



New South Wales

## **Native Title (New South Wales) Amendment Act 1998 No 88**

Act No 88, 1998

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An Act to amend the *Native Title (New South Wales) Act 1994* and certain other *Acts* and Regulations following the enactment of the *Native Title Amendment Act 1998* of the Commonwealth; and for other purposes.  
[Assented to 24 September 1998]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Native Title (New South Wales) Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Native Title (New South Wales) Act 1994 and certain other Acts and Regulations**

Each Act or Regulation that is specified in a Schedule to this Act is amended as set out in the Schedule concerned.

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## **Schedule 1 Amendment of Native Title (New South Wales) Act 1994 No 45**

(Section 3)

**[1] Section 3 Objects of this Act**

Insert “, and intermediate period acts,” after “past acts” in section 3 (a).

**[2] Section 3**

Omit section 3 (c) and the word “and” at the end of section 3 (b).

**[3] Section 4 Definitions**

Omit all definitions from section 4 (1), except the definitions of *Commonwealth Native Title Act* or *NTA*, *State Compulsory Acquisition Act* and *State Mining Act*.

**[4] Section 4, note**

Omit the note to section 4.

**[5] Section 7 Objects of this Part**

Omit section 7 (b). Insert instead:

- (b) to validate, in accordance with section 22F of the Commonwealth Native Title Act, intermediate period acts attributable to the State, and
- (c) to provide for the effects of any such validation.

**[6] Section 7, note**

Insert “An *intermediate period act* is defined in s. 232A NTA (being certain acts that took place between 1 January 1994 and 23 December 1996).” after the matter relating to the definition of *past act*.

**[7] Section 8A**

Insert after section 8:

**8A Validation of intermediate period acts attributable to the State (NTA s 22F)**

Every intermediate period act attributable to the State is valid, and is taken always to have been valid.

**[8] Section 9 Application of remaining provisions of this Part**

Omit “apply to a past act attributable to the State that is validated by section 8.” from section 9 (1).

Insert instead:

apply:

- (a) to a past act attributable to the State that is validated by section 8, and
- (b) to an intermediate period act attributable to the State that is validated by section 8A.

**[9] Section 9 (2) and (3)**

Omit the subsections.

**[10] Part 2, Division 2, heading**

Insert “of past acts” after “validation”.

**[11] Section 9A**

Insert before section 10:

**9A Application of this Division**

This Division applies to a past act attributable to the State that is validated by section 8.

**[12] Part 2, Division 2, note**

Insert after section 14:

**Note.** Section 20 NTA provides native title holders with an entitlement to compensation from the State in respect of past acts attributable to the State.

**[13] Part 2, Division 2A**

Insert after Division 2 of Part 2:

**Division 2A Effect of validation of intermediate period acts on native title**

**14A Application of this Division**

This Division applies to an intermediate period act attributable to the State that is validated by section 8A.

**14B Category A intermediate period acts dealing with the granting or vesting of certain interests in land or waters (NTA, ss 22F and 22B (a))**

- (1) This section applies to a category A intermediate period act to which section 232B (2), (3) or (4) (which deals with things such as the grant or vesting of freehold estates and certain leases) of the Commonwealth Native Title Act applies.
- (2) The intermediate period act extinguishes all native title in relation to the land or waters concerned.

**14C Category A intermediate period acts that are public works (NTA, ss 22F and 22B (b))**

- (1) This section applies to a category A intermediate period act to which section 232B (7) (which deals with public works) of the Commonwealth Native Title Act applies.
- (2) The intermediate period act extinguishes the native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated.

- (3) The extinguishment is taken to have happened when the construction or establishment began.

#### **14D Category B intermediate period acts**

- (1) This section applies to a category B intermediate period act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned.
- (2) The intermediate period act extinguishes the native title to the extent of the inconsistency.

**Note.** Category B intermediate period acts are defined in s 232C NTA.

#### **14E Category C and D intermediate period acts**

- (1) This section applies to a category C intermediate period act or a category D intermediate period act.
- (2) The non-extinguishment principle applies to the intermediate period act.

**Note.** Category C intermediate period acts are defined in s 232D NTA and category D intermediate period acts are defined in s 232E NTA.

#### **14F This Division is subject to registered indigenous land use agreements**

Sections 14B–14E apply subject to section 31.

**Note.** Section 22G NTA provides native title holders with an entitlement to compensation from the State in respect of the validation of intermediate period acts attributable to the State.

#### **[14] Section 15 Preservation of beneficial reservations and conditions (NTA, ss 19 and 16)**

Omit "**conditions**" from the heading to the section.  
Insert instead "**conditions—past acts**".

**[15] Section 15 (2)**

Insert “of past acts” after “validation”.

**[16] Section 15A**

Insert after section 15:

**15A Preservation of beneficial reservations and conditions—  
intermediate period acts (NTA, ss 22F and 22C)**

- (1) This section applies if:
  - (a) an intermediate period act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples, or
  - (b) the doing of an intermediate period act attributable to the State would affect rights or interests (other than native title rights and interests) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage).
- (2) Division 2A (Effect of validation of intermediate period acts on native title) does not affect a reservation or condition or rights or interests mentioned in this section.

**[17] Section 18 Confirmation of access to certain areas (NTA, s 212 (2) and (3))**

Insert after section 18 (d):

- (da) stock-routes,

**[18] Section 18, note**

Omit “or impair” from the note after section 18.

**[19] Parts 4–9**

Omit the Parts.

**[20] Part 4**

Insert as Part 4:

**Part 4 Confirmation of past extinguishment of native title**

**Division 1 Objects of this Part**

**19 Objects of this Part**

- (1) The objects of this Part are:
  - (a) to confirm the complete extinguishment of native title by previous exclusive possession acts attributable to the State, and
  - (b) to confirm the partial extinguishment of native title by previous non-exclusive possession acts attributable to the State.
- (2) The confirmation is as contemplated by sections 23E and 23I of the Commonwealth Native Title Act.

**Division 2 Confirmation of extinguishment of native title by previous exclusive possession acts**

**20 Confirmation of extinguishment of native title by previous exclusive possession acts of the State (NTA, ss 23E and 23C)**

- (1) **Acts other than public works**

If an act is a previous exclusive possession act under section 23B (2) (including because of section 23B (3)) of the Commonwealth Native Title Act and is attributable to the State:

  - (a) the act extinguishes any native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned, and
  - (b) the extinguishment is taken to have happened when the act was done.



(2) **Public works**

If an act is a previous exclusive possession act under section 23B (7) (which deals with public works) of the Commonwealth Native Title Act and is attributable to the State:

- (a) the act extinguishes native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated, and
- (b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

(3) **Other extinguishment provisions do not apply**

If this section applies to the act, Divisions 2 and 2A of Part 2 do not apply to the act.

**21 Preservation of beneficial reservations and conditions (NTA, ss 23E and 23D)**

If:

- (a) a previous exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples. or
- (b) the doing of a previous exclusive possession act attributable to the State would affect rights or interests (other than native title rights and interests) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage).

nothing in section 20 affects that reservation or condition or those rights or interests.

**22 Confirmation of validity of use of certain land held by Crown etc (NTA, ss 23E and 23DA)**

To avoid doubt. if the act is a previous exclusive possession act because of section 23B (9C) (b) (which deals with grants to the Crown etc) of the Commonwealth Native Title Act. the use of the land or waters concerned as mentioned in that paragraph is valid.

**Division 3 Confirmation of partial extinguishment of native title by previous non-exclusive possession acts**

**23 Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of the State (NTA, ss 23I and 23G)**

- (1) Subject to subsection (2), if a previous non-exclusive possession act is attributable to the State:
  - (a) to the extent that the act involves the grant of rights and interests that are not inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned, the rights and interests granted, and the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them, and
  - (b) to the extent that the act involves the grant of rights and interests that are inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned:
    - (i) if, apart from this Act, the act extinguishes the native title rights and interests—the native title rights and interests are extinguished, and
    - (ii) in any other case—the native title rights and interests are suspended while the lease concerned, or the lease as renewed, re-made, re-granted or extended, is in force, and
  - (c) any extinguishment under this subsection is taken to have happened when the act was done.
- (2) If the act is the grant of a pastoral lease or an agricultural lease to which section 10 applies, this section does not apply to the act.
- (3) If this section applies to an act, Divisions 2 and 2A of Part 2 do not apply to the act.

## **24 Preservation of beneficial reservations and conditions (NTA, ss 23I and 23H)**

If:

- (a) a previous non-exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples, or
- (b) the doing of a previous non-exclusive possession act attributable to the State would affect rights or interests (other than native title rights and interests) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage),

nothing in section 23 affects that reservation or condition or those rights or interests.

## **25 Notification (NTA, ss 23I and 23HA)**

In the case of a previous non-exclusive possession act to which section 23F (3) (c) (ii) of the Commonwealth Native Title Act applies:

- (a) notice must be given, in the way determined in writing by the Commonwealth Minister, to any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act about the doing or proposed doing of the act. or acts of that class, in relation to the land or waters concerned. and
- (b) they must be given an opportunity to comment on the act or class of acts.

**Note.** Section 23J NTA provides native title holders with an entitlement to compensation from the State in respect of certain acts attributable to the State that extinguish native title under this Part.

**[21] Part 5**

Insert as Part 5:

**Part 5 Validation of transfers under land rights legislation**

**26 Object of this Part**

- (1) The object of this Part is to validate certain transfers under the *Aboriginal Land Rights Act 1983*.
- (2) The validation is as contemplated by sections 22I–22L of the Commonwealth Native Title Act.

**27 Validation of transfers (NTA, s 22J)**

If:

- (a) future acts consist of the transfer of lands under section 36 of the *Aboriginal Land Rights Act 1983*, and
- (b) the claims for the lands were made before 28 November 1994, and
- (c) the acts took place before or take place after the commencement of section 22J of the Commonwealth Native Title Act. and
- (d) the acts are not intermediate period acts, and
- (e) the acts are invalid to any extent because of Division 3 of Part 2 of the Commonwealth Native Title Act or for any other reason, but would be valid to that extent if native title did not exist in relation to the lands.

the acts are valid, and are taken always to have been valid.

**28 Effect of validation on native title (NTA, s 22K)**

The non-extinguishment principle applies to the acts.

**Note.** Section 22L NTA provides native title holders with an entitlement to compensation from the State in respect of acts attributable to the State that are validated under this Part.

**[22] Part 6**

Insert as Part 6:

**Part 6 Validation of acts covered by indigenous land use agreements**

**29 Objects of this Part**

- (1) The objects of this Part are:
  - (a) to validate certain future acts that are covered by indigenous land use agreements, and
  - (b) to change the effects of the validation of certain intermediate period acts that are covered by indigenous land use agreements.
- (2) The validation or change is as contemplated by section 24EBA of the Commonwealth Native Title Act.

**30 Validation of future acts covered by indigenous land use agreements (NTA, s 24EBA (1)–(5))**

(1) **Coverage of section**

The consequences set out in this section apply if:

- (a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to:
  - (i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly, or
  - (ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly, and

- (b) the act or class of acts is attributable to the State, and the State is a party to the agreement, and
- (c) where, whether under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the act or class of acts—that person is a party to the agreement.

(2) **State future acts are valid**

If this section applies, the future act or class of future acts is valid, and is taken always to have been valid.

(3) **Non-extinguishment principle applies to future acts**

If this section applies, the non-extinguishment principle applies to the act or class of acts unless:

- (a) the act or class of acts is the surrender of native title. and
- (b) the agreement includes a statement to the effect that the surrender is intended to have extinguished the native title rights and interests.

(4) **Compensation consequences of future acts**

If this section applies, the consequences set out in section 24EB (4), (5) or (6) of the Commonwealth Native Title Act, and the consequences set out in section 24EB (7) of that Act, apply to the act or to each of the acts in the class.

**31 Change of effects of validation of intermediate period acts covered by indigenous land use agreements (NTA, s 24EBA (1) and (6))**

(1) **Coverage of section**

The consequences set out in this section apply if:

- (a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to changing the effects, that are provided for by Division 2A of Part 2, of an intermediate period act or of intermediate period acts included in classes. and

- (b) the act or class of acts is attributable to the State, and the State is a party to the agreement, and
  - (c) where, whether under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the act or class of acts—that person is a party to the agreement.
- (2) **Changing the effects of validated intermediate period acts**  
If this section applies, the effects mentioned in subsection (1) (a) are changed in accordance with the agreement.

## [23] Part 7

Insert as Part 7:

### **Part 7 Independent adjudication of certain native title objections under Commonwealth Act**

#### **32 Object of this Part**

- (1) The object of this Part is to meet the State's obligations under the Commonwealth Native Title Act to ensure that any of the following objections of registered native title claimants or native title bodies corporate with respect to proposed acts attributable to the State are heard by an independent body or person:
  - (a) objections duly made under section 24MD (6B) (d) of that Act (relating to certain compulsory acquisitions of native title rights and interests or the creation or variation of certain rights to mine).
  - (b) objections duly made under section 24MD (6B) (d) of that Act, as applied under section 24ID (4) of that Act (relating to certain renewals and other dealings with non-exclusive agricultural or pastoral leases).

- (2) This Part confers that jurisdiction on the Administrative Decisions Tribunal.

**Note.** Section 24MD NTA relates to the validity of future acts that pass the freehold test and section 24ID NTA relates to the validity of future acts that are permissible lease etc renewals.

### 33 Definitions

In this Part:

*determination* includes recommendation.

*relevant authority of the State* means the body or person proposing to do the act that is the subject of a relevant native title objection.

*relevant native title objection* means an objection referred to in section 32.

*Tribunal* means the Administrative Decisions Tribunal.

### 34 Referral of objections to ADT at request of objector

- (1) The body or person making a relevant native title objection may request the relevant authority of the State to refer the objection to the Tribunal.
- (2) Any such request:
- (a) must be in writing, and
  - (b) must identify the proposed act, and
  - (c) must specify the reason for the objection. and
  - (d) must comply with any other requirements of the regulations.
- (3) Any such request may be made at any time after the completion of the consultation on the matter required by section 24MD (6B) (e) of the Commonwealth Native Title Act and before the closing date determined by the relevant authority of the State. The closing date is to be a date, notified in writing to the body or person who has made the objection, that is at least 28 days after the completion of that consultation or such later date to which the relevant authority of the State agrees.



- (4) If any such request is duly made under this section, the relevant authority of the State must refer the objection to the Tribunal unless it decides not to proceed with the proposed act the subject of the objection.

### **35 Parties to proceedings before ADT**

- (1) The following are parties to proceedings before the Tribunal under this Part:
- (a) the relevant authority of the State (the applicant in the proceedings),
  - (b) the objector (the respondent in the proceedings),
  - (c) any other person who becomes a party in accordance with section 67 of the *Administrative Decisions Tribunal Act 1997*.

**Note.** Section 67 (4) of the ADT Act authorises the Tribunal to make a person a party to the proceedings if their interests are likely to be affected by a determination of the Tribunal.

- (2) The Minister may, on behalf of the State, intervene in proceedings before the Tribunal under this Part.

### **36 Determinations of ADT**

- (1) The Tribunal may make one of the following determinations with respect to an objection referred to it under this Part:
- (a) a determination that the proposed act may be done.
  - (b) a determination that the proposed act may be done, subject to conditions.
  - (c) a determination that the proposed act not be done.
- (2) When making a determination, the Tribunal is to take into account:
- (a) the likely impact of the proposed act on the objector's registered native title rights and interests, and

- (b) the measures proposed to be taken to minimise that impact, and
  - (c) the social, economic or other public benefits likely to result from the doing of the proposed act (including in the relevant region or locality of the State).
- (3) The Tribunal may dismiss an objection if it determines that the objection has not been duly made on a ground provided by section 24MD (6B) (d) of the Commonwealth Native Title Act.

### **37 Compliance with determination of ADT**

- (1) A determination of the Tribunal under this Part has effect only for the purposes of section 24MD (6B) of the Commonwealth Native Title Act.

**Note.** Section 24MD (6B) (g) NTA requires, in order to ensure the validity of the act, compliance with a determination of the Tribunal upholding an objection, or imposing conditions about the doing of the act that relate to registered native title rights and interests, unless:

- (a) the Minister of the State responsible for indigenous affairs is consulted, and
  - (b) the consultation is taken into account, and
  - (c) it is in the interests of the State not to comply with the determination.
- (2) A decision under section 24MD (6B) of the Commonwealth Native Title Act not to comply with a determination of the Tribunal under this Part can only be made by the Minister.

### **38 Other provisions relating to ADT's jurisdiction**

- (1) To avoid doubt, a determination of the Tribunal under this Part is an original decision for the purposes of the *Administrative Decisions Tribunal Act 1997*.
- (2) A determination of the Tribunal under this Part may take the form of a recommendation.

- (3) Chapter 7 (Appeals from decisions of Tribunal) of the *Administrative Decisions Tribunal Act 1997* does not apply to determinations or proceedings of the Tribunal under this Part.
- (4) The Tribunal may award costs under section 88 of the *Administrative Decisions Tribunal Act 1997* in relation to proceedings before it under this Part, but only if it is satisfied that there are special circumstances warranting an award of costs.
- (5) The Tribunal is required to provide a copy of its determination under this Part to each party to the proceedings and to the Minister.

### **39 Other statutory requirements not affected**

A determination under this Part that a proposed act may be done does not affect the requirements of any other written law that apply to the doing of the act.

#### **[24] Section 96 Objects of this Part**

Omit section 96 (c) and the word “and” at the end of section 96 (b).

#### **[25] Section 97 Acquisition of native title rights and interests**

Omit section 97 (a) and (d). Insert instead:

- (a) native title rights and interests may be compulsorily acquired consistently with the Commonwealth Native Title Act. and

#### **[26] Section 97 (c)**

Insert “, except where special procedural rights apply under the Commonwealth Native Title Act” after “ordinary title”.

**[27] Section 97 (f)**

Omit the paragraph.

**[28] Section 98 Native title holders are owners for State Mining Acts**

Omit the section.

**[29] Section 99 State Mining Acts apply with prescribed changes**

Omit section 99 (2) (a).

**[30] Section 99 (2) (b)**

Omit "section 26 (2)".

Insert instead "Subdivision P of Division 3 of Part 2".

**[31] Section 99 (2)**

Omit section 99 (2) (d) and the word "and" at the end of section 99 (2) (c).

**[32] Section 101 Interim regulation making power**

Omit "this Act" from section 101 (2).

Insert instead "the *Native Title (New South Wales) Amendment Act 1998*".

**[33] Section 102**

Omit the section. Insert instead:

**102 Expiry of this Part**

This Part expires 2 years after the date of assent to the  
*Native Title (New South Wales) Amendment Act 1998*.

**[34] Sections 103, 103A**

Omit section 103. Insert instead:

**103 Satisfying right of native title holders to be notified of an act**

(1) This section applies if:

- (a) because of any law of the Commonwealth or the State, native title holders have a procedural right that requires another person to notify them of an act, and
  - (b) there has been no approved determination of native title.
- (2) One way in which the person may give the required notice is by notifying in the approved manner the following that the act is to take place:
- (a) any representative Aboriginal/Torres Strait Islander bodies for the area concerned,
  - (b) any registered native title claimants in relation to land or waters in the area concerned.
- (3) The approved manner of notification is:
- (a) the manner of notification prescribed by the law of the Commonwealth or the State for notifying the holders of ordinary title of the act concerned, or
  - (b) if there is no such manner of notification prescribed—by post or in such other manner to which the notified body or person agrees.

**Note.** If notification of the act is required for the purposes of complying with section 24KA, 24MD or 24NA NTA, the notification requirements of section 24KA (8), 24MD (7) or 24NA (9) NTA apply.

### **103A Satisfying other procedural rights of native title holders**

- (1) This section applies if:
- (a) because of any law of the Commonwealth or the State, native title holders have a procedural right that requires another person to do any thing in relation to the native title holders, and
  - (b) there has been no approved determination of native title.
- (2) One way in which the person may give effect to the requirement is:
- (a) by doing the thing in relation to any registered native title claimant in relation to land or waters in the area concerned, or

- (b) if there are no such registered native title claimants in relation to land or waters in the area concerned—by ensuring that any representative Aboriginal/Torres Strait Islander bodies for the area concerned have an opportunity to comment on the doing of the act.

**Note.** If the doing of the thing is required for the purposes of complying with section 24KA, 24MD or 24NA NTA, the requirements of section 24KA (9), 24MD (8) or 24NA (10) NTA apply.

**[35] Section 104, heading**

Omit "NTA, s 23 (5) (b) (ii)" from the heading to section 104.  
Insert instead "(NTA, ss 24MD (4) and 24NA (7))".

**[36] Section 107A**

Insert after section 107:

**107A Savings, transitional and other provisions**

Schedule 2 has effect.

**[37] Section 108 Review of Act**

Omit "5 years after the date of assent to this Act" from section 108 (2).

Insert instead "5 years after the date of assent to the *Native Title (New South Wales) Amendment Act 1998*".

**[38] Schedule 1 Miscellaneous amendment of other Acts**

Omit so much of the Schedule as amends the *Land and Environment Court Act 1979*.

**[39] Schedule 1**

Omit items (7)–(11) of the amendments to the *Mining Act 1992*.

**[40] Schedule 1**

Omit item (5) of the amendments to the *Petroleum (Onshore) Act 1991*.

**[41] Schedule 2**

Insert after Schedule 1:

**Schedule 2 Savings, transitional and other provisions**

(Section 107A)

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:  
  
this Act  
  
*Native Title (New South Wales) Amendment Act 1998*
- (2) Any such provision may, if the regulations *so* provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication. or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

Native Title (New South Wales) Amendment Act 1998 No 88

Schedule 1 Amendment of Native Title (New South Wales) Act 1994 No 45

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## **2 Saving of notifications of native title holders under section 103**

The replacement of section 103 by the *Native Title (New South Wales) Amendment Act 1998* does not invalidate or affect any notification of an act made at any time before that replacement in accordance with that section as in force at that time.

## **3 Revival of expired interim provisions of Part 10 of Act**

Section 102, as replaced by the *Native Title (New South Wales) Amendment Act 1998* has the effect of reviving Part 10 of this Act (which expired on 28 November 1996).



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**Schedule 2    Amendment of Aboriginal Land Rights  
Act 1983 No 42**

(Section 3)

**[1]    Section 23 (1), note**

Omit the note at the end of the subsection.

**[2]    Section 36 Claims to Crown lands**

Omit “or the *Native Title (New South Wales) Act 1994*” from section 36 (1) (d).

**[3]    Section 36, note**

Omit the note at the end of the section.

## **Schedule 3 Amendment of Land Acquisition (Just Terms Compensation) Act 1991 No 22**

(Section 3)

### **[1] Section 4 Definitions**

Omit “or in the native title register kept under the *Native Title (New South Wales) Act 1994*” from the definition of **registered interest** in section 4 (1).

### **[2] Section 7A Authority empowered to acquire native title**

Insert at the end of the section:

- (2) For the purposes of any such acquisition of native title rights and interests, the authority of the State is, despite any provision of this or any other Act to the contrary, authorised to comply with any relevant procedure under the Commonwealth Native Title Act for a valid acquisition of those rights and interests.

**Note.** Relevant procedures under the NTA include the following different procedures:

- (a) the right to negotiate procedure under Subdivision P of Division 3 of Part 2,
- (b) the procedure under section 24MD (6B),
- (c) the procedure under an indigenous land use agreement.

Section 26 NTA makes provision with respect to the application of the right to negotiate procedure—see section 26 (1) (c) (iii) (A) NTA with respect to compulsory acquisitions that confer rights on a Government party. Section 24MD NTA sets out a number of requirements for extinguishment of native title **by** compulsory acquisition that passes the freehold test (including the need to acquire the whole or relevant part of all non-native title rights and interests—see subsection (2) (b)).

**[3] Section 12 Owners to be given notice**

Insert after section 12 **(4)**:

- (5) If the proposed acquisition notice relates to land that is the subject of a registered native title claim under the Commonwealth Native Title Act, the authority of the State must give a copy of the notice to the registered native title claimant under that Act.

**Note.** Under the NTA, the registered native title claimant is the person shown in the Register of Native Title Claims as the applicant for the claim.

**[4] Section 54 Entitlement to just compensation**

Omit the note to section 54 (2).

## Schedule 4 Amendment of Local Government General) Regulation 1993

(Section 3)

### [1] Clause 9 Meaning of “diligent inquiry”

Omit “and the native title register kept under the *Native Title (New South Wales) Act 1994*” from clause 9 (2) (c).

### [2] Clause 9 (5) (b) and (c)

Omit the paragraphs. Insert instead:

- (b) if a relevant procedure under the *Native Title Act 1993* of the Commonwealth applies—the giving of notice as required under that procedure,
- (c) if a relevant procedure under that Act does not apply—the giving of notice (as set out in paragraph (a)) to any registered native title claimant (within the meaning of that Act) in relation to the land concerned by post or in such other manner to which the notified claimant agrees.

### [3] Clause 9 (6)

Omit the subclause. Insert instead:

- (6) For the purposes of subclause (5), a *relevant procedure* is the procedure under Subdivision P of Division 3 of Part 2 of the *Native Title Act 1993* of the Commonwealth or the procedure under section 24MD (6B) of that Act. or the procedure prescribed by a registered indigenous land use agreement.

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## Schedule 5 Amendment of Mining Act 1992 No 29

(Section 3)

### [1] Part 3, Division 5

Insert after Division 4 of Part 3:

#### **Division 5 Low-impact exploration licences—special provisions**

##### **32A Object of Division**

The object of this Division is to provide for the grant of a class of low-impact exploration licence that may be approved under section 26A of the Commonwealth Native Title Act.

**Note.** See clause 14 (3) of Part 5 of Schedule 5 to the *Native Title Amendment Act 1998* of the Commonwealth for preservation of approvals previously granted by the Commonwealth.

##### **32B Special low-impact class of licence**

- (1) There is to be a special class of exploration licence called a low-impact exploration licence.
- (2) An exploration licence may be granted as a low-impact exploration licence if this Division is complied with.
- (3) The provisions of this Act relating to exploration licences apply to low-impact exploration licences, except as otherwise provided by this Division.

##### **32C Authority conferred by low-impact licence**

- (1) The Minister may, by order published in the Gazette, determine the kind of prospecting operations that may be authorised by a low-impact exploration licence, being operations that the Minister is satisfied are unlikely to have a significant impact on the land over which the licence may be granted.

- (2) The conditions to which a low-impact exploration licence is subject are to limit the prospecting operations authorised by the licence to all or some of the prospecting operations of the kind determined by the Minister under this section.
- (3) A change in the prospecting operations determined by the Minister under this section does not affect a low-impact exploration licence that is in force at the time the change is made.

### **32D Provisions relating to applications for low-impact licence**

- (1) A person may not be granted a low-impact exploration licence unless notice of the application for the licence has been served on all:
  - (a) registered native title bodies corporate, and
  - (b) registered native title claimants, and
  - (c) representative Aboriginal/Torres Strait Islander bodies.

in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the licence.
- (2) The notice must contain a map or other description of the land over which the exploration licence is sought and a description of the kind of prospecting operations that may be authorised by the licence.
- (3) An applicant may request the Minister to grant a low-impact exploration licence either at the time the application for a licence is made or at any later time before the grant of the licence.
- (4) The regulations may make other provision for or with respect to the making and grant of applications for low-impact exploration licences.
- (5) In this section, *application* includes tender.

### **32E Change of class of licence—additional prospecting operations**

- (1) The holder of a low-impact exploration licence may apply to the Minister for a variation of the prospecting operations authorised by the licence.
- (2) After considering the application, the Minister may vary the licence or may refuse the application.
- (3) If the prospecting operations authorised by a licence as so varied are not of a kind permitted by this Division, the licence ceases to be a low-impact exploration licence.
- (4) The variation of an exploration licence takes effect on the date on which written notice of the variation is served on the holder of the licence or such later date as may be specified in the notice.

**Note.** The right to negotiate or other procedures may apply to the variation of the licence under the Commonwealth Native Title Act if section 26A of that Act no longer applies because of the variation.

### **32F Access agreement required for prospecting operations under low-impact licences**

- (1) In this section, *relevant land* means land in relation to which there are registered native title bodies corporate or registered native title claimants.
- (2) A low-impact exploration licence is subject to the condition that the holder of the licence is not authorised to carry out prospecting operations on any relevant land otherwise than in accordance with an access agreement under Division 2 of Part 8 between the holder of the licence and each registered native title body corporate or each registered native title claimant. being an access agreement:
  - (a) that is agreed between them in accordance with that Division, or that is determined for them by an arbitrator in accordance with that Division. and

- (b) that has involved consultation by the holder of the licence that satisfies the requirements of section 26A of the Commonwealth Native Title Act.
- (3) This section does not apply in any case in which Division 2 of Part 8 is excluded because of section 138 (2) (which relates to prospecting title granted after compliance with the full native title right to negotiate procedure or an indigenous land use agreement).
- (4) This section does not limit the operation of Division 2 of Part 8 with respect to owners or occupiers of land who are not native title holders.

### **32G Renewal of low-impact licences**

The requirements of this Division with respect to the grant of a low-impact exploration licence apply to the renewal of such a licence, subject to any modifications prescribed by the regulations.

#### **[2] Section 138 Application of Division**

Omit "Subdivision B" from section 138 (2).  
Insert instead "Subdivision P".

#### **[3] Section 138 (2)**

Omit "This subsection has effect despite section 98 of the *Native Title (New South Wales) Act 1994*."  
Insert instead "In addition, this Division does not apply if the prospecting title concerned was granted or renewed after compliance with a registered indigenous land use agreement under that Act and the agreement provides that an access agreement is not required under this Division in respect of such an owner or occupier."

#### **[4] Section 138, note**

Insert at the end of the section:

**Note.** Section 32F makes special provision with respect to access agreements for low-impact exploration licences.



**[5] Section 224 Opal prospecting blocks**

Omit section 224 (3). Insert instead:

- (3) An opal prospecting block may not exceed:
- (a) an area of 500 hectares, or
  - (b) such smaller area as is prescribed by the regulations.

**[6] Section 225 Map of opal prospecting area to be prepared**

Insert "(not exceeding 5 years)" after "the period" in section 225 (1) (a) (v).

**[7] Section 267A Effect of determination and payment of compensation under right to negotiate provisions of Commonwealth Native Title Act**

Omit "Subdivision B" from section 267A (1).  
Insert instead "Subdivision M or P".

**[8] Section 272 Assessment of compensation**

Omit "Subdivision B" from section 272 (2).  
Insert instead "Subdivision M or P".

**[9] Part 13, Division 5**

Insert after Division 4 of Part 13:

**Division 5 Native title compensation payable by holders of authorities**

**281A Application of Division**

This Division applies to the grant, renewal or variation of an authority under this Act after the commencement of this Division.

**281B Compensation payable by holders of authority**

If compensation is payable under section 24MD of the Commonwealth Native Title Act in respect of an act to which this Division applies that is attributable to the State, the holder of the authority concerned at the time of the grant, renewal or variation is declared, in accordance with section 24MD (4) (b) (i) of that Act, to be liable to pay the compensation.

**[10] Section 383A Service of documents on native title holders**

Omit “2 months” wherever occurring in section 383A (2) (b) and (3).

Insert instead “4 months”.

**[11] Section 383B Consents of owners and occupiers**

Omit “2 months” wherever occurring in subsection 383B (3) (a) and (b).

Insert instead “4 months”.

**[12] Schedule 6 Savings, transitional and other provisions**

Insert at the end of clause 1 (1):

*Native Title (New South Wales) Amendment Act 1998*

**[13] Schedule 6**

Insert at the end of the Schedule:

**Part 4 Provisions consequent on the enactment of the Native Title (New South Wales) Amendment Act 1998**

**62 Conversion of existing exploration licences to low-impact exploration licences**

- (1) The holder of an exploration licence in force immediately before the commencement of Division 5 of Part 3 of this Act may apply to the Minister for its conversion to a low-impact exploration licence under that Division.

- (2) The Minister may approve the application only if satisfied that the notification and other requirements of that Division for the grant of a low-impact exploration licence have been complied with. For the purpose of converting the licence, the Minister is to amend the licence and its conditions by notice served on the holder of the licence.
- (3) On the service of the notice, the exploration licence becomes a low-impact exploration licence and is subject to the provisions of that Division.
- (4) An application under this clause may be made with respect to a part only of the land over which the exploration licence was granted. In that case, the Minister may, subject to the regulations, convert the licence as to that part of the land and continue the existing licence as to the remainder of the land.

**63 Saving with respect to existing exploration licences or opal prospecting licences**

The amendments made to this Act by the *Native Title (New South Wales) Amendment Act 1998* do not invalidate or affect any exploration licence or opal prospecting licence in force at the time the amendments are made.

## **Schedule 6 Amendment of Petroleum (Onshore Act 1991 No 84**

(Section 3)

### **[1] Part 3, Division 6**

Insert after Division 5 of Part 3:

#### **Division 6 Low-impact prospecting titles—special provisions**

##### **45A Object of Division**

The object of this Division is to provide for the grant of a class of low-impact exploration licence, or low-impact special prospecting authority, that may be approved under section 26A of the Commonwealth Native Title Act.

**Note.** See clause 14 (3) of Part 5 of Schedule 5 to the *Native Title Amendment Act 1998* of the Commonwealth for preservation of approvals previously granted by the Commonwealth.

##### **45B Special low-impact class of prospecting title**

- (1) There is to be:
  - (a) a special class of exploration licence called a low-impact exploration licence, and
  - (b) a special class of special prospecting authority called a low-impact special prospecting authority.

Exploration licences and special prospecting authorities are referred to in this Division as *prospecting titles*.

- (2) A prospecting title may be granted as a low-impact prospecting title if this Division is complied with.
- (3) The relevant provisions of this Act relating to prospecting titles apply to low-impact prospecting titles, except as otherwise provided by this Division.

##### **45C Authority conferred by low-impact prospecting title**

- (1) The Minister may, by order published in the Gazette, determine the kind of prospecting operations that may be authorised by a low-impact prospecting title, being

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operations that the Minister is satisfied are unlikely to have a significant impact on the land over which the title may be granted. Different kinds of operations may be determined for exploration licences and for special prospecting authorities.

- (2) The conditions to which a low-impact prospecting title is subject are to limit the prospecting operations authorised by the title to all or some of the prospecting operations of the kind determined by the Minister under this section.
- (3) A change in the prospecting operations determined by the Minister under this section does not affect a low-impact prospecting title that is in force at the time the change is made.

#### **45D Provisions relating to applications for low-impact prospecting titles**

- (1) A low-impact prospecting title may not be granted unless notice of the application for the title has been served on all:
  - (a) registered native title bodies corporate, and
  - (b) registered native title claimants, and
  - (c) representative Aboriginal/Torres Strait Islander bodies.

in relation to any of the land that will be affected by the proposed prospecting operations to be authorised by the prospecting title.

- (2) The notice must contain a map or other description of the land over which the prospecting title is sought and a description of the kind of prospecting operations that may be authorised by the prospecting title.
- (3) An applicant may request the Minister to grant a low-impact prospecting title either at the time the application for a prospecting title is made or at any later time before the grant of the prospecting title.

- (4) The regulations may make other provision for or with respect to the making and grant of applications for low-impact prospecting titles.

**45E Change of class of prospecting title—additional prospecting operations**

- (1) The holder of a low-impact prospecting title may apply to the Minister for a variation of the prospecting operations authorised by the title.
- (2) After considering the application, the Minister may vary the prospecting title or may refuse the application.
- (3) If the prospecting operations authorised by a prospecting title as so varied are not of a kind permitted by this Division, the title ceases to be a low-impact prospecting title.
- (4) The variation of a prospecting title takes effect on the date on which written notice of the variation is served on the holder of the title or such later date as may be specified in the notice.

**Note.** The right to negotiate or other procedures may apply to the variation of the prospecting title under the Commonwealth Native Title Act if section 26A of that Act no longer applies because of the variation.

**45F Access agreement required for prospecting operations under low-impact prospecting titles**

- (1) In this section, *relevant land* means land in relation to which there are registered native title bodies corporate or registered native title claimants.
- (2) A low-impact prospecting title is subject to the condition that the holder of the prospecting title is not authorised to carry out prospecting operations on any relevant land otherwise than in accordance with an access agreement under Part 4A between the holder of the prospecting title and each registered native title body corporate or each registered native title claimant, being an access agreement:

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- (a) that is agreed between them in accordance with that Part, or that is determined for them by an arbitrator in accordance with that Part, and
  - (b) that has involved consultation by the holder of the prospecting title that satisfies the requirements of section 26A of the Commonwealth Native Title Act.
- (3) This section does not apply in any case in which Part 4A is excluded because of section 69A (2) (which relates to prospecting title granted after compliance with the full native title right to negotiate procedure or an indigenous land use agreement).
- (4) This section does not limit the operation of Part 4A with respect to owners or occupiers who are not native title holders.

#### **45G Renewal of low-impact prospecting titles**

The requirements of this Division with respect to the grant of a low-impact prospecting title apply to the renewal of such a title, subject to any modifications prescribed by the regulations.

#### **[2] Section 69A Application of Part**

Omit "Subdivision B" from section 69A (2).  
Insert instead "Subdivision P".

#### **[3] Section 69A (2)**

Omit "This subsection has effect despite section 98 of the *Native Title (New South Wales) Act 1994*."

Insert instead "In addition, this Division does not apply if the prospecting title concerned was granted or renewed after compliance with a registered indigenous land use agreement under that Act and the agreement provides that an access agreement is not required under this Division in respect of such an owner or occupier."

**[4] Section 69A, note**

Insert at the end of the section:

**Note.** Section 45F makes special provision with respect to access agreements for low-impact prospecting titles.

**[5] Section 107 Compensation**

Omit “Subdivision B” from section 107 (4).

Insert instead “Subdivision M or P”.

**[6] Section 112A**

Insert after section 112:

**112A Native title compensation payable by holders of petroleum titles**

- (1) This section applies to the grant, renewal or variation of petroleum titles under this Act after the commencement of this section.
- (2) If compensation is payable under section 24MD of the Commonwealth Native Title Act in respect of an act to which this section applies that is attributable to the State, the holder of the title concerned at the time of the grant, renewal or variation is declared, in accordance with section 24MD (4) (b) (i) of that Act, to be liable to pay the compensation.

**[7] Section 134B Consents of owners and occupiers**

Omit “2 months“ wherever occurring in section 134B (3) (a) and (b).

Insert instead ”4 months”.

**[8] Schedule 1 Savings and transitional provisions**

Insert at the end of clause 2 (1) (as replaced by Act No 5 of 1998):

*Native Title (New South Wales) Amendment Act 1998*



**[9] Schedule 1**

Insert at the end of the Schedule:

**Part 3 Provisions consequent on enactment of  
Native Title (New South Wales) Amendment  
Act 1998**

**15 Conversion of existing prospecting titles to low-impact  
prospecting titles**

- (1) The holder of an exploration licence or special prospecting authority in force immediately before the commencement of Division 6 of Part 3 of this Act may apply to the Minister for its conversion to a low-impact exploration licence or low-impact special prospecting authority under that Division. Exploration licences and special prospecting authorities are referred to in this clause as *prospecting titles*.
- (2) The Minister may approve the application only if satisfied that the notification and other requirements of that Division for the grant of a low-impact prospecting title have been complied with. For the purpose of converting the title, the Minister is to amend the title and its conditions by notice served on the holder of the title.
- (3) On the service of the notice, the title becomes a low-impact exploration licence or low-impact special prospecting authority (as the case requires) and is subject to the provisions of that Division.
- (4) An application under this clause may be made with respect to a part only of the land over which the prospecting title was granted. In that case, the Minister may, subject to the regulations, convert the title as to that part of the land and continue the existing title as to the remainder of the land.

Native Title (New South Wales) Amendment Act 1998 No 88

Schedule 6 Amendment of Petroleum (Onshore) Act 1991 No 84

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**16 Saving with respect to existing exploration licences and special prospecting authorities**

The amendments made to this Act by the *Native Title (New South Wales) Amendment Act 1998* do not invalidate or affect any exploration licence or special prospecting authority in force at the time the amendments are made.

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## **Schedule 7    Amendment of Pipelines Act 1967 No 90**

(Section 3)

### **[1]    Section 21 Vesting of lands or easements in licensee**

Omit from the note at the end of the section “the right to negotiate regime set out in Subdivision B of Division 3 of Part 2 of the NTA must be followed before a notification under section 21 is published in the Gazette.”.

Insert instead:

a relevant procedure under the NTA must be followed before a notification under section 21 is published in the Gazette. The relevant procedures include:

- (a) the right to negotiate procedure under Subdivision P of Division 3 of Part 2,
- (b) the procedure under section 24MD (6B),
- (c) the procedure under an indigenous land use agreement.

### **[2]    Section 22 Availability of certain land etc for compulsory acquisition**

Insert at the end of the section:

**Note.** In order to comply with any relevant procedure under the NTA, the notice periods under the NTA must be followed despite any different notice periods under section 22.

## **Schedule 8 Amendment of Roads Act 1993 No 33**

(Section 3)

### **[1] Section 181 Definitions**

Omit “or in the native title register kept under the *Native Title (New South Wales) Act 1994*” from the definition of *registered interest* in section 181 (1).

### **[2] Section 182 Private individuals etc may request Minister to acquire land**

Omit the note at the end of the section. Insert instead:

**Note.** The NTA also imposes requirements where the native title rights and interests are compulsorily acquired.

### **[3] Section 184 Decision on whether to deal with application**

Omit section 184 (2) (b) (ii).

### **[4] Section 184 (2)**

Insert after section 184 (2) (b):

- (c) to be served on each person who is a registered native title claimant (within the meaning of the Commonwealth Native Title Act) in relation to the land affected by the proposed acquisition.

### **[5] Section 184, note**

Omit the note at the end of the section.

### **[6] Section 194A Entitlement of native title holders to just compensation**

Omit the note at the end of the section.

**[7] Section 254 Service of documents on persons generally**

Insert the following note at the end of the section:

**Note.** Section 103 of the *Native Title (New South Wales) Act 1994* makes special provision with respect to the service of notices on native title holders where there is no approved determination of native title. Relevant provisions are also made by the Commonwealth Native Title Act.

## **Schedule 9 Amendment of Very Fast Train (Route Investigation) Regulation 1995**

(Section 3)

### **Clause 4 Preliminary notice of intention to enter land**

Insert at the end of the clause:

- (5) In the case of land in which there are native title rights and interests but in respect of which there is no approved determination of native title (within the meaning of the *Native Title Act 1993* of the Commonwealth), the notice is to be served in accordance with section 103 of the *Native Title (New South Wales) Act 1994* at least 7 days before the land is first entered under the authority of the permit concerned.

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## **Schedule 10 Amendment of Western Lands Act 1901 No 70**

(Section 3)

### **Section 18FA**

Insert before section 18G:

#### **18FA Subdivision of leases**

- (1) The holder of a lease under this Act may, with the Minister's approval, subdivide land comprised in the lease.
- (2) An application for approval is to be made in the form approved by the Minister.
- (3) The applicant is required to meet all reasonable costs incurred in dealing with the application.
- (4) The Minister may, in the Minister's absolute discretion, refuse the application or approve the subdivision either conditionally or unconditionally.
- (5) A condition of approval also has effect as a condition attaching to any lease resulting from the subdivision that is a lease to which the condition relates.
- (6) The Minister may make such consequential alterations to the conditions or purpose of the lease for a subdivided portion as the Minister considers necessary as a result of the subdivision.
- (7) The Minister may exclude from a subdivision any areas required for roads of access to the subdivided portions.
- (8) Excluded areas are, on approval being given to the subdivision, surrendered to the Crown free from any right to compensation.
- (9) The Minister may apportion rent or other money due to the Crown to the subdivided portions in such manner as the Minister considers appropriate.

- (10) The approval of the Minister for a subdivision does not affect the requirements of any other written law that apply to the subdivision.
- (11) This section applies to leases whether granted or issued before or after the commencement of this section.

[Minister's second reading speech made in—  
Legislative Assembly on 15 September 1998  
Legislative Council on 23 September 1998]