunal for a review of compensation (s318K).

Additional Native Title Provisions

Introduction

Parts 12 to 18 of the MRA contain native title provisions that state additional requirements for certain grants, renewals and variations of mining tenements. In certain circumstances, there are additional requirements relating to native title for prospecting permits, mining claims, exploration permits, mineral development licences and mining leases (Parts 13 to 17). There are also compensation provisions under Part 18 in respect of certain acts that affect native title rights and interests and transitional provisions under Part 19.

The additional requirements only apply in limited circumstances. The additional requirements do not apply under Parts 13 to 18 and Part 19, division 2 where a notice under s29 of the Commonwealth NTA was given before the commencement of s419 MRA. Parts 12 to 17 do not apply to an act that is excluded from the operation of the right to negotiate provisions under s26D of the NTA (earlier valid acts – renewal of existing mining leases etc).

Parts 13 to 17 do not apply to the grant of a prospecting permit, or the grant, renewal or variation of, or another act concerning, a mining claim, exploration permit, mineral development licence or mining lease if –

- there is a registered ILUA; and
- the ILUA includes statements to the effect that –
 - the parties to the ILUA consent to the doing of the act; and
 - the right to negotiate provisions are not intended to apply to the act (s420).

An act to which the native title provisions apply is invalid to the extent that it affects native title unless the native title procedures are complied with (s421).

Native Title Requirements for Prospecting Permits (Part 13)

Application

Part 13 sets out additional requirements for the grant of certain low impact prospecting permits over non-exclusive land, and the exercise of access rights under such permits. The purpose of the part is to state those requirements and in so doing to provide a basis for a determination by the Commonwealth Minister under s26A (approved exploration etc acts) of the Commonwealth NTA.

The Part 13 native title provisions only apply to the grant of a prospecting permit if it is a low impact prospecting permit and the application was lodged on or before 31 March 2003 and

the granting of the permit is an act that affects native title rights and interests and to which the right to negotiate provisions would have applied (s426). The part does not apply to a prospecting permit if the permit is solely for the purpose of applying for a mining claim or mining lease (s427), nor to an act relating to a prospecting permit in an approved opal or gem mining area to the extent the act is excluded from the s26(2)(d) NTA right to negotiate provisions (s428).

Access agreements

While the prospecting permit can be granted without Tribunal involvement, the holder of a prospecting permit can not enter land claimed or subject to claim by Native Title parties, unless there is an access agreement with respect to that land (s433). The parties can ask the mining registrar to mediate the access agreement (s436).

Where an access agreement for entry is not obtained within 1 month after the mining registrar has been asked to hold a conference for mediation about the agreement, the permit holder or the registered native title party may ask the mining registrar to refer the matter to the Tribunal for a decision (s436A). If so asked, the mining registrar must refer the matter and the Tribunal must decide the terms of the access agreement.

The Tribunal order has the same effect as an access agreement executed by the parties. The Tribunal must also make a compensation decision or a compensation trust decision for the registered native title party under part 18 (s436A).

Native Title Requirements for Mining Claims Part 14

The purpose of Part 14 MRA is to state additional requirements that apply for the granting of a proposed mining claim, or variation or renewal of a mining claim over non-exclusive land and thereby provide alternative provisions under s43 of the Commonwealth NTA (s439).

The Part 14 native title provisions only apply to the grant of a mining claim if the application was lodged on or before 31 March 2003 and the granting of the mining claim is an act that affects native title rights and interests and to which the right to negotiate provisions would have otherwise applied and a determination is in force under s43(1) NTA and this division is included in the alternative provisions the subject of the determination (ss462 & 465).

This part does not apply to an act relating to a mining claim in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under s26(2)(d) of the Commonwealth NTA (s440).

The Tribunal has jurisdiction to:

- mediate issues referred to it by a consultation and negotiation party at any time before a negotiated agreement is reached or the mining claim is referred to the Tribunal for a native title issues decision;
- hear and determine native title objections and make a native title issues decision in relation to the application; and
- make a compensation decision or compensation trust decision.

Where a proposed mining claim will affect native title interests and a right to negotiate would have had effect and the alternative State provisions apply, these additional requirements apply.

Alternative State Provisions

Under s 463, Part 17 (mining leases), division 4 applies to mining claims with necessary changes.

Specifically:

- References to the Governor in Council and the Minister are to be read as references to the mining registrar (s 464(2)).
- The “pre-referral period” under s 669 is 6 months starting on the notification day (native title issues); or such longer period as is agreed between the parties and advised to the mining registrar (s 464(3)).
- The mining registrar is not to grant the mining claim under s 74 (claim where there are no objections) unless a negotiated agreement has been reached (s 464(4)).
- The objections and native title issues must be heard together (that is, the process under s 672(2)-(4) is not available) (s 464(5)).
- The Tribunal does not have jurisdiction to hear deferred matters under s 678.

The native title issues decision is binding on the mining registrar (s 464(6)).

Renewals of Mining Claims

The additional requirements also apply to renewals of mining claims with the necessary changes (s 470). In particular, there is no power to hold a combined hearing, however:

- The mining registrar must within 14 days after the pre-referral period ends, fix a day for the Tribunal to hear the application for the renewal;
- All consultation and negotiation parties have the right to be heard at the hearing;
- The Tribunal must hear the application for the renewal and make a native title issues decision; and
- Before making its native title issues decision, the Tribunal must ask the mining registrar about the extent to which the mining registrar is satisfied about the matters set out in s 93(3) about renewals of mining claims.

Subsidiary approvals

The additional requirements also apply to subsidiary approvals for mining claims with the necessary changes (s 477). In particular, there is no power to hold a combined hearing, however:

- the mining registrar must within 14 days after the pre-referral period ends, fix a day for the Tribunal to hear the application for the addition;
- all consultation and negotiation parties have the right to be heard at the hearing; and
- the Tribunal must hear the application for the addition and make a native title issues decision (s 478).

Native Title Requirements for Low Impact Exploration Permits (Part 15)

Where the application is for a “low impact exploration permit” (defined in ss 481 and 482), the granting of which would affect native title rights and interests, these additional requirements apply.

Jurisdiction

Under these alternative State provisions, upon referral by the mining registrar the Tribunal has jurisdiction to decide the terms of an access agreement and to make a compensation decision or a compensation trust decision for the registered native title party.

Notice

An applicant for a low impact exploration permit must give notice of their intention to lodge an application to:

- each native title notification party for the land; and
- the Native Title Registrar.

Consultation

A low impact exploration permit holder cannot enter, for the first time, any area of non-exclusive land unless

- the holder has consulted with each registered native title party for the area, or
- the registered native title party, at any time after the start of the consultation period gives the applicant written notice that they do not wish to be so consulted.

Access Agreements

A low impact exploration permit holder cannot enter, for the first time, any area of non-exclusive land unless:

- the holder has an access agreement for entry to the area with each registered native title party for the area, obtained after the start of the “consultation period” for entry to the area, or
- the registered native title party has given written notice that it does not wish to be consulted about an access agreement (s 488).

Where there is an access agreement, the holder of the permit must not carry out activities in a way that is inconsistent with the requirements of the access agreement (s 488A).

Mediation

At the end of the consultation period either the permit holder or the registered native title party can ask the mining registrar to hold a conference for mediation about the access agreement.

Lawyers can represent the parties and ss 169 to 174 apply (s 491).

Tribunal decision

If no access agreement has been obtained within 1 month of the mining registrar being asked to hold a conference, either the permit holder or the registered native title party may ask the mining registrar to refer the matter to the Tribunal for a decision.

When the Tribunal decides the terms of the access agreement, it must also make a compensation decision or a compensation trust decision for the registered native title party under part 18 (s491A).

The permit holder is to give a copy of the access agreement to the mining registrar (s492).

Recommendations to the Minister

The mining registrar may recommend action to the Minister to address any matter raised by a registered native title party in relation to the access agreement.

The Minister may give the permit holder the directions the Minister considers appropriate about the recommended action. Failure to comply with the directions is a breach of the conditions of the exploration permit (s493).

Native Title Requirements for High impact exploration permits (Part 15)

Jurisdiction

Under these alternative State provisions, the Tribunal has jurisdiction to:

- mediate issues referred to it by a consultation and negotiation party at any time before a negotiated agreement is reached or the proposed permit is referred to the Tribunal for a native title issues decision; and
- hear and determine native title objections and make a native title issues decision in relation to the application.

Alternative State Provisions

The additional requirements set out in part 17, division 4 (mining leases) apply with the necessary changes (s 524).

Specifically:

- References to the Governor in Council are to be read as references to the Minister.
- The time period for the notification requirement is to be 14 days after the applicant is notified of the Minister's decision under s 144(1) or (3) of the amount of security to be deposited if the permit is granted.
- The "pre-referral period" is to be 6 months starting on the notification day (native title issues) or such other period agreed between the parties and advised to the mining registrar in writing.
- There is no "combined hearing" but rather the mining registrar must fix a date for a hearing for the native title issues decision, including the hearing of any objections lodged under s 668.
- The Tribunal does not make compensation determinations on these.

The Tribunal is required to advise the Minister of its native title issues decision.

Renewals and Variations of Exploration Permits

The additional provisions also apply in relation to renewals of exploration permits (s525) and the variation of permits (ss 532 and 534) with necessary amendments.

The Tribunal must, before making its native title issues decision, ask the Minister about the extent to which the Minister is satisfied that the holder of the exploration permit proposed to be renewed has complied with the conditions of the exploration permit and consider that information in making its decision.

Native Title Requirements for Low Impact Mineral Development Licences (Part 16, Division 2)

Preliminaries

Part 16 does not apply to an act relating to a mineral development licence in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under section 26(2)(d) of the NTA.

Part 16, division 2 applies to the granting of a low impact mineral development licence over non-exclusive land that affects native title rights and interests and to which the right to negotiate provisions would have applied.

Jurisdiction

Under these alternative State provisions, the Tribunal has jurisdiction to:

- upon referral by the mining registrar, decide the terms of an access agreement; and
- make a compensation decision or compensation trust decision for the registered native title party.

Notice

An applicant for a low impact mineral development licence must give written notice of their intention to lodge an application to each native title notification party for the land and the Native Title Registrar.

Consultation

It is a condition of a low impact mineral development licence that the licence holder must not act under the licence to enter, for the first time, any area of non-exclusive land unless

- the holder has consulted with each registered native title party for the area; or
- the registered native title party gives the licence holder a written notice that they do not wish to be consulted.

The purpose of consultation is to minimise the impact of the low impact mineral development licence on the exercise of native title rights and interests in relation to the land that will be affected under the licence and to obtain any necessary access agreement for entry (s 545). Consultation must include matters mentioned in section 26A(7) of the NTA.

The “consultation period” for entry to an area starts 1 month after the consultation period advice day, which is the day when the licence holder gives notice of the day on which the consultation period for entry to the area is to start to each registered native title party for the area and the mining registrar. Such notice must contain a clear description of the area to be entered, its location and a description of the nature of the low impact activities proposed for the area is given. The consultation period ends 2 months after it starts (s 546).

The consultation period advice day must not be less than 3 months after the application notice relating to the low impact mineral development licence (or replacement notice under s 543) was given.

Access Agreement

It is a condition of a low impact mineral development licence that the holder must not enter, for the first time, any area of non-exclusive land unless

- the holder has an access agreement for entry to the area with each registered native title party for the area, obtained after the start of the consultation period for entry to the area.; or
- the registered native title party gives the licence holder a written notice that they do not wish to be consulted about an access agreement for the entry (s 544).

Where there is an access agreement for entry to the area under a mineral development licence, the holder of that licence must not carry out the activities in a way that is inconsistent with the requirements of the access agreement (section 544).

Mining Registrar’s Conference

If there is no access agreement at the end of the consultation period, either party may ask the mining registrar to hold a conference for mediation about the access agreement and sections 217 to 222 apply as if the request were from an owner of land.

Parties can be represented by lawyers (s 547).

Tribunal Decision

If the access agreement is not obtained within 1 month of the request for mediation under s 547, either party can ask the mining registrar to refer the matter to the Tribunal for a decision.

The Tribunal must then decide the terms of the access agreement and make a compensation decision or compensation trust decision for the registered native title party under part 18 (s 547A).

The licence holder is to give a copy of the access agreement to the mining registrar as soon as practicable after being obtained but at least before entry into the area.

Mining Registrar Recommendations

The mining registrar may recommend action to the Minister to address any matter raised by a registered native title party in relation to an access agreement.

The minister may give the mineral development licence holder directions about the recommended action.

Failure to comply with those directions is a breach of the mineral development licence.

Native Title Requirements for High Impact Mineral Development Licences (Part 16, Division 4)

Preliminaries

Part 16 does not apply to an act relating to a mineral development licence in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under s 26(2)(d) of the NTA.

Part 16, division 4 applies to the granting of a high impact mineral development licence over non-exclusive land that affects native title rights and interests and a determination is in force under s 43(1) of the NTA and this division is included in the alternative provisions the subject of the determination.

Jurisdiction

Under these alternative State provisions, the Tribunal has jurisdiction to:

- mediate issues referred to it by a consultation and negotiation party at any time before a negotiated agreement is reached or the proposed high impact mineral development licence is referred to the Tribunal for a native title issues decision; and
- hear and determine native title objections and make a native title issues decision about the application.

Alternative State Provisions

The additional requirements under part 17, division 4 for the granting of a proposed mining lease also apply for the granting of a proposed high impact mineral development licence with the necessary changes (s 581).

Specifically:

- References to the Governor in Council are taken to be references to the Minister.
- Written notice about the proposed high impact mineral development licence is to be given not later than 14 days after the applicant is notified of the Ministers decision under s 190 of the amount of security to be deposited if the licence is granted.
- the “pre-referral period” is 6 months starting on the notification day (native title issues) or such later period agreed between the parties and advised to the mining registrar.
- There is no provision for combined hearings but the mining registrar must fix a date for a hearing for the native title issues decision, including the hearing of any objections lodged under s 668.
- The hearing does not include a compensation decision.
- The Tribunal is to advise the Minister of its native title issues decision.
- The Minister must comply with the native title issues decision unless it is overruled under Part 17, division 4, subdivision 6.

Renewal of mineral development licences and subsidiary approvals

The additional requirements apply to the renewal of mineral development licences and subsidiary approvals with necessary changes.

The Tribunal must, before making a native title issues decision for a renewal of a mineral development licence, ask the Minister about the extent to which the Minister is satisfied that the holder of the mineral development licence proposed to be renewed has complied with the conditions of the mineral development licence and take that information into account (s 587).

Native Title Requirements for Mining Leases (Part 17)

Jurisdiction

Under these alternative State provisions, the Tribunal has jurisdiction to:

- mediate issues referred to it by a consultation and negotiation party at any time before a negotiated agreement is reached or the proposed mining lease is referred to the Tribunal for a native title issues decision; and
- hear and determine all objections and make a native title issues decision in a combined hearing; and
- make decisions about deferred matters.

Preliminaries

This Part states additional requirements that apply for the granting of a proposed mining lease, or variation or renewal of a mining lease over “non-exclusive land”, that is, land over which native title has not been extinguished, but excluding the seas and inter-tidal zone. The part also provides alternative provisions under s 43 of the NTA (s 593).

Further, this part does not apply to an act relating to a mining lease in an approved opal or gem mining area to the extent that the act is excluded from the application of the right to negotiate provisions under s 26(2)(d) of the NTA (s 594).

If the parties to a hearing under this part are identical to the parties to an earlier relevant agreement or at the relevant hearing, a party to the mining lease hearing must not, without the leave of the Tribunal, seek to vary the decision on this issue.

Where a proposed mining lease will affect native title interests and a right to negotiate would have had effect and the alternative State provisions apply, these additional requirements apply.

Notice

An applicant for a mining lease is to give notice of the proposed mining lease to all native title notification parties for the land and the Native Title Registrar, and publish same in relevant newspapers and publications, not earlier than 3 months before the application for the proposed mining lease is lodged and not later than the end of the period of 28 days after the certificate of application for the proposed mining lease is endorsed by the mining registrar, or such longer period as is determined by the mining registrar. If the mining registrar has given a

direction for the giving of a new written notice and the publication of a new public notice, not later than the end of the period nominated in the direction (s 652).

The written notice must state a date at least 3 months after the date of notification for the lodging of objections (s 653).

Within 2 days of giving the notice, the applicant must advise the mining registrar of their compliance with the requirement to give notice and give copies of such notice. The mining registrar can direct the giving of further notice if sections 652 and 653 are not complied with.

Certain bodies are given the ability to be “registered native title parties” even if they incorporate after the closing date for objections.

List of native title parties

As soon as practicable after the closing date for the proposed lease, the applicant is to give the mining registrar a list of all registered native title parties (and those who could become registered native title parties), and after 1 month, a list of those that have become registered native title parties during that month (s 656).

These additional requirements stop applying if, after 1 month after the closing day (native title issues) there are no registered native title parties or all registered native title parties certify in the approved form lodged with the mining registrar that they do not object to the grant and do not wish to be consulted about it.

However, if the lease is granted and there is at least one registered native title party, the holder of the mining lease must, within 28 days after the holder receives notice of the grant, give a written notice of the grant, stating any conditions to the grant, to each registered native title party.

Consultation and Negotiation Parties

The applicant, the registered native title parties and the State are all “consultation and negotiation parties” for the proposed mining lease. The State stops being a consultation and negotiation party if all the consultation and negotiation parties agree at any time, in the approved form lodged with the mining registrar, that the State is not to be a consultation and negotiation party.

However the State can take a “stated role” (s 658).

Consultation and Negotiation

The consultation and negotiation parties are required to consult and negotiate in good faith with a view to obtaining the agreement of each of the registered native title parties to:

- the granting of the proposed mining lease; and
- any conditions to be complied with by the consultation and negotiation parties if the proposed mining lease is granted.

Also, the applicant must consult the registered native title parties about ways of minimising the impact of the grant of the proposed mining lease on their registered native title rights and

interests in the land, including access and the way in which anything authorised by the proposed mining lease might be done.

The applicant must also have regard to the guidelines for registered native title party consultation (s 659)

A consultation and negotiation party is required to make every reasonable effort to reach agreement (s 660)

Mediation

A consultation and negotiation party may refer issues relevant to consultation and negotiation to mediation at any time before a negotiated agreement is reached or the proposed mining lease is referred to the Tribunal for a native title issues decision under s 669.

Mediation does not extend the period that must elapse before the proposed lease may be referred to the Tribunal and may continue during the referral. Mediation may end at any time by decision of the mediator or by agreement of the consultation and negotiation parties (s 662).

Applicant consultation

Within 4 months after the notification day (native title issues), the applicant should give each registered native title party:

- a copy of the application for the lease (but not the statement detailing the applicant's financial and technical resources)
- and the endorsed certificate of application

and convene at least one consultation meeting for all registered native title parties to be given a presentation about the proposed mining lease (s 663).

Negotiated agreement

If the mining lease is granted, the holder of the lease must, within 28 days after receiving notice of the lease, give a written notice to each registered native title party stating any conditions to the mining lease (s 666).

Objections by registered native title parties

At any time before a negotiated agreement is reached or the proposed mining lease has been referred to the Tribunal for a native title issues decision, a registered native title party may lodge an objection to the proposed mining lease (s 668).

Objections can be withdrawn at any time before a negotiated agreement is reached or the proposed mining lease is referred to the Tribunal for a native title issues decision.

This objection power is to be used instead of the power of objection under s 260 for native title issues.

The Tribunal must not hear an objection if the objection has not been made in substantial compliance with s 668.

Native Title Issues Decision

If the pre-referral period has ended, but a negotiated agreement has not been reached, a consultation and negotiation party may refer the proposed mining lease to the Tribunal for a decision (a “native title issues decision”).

If there has been no referral within 3 months after the end of the pre-referral period, the Minister may reject the application for the proposed mining lease (s 669).

If the “pre-referral period” has ended and a registered native title party has lodged an objection and has not withdrawn the objection, the proposed mining lease is taken to have been referred to the Tribunal.

The “pre-referral period” is:

- if an EIS for the proposed mining lease is not required to be prepared under another State Act or a Commonwealth Act – 6 months starting on the notification day (native title issues) or such later time as the registered native title parties agree and advise the mining registrar in writing;

otherwise –

- 3 months following the day the environmental impact statement is publicly notified under the other State Act or the Commonwealth Act; or
- a period agreed between the registered native title parties and the applicant and advised to the mining registrar; or
- 6 months starting on the notification day (native title issues) -

whichever is the later.

If a negotiated agreement is reached, all referrals of the proposed mining lease are taken to be withdrawn and the Tribunal must not make a native title issues decision (s 670).

A hearing of ordinary objections and the hearing for a native title issues decision and native title objections must be heard together as a “combined hearing” (s 671).

The Tribunal must not act under s 270 to dispense with a hearing, unless a negotiated agreement has been reached.

The Tribunal can give directions to the consultation and negotiation parties at any time after the referral of the proposed mining lease for a native title issues decision (s 673).

If at a combined hearing the Tribunal is not satisfied that the applicant or the State has complied with the requirement of negotiation in good faith, it may adjourn the combined hearing for up to 3 months to allow for compliance. If a registered native title party has failed to negotiate in good faith, this failure can be taken into account in making its native title issues decision (s 674).

The Tribunal is empowered to make decisions about “deferred matters”, that is, matters that were the subject of negotiation between the parties but are not directly relevant to the native title issues decision (s 678).

The Minister must comply with the native title issues decision, including in the making of any recommendation by the Minister to the Governor in Council, unless the Minister overrules the native title issues decision under subdivision 6 (s 680).

Overruling by Minister

The Minister may overrule the Tribunal's native title issues decision if it is in the interests of Queensland or in the national interest and it is done within 2 months after the native title issues decision is made. The Minister must then make a substituted decision and give a copy of that decision to the Tribunal and to the consultation and negotiation parties (s 681).

Urgent decisions

If 4 months after the proposed mining lease was referred to the Tribunal for a native title issues decision:

- the Tribunal's native title issues decision has not been made; and
- a negotiated agreement has not been reached;

the Minister may give the Tribunal a written "urgency notice" asking the Tribunal to complete its combined hearing and make its native title issues decision within the period stated in the written notice.

The stated period is to be a period ending after the end of 6 months after the proposed mining lease was referred to the Tribunal for a native title issues decision (s 683).

If the Tribunal does not make its decision within the period stated in the notice, the Minister can make the decision after consulting with the relevant Commonwealth Minister (s 684). The Minister has consultation requirements under s 685.

Conditions

If the Governor in Council grants the proposed mining lease, a contract condition has effect (in addition to any other effect that it may have) as if it were included in the terms of a contract between the consultation and negotiation parties.

If a consultation and negotiation party is a registered native title claimant, any individual included in the native title lease group concerned is a party to the contract (s 687).

If the Governor in Council grants the proposed mining lease, the holder of the mining lease must, within 28 days after the holder receives notice of the grant, give a written notice to each registered native title party:

- advising the granting of the mining lease; and
- stating any contract conditions and the conditions of the mining lease (s 688).

Renewals and subsidiary approvals

Where:

- the renewal of a mining lease over non-exclusive land will affect native title rights and interests; and
- in respect of which the right to negotiate provisions would have otherwise had effect; and

- s 689(5) is an alternative state provision under section 43(1) of the NTA,
- the additional requirements outlined above apply with necessary changes (s 694).

Particularly, the initial notification requirements must be complied with within 28 days after lodgement of the application for renewal.

Where:

- an applicant has applied for subsidiary approvals to a mining lease; and
- the mining of those specified minerals would be an act affecting native title rights and interests; and
- the addition relates to non-exclusive land; and
- this is an accepted alternative state provision,

the additional requirements apply with necessary changes (s 697).

Compensation (Part 18)

Entitlement to compensation

An entity is entitled to compensation for the effect of a “relevant act” on the entity’s native title rights and interests but only in accordance with Part 18 (s 707).

“Relevant act” means the grant, renewal or variation of or another act concerning:

- a mining tenement to which
 - Part 13, 14, 17, division 4,5 or 6; or
 - Part 15, 16, division 2,4,5 or 6 applies; or
- to which those parts would apply were it not that the act
 - relates to a mining tenement in an approved opal or gem mining area; and
 - is excluded from the application of the right to negotiate provisions under section 26(2)(d) of the NTA; and

concerning:

- renewals to which part 14,15,16 or 17, division 5 would apply, were it not that the renewal is an act
 - to which the right to negotiate provisions do not apply because of section 26D(1) of the NTA and
 - in relation to which the earlier right to mine mentioned in section 26(1)(a) is an earlier right mentioned in section 26D(1)(b)(ii) and for which compensation has not previously been agreed (section 706).

Compensation can be agreed before the relevant act is done.

Tribunal Order

Apart from the State, the Tribunal can order the applicant for or the holder of the mining tenement or another entity with a connection to the relevant act to pay compensation in certain circumstances (s 707). The Tribunal is to apply all relevant principles applicable under the MRA for deciding amounts of compensation.

Compensation

An applicant for the doing of a relevant act, or the holder of a mining tenement the subject of a relevant act may enter into an agreement with an entity about compensation for the effect of the relevant act on various native title rights and interests.

An entity may apply to the Tribunal for a compensation decision or a compensation trust decision for a relevant act (s 709).

If the Tribunal:

- makes a compensation decision for a relevant act; and
- the decision is that compensation is payable,

the registered native title body corporate can ask that the compensation (in whole or in part) be in the form of non-monetary compensation, including the transfer of land or other property, the provision of goods or services or the creation of employment opportunities.

If there is an agreement about compensation or a compensation decision for a relevant act relating to a mining claim or mining lease, it is a condition of the mining claim or mining lease that the holder of the claim or lease must comply with the terms of the agreement or decision that apply to the holder (s 711).

If the land is subject to a compensation trust decision, the applicant or holder of the mining tenement the subject of a relevant act cannot be required to pay an amount under a compensation decision (s 712).

The State has the right to be heard at any proceeding before the Tribunal under this part.

Where there is a registered native title body corporate in relation to any part of the land the subject of a relevant act relating to a mining claim or mining lease, the relevant act can only be done if compensation has been determined by way of agreement or under a compensation decision.

Where there is a registered native title claimant in relation to any part of the land the subject of a relevant act relating to a mining claim or mining lease, the relevant act can only be done if:

- there is an agreement about compensation; or
- the Tribunal has made a compensation trust decision

and the conditions or requirements of the agreement or decision have been complied with.

Registered Native Title Body Corporate or Claimant

Where there is no registered native title body corporate or registered native title claimant for the land when a relevant act relating the land is done, if an entity subsequently becomes a registered native title body corporate, it may

- recover compensation under an agreement; or
- apply to the Tribunal for a compensation decision for the relevant act.

If the entity subsequently becomes a registered native title claimant, it may recover compensation under an agreement or apply to the Tribunal for a compensation trust decision for the relevant act (s 716).

In relation to relevant acts relating to other mining tenements, if there is a registered native title body corporate in relation to land the subject of the relevant act, the registered native title body corporate may at any time recover compensation under an agreement or apply to the Tribunal for a compensation decision (s 717).

If there is a registered native title claimant, the entitlement is the same, except the application to the Tribunal is for a compensation trust decision.

Section 719 sets out when the State can be required to pay compensation.

Where:

- an amount is held in trust under a compensation trust decision for a relevant act and the application for the doing of the relevant act is not granted and is no longer a current application; or
- the relevant act is done but a native title determination shows that native title did not exist in relation to the land the subject of the relevant act

a person who claims to have an interest in the trust amount (or the State) may apply to the Tribunal for an order about the payment of the amount (s 720).

Where:

- there has been an amount held under a compensation trust decision; and
- native title is found to exist on the relevant land,

the registered native title body corporate may apply to the Tribunal for a compensation decision for the relevant act.

The Tribunal must also determine how much of the funds held in trust under the compensation trust decision is to be paid to the registered native title body corporate.

If the compensation decision is greater than the amount held in trust, the balance is to be paid by the State (s 721).

Where:

- an amount is held in trust under a compensation trust decision for a relevant act; and
- no other provision provides for the disposal of the amount

the Tribunal may order the payment of some or all of the amount held in trust in the way the Tribunal considers appropriate (s 722).

Cultural Heritage Acts

Summary

The *Aboriginal Cultural Heritage Act 2003* and *Torres Strait Islander Cultural Heritage Act 2003* (the Cultural Heritage Acts) commenced on 16 April 2004, replacing the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*. These Cultural Heritage Acts provide for an important role for the Tribunal in respect of cultural heritage management plans, cultural heritage injunctions and cultural heritage studies.

The Acts provide jurisdiction for the Tribunal to:

- mediate disputes about development of cultural heritage management plans¹;
- hear objections to a refusal to approve a cultural heritage management plan²;
- hear applications to approve cultural heritage management plans³;
- grant an injunction to restrain acts that contravene Aboriginal or Torres Strait Islander cultural heritage provisions (this is exclusive jurisdiction)⁴; and
- hear objections to decisions regarding cultural heritage studies⁵.

The substantive provisions of the two Acts are the same, differing only in that they apply either to Aboriginal cultural heritage or Torres Strait Islander cultural heritage. Cultural heritage is defined to include anything that is a significant Aboriginal/Torres Strait Islander area in Queensland; a significant Aboriginal/Torres Strait Islander object; or evidence, of archaeological or historic significance, of Aboriginal/Torres Strait Islander occupation of an area of Queensland (s. 8).

Cultural heritage management plans

In general, whenever any project requires a lease, license, permit, approval, or other authority under an Act and also requires an environmental impact statement, the authority must not be given unless a cultural heritage management plan has been developed and approved under the Cultural Heritage Acts, or the authority is given on condition that no activities that may harm cultural heritage are undertaken without an approved cultural heritage management plan (s. 87). A cultural heritage management plan may also be required where some other environmental authority is needed, or under the *Integrated Planning Act 1997* (ss 88 & 89).

The sponsor of a cultural heritage management plan must give notice to the chief executive, each person who owns or occupies relevant land, each Aboriginal/Torres Strait Islander cultural heritage body for the plan area (or each native title party for the area if there is no cultural heritage body) (s. 91). If there is no cultural heritage body and no native title party, the sponsor must ensure that public notice directed to Aboriginal/Torres Strait Islander parties is published s. 96).

¹ s. 106 of each Act.

² s. 111 of each Act.

³ ss.112, 113 & 116 of each Act.

⁴ These are provisions to protect cultural heritage and prohibit unlawful damage to, excavation and removal of and possession of Aboriginal and Torres Strait Islander cultural heritage ss24(1), 25(1) & 26(1) of each Act.

⁵ s. 77 of each Act.

An Aboriginal/Torres Strait Islander party or cultural heritage body may respond to the notice within 30 days, in which case the sponsor must endorse each such party to take part in developing the cultural heritage management plan (ss 97-9). The purpose of a cultural heritage management plan is to ensure that the project is managed in a way that avoids harm to Aboriginal and Torres Strait Islander cultural heritage and, where harm cannot be avoided, minimises that harm (ss 102-3).

Objections to a refusal to approve a cultural heritage management plan

If all parties reach agreement, then the sponsor may give the plan to the chief executive, who must then approve the plan (s. 107). However, if there are no endorsed parties the chief executive must first be satisfied that the plan makes enough provision for how the project is to be managed to avoid/minimise harm to Aboriginal/Torres Strait Islander cultural heritage, and that the plan includes effective alternative dispute resolution arrangements (s. 108).

Where there are no endorsed parties and the chief executive refuses to approve the plan, the sponsor may object to the Tribunal. In such cases, the sponsor must file its argument as to why it believes that the plan makes enough provision for the prevention and minimisation of harm to cultural heritage.

Mediation of disputes

If at least 28 days of the consultation period⁶ have passed and a dispute between two or more parties arises that substantially delays the development of the plan, the party may ask the Tribunal to provide mediation of the dispute (s. 106). A presiding member decides whether the dispute is suitable for mediation.

Applications to approve cultural heritage management plans

If mediation is undertaken and is not successful, the mediator may authorise the sponsor to apply to the Tribunal for approval (s. 112). Alternatively, if the consultation period has ended and agreement has not been reached, the sponsor may ask the Tribunal to approve the plan (s. 113).

Hearing of objections and applications

The Tribunal may, but is not required to, conduct a hearing of an objection or application (that is, it may proceed “on the papers”) (s. 116). The Tribunal may order mediation before the hearing if it considers that mediation may resolve a dispute about the plan. All parties to the objection have the right to be heard at the hearing.

The Tribunal is required to recommend to the Minister (s. 117) that:

- the Minister confirm the chief executive’s refusal to approve the plan;
- the Minister refuse to approve the plan;
- the Minister approve the plan; or
- the Minister approve the plan after specified amendments.

⁶ The consultation period is a period of 84 days commencing after the notice period.

In reaching its decision, the Tribunal must include in its considerations:

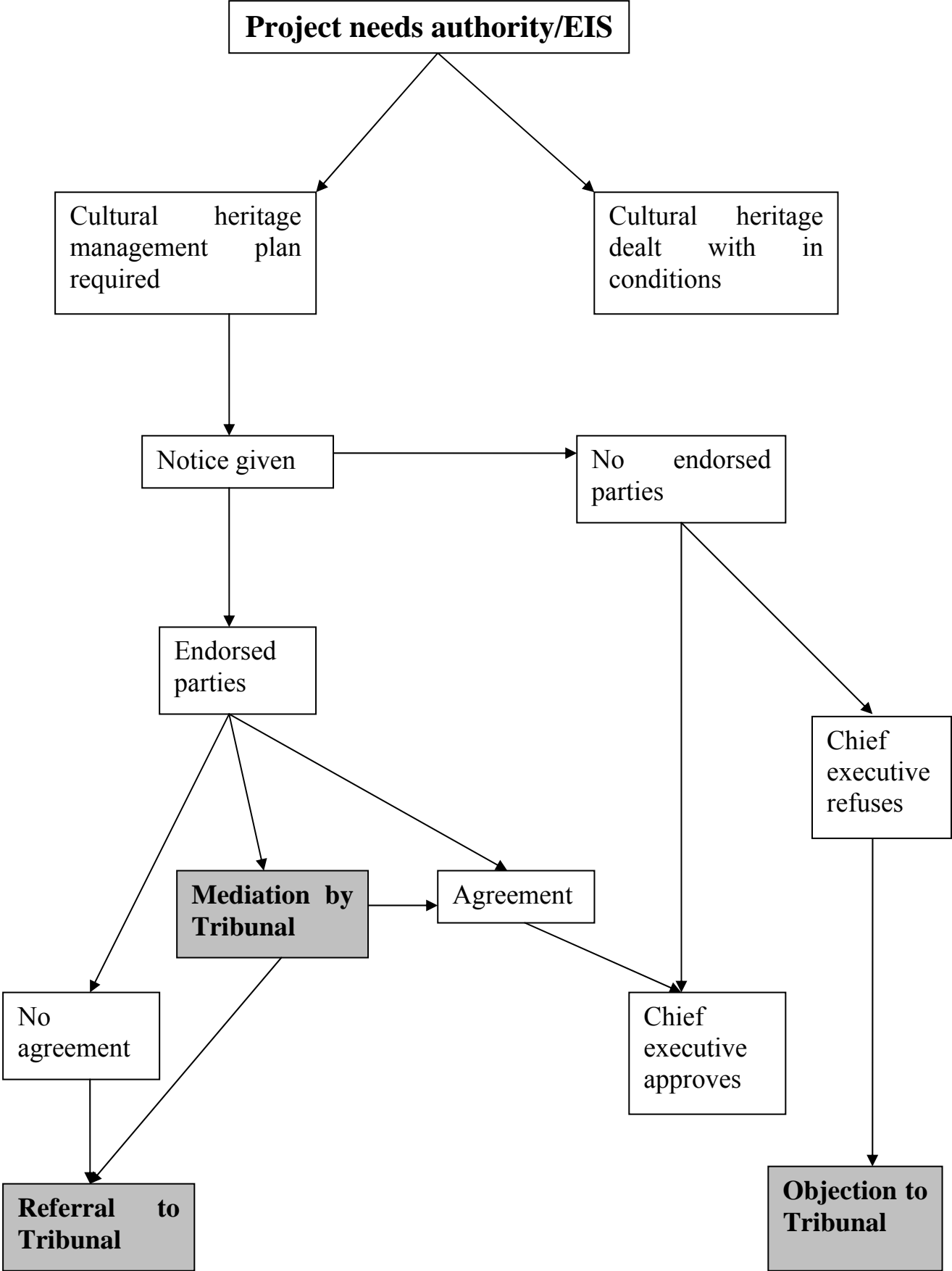
- the availability and quality of documented information about the cultural heritage significance of the plan area;
- the nature of the impacts on the project;
- submissions made by the parties; and
- the nature and extent of past uses of the project area (s. 118(4)).

Before recommending the approval of a plan, the Tribunal must be satisfied that the plan makes enough provision for:

- avoiding damage to cultural heritage;
- minimising damage, where damage can not be avoided;
- providing effective alternative dispute resolution arrangements; and
- where cultural heritage may be taken away – who is to become owner and who is to be custodian of the cultural heritage (s. 118(1)-(3)).

The Minister must have regard to, but is not bound by the recommendation of the Tribunal (s. 120).

Cultural Heritage Management Plan Flowchart



Cultural heritage injunctions

Section 53 of the *Land and Resources Tribunal Act 1999* remains the source of the Tribunal’s exclusive jurisdiction to grant injunctions to stop a person from contravening a cultural heritage protection law. An Aboriginal or Torres Strait Islander group, or member of such a group, has standing to seek an injunction if the group has a traditional, historic or custodial interest in the cultural heritage to which the act relates. The s. 53(2) criteria of which the Tribunal must be satisfied before granting an injunction remain the same (that is, that the person is or is likely to do the act, that the act would be a contravention of the cultural heritage protection provisions, that the applicant has standing, and that the injunction is necessary to stop the person doing the act).

The Tribunal is empowered to grant injunctions against the doing of any act which would be a contravention of ss 24(1), 25(1) or 26(1) of each Cultural Heritage Act, or of a provision of any other Act providing for the protection of Aboriginal or Torres Strait Islander cultural heritage.

Sections 24, 25, and 26 of the Cultural Heritage Acts prohibit a person from harming; excavating, relocating, or taking away; or possessing any Aboriginal or Torres Strait Islander cultural heritage if the person knows or ought reasonably to know that it is cultural heritage. However, a person does not offend these provisions if, amongst other things, the person owns the cultural heritage⁷, is acting in an emergency situation or is acting –

- under the authority of a provision of the Cultural Heritage Acts;
- under an approved cultural heritage management plan;
- under a native title agreement;
- in compliance with cultural heritage duty of care guidelines.

Cultural heritage duty of care guidelines

The duty of care guidelines are “reasonable and practicable” measures established by the Minister and designed to ensure that activities are managed to avoid or minimise harm to cultural heritage (s. 28). At present Aboriginal cultural heritage guidelines have been gazetted, but not Torres Strait Islander duty of care guidelines.

Given that compliance with the guidelines is a complete defence to any alleged contravention of the cultural heritage protection provisions, the guidelines are likely to play an important role in the Tribunal’s consideration of applications for cultural heritage injunctions.

Cultural heritage studies

The Cultural Heritage Acts have established a framework for the conduct of cultural heritage studies. Any person may sponsor a cultural heritage study; however Aboriginal or Torres Strait Islander parties (the “endorsed parties”) are responsible for assessing the level of significance of the areas or objects included in the study (s. 53). The results of a cultural

⁷ Note that s. 15 of each Act provides that ownership over Aboriginal and Torres Strait Islander human remains vests in Aboriginal or Torres Strait Islander people with a “traditional or familial” link with those remains.

heritage study may be recorded in the registers created by the Acts if the study complies with the relevant requirements.

The sponsor of a cultural heritage study may give the study to the chief executive for recording in the register, and the chief executive may either record the findings or refuse to record the findings (s. 71). When considering whether to record the study, the chief executive must have regard to the results and nature of consultation that has taken place between the sponsor and the endorsed parties, may seek expert advice, and may consult with the endorsed parties, the cultural heritage assessors, owners, occupiers and users of relevant land, and relevant local governments (s. 72).

To record the findings of a study in the register, the chief executive must be satisfied of the criteria set out in s. 73(1). These include that the sponsor has complied with the procedures and requirements for conducting the study, the findings are consistent with authoritative information about the study area, and the study includes all information required under the Act, including the extent to which any endorsed party does not agree to the recording of the study in the register.

The sponsor, an endorsed party, an owner or occupier of part of the study area, or a relevant local government may object against the decision of the chief executive to the Tribunal (s. 76). Objections must be lodged within the appeal period (30 days from notification of the chief executive's decision).

Upon receiving an objection, the Tribunal must take all reasonable steps to identify all other parties to the objection and the chief executive must provide all help he/she reasonably can to do this. The Tribunal must advise the other parties of the objection and keep them informed about when the hearing is to be held.

A hearing must be held (cannot be "on the papers") and the Tribunal must be constituted by a presiding member, a presiding member with a single non-presiding member, or a referee non-presiding member who has been appointed as an indigenous issues referee (s. 77). All parties to the objection have a right to be heard at the hearing. The Tribunal may help the parties to negotiate changes to the study before it makes a decision.

After the hearing, the Tribunal must make a recommendation to the Minister (s. 78). If the objection was to the recording of a study, the Tribunal may recommend that the recording be confirmed, that the findings be removed, or that the findings be amending in particular ways. If the objection was to the refusal to record a study, the Tribunal may recommend that the refusal be confirmed, that the findings be recorded, or that the findings be amended and then recorded.

In making a recommendation, the Tribunal must have regard to the matters about which the chief executive was required to be satisfied (ie s. 73(1)) and may include in its considerations the nature and extent of consultations held in carrying out the study.

The Minister must have regard to the Tribunal's recommendation but is not bound by it (s. 79).

Fossicking Act 1994

Appeals

An applicant for a licence or permit under the *Fossicking Act 1994* may appeal to the Tribunal (presiding member or mining referee) against an issuing officer's decision to refuse to grant the licence or permit (s 99(1)).

A licensee may appeal against (s 99(2)):

- a decision of an issuing officer –
 - to impose a condition on a licence; or
 - to refuse to replace a licence; or
- a decision of a mining registrar to suspend or cancel a licence; or
- a decision of an authorised officer resulting in the cancellation of a person's permit under section 78(5) of the Act.

Procedures (s 100):

An appeal is started by filing a written notice of appeal with the mining registrar for the mining district to which the licence or permit applied for relates.

The mining registrar must give a copy of the notice to the authorised officer who made the decision appealed against.

The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against, although the Tribunal may extend the period for filing at any time.

The notice of appeal must state the grounds of the appeal.

Stay of Decision

The Tribunal may stay a decision appealed against to secure the effectiveness of the appeal (s 101(1)). A stay:

- may be given on conditions the Tribunal considers appropriate;
- operates for the period specified by the Tribunal; and
- may be revoked or amended by the Tribunal.

The period of a stay specified by the Tribunal must not extend past the time when the Tribunal decides the appeal. The starting of an appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed (s 101(4)).

Hearings

An appeal is by way of rehearing (s 102). In deciding an appeal, the Tribunal is not bound by the rules of evidence and must observe natural justice.

Power of Tribunal on appeal

In deciding an appeal, the Tribunal may (s 103) –

- confirm the decision appealed against; or
- set aside the decision and substitute another decision; or
- set aside the decision and return the decision to the authorised officer, issuing officer or mining registrar with directions the Tribunal considers appropriate.

In substituting another decision, the Tribunal has the same powers as an authorised officer, issuing officer or mining registrar. If the Tribunal substituted another decision, the substituted decision is taken to be the decision of the authorised officer, issuing officer or mining registrar (s 103).

Petroleum Act 1923

The *Petroleum Act 1923* remains in force but the new *Petroleum and Gas (Production and Safety) Bill 2004* is set to replace the 1923 Act for new tenements (see next section). References in the *Petroleum Act 1923* to the warden or Wardens Court are to be read as references to the Tribunal (LRT Act s 86).

Permit

Note: This provision is no longer used.

Permits last for two years, commencing on the first day of the month which next follows the day on which the application was lodged with the Tribunal (s 29).

Procedures:

An application for a permit is to be lodged with the Tribunal along with a fee equal to 40 cents for every square kilometre of land or part thereof applied for, such sum going towards the first year's rent (s 26).

On receipt of the application for a permit, the Tribunal is to forward it to the Minister along with references and other prescribed documents together with the Tribunal's report thereon (s 27).

Extension of Permit

Note: This provision is no longer used.

The holder of a permit may apply for an extension.

Procedures:

An application for extension shall be addressed to the Minister and filed with the Tribunal or with the chief executive (s 30).

Compensation

The Tribunal has the power to determine the amount of compensation payable by the holder of an authority to prospect on any private land or improved land (s 18).

If the holder of a permit determines to drill on any portion of private land or improved land covered by the permit, the holder shall, before commencing such drilling, apply to the Tribunal to determine the amount of compensation payable in respect of the operations during the first year of the period of the permit (s 36). At the end of the first year, the Tribunal will determine if any further compensation is payable for that year and compensation payable for the balance of the permit.

Procedures:

Notice of the application is to be given by the Tribunal to the owner or occupier of the private land or improved land, or, if the land is vacant, shall be affixed in some conspicuous place on the land (s 36).

Cancellation of Permit

Note: This provision is no longer used.

If the Minister has cause to believe that the holder of the permit is not complying the provisions of the Act or the conditions of the permit, the Minister may order the Tribunal to call upon the holder of the permit to show cause why the permit should not be cancelled.

Procedures:

The Tribunal shall give at least 14 days notice to the holder or the holder's agent to appear before it and show cause why the permit should not be cancelled.

After having heard the matter in open court, the Tribunal shall forward the evidence to the Minister, who, if satisfied that it is just to do so, may cancel the permit, and the decision of the Minister shall be final and without appeal (s 38).

Lease to person other than a holder of authority or permit

A person other than a holder of an authority to prospect or a permittee who satisfies the Governor-in-Council that they have discovered payable deposits of petroleum with certain land can obtain a lease of that land.

Procedures:

The application is to be made to the Tribunal and shall be heard by the Tribunal in open court on a date not earlier than two months after the making of the application.

The Tribunal is to fix a date for the hearing and give not less than 14 days prior public notice thereof by advertisement in a Brisbane newspaper and a newspaper circulating in the locality of the land the subject of the application.

The Tribunal is to make a record of the evidence heard and transmit such record to the Minister together with a finding as to whether or not the applicant has proved to the Tribunal's satisfaction that the applicant has discovered payable deposits of petroleum within the limits of the land specified in the application (s 42).

Compensation Agreements

The permittee or lessee or holder of an authority to prospect or licensee or other person by whom compensation is payable may agree with the persons severally entitled to compensation as to the amount of such compensation.

No such agreement shall be valid unless it is in writing, signed by the parties and filed in the Tribunal.

If within the prescribed time the parties are unable to agree on the amount of compensation, then either party may apply to have the amount determined in the Tribunal (s 98).

Limits on use of water from natural source

Note: This jurisdiction has been superseded by the *Water Act 2000*, however outstanding disputes may exist, requiring the exercise of jurisdiction by the Tribunal.

Where there is a dispute in respect of the taking of water from a natural source by the holder of an authority to prospect, permittee, lessee or licensee, any party to the dispute may refer the issue to the Tribunal. The Tribunal has jurisdiction to determine the quantity of water to be taken from the source by the parties and the time and manner of taking water (s 95).

Miscellaneous

All rents are payable to the Tribunal unless the Minister directs otherwise (s 46). The Minister has directed that rents be paid to the CEO of the Department of Natural Resources, Mines and Energy.

Every entry upon, occupation of, or interference with any land the subject of a permit or lease or authority to prospect shall be deemed to be a trespass unless such entry, occupation, or interference is authorised by the Minister. Every permittee or lessee or holder of an authority to prospect may proceed in the Tribunal for such trespass and for damages in respect thereof (s 64).

The Minister may recover payment of rental, fees or other moneys from a person who has surrendered an authority to prospect in the Tribunal as a debt due to the Crown (s 21).

Petroleum and Gas (Production and Safety) Bill 2004

Please Note: this section discusses the *Petroleum and Gas (Production and Safety) Bill 2004*. This legislation has not yet been passed into law by Parliament.

Summary

The *Petroleum and Gas (Production and Safety Bill) 2004* is a large piece of legislation that establishes a “new competitive petroleum tender regime”. The Bill regulates petroleum exploration and production activities and pipeline licensing other than distribution. It also manages safety and technical matters for the upstream and downstream petroleum industries and gas consumers.

The Bill is prospective in its application. In order avoid difficulties with native title considerations, the existing *Petroleum Act 1923* will be retained subject to amendment⁸. Current petroleum tenures will remain under the old Act and all new tenures will be managed under the new Act.

The types of authorities available under the Bill are:

- authority to prospect (ATP)
- petroleum lease
- data acquisition authority
- water monitoring authority
- survey licence
- pipeline licence
- petroleum facility licence
- gas work licence
- gas work authorisation

The authorities, other than a gas work licence or authorisation, are referred to collectively as petroleum authorities. Authorities to prospect and petroleum leases are referred to as petroleum tenures.

The Bill covers a wide range of matters of some complexity. This paper focuses on the Bill’s relationship with the *Mineral Resources Act 1989* and the role of the Land and Resources Tribunal. A brief overview of the general provisions of the Bill is available from *Allens Arthur Robinson*⁹.

The main areas of Tribunal jurisdiction under the Bill are:

- Appeals against decisions
- Compensation
- Coordination of adjoining leases
- Decisions regarding underground water rights
- Preference decisions

⁸ The *Petroleum and Other Legislation Amendment Bill 2004* was, at time of writing, in draft format. It will, in part, effect amendments to the *Petroleum Act 1923* and implement transitional arrangements.

⁹ See: <http://www.aar.com.au/pubs/res/formay04.htm>.

- Access rights and agreements
- Notifiable road usage

Appeals against decisions

The Bill contains general appeal provisions which will apply to a range of matters before the Tribunal. A person affected by any of the decisions listed in table 2 of schedule 1 may appeal to the Tribunal (s. 823). These decisions include matters concerning authorities to prospect, petroleum leases, water monitoring authorities, provisions for existing Water Act bores, coordination arrangements, licences, non-compliance action and other decisions¹⁰.

A person must start an appeal within 20 business days of receiving notice of the decision, although the Tribunal may extend the appeal period at any time within that time (s. 824). An appeal is started by written notice to the Tribunal, a copy of which must be lodged with the Department (s. 825). The Tribunal may grant a stay to secure the effectiveness of the appeal, and an appeal only affects the decision if a stay is given (s. 826).

In hearing the appeal the Tribunal has the same powers as the original decision maker and is not bound by the rules of evidence (s. 827). The appeal is a rehearing, unaffected by the original decision and in procedural accordance with the Tribunal's rules. The rules of natural justice must be complied with and the appeal may be heard in court or in chambers.

The Tribunal may confirm the decision under review, or set it aside and either substitute a new decision or remit the decision with appropriate directions (s. 828). Any substituted decision is, except for the appeal provisions, treated as the original decision. Decisions of the Tribunal are final, with appeals on questions of law only¹¹.

These appeal provisions will also apply to certain decisions made under new provisions of the MRA¹².

Compensation

The Bill includes general provisions for the compensation of owners and occupiers of relevant land (s. 531). A petroleum authority holder must not enter private land unless compensation has been agreed to, an application has been made to the Tribunal or an agreement to defer compensation has been reached (s. 536).

The holder of a petroleum authority is liable to compensate each owner or occupier (an "eligible claimant") of (a) private or public land in the petroleum authority area and (b) access land for any compensatable effect caused by authorised activities and any consequential damages incurred because of a compensatable effect.

A compensatable effect means: deprivation of possession of the land's surface; diminution of the land's value; diminution of the use made, or that may be made, of the land or any

¹⁰ See Appendix One for the full list of decision against which a person may appeal to the Tribunal.

¹¹ *Land and Resources Tribunal Act 1999* s. 67.

¹² See Appendix Two.

improvement on it; severance; and any cost or loss arising from the carrying out of activities under the petroleum authority on the land. According to the Explanatory Memorandum, these heads of compensation are aligned “to an appropriate extent ... with those in the *Mineral Resources Act 1989*”.

The parties may enter into a compensation agreement or may apply to the Tribunal for it to decide the authority holder’s compensation liability (ss 532-3). However, the Tribunal may only decide compensation liability to the extent that it is not subject to an existing agreement.

Where there has been a material change in circumstances, a party may apply to the Tribunal for a review of compensation liability (s. 534). The Tribunal may only review compensation to the extent that is affected by the change, and if the Tribunal considers that compensation is not affected by the change it must not carry out or continue the review. Following a review, the Tribunal may either confirm or amend the compensation. Amended compensation is treated as the original compensation.

The Tribunal may make any order that it considers appropriate to meet or enforce its compensation decision and may order non-monetary compensation (s. 535).

Coordination of adjoining leases

The Bill provides a framework for managing petroleum resources where an underground reservoir is covered by two or more adjoining petroleum lease areas (s. 113). In such cases, the lease holders may make coordination arrangements¹³ regarding the petroleum to be produced (s. 114). A petroleum lease holder must not produce petroleum that is likely to come from an adjacent lease area unless there is a coordination agreement between the lease holders or a decision by the Tribunal (s. 115).

Coordination agreements entered into by parties require the approval of the Minister (s. 236). In certain circumstances, the Minister may cancel such agreements (s. 242) and an affected party may appeal against the cancellation to the Tribunal (Schedule 1).

If no coordination agreement has been made, either party may apply to the Tribunal to decide the amount or proportion of petroleum owned by each party, how the parties are to bear the cost of production or how production is to be coordinated (s. 116(2)).

In making its decision, the Tribunal must (a) consider whether the safety of production activities on any adjoining mining or petroleum lease would be compromised; (b) attempt, having regard to the public interest, to optimise petroleum production under the leases in a way that maximises benefit; and (c) may make its decision without regard to who under any law otherwise would own the petroleum (s. 116(4)).

Amendments to the MRA will insert similar provisions to manage situations where an underground reservoir extends from the area of one coal or oil shale mining lease to the area of another coal or oil shale mining lease or a petroleum lease. The Tribunal will have jurisdiction to hear applications if no coordination arrangement is reached between the lease holders.

¹³ Part 8 of Chapter 2 deals with the making of coordination arrangements.

Decisions regarding underground water rights

A petroleum tenure holder has the right to take or interfere with underground water in the tenure area in relation to authorised activities (s. 185). The Bill also creates a “make good obligation” if the exercise of the right unduly affects an existing Water Act bore (s. 250). The tenure holder must take measures to restore the supply of water to the owner of the bore or to compensate the owner. Where there are multiple tenure holders, this obligation applies to each of them jointly and severally (s. 251(2)).

The petroleum tenure holder must make reasonable attempts to negotiate a “make good agreement” with the owner of an existing Water Act bore about how a make good obligation for the bore is to be complied with (s. 272). A make good agreement may be included in a general compensation agreement.

Where the tenure holder and the bore owner can not agree on how the make good obligation is to be complied with, the Tribunal has jurisdiction to hear and decide the matter (s. 273). Any of the parties may apply to the Tribunal for a determination and each separate tenure holder must be made a party to the proceedings (s. 274).

The Tribunal may decide how the make good obligation is to be complied with, however it may only make the decision to the extent that the obligation is not subject to a make good agreement between the parties. Further, the Tribunal may only order monetary compensation if it considers that it is not reasonably feasible for the make good obligation to be complied with by the taking of restoration measures (s. 275(2)).

If the make good obligation arose because of the exercise of rights of more than one tenure holder and those tenure holders have not agreed between themselves how much each should contribute, the Tribunal may decide their contributions (s. 275(4)). The tribunal may make any order it considers appropriate to meet or enforce its decision (s. 275(3)).

If the Tribunal decides that compensation is to be part of the tenure holder’s compliance with the make good obligation, the compensation amount may only be for (a) diminution, due to the exercise of water rights, of the value of the owner’s land on which the bore is located or use the owner may make of the water; or (b) any cost or loss caused by impaired capacity of the bore (s. 276(2)). In deciding the amount of compensation, the Tribunal may consider any restoration measures attempted by the tenure holder and must as far as practicable decide the compensation at the same time as it makes any decision under the general compensation provisions(s. 276(3) & (4)).

Where there has been a material change in circumstances since a make good agreement or decision, the bore owner or petroleum tenure holder may apply to the Tribunal for a review of the original agreement or decision (s. 278). In conducting the review, the Tribunal may review the agreement or decision only to the extent that it is affected by the material change. Following review, the Tribunal may either confirm or amend the agreement or decision. An amended agreement or decision is taken to be the original agreement or decision.

Preference decisions

Where a petroleum lease application is made over land subject to a coal or oil shale exploration tenement, there must either be agreement between the applicant and the tenement holder or the minister must decide whether to give coal or oil shale development preference.

The Minister must first be satisfied that there is a deposit of coal or oil shale in the land that is identified under the relevant code, that there is an adequate level of knowledge about the deposit with details of the deposit known from specific geological evidence and that there are reasonable prospects for the eventual economic mining of the deposit (s. 318).

The Minister must decide whether to grant the petroleum lease application or to give any coal or oil shale preference for the land (the “preference decision”; s. 319). Before making this decision, the matter must be referred to the Tribunal for recommendations to the Minister about what preference decision should be made (s. 320).

The referral starts proceedings in the Tribunal and the parties are the petroleum lease applicant and the coal or oil shale exploration tenement holder. In making its recommendation, the Tribunal must consider the coal seam gas (CSG) assessment criteria (in s. 305) and must only recommend any coal or oil shale development preference if satisfied of the criteria in s. 321, including that the petroleum developer and coal or oil shale developer are unlikely to reach a coordination arrangement and that the public interest is best served by not granting the petroleum lease first.

Amendments to the MRA will introduce mirror provisions that apply where there is an application for a mining lease over an area subject to a petroleum authority. If the existing lease holder does not consent to the new application, a reference must be made to the Tribunal for a recommendation to the Minister about whether the mining lease should be granted or whether priority should be given to petroleum development.

Access rights and agreements

The Bill will establish a framework for access to private land falling outside the area of a petroleum authority. An authority holder will have the following access rights: the right to cross land if it is reasonably necessary to allow the holder to enter the authority area; and the right to conduct activities on land that are reasonably necessary to allow the crossing of the land (s. 502). The activities that the tenement holder is authorised to carry out may include things that have no permanent impact on the land, such as opening a gate, or things that do have a permanent impact on the land, such as building a road.

These access rights may only be exercised after there is an access agreement with each owner and occupier where there is likely to be permanent impact on the land, or agreement with each occupier where there will be no permanent impact (s. 503).

An owner or occupier of access land must not unreasonably refuse to make an access agreement (s. 504). The imposition of reasonable and relevant conditions on the access agreement is not to be considered unreasonable (s. 504(2)), but if no agreement is reached within 20 days the owner or occupier is taken to have refused (s. 504(3)).

Section 505 sets out the principles for deciding whether crossing of land by an authority holder is reasonably necessary, whether it is reasonably necessary for the authority holder to carry out activities on the land to allow crossing and whether an owner or occupier has unreasonably refused to make an access agreement. First, the authority holder must show that it is not possible or reasonable to exercise the access rights by using a formed road. Next, consideration must be given to the extent of any impact on the land or the owner or occupier's use and enjoyment of it and how, when and where the holder proposes to exercise the access rights.

If there is a dispute between the authority holder and the owner or occupier about the issues in s. 505, an application may be made to the Tribunal for a determination (s. 508(1)). In making its decision, the Tribunal may apply any conditions it thinks appropriate. Where there is an existing access agreement, any conditions imposed are considered to be conditions of that agreement. Where there is no agreement in place, the conditions are taken to constitute an access agreement between the parties.

A petroleum authority holder or an owner or occupier may also apply to the Tribunal to vary an existing access agreement, but the Tribunal may only vary it if change is appropriate because of a material change of circumstances (s. 509). In all decisions regarding access rights, the Tribunal must have regard to the s. 505 principles.

Notifiable road usage

It is a condition of each petroleum authority that the holder must not use a public road for any notifiable use unless the holder has given the public road authority notice of the use (s. 516). A notifiable use is use of a public road in the area of the authority for transport relating to seismic survey or drilling equipment or use for transportation of petroleum produced in the area or relating to construction of a pipeline, if that transportation exceeds certain tonnages (s. 515).

The public road authority may give road use directions about how the petroleum authority holder may use the road in order to preserve the road's condition and safety (s. 517). The holder must comply with these directions (s. 518).

The authority holder is liable to compensate the public road authority for any loss or damage caused by notifiable road uses (s. 519). The parties may enter into a compensation agreement (s. 520) or may apply to the Tribunal for a compensation decision (s. 521). The authority holder must not carry out notifiable road uses on public roads unless there is a compensation agreement, a compensation application has been made to the Tribunal or the public road authority has given written consent (s. 524).

In considering compensation applications, the Tribunal may only decide compensation liability to the extent that it is not subject to a compensation agreement (s. 521(2)). The Tribunal may have regard to whether the applicant has attempted to mediate or negotiate compensation (s. 521(3)).

Section 522 sets out criteria which the Tribunal must include in its consideration. These include (a) the reasonableness of the cost, damage or loss claimed; (b) if the road authority is a local government, the extent to which the amount should be paid from amounts received for notifiable road uses or for rates and charges; and (c) any other relevant matter. In considering

the reasonableness of the cost, loss or damage claimed the Tribunal must have regard to any action or proposal by the authority holder to minimise the cost or damage and any relevant act or omission of the public road authority.

Where compensation has been agreed or decided and there is a material change in circumstances, a party may apply to the Tribunal for a review of compensation (s. 523). In the review, the Tribunal must consider the same criteria as when making a compensation decision as well as having regard to the original compensation, whether the applicant has attempted negotiation and any change in the s. 522 criteria. The amended compensation is taken to be the original compensation.

Relationship with the MRA

The Bill makes provision for its relationship with the *Mineral Resources Act 1989* (MRA). In general terms, a petroleum authority may be granted over land which is also subject to a mining tenement, but the petroleum authority holder may not carry out authorised petroleum activities unless the mining lease holder consents (s. 6). A new s. 3A will be inserted into the MRA to similarly establish that a mining tenement may be granted over land which is subject to a petroleum authority, but mining activities may only be commenced with consent of the petroleum authority holder.

The definition of “mineral” will be moved from the dictionary into the main part of the MRA and become s. 6. What was previously referred to as hydrocarbon will be known as coal seam gas¹⁴.

Section 234 will be amended so that coal seam gas can not be specified in a mining lease. A coal mining lease will include a right to mine incidental coal seam gas, but commercialisation of coal seam gas will need to be undertaken under a petroleum lease.

A new subsection will be added to s. 269, dealing with the Tribunal’s recommendation in respect of mining lease applications. Where the application is for a coal mining lease and a preference decision is required¹⁵, the Tribunal can not recommend against grant of the lease for the purpose of giving a preference to petroleum development. This ensures that the Minister retains control over preference decisions.

The Bill will insert a new Part 7AA dealing with coal seam gas into the MRA. Part 7AA will clarify miners’ rights to access coal seam gas and manage situations where both a coal or oil shale mining lease and a petroleum lease are granted over the same area. As noted above, the Tribunal will have jurisdiction in relation to coordination of adjoining leases and preference decisions.

¹⁴ See Explanatory Memorandum, p. 206.

¹⁵ This may occur where the application is over land subject to a petroleum authority.

Water Act 2000

Where:

- an applicant makes a development application for certain assessable development under the *Integrated Planning Act 1997*; and
- the assessable development is related to an activity authorised under the *Mineral Resources Act 1989*; and
- the applicant has applied under the *Mineral Resources Act 1989* for authorisation to carry out the activity

the applicant may appeal against a decision about the development application to the Tribunal (s 972).

Environmental Protection Act 1994

The Tribunal has a role in the granting of environmental authorities for mining activities. A decision by the administering authority to refuse an environmental authority (mining lease) application is subject to appeal to the Tribunal (chapter 6, part 3).

At the decision stage, current objections are referred to the Tribunal.

Procedures:

The administering authority refers objections by filing a notice in the approved form with the registrar of the Tribunal.

Any party can ask the Tribunal to mediate objections (s 34HK).

Any objection decision is a recommendation to the MRA Minister. A copy is given to the EPA Minister. The compensation can be agreed before the relevant act is done. The MRA Minister advises the EPA Minister and the EPA Minister then makes the decision.

The Tribunal also hears appeals from certain original decisions of the administering authority (s 203A). Any party can ask for mediation (s 203D).

Offshore Minerals Act 1998

Under s86 of the LRT Act all references to the warden in the *Offshore Minerals Act 1998* are taken to be references to the Tribunal.

Caveats

The Tribunal may (s 351(1)):

- order the removal of a caveat from a tenure
- order the Minister to register a dealing despite a caveat
- extend the period before which a caveat ceases to have effect after the caveat holder is given notice of a proposed dealing in the tenure

If the Tribunal orders the removal of a caveat or the registering of a dealing despite a caveat and it is satisfied that the caveats are being used vexatiously, the Tribunal may order that the Minister not register any caveat in relation to the tenure without the Tribunal's consent (s 351(2)).

Where a caveat is in force in respect of a tenure, the Minister must not register a dealing in the tenure unless the Tribunal orders the Minister to so register the dealing despite the caveat (s 341(1)). Similarly, the Minister must not register a person as a tenure holder under s 340 unless the Tribunal orders the Minister to so register the person despite the existence of a caveat (s 341(2)).

Correction of register

A person aggrieved by the omission of an entry from the offshore mining register, an entry wrongly existing in the register or an error or defect in an entry in the register may apply to the Tribunal for an order directing correction of the register (s 354(1)). The Tribunal may make any order it considers appropriate directing the correction of the register and the Minister must amend the register to comply with the order.

Penalties and costs

The State may apply to the Tribunal to recover any amount of any fee, royalty or penalty that is payable (s 437). The Minister may apply to the Tribunal to recover certain expenses against a tenure holder when the Minister takes action when the holder fails to comply with certain directions (s 396).

Compensation for acquisition of property due to suspension of rights

If the Minister suspends tenure rights under s 48, 135 or 195 and the suspension results in the acquisition of property from a person, the person may bring an action for compensation against the state in the Tribunal (ss 49(2), 136(2) & 196(2)). The State must pay the amount of compensation, if any, determined by the Tribunal.

Criminal jurisdiction

A proceeding for an offence against the Act may be taken before the Tribunal by way of summary proceedings under the *Justices Act 1886* (s 442). Such proceedings must be taken within 1 year of the commission of the offence or within 6 months of the commission of the offence coming to the complainant's knowledge (but within two years of its commission).

For a proceeding taken before it by way of summary procedure under the *Justices Act 1886* the Tribunal has and may exercise all the powers of a Magistrates Court subject to and in accordance with that Act (s 442(2)).

An offence under s 404(3) (certain vessels entering safety zone without consent) may be prosecuted either by way of summary proceedings or on indictment at the prosecution's election. However, the Tribunal must not hear the offence summarily if the defendant asks that the charge be prosecuted on indictment or if the Tribunal considers that the charge should be prosecuted on indictment. If the charge is to be prosecuted on indictment, the Tribunal must proceed with a committal hearing. The table on the following page summarizes the offences under the Act.

Federal jurisdiction

Section 438(1) of the Queensland *Offshore Minerals Act 1998* provides that the Tribunal may exercise any jurisdiction that is conferred on it by the *Offshore Minerals Act 1994* (Cth). Under the Commonwealth Act, Queensland's laws apply to the Commonwealth-State offshore area and Queensland courts are invested with federal jurisdiction in all matters arising under those laws (ss 428 & 435).

The Commonwealth Act vests Queensland courts with federal jurisdiction with respect to matters arising under that Act. The Commonwealth Act provides that a court of competent jurisdiction has powers in relation to caveats that essentially replicate the Queensland Act provisions (s 351 of the Commonwealth Act).

The Commonwealth Act also vests Queensland courts with federal jurisdiction with respect to the recovery of relevant fees and debts under the associated revenue Acts, which include:

- *Offshore Minerals (Exploration Licence Fees) Act 1981* (Cth)
- *Offshore Minerals (Mining Licence Fees) Act 1981* (Cth)
- *Offshore Minerals (Registration Fees) Act 1981* (Cth)
- *Offshore Minerals (Retention Licence Fees) Act 1994* (Cth)
- *Offshore Minerals (Royalty) Act 1981* (Cth)
- *Offshore Minerals (Works Licence Fees) Act 1981*(Cth)

Table: Offences and penalties under the Offshore Minerals Act 1998.

Section	Offence	Maximum penalty	
		Individual	Company
38	Exploring for or recovering minerals in coastal waters without authority.	\$30 000	\$150 000
44	Unnecessary interference with other activities in tenure area by tenure holder.	\$10 050	\$50 250
123, 183, 259, 308	Failure to take reasonable steps to ensure activities carried out to acceptable standard, tenure area equipment in good repair, remove property from area not used for authorised activities.	\$20 025	\$100 125
124, 184, 261, 309	Failure to keep and provide specified records.	\$10 050	\$50 250
125, 185, 262, 310	Failure to provide reasonable facilities and help to inspector.	\$5 025	\$25 125
364	Failure to comply with Ministerial request for information relating to transfer of tenure.	\$5 025	\$25 125
372(1)	Failure to comply with a Ministerial request under s 367, 368, 369, 370 or 371 (asking questions on oath, requiring documents, samples etc).	\$10 050	\$50 250
372(3)	Giving false or misleading information in response such a request/question under s 367, 368, 369, 370 or 371.	\$10 050	\$50 250
374	Person with access to certain confidential material held by Minister must not disclose it.	\$124 500	\$622 500
384(1)	Occupier of place must provide inspector with facilities and help reasonably required.	\$5 025	\$25 125
385(1)	Failure to comply with Ministerial directions.	\$10 050	\$50 250
385(2)	Failure to comply with supplementary Ministerial directions.	\$5 025	\$25 125
391	Failure of tenure holder to give notice of relevant directions to associate.	\$5 025	\$25 125
404(3)	Owner/commander of certain vessels commit indictable offence if enter safety zone without consent.	\$311 250 (\$10 050 if prosecuted summarily)	\$1 556 250 (\$50 250 if prosecuted summarily)
423	Failure of former inspector to return identification card.	\$105	n/a

Geothermal Exploration Act 2004

Please Note: this section discusses proposed jurisdiction for the Tribunal. The provisions of the *Geothermal Exploration Act 2004* referred to below have not yet commenced operation.

Overview

Geothermal energy is heat from inside the earth's crust. These 'hot rocks' can be used to generate electricity through either injecting water in to be heated, or drawing upon existing water. Australia's only geothermal power plant is located at Birdsville, Queensland, where bore water is the heat source for electricity generation.

The *Geothermal Exploration Act 2004*, introduced to Parliament by the Minister for Natural Resources, Mines and Energy, provides a framework for the exploration for Queensland's geothermal resources. The Act defines geothermal energy as heat energy derived from natural geological processes and vests all geothermal energy in the State (s. 11). Exploration and extraction of geothermal energy is forbidden unless authorised under the Act. The Act does not provide a framework for the extraction and development of geothermal resources, but draft legislation for this purpose is expected in late 2004.

The Act provides for the granting of geothermal exploration permits through a process of competitive tender (s. 16). The Act envisions a process where the Minister invites tenders for a "tender release area" (s. 17). Any person may submit a tender for a permit (s. 20) and a person who is an owner of, or who has an interest (including mining interest) in, the relevant area (an "affected person") may make a submission in respect of the call for tenders (s. 25).

Upon the close of the tender period, the Minister considers the tenders and decides if, or in what way, to grant a permit (s. 26). There are "suitability criteria" for deciding whether to grant a permit (s. 28) and the Minister may impose "tenure conditions" (but not for the management of environmental impacts) on the permit (s. 29). The Minister may also require the tenderer to obtain an authority or license under some other Act before granting the permit (s. 30; for example, Minister may require an environmental authority).

The term of a permit must be 1, 2 or 3 years (s. 33) and the permit authorises the holder to carry out geothermal exploration in the permit area (s. 35), although notice of entry upon land must be given to landholders, native title bodies and the chief executive (ss. 91 & 96). A person who has a right to enter the permit area, but is not the permit holder, must not unreasonably obstruct the permit holder (s. 38) and the permit holder must not unreasonably obstruct any other person with a right of access to the area (s. 45).

Sections 40 to 52 set out the mandatory conditions for each permit that is granted. These include that the holder must achieve agreed specific objectives (s. 41), pay an annual rent to the State (s. 43), and give notice of any significant discovery of geothermal material, petroleum or minerals (s. 50).

Interaction of the Act with mining and petroleum tenures

The Act itself does not limit or affect the power to grant leases and permits under the *Mineral Resources Act 1989* (MRA) or the *Petroleum Act 1923* (PA) (ss 6-7). However, activities under an MRA prospecting permit, exploration permit or mineral development license or a PA authority to prospect can not be carried out if they would adversely affect geothermal exploration that has already commenced in an area (ss. 6-7).

On the other hand, geothermal exploration can not be carried out on land subject to a mining interest if the geothermal exploration would adversely affect mining activities that have already commenced (s. 35). Further, the MRA will be amended so that a mining claim is not to be granted over land for which there is geothermal exploration permit unless the permit holder gives written consent (s. 151). An amendment will also require an applicant for a mining lease for land over which a geothermal exploration permit is held to obtain the permit holder's consent (s. 152).

Tribunal's role

The Act provides (s. 137) that the Tribunal may award costs in proceedings under the Act, despite s. 50(1) of the *Land and Resources Tribunal Act 1999* (costs only in special circumstances). In all matters under the Act, the Tribunal would be constituted by a presiding member (Part 4, Amendment of LRT Act).

General appeal provisions

Part 2 of Chapter 7 of the Act deals with appeals to the Tribunal. Any person who has received (or should have received) an "information notice" regarding a decision of the Minister or chief executive may appeal to the Tribunal against that decision. The Act provides that an information notice is to be issued when a decision goes against a permit holder in respect of amendments of permits or transfer of bores (ss 58, 81, 126-8).

These appeals must be commenced within 20 days of the person receiving the information notice, although the Tribunal may extend the appeal period any time within that 20 days (s. 110). The Tribunal may grant a stay of the decision pending the hearing of the appeal (s. 112). The appeal hearing is a rehearing and is not affected by the original decision (s. 113). The Tribunal may hear the appeal in court or in chambers and has the same powers as the original decision maker (s. 113). The Tribunal may confirm, set aside and substitute, or set aside and remit the decision (s. 114) and the Tribunal's decision is final, subject only to ordinary appeal provisions (questions of law).

The general appeal provisions apply to matters relating to the amendment of permits. The holder of a permit may apply to the Minister to amend the conditions of a permit (s. 57). If the Minister decides to refuse all or part of the application, an information notice must be issued to the permit holder, triggering the right to appeal to the Tribunal.

The Minister also has the power to amend, cancel or suspend the permit without an application from the permit holder, so long as the holder agrees or certain grounds are established (such as a contravention of the Act, the Minister believes the holder is unsuitable, or there is a significant change of interests in the permit; ss 72-76). Where the permit holder

does not agree, the Minister must follow set procedures, including allowing the holder to make submissions (s. 78). If the Minister goes ahead with the amendment, cancellation or suspension, an information notice must be given to the permit holder, who can then appeal to the Tribunal.

The general appeal provisions also apply to decisions regarding the transfer of bores. The Minister's approval is required before a bore is transferred to a permit holder (s. 126), from a permit holder to a landholder or mining interest holder (s. 127), or from a permit holder to the State (s. 128). If the Minister refuses approval, an information notice is to be issued and the permit holder may appeal to the Tribunal.

Access to restricted land

The Act establishes a role for the Tribunal where a permit holder requires access to restricted land. Restricted land¹⁶ is defined as any land that is within the permit area and:

- over which there is a production interest (ie, mining claim/lease, petroleum lease, or pipeline easement under the PA), a reserve under the Land Act, or a state forest or timber reserve under the Forestry Act; or
- which is within 100m of buildings such as accommodation or businesses, or within 50m of certain other things, such as a principal stock yard or a Aboriginal or Torres Strait Islander significant area.

A permit holder may only enter upon restricted land if each landholder or person with a production interest gives consent or the Tribunal gives consent (s. 87). A permit holder may apply to the Tribunal for access consent if the landholder/production interest holder has not given consent, or may apply to vary the conditions of a granted consent (s. 89).

The Tribunal may give or vary the consent only if satisfied that either:

- consent is effectively unobtainable (reasonable attempts to contact landholder/production interest holder have failed); or
- the permit holder has used reasonable attempts over at least 3 months to negotiate access consent, but the landholder/production interest holder has unreasonably refused or sought to impose unreasonable conditions on consent.

Compensation

The Act also establishes a role for the Tribunal in the determination of compensation to certain persons. A permit holder must compensate a landholder, a person with a production interest, or an owner of an item for a "compensatable effect" (s. 100). A compensatable effect is:

- (a) all or any of the following in relation to the claimant's land –
 - (i) deprivation of possession of its surface;
 - (ii) diminution of its value;
 - (iii) diminution of the use made, or that may be made, of the land or any improvement on it;

¹⁶ Restricted land in the Bill follows the definition of restricted land in the *Mineral Resources Act 1989*, Schedule Dictionary.

- (iv) severance of any part of the land from other parts of the land or from other land that the claimant owns; and
- (b) any cost or loss arising from the carrying out of activities under the geothermal exploration permit or the exercise of access rights under this Act on the claimant's land or of the item.

A claimant may apply to the Tribunal for a compensation order (s. 101). The Tribunal may only order compensation if it is satisfied that it is just to make the order in the circumstances.

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