

# Native Title Procedures

Mineral Resources Act 1989

Parts 12, 15, 16, 18 & 19

EXPLORATION  
TENEMENTS

**Commencement Edition**

**18 September 2000**

## Manual for Applicants for **EXPLORATION TENEMENTS**

Exploration Permits  
and Mineral Development Licences



**Queensland  
Government**  
Department of  
Mines and Energy

**NATIVE TITLE PROCEDURES**

**MINERAL RESOURCES ACT 1989**

**Parts 12, 15, 16, 18 and 19**

**MANUAL FOR APPLICANTS FOR**

**EXPLORATION TENEMENTS**

**(EXPLORATION PERMITS AND  
MINERAL DEVELOPMENT LICENCES)**

**COMMENCEMENT EDITION**

**DEPARTMENT OF MINES AND ENERGY**

**18 SEPTEMBER 2000**

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## PREFACE TO COMMENCEMENT EDITION

This Manual has been prepared to assist intending applicants for Exploration Permits and Mineral Development Licences under the *Mineral Resources Act 1989* to become familiar with the new alternative State provisions for dealing with native title in the application process for such tenements, following commencement of these State provisions on 18 September 2000.

The State provisions replace those previously required under the Commonwealth *Native Title Act 1993*, chiefly those known as the ‘right-to-negotiate’ provisions.

This Manual has been prepared on the basis of the *Mineral Resources Act 1989* and the *Land and Resources Tribunal Act 1999* after they were amended by the *Native Title Resolution Act 2000* in September 2000. This followed approval of the alternative State provisions by the Commonwealth Attorney-General under the *Native Title Act 1993*, and scrutiny by the Commonwealth Parliament through disallowance motions in the Senate.

This edition of the Manual differs from the Provisional Edition issued in December 1999 (which was based on the amendments to the *Mineral Resources Act 1989* encompassed in the *Native Title (Queensland) State Provisions Amendment Act (No 2) 1998*, and the *Native Title (Queensland) State Provisions Amendment Act 1999*), as some of the alternative State provisions did not survive the disallowance motions, and others have been modified to give additional rights to native title parties. These changes were made by the *Native Title Resolution Act 2000*.

Specifically, the provisions for the grant of high-impact exploration tenements on ‘Alternative Provision Areas’ (chiefly pastoral lease and reserve land), were disallowed by the Senate. To accommodate this situation, the Queensland provisions for high-impact tenements on other land where native title may exist have been extended to cover such pastoral lease and reserve land also. The provisions are essentially a State-based ‘right-to-negotiate’ process, with the advantages of being integrated with other provisions of the *Mineral Resources Act 1989*, and using the Queensland Land and Resources Tribunal to resolve disputes.

The procedures for low-impact exploration tenements have been amended to give additional substantive and procedural rights to native title parties that are no less favourable than those proposed in New South Wales. The definition of low-impact activities has also been amended.

***Disclaimer: This Manual is not a legal document and is issued as a general guide only. It does not replace the detailed provisions of the legislation with which you must comply. You should become familiar with the legislation pertaining to your situation and if necessary seek your own legal advice.***

## 1. INTRODUCTION

This manual is designed to assist applicants for Exploration Permits and Mineral Development Licences covering land where native title may exist, to comply with the procedures now required by the new Parts 12, 15, 16, 18 and 19 of the *Mineral Resources Act 1989* (MRA). These procedures, which allow native title rights and interests to be taken into account, are additional to the normal procedures of Parts 5 and 6 of the MRA.

These procedures are the alternative procedures for exploration which does not have significant impact on the land or waters as permitted under Section 26A of the Commonwealth *Native Title Act 1993* (NTA), and the alternative State provisions for other exploration activities permitted under Section 43 of that Act. They were inserted into the MRA by the *Native Title (Queensland) State Provisions Amendment Act (No 2) 1998*, and the *Native Title (Queensland) State Provisions Amendment Act 1999*. They were approved by the Commonwealth Attorney-General on 1 June 2000 and survived disallowance motions in the Senate on 30 August 2000, subject to certain amendments being made, which were done by the *Native Title Resolution Act 2000*. They commenced on 18 September 2000.

Some of the procedures involve the Land and Resources Tribunal which replaces the previous Wardens Court.

### ON WHICH LAND DO THE NATIVE TITLE PROCEDURES APPLY?

#### **Land where compliance is necessary**

Compliance with the native title procedures is necessary on all land where native title may still exist ('**non-exclusive**' tenures), except in certain particular circumstances as described below. It is irrelevant whether or not a native title claim has been lodged over the area.

Main categories of such land of significance to exploration and mining are:

1. Pastoral Leases
2. Reserves, State Forests
3. Aboriginal Freehold Land and Torres Strait Islander Freehold Land
4. Some freehold land held by the State (previously a non-exclusive tenure and still undeveloped)
5. Occupation Licences
6. Permits to Occupy
7. Unallocated State Land
8. Beds and banks of boundary water courses
9. Roads not mentioned in 'extinguishing tenures' below.

#### **Land where compliance is *not* necessary**

Compliance is not necessary on land where native title is taken to have been extinguished, ('**extinguishing**' tenures), predominantly land which is:

1. Freehold (other than State freehold as above); or

2. Certain leasehold land tenures that have given exclusive possession to the lessees, (ie **‘exclusive tenures’** as set out in Part 3 of Schedule 1 of the *Native Title Act 1993*). Land tenures in this category important in mineralised areas are Grazing Homestead Perpetual Leases (GHPLs), Grazing Homestead Freeholding Leases (GHFLs), Mining Homestead Perpetual Leases (MHPLs), Agricultural Farms (AFs), various other agricultural leases and certain term or special leases; or
3. Areas that can be shown to have once been covered by freehold or exclusive tenures but are now under a lesser form of tenure. Examples are areas of freehold, GHPL etc that have been converted to State Forest or other State reserves, or areas that have reverted to un-allocated State land (note however that land with this history which is now held or set aside for the benefit of Aboriginal or Torres Strait Islanders or is occupied by Aboriginal people or Torres Strait Islanders is not included);or
4. Certain roads that have been dedicated and:
  - are less than 120.7m wide and entirely surrounded by freehold or exclusive land tenures; or
  - are less than 120.7m wide not surrounded by freehold or exclusive tenures but which have been constructed and established; or
  - are greater than 120.7m wide and have been constructed and established – native title is taken to be extinguished to the extent of 60.35m from the centre line; or
  - have been created entirely from previously existing freehold or exclusive tenures; or
5. Other public infrastructure such as railways, pipelines, fully developed reserves (eg for schools) etc; or
6. Areas of actual disturbance on Gold Mining Leases and other mining tenements validly granted before 1975.

Considerable tenure examination and tenure history research is needed to identify land mentioned in paragraphs 3-6 above.

## **OVERVIEW OF THE PROCEDURES FOR ALL MINING AND EXPLORATION TENEMENTS**

The following is an overview of the procedures for all exploration and mining tenements, to set those for exploration tenements in perspective

The procedures are designed to run parallel with all other requirements of the Mineral Resources Act.

Applications for all tenements require the notification of relevant native title parties either before or shortly after lodgement of an application.

For prospecting permits allowing prospecting and low-impact exploration tenements, the procedures require consultation with native title parties on the protection of native title rights and interests, and the reaching of an access agreement before entry onto the land.

For high-impact exploration tenements, consultation and negotiation with native title parties is required to enable the grant of the tenement. Native title parties are entitled to object. If agreement for grant cannot be negotiated, the matter is heard by the Land and Resources Tribunal. The Minister may overrule the Tribunal only in limited circumstances.

For Mining Leases and Mining Claims, consultation and negotiation with native title parties is required for the grant of the tenement. Native title parties are entitled to object. If agreement for grant cannot be negotiated, the matter is heard by the Land and Resources Tribunal in conjunction with any other hearing necessary under the Mineral Resources Act. Again, the Minister may overrule the Tribunal only in limited circumstances. Mediation is available if requested in the consultation and negotiation phases of all processes.

Mining Leases solely for infrastructure purposes are not subject to the alternative State provisions, but must comply with section 24MD (6)(b) of the NTA as well as the MRA.

Settling of compensation for disturbance to native title interests is required before the grant of a Mining Lease or Mining Claim on land where native title has been recognised (ie by a determination of the Federal Court), either by agreement or a determination by the Tribunal. Where native title has not yet been recognised but there are native title claimants, if agreement with the claimants is not possible, the Tribunal determines an amount to be paid into trust. If the grant of a Mining Claim or Mining Lease needs to be heard by the Tribunal, and there is no agreement on compensation at that stage, the Tribunal must determine the compensation, or decide an amount to be paid into trust as the case may be, at the same hearing rather than at a later date.

When there are no bodies corporate or claimants at the time of grant but these become registered later, they may request a compensation agreement or apply to the Tribunal for compensation to be determined or an amount to be paid into trust at any time after grant.

Settling of compensation is not required before the grant of Prospecting Permits, Exploration Permits, Mineral Development Licences, but native title parties may request a compensation agreement or apply to the Tribunal for compensation or an amount to be paid into trust, as the case may be, at any time after grant.

## **EXPLORATION PERMITS**

Exploration Permits (EPs) are the main exploration tenement used by the mining industry throughout the State. They are issued for first-stage, broad-scale exploration. If discoveries are made, they may be followed by Mineral Development Licences (allowing advanced investigations), or Mining Leases (allowing production). They are granted by the Minister for periods of up to 5 years (unless the Minister in a particular case determines otherwise) and may be renewed. They may cover sizeable areas over land held by many owners under various land tenures. Each Permit is subject to a work program and an annual relinquishment of area is normally required.

Exploration usually involves extensive activities with no significant or lasting impacts, but these may be followed by more intensive activities such as costeaning and close-spaced drilling.

## MINERAL DEVELOPMENT LICENCES

Mineral Development Licences (MDLs) are for advanced exploration activities. They generally fall into two categories: those taken out as a holding tenure over an identified but as yet uneconomic resource, and those where more intensive evaluation of the resource is required. Such investigations may include trenching, closely spaced drilling, bulk sampling, metallurgical investigations and feasibility studies. They require an Exploration Permit or another MDL as a prerequisite, and usually cover smaller areas than the original permit. They are normally granted by the Minister for periods of up to 5 years, but may be renewed.

### ARE ANY EXPLORATION TENEMENTS EXEMPT FROM THE PROCEDURES?

#### Exploration tenements in areas subject to a registered indigenous land use agreement (ILUA)

If an ILUA applies to the grant of the relevant type of tenement, the procedures required by that ILUA apply instead of those in Parts 15 and 16 of the MRA. MRA Section 420

Any ILUA should have also addressed the matters of compensation and renewal.

Mining Registrars can advise you if there is a relevant ILUA in an area of exploration interest.

#### Exploration tenements in ‘approved opal and gem mining areas’

Under section 26C of the NTA the Commonwealth Minister may approve certain areas of intense opal or gem mining as ‘approved opal and gem mining areas’ where lesser procedures are required.

The native title procedures of Parts 15 and 16 of the MRA are not required for applications for exploration tenements in these areas **provided that they are conditioned so that:**

- exploration is permitted over no more than 500ha; and
- exploration is for opal or gems only. Sections 480, 536

There are no such approved areas at the time of compilation of this manual, but Mining Registrars can advise if any are approved in the future.

#### Exploration tenements solely below the high water mark.

The procedures do not apply to exploration tenements solely below the high water mark as the original ‘right to negotiate’ of the Commonwealth *Native Title Act 1993* does not apply in such circumstances. NTA Section 26(3)

#### Exploration tenements in areas subject to a ‘right to negotiate’ agreement under the Commonwealth NTA.

The procedures also do not apply in cases where a ‘right-to-negotiate’ process for the grant of an exploration tenement under section 26 of the Commonwealth Native Title Act has been completed or is being undertaken. There are no such agreements in force or being negotiated at the time of compilation of this manual. Section 419

## **WHICH EXPLORATION TENEMENTS MUST COMPLY WITH THE PROCEDURES ?**

All exploration tenements over non-exclusive land other than those above must comply with the native title procedures.

There are two different sets of procedures required, namely for:-

- tenements conditioned to allow low-impact activities only;
- tenements conditioned to allow both low- and high- impact activities.

### **Exploration tenements conditioned to allow only low-impact activities ('Low-impact' tenements)**

Section 26A of the Commonwealth NTA provides for exploration to be exempted from the 'right-to-negotiate' process where the Commonwealth Minister has determined that particular exploration activities are unlikely to have a significant impact on the land, and that there are satisfactory State procedures in place to deal with native title rights and interests. Activities determined by the Commonwealth to qualify as having no significant impact are set out in chapter 2 below as 'low-impact activities'. Section 482, 538

Only those Exploration Permits and Mineral Development Licences, which are conditioned to allow the low-impact activities only ('low-impact Exploration Permits' and 'low-impact Mineral Development Licences'), qualify for this exemption from the 'right to negotiate'. However they must instead comply with the alternative State procedures of Parts 15 and 16 of the MRA. These still require certain notification and consultation processes, and reaching of an access agreement with registered native title parties before entry. These processes are set out in Parts 15, 16 and 18 of the MRA and are outlined in chapters 2 and 6 below.

Note that a tenement is conditioned for low-impact activities only with respect to non-exclusive land – you can undertake high-impact activities on any exclusive land tenures within it.

If you later wish to upgrade from a tenement conditioned for low-impact activities only, to one also allowing high-impact activities over all or part of the area, you may apply to the Minister for the required change of conditions. Sections 141C, 194AC

An application to do this would then trigger the alternative State procedures for high-impact tenements as if a new application were being made. Sections 532, 589

### **Exploration tenements conditioned to allow high-impact as well as low-impact activities**

High-impact activities are those that are normally allowed under an Exploration Permit or a Mineral Development Licence but which are not low-impact activities. Where high-impact activities are desired on non-exclusive land tenures, the NTA requires the 'right-to-negotiate' process of the NTA unless there are approved alternative State provisions.

The alternative State provisions approved by the Commonwealth for such land under Section 43 of the NTA are set out in Parts 15, 16 and 18 of the MRA and are outlined in chapters 3 and 6 below.

### **EXPLORATION TENEMENTS PARTLY OVER EXTINGUISHING LAND TENURES AND PARTLY OVER NON-EXCLUSIVE LAND TENURES**

It is possible to grant tenements in such circumstances without compliance with the native title procedures, provided that the non-exclusive land tenures are specifically excluded from the grant of the tenement. The Department will consider such grants if you can demonstrate that there is a sufficient proportion of extinguishing land tenures present to allow a worthwhile exploration program. In the case of Exploration Permits only sub-blocks containing both extinguishing and non-exclusive tenures will be granted; those entirely over non-exclusive tenures will not be granted. However you can re-apply for a new tenement separately over such whole sub-blocks if desired and use the alternative State procedures below for it.

There is provision in the MRA to add in any excluded non-exclusive tenures to the tenement at a later date if desired. Sections 176A, 226AA

An application to do this would then trigger the alternative State procedures as if a new application were being made. Sections 534, 591

### **ARE THERE ANY DEALINGS WITH EXPLORATION TENEMENTS APART FROM GRANTS THAT REQUIRE THE NATIVE TITLE PROCEDURES?**

Certain **renewals** of exploration tenements require compliance with the native title procedures. The requirements are set out in chapter 4 below.

Certain other **subsidiary approvals** also require compliance with the native title procedures. These include applications for:

- removal of conditions allowing low-impact activities only;
- adding non-exclusive land to a tenement granted only over extinguishing tenures;
- adding other minerals to a Mineral Development Licence (in some cases).

The requirements for these approvals are set out in chapter 5 below.

Conditional surrenders of tenements to allow one or more new tenements also require compliance with the procedures as they create new 'rights to mine'. The procedures must be followed as for the grant of new tenements.

Assignments or transfers of tenements are exempt from the procedures. However, after an assignment of a Mineral Development Licence, any native title bodies corporate or registered native title claimants must be notified, as for other landowners. Section 198(9) as amended

### **NOMINATING ON APPLICATION**

In your initial application for an Exploration Permit or Mineral Development Licence, you should state:-

(1) whether you wish the application to be granted over extinguishing land tenures only, or over both extinguishing and non-exclusive land tenures;

(2) if you wish the latter:-

- whether the land is subject to a relevant ILUA;
- whether it is within an approved opal or gem mining area;

(3) if neither of the above in (2) apply, whether you require the tenement to be conditioned for low or high-impact activities.

## 2. NATIVE TITLE PROCEDURES FOR EXPLORATION TENEMENTS CONDITIONED FOR LOW-IMPACT ACTIVITIES ON NON-EXCLUSIVE LAND Part 15 (Div. 2) and Part 16 (Div. 2) of the Mineral Resources Act

The approved State procedures for applications for exploration tenements where you request that they be conditioned for low-impact activities only, are as follows. The procedures comply with Section 26A of the NTA. They require notification, consultation and reaching of an access agreement with registered native title parties before entry. The definition of low-impact activities is given in the box over the page.

### *Notification*

Within a period of 1 month before lodging your application for the Exploration Permit or the Mineral Development Licence, or within 7 days after the lodgement, you must notify, in writing, all registered native title bodies corporate, registered native title claimants, representative Aboriginal/Torres Strait Islander bodies for the land involved (the native title notification parties), and the Registrar of the National Native Title Tribunal of your intention to lodge the application or that you have lodged it. Mining Registrars can supply a standard form for this notification.

Sections 486,542

You must also give a copy of the notice to the Mining Registrar for the district in which the application is predominantly situated within 2 days of giving the notice to the native title parties. If the Mining Registrar considers that the notice is defective, you may be directed to re-issue it within a certain period.

Sections 487, 543

The Mining Registrar for the district or the National Native Title Tribunal can help you with the addresses and contacts for the native title parties.

After you have notified the native title parties as required, the Exploration Permit or Mineral Development Licence Permit can proceed to grant in the usual manner. It will be granted with a condition allowing only low-impact activities as defined below.

### Notification Details

Sections 486,542

*The written notice must include the following:*

- *the name and postal address of the applicant;*
- *whether or not the application for the Exploration Permit or Mineral Development Licence has been lodged;*
- *a clear description of the land, and its location;*
- *details of the activities proposed for the land under a program of work;*
- *an outline of the expected impact on the land by the proposed activities;*
- *a statement that you cannot enter land where native title may exist unless you have an access agreement for entry to the land (see below).*

**Low-Impact Exploration Activities**

Sections 482, 538

*Low-impact activities are the following:*

*a) Aerial surveys:*

*examples:- geological, geophysical photogrammetric and topographic surveys;*

*b) Geological and surveying field work that does not involve clearing:*

*examples:- flagging of sites and sample locations; geological reconnaissance and field mapping; surveying that does not involve clearing;*

*c) Sampling by hand methods:*

*examples:- grab sampling; mine tailings and mine mullock sampling; panning and sieving; rock chip sampling; stream sediment sampling; soil sampling; water sampling;*

*d) Ground-based geophysical surveys that do not involve clearing:*

*examples:- potential field methods (including for example gravity, magnetic and radiometric); electrical methods (including for example electromagnetic, ground penetrating radar, induced polarisation, resistivity); seismic methods (including for example hammer, refraction and vibration-sourced surveys);*

*e) Drilling and activities associated with drilling that-*

- (i) do not involve clearing or excavation, other than the minimum necessary to establish a drill pad for a mobile rig; and*
- (ii) do not include clearing or excavation for access to a drill site; and*
- (iii) do not include side hill excavation for access or drill pads as would be necessary on steep slopes; and*
- (iv) do not include drilling in a watercourse or stream diversion; and*
- (v) do not include clearing in densely vegetated areas.*

*f) Environmental field work that does not involve clearing:*

*examples:- cultural heritage, environmental and geobotanical surveys; environmental monitoring;*

*g) (for MDLs only) Investigations associated with mine feasibility and development:*

*examples:- engineering and design studies; environmental studies and monitoring.*

**Definitions of Clearing and Excavation in Low Impact Activities**

*Sections 482, 538*

*‘Clearing’ means, in relation to grass, scrub or bush, the removal of vegetation by disturbing root systems and exposing the underlying soil.*

*It does not include the flattening or compaction of vegetation by vehicles if the vegetation remains living, the slashing or mowing of vegetation to facilitate access tracks, or the clearing of noxious or introduced species.*

*‘Clearing’, in relation to trees, means cutting down, ringbarking or pushing them over.*

*‘Excavation’ means the use of machinery to dig below the topsoil horizon, but does not include minor levelling of a site to allow a drill to operate safely on a level surface, or the construction of a small sump for operational purposes.*

*‘Top soil horizon’ means the top level or layer of soil that is usually less than 30cm thick.*

***Requirement for consultation and access agreement***

Despite the grant of the Exploration Permit or Mineral Development Licence, you cannot enter any non-exclusive land until you have consulted, and reached an access agreement, with, any registered native title party for the land (you do not have to consult or reach an access agreement with any party that gives a written notice to you that it does not wish to be consulted or does not require an access agreement). *Sections 488, 544*

*A registered native title party* is a registered native title body corporate or a registered native title claimant who is registered when you wish to give notice of the start of the consultation period, (see below) or becomes registered by the time the consultation period starts. *Sections 485, 541*

***Notice of start of consultation***

When you wish to enter any land in the exploration tenement, you must give a notice to all registered native title parties for the land (at that time), nominating a day for consultation and discussions about an access agreement to start. The notice must contain a clear description of the land to be entered and its location and a description of the activities to be carried out. A copy of the notice must be forwarded to the Mining Registrar.

This notice must not be given before:

- 3 months have passed since you gave notice of the application for the tenement; and
- in the case of exploration permits, before you are advised of the security deposit required by the Minister under Section 144.

The consultation starting day must be at least 1 month after you give the consultation starting notice.

The consultation period lasts for 2 months after the consultation starting day.

*Sections 490, 546*

### Matters for Consultation

Sections 489, 545

*The purpose of consultation is to minimise the impact of the tenement on the exercise of native title rights and interests in the land that will be affected by the tenement, and to obtain the necessary access agreement for entry. In particular, the consultation must be about:*

- (a) the protection and avoidance of any area or site, on the land or waters to which the native title rights and interests relate, of particular significance to the persons holding the native title in accordance with their traditional laws and customs;*
- (b) any access to the land or waters to which the native title rights and interests relate by –*
  - (i) the persons mentioned in paragraph (a) above; or*
  - (ii) any person who will do anything authorised under the Exploration Permit or Mineral Development Licence; and*
- (c) the way in which any other thing authorised by the Exploration Permit or Mineral Development Licence that affects native title rights and interests is to be done.*

### Nature of Access Agreements

Sections 489A, 545A

*An Access Agreement may contain provisions about any of the following:*

- a) the periods during which you are permitted access to the area;*
- b) the parts of the area you may access;*
- c) the kinds of low-impact activities that may be carried out;*
- d) requirements that you must observe;*
- e) things that you need to do to protect the environment;*
- f) compensation to be paid under Part 18 of the MRA;*
- g) how disputes arising in connection with the Agreement are to be resolved;*
- h) the way the Agreement may be changed; and*
- i) other matters the parties agree to provide for.*

*If an Access Agreement contains provisions inconsistent with the MRA or a condition of the tenement, such provisions have no effect.*

***Mediation***

If at the end of the consultation period an access agreement has not been reached, you or a registered native title party for the area may ask the Mining Registrar for the district to hold a conference for mediation about the access agreement. Sections 169 to 174 (or 217 to 222 as the case may be) of the MRA apply as if the request were made by an owner of land affected by the application, except you and the native title parties may be represented by a lawyer if desired. Each party pays its own costs, unless by application the Tribunal makes an order for costs where one party does not attend.

Sections 491, 547

***Decision by Tribunal***

If an access agreement has not been reached within one month of the Mining Registrar being asked to mediate, you or a registered native title party for the land may ask the Mining Registrar to refer the matter to the Land and Resources Tribunal for a decision on the terms of an access agreement.

If the Tribunal decides the terms of an access agreement, it must also make a compensation decision or compensation trust decision under Part 18 of the MRA .

Sections 491A, 547A

***Notification of access agreement***

As soon as practicable after an access agreement for entry to an area is obtained, and before you enter the area, you must give a copy of the access agreement to the Mining Registrar for the district.

Sections 492, 548

The Mining Registrar may recommend to the Minister action to address any matter raised by any registered native title party in relation to an access agreement. The Minister may give you directions to address any of these matters. Any failure to follow such directions is taken to be a breach of the conditions of the tenement.

Sections 493, 54

***Compliance with access agreement***

Once an access agreement is reached and you enter the land, you must carry out your activities consistent with the agreement. Any alleged breach is subject to investigation and the normal penalties for infringement of the MRA.

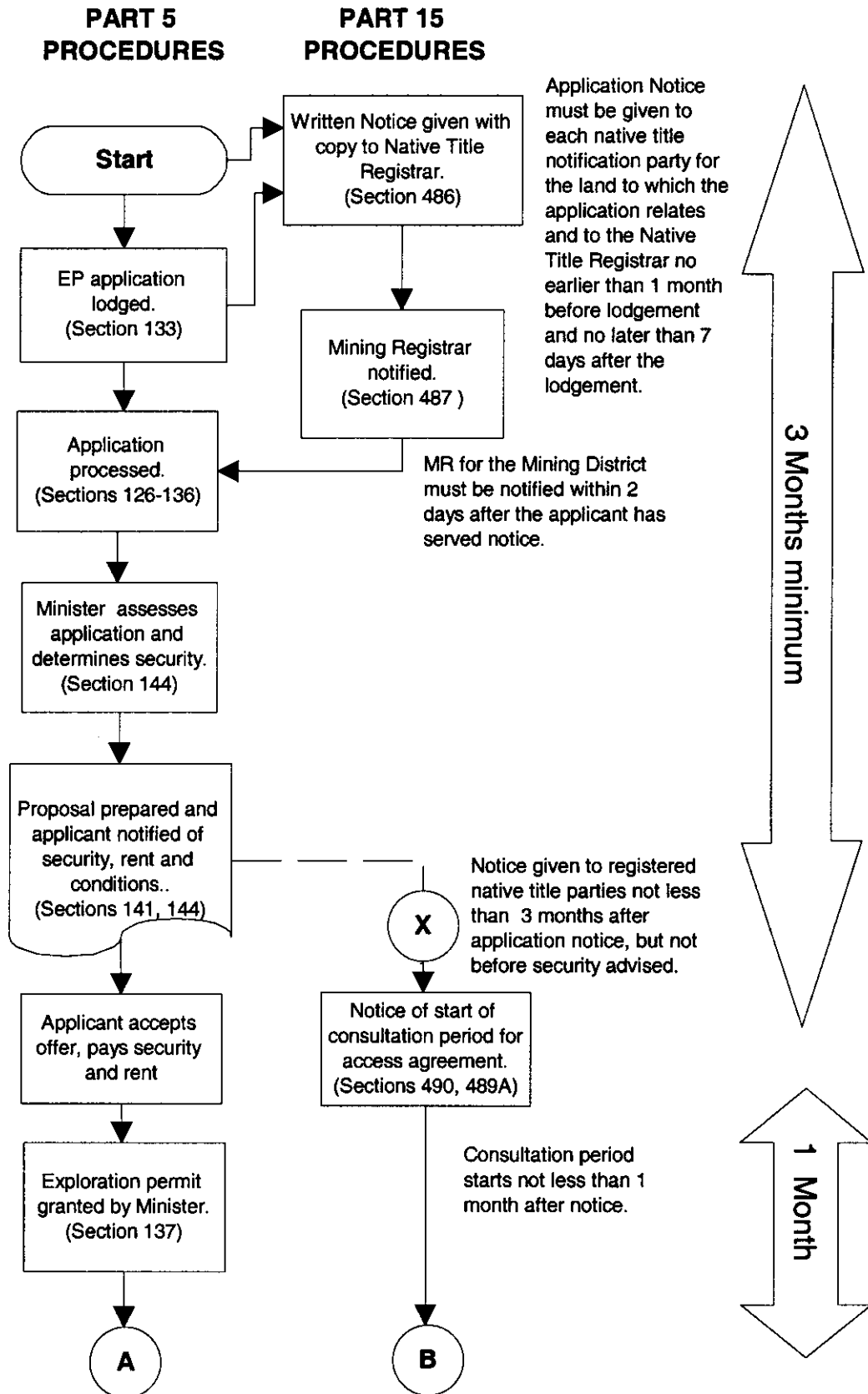
Sections 488A, 544A

***Compensation***

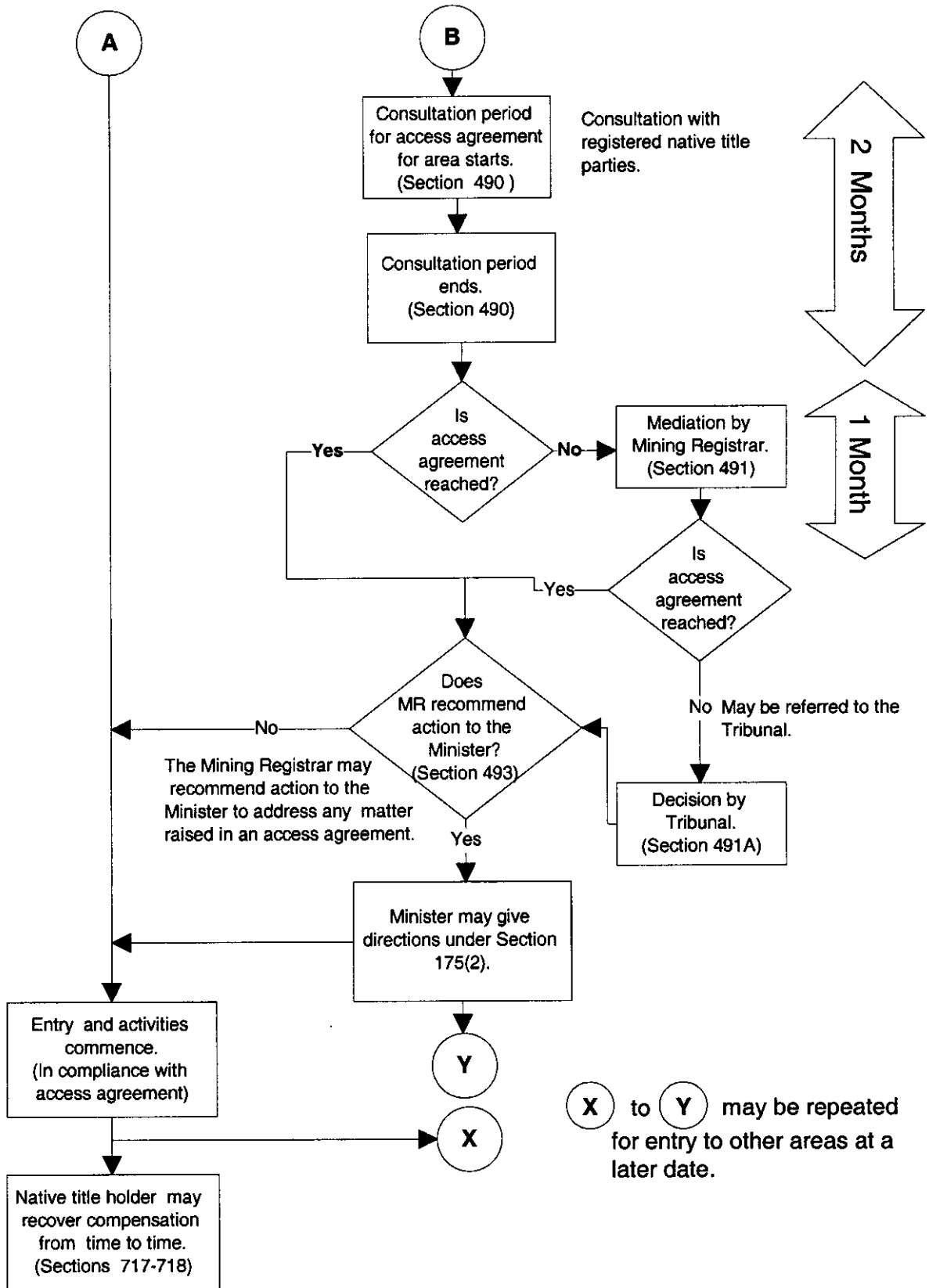
Native Title holders are entitled to seek compensation at any time after the grant of the Exploration Permit or Mineral Development Licence for the affect of any activities carried out under the authority of the permit or licence on native title rights and interests. (As mentioned above, they may include such matters in the access agreement). If you cannot reach agreement with them, they may seek a determination in the Tribunal. In the latter case, if a native title holder is other than a registered native title body corporate, the compensation must be paid into trust until native title is determined for the area.

Sections 707-713, 717-718

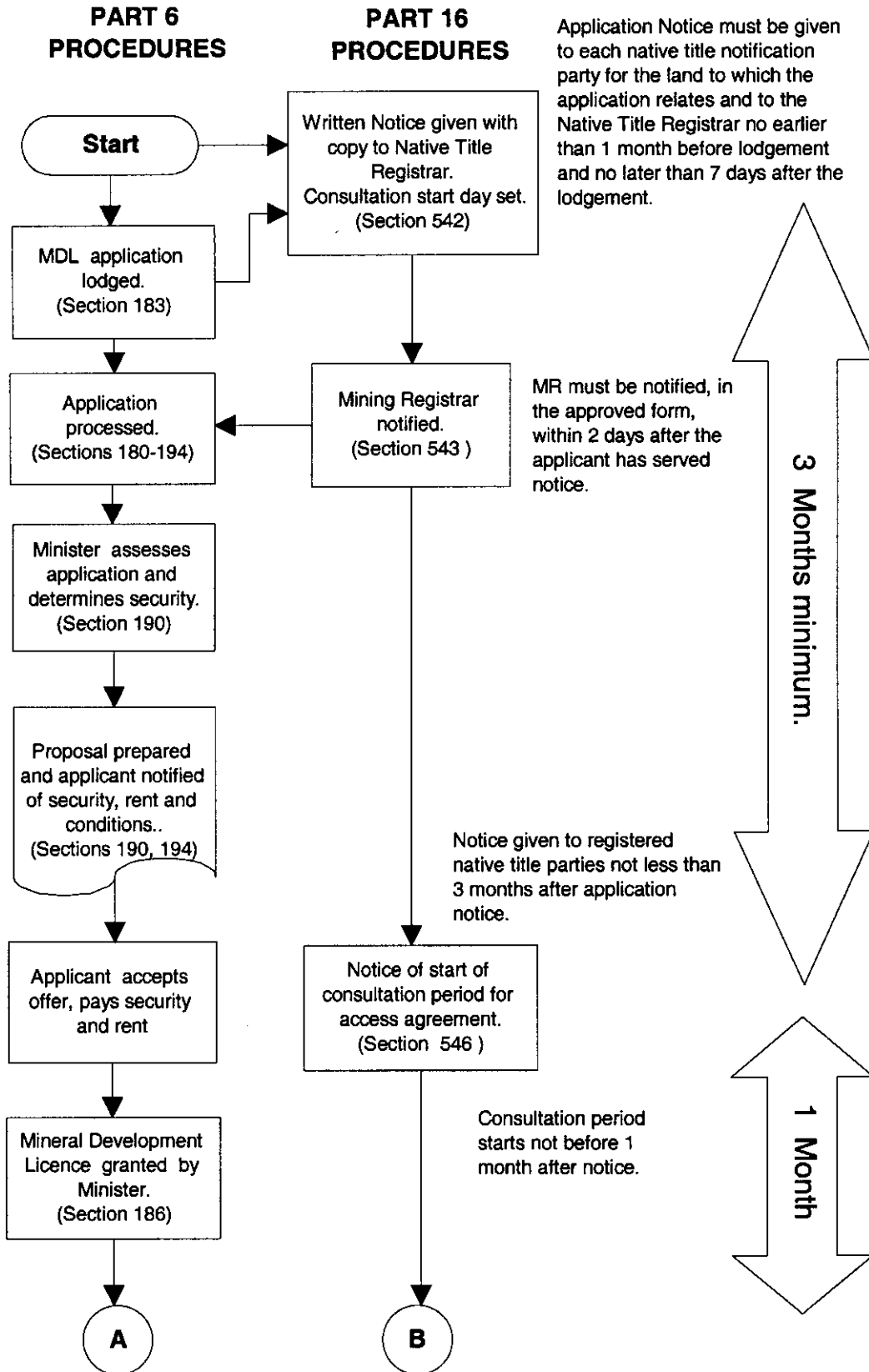
**FLOW CHART**  
**Exploration Permit Application**  
**Low Impact EP over non-exclusive land**



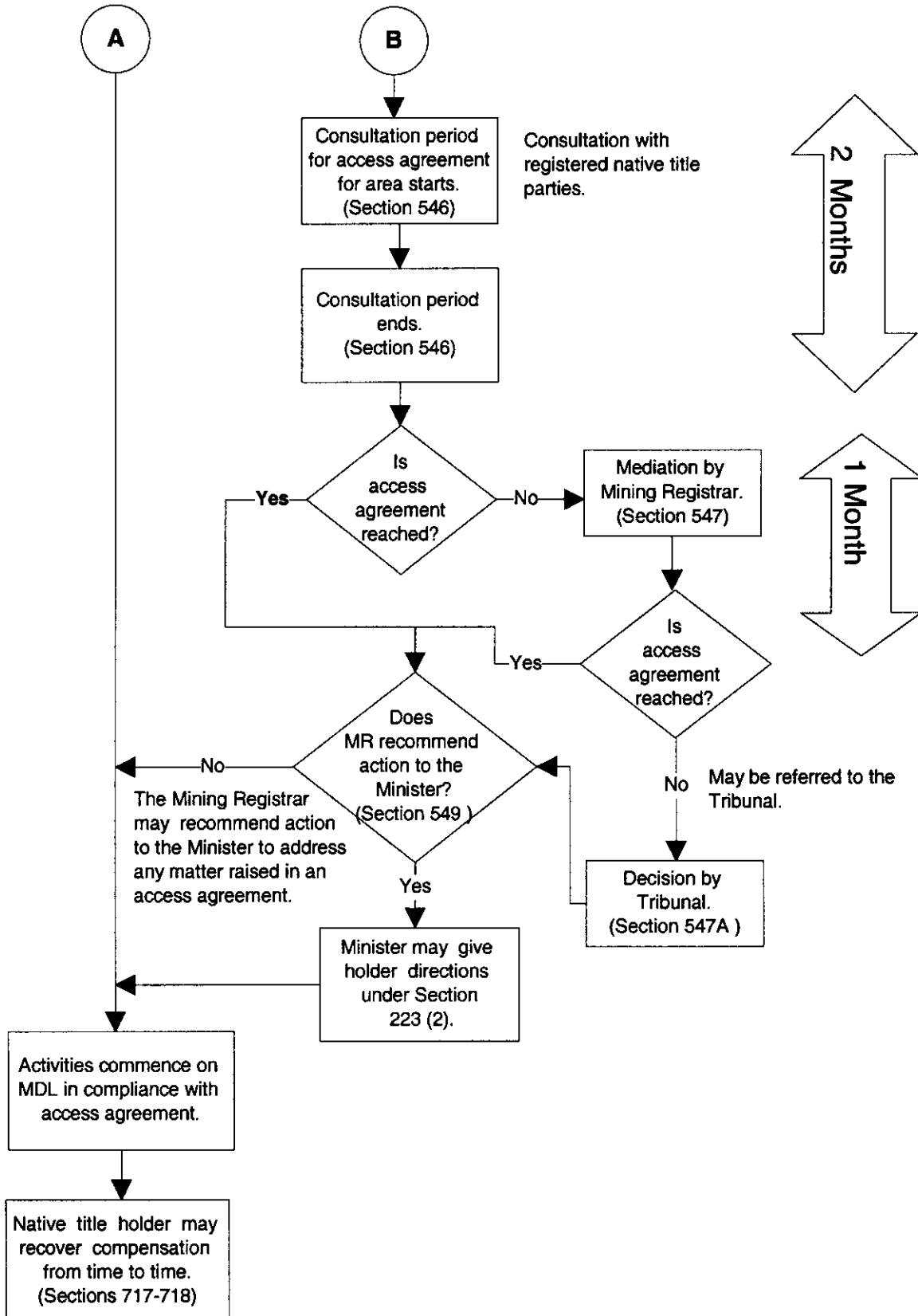
**FLOW CHART**  
**Exploration Permit Application**  
**Low Impact EP over non-exclusive land**



**FLOW CHART  
Mineral Development Licence Application  
Low Impact MDL over non-exclusive land**



**FLOW CHART**  
**Mineral Development Licence Application**  
**Low Impact MDL over non-exclusive land**



### **3. NATIVE TITLE PROCEDURES FOR EXPLORATION TENEMENTS CONDITIONED TO ALLOW HIGH AND LOW IMPACT ACTIVITIES OVER NON-EXCLUSIVE LAND**

#### **Part 15 (Div. 4) and Part 16 (Div. 4) of the Mineral Resources Act**

The procedures for applications for these tenements comply with section 43 of the NTA. They are the same as for Mining Leases under Part 17 of the MRA, with a number of necessary changes, and provide for notification, consultation and negotiation in good faith for the grant of the tenure, objections to the grant if desired, and hearing by the Tribunal of objections or failure of the negotiations toward grant.

The provisions with the necessary changes are as follows:

#### ***Notification***

As consultation and negotiation on these tenures is required before grant, (not before entry as for low-impact exploration tenures), you do not need to notify native title parties on application, in case there are administrative reasons why the area may not be available in whole or in part. Processing of the application by DME is begun in the usual way.

However, within 14 days of being notified by DME of the Minister's decision on the amount of security to be deposited if the tenure were to be granted, you must notify in writing all registered native title bodies corporate, registered native title claimants and representative Aboriginal/Torres Strait Islander bodies for the land involved at the time (the native title notification parties), and the Registrar of the National Native Title Tribunal, that you have lodged the application for the tenement. The Mining Registrar for the district in which the application is situated and the National Native Title Tribunal can help you with the names and addresses of the native title notification parties, and Mining Registrars can supply a standard form for this notification.

You must also at the same time insert a public notice to the same effect in a newspaper circulating generally in the area of the application, and in a relevant special interest publication (eg an Aboriginal newspaper). Details of acceptable publications can be obtained from the district Mining Registrar.

Section 652

Within 2 days of giving the notice to the native title parties and inserting the public notices, you must give the Mining Registrar of the district in which the application is predominantly situated notice of your compliance with the above (there is a standard form for this). To this you must attach a copy of the notice you gave to the native title notification parties, and copies of the pages of the newspaper and special interest publication containing the public notices. If the Mining Registrar considers that any of the notices are defective, you may be directed to re-issue them within a certain period.

Section 654

In this notification you must nominate a closing day by which responses from 'registered native title parties' must be received. This must be at least 3 months from the notification day, which is the day when it can be reasonably assumed that the written notice will have been received and the public advertisement come to the attention of interested persons.

Section 652 modified by Section 524(3) and Section 581(3)

A *registered native title party* is a registered native title body corporate or a registered native title claimant who was registered before the closing day, or one who became registered within one month after the closing day if the application to become registered was lodged before closing day. For precise details of this definition in special circumstances you should consult the legislation.

Section 655

**Notification Details**

Section 653

*The written notice must include the following:*

- *the name and postal address of the applicant;*
- *the notification day (native title issues)- ie the day by which it can be reasonably assumed that the notices of the application will have been received or come to the attention of the relevant people;*
- *the closing day(native title issues)-this must be at least 3 months after the notification day;*
- *how a person may become a registered native title party;*
- *that registered native title parties have a right:*
  - to be consulted about the proposed tenement;*
  - to object to the granting of the proposed tenement; and*
  - to negotiate with a view to reaching agreement about the granting of the proposed tenement;*
- *that objections must:*
  - be made in writing in the approved form;*
  - be lodged with the Mining Registrar at any time before a Negotiated Agreement is reached or before the application is referred to the Tribunal for a Native Title Issues Decision; and*
  - state the facts and circumstances relied upon in support of the ground of objection;*
- *a clear description of the land, and its location;*
- *a description of the nature of the proposed tenement;*
- *that the proposed tenement, if granted, will be granted by the Minister;*
- *how further information about the proposed tenement can be obtained from you and the Mining Registrar.*

As soon as practicable after the closing day, you must give the Mining Registrar a form with a list of the names and addresses of all registered native title parties, and entities that may become so (ie groups who have lodged claims but are not yet registered native title claimants). If any entities become registered native title parties within one month after the closing day, you must give the Mining Registrar a second form with a list of their names and addresses also.

Section 656

The Mining Registrar may be able to assist with these names, but for up-to-date information you may need to contact the National Native Title Tribunal. The Mining Registrar can assist with contact details for these bodies.

***Early ending of native title procedures***

If after the closing day there are no registered native title parties or entities that may become so, or if the registered native title parties and any entities that may become so in the 1 month after the closing day advise the Mining Registrar in the approved form that they do not object to the grant of the tenement and do not wish to be consulted about it, the tenement can then proceed to grant in the usual manner. Section 657

***Notice of grant***

Within 28 days of receiving notice of the grant of a Mineral Development Licence, you should give written notice to the registered native title parties advising of the grant of the Licence and stating its conditions. This is not necessary on the grant of an Exploration Permit. Section 688

***Consultation and negotiation in good faith***

Unless early ending of the native title procedures occurs, you are obliged to consult and negotiate *in good faith* with the registered native title parties with a view to obtaining their agreement to the grant of the tenement ( a Negotiated Agreement) and any conditions to be complied with if it is granted.

The State is also a party to this consultation and negotiation process, unless you, the registered native title parties and the State advise, in a form to the Mining Registrar, that the State is not to be a party, or is to take only a specified role. Sections 658, 659, 660

The time for consultation and negotiation lasts for 6 months from the notification day (the pre-referral period), unless the parties agree within the 6 months for it to be extended, and advise the Mining Registrar of the new date. Section 669 modified by Section 524(4) and Section 581(4)

**Matters for Consultation and Negotiation in Good Faith**

Sections 659, 665

*As part of the consultation and negotiation in good faith, you must consult the registered native title parties about ways of minimising the effect of the grant of the tenement on their registered native title rights and interests in relation to the land, including any access to the land and the way in which anything authorised by the tenement may be done.*

*The registered native title parties must consult the other parties about the effect of the grant of the tenement on their registered native title rights and interests.*

*The consultation must have regard to the Guidelines set out below.*

*Negotiation is not limited to the above matters, but you are not required to negotiate on matters unrelated to the impact of the grant on the registered native title rights and interests, or on matters unrelated to the tenement.*

*The consultation and negotiation can take into account the nature and extent of non-native title rights and interests, existing use of the land by other parties, and the practical effects of the exercise of the non-native title rights and interests and the existing uses of the land on the exercise of native title rights and interests.*

*You must make every reasonable effort to reach a negotiated agreement for the grant of the tenement and any conditions to be complied with. However failure of another party to negotiate in good faith as required cannot be held against you in this respect.*

**Guidelines for Consultation**

Sections 663, 664

**For you as applicant**

*The consultation should start as soon as is practicable.*

*You should give each registered native title party a copy of the application for the tenement (excluding any statement about your financial and technical resources).*

*You should convene at least one meeting to provide a reasonable opportunity for all registered native title parties to be given a presentation about the proposed tenement. The presentation should be directed at providing an understanding of the anticipated nature, extent and impact of the exploration project.*

*This meeting or meetings may be at a place agreed by you and the native title parties, or in a town or city where there is an office of the representative Aboriginal/Torres Strait Islander body, or in the town or city where the Mining Registrar's office is located. However it should be at a time and place to maximise attendance. If you have convened the meeting properly but the other parties do not attend, you are taken to have complied with your obligations.*

*You should complete this phase of the consultation and negotiation process within 4 months of the notification day.*

**For the registered native title parties**

*As soon as possible after you as applicant have completed the consultation above, each registered native title party should advise all the other parties about the impact the proposed tenement is likely to have on the party's registered native title rights and interests.*

***Mediation***

At any time before a Negotiated Agreement is reached or the tenement is referred to the Tribunal for a Native Title Issues Decision, you or another consultation and negotiation party may ask for mediation to help in resolving issues relevant to the consultation.

The mediation may be carried out by a mediator chosen by you and the native title parties together, or if agreement on this cannot be reached, you or the other parties may ask the Tribunal for mediation by the Tribunal or a mediator chosen by it.

The mediation must be carried out in the pre-referral period unless all parties agree for it to be extended. The mediation may end at any time by a decision of the mediator or by agreement of all parties.

Section 662

### ***Objections***

At any time before a Negotiated Agreement is reached or the tenement is referred to the Tribunal for a Native Title Issues Decision, a registered native title party may lodge with the Mining Registrar for the district involved an objection to the proposed tenement on the ground that it would affect the party's registered native title rights and interests, or on any other matter relating to the grant.

The registered native title party must give you a copy of the objection and accompanying material on which it is based.

An objection can be withdrawn at any time during the consultation and negotiation period, with a notice of this being sent to you. Section 668

### ***Agreement from consultation and negotiation in good faith***

If you and the other consultation and negotiation parties reach an agreement (a Negotiated Agreement) for the grant of the tenement as a result of the consultation and negotiation, you and the other parties must give a certificate to the Mining Registrar stating that an agreement has been obtained for the grant of the tenement, and provide a signed copy of the agreement. You must also give a copy of the certificate to the Tribunal. There is a standard form for this certificate.

If the agreement contains conditions, the conditions have the effect of the terms of a contract between you and the other consultation and negotiation parties.

If possible the Negotiated Agreement should also contain agreement about renewal, to avoid the necessity for a separate renewal process later (see chapter 5 below).

If a Negotiated Agreement is reached, the native title parties must withdraw any objections they have lodged.

Once an agreement has been reached the tenement will then proceed to grant in the usual manner. Sections 666, 667, 668

### ***Notice of grant***

Within 28 days of receiving notice of the grant of a Mineral Development Licence, you should give written notice to the registered native title parties advising of the grant of the Licence and stating its conditions. This is not necessary on the grant of an Exploration Permit. Section 688

### ***Referral of application for tenement to the Tribunal***

If 6 months or a longer agreed period have passed since the notification day, and a Negotiated Agreement has not been reached, you or another consultation and negotiation party may refer the application to the Tribunal for a decision (a Native Title Issues Decision). This must be done in a standard form lodged with the Mining Registrar, and copies given to the other parties.

If no referral form has been lodged but there is an objection from a native title party that has not been withdrawn, the application is taken to have been referred to the Tribunal.

If there is no referral within 3 months of the end of the pre-referral period described above, the Minister may reject the application. Section 669

### ***Continued negotiation and mediation***

Despite a tenement application being referred to the Tribunal, you and the other consultation and negotiation parties may continue trying to reach a Negotiated Agreement up until the Tribunal makes a Native Title Issues Decision. If an Agreement is reached, all referrals to the Tribunal are taken to be withdrawn and objections must also be withdrawn. Section 670

### ***Hearing by Tribunal***

Where a referral has been made to the Tribunal or an objection lodged by a registered native title party, the Mining Registrar will fix a day for a hearing for the Native Title Issues Decision, including any objections made under the native title provisions. Section 672 modified by Section 524(5) and Section 581(5)

At any time after the referral of a tenement application to the Tribunal, the Tribunal may give directions to the consultation and negotiation parties, including directions for producing and giving:

- a statement by you as applicant including a copy of the material you provided to the native title parties in consultation;
- a statement from each registered native title party stating the anticipated effect of the grant of the tenement on the party's registered native title rights and interests; and
- submissions on the matters the Tribunal will be required to take into account in making its Native Title Issues Decision. Section 673

**Matters Taken into Account by Tribunal**      Section 677

*In making its Native Title Issues Decision the Tribunal must take into account the following:*

- a) *The effect of the grant of the tenement on:*
- *the enjoyment by the registered native title parties of their registered native title rights and interests; and*
  - *the way of life, culture and traditions of any of the registered native title parties; and*
  - *the development of social, cultural and economic structures of any of the registered native title parties; and*
  - *the freedom of access by any of the registered native title parties to the land; and*
  - *the freedom of any of the registered native title parties to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions; and*
  - *any area or site on the land of particular significance to the registered native title parties in accordance with their traditions.*
- b) *The interests, proposals, opinions or wishes of the registered native title parties in relation to the management, use or control of the land that will be affected by the grant of the tenement;*
- c) *The economic or other significance of the grant of the tenement to Australia, Queensland, the area in which it is situated, and to Aboriginal and Torres Strait Islanders who live in the area;*
- d) *Any public interest in the granting of the tenement;*
- e) *Any other matter the Tribunal considers relevant.*

*In deciding the effect of the grant of the tenement on the above matters, the Tribunal must also take into account the nature and extent of the existing non-native title rights and interests in relation to the land; and the existing use of the land by persons other than registered native title parties.*

*The Tribunal must also take into account all objections lodged under the native title provisions and any other documents lodged.*

*The Tribunal must also establish whether there are any issues relevant to its decision on which the parties are in agreement, and must take these issues into account in making its decision.*

***Native Title Issues Decision by Tribunal***

The Native Title Issues Decision will be one of the following:

- a) that the proposed tenement may be granted;
- b) that the proposed tenement may be granted but subject to conditions, which may be either conditions of the grant, or contract conditions, or both types;

c) that the proposed tenement should not be granted.

Section 675 modified by Section 524(6) and Section 581(6)

The Tribunal will advise the Minister of the Decision.

Section 676

The decision relates only to non-exclusive tenures within the tenement and does not extend to any exclusive tenures.

The Native Title Issues Decision must be complied with by the Minister, unless the Minister overrules it as below.

Section 680

The Native Title Issues Decision should be made within 6 months of the referral of the application to the Tribunal. If not, the Tribunal must give written notice to the Minister of the reasons for the delay and an estimate of the time for the decision.

Section 679

The Tribunal may also make a deferred decision about certain matters that cannot be resolved at the time of the combined hearing.

Section 678

Any contract conditions in the Native Title Issues Decision have effect as if they were included in the terms of a contract between the parties.

Section 687

### ***Overruling Native Title Issues Decision***

The Minister can overrule the Native Title Issues Decision, but only if:

- it is in the interests of Queensland or the national interest to do so; and
- the overruling occurs within 2 months of the Decision.

If the Native Title Issues Decision is overruled, the Minister makes a substituted decision, and gives a copy to the Tribunal, to you as applicant, and to the other consultation and negotiation parties.

Section 681 modified by Section 524(6) and Section 581(6)

### ***Notification of grant***

Within 28 days of receiving notice of the grant of a Mineral Development Licence, you must give written notice to the registered native title parties advising of the grant of the Licence and stating its conditions and any contract conditions. This is not necessary for the grant of an Exploration Permit.

Section 688

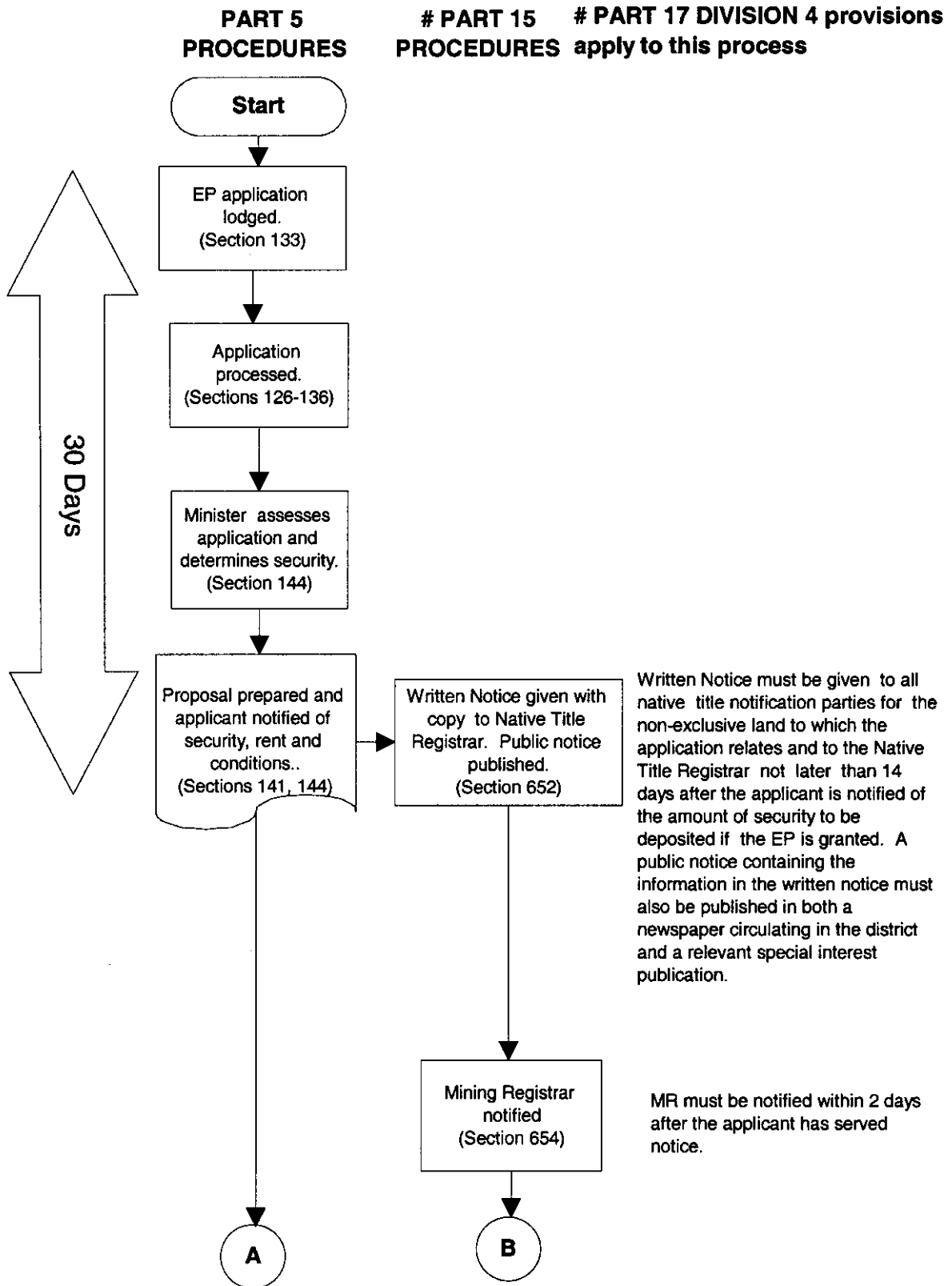
Failure to comply with this requirement is an offence for which there is a penalty.

### ***Compensation***

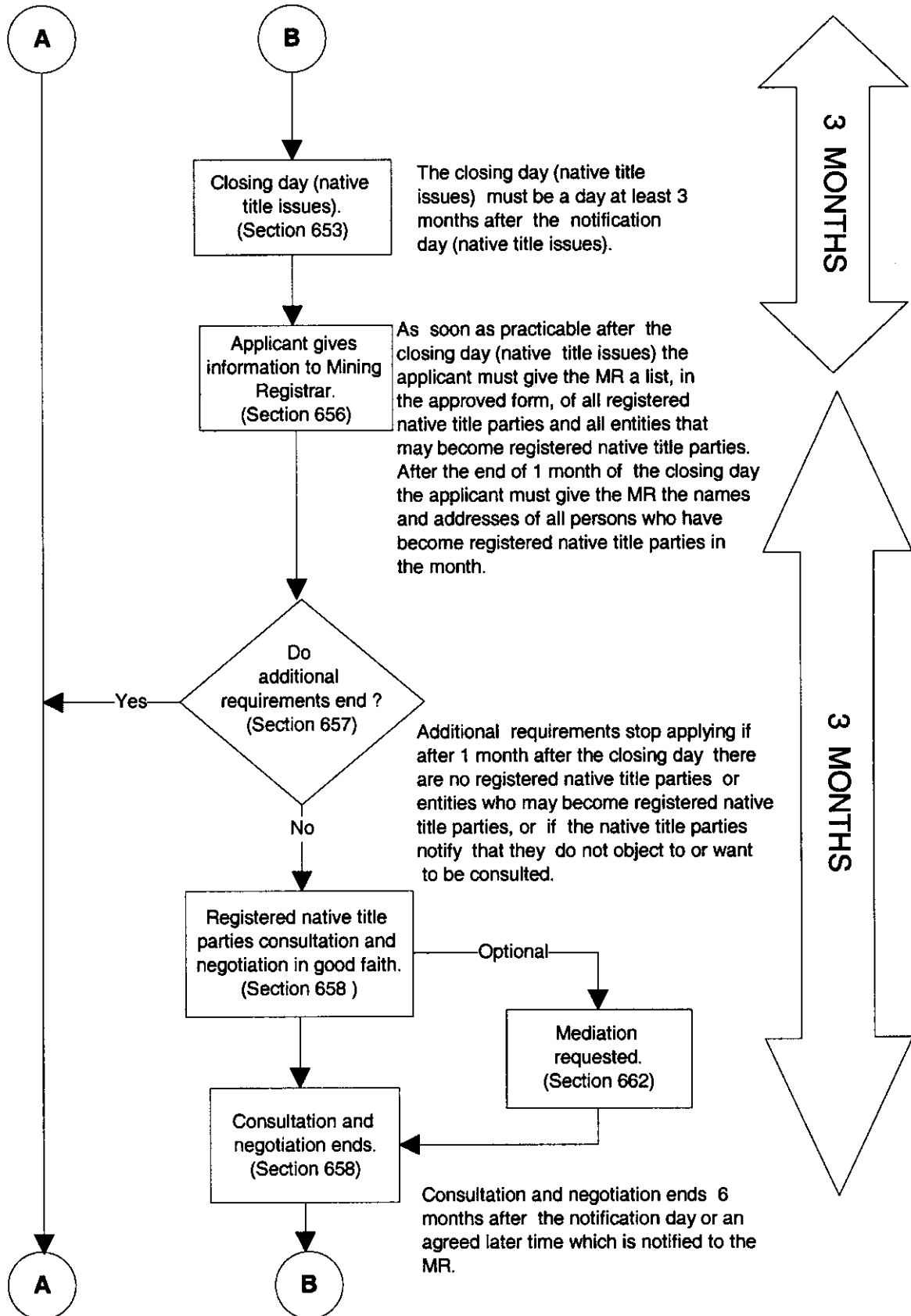
Native Title holders are entitled to seek compensation at any time after the grant of the Exploration Permit or Mineral Development Licence for the effect of any activities carried out under the Exploration Permit or Mineral Development Licence on native title rights and interests. If you cannot reach agreement with them, they may seek a determination in the Tribunal. If the latter is the case, if a native title holder is other than a registered native title body corporate, the compensation must be paid into trust until native title is determined for the area.

Sections 707-713, 717-718

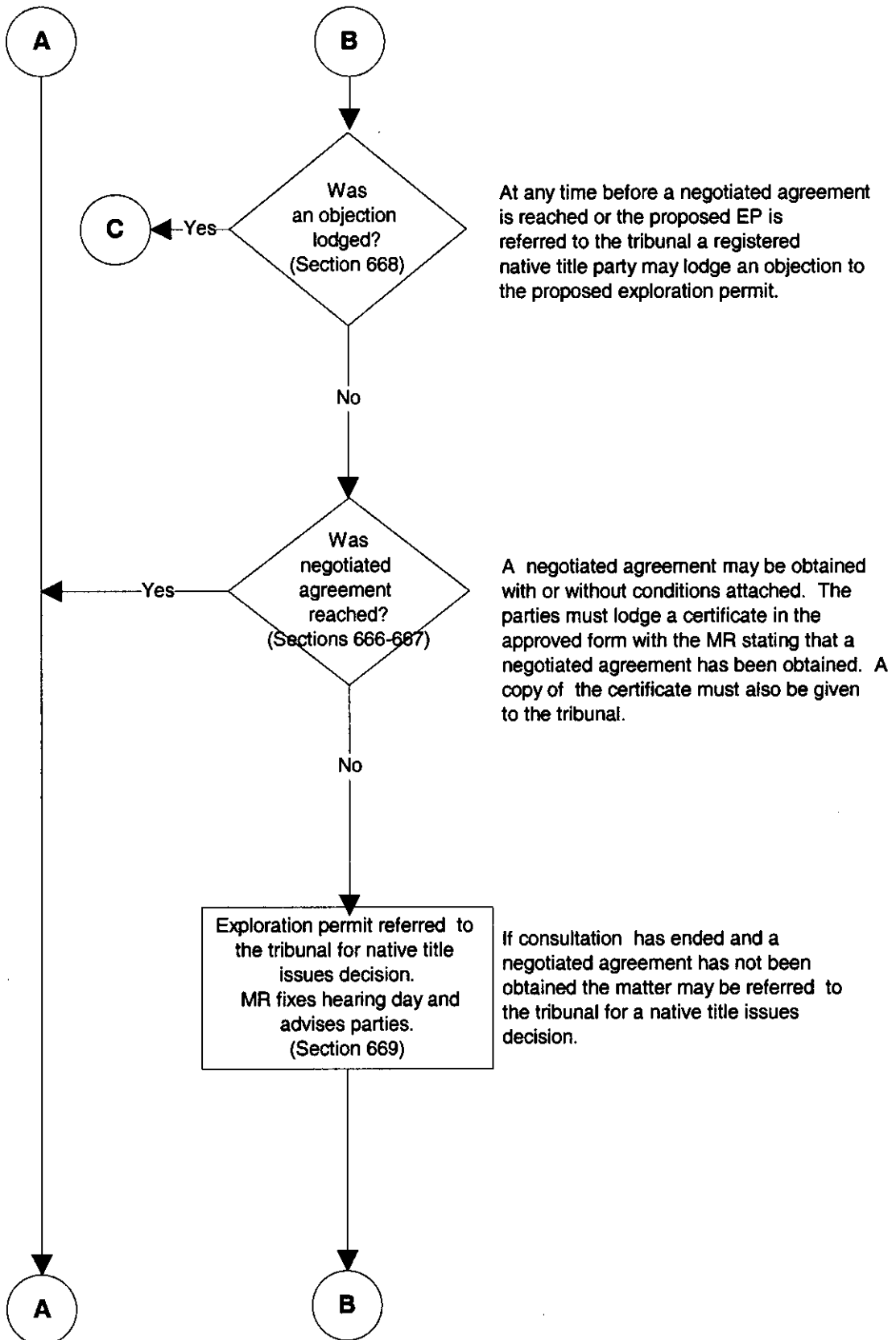
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**Exploration Permit Application**  
**High Impact EP over non-exclusive land**



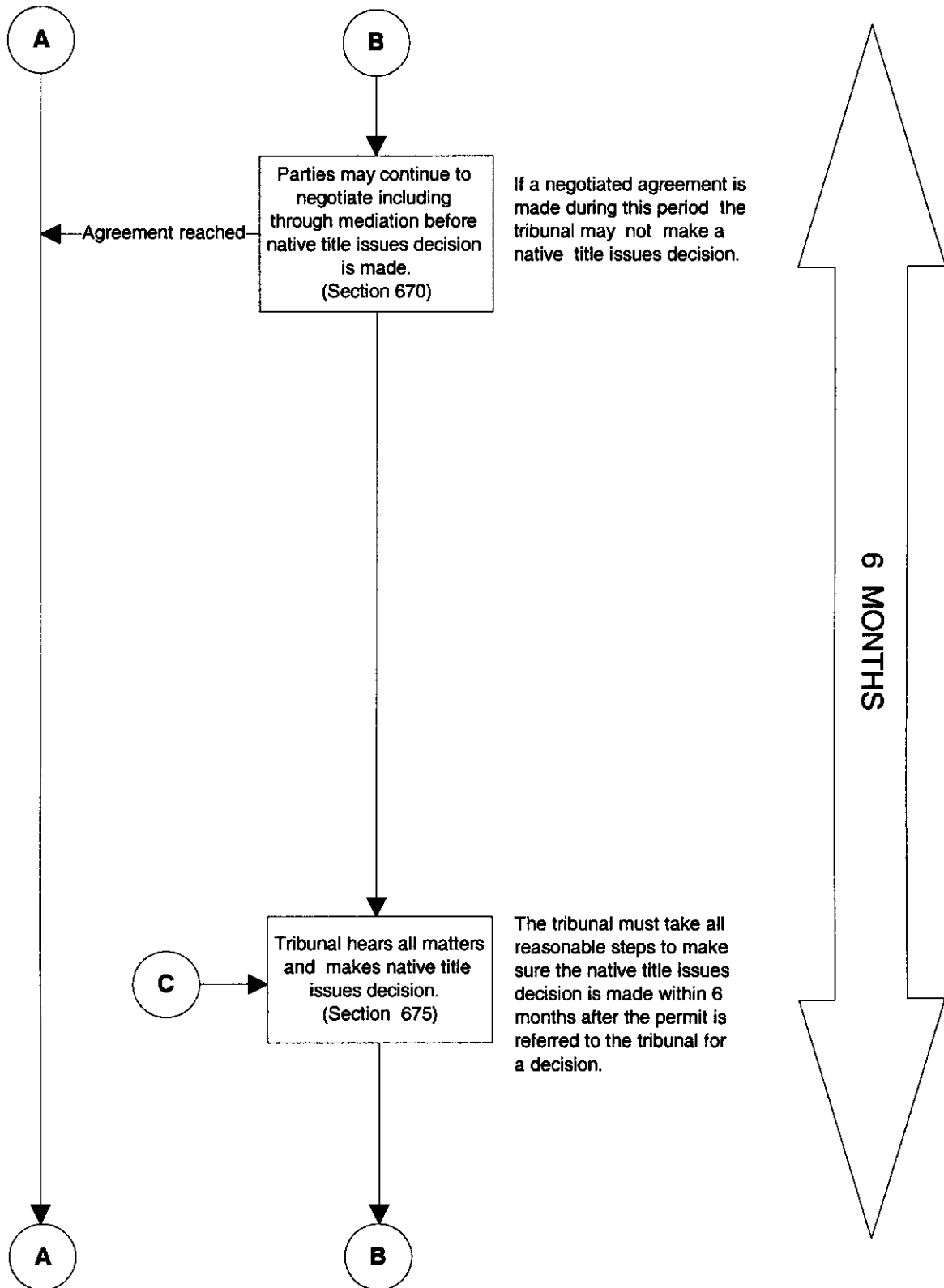
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Exploration Permit Application  
High Impact EP over non-exclusive land**



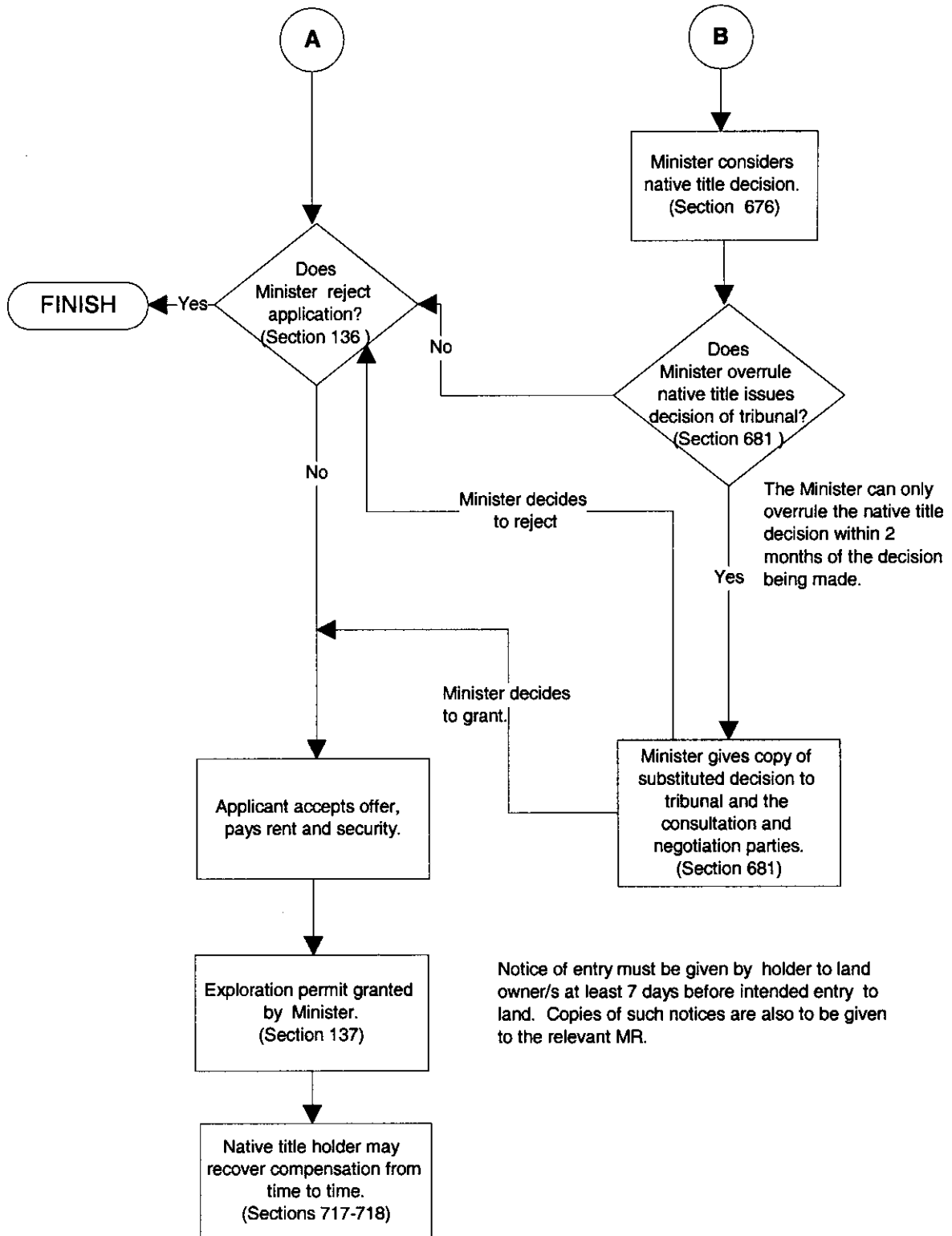
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**Exploration Permit Application**  
**High Impact EP over non-exclusive land**



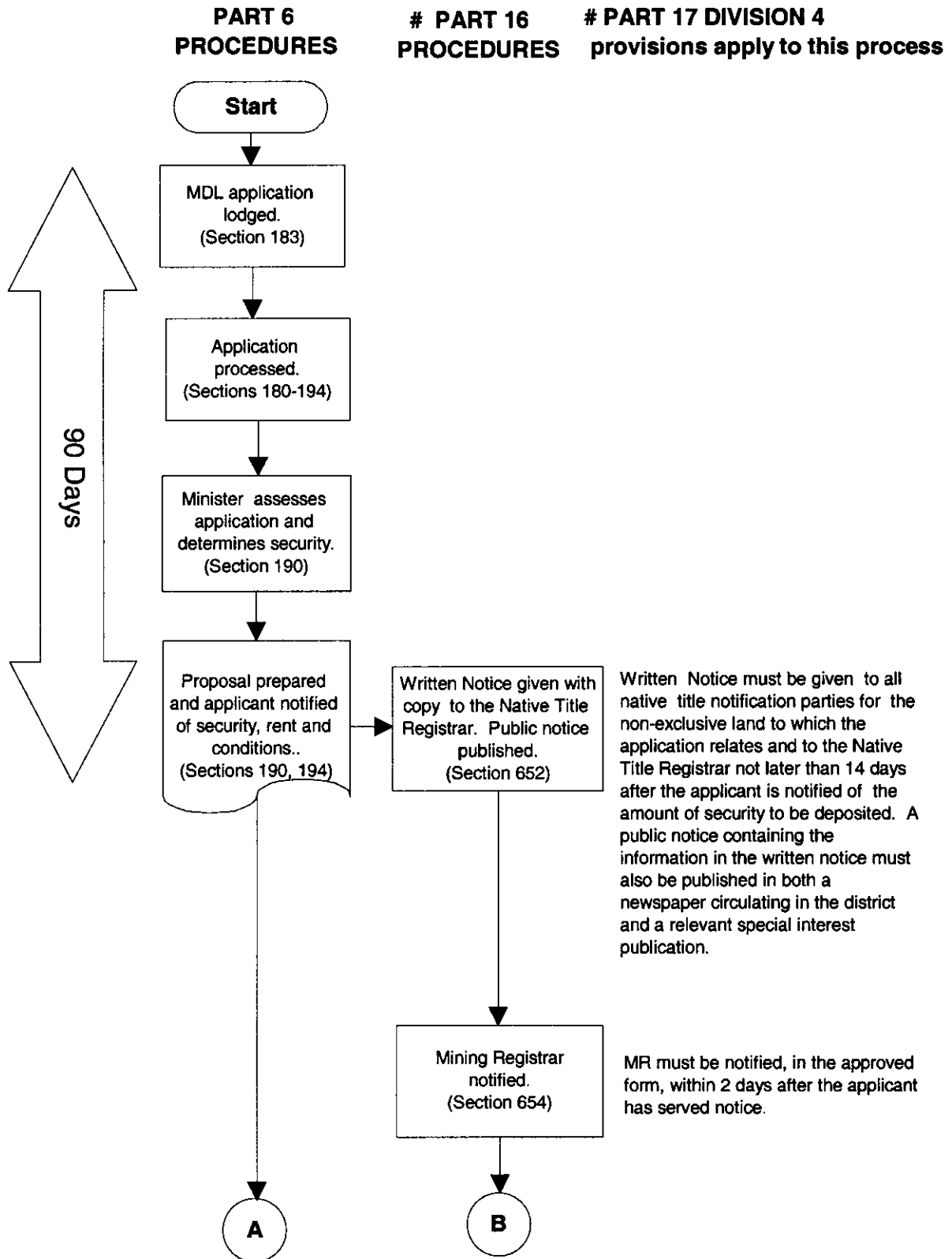
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**High Impact EP over non-exclusive land**



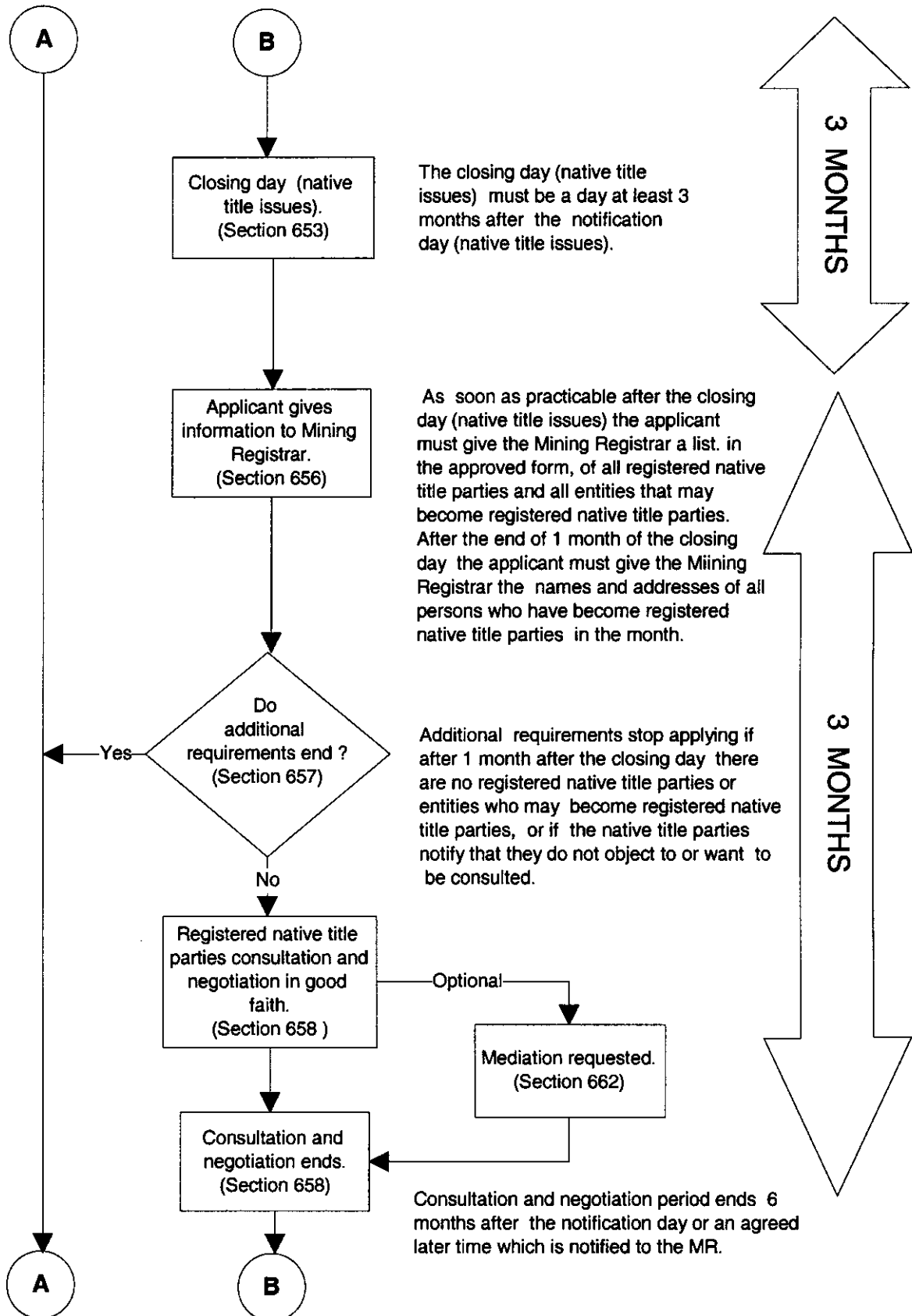
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**Exploration Permit Application**  
**High Impact EP over non-exclusive land**



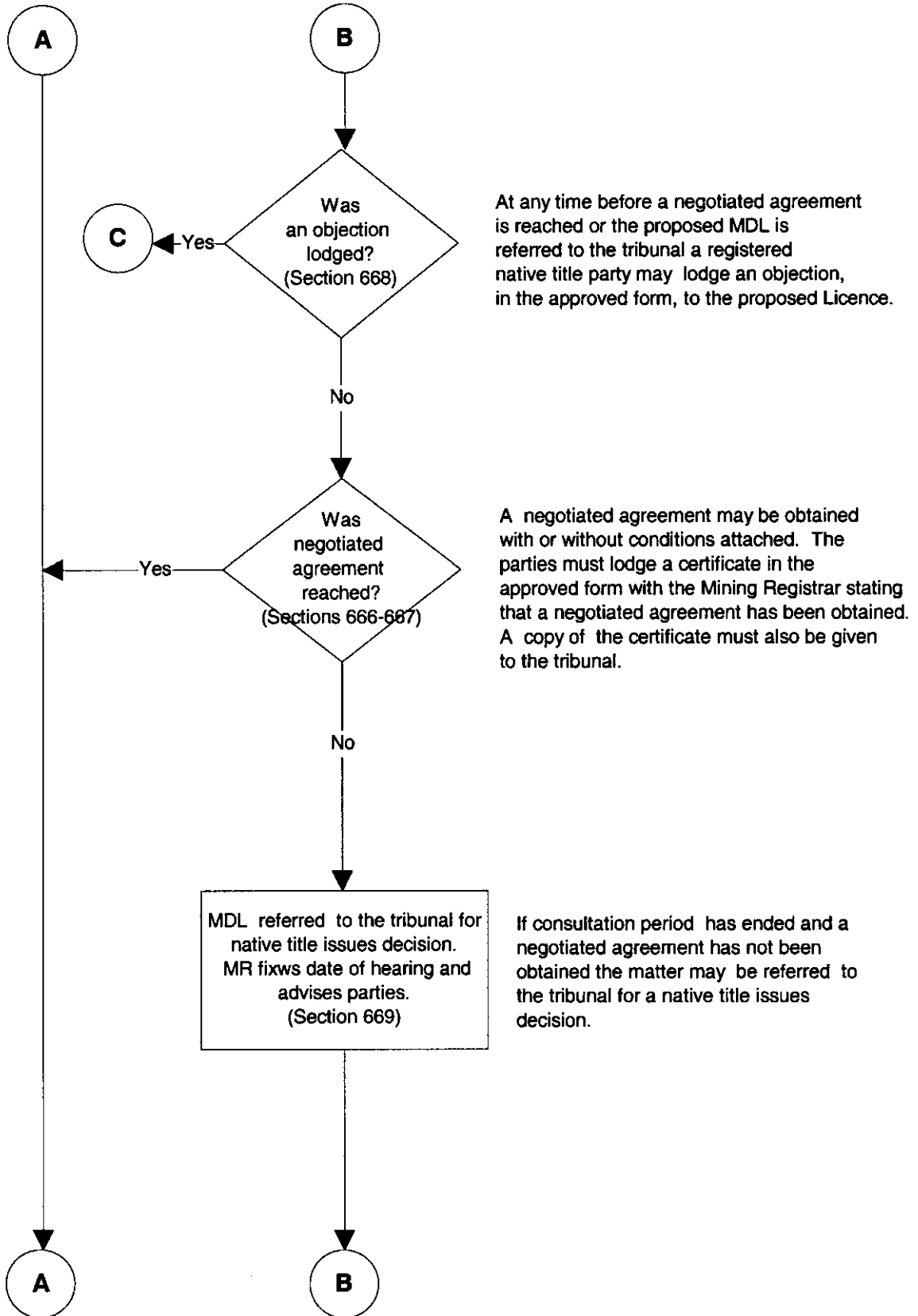
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Mineral Development Licence Application  
High Impact MDL over non-exclusive land**



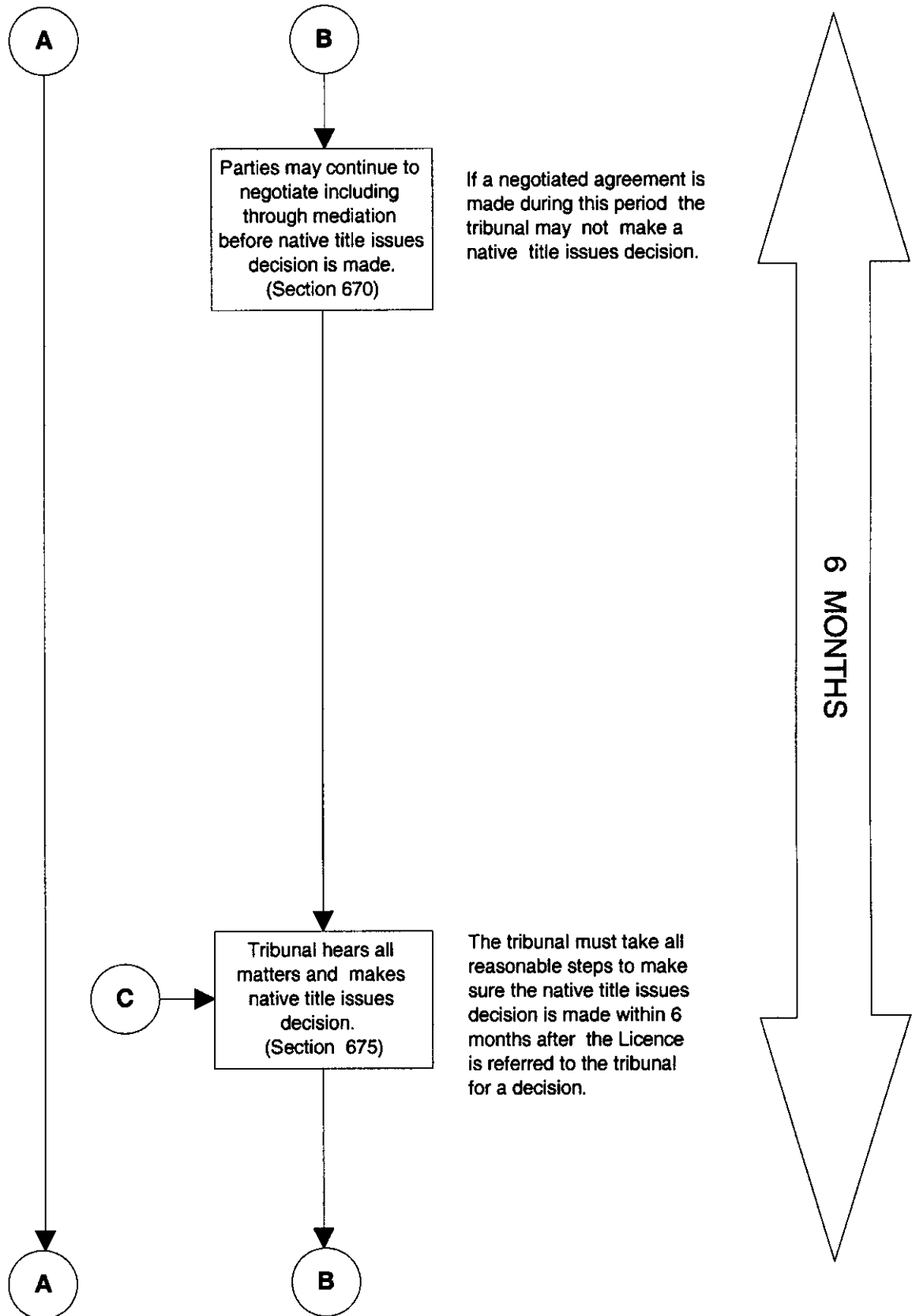
**FLOW CHART  
Mineral Development Licence Application  
High Impact MDL over non-exclusive land**



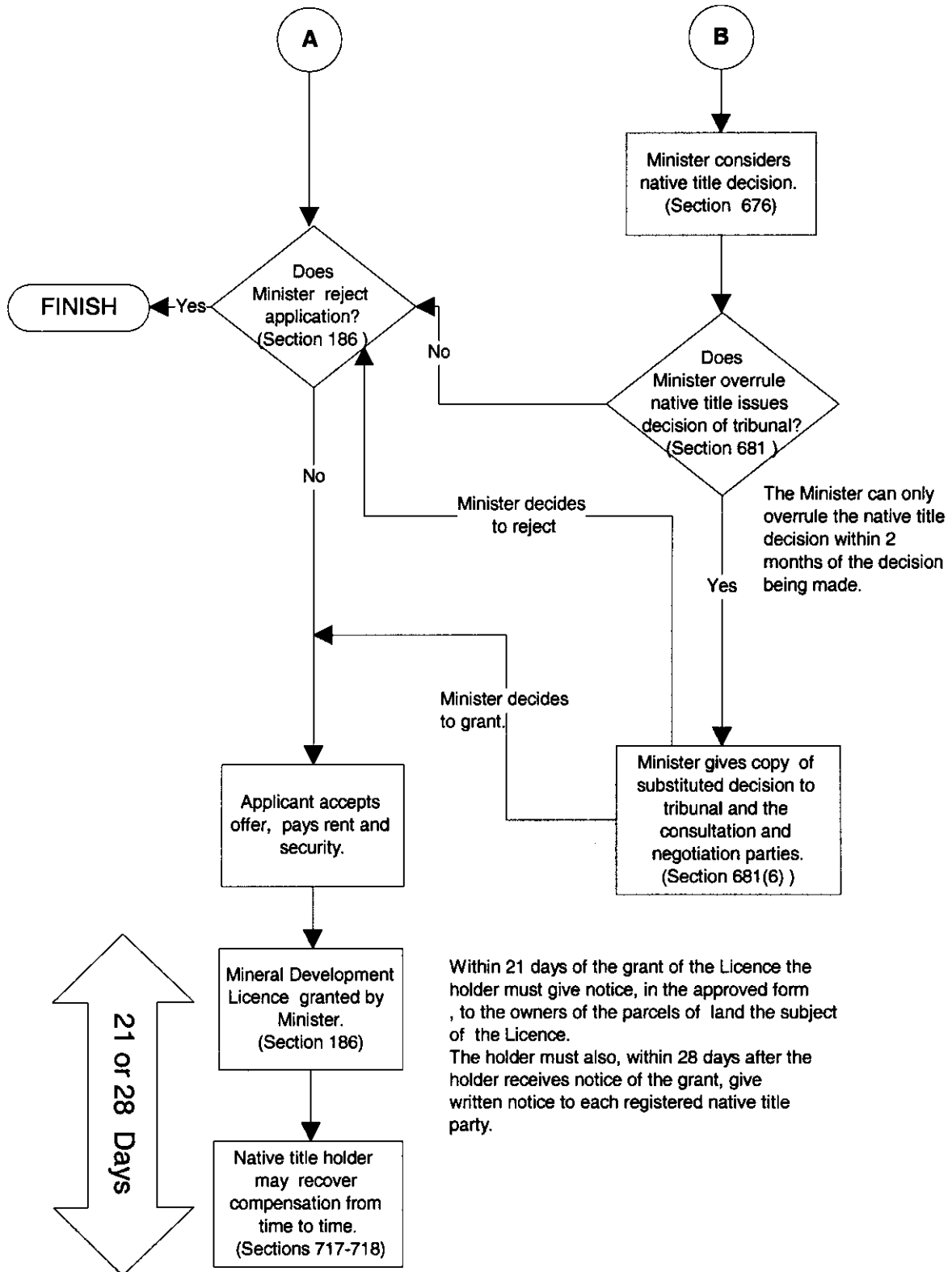
**FLOW CHART**  
**Mineral Development Licence Application**  
**High Impact MDL over non-exclusive land**



**FLOW CHART**  
**Mineral Development Licence Application**  
**High Impact MDL over non-exclusive land**



**FLOW CHART**  
**Mineral Development Licence Application**  
**High Impact MDL over non-exclusive land**



## **4. NATIVE TITLE PROCEDURES FOR RENEWALS OF EXPLORATION TENEMENTS. Part 15 (Div. 5) and Part 16 (Div. 5) of the Mineral Resources Act**

Renewals of Exploration Permits and Mineral Development Licences granted over non-exclusive land before 23 December 1996 can proceed without any native title procedures, provided the renewal is for a like term and does not authorise any additional activities.

NTA Section 26D(1)(b)(i)

Renewals contemplated in ILUAs and Right to Negotiate agreements under the NTA can also proceed under the conditions in those agreements.

Renewals of other exploration tenements granted over non-exclusive land since 1996 are subject to the procedures in chapters 2 or 3 above as if they were new grants.

Use of the native title procedures for renewals is necessary because the NTA does not permit State procedures to allow an agreement or determination for grant to include similar provisions for renewals.

Whilst the requirement can introduce delays, there are strategies to minimise these. For low-impact tenements, initial consultation after grant could include discussion of what should happen on renewal. When the time comes for consultation on entry after renewal, native title parties have the option of notifying that sufficient consultation has already occurred.

For high-impact tenements, there is an option to discuss renewal during the initial consultation and negotiation before grant. If agreement is reached at that stage, when the time comes for renewal, native title parties have the option of quickly reaching a Negotiated Agreement. The application can then proceed without further native title requirements.

However any advance understandings with the native title parties of this nature cannot be binding (unless incorporated into an ILUA).

### **Renewals of tenements conditioned for low-impact activities**

If the tenement is conditioned for low-impact activities, you must follow the procedures in chapter 2 above. You must notify the native title parties between 1 month before lodging the application for the renewal with the Minister and 7 days after lodging it. There is a standard form for the notification of such a renewal application to the native title parties.

You must also give a copy of the notice to the Mining Registrar for the district in which the tenement is situated within 2 days of giving the notice to the native title parties. If the Mining Registrar considers that the notice is defective, you may be directed to re-issue it within a certain period.

The Minister can then grant your renewal. No other procedures are necessary, except that consultation must be carried out and an access agreement reached for entry to any new areas that you have not consulted about or negotiated access previously.

**Renewals of tenements conditioned to allow high-impact activities**

Chapter 3 applies if you wish to renew a tenement conditioned for high-impact activities on non-exclusive tenures. After you have lodged your application for renewal with the Minister, the Minister will advise you of any additional security deposit that is necessary. Receipt of this advice commences the notification procedures in chapter 3 above. There are standard forms for the notification of such applications for renewal to the native title parties.

If the application for renewal of the high-impact tenement is referred to the Tribunal for a Native Title Issues Decision, the Tribunal must ask the Minister about the extent to which the Minister is satisfied that you as holder of the tenement have complied with the conditions of the tenement, and the Tribunal must consider that information.

Section 528

## **5. NATIVE TITLE PROCEDURES FOR SUBSIDIARY APPROVALS FOR EXPLORATION TENEMENTS**

### **Part 15 (Div. 6) and Part 16 (Div. 6) of the Mineral Resources Act**

#### **Upgrading from tenements conditioned for low-impact activities only, to those that also allow high-impact activities**

If you wish to upgrade a tenement conditioned for low-impact activities only to allow more intensive activities (eg trenching, fill-in drilling, bulk sampling), you must apply to the Minister for a variation of conditions of the tenement. If you wish you may request a change of conditions to allow high-impact activities over part of the area only.

The Minister will advise you of any additional security deposit that is necessary. Receipt of this advice commences the notification procedures in Chapter 3 above. There are standard forms for the notification of such an application.

You then must proceed through the processes in chapter 3 as if the application were for a new tenement.

#### **Adding non-exclusive land to a tenement that has excluded it on grant**

If you wish to add non-exclusive land to a tenement that excluded it on grant (eg your area of exploration interest has extended on to the non-exclusive land), you must apply to the Minister for an addition of area to the tenement. Such additions can only be made within the sub-blocks already held under an Exploration Permit, or within the area held under a Mineral Development Licence. There are standard forms for these applications.      Sections 176A, 226AA

Note that sections 132 and 182 of the MRA have been amended to provide that any mining leases or mining claims which were in existence before the grant of an exploration permit and subsequently expire, are not automatically added in to the exploration tenement, and that you must apply to the Minister for them to be added if you require them.

You then must proceed through the processes in chapters 2 or 3 above as if the application for addition were for a new tenement.

Chapter 2 applies if you wish to undertake only **low-impact activities** on the added land. All non-exclusive tenures can be added. You must begin the process by notifying the native title parties; this can be between 1 month before lodging the application with the Minister and 7 days after lodging it. There is a standard form for the notification of such an application to the native title parties. You must also give a copy of the notice to the Mining Registrar for the district in which the tenement is situated within 2 days of giving the notice to the native title parties. If the Mining Registrar considers that the notice is defective, you may be directed to re-issue it within a certain period.

The Minister can then grant your application. However, you cannot enter the non-exclusive tenures until you have undertaken the required consultation procedures and reached an access agreement as set out in chapter 2. Entry must not be before 4 months after the notice is given to the native title parties.

Chapter 3 applies if you wish to undertake **high-impact activities** on the non-exclusive tenures you wish to add. After you have lodged your application for addition with the Minister, the Minister will advise you of any additional security deposit that is necessary. Receipt of this advice commences the notification procedures in chapter 3 above. There are standard forms for the notification of such applications to the native title parties.

### **Adding minerals to a Mineral Development Licence on non-exclusive land**

If you wish to add minerals to a Mineral Development Licence on non-exclusive land, you must apply to the Minister. There is a standard form for this. Generally you must then follow the native title procedures, but there may be some circumstances when the addition of a new mineral is not changing the right to mine and would not trigger the Commonwealth right to negotiate provisions, and hence the alternative State provisions will not be necessary. If you think this may be the case you should contact the Department for advice.

If you are required to use the procedures, and the Mineral Development Licence is conditioned for **low-impact activities**, you must follow the procedures in chapter 2 above. You must notify the native title parties between 1 month before lodging the application with the Minister and 7 days after lodging it. There is a standard form for the notification of such an application to the native title parties.

You must also give a copy of the notice to the Mining Registrar for the district in which the licence is situated within 2 days of giving the notice to the native title parties. If the Mining Registrar considers that the notice is defective, you may be directed to re-issue it within a certain period.

The Minister can then grant your application. No other procedures are necessary, except that any future consultation before entry must include consultation on the basis of inclusion of the additional mineral. The access agreement must also be modified for access to the new mineral, and entry for purposes of exploring for the new mineral must not be before 4 months after the notice of addition is given to the native title parties.

If the Mineral Development Licence is conditioned for **high-impact activities**, you must follow the procedures in chapter 3 above.

After you have lodged your application for addition with the Minister, the Minister will advise you of any additional security deposit that is necessary. Receipt of this advice commences the notification procedures in chapter 3 above. There are standard forms for the notification of such applications to the native title parties.

## 6. COMPENSATION PROVISIONS FOR EXPLORATION TENEMENTS

### Part 18 of the Mineral Resources Act

Under the Commonwealth Native Title Act 1993, native title holders are entitled to compensation for the effect of any act on their native title rights and interests, including grants, renewals and other acts relating to exploration and mining tenements. This compensation is payable by the State making the grant or other approval, unless a law of the State provides for other parties to pay the compensation.

#### WHEN IS COMPENSATION REQUIRED?

There is an entitlement for compensation for the following acts:

1) The **grant** and **renewal** of, and **subsidiary approvals** for:

- Exploration Permits and Mineral Development Licences under the native title provisions of Parts 15 and 16 of the MRA;
- the above tenements on the seaward side of the mean high water mark (where the alternative State provisions of Parts 15 and 16 of the MRA or Commonwealth 'right to negotiate' process do not apply);
- the above tenements in approved opal or gem mining areas determined under section 26C of the Commonwealth NTA (where the alternative State provisions of Parts 15 and 16 of the MRA or Commonwealth 'right to negotiate' process do not apply) (No such areas have been determined at the time of writing of this Manual).
- the above tenements the subject of a registered Indigenous Land Use Agreement (ILUA) if the ILUA does not provide for compensation;

2) The **renewal** also of:

- Exploration Permits and Mineral Development Licences granted as a result of an 'right to negotiate' agreement or determination of the National Native Title Tribunal under the Commonwealth NTA and for which compensation on renewal has not been previously agreed.

Section 706

#### HOW AND WHEN IS COMPENSATION SETTLED?

Part 18 of the *Mineral Resources Act 1989* sets out how such compensation is to be settled in different circumstances. These provisions largely parallel the compensation entitlements of other land holders, but with modifications to cater for the fact that the actual native title holders may not have been determined and there are only claimants at present.

Compensation is payable by the applicant or the holder of the tenement, except in limited special circumstances where the State is liable. It is payable by agreement or after determination by the Tribunal (as with other land holders).

Agreements on compensation can be about any matter and are payable in money or non-monetary form. They must be in writing, signed by all parties, and lodged with the Mining Registrar to have force and effect. If an agreement is reached with a claimant but it later turns out that they were not the true native title holders, and the eventual registered native title body corporate requests the tribunal to determine compensation, the State will be responsible for this second compensation.

If the Tribunal is required to make a determination on compensation where there is a registered native title body corporate, it makes a 'compensation decision' which takes effect immediately. This compensation must be in money, but the body corporate can ask the Tribunal to recommend that all or some of the compensation be paid in a non-monetary form. If there are only registered native title claimants the Tribunal makes a 'compensation trust decision' for money to be paid into trust until a determination of native title is made and a registered native title body corporate is established.

For **Exploration Permits and Mineral Development Licences**, compensation is *not* required before grant or renewal or subsidiary approval. However registered native title bodies corporate or registered native title claimants are entitled to approach you at any time for an agreement on compensation or seek a determination in the Tribunal for a 'compensation decision' or 'compensation trust decision' as the case may be for the effect of the tenement on their rights and interests. This should occur only after it is clear in the exploration programme what those effects have been, or will be.

Sections 717-718

However, if the Tribunal is required to make a decision on an access agreement for entry to a low-impact exploration tenement, the Tribunal must reach a compensation decision or compensation trust decision at the same time.

Sections 491A, 547A

## **7. SPECIAL PROVISIONS APPLYING TO APPLICATIONS FOR EXPLORATION TENEMENTS OUTSTANDING AT THE TIME OF COMMENCEMENT OF THE NATIVE TITLE PROCEDURES**

### **Part 19 of the Mineral Resources Act**

Special transitional provisions are required for applications for tenements which are outstanding over non-exclusive land at the time of commencement of the native title procedures.

Regardless of the stage they have reached towards grant under Parts 5 or 6 of the MRA, applicants for exploration tenures will have to comply with the native title procedures of Parts 15 and 16 of the MRA before grant.

However, commencement of the notification, consultation and negotiation processes required by these Parts in a random fashion by the large numbers of individual applicants involved would lead to chaos, as the native title claimants and representative Aboriginal/Torres Strait Islander bodies would not be in a position to respond.

The legislation provides that the Department of Mines and Energy will determine when the initial notification process can start for each tenement (and hence also when subsequent consultation and negotiation can start).

One option to regulate the situation is for the Department to batch similar applications (eg for Exploration Permits to be conditioned for low-impact activities) in similar geographical areas or over the same native title claim area, so that consultation or negotiation can be carried out on similar matters at the same time with the same people.

Under this scenario the Chief Executive would ask applicants for **Exploration Permits and Mineral Development Licences** whether they desire a tenement conditioned for low-impact or high-impact activities, if these matters have not been ascertained previously.

The Chief Executive would then notify applicants for Exploration Permits and Mineral Development Licences, of the day when notification can commence. Applicants must then issue the relevant notifications within:

- 2 months for Exploration Permits and Mineral Development Licences to be conditioned for low-impact activities
- 4 months for Exploration Permits and Mineral Development Licences to be conditioned for high-impact activities

Applicants in a batch may be well advised to try to co-ordinate their notices and consult and negotiate together, at least initially. The Department would assist in providing names and addresses of members of a batch.

