

[Act 1998 No 88]



New South Wales

# Native Title (New South Wales) Amendment Bill 1998

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The object of this Bill is to amend the *Native Title (New South Wales) Act 1994* ("the NSW Act") and certain other Acts and Regulations following the amendment of the *Commonwealth Native Title Act 1993* ("the Commonwealth Act") by the *Commonwealth Native Title Amendment Act 1998*. A number of the expressions used in this explanatory note are defined in the Commonwealth Act (see section 222 of that Act).

The particular objects of this Bill are as follows:

- (a) to amend the NSW Act so as to make it consistent with the Commonwealth Act, as amended,
  - (b) to validate (as contemplated by section 22F of the Commonwealth Act) intermediate period acts attributable to the State that took place between 1 January 1994 and 23 December 1996.
-

- (c) to confirm (as contemplated by sections 23E and 23I of the Commonwealth Act) the complete extinguishment of native title by previous exclusive possession acts attributable to the State, and the partial extinguishment of native title by previous non-exclusive possession acts attributable to the State,
- (d) to validate (as contemplated by sections 22I–22L of the Commonwealth Act) certain transfers under the *NSW Aboriginal Land Rights Act 1983*,
- (e) to validate (as contemplated by section 24EBA of the Commonwealth Act) certain future acts that are covered by indigenous land use agreements, and to allow (as contemplated by that section) changes to be made to the effects of the validation of certain intermediate period acts that are covered by those agreements,
- (f) to meet the State's obligations under section 24MD of the Commonwealth Act to ensure that objections of registered native title claimants or native title bodies corporate with respect to certain proposed acts attributable to the State relating to compulsory acquisitions, the creation or variation of certain mining rights and renewals etc of certain leases are heard by an independent body or person (namely, the Administrative Decisions Tribunal),
- (g) to omit from the NSW Act uncommenced provisions relating to State-based mechanisms for deciding claims to native title (including those conferring native title jurisdiction on the Land and Environment Court and Wardens' Courts of the State).
- (h) to revive certain interim regulation-making provisions to give effect to the original Commonwealth Act so that any necessary provisions can be made following the enactment of the amendments to that Act in 1998.
- (i) to revise (in line with the revised arrangements in the Commonwealth Act) the method prescribed for notifying native title holders of any act, and satisfying other procedural rights of native title holders, where there is no approved determination of native title,
- (j) to amend the *Land Acquisition (Just Terms Compensation) Act 1991* to ensure that the applicant in respect of a registered native title claim is notified of a proposed compulsory acquisition of the land,
- (k) to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to provide for a special category of low-impact exploration licence that can qualify for approval under section 26A of the Commonwealth Act, being a category that authorises a limited kind of prospecting operations and requires an access agreement with registered native title bodies corporate and registered native title claimants.

- (l) to amend the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* to require any compensation otherwise payable by the State to native title holders under section 24MD of the Commonwealth Act to be paid instead by the holders of the mining authorities or petroleum titles concerned,
- (m) to amend the *Mining Act 1992* to place limits on the size and duration of opal prospecting licences so that they can comply with the requirements of section 26C of the Commonwealth Act,
- (n) to amend the *Western Lands Act 1901* to allow leases to be subdivided instead of surrendered and re-granted,
- (o) to make other minor or consequential changes to the NSW Act and various other Acts and Regulations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the Native Title (New South Wales) Act 1994 and other Acts and Regulations set out in Schedules 1–10.

## **Schedule 1      Amendment of Native Title (New South Wales) Act 1994**

The Schedule gives effect to the objects mentioned in paragraphs (a)–(i) of the above overview of the Bill. In particular:

- (a) **Schedule 1 [1], [5]–[16]** validate (as contemplated by section 22F of the Commonwealth Act) intermediate period acts attributable to the State that took place between 1 January 1994 and 23 December 1996.
- (b) **Schedule 1 [20]** confirms (as contemplated by sections 23E and 23I of the Commonwealth Act) the complete extinguishment of native title by previous exclusive possession acts attributable to the State, and the partial extinguishment of native title by previous non-exclusive possession acts attributable to the State.

- (c) **Schedule 1 [21]** validates (as contemplated by sections 22I–22L of the Commonwealth Act) certain transfers under the NSW *Aboriginal Land Rights Act 1983*. The amendments cure the possible invalidity of transfers under that Act where claims for land were made before amendments to section 36 of that Act came into force. Those amendments provided that the transfer of land pursuant to a claim is to be for an estate in fee simple but subject to any existing native title rights or interests.
- (d) **Schedule 1 [22]** validates (as contemplated by section 24EBA of the Commonwealth Act) certain future acts that are covered by indigenous land use agreements, and allows (as contemplated by that section) changes to be made to the effects of the validation of certain intermediate period acts that are covered by those agreements.
- (e) **Schedule 1 [23]** meets the State's obligations under the Commonwealth 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 (namely, the Administrative Decisions Tribunal):
  - (i) 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).
  - (ii) 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).
- (f) **Schedule 1 [2]–[4]** and **[19]** omit from the NSW Act uncommenced provisions relating to State-based mechanisms for deciding claims to native title (including those conferring native title jurisdiction on the Land and Environment Court and Wardens' Courts of the State).
- (g) **Schedule 1 [24]–[33]** revive certain interim regulation-making provisions to give effect to the original Commonwealth Act so that any necessary provisions can be made following the enactment of the amendments to that Act in 1998.
- (h) **Schedule 1 [34]** revises (in line with the revised arrangements in the Commonwealth Act) the method prescribed for notifying native title holders of any act, and satisfying other procedural rights of native title holders, where there is no approved determination of native title.

**Schedule 2      Amendment of Aboriginal Land Rights Act  
1983**

The Schedule makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act, as amended.

**Schedule 3      Amendment of Land Acquisition (Just Terms  
Compensation) Act 1991**

The Schedule makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act, as amended. In particular:

- (a) **Schedule 3 [2]** ensures that the relevant procedures for acquiring native title rights and interests under the Commonwealth Act can be complied with, and
- (b) **Schedule 3 [3]** ensures that the applicant in respect of a registered native title claim is notified of a proposed compulsory acquisition of the land.

**Schedule 4      Amendment of Local Government (General)  
Regulation 1993**

The Schedule amends the procedures for making diligent inquiry for the owner of land that a council proposes to compulsorily acquire for the purposes of resale. In particular, the amendment confirms the proposed new procedure for notification where there is no approved determination of native title, namely, notification of representative Aboriginal/Torres Strait Islander representative bodies and the applicant for any registered native title claim.

**Schedule 5      Amendment of Mining Act 1992**

The Schedule gives effect to the objects mentioned in paragraphs (k)–(m) of the above overview of the Bill, and makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act. In particular:

- (a) **Schedule 5 [1]** provides for a special class of low-impact exploration licence that can qualify for approval under section 26A of the Commonwealth Act, being a category that authorises a limited kind of prospecting operations and requires an access agreement with registered native title bodies corporate and registered native title claimants, and

- (b) **Schedule 5 [5]** and **[6]** place limits on the size and duration of opal prospecting licences so that they can comply with the requirements of section 26C of the Commonwealth Act, and
- (c) **Schedule 5 [9]** requires any compensation otherwise payable by the State to native title holders under section 24MD of the Commonwealth Act to be paid instead by the holders of the mining authorities concerned.

### **Schedule 6 Amendment of Petroleum (Onshore) Act 1991**

The Schedule gives effect to the objects mentioned in paragraphs (k) and (l) of the above overview of the Bill, and makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act, as amended. In particular:

- (a) **Schedule 6 [1]** provides for a special class of low-impact exploration licence or special prospecting authority that can qualify for approval under section 26A of the Commonwealth Act, being a category that authorises a limited kind of prospecting operations and requires an access agreement with registered native title bodies corporate and registered native title claimants, and
- (b) **Schedule 6 [6]** requires any compensation otherwise payable by the State to native title holders under section 24MD of the Commonwealth Act to be paid instead by the holders of the petroleum titles concerned.

### **Schedule 7 Amendment of Pipelines Act 1967**

The Schedule makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act, as amended.

### **Schedule 8 Amendment of Roads Act 1993**

The Schedule makes minor or consequential changes to the Act so as to make it consistent with the Commonwealth Act, as amended. In particular, **Schedule 8 [4]** ensures that the applicant in respect of a registered native title claim is notified of a proposed compulsory acquisition of the land for a road.

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

The Schedule makes a consequential amendment with respect to the notification of owners or occupiers of land of investigations proposed to be carried out on the land for the very fast train. The amendment applies the proposed new procedure for notification where there is no approved determination of native title, namely notification of representative Aboriginal/Torres Strait Islander representative bodies and the applicant for any registered native title claim.

**Schedule 10     Amendment of Western Lands Act 1901**

The Schedule allows leases under the Act to be subdivided, in accordance with the similar procedure that applies to other Crown land holdings under Schedule 4 to the *Crown Lands (Continued Tenures) Act 1989*. At present, a subdivision is effected by a surrender of the lease and a re-grant.