



Western Australia

## **Acts Amendment (Land Administration, Mining and Petroleum) Act 1998**

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No. 61 of 1998

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**An Act to amend —**

- **the *Land Administration Act 1997*;**
- **the *Mining Act 1978*;**
- **the *Petroleum Act 1967*; and**
- **the *Petroleum (Submerged Lands) Act 1982*.**

[Assented to 11 January 1999]

The Parliament of Western Australia enacts as follows:

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Acts Amendment (Land Administration, Mining and Petroleum) Act 1998*.

### **2. Commencement**

- (1) Subject to subsections (2) and (3), this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Section 4 comes into operation on the day on which Part 5 of the *Native Title (State Provisions) Act 1998* comes into operation.
- (3) Section 7 comes into operation on the day on which any of Parts 3, 4 and 5 of the *Native Title (State Provisions) Act 1998* comes into operation.

**Part 2 — *Land Administration Act 1997***

**3. The Act amended**

The amendments in this Part are to the *Land Administration Act 1997*\*.

[\* *Act No. 30 of 1997.*

*For subsequent amendments see 1997 Index to Legislation of Western Australia, Table 1, p. 128, and Act No. 53 of 1997.]*

**4. Section 6A inserted**

After section 6 the following section is inserted in Part 1 —

“

**6A. Renewal etc. of certain tenures subject to *Native Title (State Provisions) Act 1998***

(1) Where the exercise of a power under this Act to renew, re-grant or extend a non-exclusive tenure of land is a Part 5 act within the meaning of the *Native Title (State Provisions) Act 1998*, the exercise of the power is subject to section 5.3 of that Act.

(2) In subsection (1) —

“**non-exclusive tenure of land**” means an interest under —

- (a) a lease;
- (b) a licence; or
- (c) other authority,

that permits the use of the land but does not confer a right of exclusive possession.

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**5. Section 83 replaced**

Section 83 is repealed and the following section is inserted instead —

“

**83. Minister may transfer Crown land in fee simple and grant leases of Crown land to or for benefit of Aboriginal persons**

- (1) The Minister may for the purposes of advancing the interests of any Aboriginal person or persons —
- (a) transfer Crown land in fee simple; or
  - (b) grant a lease of Crown land, whether for a fixed term or in perpetuity,

to that person or those persons, or to an approved body corporate, on such conditions as the Minister thinks fit in the best interests of the person or persons concerned.

- (2) Subsection (1) does not limit the right of any Aboriginal person, or a body corporate, to apply for and acquire an interest in or the fee simple of Crown land under any other provision of this Act.

- (3) In subsection (1) —

**“approved body corporate”** means a body corporate that the Minister is satisfied —

- (a) is to hold the land or the lease in trust for the Aboriginal persons concerned; or
- (b) has a membership that comprises only the Aboriginal persons concerned.

”

**6. Section 152 amended**

- (1) Section 152(a) is amended by deleting “permissible future act under” and inserting instead —

“

valid future act under sections 24MB(1)(b) and  
24MD(1) of

”

- (2) Section 152(b) is deleted.

**7. Section 152A inserted**

After section 152 the following section is inserted —

“

**152A. This Part subject to *Native Title (State Provisions) Act 1998***

Where the taking of land or an interest in land under this Part is a Part 3 act, a Part 4 act or a Part 5 act within the meaning of the *Native Title (State Provisions) Act 1998*, the operation of this Part is subject to section 3.6, 4.5 or 5.3, as the case may be, of that Act.

”

**8. Sections 153 and 154 replaced**

Sections 153 and 154 are repealed and the following sections are inserted instead —

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**153. Giving notice to native title holders where no determination of native title**

- (1) This section applies if —
- (a) this Act requires notice of any thing to be given to persons who include native title holders;

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- (b) there has been no approved determination of native title within the meaning of that expression in the NTA; and
  - (c) section 154 does not apply.
- (2) Where this section applies —
  - (a) the giving of notice in accordance with the NTA satisfies the relevant requirement of this Act in relation to native title holders; and
  - (b) if the notice relates to a taking, the subsequent service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.
- (3) In subsection (2) —
  - “in accordance with the NTA”** means —
    - (a) if Part 5 of the *Native Title (State Provisions) Act 1998* is in operation and the notice, or the order and forms, relate to a taking that is a Part 5 act within the meaning of that Act, in accordance with Division 2 of Part 5 of that Act; or
    - (b) if paragraph (a) does not apply, in the manner provided for by section 24MD(7) of the *Native Title Act 1993* of the Commonwealth.

**154. Giving notice to native title holders if Part 2, Division 3, Subdivision P of NTA applies**

- (1) This section applies if —
  - (a) interests in land are intended to be taken under section 161 or 165; and

- (b) Part 2, Division 3, Subdivision P of the NTA is applicable to the taking by virtue of section 26(1)(c)(iii) of the NTA.
- (2) Where this section applies —
  - (a) the giving of notice in accordance with the NTA satisfies the requirements of section 170(5)(b) of this Act in relation to native title holders; and
  - (b) the service of the order and forms referred to in paragraph (c) of section 177(5) of this Act in accordance with the NTA, as if they were a notice, satisfies the requirements of that paragraph in relation to native title holders.
- (3) In subsection (2) —
  - “in accordance with the NTA”** means —
    - (a) if Part 3 of the *Native Title (State Provisions) Act 1998* is in operation and the taking is a Part 3 act within the meaning of that Act, in accordance with Division 3 of Part 3 of that Act;
    - (b) if Part 4 of the *Native Title (State Provisions) Act 1998* is in operation and the taking is a Part 4 act within the meaning of that Act, in accordance with Division 3 of Part 4 of that Act; or
    - (c) if paragraph (a) or (b) does not apply, in accordance with section 29 of the *Native Title Act 1993* of the Commonwealth.

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**9. Section 155 replaced**

Section 155 is repealed and the following section is inserted instead —

“

**155. Effect of taking on native title rights and interests**

If any native title right or interest is taken under this Part, the right or interest is extinguished to the extent permitted by the NTA.

”

**10. Section 158 amended**

Section 158(2) is amended by deleting “in accordance with subsection (7) of section 23” and inserting instead —

“

in the manner provided for by subsection (7) of section 24MD

”

**11. Section 165 amended**

Section 165(2) is amended by deleting “development of the land” and inserting instead —

“

use or development of the land, or the doing of both of those things,

”

**12. Section 167 amended**

Section 167(1)(c) is amended by deleting “23(3)(c) or (4)(b)” and inserting instead —

“ 24MD(2)(e) or (3)(b) ”.



**13. Section 170 amended and transitional provision**

- (1) Section 170(7) is amended by inserting after “12 months” the following —
- “ , or a longer period determined under subsection (8), ”.
- (2) After section 170(7) the following subsections are inserted —
- “
- (8) The Minister may, in respect of a particular notice of intention, determine that a longer period applies for the purposes of subsection (7).
- (9) A determination under subsection (8) —
- (a) must be made while the notice of intention is current;
- (b) must be notified in writing to the relevant persons mentioned in subsection (5)(b) and (c); and
- (c) may be made more than once.
- (10) Subsections (3) and (4) apply to a determination under subsection (8) as if it were a notice of intention.
- ”.
- (3) The application of section 170 of the *Land Administration Act 1997* as amended by this section extends to a notice of intention, as defined in section 151 of that Act, that is current at the commencement of this section.

**14. Section 177 amended**

- (1) Section 177(1) is amended as follows:
- (a) after paragraph (a) by inserting “and”;
- (b) in paragraph (b)(iii) by deleting the semicolon and inserting a comma instead;

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- (c) after paragraph (b) by deleting “and”;
  - (d) by deleting paragraph (c).
- (2) Section 177(5)(a) is amended by deleting “a copy of the order” and inserting instead —
- “ an extract from the order, in the approved form, ”.

**15. Section 180 amended**

- (1) After section 180(1) the following subsection is inserted —
- “
- (1a) As soon as possible after the registration of an order under subsection (1) the Minister must cause a copy of the order to be published once in a daily newspaper circulating throughout the State.
- ”.
- (2) Section 180(2) is amended by deleting “(a),”.

**Part 3 — *Mining Act 1978***

**16. Section 125A inserted**

After section 125 of the *Mining Act 1978*\* the following section is inserted —

“

**125A. Liability for payment of compensation to native title holders**

- (1) If compensation is payable to native title holders for or in respect of the grant of a mining tenement, the person liable to pay the compensation is —
  - (a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the mining tenement at the time the amount is required to be paid; or
  - (b) otherwise, the applicant for the grant of, or the holder of, the mining tenement at the time a determination of compensation is made.
- (2) If, at the relevant time, there is no holder of the mining tenement because the mining tenement has been surrendered or forfeited or has expired, a reference in subsection (1) to the holder of the mining tenement is a reference to the holder of the mining tenement immediately before its surrender, forfeiture or expiry.
- (3) In subsection (1) —  
“**grant**” includes extension or renewal;

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**“native title holders”** has the same meaning as in the  
*Native Title Act 1993* of the Commonwealth.

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[\* *Reprinted as at 27 February 1996.*  
*For subsequent amendments see 1997 Index to Legislation of*  
*Western Australia, Table 1, pp. 156-7 and Acts Nos. 31 of*  
*1997, and 10 and 35 of 1998.*]

**Part 4 — *Petroleum Act 1967***

**17. Section 24A inserted**

After section 24 of the *Petroleum Act 1967*\* the following section is inserted —

“

**24A. Liability for payment of compensation to native title holders**

- (1) If compensation is payable to native title holders for or in respect of the grant of an authorization, the person liable to pay the compensation is —
  - (a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the authorization at the time the amount is required to be paid; or
  - (b) otherwise, the applicant for the grant of, or the holder of, the authorization at the time a determination of compensation is made.
- (2) If, at the relevant time, there is no holder of the authorization because the authorization has been surrendered or cancelled or has expired, a reference in subsection (1) to the holder of the authorization is a reference to the holder of the authorization immediately before its surrender, cancellation or expiry.
- (3) In this section —

“**authorization**” means a permit, drilling reservation, lease, licence, special prospecting authority or access authority;

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**“native title holders”** has the same meaning as in the  
*Native Title Act 1993* of the Commonwealth.

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[\* *Reprinted as at 17 December 1992.*

*For subsequent amendments see 1997 Index to Legislation of  
Western Australia, Table 1, p. 177 and Act No. 31 of 1997.]*

**Part 5 — *Petroleum (Submerged Lands) Act 1982***

**18. Section 124A inserted**

After section 124 of the *Petroleum (Submerged Lands) Act 1982*\* the following section is inserted —

“

**124A. Liability for payment of compensation to native title holders**

- (1) If compensation is payable to native title holders for or in respect of the grant of an authorization, the person liable to pay the compensation is —
  - (a) if an amount is to be paid and held in trust, the applicant for the grant of, or the holder of, the authorization at the time the amount is required to be paid; or
  - (b) otherwise, the applicant for the grant of, or the holder of, the authorization at the time a determination of compensation is made.
- (2) If, at the relevant time, there is no holder of the authorization because the authorization has been surrendered or cancelled or has expired, a reference in subsection (1) to the holder of the authorization is a reference to the holder of the authorization immediately before its surrender, cancellation or expiry.
- (3) In this section —

“**authorization**” means a permit, lease, licence, pipeline licence, special prospecting authority or access authority;

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“**native title holders**” has the same meaning as in the  
*Native Title Act 1993* of the Commonwealth.

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[\* *Reprinted as at 24 March 1992.*

*For subsequent amendments see 1997 Index to Legislation of  
Western Australia, Table 1, p. 178.]*

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