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1993

SENATE

**NATIVE TITLE BILL 1993**

**SUPPLEMENTARY EXPLANATORY MEMORANDUM**

Amendments and new clauses to be moved on behalf of the Government

(Circulated by authority of the Prime Minister  
the Honourable Paul Keating MP)

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## **AMENDMENTS OF NATIVE TITLE BILL 1993**

### **OUTLINE OF AMENDMENTS**

1. The amendments proposed by the Government arise as a result of continued consultation with all interested parties since the introduction of the Bill and also from the majority report of the Senate Standing Committee on Legal and Constitutional Affairs.
2. The preamble is amended by the addition of words which indicate the Parliament's view that governments should facilitate the negotiation of regional agreements in appropriate circumstances.
3. The amendments to Part 1 of the Bill include a provision to make it clear that laws of general application can apply to native title rights and interests unless the Bill provides otherwise.
4. Amendments are made to Part 2 to do a number of things but particularly to make it clear that the renewals of existing valid interests will be treated in a similar way as renewals of existing invalid but validated interests.
5. There are amendments to Part 3 which deal with applications for determination of matters relating to native title. In particular there is a provision that certain non-claimant native title applications are not dismissed when a native title application is made to part of the area covered by the non-claimant application.
6. Part 4 is amended to provide the Federal Court with a discretion as to whether or not it will use assessors in individual cases.
7. In Part 6 a number of clauses have been amended to allow the Tribunal to make determinations consistent with agreements, on the basis that it would be appropriate in the circumstances.
8. There is an amendment to Part 7 to make clear that a person who is the claimant on the Register of Native Title Claims is the registered native title claimant for other provisions in the Bill.
9. There is a new Part 8A added to the Bill to deal with Commonwealth provision of financial assistance to the States and Territories.
10. There is a new Part 10A added to the Bill to provide for a Parliamentary Joint Committee on Native Title to monitor and review the implementation and operation of this Bill.
11. Part 11 contains an amendment to correct a reference to existing fishing rights to make clear that it was intended to refer to existing statutory fishing rights.
12. There are a number of amendments to Part 13 which contains the definitions of terms used in the Bill.

13        There are also a number of amendments to various clauses to clarify that for the purposes of the Bill the inter tidal area ie. the area between high and low water is to be regarded as "waters" even though it is not always covered by water. This will make clear that future grants of, for example, fishing rights in the inter-tidal area will have to satisfy the permissible future act test applicable to onshore waters. That is could the grant be made if the native title holders instead held ordinary title to the land adjoining the area.

#### FINANCIAL IMPACT STATEMENT

The amendments to the Bill contain no further financial impact.

## NOTES ON AMENDMENTS AND NEW CLAUSES

### AMENDMENT 1

#### Preamble

In appropriate circumstances regional agreements with indigenous people may provide an efficient mechanism for the resolution of indigenous aspirations to land and of proposals to use land for economic purposes. Such agreements have the potential to deal with a number of claims to native title in a way that would minimise litigation. Moreover they need not be confined to native title issues, but might extend to other matters of concern to indigenous people. This amendment inserts an extra paragraph into the Preamble which notes that governments should facilitate such agreements where appropriate.

### AMENDMENTS 2 AND 3

#### Clause 4 - Outline of Act

This clause provides a guide to the various Parts of the Bill. The amendments are necessary to add in references to the new Part 8A dealing with financial assistance to the States and Territories and to Part 10A which deals with the Parliamentary Joint Committee on Native Title. These new Parts are explained in detail later in this memorandum.

### AMENDMENT 4

#### Clause 11 - Native title part of Commonwealth law

This clause states that the common law in Australia relating to native title is recognised and enforceable as a law of the Commonwealth. The addition of subclause (2) will clarify that native title rights should be subject to State and Territory laws of general application unless those laws conflict with the other provisions of this Bill. This means that native title rights are subject to the same regulation as other people's rights eg. under planning, stock control, quarantine, heritage and environmental laws of general application. A law of general application can apply to the whole or part of a State or Territory.

### AMENDMENT 5

#### Clause 13 - Validation of Commonwealth acts

This clause validates past acts attributable to the Commonwealth. The purpose of this amendment is to clarify the effect of the clause such that if the validated past act consists of the making, amendment or repeal of legislation, this validation does not, of itself, validate acts done under that legislation in the future. Such acts, which may include, for example, the grant of a lease or licence or the creation of an interest in relation to land or waters, must also fall within the definition of 'past act' (clause 213) in order to be validated. Otherwise, these acts will need to be permissible future acts (clause 220) and comply with the future regimes (see especially clause 22).

A similar amendment is proposed for clause 18 which relates to the validation of State/Territory acts.

## **AMENDMENT 6**

### Clause 16 - Entitlement to compensation

This clause deals with the entitlement of native title holders to compensation for past acts attributable to the Commonwealth. This technical amendment deals with the position of onshore waters bounded on one side only by land, such as in the inter-tidal area. This is essentially the area between high and low tide and is regarded as "onshore" and "waters" for the purpose of the Bill. This amendment addresses the concerns of commercial fishermen and is part of a package of amendments to deal with the inter-tidal area and also areas such as bays, estuaries and harbours. In essence these amendments clarify that future grants of eg. fishing licences will be able to be made in this area in the same way that they are made now when ordinary title land is owned on the adjacent shore. Other amendments in this package are made to clauses 22, 220, 225, and 238.

What this means in practice is that a native title holder's say about whether a right should be given to somebody to use eg. the inter-tidal area would be the same as the say in the matter which an adjoining ordinary title holder would have.

## **AMENDMENT 7**

### Clause 18 - State/Territory acts may be validated

This clause enables the States and Territories to pass laws validating past acts attributable to the State or Territory provided that these laws do so on the same basis as the Commonwealth has validated its past acts under clauses 14 and 15.

The purpose of this amendment is similar to that relating to clause 13. It clarifies the effect of the clause such that if the validated past act consists of the making, amendment or repeal of legislation, this validation does not, of itself, validate all of the acts done under that legislation. Such acts, which may include, for example, the grant of a lease or licence or the creation of an interest in relation to land or waters, must also fall within the definition of 'past act' (clause 213) in order to be validated.

## **AMENDMENT 8**

### Clause 19 - Entitlement to compensation

Clause 19 creates a federal right to recover compensation where a State or Territory validates a past act on the same terms as the Commonwealth, or in respect of a past act attributable to the State/Territory which has not been validated. The amendment to subclause (3) provides that native title holders can recover compensation from the State or Territory. Similar amendments are made to clauses 22 and 23. A new subclause 19(4) has been inserted which makes it clear that the creation of the Federal right to compensation does not prevent State/Territory Governments from creating an entitlement to compensation. Native title holders will always be able to claim the

federal right to compensation in the federal process. A note cross references this clause with clause 47 which prevents multiple compensation for the same act.

#### **AMENDMENT 9**

##### Clause 22 - Permissible future acts

This amendment inserts a note after subclause 22(3) to draw attention to the fact that the right to negotiate (Subdivision B) applies to some acquisitions under Compulsory Acquisition Acts (see subclause 25(2)), namely acquisitions for third parties.

#### **AMENDMENT 10**

##### Clause 22 - Permissible future acts

The intention of this technical amendment to subparagraph 22(4)(b)(iii) is to make it clear that the law referred to in that subparagraph is one that does not provide for compensation to native title holders. The Bill gives compensation rights to native title holders where under the current law those rights are available to ordinary title holders.

#### **AMENDMENT 11**

##### Clause 22 - Permissible future acts

This technical amendment makes it clear that native title holders may recover compensation from the relevant government as set out in the rest of the subclause.

#### **AMENDMENT 12**

##### Clause 22 - Permissible future acts

This clause deals with the effect of permissible future acts on native title. Subclause (6) deals with what procedural rights native title holders will be entitled to where permissible future acts are proposed. Paragraph (6)(a) is amended in a similar manner to the amendment to subparagraph 16(2)(a)(ii) to provide that for the inter-tidal zone native title holders will be entitled to the same procedural rights as the holder of ordinary land adjacent to the inter-tidal area.

#### **AMENDMENT 13**

##### Clause 23 - Where unopposed non-claimant application

This amendment is similar to that made to subclause 22(5) and makes it clear against which government compensation is recoverable under this clause.

#### **AMENDMENT 14**

##### Clause 24 - Renewals and extensions of certain acts

The amendments to clause 24 are designed to bring the provisions for the renewal of valid acts into line with the provisions of clause 213 dealing with the renewal of invalid acts which are later validated either by this Bill or by complementary State or Territory legislation. Note 1 indicates that an act, such as a renewal, which does not affect any native title rights cannot be a future renewal act. Such acts can take place free of any restrictions by this Bill. It is important to note that valid leases will have already extinguished native title in whole or in part, so that renewal of a lease in the same terms does not affect native title.

The new subclause (1) makes it clear that native title holders will be entitled to the same compensation for a 'future renewal act' as if it was a past act. This means that where valid interests are renewed in accordance with this clause then any compensation payable because of the existence of native title will be recoverable, where the act is attributable to the Commonwealth from the Commonwealth. Where the act is attributable to a State or Territory the compensation is recoverable from that State or Territory.

Further amendments to the clause are the addition of subclauses (3), (4) & (5). Subclause (3) and (4) define what is to be regarded as a 'future renewal act' for the purposes of this clause. Subclause (5) outlines a number of exceptions to that definition. As indicated in note 2 under subclause (5) these provisions correspond with the provisions of subclauses 213 (3), (4) and (6) and the examples in subclauses 213(5), (7) and (8) are correspondingly applicable.

## **AMENDMENTS 15 and 16**

### Clause 25 - When Subdivision applies

This clause sets out when the right to negotiate applies. The provision replacing paragraph 25(2)(c) makes it clear that a mining right in existence on 1 January 1994 can be extended (without going through the right to negotiate process). This is consistent with the policy that rights and interests should be able to be renewed without the titleholder having additional requirements to satisfy as a result of this Bill where that is provided for in the mining right.

Amendment 16 amends subclause (4) of this clause which sets out the criteria under which a Commonwealth Minister can determine whether or not an act should be excluded from the right to negotiate. It is proposed that paragraph (4)(a) be amended to omit the term 'native title' and insert the word 'land'. The minimal impact should refer to the impact on the particular land concerned.

## **AMENDMENT 17**

### Clause 37 - Criteria for making determination

Clause 37 sets out the matters which the arbitral body must take into account when making a determination about a right to negotiate application. The amendment to paragraph 37(1)(b) makes it clear that the tribunal must consider the environmental assessments made by a court or tribunal or those prepared or commissioned by

governments or statutory authorities, but is not obliged to consider environmental assessments prepared by private interest groups.

#### **AMENDMENT 18**

##### Clause 38 - No reopening of issues previously decided

This clause is designed to prevent matters which were dealt with at an earlier stage in a right to negotiate process, such as at the exploration stage, from being reopened at a later stage, such as at the mining stage. At the moment that can only happen when the arbitral body agrees that it should. It is proposed to add a subclause (2) to provide that a reopening should only happen when there has been a material change in the circumstances.

#### **AMENDMENT 19**

##### Clause 43 - RDA compensation to be determined under this Act

This clause deals with a situation where the effect of the RDA was not to render a past act invalid but rather to give the native titleholders a right to compensation. Should this be the position the compensation is determined in accordance with the processes set out in clause 48.

The addition of subclause (2) clarifies against which government the native title holders have a right to recover compensation. Where the act giving rise to the right of compensation is attributable to the Commonwealth, the right is against the Commonwealth.

#### **AMENDMENT 20**

##### Clause 45 - Pastoral leases held by native title claimants

This amendment affects clause 45, which deals with pastoral leases held by persons who make an application claiming native title to the area covered by the pastoral lease. Subclause (2) is omitted and replaced by new subclause (2). The effect of the provision is that the extinguishment of native title, whether by the grant of the pastoral lease, the creation of any other interest in the area or any acts done under the lease or under the other interest, is to be disregarded for the purposes of the native title application.

The note at the bottom of this clause makes it clear that people claiming native title will still have to show any connection with the land that maybe required by the common law.

#### **AMENDMENT 21**

##### Clause 45 - Pastoral leases held by native title claimants

This amendment also affects clause 45. It amends paragraph 45(3)(a) to make it clear that a determination that native title is held by the holders of a pastoral lease does not effect the validity of interests held by the Crown or a statutory authority in public works on the land or waters in question.



## **AMENDMENT 22**

### **Clause 48 - Bodies that may determine compensation**

This amendment omits subclauses 48 (3) and (4) and is consequential on the amendment to clause 19. Clause 19 creates a right to compensation in respect of the validation by a State or Territory Government of an invalid past act, or the doing of a past act. Subclauses 48(3) and (4) would have conferred Federal jurisdiction to determine the compensation on a recognised State/Territory court. It is no longer necessary to confer Federal jurisdiction, since amended clause 19 provides that State/Territory Governments may themselves create an entitlement to compensation, and give jurisdiction to their own bodies.

## **AMENDMENT 23**

### **Clause 50 - Compensation to be held in trust under 'right to negotiate' procedures**

Clause 50 deals with how compensation paid into trust under the right to negotiate procedures is to be dealt with in the circumstances set out in subclause (1). The proposed amendment, which would insert a new paragraph (e) into subclause (1), provides for how the money paid into trust is to be dealt with if none of the other conditions is satisfied, and is thus a catch-all provision. It would permit the Federal Court, on application by any person, to pay the negotiated compensation to that person or another person where it considers it to be just and equitable in the circumstances.

## **AMENDMENT 24**

### **Clause 50 - Compensation to be held in trust under 'right to negotiate' procedures**

This amendment inserts a new subclause 50(6) and is consequential to the amendment to subclause 50(1). This new subclause would require the trustee to pay the compensation to whomever the Federal Court has directed it be paid to under the proposed new paragraph 50(1)(e).

## **AMENDMENT 25**

### **Clause 53 - Native title to be held by body corporate**

This amendment inserts two new subclauses into clause 53, which contains provisions dealing with the holding of native title by a body corporate. New subclause 53(7) protects the native title held by the body corporate from legal action to enforce liabilities incurred by the body corporate. This means that if the body corporate becomes liable to pay an amount to another person, including a government or statutory authority, the native title interests cannot be seized, transferred, made the subject of a forced sale or otherwise be made subject to legal action to recover the amount of the liability.

New subclause 53(8) makes it clear that subsection (7) does not apply if the liability arose because a dealing with the native title rights by the body corporate that is a dealing permitted by regulations made under paragraph 53(5)(c). This means that if the body enters into a permitted agreement in relation to the native title rights, the

person with whom the agreement was made can take action that affects native title rights to enforce that agreement.

## **AMENDMENT 26**

### **Clause 59 - Action to be taken in relation to accepted applications**

Subclause (2) of this clause deals with the people to whom the Registrar must give notice when an application for a native title determination, a variation of that determination or a claim for compensation is made under this Bill. The addition of subparagraph 2(a)(iv) makes it clear that a person who holds a proprietary interest, such as a lease, in that land which is registered in for example, a State or Territory land titles register, must also be notified.

## **AMENDMENT 27**

### **Clause 60 - Special procedure in relation to certain native title determination applications.**

This clause deals with applications for a determination as to the existence of native title by a person who is not a native title holder (a non-claimant application). Under clause 55 these applications can be made either by a government or by a person who holds an interest in the land.

Under the present clause if a native title determination application is lodged by persons claiming native title (a claimant application) within 2 months after a non-claimant application is made then the non-claimant application is wholly dismissed. This is the case even if the claimant application relates only to part of the area of the non-claimant application. The new subclause (2) to this clause now provides that where a non-claimant application is made by a person with an interest in the land other than a government or statutory authority then that application is taken to be dismissed only to the extent of the area that the claimant application applies to.

Where the non-claimant application is made by a government or a statutory authority then paragraph 2(c) provides that such an application is dismissed entirely when a claimant application is made to any part of the area covered by that non-claimant application. Of course, the application may be resubmitted with the claimed area excised.

The rationale for the distinction is that governments ought not to be able to seek a determination of whether there is native title over vast areas of land as a device to permit grants to be made two months later unless Aboriginal people have come forward to make claims over the whole area.

## **AMENDMENT 28**

### **Clause 64 Powers of tribunal if parties reach agreement**

The amendment to this clause omits the existing paragraphs (c) and (d) and replaces them with a new paragraph (c). The Tribunal will not need to be satisfied that the applicant has made out a prima facie case for the determination that is sought but only that the determination is within the power of the Tribunal and is appropriate in the

circumstances. A similar amendment is made to clause 66 and in relation to the Federal Court, to clause 80

### **AMENDMENTS 29, 30 and 31**

#### Clause 65 - Mediation conference to be held

Part of the process of resolving disputes between parties to an application is to be by mediation conferences.

The insertion of the words 'unless the parties otherwise agree, a member' is intended to enable mediators to take a further part in the proceedings relating to the application following the mediation conference, if the parties agree.

New subclause 65(2A) provides that in subsequent proceedings before the Federal Court or at hearings before the Tribunal evidence cannot be given or statements made about acts done or words spoken at a conference unless the parties agree.

New subclause 65(4) which enables the member of the Tribunal to allow a person to participate in mediation conferences by, for example, telephone or closed-circuit television, is intended to permit increased flexibility in the conduct of mediation conferences.

### **AMENDMENT 32**

#### Clause 66 Powers of the Tribunal if parties reach agreement after mediation conference.

This amendment is in similar terms to that to clause 64 and again omits the existing paragraphs (c) and (d) and replaces them with a new paragraph (c). This paragraph no longer has a requirement that the Tribunal be satisfied that a prima facie case has been made out. The Tribunal must only be satisfied that the determination is within its power and is appropriate in the circumstances.

### **AMENDMENT 33**

#### Clause 76 - Assessor assisting the Federal Court

This amendment provides that the Chief Judge of the Federal Court may direct an assessor to assist the Court. The Chief Judge therefore has a discretion in this matter. It is expected that in all significant claims an assessor will be appointed.

### **AMENDMENT 34**

#### Clause 80 Power of Federal Court if parties reach agreement

This amendment is similar to those made to clauses 64 and 66 in that the Court no longer has to be satisfied that a prima facie case has been made out before the Court can act consistently with an agreement between the parties.

### **AMENDMENT 35**

### Clause 88 - Appointment of Registrar

This amendment enables a Registrar to be appointed prior to the appointment of the President of the Tribunal.

### **AMENDMENT 36**

### Clause 132 - Inquiries

The purpose of this amendment is to add agreements reached after mediation conferences pursuant to clause 66 to the list of those occasions on which the Tribunal is required to hold an inquiry. The list already includes unopposed applications, right to negotiate applications and special matters under clause 130. It is a technical amendment. By virtue of the amendment to clause 66 the inquiry will only be such as is necessary to ensure that the determination is within the powers of the Tribunal and appropriate in the circumstances.

### **AMENDMENT 37**

### Clause 139 - Evidence and findings in other proceedings

This amendment includes 'reports' among those things which may be adopted by the Tribunal in the course of an inquiry. The main purpose of this amendment is to enable the Tribunal to adopt reports about matters covered by special inquiries held under clause 130.

### **AMENDMENT 38**

### Clause 141A - Power of Tribunal where applicant requests dismissal

This new clause provides the Tribunal with the power to dismiss an application where an applicant wishes that it should do so. The NNTT has to be satisfied that it is appropriate to allow the application to be dismissed before it can so order.

### **AMENDMENT 39**

### Clause 178 - Contents of Register

Under paragraph (1)(d) of this clause a person must be named as being the claimant for the purposes of the Register of Native Title Claims. This person would be the contact point for all the claimants. The note which is now added to the clause will make it clear that this person is the registered native title claimant provided for in a number of clauses in the Bill, such as paragraph 28(2)(b), on whom notices need to be served..

### **AMENDMENT 40**

## **PART 8A - FINANCIAL ASSISTANCE TO STATES AND TERRITORIES**

### Clause 191A - Financial assistance to States or Territories

This clause provides that the Commonwealth may enter into agreements with the States and Territories to provide financial assistance in relation to the costs of any compensation that might be payable as a result of this Bill. Such an agreement is conditional on the State or Territory validating past acts in accordance with clause 18. The agreements may also deal with the provision of financial assistance in relation to the costs of setting up and running any recognised State/Territory body and also for any State or Territory procedures in substitution for the right to negotiate which may be recognised by the Commonwealth Minister under clause 41. Any assistance is to be provided on the terms determined by the Commonwealth Minister, and set out in the agreement.

#### **AMENDMENT 41, 42 and 43**

##### **Clause 194 - Financial assistance to representative Aboriginal/Torres Strait Islander bodies**

This clause allows for the provision by the Commonwealth Minister of financial assistance to representative Aboriginal/Torres Strait Islander bodies. These amendments provide that the Aboriginal and Torres Strait Islander Commission (ATSIC) established under the *Aboriginal and Torres Strait Islander Commission Act 1989* can also provide such assistance if an application is made to ATSIC.

The amendment to subclause (2) simply makes clear that the Commonwealth Minister must receive an application before being satisfied that assistance should be granted.

#### **AMENDMENT 44**

##### **PART 10A - PARLIAMENTARY JOINT COMMITTEE ON NATIVE TITLE**

This new part is added to the Bill to provide for a means of monitoring and reviewing the implementation and operation of this Bill. The amendment reflects the recommendation in the majority report of the Senate Standing Committee on Legal and Constitutional Affairs on this Bill.

##### **Clause 194A - Establishment and membership**

Subclause (1) provides for the setting up of the Committee as soon as practicable after this Part of the Bill comes into force. Thereafter a new Committee will be established at the commencement of each new Parliament. The subclause also provides for the name of the Committee.

The remainder of the clause deals with the membership of the Committee. Subclause (2) provides that there are to be 5 members from the Senate and 5 from the House of Representatives.

Subclause (4) lists members or senators who hold certain offices and indicates that these office holders cannot be members of the Committee.

Subclause (5) provides when a member ceases to be a member of the Committee.

Subclauses (6), (7) and (8) allow members of the Committee to resign and provides for the filling of a vacancy on the Committee by the House from where the vacancy arose.

#### Clause 194B - Powers and proceedings

This clause indicates that the actual powers and proceedings of the Committee must be decided by a resolution of both the House of Representatives and the Senate.

#### Clause 194C - Duties

This clause outlines the duties of the Parliamentary Committee. Paragraph (a) provides who the Committee is to consult about the implementation and operation of the Bill.

Paragraph (b) requires the Committee to report from time to time to both Houses and paragraph (c) requires the Committee to consider annual reports made by the President of the NNTT and to report to both Houses on certain matters in the report that the Committee believes should be brought to the Parliament's attention.

Finally, paragraph (e) provides the Committee with the power to report on matters related to its duties that are referred to it by either House. In this case the Committee reports to the House which referred the matter to it.

#### Clause 194D - Sunset provision

This is a sunset clause which provides that the Committee will cease to exist at the end of 5 years after it is first appointed.

### **AMENDMENT 45**

#### Clause 197 - Confirmation of ownership of natural resources, access to beaches etc

This amendment is intended to clarify existing paragraph (1)(c). As it presently is worded existing fishing access rights (which would include public and private rights) prevail over any other public or private rights. The amendment makes clear that it is statutory fishing rights which prevail over any other fishing rights.

### **AMENDMENT 46**

#### Clause 199 - Disallowable instruments

This amends clause 199, which sets out which instruments made under the Bill are disallowable instruments, to make it clear that the revocation of recognition of a State or Territory body must be done by way of disallowable instrument. This amendment is related to the amendment to paragraph 236(4)(b).

### **AMENDMENTS 47 and 48**

#### Clause 207 - List of Definitions

These amendments to the list of definitions take account of the insertion of the terms 'Aboriginal/Torres Strait Islander land or waters' and 'explore' into clause 238.

## **AMENDMENTS 49 and 50**

### Clause 208 - Native title

The amendments to this clause avoid any doubt that rights under a reservation in favour of Aboriginal peoples contained in a pastoral lease granted before 1 January 1994 or in legislation made before 1 July 1993 where the reservation applies because of the grant of a pastoral lease before 1 January 1994 do not fall within the expression 'native title' for the purposes of this Bill.

## **AMENDMENT 51**

### Clause 211 - Act

This amendment deletes subclause 211(4), removing the power to make regulations which could have excluded any 'act' (including legislation) from the definition of 'act'.

## **AMENDMENT 52**

### Clause 212 - Act affecting native title

This amendment makes it clear that for the purposes of the Bill and in particular for the definition of 'future act' in clause 218 an act (such as the making of legislation) affects native title if that act extinguishes native title.

## **AMENDMENT 53**

### Clause 213 - Past act

This amendment affects clause 213 which sets out which acts are 'past acts' for the purpose of the validation provisions in Part 2 of the Bill. The amendment changes subparagraph (3)(b)(ii) to amend the date by which an offer, commitment, arrangement or undertaking must be made, in order to come within the definition of 'past act' and be able to be validated as provided for in this Bill. The new date is 1 January 1994. The offer, commitment, arrangement or undertaking must not be in legislation.

## **AMENDMENTS 54, 55 and 57**

### Clause 214 - Category A past act

This clause defines what is meant by a 'category A past act'. The amendments to subclauses (2), (3) and (4) make clear that 'category A past acts' are certain 'past acts' as defined in clause 213. The amendments are technical only.

## **AMENDMENT 56**

### Clause 214 - Category A past act

This amendment excludes from the definition of 'category A past acts' any grants of leases made at any time in the past over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters (a related amendment inserts a definition of this term into clause 238). The effect of this amendment is to ensure that

validated leases granted over Aboriginal/Torres Strait Islander land or waters will therefore fall within the definition of "category D past acts" and the non-extinguishment principle applies so that such leases will not be taken under clause 14 to have extinguished any native title to Aboriginal/Torres Strait Islander land or waters.

## **AMENDMENT 58**

### Clause 215 - Category B past act

This amendment excludes from 'category B past acts' any grants of leases made at any time in the past over land or waters that, on 1 January 1994, are Aboriginal/Torres Strait Islander land or waters (a related amendment inserts a definition of this term into clause 238). The effect of this amendment is to ensure that validated leases granted over Aboriginal/Torres Strait Islander land or waters will not be taken under clause 14 to have extinguished any native title to Aboriginal/Torres Strait Islander land or waters. Such leases will therefore fall within the definition of "category D past acts", where the non-extinguishment principle applies.

## **AMENDMENTS 59 and 60**

### Clause 218 - Future act

There is a technical amendment to subclause 218(1) to take account of a related amendment to insert a new subclause 218(3).

Amendment 60 inserts a new subclause (3). The acts described in the subclause are not 'future acts'.

## **AMENDMENTS 61, 62 and 63**

### Clause 220 - Permissible future act

This clause defines what is meant by a 'permissible future act' for the purposes of this Bill. There are three amendments to subclauses in this clause each of which deals with the position of the onshore water areas that are bounded by land on one side only and are related to amendments made to other clauses (see the explanation in relation to the amendment to clause 16). Subclause (2) deals with what future legislative acts will be regarded as 'permissible future acts'. In both paragraph (a) and (b) the references to the land adjoining waters is amended to make it clear that the areas of water that are onshore (such as the inter-tidal area and certain bays, estuaries and harbours) and which are bounded on one side by land, are covered by these provisions.

Subclause (5) deals with what are to be regarded as 'permissible future acts' which are not legislative acts. The amendment to paragraph (5) (b) is to similar effect to that to subclause (2). Future acts such as the grant of fishing licences over such areas of water must satisfy the 'permissible future act test' applicable to onshore waters, they can be made if they could be made if the native title holder held ordinary title to the adjoining land.

## **AMENDMENT 64**



### Clause 225 - Similar compensable interest test

This clause defines what is meant by the 'similar compensable interest test' for the purposes of this Bill. The amendment to paragraph (a) is another part of the package of amendments relating to onshore waters.

## **AMENDMENT 65**

### Clause 227 - Lease

The addition of subclause (2) provides that for the purposes of mining leases only, licences or authorities to mine are to be treated in the same way as mining leases. This amendment is part of a package of amendments to treat licences and authorities to mine in the same way as mining leases. The related amendments are found in amendments 66 and 67.

## **AMENDMENTS 66 and 67**

### Clause 228 - Lessee

This clause defines what is meant by the term 'lessee' for the purposes of this Bill. The addition of subclause (2) makes it clear that for the purpose of a mining licence or authority that is a mining lease because of subclause 227(2) a person holding such a licence or authority is to be regarded as a lessee for the purposes of the Bill. These amendments are also consequential upon the treatment of mining licences and authorities which give similar rights to mining leases in the same manner for the purposes of this Bill.

## **AMENDMENT 68**

### Clause 236 - Recognised State/Territory body

This is a technical amendment to clause 236, which deals with the recognition of State/Territory bodies. It makes it clear that the revocation of the recognition of a State or Territory body is to be in writing. This amendment is related to the amendment to clause 199, which makes a revocation under subclause 236(4) a disallowable instrument.

## **AMENDMENT 69**

### Clause 238 - Other Definitions

This amendment inserts a definition of 'Aboriginal/Torres Strait Islander land or waters' into clause 238. This term means land or waters held by or for Aboriginal people or Torres Strait Islanders under the various land rights acts set out in paragraphs (a) and (b) of the definition. There is also a power to extend this list by regulations made under paragraph (c) to cover other appropriate legislation under which land or waters is held by or for the benefit of Australia's indigenous peoples.

## **AMENDMENT 70**

### Clause 238 - Other definitions

This amendment amends the definition of 'Compulsory Acquisition Act' and by adding a new paragraph (a) makes it clear that for an Act to come within the definition of a Compulsory Acquisition Act it must provide for the acquisition of native title rights and interests and also for other non-native title interests in relation to land or water.

It is not sufficient for an Act to provide only for the acquisition of native title interests.

#### **AMENDMENT 71**

##### Clause 238 - Other definitions

This amendment adds a definition of 'explore' to the Bill. 'Explore' is defined to include conducting certain surveys and taking certain samples.

#### **AMENDMENT 72**

##### Clause 238 - Other definitions

This amendment to the definition of 'land' clarifies that the area between high and low water is to be regarded as 'water' for the purposes of this Bill. This amendment is part of the package of amendments dealing with the inter-tidal area as outlined in the explanation to the amendments to clause 16.

#### **AMENDMENT 73**

##### Clause 238 - Other definitions

This amendment to the definition of 'registered native title claimant' is made to make clear that the person who is the claimant on the Register of Native Title Claims is intended to be the 'registered native title claimant'. This amendment relates to the note to clause 178 to this effect.

#### **AMENDMENT 74**

##### Clause 238 - Other definitions

This amendment alters the definition of "waters" and clarifies that the area between the high and low water is to be regarded as water for the purposes of the Bill. This amendment is part of the package of amendments to deal with this area and other areas referred to in the explanation to the amendment to clause 16.











