NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT BILL 1999

EXPLANATORY NOTES

Title of the Bill

Native Title (Queensland) State Provisions Amendment Bill 1999

Policy Objectives of the Bill

The policy objectives of the Bill are:

- To facilitate the establishment of a simple and straight forward workable mechanism to deal with future acts which might affect native title with respect to mining.
- To ensure compliance with sections 43 and 43A of the Commonwealth Native Title Act which allow for Alternative State Provisions to have effect instead of the right to negotiate provisions under the Commonwealth Native Title Act.
- To ensure compliance with sections 26A and 26B of the Commonwealth Native Title Act so that certain acts, approved by the Commonwealth Attorney-General, may be exempted from the right to negotiate provisions under the Commonwealth Native Title Act.
- To make associated amendments to the *Mineral Resources Act 1989, Fossicking Act 1994*, the *Native Title (Queensland) Act 1993 and the Land and Resources Tribunal Act 1999.*

Achieving the Policy Objectives of the Legislation

The proposed legislation achieves these policy objectives by:

- Amending the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* to omit parts 12 to 18 of the *Mineral Resources Act 1989* and insert new parts 12 to 19 which contain native title provisions.

- Amending the *Mineral Resources Act 1989* and the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* in order to ensure compliance with the requirements of section 26A of the Commonwealth Native Title Act. This will allow the Commonwealth Attorney-General to make a determination under section 26A that certain acts (the creation or variation of a right to mine, where the right created or varied is a right to explore or a right to prospect) are approved exploration etc. acts which will not attract the right to negotiate provisions under the Commonwealth Native Title Act.

- Amending the *Mineral Resources Act 1989* and the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* in order to ensure compliance with the requirements of section 26B of the Commonwealth Native Title Act. This will allow the Commonwealth Attorney-General to make a determination under section 26B that certain acts (the creation or variation of a right to mine, where the right created or varied is a right to mine gold or tin in surface alluvium) can be approved gold or tin mining acts and will not attract right to negotiate provisions under the Commonwealth Native Title Act.

- Amending the *Mineral Resources Act 1989* and the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* in order to ensure compliance with the requirements of section 43 and 43A of the Commonwealth Native Title Act. This will allow the Commonwealth Attorney-General to make a determination that the Alternative State Provisions (the relevant provisions of parts 13 to 19 of the *Mineral Resources Act 1989*) have effect instead of the right to negotiate provisions of the Commonwealth Native Title Act.

- Amending the *Mineral Resources Act 1989* to reflect some technical and consequential amendments following the amendments to, and the renumbering of, parts 12 to 19 to:
    - provide that under a negotiated agreement or a consultation agreement to do an act, or a registered indigenous land use agreement for the act, the conditions of those agreements can, in certain circumstances, become conditions of the grant of the tenement; and
    - ensure that the exercise of certain powers under the *Mineral Resources Act 1989* results in a valid grant where the exercise affects native title rights and interests.
- Amending the *Fossicking Act 1994* to ensure that fossicking permits can be granted on land over which there is an approved determination of native title if there is an indigenous land use agreement to that effect.
- Amending the *Native Title (Queensland) Act 1993* to take advantage of the enabling provisions of the Commonwealth Native Title Act which provide for the validation by the State, through a registered indigenous land use agreement, of certain future acts.
- Amending the *Land and Resources Tribunal Act 1999* to:
    - reflect some technical and consequential amendments following the amendments to, and the renumbering of, parts 12 to 19 of the *Mineral Resources Act 1989*; and
    - clarify, at the request of the Commonwealth, the role of the NNTT member of a NNTT panel in the making of a decision.

Administrative Cost

The administrative costs for Government, as a result of the Bill, will be those costs associated with the implementation and operation of the native title provisions by the Department of Mines and Energy, the Department of the Premier and Cabinet and the Land and Resources Tribunal.

Additionally, there will also be costs for Government as a party to participate in consultation and negotiation as required by the native title provisions.

These costs will be offset in the medium to long term by the revenues which will flow to the State from the resulting resource development and associated employment.

Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992.* Section 4 requires that legislation has sufficient regard to:

(a) rights and liberties of individuals; and

(b) the institution of Parliament.

With respect to the rights and liberties of individuals, section 4(3)(a) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. The Bill sets out the procedures that must be complied with and the factors that the tribunal must take into account when considering objections and the procedures for determining compensation in respect of the new provisions.

Section 4(3)(i) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation provides for the compulsory acquisition of property only with fair compensation. The Bill does not provide for compulsory acquisitions. In any event the Bill is consistent with this principle as it ensures that compensation is payable to native title holders to the extent that their native title has been affected.

Section 4(3)(j) of the *Legislative Standards Act 1992* provides that one of the fundamental legislative principles is whether legislation has sufficient regard to Aboriginal tradition and Islander custom. The Bill reflects the provisions of the scheme provided by the Commonwealth Native Title Act for the recognition and protection of native title rights and interests ensuring that native title claimants have the right to be notified, consulted, object and be heard in relation to impact on native title rights and interests. For

example, the Bill ensures this, by requiring notification to be made to native title notification parties for the affected land which includes the representative Aboriginal/Torres Strait Islander body, any registered native title body corporate and any registered native title claimants in relation to the land.

With respect to whether the legislation has sufficient regard to the institution of Parliament, the Bill is consistent with fundamental legislative principles as the Bill does not allow for the delegation of legislative power, does not authorise the amendment of the Act other than by an Act and does not restrict, in any way, the scrutiny of any delegated legislative power by the Legislative Assembly.

Consultation

Consultation has occurred with Commonwealth officials and the following State Departments:

- the Department of the Premier and Cabinet;
- the Department of Justice and Attorney-General;
- the Department of Mines and Energy; and
- the Department of Aboriginal and Torres Strait Islander Policy and Development.

Consultation has also occurred with representatives from the Queensland Indigenous Working Group, the Queensland Mining Council, Small Mining Interest Groups, and Agforce.

Appendix

The Appendix to these explanatory notes has been included to assist comprehension of the Bill. The Appendix is a guide to how mining tenements are granted under the *Mineral Resources Act 1989.* The information provided is general in nature and not exhaustive in content.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 of the Bill sets out the short title of the proposed Act.

Clause 2 of the Bill provides that parts 3 to 6 will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF FOSSICKING ACT 1994

Clause 3 of the Bill provides that part 2 amends the *Fossicking Act 1994.*

Clause 4 of the Bill amends section 11(2)(b) of the *Fossicking Act 1994* to provide that a registered indigenous land use agreement to allow fossicking over an area the subject of a determination that native title exists, must include a statement that the right to negotiate provisions of the Commonwealth Native Title Act do not apply.

PART 3—AMENDMENT OF THE LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 5 of the Bill provides that part 3 amends the *Land and Resources Tribunal Act 1999.*

Clause 6 amends section 26 of the *Land and Resources Tribunal Act* 1999 to more correctly describe the nature of the mining interest.

Clause 7 clarifies the relationship between sections 41 and 42 of the *Land and Resources Tribunal Act 1999* to ensure the NNTT member participates in the making of a decision. Participate has the same meaning in this Act as in the Commonwealth Native Title Act.

Clause 8 of the Bill provides general jurisdiction to the Land and Resources Tribunal to hear matters under the Commonwealth Native Title Act where the State is required to ensure that the objection is heard by an independent body.

Clause 9 of the Bill amends Schedule 2 of the *Land and Resources Tribunal Act 1999* to reflect the renumbering of the native title provisions of the *Mineral Resources Act 1989.*

Clause 10 of the Bill amends Schedule 2 of the *Land and Resources Tribunal Act 1999* to reflect the renumbering of the native title provisions of the *Mineral Resources Act 1989.*

Clause 11 of the Bill amends the dictionary in the *Land and Resources Tribunal Act 1999* to more correctly describe the nature of a mining interest and to reflect the insertion of a new part 19 into the native title provisions of the *Mineral Resources Act 1989.*

PART 4—AMENDMENT OF THE LAND AND RESOURCES TRIBUNAL ACT 1999

Clause 12 of the Bill provides that part 4 amends the *Mineral Resources Act 1989.*

Clause 13 of the Bill omits the existing definition of "prospect" and refers to the definition in new section 6B.

Clause 14 of the Bill inserts new section 6B which defines "prospect" to ensure that a low impact prospecting permit qualifies as an approved exploration etc. act under the Commonwealth Native Title Act.

Clause 15 of the Bill inserts new section 10A into the *Mineral Resources Act 1989* to ensure that, in certain circumstances, registered native title bodies corporate and registered native title claimants are afforded the same rights as an owner of land under the *Mineral Resources Act 1989.*

Clause 16 of the Bill amends section 24 of the *Mineral Resources Act 1989* to ensure that the applicant for a prospecting permit complies with the requirements of the native title provisions of the Act before the mining registrar may grant the prospecting permit.

Clause 17 of the Bill inserts new subsection (6) in section 25 which makes it a condition of a prospecting permit that the permit holder must not enter non-exclusive land unless the holder has consulted with each native title notification party.

Clause 18 of the Bill inserts new section 25A into the *Mineral Resources Act 1989* which allows for agreed conditions contained in an indigenous land use agreement, where the State is a party, to become conditions of a prospecting permit.

Clause 19 of the Bill amends section 74 of the *Mineral Resources Act 1989* to ensure that the applicant for a mining claim complies with the requirements of the native title provisions of the Act before the mining registrar may grant the mining claim.

Clause 20 of the Bill inserts new sections 81A and 81B into the *Mineral Resources Act 1989*. Section 81A provides that agreed conditions in a consultation agreement or a negotiated agreement, where consented to by the mining registrar, will become a condition of a mining claim. Section 81B allows for agreed conditions contained in an indigenous land use agreement, where the State is a party, to become conditions of a mining claim.

Clause 21 of the Bill amends section 82 of the *Mineral Resources Act 1989* by inserting a new subsection (1A) which prevents the mining registrar from changing a condition recommended by the tribunal under the native title provisions, and with respect to surface alluvium (gold or tin) mining claims, to prevent a variation which would result in it ceasing to be a surface alluvium (gold or tin) mining claim.

Clause 22 of the Bill amends section 91 of the *Mineral Resources Act 1989* to allow for an increase in the initial period of grant of a mining claim by extending the maximum term from 5 years to 10 years.

Clause 23 of the Bill amends section 93 of the *Mineral Resources Act 1989* to ensure that an applicant for the renewal of a mining claim complies with the native title provisions of the *Mineral Resources Act 1989* and extends the maximum allowable period for the renewal of a mining claim from 5 years to 10 years.

Clause 24 of the Bill amends section 137 of the *Mineral Resources Act 1989* to ensure that the applicant for an exploration permit complies with the requirements of the native title provisions of the Act before the Minister may grant the exploration permit.

Clause 25 of the Bill inserts new sections 141A, 141B and 141C into the *Mineral Resources Act 1989*. Section 141A provides that agreed conditions, under an agreement and consented to by the Minister, will become a condition of a exploration permit. Section 141B allows for agreed conditions contained in an indigenous land use agreement, where the State is a party, to become conditions of an exploration permit. Section 141C provides for an application to be made to the Minister by the holder of an exploration permit to vary the conditions of the permit.

Clause 26 of the Bill amends section 144 of the *Mineral Resources Act 1989* to extend the existing requirement for the deposit of security for the grant or renewal of an exploration permit to cover an application to vary conditions of the permit.

Clause 27 of the Bill amends section 147(1) of the *Mineral Resources Act 1989* to remove the limitation that the cumulative term of a grant and renewal of an exploration permit can not exceed 5 years.

Clause 28 of the Bill inserts new section 176A of the *Mineral Resources Act 1989.* Section 176A allows the holder of an exploration permit to apply to the Minister to add land the subject of a specific exclusion when the permit was granted to the existing permit. Excluded land may include land which is non-exclusive land and this section ensures that the native title provisions of the Act are complied with.

Clause 29 of the Bill amends section 182 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits. In addition, the clause ensures that a mineral development licence may be subject to a condition that excludes the application of section 182.

Clause 30 of the Bill amends section 183 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 31 of the Bill amends section 184 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 32 of the Bill amends section 189 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 33 of the Bill amends section 190 of the *Mineral Resources Act 1989* to extend the existing requirement for the deposit of security for the grant or renewal of a mineral development licence to cover an application to vary conditions of the licence. The clause also substitutes the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 34 of the Bill amends section 192 of the *Mineral Resources Act 1989* to remove a restriction on the discretion of the Minister to grant a mineral development licence for a period over 5 years.

Clause 35 of the Bill inserts new sections 194AA, 194AB and 194AC of the *Mineral Resources Act 1989.* Section 194AA provides that agreed conditions, under an agreement and consented to by the Minister, will become a condition of a mineral development licence. Section 194AB allows for agreed conditions contained in an indigenous land use agreement, where the State is a party, to become conditions of a mineral development licence. Section 194AC provides for an application to be made to the Minister by the holder of a mineral development licence to vary the conditions of the licence.

Clause 36 of the Bill amends section 197 of the *Mineral Resources Act 1989* to remove a restriction on the discretion of the Minister to renew a mineral development licence for a period over 5 years.

Clause 37 of the Bill amends section 208 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 38 of the Bill inserts new section 226AA into the *Mineral Resources Act 1989*. Section 226AA allows for the holder of a mineral development licence to apply to the Minister to add land the subject of a specific exclusion when the licence was granted to be added to the existing licence. Excluded land may include land which is non-exclusive land and this section ensures that the native title provisions of the Act are complied with.

Clause 39 of the Bill amends section 230 of the *Mineral Resources Act 1989* to substitute the mining registrar for the chief executive. This reflects a more operationally efficient manner of dealing with mineral development licences and brings these procedures into line with exploration permits.

Clause 40 of the Bill amends section 271 of the *Mineral Resources Act 1989* to require the Minister to consider native title matters before deciding whether to recommend the grant of mining lease.

Clause 41 of the Bill inserts new sections 276A and 276B into the *Mineral Resources Act 1989.* Section 276A provides that agreed conditions in a consultation agreement or a negotiated agreement, where consented to by the Minister, will become a condition of a mining lease. Section 276B allows for agreed conditions contained in an indigenous land use agreement, where the State is a party, to become conditions of a mining lease.

Clause 42 of the Bill amends section 286 of the *Mineral Resources Act 1989* to ensure that an applicant for the renewal of a mining lease complies with the native title provisions of the *Mineral Resources Act 1989.*

Clause 43 of the Bill amends section 294 of the *Mineral Resources Act 1989* by inserting a new subsection (1A) to prevent the Governor in Council from varying a condition of a surface alluvium (gold or tin) mining lease where the variation would result in it ceasing to be a surface alluvium (gold or tin) mining lease.

Clause 44 of the Bill amends section 315 of the *Mineral Resources Act 1989*. Subclause (1) corrects a cross reference error. Subclause (2) prevents the granting of an approval for additional activities under section 315 where the mining lease covers non-exclusive land.

Clause 45 of the Bill amends section 412 of the *Mineral Resources Act 1989* to remove the native title provisions from the operation of the general offence provision in the Act. The native title provisions contain specific penalties where necessary.

Clause 46 of the Bill inserts a new section 416A into the *Mineral Resources Act 1989* to allow the chief executive to approve forms for use under the Act.

PART 5—AMENDMENT OF THE NATIVE TITLE (QUEENSLAND) ACT 1993

Clause 47 of the Bill provides that part 5 amends the *Native Title (Queensland) Act 1993.*

Clause 48 of the Bill amends section 7 of the *Native Title (Queensland) Act 1993* to extend the objects of the part to include the validation of certain future acts under section 24EBA(3).

Clause 49 of the Bill amends section 9 of the *Native Title (Queensland) Act 1993* to exclude the application of part 2 to new division 4.

Clause 50 inserts new division 4. Division 4 takes advantage of the enabling provisions of the Commonwealth *Native Title Act* which allows validation by the State, through a registered indigenous land use agreement, of certain future acts.

PART 6—AMENDMENT OF THE NATIVE TITLE (QUEENSLAND) STATE PROVISIONS AMENDMENT ACT (NO. 2) 1998

Clause 51 of the Bill provides that part 6 amends the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998.*

Clause 52 amends the commencement of the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* to ensure that the automatic commencement mechanism in the *Acts Interpretation Act 1954* will not apply. This is necessary because the State's native title provisions are subject to the approval of the Commonwealth Minister, which is in turn subject to disallowance by Federal Parliament

Clause 53 amends section 7 of the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* to extend the definition of *native title provisions* to include part 19, division 2.

Clause 54 omits existing sections 9 to 12 of the *Native Title (Queensland) State Provisions Amendment Act (No. 2) 1998* and inserts new sections 9 to 12.

The substantive effect of section 9 is to replace parts 12 to 18 of the *Mineral Resources Act 1989.*

Parts 12 to 17 contain the additional requirements that will apply to the grant, renewal, variation or certain other acts concerning mining tenements under the *Mineral Resources Act 1989*. A description of each of parts 12 to 17 illustrating how the processes will work is set out below.

Part 18 contains new provisions with respect to the payment of compensation in relation to native title rights and interests. A description of part 18 is also set out below.

Section 10 omits existing part 12 of the *Mineral Resources Act 1989* and inserts it as part 19, division 1.

Section 11 renumbers existing transitional sections of the *Mineral Resources Act 1989* because of the insertion of the native title provisions.

Section 12 inserts part 19, division 2. The substantive effect of division 2 is to provide transitional provisions for the alternative state provisions for current applications. A description of part 19 is also set out below.

PART 12 —INTRODUCTION TO NATIVE TITLE PROVISIONS

The native title provisions are parts 12 to 19 of the *Mineral Resources Act 1989*.

The native title provisions set out additional requirements that apply to the grant, renewal, variation or other act concerning tenements under the *Mineral Resources Act 1989* where the act would have been subject to the right to negotiate provisions of the Commonwealth Native Title Act.

The native title provisions have effect instead of the right to negotiate provisions.

Part 12 sets out when the native title provisions apply. They will apply to certain grants, renewals, variations or other acts concerning mining tenements over land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark. That is because the right to negotiate under the Commonwealth Native Title Act only applies up to that geographical limit.

However, the native title provisions will not apply to an act if a section 29 notice under the right to negotiate provisions of the Commonwealth Native Title Act was given before the commencement of section 419.

Also, the additional requirements contained in the native title provisions will not apply to an act if there is a registered indigenous land use agreement, which authorises the doing of the act, and states that the right to negotiate provisions are not intended to apply.

If the native title provisions apply to an act, but are not complied with by the State or the applicant, then the act that is done will be invalid to the extent that it affects native title.

Part 12 contains definitions that apply to the native title provisions. There are additional specific definitions in parts 13 to 19. Words or expressions that are used in the Commonwealth Native Title Act will generally have the same meaning in the native title provisions.

The *Judicial Review Act 1991* applies to decisions made under the native title provisions.

PART 13—NATIVE TITLE PROVISIONS FOR PROSPECTING PERMITS

When does part 13 apply?

Part 13 sets out additional requirements that apply to the grant of a low impact prospecting permit under part 3 of the *Mineral Resources Act 1989.*

However, part 13 will only apply to:

- the grant of a low impact prospecting permit over non-exclusive land; and
- entering non-exclusive land under a low impact prospecting permit.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

A prospecting permit that is granted only for the purpose of marking out (pegging) a mining claim or mining lease, will not be subject to the requirements of part 13.

The requirements in part 13 apply instead of the right to negotiate.

What is a low impact prospecting permit?

A low impact prospecting permit is a prospecting permit that does not allow hand mining or removing minerals for sale on non-exclusive land.

This would allow, for example, prospecting with metal detectors and *sampling* with picks or shovels but not *mining* with picks or shovels (which would be hand mining). A prospecting permit does not allow removing minerals for sale.

What are the additional requirements that apply?

1. Notification

An applicant for a low impact prospecting permit must give written notice about the application to the native title notification parties for the land covered by the application and the mining registrar within 14 days before lodgement.

The native title notification parties are the:

- registered native title bodies corporate

  This term is defined in the Commonwealth Native Title Act. It only applies where there has been a determination by the Federal Court that native title rights and interests exist in relation to the land.

- registered native title claimants

  This term is also defined in the Commonwealth Native Title Act. It refers to the claimants named in native title claims which have been registered by the National Native Title Tribunal.

- relevant representative Aboriginal/Torres Strait Islander bodies

  Under the *Native Title Act 1993* the Commonwealth Minister determines representative Aboriginal or Torres Strait Islander bodies with respect to particular areas. These bodies have certain statutory functions, including assisting individuals or groups with respect to negotiations or proceedings about native title. The relevant representative body can assist in ensuring that all relevant persons are aware of the proposed act.

Once the notification has been properly given, the low impact prospecting permit can be granted under part 3.

2. Consultation

However, before entering any non-exclusive land for the first time, the permit holder must consult with each native title notification party.

The permit holder must give a written notice to the native title notification parties stating the day on which the consultation will start. That can be in the notice given under section 431 (referred to above) or in another notice.

In any case the notice must be given at least 14 days before the date for the consultation to start.

The consultation period is 14 days but that period may be extended if the parties agree. The purpose of the consultation is to minimise the impact of the permit on the exercise of native title rights and interests.

The consultation must be about the matters listed in section 434, which include the protection and avoidance of sites of significance and issues relating to access to the land.

During the consultation period, a native title notification party may ask the mining registrar to hold a mediation conference about the impact of the permit. A party to the conference may be represented by a lawyer.

After the consultation period has ended, the permit holder must give a written notice about the consultation to the mining registrar and each native title notification party. It is an offence not to give that notice. A native title notification party may also give such a notice.

Once the consultation requirements of part 13 have been complied with, the permit holder can enter the non-exclusive land under the permit.

PART 14—NATIVE TITLE PROVISIONS FOR MINING CLAIMS

Part 14 sets out additional requirements that apply to the grant, renewal or variation of mining claims under part 4 of the *Mineral Resources Act 1989.*

The additional requirements that will apply will depend upon the type of mining claim sought.

There are three different types of mining claims covered in part 14. The scope and additional requirements for each are set out below.

In all three cases, the requirements in part 14 apply instead of the right to negotiate.

Division 2—Surface alluvium (gold or tin) mining claims

When does Division 2 apply?

Division 2 applies to the grant of a surface alluvium (gold or tin) mining claim over non-exclusive land under part 4 of the *Mineral Resources Act 1989*.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What is a surface alluvium (gold or tin) mining claim?

A surface alluvium (gold or tin) mining claim is a mining claim that only allows a right to mine gold or tin in surface alluvium by a washing or aeration process and which requires rehabilitation to minimise the impact of the mining on the land or waters.

What are the additional requirements that apply?

1. Notification

An applicant for a surface alluvium (gold or tin) mining claim must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

The notice can be given at any time between 2 months prior to lodgement of the application and the time by which the applicant must serve copies of the certificate of application endorsed by the mining registrar.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13 above.

The notice must specify a date for the consultation to start (which must be at least 2 months after the notice is given to all of the native title notification parties) and state that the native title notification parties will be consulted and have a right to be heard.

The applicant must also advise the mining registrar that the notice has been given.

2. Consultation

The next step requires the applicant to consult with the other consultation parties.

The consultation parties are the applicant, the registered native title claimants and the registered native title bodies corporate. A representative Aboriginal/Torres Strait Islander body is not a consultation party, although it has a right to be heard by the tribunal.

The consultation period is two months and starts on the day specified in the notice but that time may be extended if the parties agree. The purpose of the consultation is to minimise the impact of the mining claim on any native title rights and interests in the land.

The consultation must be about the matters listed in section 449, which include the protection and avoidance of sites of significance and issues relating to access to the land.

During the consultation period, a consultation party may request that the mining registrar hold a conference for mediation about the application for the surface alluvium (gold or tin) mining claim. A party to the conference may be represented by a lawyer.

After the consultation period has ended, notice of the results of the consultation is given to the mining registrar. If the parties reached agreement about the granting of the surface alluvium (gold or tin) mining claim, then a copy of that agreement signed by all parties must be given to the mining registrar. If agreement is reached, then the process will stop and the mining claim may be granted, provided the usual requirements of part 4 are met.

3. Hearing

However, if agreement is not reached or any native title notification party has not waived its right to be heard, the mining registrar must fix a hearing date for the Land and Resources Tribunal to hold a hearing about the grant of the surface alluvium (gold or tin) mining claim.

Any native title notification party (including the representative Aboriginal/Torres Strait Islander body) has a right to be heard by the tribunal.

The hearing is conducted under section 77 of part 4 but the tribunal is required to take into account certain matters relevant to the consultation. The tribunal's decision about whether the surface alluvium (gold or tin) mining claim should be granted is made under section 78 of part 4.

If the consultation parties have not agreed about compensation for any impact of the act on native title rights and interests, then the tribunal must make a decision about compensation under part 18 before the surface alluvium (gold or tin) mining claim can be granted.

4. Notice of grant

If the surface alluvium (gold or tin) mining claim is granted, the holder must give a notice about the grant and any conditions to each other consultation party and any representative Aboriginal/Torres Strait Islander body who was heard by the tribunal. The notice must be given within 28 days of the holder receiving notice of the grant.

Division 3—Other mining claims on alternative provision areas

When does Division 3 apply?

Division 3 applies to the grant of a mining claim other than a surface alluvium (gold or tin) mining claim over an alternative provision area under part 4 of the *Mineral Resources Act 1989.*

Alternative provision area is defined in the Commonwealth Native Title Act. In general terms, it is non-exclusive land that:

- is or was covered by freehold or a lease which did not extinguish all native title rights and interests; or
- is or was reserved or dedicated for a public purpose and is or was used for that or a similar purpose.

Examples of alternative provision areas include non-exclusive agricultural or pastoral leases, national parks and reserves held in trust by local authorities.

If the mining claim application also covers other non-exclusive land then, the additional requirements in division 4 will apply to that land instead of division 3. Those requirements are more involved than the division 3 requirements.

An applicant may also elect for the division 4 requirements to apply instead of division 3.

What are the additional requirements that apply?

The additional requirements for other mining claims on alternative provision areas are generally the same as those for mining leases in alternative provision areas as set out in part 17 division 3.

Part 14 division 3 details changes that are made to that process to adapt it to the grant of a mining claim.

Division 4—Other mining claims not on alternative provision areas

When does Division 4 apply?

Division 4 applies to the grant of a mining claim other than a surface alluvium (gold or tin) mining claim over non-exclusive land, that is not an alternative provision area, under part 4 of the *Mineral Resources Act 1989.*

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark. Alternative provision areas are described in the notes to division 3 above.

An example of non-exclusive land that is not an alternative provision area is land which has always been unallocated State land.

What are the additional requirements that apply?

The additional requirements for other mining claims not on alternative provision areas are generally the same as those for mining leases not on alternative provision areas as set out in part 17 division 4.

Part 14 division 4 details changes that are made to that process to adapt it to the granting of a mining claim.

Division 5—Renewals of mining claims

When does Division 5 apply?

Division 5 applies to the renewal of a mining claim on non-exclusive land under part 4 of the *Mineral Resources Act 1989* if the right to negotiate would otherwise have applied to that renewal.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 14 (as the case may be) will apply to the renewal of the mining claim.

Part 14 division 5 details changes that are made to each of those requirements to adapt them to the renewal of a mining claim.

Division 6—Requirements for Subsidiary Approvals

When does Division 6 apply?

Division 6 applies to the addition of specified minerals to a mining claim in certain circumstances under part 4 of the *Mineral Resources Act 1989* if the right to negotiate would otherwise have applied.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 14 (as the case may be) will apply to the addition of minerals to a mining claim.

Part 14 division 6 details changes that are made to each of those requirements to adapt them to the addition of minerals.

PART 15—NATIVE TITLE PROVISIONS FOR EXPLORATION PERMITS

Part 15 sets out additional requirements that apply to the grant, renewal or variation of exploration permits under part 5 of the *Mineral Resources Act 1989*.

The additional requirements that will apply will depend upon the type of exploration permit sought.

There are three different types of exploration permit covered in part 15. The scope and additional requirements for each are set out below.

In all three cases, the requirements in part 15 apply instead of the right to negotiate.

Division 2—Low Impact Exploration Permits

When does Division 2 apply?

Division 2 applies to:

- the grant of a low impact exploration permit over non-exclusive land; and
- entering non-exclusive land under a low impact exploration permit.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What is a low impact exploration permit?

A low impact exploration permit is an exploration permit that, at least to the extent that it relates to non-exclusive land, only allows low impact activities to be carried out.

Low impact activities are defined as:

- aerial surveys
- geological and surveying field work that does not involve clearing
- sampling by hand methods
- ground-based geophysical surveys that do not involve clearing
- drilling and activities associated with drilling that:
    - do not include clearing or site excavation, other than the minimum necessary to establish a drill pad for a mobile rig; and
    - do not include clearing for a road or track
- environmental field work that does not involve clearing.

What are the additional requirements that apply?

1. Notification

An applicant for a low impact exploration permit must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

The notice can be given at any time between 1 month prior to lodgement of the application and 7 days after lodgement.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13.

The applicant must also advise the mining registrar that the notice has been given.

Once the notification has been properly given, the low impact exploration permit can be granted under part 5.

2. Consultation

However, before entering any non-exclusive land for the first time, the permit holder must consult with each native title notification party for the area.

The permit holder is not required to consult with respect to the whole of the area of the low impact exploration permit at once, only the area the holder wishes to enter.

The consultation period can not start before the applicant has been advised of the amount of security deposit to be paid and at least one month's notice of the start of the consultation period has been given to each native title notification party.

The consultation period is 2 months but that period may be extended if the parties agree. The purpose of the consultation is to minimise the impact of the permit on the exercise of native title rights and interests.

The consultation must be about the matters listed in section 489, which include the protection and avoidance of sites of significance and issues relating to access to the land.

During the consultation period, a native title notification party may ask the mining registrar to hold a mediation conference about the impact of the permit. A party to the conference may be represented by a lawyer.

After the consultation period has ended, the permit holder must give a written notice about the consultation to the mining registrar and each native title notification party for the area to be entered. It is an offence not to give that notice. A native title notification party may also give such a notice.

Once the consultation requirements have been complied with, the permit holder can enter the non-exclusive land under the permit.

Division 3—High Impact Exploration Permits

When does Division 3 apply?

Division 3 applies to the grant of a high impact exploration permit over non-exclusive land that is an alternative provision area, under part 5 of the *Mineral Resources Act 1989.*

Alternative provision area is defined in the Commonwealth Native Title Act. In general terms, it is non-exclusive land that:

- is or was covered by freehold or a lease which did not extinguish all native title rights and interests; or
- is or was reserved or dedicated for a public purpose and is or was used for that or a similar purpose.

Examples of alternative provision areas include non-exclusive agricultural or pastoral leases, national parks and reserves held in trust by local authorities.

If the high impact exploration permit application also covers other non-exclusive land, then the additional requirements in division 4 will apply to that land, instead of division 3. Those requirements are more involved than the division 3 requirements.

An applicant may elect for the division 4 requirements to apply instead of division 3.

What is a high impact exploration permit?

A high impact exploration permit is an exploration permit which is not limited to low impact activities. A description of low impact activities is given in the explanatory notes to division 2 above.

What are the additional requirements that apply?

1. Notification

An applicant for a high impact exploration permit must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

That notice must be given within 14 days of the applicant being notified of the amount of the security deposit to be paid.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13 above.

The notice must state that any registered native title bodies corporate or registered native title claimants in relation to the land may object to the grant of the high impact exploration permit and include the date by which objections must be received. That date must be at least 2 months after the day by which all native title notification parties will have received the notice.

The applicant must also advise the mining registrar that the notice has been given.

If no objection has been lodged by the due date then the high impact exploration permit may be granted.

2. Consultation and Mediation

However, if an objection is lodged by the due date then the mining registrar must give a copy of the objection to the applicant for the high impact exploration permit.

The applicant is required to consult with any objector and must give at least 7 days notice to any objector and the mining registrar of the day that the consultation is to start. The consultation must start not earlier than 14 days and not later than 2 months after the last day for objection.

The consultation period is 2 months but that period may be extended if the parties agree. The consultation must be about ways of minimising the effect of the permit on registered native title rights and interests, including issues relating to access to the land.

It is also open to any party to seek mediation during the consultation period to help in the consultation.

Section 509 sets out guidelines to assist the applicant in consulting. Those guidelines include matters such as the type of information to be given to the objectors and matters relating to any meetings held.

If the applicant and objectors reach agreement during the consultation period, then a copy of that agreement signed by all parties must be given to the mining registrar. If agreement is reached, the process will stop and the exploration permit may be granted.

3. Hearing

However, if the applicant does not reach agreement with each objector, the Land and Resources Tribunal must hear the objections and make a decision about whether or not the high impact exploration permit should be granted and if so, on what conditions (if any).

In certain circumstances, after consultation with the Minister responsible for indigenous affairs, the Minister may overrule the tribunal's decision, if it is in the interests of Queensland to do so.

Division 4—High Impact Exploration Permits not on Alternative Provision Areas

When does Division 4 apply?

Division 4 applies to the grant of a high impact exploration permit over non-exclusive land that is not an alternative provision area, under part 5 of the *Mineral Resources Act 1989.*

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark. Alternative provision areas are described in the notes to division 3 above.

An example of non-exclusive land that is not an alternative provision area is land which has always been unallocated State land.

What are the additional requirements that apply?

The additional requirements for high impact exploration permits not on alternative provision areas are generally the same as those for mining leases not on alternative provision areas as set out in part 17 division 4.

Part 15 division 4 details changes that are made to that process to adapt it to the grant of an exploration permit.

Division 5—Renewals of exploration permits

When does Division 5 apply?

Division 5 applies to the renewal of an exploration permit on non-exclusive land under part 5 of the *Mineral Resources Act 1989* if the right to negotiate would have otherwise applied to that renewal.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 15 (as the case may be) will apply to the renewal of an exploration permit.

Part 15 division 5 details changes that are made to each of those requirements to adapt them to the renewal of an exploration permit.

Division 6—Requirements for subsidiary approvals

When does Division 6 apply?

Division 6 applies to the variation of certain conditions or the addition of land to an exploration permit under part 5 of the *Mineral Resources Act 1989* to the extent that the variation or addition affects native title rights and interests.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 15 (as the case may be) will apply with necessary changes to the variation or addition.

PART 16—NATIVE TITLE PROVISIONS FOR MINERAL DEVELOPMENT LICENCES

Part 16 sets out additional requirements that apply to the grant, renewal or variation of a mineral development licence under part 6 of the *Mineral Resources Act 1989.*

The additional requirements that will apply will depend upon the type of mineral development licence sought.

There are three different types of mineral development licence covered in part 16. The scope and additional requirements for each are set out below.

In all three cases, the requirements in part 16 apply instead of the right to negotiate.

Division 2—Low Impact Mineral Development Licences

When does Division 2 apply?

Division 2 applies to:

- the grant of a low impact mineral development licence over non-exclusive land; and
- entering non-exclusive land under a low impact mineral development licence.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What is a low impact mineral development licence?

A low impact mineral development licence is a mineral development licence that, at least to the extent that it relates to non-exclusive land, only allows low impact activities to be carried out.

Low impact activities are defined as:

- aerial surveys
- geological and surveying field work that does not involve clearing
- sampling by hand methods
- ground-based geophysical surveys that do not involve clearing
- drilling and activities associated with drilling that;
    - do not include clearing or site excavation, other than the minimum necessary to establish a drill pad for a mobile rig; and
    - do not include clearing for a road or track
- environmental field work that does not involve clearing
- investigations associated with mine feasibility and development.

What are the additional requirements that apply?

1. Notification

An applicant for a low impact mineral development licence must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

That notice can be given at any time between 1 month prior to lodgement of the application and 7 days after lodgement.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13.

The applicant must also advise the mining registrar that the notice has been given.

Once the notification has been properly given, the low impact mineral development licence can be granted under part 6.

2. Consultation

However, before entering any non-exclusive land for the first time, the licence holder must consult with each native title notification party.

The consultation must relate to the whole of the area of the low impact mineral development licence.

The licence holder must give a written notice to each native title notification party stating the day on which the consultation will start. That can be in the notice given under section 554 (referred to above) or in another notice.

The consultation period is 2 months but that period may be extended if the parties agree. The purpose of the consultation is to minimise the impact of the licence on the exercise of native title rights and interests.

The consultation must be about the matters listed in section 545, which include the protection and avoidance of sites of significance and issues relating to access to the land.

During the consultation period, a native title notification party may ask the mining registrar to hold a mediation conference about the impact of the permit. A party to the conference may be represented by a lawyer.

After the consultation period has ended the licence holder must give a written notice about the consultation to the mining registrar and each native title notification party for the area to be entered. It is an offence not to give that notice. A native title notification party may also give such a notice.

Once the consultation requirements have been complied with, the licence holder can enter the non-exclusive land under the licence.

Division 3—High Impact Mineral Development Licences

When does Division 3 apply?

Division 3 applies to the grant of a high impact mineral development licence over non-exclusive land that is an alternative provision area, under part 6 of the *Mineral Resources Act 1989.*

Alternative provision area is defined in the Commonwealth Native Title Act. In general terms, it is non-exclusive land that:

- is or was covered by freehold or a lease which did not extinguish all native title rights and interests; or
- is or was reserved or dedicated for a public purpose and is or was used for that or a similar purpose.

Examples of alternative provision areas include non-exclusive agricultural or pastoral leases, national parks and reserves held in trust by local authorities.

If the application for a high impact mineral development licence also covers other non-exclusive land, then the additional requirements in division 4 will apply to that land, instead of division 3. Those requirements are more involved than the division 3 requirements.

An applicant for a high impact mineral development licence may elect for the division 4 requirements to apply instead of division 3.

What is a high impact mineral development licence?

A high impact mineral development licence is a mineral development licence which is not limited to low impact activities. A description of low impact activities is given in the explanatory notes to division 2 above.

What are the additional requirements that apply?

1. Notification

An applicant for a high impact mineral development licence must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

That notice must be given within 14 days of the applicant being notified of the amount of the security deposit to be paid.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the notes to part 13.

The notice must state that any registered native title bodies corporate or registered native title claimants in relation to the land may object to the grant of the high impact mineral development licence and include the date by which objections must be received. That date must be at least 2 months after the day by which all native title notification parties will have received the notice.

The applicant must also advise the mining registrar that the notice has been given.

If no objection has been lodged by the due date the high impact mineral development licence may be granted.

2. Consultation and Mediation

However, if an objection is lodged by the due date the mining registrar must give a copy of the objection to the applicant for the high impact mineral development licence.

The applicant is required to consult with any objector and must give at least 7 days notice to any objector and the mining registrar of the day that the consultation is to start. The consultation must start not earlier than 14 days and not later than 2 months after the last day for objection.

The consultation period is 2 months but that period may be extended if the parties agree. The consultation must be about ways of minimising the impact of the licence on registered native title rights and interests, including issues relating to access to the land.

It is also open to any party to seek mediation during the consultation period to help in the consultation.

Section 565 sets out guidelines to assist the applicant in consulting. Those guidelines include matters such as the type of information to be given to the objectors and matters relating to any meetings held.

If the applicant and objectors reach agreement during the consultation period, then a copy of that agreement signed by all parties must be given to the mining registrar. If agreement is reached, the process will stop and the mineral development licence may be granted.

3. Hearing

However, if the applicant does not reach agreement with each objector, the Land and Resources Tribunal must hear the objections and make a decision about whether or not the high impact mineral development licence should be granted and if so, on what conditions (if any).

In certain circumstances, after consultation with the Minister responsible for indigenous affairs, the Minister may overrule the tribunal's decision, if it is in the interests of Queensland to do so.

4. Notice of grant

If the high impact mineral development licence is granted, the holder must, within 28 days of receiving notice of the grant, give a notice about the grant (and any conditions) to each registered native title body corporate and registered native title claimant. It is an offence not to give that notice.

Division 4—High Impact Mineral Development Licences not on Alternative Provision Areas

When does Division 4 apply?

Division 4 applies to the grant of a high impact mineral development licence over non-exclusive land that is not an alternative provision area, under part 6 of the *Mineral Resources Act 1989.*

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark. Alternative provision areas are described in the notes to division 3 above.

An example of non-exclusive land that is not an alternative provision area is land which has always been unallocated State land.

What are the additional requirements that apply?

The additional requirements for high impact mineral development licences not on alternative provision areas are generally the same as those for mining leases not on alternative provision areas as set out in part 17 division 4.

Part 16 division 4 details changes that are made to that process to adapt it to the grant of a high impact mineral development licence.

Division 5—Renewals of mineral development licences

When does Division 5 apply?

Division 5 applies to the renewal of a mineral development licence on non-exclusive land under part 6 of the *Mineral Resources Act 1989* if the right to negotiate would have otherwise applied to that renewal.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 16 (as the case may be) will apply to the renewal of the mineral development licence.

Part 16 division 5 details changes that are made to each of those requirements to adapt them to the renewal of mining development licences.

Division 6—Requirements for subsidiary approvals

When does Division 6 apply?

Division 6 applies to the variation of certain conditions or the addition of stated minerals or land to a mineral development licence under part 6 of the *Mineral Resources Act 1989* to the extent that the variation or addition affects native title rights and interests.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 16 (as the case may be) will apply with necessary changes to the variation or addition.

PART 17—NATIVE TITLE PROVISIONS FOR MINING LEASES

Part 17 sets out additional requirements that apply to the grant, renewal, variation, or certain other acts concerning mining leases under part 7 of the *Mineral Resources Act 1989.*

The additional requirements that will apply will depend upon the type of mining lease sought.

There are three different types of mining leases covered in part 17. The scope and additional requirements for each are set out below.

In all three cases, the requirements in part 17 apply instead of the right to negotiate.

Division 2—Surface alluvium (gold or tin) mining leases

When does Division 2 apply?

Division 2 applies to the grant of a surface alluvium (gold or tin) mining lease over non-exclusive land under part 7 of the *Mineral Resources Act 1989*.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What is a surface alluvium (gold or tin) mining lease?

A surface alluvium (gold or tin) mining lease is a mining lease that only allows a right to mine gold or tin in surface alluvium by a washing or aeration process and which requires rehabilitation to minimise the impact of the mining on the land or waters.

What are the additional requirements that apply?

1. Notification

An applicant for a surface alluvium (gold or tin) mining lease must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

That notice can be given at any time between 2 months prior to lodgement of the application and the time by which the applicant must serve copies of the certificate of application endorsed by the mining registrar.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13 above.

The notice must specify a day for the consultation to start, which must be at least 2 months after the notice is given to all of the native title notification parties.

The applicant must also advise the mining registrar that the notice has been given.

2. Consultation

The next step requires the applicant to consult with the other consultation parties.

The consultation parties are the applicant, the registered native title claimants and the registered native title bodies corporate. A representative Aboriginal/Torres Strait Islander body is not a consultation party in its own right, although it has a right to be heard by the tribunal.

The consultation period is two months and starts on the day specified in the notice. The purpose of the consultation is to minimise the impact of the mining lease on any native title rights and interests in the land.

The consultation must be about the matters listed in section 604, which include the protection and avoidance of sites of significance and issues relating to access to the land.

During the consultation period, a consultation party may request that the mining registrar hold a conference for mediation about the application for the surface alluvium (gold or tin) mining lease. A party to the conference may be represented by a lawyer.

After the consultation period has ended, notice of the results of the consultation is given to the mining registrar. If the parties reached agreement about the granting of the surface alluvium (gold or tin) mining lease, then a copy of that agreement signed by all parties must be given to the mining registrar. If agreement is reached, the process will stop and the mining lease may be granted, provided the usual requirements of part 7 are met.

3. Hearing

However, if agreement is not reached or any native title notification party has not waived its right to be heard, the mining registrar must fix a hearing date for the Land and Resources Tribunal to hold a hearing about the grant of the surface alluvium (gold or tin) mining lease.

Any native title notification party (including the representative Aboriginal/Torres Strait Islander body) has a right to be heard by the tribunal.

The hearing is conducted under section 265 of part 7 but the tribunal is required to take into account certain matters relevant to the consultation. The tribunal's decision about whether the surface alluvium (gold or tin) mining lease should be granted is made under section 269 of part 7.

If the consultation parties have not reached an agreement about compensation for any impact of the act on native title rights and interests, then the tribunal must make a decision about compensation under part 18 before the surface alluvium (gold or tin) mining lease can be granted.

4. Notice of grant

If the surface alluvium (gold or tin) mining lease is granted, the holder must give a notice about the grant and any conditions to each other consultation party and any representative Aboriginal/Torres Strait Islander body who was heard by the tribunal. The notice must be given within 28 days of the holder receiving notice of the grant.

Division 3—Other mining leases on alternative provision areas

When does Division 3 apply?

Division 3 applies to the grant of a mining lease other than a surface alluvium (gold or tin) mining lease over an alternative provision area, under part 7 of the *Mineral Resources Act 1989*. Division 3 is also applied with certain specified changes to division 3 of parts 14 to 16.

Alternative provision area is defined in the Commonwealth Native Title Act. In general terms, it is non-exclusive land that:

- is or was covered by freehold or a lease which did not extinguish all native title rights and interests; or
- is or was reserved or dedicated for a public purpose and is or was used for that or a similar purpose.

Examples of alternative provision areas include non-exclusive agricultural or pastoral leases, national parks and reserves held in trust by local authorities.

If the mining lease application also covers other non-exclusive land, then the additional requirements in division 4 will apply to that land, instead of division 3. Those requirements are more involved than the division 3 requirements.

An applicant may elect for the division 4 requirements to apply instead of division 3.

What are the additional requirements that apply?

1. Notification and registration

An applicant for a mining lease other than a surface alluvium (gold or tin) mining lease must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

The applicant must also publish the notice in a newspaper circulated in the area of the proposed lease and in a publication catering for the interests of Aboriginal peoples or Torres Strait Islanders which also circulates in the geographical area of the mining lease and is published at least once a month.

That notice must be given and published at any time between 3 months prior to lodgement of the application and 28 days after the certificate of application is endorsed by the mining registrar, although a longer period may be allowed.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander body. These entities are described in the explanatory notes to part 13.

The notice must state that any *registered native title party* has a right to be consulted about the proposed lease, to object to its grant and to negotiate about the grant.

The notice must also specify the *closing day (native title issues)* which must be at least 3 months after the day by which the notice will have been received by or come to the attention of all relevant parties.

The expression *registered native title party* is defined in section 619. It generally means the registered native title bodies corporate and registered native title claimants in relation to the land, but it may also include other parties, including claimants who are registered within one month of the closing day (native title issues).

The applicant must also advise the mining registrar that the notice has been given and the names and addresses of the registered native title parties.

If there are no registered native title parties with respect to the application, or those parties do not object to the application and do not wish to be consulted about it, then the process under part 17 division 3 will stop. The mining lease may then be granted, provided the usual requirements of part 7 are met.

2. Consultation and negotiation

However, if there are registered native title parties who wish to be consulted about the proposed lease, then consultation and negotiation is required with a view to reaching agreement about the grant of the mining lease and any conditions.

The parties to the consultation and negotiation are the applicant, the registered native title parties and the State, although if the parties agree, the State may stop having a role or have only a particular role.

The consultation and negotiation period will either start immediately after the closing day (native title issues) or on the day the certificate of application is endorsed, whichever is the later.

The consultation and negotiation period is 3 months but that time may be extended if the parties agree. However, if an environmental impact statement is prepared the period will not end until 3 months after the mining registrar has given notice about that statement under section 264.

Division 3 also includes guidelines about the process for consultation and negotiation and allows any party to ask for mediation to help in resolving relevant issues.

If the consultation and negotiation parties reach agreement, then the process under part 17 division 3 will stop. The mining lease may then be granted, provided the usual requirements of part 7 are met.

3. Objection

A registered native title party may lodge an objection to the proposed mining lease at any time during the consultation and negotiation period. The objection must be about the effect of the lease on the party's native title rights and interests and may not be about compensation.

An objection by a registered native title party about the effect of the lease on the party's registered native title rights and interests may only be made under part 17 division 3.

An objection may be withdrawn at any time before the consultation and negotiation period ends.

4. Hearing

The Land and Resources Tribunal must hear an objection that is not withdrawn.

If agreement has not been reached by the end of the consultation and negotiation period, any consultation and negotiation party may refer the proposed mining lease to the tribunal to make a *native title issues decision* about whether or not the proposed mining lease should be granted and if so, on what conditions.

However, if no such referral is made within 3 months of the end of the consultation and negotiation period, the Minister may reject the mining lease application.

The hearing by the tribunal will be combined with any hearing required under part 7, for example to hear objections made by other land holders. Subdivision 5 outlines the requirements for a combined hearing.

In certain circumstances, after consultation with the Minister responsible for indigenous affairs, the Minister may overrule the native title issues decision, if it is in the interests of Queensland.

5. Notice of grant

If the mining lease is granted, the holder must give notice of the grant and any conditions to each registered native title party within 28 days of receiving notice of the grant.

Division 4 —Other mining leases not on alternative provision areas

When does Division 4 apply?

Division 4 applies to the grant of a mining lease other than a surface alluvium (gold or tin) mining lease over non-exclusive land that is not an alternative provision area, under part 7 of the *Mineral Resources Act 1989.*

Division 4 is also applied with certain specified changes to division 4 of parts 14 to 16.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark. Alternative provision areas are described in the notes to division 3 above.

An example of non-exclusive land that is not an alternative provision area is land which has always been unallocated State land.

What are the additional requirements that apply?

1. Notification and registration

An applicant for a mining lease other than a surface alluvium (gold or tin) mining lease must give written notice about the application to the native title notification parties and the Native Title Registrar (who is the registrar of the National Native Title Tribunal).

The applicant must also publish the notice in a newspaper circulated in the area of the proposed lease and in a publication catering for the interests of Aboriginal peoples or Torres Strait Islanders which also circulates in geographical area of the mining lease and is published at least once a month.

That notice must be given and published at any time between 3 months prior to lodgement of the application and 28 days after the certificate of application is endorsed by the mining registrar, although a longer period may be allowed.

The native title notification parties for the land covered by the application are the registered native title bodies corporate, the registered native title claimants and the relevant representative Aboriginal/Torres Strait Islander bodies. These entities are described in the explanatory notes to part 13.

The notice must state that any *registered native title party* has a right to be consulted about the proposed lease, to object to its grant and to negotiate about the grant.

The notice must also specify:

- the *notification day (native title issues)* which is the day by which the notice will have been received by or come to the attention of all relevant parties;
- the *closing day (native title issues)* which must be at least 3 months after notification day (native title issues).

The expression *registered native title party* is defined in section 655. It generally means the registered native title bodies corporate and registered native title claimants in relation to the land, but it may also include other parties, including claimants who are registered within one month of the closing day (native title issues).

The applicant must also advise the mining registrar that the notice has been given and the names and addresses of the registered native title parties.

If there are no registered native title parties with respect to the application, or those parties do not object to the application, then the process under part 17 division 4 will stop. The mining lease may then be granted, provided the usual requirements of part 7 are met.

2. Consultation and negotiation

However, if the division 4 process has not stopped, consultation and negotiation in good faith is required with a view to obtaining the agreement of the registered native title parties to the grant of the mining lease and any conditions.

The parties to the consultation and negotiation are the applicant, the registered native title parties and the State, although if the parties agree, the State may stop having a role or have only a particular role.

Division 4 includes guidelines about the process for consultation and negotiation in good faith and allows any party to ask for mediation to help in resolving relevant issues.

If the consultation and negotiation parties reach agreement, the parties must lodge a certificate with the mining registrar and give a copy to the tribunal. The process under part 17 division 4 will then stop and the mining lease may be granted, provided the usual requirements of part 7 are met.

3. Objection

A registered native title party may lodge an objection to the proposed mining lease at any time before agreement is reached or before the proposed mining lease is referred to the Land and Resources Tribunal. The objection may be withdrawn at any time before agreement or referral and must be withdrawn if agreement is reached.

An objection by a registered native title party about the affect of the lease on the party's registered native title rights and interests may only be made under part 17 division 4.

4. Hearing

The tribunal must hear an objection that is not withdrawn.

It is also open to any consultation and negotiation party to refer the proposed mining lease to the tribunal to make a *native title issues decision* about whether or not the proposed mining lease should be granted and if so, on what conditions.

A party cannot refer the mining lease to the tribunal until the later of 6 months after the notification day (native title issues) or 3 months after the mining registrar displays notice about the environmental impact statement (if any). However, if no referral is made within 3 months of that time, the Minister may reject the mining lease application.

The hearing by the tribunal will be combined with any hearing required under part 7, for example to hear objections made by other land holders. Subdivision 5 outlines the requirements for the combined hearing and the matters to be taken into account by the tribunal in making its native title issues decision. Those matters reflect the requirements of section 39 of the Commonwealth Native Title Act.

In certain circumstances, the Minister may overrule the native title issues decision or ask the tribunal to make a decision urgently, if it is in the interests of Queensland.

5. Notice of grant

If the mining lease is granted, the holder must give notice of the grant and any conditions to each registered native title party within 28 days of receiving notice of the grant.

Division 5—Renewals of mining leases

When does Division 5 apply?

Division 5 applies to the renewal of a mining lease on non-exclusive land under part 7 of the *Mineral Resources Act 1989* if the right to negotiate would otherwise have applied to that renewal.

Non-exclusive land is land where native title has not been extinguished, but only where that land is on the landward side of the mean high water mark.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 17 (as the case may be) will apply to the renewal of the mining lease.

Part 17 division 5 details changes that are made to each of those requirements to adapt them to the renewal of mining claims.

Division 6—Requirements for subsidiary approvals

When does Division 6 apply?

Division 6 applies to certain approvals with respect to mining leases, such as adding surface area or specified minerals to a mining lease under part 7 of the *Mineral Resources Act 1989* if the right to negotiate would otherwise have applied.

What are the additional requirements that apply?

The additional requirements set out in divisions 2, 3 or 4 of part 17 (as the case may be) will apply to the approval.

Part 17 division 6 details changes that are made to each of those requirements to adapt them to the relevant approval.

PART 18—COMPENSATION PROVISIONS

Under part 18 a native title holder can obtain compensation for the effect of a *relevant act* on their native title rights and interests.

A *relevant act* is defined as the grant, renewal or variation of, or another act concerning a mining tenement (prospecting permit, mining claim, exploration permit, mineral development licence, mining claim or mining leases) to which

- parts 13—17 apply; or
- parts 13—17 would apply were it not that the mining tenement:—
    - is in an approved opal or gem mining area and is excluded from the application of the right to negotiate provisions under the Commonwealth Native Title Act;
    - relates to a place that is on the seaward side of the mean high water mark of the sea; or

- relates to a mining lease for the sole purpose of the construction of an infrastructure facility associated with mining; or

- division 5 of parts 14 –17 would apply were it not that the renewal is one to which section 26D(1)(b)(ii) applies. However, if the compensation for the renewal has already been agreed, part 18 will not apply.

A native title holder cannot receive compensation more than once for the same effect of the same act on their native title rights and interests.

Compensation can be agreed between the native title holder and the holder of, or applicant for, a mining tenement. Where compensation can not be agreed, the Land and Resources Tribunal will determine compensation.

If a claim for compensation is made, but there has been no determination of native title for the land the subject of the relevant act, the tribunal must make a compensation trust decision. That means that the amount will be held in trust until there is a native title determination.

If there has been a determination that native title exists, the native title holder can apply for a compensation decision. This means that any compensation payable will be paid to the native title holder.

Subject to the provisions of part 18 requiring the State to pay, only the applicant for, or the holder of, the mining tenement may be ordered to pay an amount of compensation under a compensation decision or compensation trust decision.

In the case of a relevant act concerning mining claims or mining leases, where there is either a registered native title claimant or a registered native title body corporate for the land immediately before act is done, the act must not be done before compensation is agreed or decided by the tribunal.

In all other cases, compensation can be agreed or decided by the tribunal, either before or after the relevant act is done.

Part 18 also makes provision for how amounts that have been paid to the tribunal into trust for compensation, are to be dealt with. These provisions reflect the effect of section 52 of the Commonwealth Native Title Act.

PART 19—TRANSITIONAL PROVISIONS

Part 19 sets out how parts 12—18 will apply to current applications for:

- the grant of mining tenements; and
- approvals relating to mining leases

which have not been granted and which were made prior to the commencement of the native title provisions.

However, part 19 does not apply to applications where a section 29 notice under the right to negotiate provisions has been given.

The provisions of part 19 outline a system where the mining registrar or chief executive will require applicants to nominate which of the relevant alternative procedures, contained within parts 14 to17, will apply to their application.

After that nomination has been made, the mining registrar and chief executive will, in due course, advise the applicant of the *notification commencement date* for their application.

An applicant must not commence the relevant procedure under parts 14 to 17 any earlier than their notification commencement date.

Generally, the procedure must be commenced no later than 4 months after the notification commencement date.

However, for low impact exploration permits and low impact mineral development licences, the procedure must be commenced within 2 months of the notification commencement date.

APPENDIX

GUIDE TO MINING TENEMENTS GRANTED UNDER THE MINERAL RESOURCES ACT 1989

PROSPECTING PERMITS

(Part 3 Mineral Resources Act 1989)

Prospecting permits are short-term permits with very minor impacts on land.

The *Mineral Resources Act 1989* ('MRA') provides for two types of prospecting permits, which are granted by mining registrars:

- Parcel Prospecting Permits ('PPPs') which are granted for 3 months over individual parcels of land or adjoining land held by the same owner; and
- District Prospecting Permits ('DPPs') which are granted for between 1 and 12 months and relate to all land within a Mining District.

The holder of a prospecting permit is entitled to enter the land to:

- mark out mining claims and mining leases;
- prospect; or
- hand mine minerals other than coal.

However, the mining registrar may limit the permit holder's entitlements under a prospecting permit to one or more of those purposes.

Before a prospecting permit is granted, the applicant must pay the amount of security determined by the mining registrar for: compliance with the conditions of the prospecting permit; compliance with the provisions of the MRA; and to rectify any actual damage that may be caused.

A mining registrar may grant a prospecting permit upon being satisfied that an eligible person has made a genuine application that complies with the requirements of the MRA and has deposited security.

The mining registrar must advise the owner of any occupied land of the grant of a PPP. Notice is not required to be given of a DPP, as a DPP holder requires the consent of the owner to enter the surface of occupied land.

All prospecting permit holders must obtain the consent of a landowner before entering:

- land for hand mining; and
- restricted land (restricted land is land within 100m of certain permanent buildings or 50m of certain features such as stockyards and dams).

A PPP holder must also:

- give the owner of land covered by the permit at least 7 days notice before initial entry is made; and
- obtain the consent of the owner before entering the surface of a reserve.

There is no right of objection or hearing with respect to the grant of a prospecting permit. However, an owner who considers that a person has entered land without authority or has not complied with a condition of the prospecting permit, may report that matter to the mining registrar. The mining registrar must have the report investigated and advise the landowner of any action taken.

The mining registrar may take action in the event of a breach of permit conditions or of the provisions of the MRA, including the imposition of a penalty or cancellation of the permit.

The State or an owner is entitled to recover compensation for loss or damage suffered by reason of a person acting or purporting to act under the authority of a prospecting permit.

A mining registrar may from time to time vary any imposed condition. However, prospecting permits can not be transferred or renewed.

The holder of a prospecting permit must ensure that all excavations are filled in at the conclusion of any activity carried out on any land under the authority of the prospecting permit.

A prospecting permit is required as a prerequisite for an application for a mining claim and may be used as a prerequisite for an application for a mining lease.

If a holder of a prospecting permit applies for a mining claim or a mining lease, the holder's rights and obligations under the prospecting permit are extended during the period from the expiration of the prospecting permit until the determination of the application for the mining claim or mining lease.

MINING CLAIMS

(Part 4 Mineral Resources Act 1989)

Mining Claims are small tenements for commercial hand mining. Certain districts (eg. gem mining areas) are generally reserved for hand mining to avoid early depletion of the resources and to preserve the communities and any tourism significance in those areas.

Mining claims require a prospecting permit as a prerequisite tenement and the area of the mining claim must be pegged out within 7 days before the application is made.

Mining claims are granted by mining registrars over areas of 1 hectare or less, for periods of up to 5 years. They may be granted with respect to any specified minerals except for coal. A person can not hold more than two mining claims at any time.

The holder of a mining claim may prospect or hand mine in, on or under the land for any mineral to which the mining claim applies. For the purposes of prospecting or hand mining the holder of a mining claim may:

- enter the land;
- use any authorised machinery, mechanical devices or other equipment;
- erect and maintain a structure not being of a permanent nature (including, if specifically authorised, a temporary residence); and
- for the purposes of hand mining, make moderate use of explosives where specifically authorised.

If satisfied that the requirements of the MRA have been met for the application, the mining registrar must prepare a certificate of application which identifies the application and fixes a period of at least 28 days for objections to be received.

A copy of the certificate of application is posted at the office of the mining registrar and on the land and a copy is served on each owner of the land (including land used for access) to which the mining claim relates.

Within 7 days of receiving the certificate of application, an owner may ask the mining registrar to hold a conference about the application. Agreements reached by the parties at such conferences, must be in writing and signed by the parties and, if they relate to the application, must be lodged with the mining registrar.

Objections to the application can be lodged. Objections will be heard by the Land and Resources Tribunal (these are presently heard by the Wardens Court), which may instruct the mining registrar to grant or reject the mining claim application.

If there is no objection made and the mining registrar grants the mining claim, then the applicant must give written notice of the grant to the owners within 28 days.

Before a mining claim is granted, the applicant must pay the amount of security determined by the mining registrar for: compliance with the conditions of the mining claim; compliance with the provisions of the MRA; rectification of actual damage; and any amounts otherwise payable to the State.

A mining claim can not be granted over the surface of a reserve without the consent of the owner or the consent of the Governor in Council.

Compensation must be determined with land owners before the grant or renewal of a mining claim, either by negotiated agreement or by determination in the tribunal.

If the mining registrar grants the mining claim, the applicant must give written notice of the grant to the owners of land covered by the mining claim.

Mining claims are subject to a condition that the holder rehabilitate the surface of the land to the satisfaction of the mining registrar.

A mining claim may be cancelled or a penalty imposed for failure to comply with conditions, carrying out activities that are not bona fide for the purpose for which the mining claim was granted, or for failure to pay monies under the mining claim.

Mining claims can be renewed for further terms not exceeding 5 years and may be transferred with the consent of the mining registrar.

EXPLORATION PERMITS

(Part 5 Mineral Resources Act 1989)

Exploration permits are the main exploration tenements used in Queensland.

For exploration purposes, the State is divided into blocks consisting of 25 sub-blocks of approximately 3km^2. Exploration permits are granted over specified sub-blocks and may be granted by the Minister for periods of up to five years with respect to coal or all minerals other than coal.

An exploration permit entitles the holder to take action to determine the existence, quality and quantity of minerals on, in or under land or in the waters or sea above land by:

- prospecting;
- using instruments, vehicles, vessels, machinery and equipment and techniques appropriate to determine the existence of any mineral;
- sampling and testing of material to determine its mineral bearing capacity or properties of mineralisation; and
- carrying out any other operations approved by the Minister.

An exploration permit gives the holder priority over all others when applying for mineral development licences or mining leases for the same minerals over all or part of the land covered by the exploration permit.

The order of priority for the grant of an exploration permit is decided according to the day of lodgment and, if lodged on the same day, is determined by the Minister.

Before an exploration permit is granted, the applicant must pay the amount of security determined by the Minister for: compliance with its conditions; compliance with the provisions of the MRA; rectification of actual damage; and any amounts otherwise payable to the State.

The Minister may grant an exploration permit upon being satisfied that an eligible person has made a genuine application that complies with the requirements of the MRA, and has deposited security.

Exploration permits are subject to periodic reduction of their area to ensure that the holders utilise the permit and do not secure large areas of the State without undertaking exploration activities.

An exploration permit holder may enter any part of the land that comprises the permit, provided that at least 7 days notice is given to the owner before the initial entry. That notice must include details of the activities to be undertaken and when they will be carried out and, unless otherwise agreed, permits entry for only three months, but may be renewed.

If the permit includes reserve land or restricted land then the consent of the owner, or the Governor in Council, must be obtained before entry.

There is no right of objection or hearing for the grant of an exploration permit. However, an owner who is concerned, for example, about the activities being carried out or that the exploration permit conditions are not being observed, may give the mining registrar written notice of those concerns.

The mining registrar must investigate the concerns raised and may convene a conference between the owner and the permit holder to discuss these matters. The Minister may also recommend action to ease the concerns of any owner.

The Minister may impose a penalty or cancel a permit where there is a breach of permit conditions or of the provisions of the MRA.

The State or an owner is entitled to recover compensation for any loss or damage suffered by reason of a person acting or purporting to act under the authority of an exploration permit.

Unless the Minister otherwise approves, the holder of an exploration permit is required to progressively rehabilitate the surface of any disturbed land and ensure that all excavations are filled in at the completion of any activity.

Exploration permits may, on the application of the holder, be renewed for 5 years or such longer period determined by the Minister. Exploration permits may only be transferred with the consent of the Minister.

An exploration permit is required as a prerequisite for an application for a mineral development licence and may be used as a prerequisite for an application for a mining lease.

MINERAL DEVELOPMENT LICENCES

(Part 6 Mineral Resources Act 1989)

Mineral Development Licences ('MDLs') are an advanced form of exploration tenement. They may be granted where a potentially economical mineral deposit has been identified but they do not give the holder a right to win or extract minerals for production.

An MDL is granted over a smaller area than an exploration permit, is not subject to periodic reduction and therefore provides greater security of title for the holder.

An MDL would generally be sought either where:

- a potential resource has been identified but more investigations are required before an application for mining lease could be made; or
- where it is not yet economical to mine an identified resource and the applicant wants to secure rights to the resource.

Generally, an MDL will not be granted unless, at the time the application was made, the land is comprised in an exploration permit or an MDL held by the applicant in respect of the same mineral.

MDLs are granted by the Minister for periods of up to 5 years. However, the Minister may approve a grant for a longer period.

The holder of an MDL must carry out any activities specified in the MDL and may carry out any other appropriate activities, including activities leading to the evaluation and economic development of an ore body. The MDL holder may also do anything authorised under a prerequisite exploration permit held at the time the MDL application was made.

Activities leading to the evaluation and economic development of an ore body may include:

- geological, geophysical and geochemical programs and other work reasonably necessary to evaluate the potential for development of any mineral occurrence of possible economic potential;
- mining feasibility studies;
- environmental studies;
- marketing studies;
- engineering and design studies; and
- other activities the Minister considers appropriate.

An MDL gives the holder priority over all others when applying for an MDL or mining lease for the same minerals over all or part of the land in the MDL.

Before an MDL is granted, the applicant must pay the amount of security determined by the Minister for: compliance with the conditions of the MDL; compliance with the provisions of the MRA; rectification of actual damage; and any amounts otherwise payable to the State.

The Minister may grant an MDL upon being satisfied that the requirements of the MRA have been complied with, that there is significant mineral occurrence of possible economic potential, that further investigation of that occurrence is appropriate, and that the applicant has the appropriate financial and technical resources available.

Within 21 days of grant (or any longer period allowed), the holder of an MDL must give notice in the approved form to the owners of the underlying land.

The holder of an MDL (or other person acting on the holder's behalf) may enter any land covered by the MDL for purposes permitted or required under the MDL. The holder may also stay on the land and set up temporary accommodation.

That right of entry is conditional upon:

- written notice of entry being given to an owner before initial entry is made. That notice must be given at least 7 days before entry and must include details of the activities to be undertaken and when they will be carried out. Unless otherwise agreed, the notice permits entry for only three months, but may be renewed.
- the owner of any reserve land giving consent; and
- the owner of any land which was restricted land when the application was lodged giving consent (restricted land is land within 100m of certain permanent buildings or 50m of certain features such as stockyards and dams).

There is no right of objection or hearing for the grant of an MDL. However, an owner who is concerned, for example, about the activities being carried out or that the MDL conditions are not being observed, may give the mining registrar written notice of those concerns.

The mining registrar must investigate the concerns raised and may convene a conference between the owner and the holder to discuss these matters. The mining registrar may recommend action to the Minister to ease the concerns of any owner.

The Minister may cancel a licence or may impose a penalty where there has been a breach of licence conditions or a failure to pay monies due or report the discovery of a mineral.

The State or an owner is entitled to recover compensation for loss or damage suffered by reason of a person acting or purporting to act under the authority of an MDL.

Unless the Minister otherwise approves, the holder of an MDL is required to progressively rehabilitate the surface of any disturbed land and ensure that all excavations are filled in at the completion of any activity. However, those requirements do not apply if the holder applies for a mining lease over the area.

MDLs may, on the application of the holder, be renewed for five years or such longer term approved by the Minister. MDLs may only be transferred with the consent of the Minister.

If at any time the Minister considers that actual mining operations should commence, the Minister may direct that the holder apply for a mining lease. If the holder fails to comply, the Minister may cancel the MDL.

The rights and liabilities of an MDL holder extend beyond the term of the licence if an application has been made for a mining lease that has not been determined.

MINING LEASES

(Part 7 Mineral Resources Act 1989)

Mining leases are the primary form of mineral production tenement in Queensland.

Generally, a mining lease will not be granted unless at the time the application was made the land was comprised in a prospecting permit, exploration permit or mineral development licence held by the applicant in respect of the same mineral.

Mining leases may be granted by the Governor in Council for the purposes of mining minerals or other associated activities. They entitle the holder to enter and be within or, if surface rights are granted, on the land for the purposes of the mining lease and to do any other things permitted by the MRA.

Mining leases may be granted over the surface of land within 100m of certain permanent buildings or 50m of certain features such as stockyards and dams only if the owner consents.

Mining leases cannot be granted over the surface area of reserve land unless the owner consents or the Governor in Council otherwise approves.

The area of a mining lease application must be marked out on the land before the application is made and priority is determined by the order of lodgement or, if lodged simultaneously, by ballot.

A mining lease application must include the following:

- a statement of the financial and technical resources of the applicant;
- an outline of the mining program proposed and the method of operations;
- a timetable for commencement;
- proposals for any infrastructure requirements; and
- an environmental management overview strategy for protecting the environment and rehabilitation measures.

If satisfied that the requirements of the MRA have been met with respect to the application, the mining registrar must prepare a certificate of application which identifies the application and fixes a period of at least 28 days for objections to be received.

A copy of the certificate of application must be posted at the office of the mining registrar and on the subject land, and a copy must be served on any owners. A copy of the certificate must also be advertised at least 14 days prior to the last day for receipt of objections.

Within 7 days of receiving the certificate of application, an owner may ask the mining registrar to hold a conference about the application. The mining registrar may also, for any other reason if it is considered desirable, hold a conference about a mining lease application. If the conference is about an application and an objection has been lodged, the conference between the applicant and the objector must be held before the date fixed for the hearing of the application.

Objections to the application may be lodged. A notice of objection must be lodged at the office of the mining registrar on or before the last objection day and must be served on the applicant for the mining lease. Every objection must state the grounds of objection and the facts and circumstances relied on by the objector in support of those grounds.

Following the fixing of the hearing date of the mining lease application by the mining registrar, copies of any objections received are forwarded to the tribunal for consideration at the time of hearing the application. After completion of the hearing, the tribunal makes a recommendation to the Minister that the application be either granted or rejected.

After a recommendation by the tribunal the Minister must consider the application, taking into account the same criteria required to be considered by the tribunal. The Minister may recommend to the Governor in Council that the application be granted in whole or part, may reject the application, or may order that a further hearing be undertaken. The grant of a mining lease is made by the Governor in Council.

Before operations commence under a mining lease, the applicant must pay the amount of security determined by the mining registrar for: compliance with the conditions of the mining lease; compliance with the provisions of the MRA; rectification of actual damage; and any amounts otherwise payable to the State.

Compensation for any owner of land must be agreed or determined before the grant is made. At any time before the compensation is agreed any party can apply to have the amount of compensation determined by the tribunal.

The holder of a mining lease must notify each owner of land covered by the lease within 28 days of receiving notice of the grant.

If, in the Minister's opinion, activities have been carried out by the holder of a mining lease that are not bona fide for the purposes for which the lease was granted, or if any rental, royalty or other money is not paid, or if the lessee has failed to comply with any conditions, the lease may be cancelled or a fine imposed. Notice of the default and an opportunity to remedy default or show cause why the lease should not be cancelled must first be given.

A mining lease may, on application of the holder, be renewed for a period that does not exceed that covered by an agreement or determination of compensation. A mining lease may only be transferred with the consent of the Minister.