

# ARPGN 1 LAND CONTAMINATION ISSUES

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to outline information, issues, and approaches relating to contamination of land. The Institute recommends that it be used by Members as a guide for the valuation, assessment or reporting of land which is contaminated or whose contamination status is unknown or uncertain. Land includes improvements, structures or additions to the land.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope of this Guidance Note

This Guidance Note applies to Members reporting on property and it deals with broad examples of environmental contamination and their potential effect on value and marketability. It offers guidance on general concepts and concerns, and suggests approaches that are considered to have merit. It does not purport to provide a definitive coverage of the environmental issues, which may arise, or the manner in which Members should deal with these issues. Many issues of land contamination are poorly defined and involve complex or unresolved matters. Formulaic approaches to the valuation and assessment of contaminated land, are not adequately developed. The appropriate procedures will vary according to the circumstances of each property being valued or assessed. Members should apply their own skill and judgement in applying the information contained herein to their own practice. This Guidance Note should be used in conjunction with other guidance notes and practice standards that

are either over-arching or directly applicable to the type of property, purpose or issues involved.

### 1.4 International Valuation Standards

This Guidance Note recognises the International Valuation Standards 1 and 2, and the International Valuation Application 2 by the International Valuation Standards Committee and it is intended to be consistent with the concepts and definitions contained in those standards, however, there may be departures from IVSC Standards to reflect Australian & New Zealand law and practice.

### 1.5 Member Involvement

Members are able to provide appropriate skilled advice in relation to valuation and property matters with the assistance of and in accordance with this Guidance Note and bearing in mind the limitations referred to herein.

### 1.6 Marketplace More Aware

Increased environmental consciousness within the general community, environmental protection legislation, litigation associated with pollution and land contamination, and incidents where property users suffer financial loss directly or indirectly from such cases, have made the marketplace more aware of the potential adverse effects of chemical, radiation, noise and other contaminants in air, groundwater, soil and the overall environment. The market can overreact and prices may be artificially depressed. Further, limited information about a particular contaminant that is thought to be present on a property can cause a secondary 'stigma' effect on values. Conversely, the market seems to be increasingly aware that contaminated properties can be redeemed and redeveloped into viable assets.

### 1.7 Advice about Commercial Impact

Clients, whether they are property owners, vendors, purchasers, financial institutions, receiver-managers, holders of major or minor property portfolios, etc, will often look to Members of the Institute for advice and guidance on how land contamination affects their financial security

and asset value. Although Members cannot and should not promote themselves as authorities who are fully capable of measuring, recording and providing detailed scientific advice on behalf of the client, they should be able to provide some level of advice to the client about the commercial impact of suspected or evident contamination.

### 1.8 Problems Requiring Further Investigation

Members of the Institute should take all reasonable care in these matters. Members who attempt to mitigate their responsibilities by adding a disclaimer saying that the property has been valued or assessed 'without regard to the question of presence of contamination', are not providing the level of best practice expected by clients and may not satisfy the standards of practice required by the courts. Therefore, the Institute recommends that its Members become sufficiently knowledgeable about the contaminants, laws and regulations associated with this topic and their effect on property values to meet the above standards. This involves Members qualifying advice, where appropriate, so as to properly inform the client of potential problems which may require further investigation, and thereby meet the Member's professional obligations.

### 1.9 Can Affect Full Spectrum of Property Types

Members will rarely be in command of enough information or evidence to completely rule out the possibility of land contamination. They can, however, through careful research and observation, provide advice about suspected contamination and the potential consequences on a property's Market Value. Environmental contamination can affect the full spectrum of property types, and should be considered in all property valuations and assessments.

### 1.10 Definition of a Contaminated Site

As defined by the Australian and New Zealand Environment and Conservation Council (ANZECC) and the National Health and Medical Research Council (NHMRC), a contaminated site comprises 'a site at which hazardous substances occur at concentrations above background levels, and where assessment indicates it poses or is likely to pose an immediate or long term hazard to human health or the environment'. Point of Reference

Members are encouraged to actively foster professional association with consultants specialising in the identification and treatment of contamination.

## 2.0 Types of Contaminants and Examples

### 2.1 Wide range

There is a wide range of potential environmental contaminants, varying from liquid and solid chemicals to corrosive gases and radioactive substances.

### 2.2 Physical Contaminants

Each contaminant must be considered for its potential physical and non-physical impact. Examples of physical contaminants include asbestos, hydrocarbons, lead, mercury, arsenic, cyanide and pesticides, but are not limited to these substances. Mining by-products can include nutrients and arsenic compounds amongst others. Unexploded ordnance has been another environmental difficulty associated with former defence force lands. Organic compounds such as formaldehyde are problem sources. Coal tars from coal-using powerhouse operations, asbestos, or PCBs can cause toxicity problems. These are but some examples.

### 2.3 Non-Physical Contaminants

These are contaminants that include non tangible, physical substance. However, they should be considered as 'real' as physical contaminants. A typical problem could be forms of radiation, intense radio wave transmissions and excessive heat.

### 2.4 Radon

Radon is a naturally occurring radio-active gas that is responsible for about half our exposure, which is unavoidable, to background radiation. The inhalation of radon and its decay products increases the risk of lung cancer. Radon emanates from particular radioactive materials in the ground and, to a small extent, from building materials. It disperses in the open air, but elevated levels may be found in spaces like poorly ventilated basements and caves, although such levels have not been found to be a health hazard in Australia.

## 2.5 Toxins in the Internal Home Environment

These comprise a long list of substances, including insecticides, lead based paint, wood preservatives, polishes, weed killers, bleaches and numerous other substances. Certain timber related or artificially produced materials used for home insulation, furniture and fittings may release formaldehyde or other traces of preservatives that create health problems for some individuals. (Many of these home toxins are not structural but transient and may be removed through relatively low cost means.) Unless specific circumstances exist such as the use of these products in commercial quantities, comments on domestic use in a valuation report are considered excessive.

## 2.6 Changes in Lists and Definitions of Hazardous Substances

Lists and characteristics of substances constituting hazardous waste and amounts of substances considered detrimental change frequently as new information becomes available. Such information is often available from State or local environment agencies. Preliminary lists are provided in Appendices 1 and 2. The ANZECC/NHMRC Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites, January 1992, also contain a substantial list.

## 2.7 Environment Related Court Cases

Environment related court cases, particularly the Federal Court, have the potential to affect value if judgements establish new areas as a result of previous activities or management. Where doubt exists, this case law may prove appropriate investigation.

# 3.0 Identifying and Quantifying Contamination

## 3.1 Information on Possible Contamination

Information on possible contamination of the site is crucial to the property professional. The two main sources of such information are a Historical Land Use Survey and a scientific Survey of Environmental contamination as would be conducted by an Environmental Engineer/Auditor.

## Three Phases of Investigation

### Phase 1: Preliminary Site Investigation

A Phase 1 is the preliminary assessment of any contamination on the site. It includes the following steps:

- An investigation of site history
- A physical site inspection
- A basic sampling and analysis to determine the presence of contamination
- A report prepared

### Phase 2: Detailed Site Investigation

If the Phase 1 investigation shows further investigation is required, a detailed site investigation is carried out to assess:

- The concentration of various contaminations
- The volume of soil to be remediated
- The leachability and mobility of contaminants
- Any contamination of groundwater
- Any possibility of off-site migration of contaminants.

### Phase 3: Health and Environmental Assessment and Determination of Remediation Plan.

The results from Phase 2 investigation provide information to determine the potential 'human exposure and environmental impact' of the contaminants on the existing and intended land uses. If the intended use will cause unacceptable impact on the environment, then, depending on the conditions, a partial or full remediation, or other land contamination management strategy has to be implemented. A health and environment risk assessment has to be carried out, and a site specific remediation plan has to be prepared. (Footnote 4)

## 3.2 Phase I Survey : Background Research & Historical Land Uses

Previous owners and employees can be a good source of information on the property's history. Local councils can provide a wealth of information on more prominent properties, and a search of titles can provide some indication of former use. Many state governments have aerial photos that can assist in identifying some former uses. Government departments such as those involved with mining, public water supply, environment and health, may have regulating records and other useful information.

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## 3.3 Look for Signs

It is important to look for signs that suggest a former use, if not a present use, which may have lead to, or caused, some form of contamination. Following the preparation of a site history, there will need to be a complete detailed site inspection. There are often tell-tale signs on the site that can indicate the possible presence of some forms of contamination. The member should look for disturbed or coloured soils, disturbed vegetation, the presence of any chemical containers, or chemical odours, and view the quality of any surface water. In addition, surface soils or earth fill may have been introduced to the site from other locations. The potential for contamination from off-site sources should also be considered. An Environmental Assessment Checklist is provided in Appendix 3. The ANZECC/NHMRC Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites include a useful chapter on identifying and quantifying contamination.

## 3.4 Member's Role

Members should be aware however, that their role and expertise is limited to the detection and preliminary identification of discoverable contamination by reasonable site inspection and enquiries of appropriate authorities, and subsequent reporting. Detailed identification and quantification of contamination should be left to those who specialise in that field. Where, however, information is available to the Member, this should be provided to the client together with a statement of the source (whether it be a neighbour, former owner or environmental expert) and an appropriate qualification.

## 3.5 Register of Contaminated Sites

Some States compile a register of contaminated sites which is maintained by the relevant State environmental authority and is available for public inspection. Where the Member discovers or suspects that a site may be contaminated it would be prudent to inspect the Contaminated Sites Register in applicable States. This will help to provide the Member's client with useful information, thereby enhancing the level of service provided and discharging the Member's professional obligations. Members should not be over-reliant on these registers as they are not exhaustive, especially in those States where they are not formally required by legislation. Absence

from a register should not be taken to imply that a site is not contaminated. Even in the absence of a register of contaminated sites, Department of Environment staff may still be willing to provide relevant information regarding some sites.

## 3.6 Potential or Actual Contamination Issues

A Member conducting an inspection of a property for the purpose of providing a valuation or other report should be aware of the potential of site contamination of any property. During an inspection for this purpose, the Member should attempt to identify from on-site observations any potential or actual contamination issues and report accordingly, recommending further expert advice where appropriate. Other site factors to initially consider include site layout and contours, storage areas, geology, water features and nearby developments which may affect the subject land.

## 3.7 Report by Suitably Qualified Expert

### Phase 1 of Investigation.

A report on the site history of the property, provided by suitably qualified expert, may address the following issues:

- present and past land uses;
- processes and/or activities carried out on the site;
- major processes and/or activities that were carried out near the site;
- locations within the site of each process and/or activity;
- duration of each process and/or activity;
- waste disposal activities;
- source of contamination and effluent migration pathways;
- presence and purpose of underground tanks;
- signs of spills of hazardous materials.

### Phase 2 of Investigation

If, after carrying out an investigation and inspection, the Member is concerned or suspects that the property is or could be subject to potential contamination that could either restrict the future use of the site or militate against a financial consideration, the Member is obliged to recommend that the client seek more detailed advice from appropriately qualified professionals.

Such advice should be formed having regard to both the current and future use of the site. A Phase 2 Investigation by a specialist environmental engineer or scientist or other suitably qualified professional may include any or all of the following:

- historical land use survey;
- environmental risk inventory;
- evaluation of special contaminants such as asbestos, PCB's, acids, poisons such as arsenic, and radionuclides;
- remote sensing surveys;
- identification of on-site toxic vapours;
- surface soil and water samplings and laboratory analysis;
- sub-surface soil sampling and laboratory analysis;
- groundwater sampling and laboratory analysis;
- a site plan specifying locations of contaminants
- a health and safety plan.

The survey may include, in terms of a particular purpose or specific conditions of a site, a recommendation as to whether or not the contamination has reached an action level where remediation or risk reduction levels are necessary.

### Phase 3 of Investigation

Subsequently, it may be necessary for the appointed environmental consultant to move into a third phase of consultancy including site characterisation, the preparation of a preliminary remedial action plan with cost estimates, the conduct of negotiations with regulatory agencies, the design of remediation systems and continuing management, and the development of suitable future monitoring arrangements.

## 3.8 Whether Expert Engaged

A Member needs to be aware of the process of the Phase 1 investigation sufficient to advise a client as to the need for the engagement of a suitably qualified expert. The Member should also take detailed field notes that may or may not be used in the final report but will nevertheless stand as a record that the valuation or assessment was carried out having regard to the potential presence of contamination.

## 3.9 Not Expert

The Member should not hold himself or herself out as an expert in issues of site or other contamination.

## 3.10 Recommending a Survey of Environmental Contamination Where Detailed Information Cannot Be Obtained

Ultimately, only through scientific testing can the level of contamination be verified properly. Such testing can be both expensive and time consuming and cannot in itself provide a complete guarantee that contamination is not present.

Where contamination is suspected and where detailed information cannot be obtained, the Member should assess on the basis that a property is free of contamination, and qualify that value on the basis that some contamination may be present that could have an impact on the value. The following provides an example of the type of qualification which may be appropriate in these circumstances:

'From our inspection of the property we consider that there is (or could be) a potential for (detail past/current contamination) to exist and would recommend that advice should be obtained from a suitably qualified environmental expert. Please note that our valuation has been assessed on the basis of no on-site contamination. Should the above mentioned environmental advice reveal any contamination our valuation may require revision.'

The greater the perceived risk of contamination being present, the stronger the 'qualification' and the more specific should be the accompanying advice.

## 4.0 Remediation Practices and Techniques

### 4.1 Remediation Techniques Rapidly Changing

The practice of remediation of environmentally contaminated property is rapidly changing. New techniques are being developed, new standards are being set, both by the professions themselves and those who legislate standards.

### 4.2 Remediation Defined

Remediation has been defined as 'an act of attempting to moderate the severity of the

contamination of soil, groundwater, service water or buildings by various measures and methods’.

Note that remediation can include measures that alleviate the effect of contamination without destroying or removing the contaminants, as with ‘clean-up’ technologies.

### 4.3 Influence on Value

The influence of remediation or clean-up on value will depend on such factors as whether the contamination is contained (restricted) on-site, technology available the EPA controls affecting it, the length of time required to make good to permit development and use of the land and the possible need for further analysis and monitoring after the remediation process. The risks associated with achieving remediation in accordance with the defined plans may have to be factored into the value assessment.

### 4.4 Remediation Techniques

Remediation techniques could involve removal of affected soil from the site and replacement with clean fill, the extraction and ‘airing’ of hydrocarbon-affected soil from lower depths, the pumping out of contaminated groundwater or chemical neutralisation, eg. the use of lime to neutralise high acid content, and a wide variety of other measures. One difficulty with soil removal is that local authorities tend to be reluctant to allow disposal of contaminated soil.

### 4.5 New Technology

The new technology that is becoming available may potentially reduce the extent of the negative effect of contaminants on property and its value. Technology that permits safe, efficient and inexpensive clean-up of contaminants tends to minimise impact on value. However, clean-up costs can still be prohibitively expensive because of difficulties in disposing of contaminated soil, toxic waste and chemicals. Members should keep abreast of technological advances relating to this topic. The ANZECC/NHMRC Guidelines (Footnote 5) provide a site-specific approach to the management of contaminated sites, and indicate that remediation can be tailored to the actual proposed use of the land. Such awareness will assist the Member in advising appropriately on the potential risks associated with contaminated sites and the need for their clients to seek further information from appropriately qualified experts. Nevertheless, as previously referred to, Members

should avoid giving advice outside their area of expertise.

### 4.6 Clean Up Methods

As far as the removal of the contaminant source is concerned, there are different clean up methods. The common ones include:

- **On site treatment**

The contaminants are destroyed or broken down while the soil remains in-situ or excavated on site, eg. bio remediation, land farming, vertical mixing and chemical fixation.

- **Off site treatment**

The contaminated soil is excavated, removed from the site and taken to a depot for treatment, eg. high temperature incineration, soil washing, thermal absorption, particle-size separation, chemical treatment like base catalysed dechlorination (BCD), ball-mill pulverisation and super-critical fluid extraction.

- **Off site disposal**

The contaminate soil is excavated and removed from the site for disposal at a controlled landfill. Given that it is a controversial issue to allow transport of a contaminated soil on public roads, it is unlikely that the authority will approve this remediation method today.

- **Containment on site**

This method is to keep the contaminated soil in-situ and to restrict access to it and prevent leaking and leaching by suitable means, eg. encapsulation and capping (Footnote 6).

In addition to the above, recycling may also be an acceptable remediation method, eg. silver is recovered from recycling silver bromide used in the photo processing industry. However, given the high cost of recycling, this method is feasible only for end products with high value.

## 5.0 Impact on Value: General areas of Cost Impact

### 5.1 Responsible Party

Depending upon the relevant legislation, it is usual that the responsible party bear the clean-up costs of contaminated properties. Where responsibility cannot be determined, the chain of title is

generally followed with the current owner most likely to be liable. Members should refer to their relevant state legislation when determining the responsible party and the chain of responsibility.

## **5.2 Effect on Present and Future Utility**

Remediation costs can range from mild instances requiring low expenditure with little impact on value, to severe cases where virtually no use of the property is possible for the present or foreseeable future and prohibitive costs are needed to correct the problem. The degree to which contamination affects the present and future utility of the property must be quantified before a value can be readily assessed.

Due to the specialist work involved in assessing the type, extent and cost of remediation, Members are strongly advised not to provide their own estimate.

## **5.3 Initial Survey Costs**

The first cost associated with environmental contamination is the cost of discovering the extent of any problem.

## **5.4 Cost to Remedy**

The cost of remediation of a particular problem can be major, but care needs to be taken not to understate or overstate the impact on value. For example, property may be able to maintain an income stream while remediation process is in progress. In some cases these costs may be amortised over a period rather than as a one-off cost.

## **5.5 All Costs with Clean-up**

The cost to remedy a contamination problem includes all costs resulting from and associated with the clean-up. These include the cost of the physical clean-up, monitoring remedial measures, legal fees and continuing costs. Costs may also involve a capital improvement such as a more efficient, less polluting system that enhances residual property value significantly.

## **5.6 Develop & Maintain Cost Information File**

Members may develop and maintain files of clean-up cost information. This information should not, however, be used to give detailed environmental advice or cost estimates to clients. Appropriate experts should be retained for this purpose.

## **5.7 Physical Clean-up and/or Remedial Costs**

This can involve a variety of techniques such as simply removing and replacing contaminated soil (recognising that an acceptable location to receive contaminated material is often very difficult to find), extracting harmful chemicals in groundwater by pump extraction, or isolating and permanently sealing off contamination. Neutralising the contaminants with special chemicals is a possible solution in some cases. Environmental engineers and other experts can explain the options for remedial work or hazard reduction and provide cost estimates for undertaking this work.

## **5.8 Legal Costs**

Legal costs associated with contamination may be considered part of the cost to cure the problem. The extent of these legal costs will vary according to the circumstances of each particular property. Members should refer to these costs in their report, where appropriate, and ensure that they are addressed by any expert environmental report obtained. The potential for litigation or pending litigation may affect marketability and further affect

value by deterring prospective buyers. Such effects will usually be included within the Stigma component of environmental liabilities. Alternatively, Members may include a separate 'contingency figure' to cover these effects. Such a figure should either be provided by an environmental expert or estimated by the Member following suitable enquiries of solicitors. It should always be qualified to inform the client that it is a contingency figure only and that it may not reflect the costs actually incurred should litigation eventuate.

## **5.9 Continuing Costs**

Final costs are often unknown before the completion of any clean-up. These costs often exceed original estimates, especially when future, more stringent regulations are anticipated. In addition, perceived or actual risks remaining after completion of clean-up may result in higher insurance costs. Members should ensure that figures obtained from environmental experts make allowance for these continuing costs and that these costs are appropriately spread over a period corresponding to anticipated plant or improvement life or the period of the remediation.

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## 5.10 Indirect Costs

These can include anything that affect the property's income producing potential during or after the clean-up. For example, tenants may not be able to live in a rental unit during lead paint removal. Another example would occur if one portion of an industrial plant could not be used because of toxic contamination and an intermediate product manufactured in that area was no longer able to be produced on-site. Additional expenses would be incurred and the operation's earnings could suffer accordingly. Holding costs, due to delays in development caused by the need for prior remediation, are another form of indirect cost.

## 5.11 Financing

There can be an adverse effect through financiers applying more conservative lending policies where there is a perception that a property may be secondary due to the effects of contaminants. (A Member, however, has a responsibility to ensure that mortgage clients are adequately informed of risks associated with known contamination.)

## 5.12 Indemnification Agreements

Some indemnification agreements, as set out by the seller, agree to retain responsibility for current and future costs related to environmental contamination. From the point of view of market sales information, the sale price would need to be discounted. The valuer wherever possible makes enquiries to establish the extent of the indemnification.

## 5.13 Stigma

This is an intangible factor that may not be measurable in terms of cost to cure but may have real impact on Market Value. It arises from the effect of present or past contamination upon the market's perception of the property and represents a discount, beyond the direct and indirect costs likely to be incurred, required to compensate for the risks associated with contaminated or previously contaminated property including the risk of achieving the planned remediation.

## 5.14 Market Perception

The market may perceive stigma exists because of:

- Uncertainty affecting the existing or future use of the site;

- Risks associated with the effectiveness of remediation;
- A full 'cure' of the site being unattainable;
- Concern at possible hidden clean-up costs;
- Prejudice arising out of prior site uses;
- Alternative site uses being restricted;
- Legislative issues affecting contaminated sites;
- Possible future financing and marketability difficulties;
- Risks associated with public liability.

Stigma makes property less desirable, even when a complete remediation or cleanup has been carried out. That is, where there is a market perception that a property is or has been contaminated, despite the availability of information that cleanup has taken place, the market will often pay less than normal unaffected values. This situation is similar to obsolescence and represents a lingering detriment to a property. In some cases the stigma effect is variable with time or is transitory.

## 5.15 Effect May be Out of Proportion

The stigma effect on value may be out of proportion to the cost to cure the problem, and can persist at varying levels for many years.

### Main Causes of Market Value Loss

There are three broad categories of market value loss caused by land contamination:

- cost and risk of remediation including consultancy, legal and monitoring costs;
- liability to the public; and
- stigma (affecting marketability and suitability for mortgage security).

## 5.16 Contaminants may not Necessarily Reduce Value

The presence of contaminants within a property may not necessarily reduce its value within the land use class or industry in which it is operating. Under State laws an existing use might be continued without remediation being required. For example, an industrial tailings pond having protective confines within land may contain toxic compounds that form part of a valuable industrial process for which there is a long term market demand. Special licensing generally accompanies these processes and the property can continue to be used as it is. A valuer reporting a value under these circumstances

should also advise the client that the valuation could be significantly different should the current use cease.

## **6.0 Potential Problems for Lenders**

### **6.1 Lenders have Potential Exposure**

Lenders have potential exposure to risk through land contamination as follows:

- loss of market value of collateral (property);
- a borrower's inability to repay loans because of clean-up costs, penalties or inability to continue business activities;
- lender's liability for clean-up costs following foreclosure of a mortgage, entering into possession as mortgagee in possession, or even exercising control under a scheme of arrangement.

## **7.0 Legislation**

### **7.1 Legislation Increasing**

Legislation affecting property contamination and related environmental matters is increasing in this country and overseas. A list of some of the relevant legislation and agreements is offered in Appendix 6.

### **7.2 Environmental Protection Authorities in Australia**

A list of the internet addresses for the Environmental Protection Authorities in Australia is offered in Appendix 7.1.

### **7.3 Certain State Legislation Embodies 'the polluter pays'**

Members who are acting for the vendor of a property should recognise that certain State legislation embodies the principle that in matters of land contamination, there is a principle 'the polluter pays', and this means that if a vendor has caused the land being valued to be contaminated, they may not be able to avoid responsibility for subsequent remediation even though the property has been sold. Members should refer to their own State legislation in this regard. Future Federal legislation may influence liability issues.

### **7.4 Responsibility for Lessees**

The lessor could be responsible for the activities of a lessee who is unable to pay remediation costs or penalties. Many leases now contain provisions to prohibit activities that would result in contamination. Where the lessee could be engaging in activities that could result in contamination, the valuation should comment on inadequate provisions of the lease.

## **8.0 Indemnity Insurance**

### **8.1 Policy Exclusions**

Members should be aware of any exclusions within their professional indemnity insurance policy related to pollution, contamination or specific contaminants. Some policies do not provide cover in relation to claims arising from or in connection with these matters. For example, many policies exclude liability for claims arising from nuclear radiation. Furthermore, a Member may in some instances not be covered by a policy where the Member has failed to confine himself or herself to their field of expertise. Members should consult their professional indemnity insurance brokers in this regard.

### **9.0 GST CAUTION**

Since the introduction of the GST on 1st July 2000 specific legal and/or accounting advice will need to be sought regarding the GST implications for this Guidance Note.

## APPENDICES

### APPENDIX 1 United Nations Hazard Classes

1. Explosives
2. Flammable Gas
3. Non-Flammable/Compressed Gas
4. Poison Gas
5. Highly Flammable Liquid
6. Flammable Liquid
7. Flammable Solids
8. Substances Liable to Spontaneous Combustion
9. Substances Emitting Flammable Gases when Wet
10. Oxidising Agents
11. Organic Peroxides
12. Poisonous (Toxic) Substances
13. Infectious Substances
14. Radioactive Substances
15. Corrosives
16. Miscellaneous Dangerous Substances

The categorisation of contaminating substances into these 'Hazard Classes' has been provided by the United Nations. These classes are not necessarily exclusive. Members should not confine their attention to substances falling within these classes.

### APPENDIX 2 Potentially Contaminating Activities, Industries and Land Uses

1. Abattoirs and Animal Processing Works
- 1b. Arsenic
2. Acid/Alkali Plant and Formulation
3. Agricultural Activities (Vineyards, Tobacco, Sheep Dips, Market Gardens). Heavy metals
4. Airports. Trichlore-ethylene from solvent cleaning operations.
5. Alumina Refinery Residue Disposal Areas. Fluoride (atmospheric emissions).
6. Asbestos/Asbestos Production
7. By-Product Animal Rendering. Pesticides.
8. Bottling Works
9. Breweries. Pesticides, oils and greases, underground storage tanks
10. Brickworks
11. Car Wreckers. Oils and greases, TPH and BTEX compounds, TCE (solvent cleaning).
12. Cement Works
13. Cemeteries
14. Ceramic Works. Heavy metals.
15. Chemical Manufacture and Formulation
16. Coal Mines and preparation Plants. Organic compounds – surfactants.
17. Defence Works
18. Docks. Oils and greases, TPH and BTEX compounds, TCE (solvent cleaning), pesticides, heavy metals.
19. Drum Reconditioning Works
20. Dry Cleaning Establishments. Organic compounds.
21. Electricity Distribution. PCB compounds.
22. Electroplating and Heat Treatment Premises. Chrome, heavy metals.
23. Ethanol Production Plants
24. Engine works. TPH, BTEX compounds, organic compounds (associated with solvents).
25. Explosives Industries
26. Fertiliser Manufacturing Plants

27. Gasworks
28. Glass Manufacturing Works
29. Horticulture/Orchards. OCP and OPP pesticides.
30. Industrial Tailings Ponds. Heavy metals, organic compounds, TPH, BTEX.
31. Iron and Steel Works
32. Landfill Sites. Variety of possible contaminants.
33. Limeworks
34. Marinas and Associated Boat Yards. Heavy metals – particularly Tri butyl tin
35. Metal Treatment. Heavy metals.
36. Mineral Sand Dumps
37. Mining and Extractive Industries
38. Munitions Testing and Production Sites
39. Oil Production, Treatment and Storage
40. Paint Formulation and Manufacture
41. Pesticide Manufacture and Formulation
42. Pharmaceutical Manufacture and Formulation
43. Photographic Developers. Heavy metals – Ag Cl used as part of process.
44. Piggeries. Pesticides and heavy metals.
45. Plant Nurseries
46. Plant or Fibreglass
47. Power Stations
48. Prescribed Waste Treatment and Storage Facilities
49. Printed Circuit Board Manufacturers. Solvents and glues – volatile organic compounds.
50. Properties Containing Underground Storage Tanks. TPH, BTEX, PAH, solvents.
51. Radioactive Materials, Use or Disposal
52. Railway Yards
53. Research Laboratories. Metal, organic compounds, radioactive elements.
54. Sawmills and Joinery works. Copper, chrome, arsenic.
55. Scrapyards. TPH, BTEX.
56. Service Stations
57. Sewerage Works
58. Smelting and Refining
59. Sugarmill or Refinery
60. Tanning and Associated Trades (eg. Fellmongery)
61. Timber Treatment works. Formaldehyde, copper, chrome, arsenic.
62. Transport/Storage Depots
63. Tyre Manufacturing and Retreading Works. Glues – volatile organic constituents.
64. Waste Treatment Plants in which Solid, Liquid Chemical, Oil, Petroleum or Hospital Wastes are Incinerated, Crushed, Stored, Processed, Recovered or Disposed of.
65. Wood Storage Treatment. Formaldehyde, copper, chrome, arsenic.
66. Wood Treatment Facility. Formaldehyde, copper, chrome, arsenic.
67. Wood Preservation. Formaldehyde, copper, chrome, arsenic.

### Other Activities, Industries and Land Uses

1. Sites of incidence: road or rail spillage involving hazardous substances; fires involving hazardous substances.
2. 'Hot spots' of likely contamination by agricultural chemicals and their by-products, eg. spray mixing sites; sheep and cattle dips; pesticide disposal sites.

The above lists are illustrative only. They are not intended to be exclusive.

## APPENDIX 3 Suggested Environmental Checklist

The following Checklist 3 is not intended to be exhaustive. It is included to illustrate the type of factors Members should be aware of when undertaking a visual inspection of a property. Members should exercise their own professional judgement in deciding what factors are relevant to the particular property being valued.

### Hazardous Materials, Storage and Disposal

1. Are there any drums, tanks or other holders of hazardous materials like chemicals, pesticides, cleaners, solvents on the property?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
2. If so, is there any indication of spills, leaks or discharges to the ground from the drums, tanks, other holders of hazardous material?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
3. Are there any areas observed with stains on the ground or with dead or stressed vegetation?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
4. Is the facility on the property a generator of hazardous waste?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
5. If hazardous waste is generated at the property, does it appear to be improperly monitored or not transported off the property by professional hazardous waste disposal contractors?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
6. If the property generated hazardous waste, does it have statutory environmental authority approval, or is it licensed to do so?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
7. Does the property appear to have any pits, ponds, lagoons (other than normal water retention ponds required by some local councils) or other dumping areas?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment

8. Is there any evidence of radioactive products being utilised on the property?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
9. Does the facility appear to be free of any obvious sources of air emissions that have chemical odours, fumes or mists?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
10. Does the facility appear to be free of any noise pollution and are controls in place?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
11. Is there any evidence of any source of infectious waste (medical pathological wastes) on the property?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
12. If there is any source of infectious waste, are facilities for its disposal inadequate or not functioning properly?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
13. If the current use of the property does not indicate any of the above, could prior uses of the land involve hazardous materials, storage and disposal?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
14. Is the property registered on any Government register of contaminated land or its equivalent?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
15. Are the existing or past operations on the property subject to local environmental concerns expressed by the local community, Council, Health Department or EPA?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment
16. Do the existing operations comply with current regulatory permits and licensing?  
Y/N                      N/A                      Comment:  
Unknown                N/A                      Comment

17. With reference to storage of hazardous chemicals, are the storage structures designed to minimise contamination in the event of fire or natural disaster?

Y/N	N/A	Comment:
Unknown	N/A	Comment

**Management Controls: Hazardous Waste**

1. Does this facility have a policy document and is it available to all staff?

Y/N	N/A	Comment:
Unknown	N/A	Comment

2. Does the facility have an action plan in place for monitoring and reviewing environment controls?

Y/N	N/A	Comment:
Unknown	N/A	Comment

3. Does the facility have an emergency plan and/or procedures in the event of a spill, explosion or break down?

Y/N	N/A	Comment:
Unknown	N/A	Comment

4. Are copies of licenses and/or registrations easily visible and are they up to date?

Y/N	N/A	Comment:
Unknown	N/A	Comment

5. Verify the current status on any current orders

Y/N	N/A	Comment:
Unknown	N/A	Comment

6. Verify the status on current audits

Y/N	N/A	Comment:
Unknown	N/A	Comment

**Extractive Industries**

1. Is there any extractive industry currently being operated on the site?

Y/N	N/A	Comment:
Unknown	N/A	Comment

2. If yes, is there an Environmental Impact Statement available for perusal?

Y/N	N/A	Comment:
Unknown	N/A	Comment

3. If yes, is there a current Development Approval available for inspection?

Y/N	N/A	Comment:
Unknown	N/A	Comment

**Asbestos**

1. Is asbestos apparent on the property?

Y/N	N/A	Comment:
Unknown	N/A	Comment

2. Does a walk through the facilities reveal any obvious evidence of asbestos in ceilings, pipes, ducts, roofing, boiler insulation or structural beams, etc, that appears to be fireable, flaking or damaged?

Y/N	N/A	Comment:
Unknown	N/A	Comment

3. Were the facilities on the property constructed prior to 1980 when the use of asbestos was banned?

Y/N	N/A	Comment:
Unknown	N/A	Comment

4. Has an asbestos survey/audit of the facilities been conducted?

Y/N	N/A	Comment:
Unknown	N/A	Comment

5. Did the survey find the buildings to be free of asbestos containing materials?

Y/N	N/A	Comment:
Unknown	N/A	Comment

**Polychlorinated Biphenyls (PCBs)**

1. Is there any electrical equipment (transformers, capacitors, etc) that contain polychlorinated biphenyls (PCBs) on the property?

Y/N	N/A	Comment:
Unknown	N/A	Comment

2. If PCB containing electrical equipment is presently on the property, is there any evidence of leaks or spills on the ground near the equipment?

Y/N	N/A	Comment:
Unknown	N/A	Comment

**Underground Storage Tanks (USTs)**

1. Are there any underground storage tanks (USTs) containing petroleum products or hazardous chemicals on the property?

Y/N	N/A	Comment:
Unknown	N/A	Comment

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2. If USTs exist on the property, are leak detection equipment or secondary containment systems not installed on the tanks?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

3. Have they ever been tested for leaks?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

4. Has there ever been an incident of a leak, spill or discharge?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

5. Have the owners or lessees of the property undertaken any environmental audit pertaining to underground storage tanks on the property?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

6. Have the proper registration forms been submitted to the designated regulatory authorities?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

### Land Fills

1. Is there any evidence that the site is currently being filled or has been filled?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

2. Have the filling operations been approved by Council and the EPA?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

3. Do the filling operations allow for putrescible, non-putrescible or toxic wastes?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

4. Do the filling operations require a licence and/or Performance Guarantee and License from the EPA?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

### Agricultural-Type Properties

1. If the property has previously been used for horticultural, orchard or market garden purposes, is there any historic evidence of past land uses having involved persistent pesticides, such as dieldrin or DDT?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

2. Are there any environmental audits available evaluating the presence of pesticides?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

### Former Defence-Oriented Property

1. Does the land contain unexploded munitions, radioactivity or other hazardous substances that could be associated with defence works?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

2. Is there any information available from the Department of Defence or local authorities regarding the presence of unexploded munitions?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

### Environmental Hazards on Adjacent Properties

1. Do any adjacent properties appear to have any improper storage or dumping of hazardous materials, drums or containers that could impact on the value of the subject property?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

2. Are there any landfills, dumps or other waste disposal facilities within one kilometre of the subject property?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment

3. Is there any indication of operations such as gas stations, chemical plants, bulk storage tanks, manufacturing plants or other land uses which potentially involve land contamination (as outlined in this document), on any of the adjacent properties?

Y/N                      N/A                      Comment:

Unknown                N/A                      Comment:

## **APPENDIX 4 Sample Environmental Balance Sheet**

The following is a relatively simple non-costed Environmental Balance Sheet for example purposes.

### **IMPAIRED VALUE OPINION BALANCE SHEET**

	UNIMPAIRED	VALUE OPINION	\$
<b>Less : ENVIRONMENTAL LIABILITIES:</b>			
Due Diligence/Initial Environment Consultants Costs		\$	
Quantification & Alternative Strategy Development Costs		\$	
<b>PRESENT VALUE OF ACTION PLAN COMPONENTS:</b>			
Remediation/Clean-Up Action Costs	\$		
Contamination Control and Management Measures	\$		
Redesign of Production Facilities	\$		
Avoidance of Migration of Contamination to Adjacent Sites	\$		
Notification, Training and Record Keeping	\$		
Allowance for Emergency Response Actions	\$		
Legal Costs	\$		
Indemnity Insurance for the Future	\$		
Monitoring Costs	\$		
Licensing Costs where Applicable	\$		
SUBTOTAL: Present Value of Action Plan	\$		
Estimated Negative Intangible (Stigma) Impact		\$	
<b>TOTAL ENVIRONMENTAL LIABILITIES</b>		<b>\$</b>	
<b>OWNER'S IMPAIRED POSITION* \$</b>			

\* The GREATER of Zero or Unimpaired Value LESS any Environmental Liabilities.

## APPENDIX 5 A Method of Assessing Stigma

Unimpaired Value of the Land (a medium hazard risk property)	\$
Present value of remediating costs	\$
Impaired value 1 - not allowing for stigma	\$

### Comparable Case Studies

Case Study Number	Indicated percentage of impaired value 1 lost to stigma	Comparison to the property being valued
1	25.9%	Treatment completed, stigma caused by fear of additional contamination, less severe than the subject property.
2	29.2%	No treatment proposed at present, continued industrial use, similar risk level to subject property
3	20.9%	Site not contaminated but is situated adjacent to a contaminated site
4	32.7%	Similar type of contamination to subject property but slightly more severe
5	45.4%	Heavily contaminated site, derelict land, more severe than the subject property

Range of stigma effects indicated by comparables 20.9% to 45.4%

Comparables closest to subject property, numbers 2 and 4, 29.2% to 32.7%

Therefore percentage stigma applicable to the subject property is 31%

Amount of stigma @ 31% of impaired value 1	\$
--	----

Impaired value 2 (taking account of treatment and associated costs and stigma)	\$
--	----

Add value of buildings	\$
------------------------	----

Total value of asset	say \$
----------------------	--------

Percentage reduction in value attributable to contamination	21.60%
---	--------

Source: Developed from Patchin (1994) and Syms (1995) (UK)

## **APPENDIX 6 Environmental Legislation in Australia**

For legislation in Australia see Australian Legal Information Institute (AUSTLII) Website

The following list is not intended to be exhaustive. It should, however, illustrate the wide variety of existing environmental legislation which may affect the value of a particular interest in land.

### **Commonwealth of Australia**

1. The Inter-Governmental Agreement on the Environment.
2. National Waste Minimisation and Re cycling Strategy released by Commonwealth Environmental Protection Authority.
3. Industrial Chemicals (Notification and Assessment) Amendment Act 1989.
4. Ozone Protection Amendment Act 1992.
5. Commonwealth Ozone Protection Act 1988.
6. Petroleum (Submerged Lands) Act 1967.
7. Environmental Protection (Nuclear Codes) Act 1978.
8. Nature Conservation Act 1980.
9. Water Pollution Act 1984.
10. ACT (Planning & Land Management) Act 1988.

### **Australian Capital Territory**

1. Clinical Waste Act 1990
2. Public Health Act 1982
3. Poisons Act 1993
4. Radiation Act 1983
5. Air Pollution Act 1984
6. Land Planning Act 1991

### **New South Wales**

1. Environmental Planning and Assessment Act 1979.
2. Environmentally Hazardous Chemical Act 1985.
3. State Environmental Planning Policy No. 33: Hazardous and Offensive Development - Gazetted 11 March 1992.
4. Clean Waters Act 1970.
5. Environmental Offences and Penalties Act 1989.
6. Clean Air Act.

7. Noise Control Act.
8. State Pollution Commission Control Act.
9. Marine Pollution Act 1987.
10. Petroleum (Submerged Land) Act 1982.
11. Coastal Protection Act 1979.
12. Drainage Act 1939.
13. Water Board Act 1987.
14. Pesticides Act 1978.
15. Radioactive Control Act 1990.
16. Rural Lands Protection Act 1989.
17. Soil Conservation Act 1938.
18. Unhealthy Building Land Act 1990.
19. Environmental Restoration and Rehabilitation Trust Act 1990.
20. Protection of the Environment (Operations) Act 1997

### **Queensland**

1. Local Government (Planning and Environment) Act 1990.
2. The Contaminated Land Act 1991.
3. Nature Conservation Act.
4. Local Government (Planning & Environmental) Amendment Act 1992.
5. Pollution of Waters by Oil Amendment Bill 1992 (Proposed).
6. Local Government Act 1936.
7. Petroleum (Submerged Land) Act 1982.
8. Harbours Act 1955.
9. River Improvement Trust Act 1940.
10. Water Resources Act 1989.
11. Soil Conservation Act 1986.
12. Radioactive Substances Act 1958.
13. National workshop on Health Risk, Assessment and Management of Contaminated Land, November 1991.
14. Clean Air Act 1963-1990.
15. State Environment Act 1988.

### **South Australia**

1. Planning Practice Circular (distributed by the Department of Environment and Planning to Local

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- Councils, Planners and Consultants in October 1990).
2. Discussion Paper - Contaminated Land - A South Australian Legislative Approach.
  3. Proposal for South Australian Environmental Protection Authority and Chapter on Environmental Policy.
  4. Dangerous Substances Act 1979/1988.
  5. Environmental Protection Council Act 1972 and Local Government Act 1934.
  6. Marine Environment Protection Act 1990.
  7. Petroleum (Submerged Lands) Act 1982.
  8. Water Conservation Act 1936.
  9. Harbours Act 1936.
  10. Water Resources Act 1976.
  11. Native Vegetation Act 1991.
  12. Soil Conservation and Land Care Act 1989.
  13. Waste Management Act 1987.
  14. Clean Air Act 1984.
  15. Public & Environmental Health Act 1987.

### Tasmania

1. Environmental Protection Act 1973.
2. Chlorofluorocarbons and other Ozone Depleting Substances Control Act 1988.
3. Oil Pollution Act 1961.
4. Public Health Act 1962.
5. Groundwater Act 1985-1988.
6. Water Act 1957-1923.
7. Petroleum (Submerged Lands) Act 1982.

### Northern Territory

1. Conservation Commission Act 1980.
2. Local Government Act 1954.
3. Ozone Protection Act 1990.
4. Public Health Act 1952.
5. Uranium Mining (Environmental Control) Act 1979-1981.
6. Petroleum (Submerged Lands) Act 1982-1986.
7. Environmental Protection (NT Supreme Court) Act 1978.
8. Environmental Assessment Act 1982.

9. Soil Conservation & Land Utilisation Act.

### Victoria

1. Environment Protection Act 1970.
2. Pollution of Waters by Oil and Noxious Substances (Amendment) Act 1991.
3. Marine Act 1988.
4. Heritage Rivers Act 1992.
5. Agricultural and Veterinary Chemicals Act 1992.
6. Environment Protection (Resource Recovery) Act 1992.
7. Various State Environmental Protection Policies made under the Environmental Protection Act 1970 covering air environment, control of noise, ground waters, etc.
8. Local Government Act 1958.
9. Petroleum (Submerged Land) Act 1982.
10. Extractive Industries Act 1966.
11. Land Conservation Act 1970.
12. Soil Conservation and Land Utilisation Act 1958.
13. Occupational Health and Safety (Asbestos) Regulations 1992.

### Western Australia

1. Environmental Protection Act 1986.
2. Local Government Act 1960.
3. Petroleum (Submerged Lands) Act 1982.
4. Marine Harbours Act 1981.
5. Pollution of Waters by Oil and Noxious Substances Act 1987.
6. Waterways Conservation Act 1976.
7. Poisons Act 1964.
8. Radiation Safety Act 1975.
9. Explosives and Dangerous Goods Act 1961.
10. Agricultural Produce (Chemical Residues) Act 1983.
11. Health Act 1911.
12. Aerial Spraying Control Act 1966.
13. Nuclear Activities Regulation Act 1978.
14. Industrial Lands Development Authority Act 1966.
15. Soil & Land Conservation Act 1945.

## **APPENDIX 7 Internet Address of Environment Protection Authorities of Australia**

Environment Australia – Department of the Environment and Heritage (Commonwealth)  
<http://www.ea.gov.au>

Department of Lands Planning and Environment, NT  
<http://www.nt.gov.au/dlpe/>

Department of Environment and Heritage, QLD  
<http://www.env.qld.gov.au/>

Department of Environment, Heritage and Aboriginal Affairs, SA  
<http://www.denr.sa.gov.au/>

Department of Primary Industries, Water and Environment, TAS  
<http://www.dpiwe.tas.gov.au/>

Department of Environmental Protection, WA  
<http://www.environ.wa.gov.au/>

Environment ACT  
<http://www.act.gov.au/enviro/>

Environment Protection Authority, NSW  
<http://www.epa.nsw.gov.au/>

Environment Protection Authority, SA  
<http://www.epa.sa.gov.au/>

Environment Protection Authority, VIC  
<http://www.epa.vic.gov.au/>

Footnotes:

1. Australian and New Zealand Environment and Conservation Council, National Health and Medical Research Council, Australian and New Zealand Guidelines for the Assessment and Management of Contaminated Sites, January 1992, p. 2.
2. Research on Radon is being conducted by Murdoch University in Western Australia.
3. The Institute gratefully acknowledges the assistance of the NSW Property Valuation Department of the Commonwealth Bank of Australia in the preparation of this Appendix.
4. DoE, Queensland 1998.
5. National Environmental Protection Council is to release a National Environment Protection Measure which will supersede the relevant sections of the ANZECC/NHRMC Australia and New Zealand Guidelines for the Assessment and Management of Contaminated Sites 1992.
6. New South Wales EPA 1995.

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# ARPGN 2 NATIVE TITLE ISSUES

## 1.0 Introduction

### 1.1 Purpose

The purpose of this Guidance Note is to outline information and issues, and indicate approaches in cases involving the valuation and management of land subject to native title claims (or where native title may exist, has been claimed or has been determined). The National Council of the Australian Property Institute recommends that it be used by members for the valuation of co-existing property interests subject to native title in Australia. The Institute recognises that Members need to be aware of the potential for native title to coexist with certain tenures, whether there is a claim for native title or not. In this regard, they should obtain a copy of the Native Title Act (Clth) 1993 as amended on 30 September 1998.

### 1.2 Status of Guidance Notes

Guidance notes are intended to embody recognised 'good practice' and therefore may (although this should not be assumed) provide some professional support if properly applied. While they are not mandatory, it is likely that they will serve as a comparative measure of the level of performance of a Member. They are an integral part of the Valuation and Property Standards Manual.

### 1.3 Scope

This Guidance Note applies to Members reporting on land and deals with broad examples of the phenomenon, which results when native title coexists on land, and the resultant value effect. It offers guidance on pertinent general concepts and concerns relating to native title, and suggests the approach that ought to be adopted. It does not purport to provide a definitive coverage on the issue of the valuation or management of co-existing rights, or the manner in which Members should deal with these issues. Co-existing property rights where native title exists is a phenomenon which has resulted in much public debate particularly since the decision in *Wik Peoples –v- Queensland* ((1996) 141ALR 129) (*Wik*) on 23rd December 1996 and involves complex and sometimes unresolved matters. However, contrary

to public perceptions of the *Wik* decision, as long ago as September 1993 in *Pareroultja –v- Tickner* ((1993) 42 FCR 32) it was held that:

... the extent to which Native Title over land may co-exist with leasehold tenure is not a question fully explored in *Mabo* (No. 2). Much may depend on the nature and extent of the leasehold estate (eg a monthly tenancy or lease for 99 years) and inconsistency, if any, between Native Title and the lessor's reversionary interest.

'Formula' approaches to the valuation or management of co-existing interests subject to native title are almost certainly inadequate and the procedures for each report will vary according to the circumstances of each parcel of land.

Members should apply their own skill and judgement in applying the suggested approaches contained herein to their own practice.

This Guidance Note should be used in conjunction with other guidance notes and practice standard which are either over-arching or directly applicable to the type of land, purpose or issues involved.

Native Title is different from State and Territory based 'land rights' legislation and cultural heritage protection legislation.

### 1.4 International Valuation Standards

This Guidance Note recognises the International Valuation Standards 1 and 2, and the International Valuation Application 2 by the International Valuation Standards Committee and it is intended to be consistent with the concepts and definitions contained in those standards, however, there may be departures from IVSC Standards to reflect Australian & New Zealand law and practice.

### 1.5 Property Expert Involvement

Members are able to provide appropriate skilled advice in relation to Valuation and property matters with the assistance of and in accordance with this Guidance Note and bearing in mind the limitations referred to herein.

### 1.6 Market Response

Increased awareness within the general community of Indigenous issues, recent legislation, such as the Native Title Act, litigation associated with native

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title and incidents where property users allege financial loss as a result of native title claims (or the likelihood thereof), have made the marketplace more aware of the potential effect of native title co-existing with existing land titles. Anecdotal evidence may suggest that prices can become artificially depressed. Further, limited information about a particular native title claim (or prospect thereof) that is thought to be present on land may cause a 'stigma' effect on values. Conversely, the market appears to be aware that the impact upon the utility of properties with co-existing native title may vary significantly from case to case.

### 1.7 Advice about Commercial Impact

Clients will be looking to Members of the Institute for advice and guidance on how native title affects their financial security and asset value. Members cannot and should not promote themselves as authorities who are fully capable of measuring, recording and providing detailed advice. However, they should be able to provide a significant level of advice to the client about the commercial impact of the coexistence or likely coexistence of native title in relation to a particular parcel of land.

### 1.8 Issues Requiring Further Investigation

Members of the Institute should take all reasonable care in these matters. Members who attempt to mitigate their responsibilities by adding a disclaimer saying that the property has been valued or assessed 'without regard to the question of the presence of native title', are not providing the level of expertise expected by clients and would not satisfy the standards of practice required by the courts. Therefore, the Institute recommends that its Members become sufficiently knowledgeable about native title processes contained in Commonwealth and complementary State/Territory legislation, and case law associated with this topic and its effect on property values to meet the above standards. This involves Members qualifying advice, where appropriate, so as to properly inform the client of potential issues which may require further investigation, and thereby meet the Member's professional obligations.

### 1.9 May Affect a Broad Range of Non-Exclusive Estates

Except where Members are valuing or managing land identified as an 'exclusive possession grant' which extinguishes native title (s.23B (2)(c) Native

Title Act) (See Appendix 1 of this Guidance Note), Members will rarely be in possession of enough information or evidence to totally discount the presence of native title as a co-existing property right. Items of Indigenous cultural heritage (ie middens, rock carvings etc) can be a useful marker for native title, however this may not be conclusive. Members should be aware that Indigenous cultural heritage is a separate but related issue to native title. Native title as a co-existing property right may affect the full spectrum of non exclusive possession estates (eg. non exclusive possession leasehold or reserve land) and should therefore be considered.

Members should utilise Appendix 1 to assist them in distinguishing the likelihood of coexistence. The majority of ordinary titles, both private freehold and specific leasehold, listed in Appendix 1, have the status of 'exclusive possession grants' which extinguish native title. In these circumstances native title does not need to be considered further.

### 1.10 Definition of Native Title

As defined in *Mabo – v - the State of Queensland (No.2) (1992) (175 CLR 1) (Mabo)*, native title is the term used to describe the rights and interests held by Aboriginal and Torres Strait Islanders to land and waters under their custom and customary law. The National Native Title Tribunal (NNTT) describes native title as:

'.... A common law right that pre-dates European settlement of Australia'

(NNTT Information Bulletin, Feb 1997, at p1).

In addition to the above, native title is defined in the Native Title Act 1993 as:

'the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- (b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia.'

(s223(1))

Also,

'[w]ithout limiting subsection (1), 'rights and interests' in that subsection includes hunting, gathering, or fishing, rights and interests.'

(s223(2))

As a useful summary, it should be noted that native title:

- is not necessarily equivalent to other forms of legal tenure;
- is what the common law recognises;
- comprises a range of rights and interests which may vary from group to group and place to place;
- rights and interests to an area of land or waters may be held by more than one group;

when tested for survival (and co-existence), the inconsistency test set out in detail in the judgements of the High Court in *Wik Peoples v Queensland* and *Fejo v Northern Territory of Australia* are to be adopted.

The laws and customs and traditional uses, which define native title, were not frozen at the time of British settlement and as long as physical, cultural and/or spiritual connection with the land is maintained, it is understood that the defining laws and customs are able to evolve. It is often misunderstood that for native title to be intact must be maintained in a manner existing at the time of British settlement.

Conceptually this is not significantly different to the customs and traditions of every other society or group which have evolved or adapted to change throughout the course of history.

The manner in which native title continues to exist may not be given practical expression in a form which is easily recognised by non Indigenous people. That substantial development may have occurred on or near land being considered in a property valuation or assessment, ought not lead to a presumption that native title does not continue to exist, and hence does not exist as a property right.

Kado Muir of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) provides useful guidance as follows:

'... where Indigenous laws are practised and acknowledge[d] then those laws will also contain property rights. The process of inquisition into the nature, extent and incidents of property rights

derived from the Indigenous laws is not essential to establishing the existence of native title.'<sup>1</sup>

The fundamental issues to be addressed by the Court when it is required to determine that native title exists are essentially threefold:

- who holds the interest?
- where is the interest, ie the boundary?
- what are the rights and interests held?

These requirements are set out in s.225 of the Native Title Act 1993, as follows:

A determination of native title is a determination whether or not native title exists in relation to a particular area (the determination area) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or group rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between three rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and

to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease – whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

### 1.11 Point of Reference

Members must obtain relevant initial information from specialist native title sources such as the NNTT Registers, other relevant State and Commonwealth agencies and officials, and native title representative bodies (NTRBs) (see 3.1, below).

Other important points of reference are anthropologists and archeologists. The Australian Anthropological Society, at the University of Sydney tel: (02) 9351 5489 should be contacted for advice as to contacts in these disciplines. In addition, valuable research information can be accessed from the Aboriginal and Torres Strait Islander Commission (ATSIC), traditional owners, and industry organisations who are stakeholders in native title, eg: farm industry organisations.

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A further useful resource is the Australian Local Government Association (ALGA) publication *Working with Native Title: A Practical Guide for Local Government*, which provides a detailed description of the processes involved.

It is important that members obtain information that is representative of the broad spectrum of issues and views in respect of native title to ensure that they do not negligently disregard research information.

### 2.0 Types of Co-Existing Estates

#### 2.1 Wide Range of Non-Exclusive Estates

There is a wide range of non-exclusive possession estates which may co-exist with native title, varying from State to State in the level of exclusivity, and hence the quality of tenure and/or the potential for co-existing interests or native title in particular.

An example of such estates are the Western Division leases in New South Wales, and two and possibly four types of Queensland pastoral leases, (ie Pastoral Holding, Pastoral Development Holding and possibly Preferential Pastoral Holding and Stud Holding), and possibly Occupation Licences, and Special and Term Leases for grazing purposes.

Members should however note that certain statutory estates now extinguish native title and are referred to in Schedule 1 of the recent Native Title Amendment Act 1998. It is important to ascertain whether the State or Territory has enacted complementary legislation to validate and to confirm the effect on native title of the tenure listed in Schedule 1 of the Commonwealth Act.

Appendix 1 of this Guidance Note lists these estates, and are shown in chronological order of legislation by State or Territory, for ease of reference.

Caution should be exercised when consulting Appendix 1 as some non exclusive possession estates (i.e. Preferential Pastoral Holdings and Stud Holdings in Queensland) may extinguish native title, to the extent of the inconsistency only. Extinguishment by such estates has yet to be considered by the courts, and it is recommended that legal advice be obtained. In addition, some classes of Special Leases (e.g. for watering purposes) are provided for in the Act as extinguishing native title.

#### 2.2 Tenure

Each non-exclusive possession estate must be considered in assessing the impact of the rights being asserted in a native title determination application upon the property. In some States much of the non-urban land is held in private freehold (i.e. Victoria) which extinguishes native title permanently. However, in some States and Territories this land is held under statutory estates, commonly called pastoral leases.

#### 2.3 Conditions of Tenure

There are prerequisites, conditions and obligations attached to various forms of leasehold which define the nature of the ownership. The term of the statutory estate, especially the period unexpired, the rights, if any, of renewal, the capacity and limitations upon transfer, and other terms and conditions are critical to determining the degree of exclusivity of the particular estate, and how closely the tenure approaches the benchmark of private freehold.

The degree of exclusivity granted to a leaseholder has a complimentary effect on the ability of the statutory estate to co-exist with native title. The duration of leases can vary from perpetuity to only a few months, and the issue to be addressed by Members is whether duration per se is fundamental in determining the impact of native title.

Leases of a shorter duration may be more vulnerable to the bundle of rights comprising native title than those of longer duration, given that longer leases may have the 'flavour' of private freehold whilst others may be little more, in practice, than an agistment right.

It should be noted that the length of the term of the statutory estate was only one of a number of deciding issues in the Commonwealth Government's decision as to whether or not to include a particular statutory estate in the Schedule (see Appendix 1 in this Guidance Note). Relevant factors in determining whether a statutory estate was to be listed in the Schedule were, terms and conditions, third party rights, grantee obligations and restrictions, upgrade capacity, purpose, tenure history, location, and size. However, the terms of a lease and the actual activities were not determining factors, whilst all of the above factors were to be balanced to determine whether a lease had eligibility as a Scheduled Interest.<sup>2</sup> Caution should however be exercised regarding

the presence (or lack of) a statutory estate in the Schedule to the Act, as the recent decision in *Ward v State of Western Australia* (1998) 159 ALR 483 (*Miriuwing Gajerrong*) may have clouded the issue of extinguishment.

### 2.4 Consequences of Existing and Past Activities

Since *Mabo*, native title can be extinguished by not only a plain and clear intention to do so (*Mabo* at p.68) but also by the consequences of existing and past activities.

Members should be aware that the consequences of present and previous activities performed on the lease land can have significance for the likelihood of native title surviving. This may be deduced from an inspection of the property and is irrespective of questions of exclusivity, duration or reservations contained in the lease document.

At an extreme level, the complete obliteration of all natural land forms as a result of past mining activity is likely to severely limit the ability of traditional activities to be performed on site, or possibly for any meaningful relationship with the land to continue to exist. Substantial private developments for say, a sporting complex, also provide a further example. Even with less intrusive pursuits such as low impact farming, it is likely that any traditional profits a *prendre* activities would have been severely curtailed. There is also the category of 'public work' (s253) and lands incidental to the 'public work' (s251D) which also extinguish native title.

Nevertheless, Members should be aware that a direct physical contact with land is not the only medium by which native title is sustained (ie cultural and spiritual).

The *Miriuwung-Gajarrong* decision of the Federal Court in 1998 has however cast doubt upon the extinguishing capacity of existing and past activities. Members should exercise caution and obtain specialist advice in this area from anthropologists, and archeologists, NTRBs and traditional owners in order to identify the level of effect.

### 2.5 Related Court Cases

Members should also pay close attention to important court cases in the Federal or High Courts which have implications for co-existence. These cases have the potential for providing guidance in the valuation of specific types of estates over

which there has been a native title application. The NNTT and the Federal Court have separate functions under the legislation, and the States and Territories can establish their own 'recognised bodies to perform the functions of the Federal Court, and 'equivalent bodies' to perform the functions of the NNTT. However, the NNTT still retains responsibility to maintain the Registers, while the role of the Federal Court is to receive applications, refer them to the NNTT (or equivalent body) for registration, to decide on the parties, to make determinations and orders.

## 3.0 Identifying Co-Existing Native Title

### 3.1 Information on Native Title

Identifying where native title exists or may exist is crucial in all property valuations or assessments. It is important to be aware of the possibility that native title may exist in certain circumstances and in areas where it has not been extinguished regardless of whether there is currently a native title application or determination to indicate its existence.

It is not necessary to have a determination, by agreement or judicially after a contested hearing, for native title to exist. It is an existing right and may continue to exist in areas where it has not been extinguished by legislative or executive acts of government, even though the identity of the native title holders is unknown. In such circumstances it is possible that an area may be subject to an application for a native title determination at a later date.

The main sources of information in circumstances where the holders of native title rights and interests are unknown, are the NTRBs, the local Indigenous peoples with an historical connection with the area in question, local historical societies, local genealogical societies, the relevant ATSIC Regional Council and the local Council historical records.

Where an application for native title has been made, the primary sources of information are the Register of Native Title Claims held by the NNTT or equivalent State/Territory bodies, and the NNTT Schedule of Applications for native title determinations that have not passed the statutory registration test under the Native Title Act 1993 and the Federal Court's records of common law native title applications.

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The list of Scheduled Interests, together with tenure information held by state government registries is also a major source of information (see Appendix 1 in this Guidance Note).

Native title issues can arise where there has been a determination (by agreement or judicially), where an application for a determination has been made or, importantly, where the native title holders are presently unknown and no application or determination exists.

### 3.2 Searches

There are various searches that should be undertaken.

### 3.3 Tenure Searches.

After undertaking the enquiries mentioned above and prior to conducting a search of the NNTT registers, it is important to prepare a tenure history of the land.

This is best undertaken by a registered surveyor who should provide copies of documentary evidence of the tenure history both by way of title documents and other descriptive sources such as deposited plans and Crown Land survey information.

The tenure search is pivotal in deciding whether native title has survived, the nature of the surviving property rights associated therewith and the nature of impairment or even extinguishment of such rights. Often, it is necessary to closely examine the initial tenure searches and to request more detailed particulars from the surveyor in order to conclude this aspect of the Member's report. Tenures included in Schedule 1 of the Native Title Act 1993, and as enacted in complementary States/Territory legislation are not subject to native title. (See Appendix A of this Guidance Note)

### 3.4 Background Research & Historical Land Use

After undertaking the research referred to above, the use of the land may be relevant if native title has not been extinguished by present or previous grants of tenure Members should be aware that previous grants of freehold title extinguish native title permanently (viz. *Fejo v Northern Territory of Australia*), and that the Native Title Act provides for previous extinguishing acts. Before embarking on a formal search of the Registers held by the NNTT, or equivalent State/Territory body, there are several areas of enquiry to take advantage of

- the existing and previous owners (and employees) are often an excellent source of information on the land use history of a property.
- local councils can provide detailed information from their building planning and subdivision records on past history and land uses.
- aerial photographs can be obtained from the relevant Crown Lands Departments or their equivalent in each State or Territory that can also assist in documenting former uses, such as public works. Such photographs can be obtained as far back as the 1940's and are a much under-utilised resource.
- government departments dealing with utilities, health and environment, industry and mining also have approval and licensing records and other useful information.

### 3.5 Native Title Registers

Four registers are held by the NNTT covering land and waters in each State and Territory and deal respectively with registered claims, determinations, Indigenous Land Use Agreements (ILUAs) and unregistered claims.

Upon request, a formal search of the registers will be conducted by Tribunal staff. The Tribunal's fee to search the registers upon receipt of a request is \$20.00 per 15 minutes, plus photocopying at 50 cents per A4 page.

The NNTT does not have a set application form for written inquiries, however members seeking such information should attempt to follow the format of similar applications, such as those made to roads and electricity supply authorities.

The information provided to the NNTT in support of a written application for a search of the Registers should be as detailed as possible to expedite the search. Details such as county, parish and local government area are a starting point, however the provision of Deposited Plans or other survey information will also assist the Registry staff.

The written application can also be forwarded to the relevant Registry by facsimile, providing a shortening of the response time. Experience suggests that the turn around time can vary from one or two days to three weeks, subject to workload.

### 3.6 Indigenous Records

When the member receives confirmation from

the NNTT Registry that land is subject to a native title claim, (that has or may pass the registration test) or is reasonably confident that native title continues to exist on the land in question, it is prudent to make other enquiries of the relevant Indigenous representative bodies (such as NTRBs) or traditional owners. These interested parties particularly the relevant NTRB will assist the member in gaining an understanding of the ambit of existing or likely native title claims. Also, such enquiries will establish whether or not native title is a consideration for the particular task at hand.

In addition, other Indigenous records and information can be obtained from State or Territory Indigenous heritage authorities and their Registers. The District or Regional Offices of the relevant National Parks and Wildlife Authorities may be able to assist with detailed information about local Indigenous people and their relicry. Local historical societies are also important resources as they often hold rare and valuable information about early non-Indigenous settlement and their interface with the local Indigenous people.

All of the above will assist the member in providing the client with factual and dispassionate information thereby enhancing the level of service provided and discharging the member's professional obligations.

### 3.7 Site Inspection

A Member conducting an inspection of a property for the purpose of providing a valuation or other property assessment should be aware of the potential of coexisting native title prior to the inspection.

During an inspection for this purpose, the Member should attempt to identify from on-site observations any physical evidence of Aboriginal cultural heritage site and items that could suggest the exercise of native title rights. Members should be aware that the presence of physical evidence of Indigenous occupation is not necessarily a good diagnostic marker for native title in many areas of Australia. Whilst not conclusive, nevertheless the Member should look for evidence of camp sites, other occupation sites, natural or introduced food or remains or other disturbance to soils or vegetation. Finally, the Member should look for any evidence of artifacts or in rocky country, stone grooves, rock paintings, or other utilitarian or artistic evidence.

Members should exercise great caution if they suspect the presence of such evidentiary material

prior to an on site inspection. It is possible that offence may be unwittingly given to Indigenous people through either photographing such materials, or even by entering an area which has special significance.

If the Member identifies from onsite observations any potential for native title arising from the presence of Aboriginal cultural heritage items and sites, a recommendation should be made for further expert advice where appropriate, or enquiry of potential native title holders.

### 3.8 Role and Expertise

Members should recognise that their role and expertise is limited to the detection and preliminary identification of discoverable physical evidence of Aboriginal cultural heritage items and sites, which may be a diagnostic marker for native title. It should be remembered that sites of significance to Indigenous people are not necessarily evidenced by the presence of recognisable topographical features such as rock outcrops or caves. Such sites can sometimes be present in apparently featureless tracts of land, which would be otherwise ignored by untrained or uninformed observers.

Evidentiary proof of native title and the ascertaining of the ambit of the property rights must be left to those with specialist qualifications in the fields of anthropology and archeology.

Where information is available to the Member on the likely existence of, (and ambit of) native title, this should be provided as an annexure to the Member's report together with a statement as to the literature source and an appropriate qualification. It is recommended that caution should be exercised where heavy reliance is placed on literature, given that the history of Indigenous occupation was not always properly recorded.

### 3.9 Whether Expert Engaged

A member needs to be aware of the results of site inspection raised in 3.7, above: 'Site Inspection' and 3.8, above: 'Role and Expertise' and to do sufficient research to establish whether an appropriate qualified expert should be recommended for engagement. The Member should take detailed case notes, which may not necessarily be used in the preparation of the final report but will provide evidence that the property valuation or assessment was carried out with full regard to the potential existence of native title.

### 3.10 Engaged Qualified Experts

A report by a suitably qualified expert in the field of anthropology or archeology is required to provide evidence that native title is or is not being exercised on land and/or that connection with the land by Indigenous people is extant. The report is critical to the task of the Member in producing a property valuation or assessment of land where native title is present as a co-existing property right.

In providing a report on the property, the suitably qualified expert should address the following issues based upon inter alia field research, oral evidence, and literature:

- present and past Indigenous and non Indigenous land uses;
- locations on the land where these land uses were carried out;
- duration of the land uses;
- on site Indigenous relicry;
- sites of Indigenous spiritual and/or cultural significance;
- level of co-existence of Indigenous and non-Indigenous land uses.

### 3.11 Qualification if no obvious Native Title

If there is no obvious evidence of native title as a result of research or inspection of land by a Member and no expert report is to be made available to the Member, then the Member's report should be suitably qualified to reflect the relevant extent of the Member's expertise in relation to native title and to place the onus upon parties relying upon the report to make their own enquiries.

Although any qualification used should be specifically worded to suit the particular circumstances of the property valuation or assessment, the following clause provides an example of the type of qualification that should be made:

'A visual site inspection and (detail other research) has not revealed any obvious presence of native title. Nevertheless, we are not experts in native title or the property rights derived therefrom and, have not been supplied with appropriate anthropological, ethnoecological and/or ethnographic advice. Therefore, the property valuation or assessment is made

subject to there being no actual or potential native title affecting:

- The value or marketability of the property; (or...)
- The land (... as applicable).

Verification that the property is not subject to co-existing native title interests should be obtained from a suitably qualified expert. Should subsequent investigation show that the land is subject to existing or potential co-existing native title interests this property valuation or assessment will require revision.'

Once a native title claim has been lodged, irrespective of whether it is registered or unregistered, Members cannot include a disclaimer stating that they have ignored native title.

### 3.12 Not Expert

A Member who has the relevant experience or has undertaken the Institute's approved course of studies is entitled to carry out the valuation of co-existing property interests subject to native title.

### 3.13 Recommending a Detailed Native Title Report

It should be recognised by Members that only through exhaustive research can the ambit of Indigenous property rights be verified properly.

Such research is inherently expensive and time consuming, and cannot in itself provide a complete guarantee that such property rights are, or are not present. Only the courts can provide such a definitive declaration.

If, after carrying out preliminary research and site inspections, the Member is concerned or suspects that the property is or could be subject to co-existing native title that could either restrict the future use of the site or mitigate against a financial consideration, the Member is obliged to recommend that the client seek a detailed native title assessment from appropriately qualified professionals. Such advice should be formed having regard to both the current and future financial considerations as well as the future use of the land. A detailed native title assessment by suitably qualified disciplines will include the issues detailed in 3.8, above: 'Role and Expertise', together with such other information as deemed necessary to provide the fullest description of the presence of native title.

Subsequently, it may be necessary for the appointed disciplinary consultants to move into a third stage of consultancy including the preparation of alternative methods of either non Indigenous land management or the exercise of Indigenous property rights and interests.

### 3.15 Where Detailed Information Cannot be Obtained

Where detailed information cannot be obtained, the Member should prepare his/her report on the basis that the property is not subject to a co-existing native title interest, and qualify that report on the basis that some elements of native title rights and interests may exist, and if present, could have an impact on the value, usage or future development of the property. The following provides an example of the type of qualification which may be appropriate in these circumstances:

'From our inspection of the property we consider that there is (or could be) a potential for (detail possible native title rights and interests) to exist and would recommend that advice should be obtained from a suitably qualified expert. Please note that our valuation (or report) has been prepared on the basis of no survival of native title rights and interests. Should the above mentioned expert advice reveal any evidence of native title our valuation (or report) will require revision.'

It is critical that members be aware that the greater the perceived likelihood of native title rights and interests may exist, the stronger the 'qualification' must be and more specific must be the accompanying advice.

## 4.0 Native Title Predictive Practices

### 4.1 Native Title predictive practices changing

The predictive practices for the determination of the likelihood of native title survival is rapidly changing. New investigative field techniques are being developed by the anthropology and archeology disciplines and those who legislate standards (i.e. the Native Title Act 1998 as recently amended). As Professor Garth Nettheim of the Aboriginal Law Centre UNSW states:

"... although we can readily identify areas held by Aboriginal people and Torres Strait Islanders through grants under various Land Rights Acts

over the past 20 years, the task of mapping those residual areas of Australia held as 'native title' has scarcely started.

... The general characteristics of most forms of land title are reasonably well-known. By contrast, the nature of 'native title' rights and interests depend on the laws of the particular Indigenous peoples concerned, and will vary from place to place."<sup>3</sup>

### 4.2 Native Title predictive

The predictive practices which have developed by the disciplines involved in determining the likelihood of the survival of native title, are founded in both established academic literature and existing field practices, especially in the area of anthropology and archeology. Note that the definition of such practices is notoriously difficult and can present some difficulties for members recommending to a client from a panel of appropriately qualified consultants.

### 4.3 Practices Defined Influence on Value of

The influence on value of such practices, will depend on such factors as whether the native title rights and interests are restricted or more diverse. In addition, there is the effect of the possible need for further detailed analysis after the preliminary research.

### 4.4 Co-Existing Interests subject to Native Title Predictive Practices

Predictive practices could involve a detailed review of existing and historic literature, a search of government survey and tenure records, the obtaining of oral evidence from native title claimants, and/or traditional owners, and the testing of any conclusions against other predictive work already published or otherwise available.

A difficulty with any predictive practice is that Indigenous people tend to be reluctant to share their understanding of native title rights and interests, due often to cultural and spiritual imperatives and due to understandable suspicion. It must be remembered that Indigenous cultural heritage is significantly based on spiritual concepts, and there is the danger that areas of significance may attract unwanted attention which could lead to desecration.

### 4.5 New Practices

New practices in the disciplines of anthropology and archeology are developing in the light of current litigation which will almost certainly result in exhaustive testing in the courts of any opinions expressed by such consultants.

However, the cost of predictive practices are already inherently expensive and time consuming, and it must be recognised that clients may be unwilling to undertake such work if the existing Market Value of a property.

Members should keep abreast of research and technological changes relating to predictive practices. Such awareness will assist the member in advising appropriately on the perceived likelihood of the survival of native title rights and interests and the need for clients to seek further information.

Members must avoid giving advice beyond their area of expertise.

## 5.0 Impact on Value of Co-Existing Interests Subject to Native Title: General Issues

### 5.1 Responsible Party for Compensation

Depending upon the relevant Commonwealth or State/Territory legislation, it is as a general rule the responsibility of government to bear the cost of any compensation if practices on the property are proven to have resulted in the loss, extinguishment or impairment of native title.

Any new activity to be authorised on a property, may result in the consent authority (eg. state and local governments, Western Lands Commission) requiring that any compensation be met by the holder of the co-existing interest subject to native title. However, compensation for future acts by third parties only applies to those acts affecting native title after 23 December 1996.

It is noted that present activities on land subject to a co-existing native title interest (or application for a native title determination) are generally unaffected as regards ongoing present uses conducted on the property. Where land use changes are proposed, minor changes may not cause a claim for compensation for the loss, extinguishment or impairment of native title. The important issue here is not whether there is a change of use, but whether the lease permits the

activity. If the lease allows the proposed action there are no native title implications regardless of how the land is currently being utilised.

Members should exercise caution when forming a view as to the affect that a co-existing native title interest (or application for a native title determination) may have on present and future utility of a property. The activities which are permissible, and the procedural pathways to be followed are set out in s.24 of the Native Title Act.

It is necessary for the Member to be thoroughly aware of these activities and procedures in forming a view as to the affect of co-existing native title on present and future utility. Members should be careful that they are not misled to concluding that minor (or greater) changes in utility may or may not be relevant.

In some circumstances, some changes in the nature of activities may merely have been undertaken negligently, and thus inappropriately without the relevant permits and authorities.

Members should be aware that provided lessees abide by the conditions of their potentially co-existing leases, and have exhibited an awareness of cultural heritage obligations, the procedures under s.24 may not have been transgressed.

Members should be aware that Indigenous Land Use Agreements (ILUAs) are becoming more common place, and can apply to any area or class of activity. ILUAs can impact upon property management as to when they are registered, as it is provided for in the Native Title Act that they are binding on the parties to the Agreement. The NNTT has a register of ILUAs throughout Australia.

Due to the specialist advice required in assessing the impact of future activities on the value of co-existing interests subject to native title, members are strongly advised to seek formal advice from appropriately qualified specialists.

### 5.2 Legal Costs

Legal costs arising from the co-existence of interests subject to native title will vary in extent according to the circumstances of each particular property. Members should refer to these costs in their report, where appropriate, and ensure that they are addressed in any subsequent expert preliminary (or detailed) report obtained.

Members should recognise that the potential for litigation or pending litigation may affect marketability and further affect value by deterring prospective buyers of properties.

It should be recognised that there is very little case law in this area and future judicial direction will clarify whether the current valuation methods are appropriate. When considering the impact of native title on co-existing property rights, some guidance is available in the literature<sup>4</sup> and members should endeavour to keep abreast of legal and practice developments.

The effect of legal costs should be included within any discount, or separate contingency figure for the existence (or likelihood) of co-existing native title. This is not dissimilar to the allowance for the effect of legal costs usually recommended to be included within the stigma component of environmental liabilities when contaminated land is valued.

This discount or separate contingency figure should be based upon information either provided by an appropriately qualified expert (in the disciplines of anthropology, ethnoecology or ethnography) or estimated by the member following appropriate legal advice.

As a warning, such discount or contingency figure should always be qualified to inform the client that it is an estimate only and that it may not reflect the costs actually incurred should litigation for compensation eventuate.

### 5.3 Mortgage Security

It is accepted practice that mortgage lenders prefer to lend funds on freehold rather than lessor tenures. Whilst freehold title may be seen as more definite, it should be noted that there are many secure titles which are listed in Schedule 1, Native Title Act 1993 (Appendix 1). These exclusive possession leases do not require that native title be considered, and mortgage lenders would not require any further enquiry.

Nevertheless, for some particular uses, such as industrial:

Leasehold properties effectively only provide an income stream and the present value of this reduces as the loan term continues. Because of this reducing interest and the lesser acceptance of leasehold properties in the marketplace, lenders will usually charge a higher interest rate for this style of property.<sup>5</sup>

In significant areas of Australia where land is subject to native title, the predominant form of property interest is a statutory estate commonly known as a pastoral leasehold.<sup>6</sup> As of the historic absence of freehold interests in such areas,

the security offered to mortgage lenders is the pastoral lease. Because pastoral rights prevail over co-existing native title rights to the extent of any inconsistency (viz. Wik Peoples –v– State of Queensland) ((1996 ) 141 ALR 129), there is little concern that these tenures are not secure.

Nevertheless, the perceived dysfunctional nature of co-existing multiple property rights has resulted in a broad public debate since the Wik decision. There may be an adverse effect through financiers requiring higher interest rates where there is a view that a property may be diminished in Market Value due to the perceived effect of native title.

It is reported that whilst mortgage lenders do not appear to have made any changes to existing rural loans, it is anticipated that they will exercise greater caution in granting new loans. Members should be aware that the inclusion of 'land rights' as an 'Event of Default' in some security documents has been reported however, this is probably not unreasonable given the developing nature of due diligence. It should also be noted that the term 'land rights' encompasses a broader area of Indigenous property rights than native title, which is recognised by the common law.

It is important to note that the identification of 'land rights' (more correctly, native title) appears to be only viewed adversely if circumstances arise which materially diminish the value of the mortgage security or effect the financial position of the parties.<sup>7</sup>

Members should be aware that mortgage lenders will seek professional advice from them as to whether the value of the security has been reduced, such that the identification of native title (or the possibility thereof) is grounds for an 'Event of Default'. Members have a responsibility to ensure that mortgage lenders are adequately informed of the likelihood of co-existing native title and the consequences for the Market Value of a specific property. This task is undertaken by examining the market sales evidence.

It should be noted that the effect of co-existing native title upon pastoral leases may be analogous to the relatively nominal value effect which occurs when a high tension transmission line easement is placed over freehold land. This effect often amounts to little more than a blemish upon the freehold title, and its Market Value. This should not be construed however as in any way suggesting that the value of native title is merely a residual.

### 5.4 Indemnification Agreements

Where a member is instructed to specifically ignore native title when valuing a co-existing property right, the Institute recommends that to satisfy the standard of practice required by the Courts, and the member's professional obligations, that a Deed of Release and Indemnity be executed protecting the member.

If a Deed of Release and Indemnity is unable to be obtained from the client, the Institute does not consider that the level of best practice as required of members, will be met and the instructions should be returned with appropriate reference to this section of ARPGN 2.

## 6.0 Valuation Approach

### 6.1 Co-Existing Native Title may or may not impact upon Value

The presence of co-existing native title over a property may not necessarily reduce its value within the current class of use. However, there are two scenarios in respect of the impact of coexisting native title.

Firstly, it can be argued that whilst pastoral leases may be subject to an application for a determination, if the pastoralist is utilising the land in a manner which conforms with the rights (specific or implied) and obligations flowing from the grant of the pastoral lease, then the utility and income flow from the business remains unaffected for which there is a long term market demand. In this scenario, the value of the pastoral lease is unaffected and would be supported by appropriate sales evidence.

Secondly, there may be situations where coexisting native title could reduce the value of a pastoral lease, even though utility and income flow from the business remains unaffected. The mere presence of native title may be viewed by potential purchasers as requiring a discount of the value of the pastoral lease. Again, in this scenario such assertions as to value would be supported by appropriate sales evidence.

Given the above qualifications, Members should advise that the property can continue to be used and developed in accordance with its purpose, terms and conditions and subject to any required permits, licenses and authorities.

### 6.2 Two Main Approaches

Where a co-existing native title claim (or the possibility thereof) is identified, it is recommended that one of the following methods should be utilised depending on the specific circumstances:

- Unaffected valuation approach, comparing like with like;
- Special considerations approach because no suitable comparable basis exists.

### 6.3 Unaffected Valuation Basis

Provide a valuation on an unaffected basis, together with an outline of the likely content of any presence of native title and the inclusion of a qualification in the report indicating that the property valuation or assessment does not reveal any diminution due to the possible presence of native title. The example of the type of qualification that should be made is detailed above in 3.11: 'Qualification if no obvious Native Title'.

### 6.4 Affected Valuation Approach

After obtaining the client's approval, the member should arrange for an expert preliminary (or detailed) report to be prepared to provide affirmation that native title is being exercised on land and/or that connection to the land by Indigenous people is extant together with inclusion of costing for any further reports or negotiations.

The Member should then calculate the property's discounted value upon the above expert report. This is critical to the formation of a view by the member as to whether native title necessitates a discounted value being placed on the co-existing pastoral lease (or other less than freehold estate).

Alan Hyam LFAPI, Barrister has provided useful guidance listing the following matters that regard should be had when members attempt to value property subject to native title:

- "The nature of the rights conferred by the native title. It must be established whether they entitle the native people to access only or other rights are conferred, such as, the right to camp or dwell on the land, the right to fish and hunt game.
- The frequency at which the rights will, or are likely to, be exercised; the number of people who may enjoy the rights.
- The number of occasions upon which the rights have been exercised in the past.

- The impact which the exercise of the rights will have on the interest of the co-existing owner in the land.
- The attitude of the hypothetical prudent purchaser to the co-existing rights...<sup>8</sup>

Assessment of the 'affected value' (and hence discount) indicated above would, where sales are available involve the comparative approach. There may be only limited instances where direct comparison of affected property sales can be made, but endeavours should be made to establish whether this sales evidence is available in order that the comparative approach may be successfully applied. With caution, Members should ensure that properties are being compared truly evidence comparability, both in terms of the pastoral lease and the native title thereon.

Members should not make judgements as to the comparability of affected sales without access to the report of experts in relation to any properties sought to be used as comparables.

### 6.5 Detail on How Valuation Reached

Where a discount attributable to native title is applied by a member, it is strongly recommended that full details should be provided as to how the final valuation figure was reached. It is recommended that care be exercised when applying a discount as it was the view in Wik that native title yields to the statutory rights and interests granted by the Crown. In addition, the interests detailed in Schedule 1 of the Native Title Amendment Act 1998 (see Appendix A of this Guidance Note) confirm that those interests are not vulnerable to native title.

The Member should state clearly in the report that the discount applied was arrived at based upon information obtained from expert reports and that the Member has not formed an opinion as to the veracity of that information. A copy of the expert's report should be annexed to the member's report. The discount may be arrived at through sales evidence, income flows or other appropriate market information.

It should be noted that the Institute is concerned that member's discharge their professional responsibility as regards the determination of the discount arising from the likelihood of co-existing native title. To that end, it is recognised that clients may have a particular (and often strong) personal view concerning the effect of native title rights and interests.

In some cases, these views may not be based upon a factual and dispassionate assessment of the consequences of native title claims (or the possibility thereof) upon Market Value of a specific property. It is recognised by the Institute that such situations may impact upon the professional interpersonal relations of member and client.

Extreme caution should be exercised by members in such situations, and given early recognition it is recommended that the member ensures the client is aware of the impartial and independent nature of the market advice that the member is to provide. In the event that the client does not accept the member's professional standpoint the Institute does not consider that the level of best practice as required of members, will be met and the instructions should be returned with appropriate reference to this section of GN27.

### 6.6 Obtain Cost Estimates of preliminary or detailed Expert Report

Members should not provide their own estimate of the cost of expert's preliminary (or detailed) reports. These estimates should only be obtained from appropriately qualified experts.

A preliminary (or detailed) native title report will include the issues detailed in 3.8, above: 'Role and Expertise' and reflect the recommendations in 3.13, above: 'Recommending a Detailed Native Title Report' and 4.0, above: 'Native Title Predictive Practices'. It should be recognised that such research cannot provide members with a complete guarantee as regards Indigenous property rights and caution should be exercised by Members.

The member should clearly state in his or her report that any conclusions based upon the information contained in the preliminary (or detailed) expert report. The Member should advise that an opinion has not been formed as to the accuracy of that expert report.

A failure to include such a qualification could result in the member being held to have adopted without question the conclusions contained in the expert report.

A qualification in the following form or to a similar effect may be appropriate where this method is adopted:

'The valuation opinion contained herein has been formed utilising information and conclusions as to the identification of native title and the ascertaining of the ambit of such property rights obtained from (state name of

expert) on instructions from you. A copy of the (the expert's report is annexed to this report as Annexure 'A'. (The member) has not formed an opinion as to the accuracy of this information or conclusions and accepts no responsibility for them. Any enquiries in relation to this information or conclusions should be directed to (the expert).'

### 7.0 Legislation

#### 7.1 Commonwealth Legislation increasingly complex

Commonwealth legislation dealing with native title and related administrative matters is growing in line with overseas experience. At present, the primary piece of legislation is the Native Title Act (Cth), 1993 (as amended 30 September 1998).

Members are encouraged to obtain an up to date copy of the 2nd edition of the amended Native Title Act, and be aware of Schedule 1 (See Appendix 1) and s24 in particular. Copies are available from commonwealth government bookshops.

The Act provides members with additional useful information, in particular explaining that private freehold and the majority of leasehold interests provide the right to exclusive occupation and extinguish native title. It also highlights that lessor interests may co-exist with native title.

Importantly, the Act highlights that land held by government authorities does not automatically convey exclusive possession, and extinguish native title although the usage or public works may.

#### 7.2 Complementary State/Territory Legislation

Members should be aware that complementary State/Territory legislation is being enacted dealing with native title.

### 8.0 Indemnity Insurance

#### 8.1 Policy Exclusions

Members should be aware of any exclusions within their professional indemnity insurance policy relating to native title or 'land rights'. Because of the newly emerging law in this area, policies may not provide cover in relation to claims arising from or in connection with these matters. In addition, a Member may in some instances not be covered by a policy even where native title or 'land rights' is within their field of expertise. Members should consult their professional indemnity insurance brokers in this regard.

#### 8.2 GST Caution

Since the introduction of the GST on 1st July 2000 specific legal and/or accounting advice will need to be sought regarding the GST implications for this Guidance Note.

##### Footnotes:

- 1 Muir, K This Earth has an Aboriginal Culture Inside. Land, Rights, Laws: Issues of Native Title Series - Issues Paper No. 23 (Canberra: AIATSIS, July 1998), p4
  - 2 Native Title Amendment Bill 1997 Supplementary Explanatory Memorandum (Canberra: The Parliament of the Commonwealth of Australia, The House of Representatives, 1996-1997) Cata.No.969571
  - 3 Nettheim, G 'Which way now for the Wik judgement?' Sydney Morning Herald, 14 January 1997, p13
  - 4 The Attorney General's Legal Practice Legal Implications of the High court Decision in the WIK PEOPLES -v- QUEENSLAND Current Advice, Canberra: Attorney General's Department, 23 January 1997
  - 5 Australian Institute of Valuers and Land Economists and Royal Australian Planning Institute, Native Title Background Paper (Deakin/Hawthorne: The Institute, 1997)
  - 6 Horrigan, B and Young, S (eds) Commercial Implications of Native Title (Annandale: The Federation Press in association with The Centre for Commercial and Property Law, Queensland University of Technology, 1997)
  - 7 Sheehan, J and Wensing, E Indigenous Property Rights: New Development for Planning and Valuation, Discussion Paper No. 17 (Canberra: The Australia Institute, March 1998)
  - 8 Fingleton, PG, et al. 'Industrial Property' in Australian Institute of Valuers and Land Economists Valuation Principles and Practice (Deakin: The Institute, 1997)
  - 9 Sheehan, J 'Native Title and Statutory Estates' (1998) 4:1 Australian Land Economics Review, pp29-35
- 10 op cit, Sheehan, J and Wensing, E, p43.
- 11 Hyam, A 'A Valuation of Native Title Lands' Paper presented to Native Title Workshop AIVLE, Sydney 22nd May 1997

##### Note

Further useful background on native title can be obtained in the Australian Local Government Association (ALGA) 1999, Working with Native Title: A Guide for Local Government publication The Guide is in two parts: Part A describes a six-step process for determining when native title exists, may exist or has been extinguished, and recommended approaches in dealing with land or waters affected by native title. Part B usefully details other sources of information.

## **APPENDIX 1**

### **Scheduled Interests**

The following is a list of scheduled interests which the States and Territories assert to confer a right of exclusive possession that extinguishes native title rights and interests over the land or waters concerned. The list is included in the amended Native Title Act 1993 (Cth) and forms Schedule 1 to the amended Act. For ease of reference, the list has been rearranged in chronological order of the statute under which the interest was created.

#### **NSW**

Public Parks Act 1854

s.5 lease (defined uses)

Crown Lands Occupation Act 1861

s.30 special purposes lease

Crown Lands Act 1884

s.89 special lease

s.90 special lease (defined uses)

s.92 special lease (defined uses)

conditional lease

Public Parks Act 1884

s.6 lease (defined uses)

Crown Lands Act 1895

s.50 residential lease (original or additional)

homestead selection or grant (original or additional)

settlement lease (original or additional)(defined uses)

Crown Lands Act 1889

s.48 residential lease (original or additional)

Western Lands Act 1901

s.23 lease (defined uses)

s.28A special lease (defined uses)

conditional lease

Public Parks Act 1902

s.7 lease (defined uses)

Crown Lands (Amendment Act) 1905

conditional purchase lease – (original or additional)

Crown Lands (Amendment) Act 1912

Crown lease (original or additional; defined uses)

suburban holding (original or additional)

town land lease within an irrigation area

homestead farm (original or additional)

irrigation farm lease or non-irrigable lease

Crown Lands Consolidation Act 1913

s.69A lease (defined uses)

s.74 special lease (defined uses)

s.75 or s.75B special lease (defined uses)

s.76 special lease (defined uses)

s.80 residential lease (original or additional)

s.82A town land lease

Part 111A lease (defined uses)

Div. 3 (Part 111B) lease (defined uses)

homestead selection or grant (original or additional)

settlement lease (original or additional; defined uses)

conditional lease

conditional purchase lease (original or additional)

Crown lease (original or additional; defined uses)

suburban holding (original or additional)

town land lease within an irrigation area

homestead farm (original or additional)

irrigation farm lease or non-irrigable lease

week-end lease

special conditional purchase lease (original or additional)

Returned Soldiers Settlement Act 1916

s.4 lease

Closer Settlement Amendment (Conversion) Act 1943

group purchase lease

closer settlement lease

settlement purchase lease

Kosciusko State Park Act 1944

ss. 11(3) lease

National Parks and Wildlife Act 1967

para.. 30(1)(a) or (b) lease

National Parks and Wildlife Act 1974

para. 151 (1)(a), (b), (c), (d), or (e) lease

Schedule 9A lease (defined uses)

Crown Lands Act 1989

s34 lease (defined uses).

Division 5 (Part 5) lease (defined uses)

#### **VICTORIA**

Land Act 1862

s..XXI, lease

s.XXIII lease

s.XLVIII lease

s.L lease (defined uses)

Amending Land Act 1865

s.13 lease

s.37 lease (defined uses)

s.38 lease

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

Land Act 1869	s.61 grazing allotment lease
s.20 lease	agricultural allotment lease
s.31 lease	agricultural lease
s.33 lease	perpetual lease
s.46 lease	conditional purchase lease
s.45 lease (defined uses)	
Victorian Water Conservation Act 1881	Land Act 1900
s.75 lease	s.19 lease
Land Act 1884	agricultural lease
s.18 lease	agricultural allotment lease
s.44 lease	perpetual lease
s.49 lease (defined uses)	conditional purchase lease
s.92 lease	Land Act 1900 (No.2)
s.94 lease	agricultural allotment lease, or agricultural lease
s.85 drained and reclaimed swamp land lease (defined uses)	perpetual lease
s.91 lease (defined uses)	conditional purchase lease
agricultural allotment lease	Land Act 1901
agricultural lease	s.18 lease
Irrigation Act 1886	s.50 lease (defined uses)
s.118 lease	s.56 grazing allotment lease
Land Act 1890	s.131 drained and reclaimed swamp land lease (defined uses)
s.18 lease	s.142 lease (defined uses)
lease (non-residence licence conditions)	s.143 lease
s.85 drained and reclaimed swamp land lease (defined uses)	s.144 lease
s.97 lease (defined uses)	s.309 lease
s.100 lease	s.311 lease
agricultural allotment lease	s.402 lease
agricultural lease	s.411 lease
Melbourne and Metropolitan Board of Works Act 1890	agricultural allotment lease,
s.147 lease (defined uses)	agricultural lease
s.148 building or improving lease (defined uses)	village community allotment lease
Water Act 1890	township allotment lease
s.68 lease (defined uses)	homestead section lease
s.243 lease (defined uses)	perpetual lease
s.277 lease	conditional purchase lease
s.292 lease (defined uses)	residential lease (selection purchase allotment)
Settlement on Lands Act 1893	non-residential lease (selection purchase allotment)
village community allotment lease	selection purchase lease
township allotment lease	Land Act 1904
homestead section lease	s.28 lease
Land Act 1896	perpetual lease
s.2 lease	Water Act 1905
Land Act 1898	s.213 lease
s.51 (defined uses)	s.299 lease (defined uses)
	Murray Settlements Act 1907
	conditional purchase lease

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

Land Act 1911	conditional purchase lease
s.73 lease	residential lease (selection purchase allotment)
agricultural allotment lease,	non-residential lease (selection purchase allotment)
agricultural lease	selection purchase lease
perpetual lease	
conditional purchase lease	Melbourne and Metropolitan Board of Works Act 1928
residential lease (selection purchase allotment)	s.209 lease (defined uses)
non-residential lease (selection purchase allotment)	s.210 building or improving lease (defined uses)
selection purchase lease	Water Act 1928
	s.184 lease
Land Act 1915	s.299 lease (defined uses)
s.110 drained and reclaimed swamp land lease	Land Act 1933
(defined uses)	conditional purchase lease
s.125 lease (defined uses)	
s.127 lease	Land (Residential Areas) Act 1935
s.128 lease	residence area occupancy right
agricultural allotment lease,	
agricultural lease	Land Act 1941
perpetual lease	ss.126(2) lease
conditional purchase lease	ss.7(2) lease (defined uses)
residential lease (selection purchase allotment)	s.14 lease (defined uses)
non-residential lease (selection purchase allotment)	agricultural allotment lease
selection purchase lease	agricultural lease
	perpetual lease
Land Act 1915 (No 2)	conditional purchase lease
s.4 lease	residential lease (selection purchase allotment)
residential lease (selection purchase allotment)	non-residential lease (selection purchase allotment)
non-residential lease (selection purchase allotment)	selection purchase lease
selection purchase lease	Soldier Settlement Act 1946
Melbourne and Metropolitan Board of Works Act 1915	settlement interim lease
s.209 lease (defined uses)	settlement purchase lease
s.210 building or improving lease (defined uses)	purchase lease
	North-West Mallee Settlement Areas Act 1948
Water Act 1915	perpetual lease (defined uses)
s.184 lease	Land (Development Leases) Act 1951
s.299 lease (defined uses)	development lease
Forests Acts 1918	Land Settlement Act 1953
s.39 lease (defined uses)	perpetual lease
Land Act 1928	Land (Improvement Purchase Lease) Act 1956
s.110 drained and reclaimed swamp land lease	improvement purchase lease
(defined uses)	
s.125 lease (defined uses)	Education Act 1958
ss.126(2) lease	s.17 lease (defined uses)
s.127 lease	s.20A lease (defined uses)
s.128 lease	
s.352 lease (defined uses)	Forests Act 1958
s.356 lease	s.51 lease (defined uses)
agricultural allotment lease	s.57B lease
agricultural lease	Harbour Boards Act 1958
perpetual lease	s.35 lease (defined uses)

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

### Land Act 1958

- s.110 drained and reclaimed swamp land lease (defined uses)
- s.133B cultivation lease
- s.134 lease (defined uses)
- ss.135(2) lease
- s.136 lease
- s.137 lease
- s.151E lease
- s.222A lease
- s.222B lease
- Subdn.1 Div 9 Pt.I lease (defined uses)
- Div.3 Pt.II) perpetual lease (defined uses)
- agricultural allotment lease
- agricultural lease
- conditional purchase lease
- perpetual lease (defined uses)
- residence area occupancy right development lease
- improvement purchase lease
- industrial lease
- industrial purchase lease
- industrial development lease
- settlement interim lease
- settlement purchase lease
- purchase lease
- residential lease (selection purchase allotment)
- non-residential lease (selection purchase allotment)
- selection purchase lease

### Land Settlement Act 1958

- perpetual lease
- conditional purchase lease

### Melbourne and Metropolitan Board of Works Act 1958

- s.235 lease (defined uses)
- s.236 building or improving lease (defined uses)

### Port of Geelong Authority Act 1958

- ss. 46(1) lease (defined uses)
- para.24(2)(b) lease (defined uses)
- para.26B(1)(a) lease (defined uses)

### Port of Melbourne Authority Act 1958

- s.50A lease (defined uses)
- para.50(2)(b) lease (defined uses)
- para.56(A)(1)(a) lease (defined uses)

### Port of Portland Authority Act 1958

- ss.19(2) lease (defined uses)
- para. 17A(2)(b) lease (defined uses)
- para. 17E(1)(a) lease (defined uses)

### Railways Act 1958

- s.76 lease (defined uses)

### Soldier Settlement Act 1958

- ss.43 lease (pending interim lease grant)
- settlement interim lease
- settlement purchase lease
- purchase lease

### Water Act 1958

- s.200 lease
- s.324 lease (defined uses)

### Land Settlement Act 1959

- s.47 lease
- settlement interim lease
- settlement purchase lease
- purchase lease
- temporary lease

### Land (Surf Life Saving Association) Act 1967

- s.3 lease

### Albury-Wodonga Agreement Act 1973

- ss.7(2) lease (defined uses)
- para.15(1)(f) lease (defined uses)

### National Parks Act 1975

- para.19(2)(a) lease or tenancy
- para.19(2)(b) building tenancy
- s.31AA lease (defined uses)
- s.30AA lease or tenancy
- s.32AB lease or tenancy
- s.32B lease or tenancy
- s.32C tenancy (defined uses)

### Emerald Tourist Railway ACT 1977

- para.41(1)(a) lease (defined uses)

### Melbourne Market Authority Act 1977

- para.7(2)(a) lease or tenancy (defined uses)

### Melbourne Wholesale Fruit and Vegetable Market Trust Act 1977

- para.6(2)(a) lease or tenancy (defined uses)

### Crown Land (Reserves) Act 1978

- s.14D lease (defined uses)
- s.16 lease (defined uses)
- s.17C lease (defined uses)
- s.17D lease (defined uses)
- s.22 lease
- s.23 lease
- s.29A lease (defined uses)

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

Railway Construction and Property Board Act 1979  
subpara.21(1)(f)(l) lease (defined uses)

ss.25(3) lease or tenancy

ss.26(1) lease or tenancy

Government Employee Housing Authority Act 1981  
para.13(1)(i) lease

Alpine Resorts Act 1983

s.28A lease

ss.28(2) lease (defined uses)

para.28(2)(c) lease (defined uses)

Transport Act 1983

para.47(2)(b) lease (defined uses)

Rural Finance Act 1988

settlement interim lease

settlement purchase lease

purchase lease

Water Act 1989

s.132 lease (defined uses)

Casino Control Act 1991

s.128K lease

Docklands Authority Act 1991

ss.20(2) lease (defined uses)

ss.24(1) lease (defined uses)

Royal Botanic Gardens Act 1991

ss.24(2) lease (defined uses)

ss.24(3A) lease

Melbourne Sports and Aquatic Centre Act 1994

ss.24(2) deemed lease (defined uses)

para.24(1)(b) lease (defined uses)

Australian Food Industry Science Centre Act 1995

Port Services Act 1995

para.65(4)(d) lease (defined uses)

Zoological Parks and Gardens Act 1995

para.33(2)(a) lease (defined uses)

### QUEENSLAND

Alienation of Crown Lands Act 1860

s.XII lease

Leasing Act 1866

Lease

Crown Lands Alienation Act 1868

s.51 lease

s.69 special lease

Gold Fields Town Lands Act 1869

lease

Gold Fields Homestead Act 1870  
homestead lease

Homestead Areas Act 1872  
homestead selection

Crown Lands Alienation Act 1876  
s.28 lease  
s.70 special lease  
homestead selection

Gold Fields Homestead Act Amendment Act 1880  
lease

Crown Lands Act 1884  
agricultural farm

Gold Fields Homestead Leases Act 1886  
homestead lease

Crown Lands Act 1891  
unconditional selection

Mineral Homesteads Leases Act 1891  
homestead lease

Agricultural Lands Purchase Act 1894  
agricultural farm

Agricultural Lands Purchase Act 1897  
agricultural farm

Land Act 1897  
s.188 special lease  
agricultural farm  
agricultural homestead  
free homestead  
perpetual lease selection  
perpetual town allotment lease  
perpetual suburban allotment lease  
prickly pear frontage selection  
prickly pear infested selection  
unconditional selection

Mining Act 1898  
miner's homestead lease (or pursuant to any Act repealed by this Act.)

Prickly Pear Selections Act 1901  
prickly-pear selection

Special Agricultural Homesteads Act 1901  
agricultural homestead

Special Agricultural Selections Act 1901  
agricultural farm

Closer Settlement Act 1906  
agricultural farm

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

perpetual lease selection	perpetual suburban lease
perpetual town lease	auction perpetual lease (that is a perpetual suburban lease)
auction perpetual lease (that is a perpetual town lease)	Workers' Homes Act 1919
perpetual country lease	perpetual town lease
auction country lease (that is a perpetual country lease)	auction perpetual lease (that is a perpetual town lease)
perpetual suburban lease	perpetual suburban lease
auction perpetual lease (that is a perpetual suburban lease)	auction perpetual lease (that is a perpetual suburban lease)
settlement farm lease	Sugar Workers' Perpetual Lease Selections Act 1923
unconditional selection	perpetual lease selection
Land Act 1910	Upper Burnett and Callide Land Settlement Act 1923
s.119A lease	grazing homestead
ss.185(2) lease (defined uses)	perpetual lease selection
agricultural farm	Tully Sugar Works Area Land Regulations Ratification Act 1924
agricultural homestead	perpetual lease selection
designed settlement farm lease	perpetual town lease
free homestead	auction perpetual lease (that is a perpetual town lease)
perpetual lease selection	perpetual country lease
perpetual town lease	auction country lease (that is a perpetual country lease)
auction perpetual lease (that is a perpetual town lease)	perpetual suburban lease
perpetual country lease	auction perpetual lease (that is a perpetual suburban lease)
auction country lease (that is a perpetual country lease)	sugar workers' agricultural farm
perpetual country lease without competition	Prickly-pear Land Acts Amendment Act 1930
perpetual town lease without competition	perpetual lease prickly-pear development selection
perpetual suburban lease	prickly-pear development selection
auction perpetual lease (that is a perpetual suburban lease)	Irrigation Acts Amendment Act 1933
perpetual suburban lease without competition	perpetual lease selection
perpetual lease prickly-pear development selection	perpetual town lease
prickly-pear selection	auction perpetual lease (that is a perpetual town lease)
prickly-pear development selection	State Housing Act 1945
settlement farm lease	s.22B term or perpetual lease (defined uses)
special lease (defined uses)	perpetual town lease
unconditional selection	auction perpetual lease (that is a perpetual town lease)
Miners' Homestead Leases Act 1913	freeholding lease
miner's homestead perpetual lease	perpetual suburban lease
miner's homestead lease	auction perpetual lease (that is a perpetual suburban lease)
Clermont Flood Relief Act 1917	perpetual suburban lease without competition
s.8 perpetual lease	
Discharged Soldiers' Settlement Act 1917	
perpetual lease selection	
perpetual town lease	
auction perpetual lease (that is a perpetual town lease)	

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

City of Brisbane (Flood Mitigation Works Approval) Act 1952	auction perpetual lease (that is a perpetual town lease)
perpetual country lease (without competition)	perpetual country lease
perpetual town lease without competition	auction country lease (that is a perpetual country lease)
perpetual suburban lease without competition	perpetual country lease (non-competitive)
Land Acts Amendment Act 1952	perpetual town lease (non-competitive)
designed agricultural selection	perpetual suburban lease
Harbours Act 1955	auction perpetual lease (that is a perpetual suburban lease)
s.64A lease	perpetual suburban lease (non-competitive)
Crown Land Development Act 1959	settlement farm lease
development lease (defined uses)	special lease (defined uses)
Amoco Australia Pty Limited Agreement Act 1961	special lease purchase freehold
s.3 special lease (cl.3 Agt.)	Industrial Development Act 1963
Brigalow and Other Lands Development Act 1962	ss. 6A(2) sub-lease
agricultural farm	para.24(b) lease
perpetual lease selection	Austral-Pacific Fertilizers Limited Agreement Act 1967
purchase lease	s.3 (cl.4(b) Agt) lease
settlement farm lease	s.3 (cl.4(c) Agt) lease
Irrigation Areas (Land Settlement) Act 1962	s.3 (c.4(d) Agt) special lease
agricultural farm	Gateway Bridge Agreement Act 1980
perpetual lease selection	s.4 (cl.1(5)Pt.III Agt.) special lease
perpetual town lease	Mining Titles Freeholding Act 1980
auction perpetual lease (that is a perpetual town lease)	mining titles freeholding lease
perpetual country lease (non-competitive)	Motorways Agreements Act 1987
perpetual country lease	s.4 (cl.1(4)Pt.III Agt) special lease
auction country lease (that is a perpetual country lease)	Land Act 1994
perpetual town lease without competition	ss.57(1) lease (defined uses)
perpetual town lease (non-competitive)	Sched.6 freeholding lease
perpetual suburban lease	term or perpetual lease (defined uses)
auction perpetual lease (that is a perpetual suburban lease)	grazing homestead freeholding lease
perpetual suburban lease without competition	<b>WESTERN AUSTRALIA</b>
perpetual suburban lease (non-competitive)	Land Regulations 1829
settlement farm lease	town land lease (defined uses)
Land Act 1962	Land Regulation 1872
s.176 lease	special occupation land lease
s.343 lease (defined uses)	Land Regulations 1887
ss.207(7) lease	cl.46-53 conditional purchase lease
agricultural farm	Mineral Lands Act 1892
auction purchase freehold	ss.12(5) lease
development lease (defined uses)	Homestead Act 1893
grazing homestead freeholding lease	homestead farm
grazing homestead perpetual lease	homestead lease
perpetual lease selection	
perpetual town lease	

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

Agricultural Lands Purchase Act 1896 lease	Iron Ore (Mount Newman) agreement Act 1964 lease (other than a mineral lease) (defined uses)
Land Act 1898 s.41a lease (defined uses) s.152 lease (defined uses) s.153 town or suburban land lease (defined uses) s.153a lease Pt.V conditional purchase lease Pt.VI conditional purchase lease homestead farm special settlement land lease working man's block lease	Leslie Solar Salt Industry Agreement Act 1966 lease (other than a mineral lease) (defined uses) Dampier Solar Salt Industry Agreement Act 1967 lease (other than a mineral lease) (defined uses) Evaporites (Lake MacLeod) Agreement Act 1967 lease (other than a mineral lease) (defined uses) Iron Ore (Hamersley Range) Agreement Act Amendment Act 1968 lease (other than a mineral lease) (defined uses)
Mining Act 1904 Pt.VIII miner's homestead lease (defined uses)	Irrigation (Dunham River) Agreement Act 1968 lease (other than a mineral lease) (defined uses)
Agricultural Land Purchase Act 1909 lease	Nickel Refinery (Western Mining Corporation Limited) Agreement Act 1968 lease (other than a mineral lease) (defined uses)
Land Act 1933 ss.32(1) lease (defined uses) ss.33(3) lease (defined uses) s.116 lease (defined uses) s.117 town land lease (defined uses) s.117A lease (defined uses) Pt.V conditional purchase lease Pt.IV lease (defined uses) homestead farm special settlement land lease working man's block lease	Alumina Refinery (Pinjarra) Agreement Act 1969 lease (other than a mineral lease) (defined uses) Nickel Refinery (Westing Mining Corporation Limited) Agreement Act Amendment Act 1970 lease (other than a mineral lease) (defined uses) Poseidon Nickel Agreement Act 1971 lease (other than a mineral lease) (defined uses) Iron Ore (Goldsworthy-Nimingarra) Agreement Act 1972 lease (other than a mineral lease) (defined uses) Iron Ore (McCamey's Monster) Agreement Authorisation Act 1972 lease (other than a mineral lease) (defined uses)
State Housing Act 1946-1974 Pt.V worker's dwelling house lease	Iron Ore (Mount Bruce) Agreement Act 1972 lease (other than a mineral lease) (defined uses)
Oil Refinery Industry (Kwinana Agreement) Act 1952 lease (other than a mineral lease) (defined uses)	Alumina Refinery (Worsley) Agreement Act 1973 lease (other than a mineral lease) (defined uses)
War Service Land Settlement Scheme Act 1954 perpetual lease	Nickel (Agnew) Agreement Act 1974 lease (other than a mineral lease) (defined uses) Mineral Sands (Eneabba) Agreement Act 1975 lease (other than a mineral lease) (defined uses) Alumina Refinery (Wagerup) Agreement and Acts Amendment Act 1978 lease (other than a mineral lease) (defined uses)
Broken Hill Proprietary Company's Integrated Steel Works Agreement Act 1960 lease (other than a mineral lease) (defined uses)	Collie Coal (Griffin) Agreement Act 1979 lease (other than a mineral lease) (defined uses)
Iron Ore (Hamersley Range) Agreement Act 1963 lease (other than a mineral lease) (defined uses)	Collie Coal (Western Collieries) Agreement Act 1979 lease (other than a mineral lease) (defined uses)
Iron Ore (Hamersley Range) Agreement Act 1963-1968 lease (other than a mineral lease) (defined uses)	
Iron Ore (Robe River) Agreement Act 1964 lease (other than a mineral lease) (defined uses)	
Iron Ore (Mount Goldsworthy) Agreement Act 1964 lease (other than a mineral lease) (defined uses)	

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

North West Gas Development (Woodside) Agreement Act 1979	agreement of sale and purchase on credit
lease (other than a mineral lease) (defined uses)	
Diamond (Argyle Diamond Mines) Agreement Act 1981	Crown Lands Amendment Act 1881
lease (other than a mineral lease) (defined uses)	credit agreement
Shark Bay Solar Salt Industry Agreement Act 1983	agreement of sale and purchase on credit
lease (other than a mineral lease) (defined uses)	Crown Lands Amendment Act 1882
Camballin Farms (AIL Holdings Pty Ltd) Agreement Act 1985	s.20 lease with right of purchase
lease (other than a mineral lease) (defined uses)	credit agreement
Western Mining Limited (Throssell Range) Agreement Act 1985	agreement of sale and purchase on credit
lease (other than a mineral lease) (defined uses)	Agricultural Crown Lands Amendment Act 1884
Iron Ore (Channar Joint Venture) Agreement Act 1987	Pt.II lease with right of purchase
lease (other than a mineral lease) (defined uses)	Pt. III selector's lease
Iron Ore (Marillana Creek) Agreement Act 1991	credit agreement
lease (other than a mineral lease) (defined uses)	agreement of sale and purchase on credit
<b>SOUTH AUSTRALIA</b>	Crown Lands Amendment Act 1885
Scrub Lands Act 1866	s.29 lease (other than Aboriginal reserve leases)
lease with right of purchase	Crown Lands Consolidation Act 1886
Scrub Lands Act Amendment Act 1867	Pt.II grazing and cultivation lease (defined uses)
lease with right of purchase	Pt.II grazing and cultivation lands lease (defined uses)
Waste Lands Amendment Act 1868-9	Pt.III selector's lease
credit agreement	Pt.XI working man's block perpetual or term lease
agreement of sale and purchase on credit	(other than Aboriginal reserve leases)
Scrub Lands Act Extension Act 1870 – 71	Pt.XI working man's block term lease (defined uses)
lease with right of purchase	Pt.XI homestead block perpetual or term lease (other
Miscellaneous Leases Act 1872	than Aboriginal reserve leases)
s.1 miscellaneous lease (other than Aboriginal reserve	Pt.XI homestead block term lease (defined uses)
leases) (defined uses)	Pt.II lease with right of purchase
Waste Lands Alienation Act 1872	s.159 miscellaneous lease (other than Aboriginal
credit agreement,	reserve leases) (defined uses)
agreement of sale and purchase on credit	credit agreement
s.39 lease with right of purchase (defined uses)	agreement of sale and purchase on credit
Crown Lands Consolidation Act (No.86) 1877	Crown Lands Amendment Act 1887
s.58 lease with right of purchase	Pt.III lease with right of purchase
s.92 miscellaneous lease (other than Aboriginal	Crown Lands Act 1888
reserve leases) (defined uses)	Pt.II lease with right of purchase (defined uses)
Pt. III (excl.s.58) lease with right of purchase (defined	Pt.VII working man's block perpetual or term lease,
uses)	(other than Aboriginal reserve leases)
credit agreement	Pt.VII homestead block perpetual or term lease
agreement of sale and purchase on credit	(other than Aboriginal reserve leases)
Crown Lands Amendment Act 1880	s.118 miscellaneous lease (other than Aboriginal
credit agreement	reserve leases) (defined uses)
	perpetual lease (defined uses)
	right of purchase lease (defined uses)
	Crown Lands Amendment Act 1893
	perpetual lease (defined uses)
	lease with right of purchase (defined uses)
	s.80 villager's lease

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

### Closer Settlement Act 1897

- s.11 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- perpetual lease (defined uses)

### Broken Hill Proprietary Company Limited's Hummock Hill to Iron Knob Tramways and Jetties Act 1900

- s.8 perpetual lease

### Crown Lands, Closer Settlement, and Blockholders' Loans Amendment Act 1901

- perpetual lease (defined uses)

### Village Settlements Act 1901

- Pt.IV horticultural or commonage land perpetual lease

### Closer Settlement Act 1902

- s.11 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)

### Crown Lands Act 1903

- Pt.IX agreement
- Pt.IX working man's block perpetual or term lease, (other than Aboriginal reserve leases)
- Pt.IX homestead block perpetual or term lease (other than Aboriginal reserve leases)
- s.80 miscellaneous lease (other than Aboriginal reserves leases) (defined uses)
- s.126 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- perpetual lease (defined uses)

### Irrigation and Reclaimed Lands Act 1908

- s.24 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- irrigation area block perpetual or term lease

### Irrigation and Reclaimed Lands Act 1914

- s.26 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- irrigation area block perpetual or term lease

### Crown Lands Act 1915

- Pt.IX working man's block perpetual or term lease, (other than Aboriginal reserve leases)
- Pt.IX homestead block perpetual or term lease (other than Aboriginal reserve leases)
- Pt.VIII horticultural or commonage land perpetual lease
- s.83 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- s.128 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- perpetual lease (defined uses)

### Returned Soldiers Settlement Act 1915

- perpetual lease (defined uses)
- term lease (defined uses)

### Discharged Soldiers Settlement Act 1917

- perpetual lease (defined uses)
- term lease (defined uses)

### Lyrup Village Association (District Extension) Act 1921

- horticultural or commonage land perpetual lease

### Agricultural Graduates Land Settlement Act 1922

- perpetual lease (defined uses)

### Irrigation Act 1922

- s.48 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- irrigation area block perpetual or term lease
- irrigation area town allotment perpetual or term lease

### Hummock Hill to Iron Knob Tramway Extension Act 1927

- s.5 perpetual lease

### Crown Lands Act 1929

- Pt.IX working man's block perpetual or term lease, (other than Aboriginal reserve leases)
- Pt.IX homestead block perpetual or term lease (other than Aboriginal reserve leases)
- Pt V perpetual lease (defined uses)
- Pt.VIII horticultural or commonage land perpetual lease
- s.77 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- s.78B miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- s.182 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- s.66A perpetual lease (defined uses)
- s.199 perpetual lease (defined uses)

### Irrigation (Land Tenure) Act 1930

- s.27 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- s.44 miscellaneous lease (other than Aboriginal reserve leases) (defined uses)
- irrigation area block perpetual or term lease
- irrigation area town allotment perpetual or term lease

### Discharged Soldiers Settlement Act 1934

- perpetual lease (defined uses)
- term lease (defined uses)

### Broken Hill Proprietary Company's Indenture Act 1937

- lease (cl.11 Indenture in Schedule to Act) (defined uses)

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

Marginal Lands Act 1940

perpetual lease (defined uses)

National Parks and Wildlife Act 1972

s.35 lease (defined uses)

Crown Lands Development Act 1943-1973

perpetual lease (defined uses)

War Service Land Settlement Agreement Act 1945

perpetual lease (Agt in Schedule to Act)

### TASMANIA

Crown Lands Act 1890

s.81 lease

s.82 lease

s.24 lease (defined uses)

Crown Lands Act 1903

ss.128(1) lease

ss 128(2) lease (defined uses).

s. 24 lease (defined uses)

s.129 lease

Crown Lands Act 1911

ss.108(1) lease

ss.108(2) lease (defined uses)

s.11 lease (defined uses)

s.109 lease

Closer Settlement Act 1929

Pt.V (excl. s.41-2) lease (defined uses)

Crown Lands Act 1935

ss.7(2) lease (defined uses)

ss.77(1) lease

ss.77(4) lease (defined uses)

s.23 lease (defined uses)

s.78 lease

building lease

Crown Lands Act 1976

s.29 lease (defined uses)

### NORTHERN TERRITORY

Northern Territory Land Act 1872 (South Australia)

s.30 lease

s.81 lease

s.83 special purposes lease (defined uses)

Northern Territory Crown Lands Consolidation Act 1882 (South Australia)

s.30 lease

s.77 lease

s.79 special purposes lease (defined uses)

Northern Territory Crown Lands Act 1890 (South Australia)

s.54 lease

s.77 special purposes lease (defined uses)

s.78 special purposes lease (defined uses)

s.78 lease (defined uses)

Pt.II lease

Crown Lands Ordinance 1912 (No.3 of 1912)

Div. 3 Pt.III agricultural lease (defined uses)

Div. 3 Pt.III agricultural land lease (defined uses)

Div. 4 Pt.III town land lease (defined uses)

Div. 5 Pt.III miscellaneous lease (defined uses)

Crown Lands Ordinance 1912 (No.8 of 1912)

Div. 3 Pt.III agricultural lease (defined uses)

Div. 3 Pt.III agricultural land lease (defined uses)

Div. 4 Pt.III town land lease (defined uses)

Div. 5Pt.III miscellaneous lease (defined uses)

Crown Lands Ordinance 1924

s.73A garden land miscellaneous lease

Div. 3 Pt.III agricultural lease (defined uses)

Div. 3 Pt.III agricultural land lease (defined uses)

Div.4 Pt.III town land lease (defined uses)

Div.5 Pt.III miscellaneous lease (defined uses)

Crown Lands Ordinance 1927 (Territory of North Australia)

s.69 garden land miscellaneous lease

Div.3 Pt.III agricultural lease (defined uses)

Div.3 Pt.III agricultural land lease (defined uses)

Div.4Pt.III town land lease (defined uses)

Div.5Pt.III miscellaneous lease (defined uses)

Crown Lands Ordinance 1927 (Territory of Central Australia)

s.69 garden land miscellaneous lease

Div.3 Pt.III agricultural lease (defined uses)

Div.3 Pt.III agricultural land lease (defined uses)

Div.4 Pt.III town land lease (defined uses)

Div.5 Pt.III miscellaneous lease (defined uses)

Crown Lands Act 1931 – 1991 (Northern Territory)

s.6A lease

s.16A experimental farm agricultural lease (defined uses)

s.25CF town land lease (defined uses)

s.25CG agricultural lease (defined uses)

s.25CG agricultural land lease (defined uses)

s.25DAA agricultural lease (defined uses)

s.25DAA agricultural land lease (defined uses)

s.25DAA miscellaneous lease (defined uses)

s.68A lease

s.68B lease

## AUSTRALIA REAL PROPERTY GUIDANCE NOTE 2

s.68C lease	Agricultural development lease (Agt. In Sched. to Act) (defined uses)
s.68D lease	
s.68E lease	Crown Lands Act (Northern Territory)
s.68F lease	s.5 lease
s.68G lease	para.26(a) Crown lease (defined uses)
s.68H lease	para.26(b) Crown Lease (defined uses)
s.70 garden land miscellaneous lease	Special Purposes Leases Act (Northern Territory)
s.74A agricultural lease (defined uses)	s.4 special purposes lease (defined uses)
s.74A agricultural land lease (defined uses)	
s.74A town land lease (defined uses)	Mining Gove Peninsula Nabalco Agreement Act (Northern Territory)
s.74D agricultural lease (defined uses)	s.6 special purposes lease (defined uses)
s.74D agricultural land lease (defined uses)	special purposes lease (subcl.4(2) of Agt. In Sched. to Act)(defined uses)
s.74D miscellaneous lease (defined uses)	
s.74D town land lease (defined uses)	
s.74E miscellaneous lease (defined uses)	
s.112A lease	
para.23(b) lease (defined uses)	
para.23(c) lease (defined uses)	
Div.3 Pt.III agricultural lease (defined uses)	
Div.3 Pt.III agricultural land lease (defined uses)	
Div.4 Pt.III town lease (defined uses)	
Div.5 Pt.III miscellaneous lease (defined uses)	
Div.6 Pt.III town land subdivision lease	
Darwin Leases (Special Purposes) Ordinance 1946	
s.2 lease	
Darwin Short Term Leases Ordinance 1946	
s.3 lease	
Church Lands Leases Ordinance 1947	
s.3 lease	
Darwin Town Area Leases Act 1947-1979 (Northern Territory)	
s.4 lease	
s.16A lease	
s.16AA lease	
s.16B lease	
s.16C lease	
s.16D lease	
s.29A lease	
Agricultural Development Leases Ordinance 1956	
s.14 agricultural lease (defined uses)	
s.14 agricultural land lease (defined uses)	
agricultural development lease (defined uses)	
Rice Development Agreement Ordinance 1956	
Agricultural land lease (Agt. In Sched. to Act) (defined uses)	
Agricultural lease (Agt. In Sched. to Act) (defined uses)	

### APPENDIX 2 GLOSSARY

#### Anthropology

The study of humankind's physical characteristics, historical and present geographical distribution, racial classification, group relationships and cultural history.

#### Application

An application for a determination of native title is the document required to be lodged with the Federal Court and the due processes that follow under the Native Title Act 1993 (Cth) or complementary legislation

#### Claim

The rights and interests being asserted in an application for a determination of native title.

#### Ethnoecology

A two fold discipline that deals with cultural or social anthropology, including the comparative and analytical study of cultures combined with the interrelationship of humankind and its environment focussed on natural cycles and rhythms, community development and structure, interaction between different groups of humankind, geographic distributions and population alterations.

#### Ethnography

A branch of anthropology that deals historically with the origin and family relationships (filiation) of races and cultures.

#### Extinguish

In relation to native title, 'extinguishment' means to permanently extinguish the native title rights and interests. This means there is no possibility of their revival after the extinguishment occurs even if the extinguishing act ceases to exist. (Section 237A of the Native Title Act 1993 (Cth)).

#### Land or Waters

In the context of the Native Title Act 1993 (Cth), land or waters refers to:

- inland waters;
- subterranean waters;
- coastal waters within limits of the State or territory, including areas above the low water mark and waters within some bays, or between the coast and some nearby islands; and
- the bed or subsoil under, or airspace over any waters.

#### Non-extinguishment principle

In relation to native title, the 'non-extinguishment principle' means that an activity does not wholly or partially extinguish native title, and that when the activity ceases or is wholly removed, the native title rights and interests again have full effect. (Section 238 of the Native Title Act 1993 (Cth).)

#### Registered native title claimant

Person or persons whose name or names appear in an entry on the Register of Native Title Claims as the applicant in relation to getting a determination of native title in relation to the land or waters.

#### Representative Body

A representative body is an organisation approved by the Commonwealth Minister under the provisions of the Native Title Act 1993 (Cth) to represent the interests of Aboriginal peoples or Torres Strait Islanders within a particular region on native title matters. These bodies are elected local Indigenous land councils or legal aid services that have special responsibility to assist and represent native title holders and claimants. (Section 202 of the Native Title Act 1993 (Cth).)

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