

**ACTS AMENDMENT AND REPEAL
(NATIVE TITLE) ACT 1995**

No. 52 of 1995

AN ACT to amend the —

- *Public Works Act 1902;*
- *Land Act 1933;*
- *Mining Act 1978;*
- *Mining Amendment Act 1994;*
- *Petroleum Act 1967;*
- *Petroleum (Submerged Lands) Act 1982;*
- *Petroleum Pipelines Act 1969;* and
- *Pearling Act 1990,*

and to repeal the *Land (Titles and Traditional Usage) Act 1993.*

[Assented to 24 November 1995.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Acts Amendment and Repeal (Native Title) Act 1995*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

PART 2 — PUBLIC WORKS ACT 1902

Principal Act

3. In this Part the *Public Works Act 1902** is referred to as the principal Act.

[* *Reprinted as at 22 June 1992.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 175-6 and Act No. 103 of 1994.]

Long title amended

4. The long title to the principal Act is amended by inserting after “**public works**” the following —

“

and to provide for the taking of land for public works and for the purpose of conferring interests under written laws

”.

Section 1 amended

5. Section 1 of the principal Act is amended by inserting after “as the” the following —

“ *Land Acquisition and* ”.

Section 2 amended

6. Section 2 of the principal Act is amended —

(a) in the definition of “Crown land” —

(i) by inserting a comma after “*Act 1933*”; and

(ii) by inserting after “Act 1984” the following —

“

or land in relation to which native
title exists

”;

and

(b) by inserting after the definition of “Minister” the
following definitions —

“

“**native title**”, “**native title holder**” and
“**native title rights and interests**”
have the same meanings as they have
in the NTA;

“**NTA**” means the *Native Title Act 1993* of
the Commonwealth;

”.

Part IB inserted

7. After Part IA of the principal Act the following Part is
inserted —

“

PART IB — PROVISIONS RELATING TO NATIVE TITLE

Objective of this Part

9J. (1) The objective of this Part is to ensure
that —

(a) where the taking of land under this Act
affects native title, in terms of section 227
of the NTA, the taking is a permissible
future act under the NTA;

- (b) this Act is a Compulsory Acquisition Act for the purposes of the NTA; and
- (c) this Act is consistent with the procedural requirements of the NTA.

(2) The provisions in Part IIA and section 45A are also enacted with the objective mentioned in subsection (1).

Land includes land subject to native title

9K. Land that may be taken or resumed under this Act includes land in relation to which native title exists.

Interests in land include native title

9L. References in this Act to an interest in land or to an estate or interest in land include native title rights and interests.

Notice to native title holders, taking for public work

9M. (1) Where the purpose of the intended taking or resumption of land for any public work will affect native title, in terms of section 227 of the NTA —

- (a) native title holders are to be treated as having an estate or interest in the land as owners for the purposes of section 17 (2) (c) (ii), (d) (i) and (e) and (2a) (b) and section 97 (e);
- (b) the giving of notice of the intended taking or resumption under section 23 (6) or, if

applicable, section 23 (7) of the NTA satisfies the obligations that the Minister would otherwise have in relation to the native title holders under section 17 (2) (c) (ii) or 97 (e) of this Act.

(2) Where notice of an intended taking or resumption has been given as provided for by subsection (1) —

- (a) the references to 30 days in section 17 (2) (d) (i) and (e) are to be read as references to 60 days; and
- (b) the Minister may by order published in the *Government Gazette* determine that a longer period applies instead of the period of one year specified in section 17 (3) (d), and may in the same way revoke or amend an order so made.

Notice to native title holders, taking under Part IIA

9N. If the purpose of the intended taking or resumption of land under Part IIA will affect native title, in terms of section 227 of the NTA, the giving of notice of the intended taking or resumption under section 29 of the NTA satisfies the obligations that the Minister would otherwise have in relation to native title holders under section 17 (2) (c) (ii) of this Act.

Section 18 and Part III modified

9O. (1) Where land in relation to which native title rights and interests exist is taken under this Act, the native title holders have a claim for compensation under Part III.

(2) A claim for compensation referred to in subsection (1) is to be determined as if the native title rights and interests —

- (a) had been extinguished by the taking; and
- (b) at that time had been converted into a claim for compensation in accordance with section 18.

(3) No further claim for compensation arises under Part III from the subsequent effect on native title rights and interests of any act that is done in giving effect to the purpose of the acquisition.

(4) In the determination of compensation under Part III for the effect on native title rights and interests of the taking of land, account is to be taken of any compensation awarded under the NTA, or any other written law, for essentially the same act.

Section 34 (2) modified

9P. The exclusion of entitlement to compensation contained in section 34 (2) does not apply to native title holders.

Compensation claimants

9Q. Any claim for compensation under Part III for the effect on native title rights and interests of the taking of land under this Act is to be made by the native title holders.

Refund of compensation where purpose of taking cancelled

9R. (1) Where —

- (a) compensation has been paid for the effect on native title rights and interests of the taking or resumption of land;
- (b) the purpose of the taking or resumption has not been given effect to; and
- (c) the Governor is of the opinion that the land is no longer required for the purpose for which it was taken,

the Governor may, by order published in the *Gazette*, cancel the purpose of the taking or resumption.

(2) Notice of the order is to be given to the native title holders, and may be given in accordance with subsection (7) of section 23 of the NTA as if the cancellation were an act to which that subsection applies.

(3) The effect of an order under this section is that —

- (a) the land may not be used or dealt with for the purpose for which it was taken or resumed; and
- (b) the taking or resumption so far as it may have affected native title rights and interests wholly ceases to operate.

(4) Subject to subsection (5), on the publication of an order under this section —

- (a) a sum equal to the amount of the monetary compensation paid to a person becomes a debt due by that person to the Crown; and

- (b) that debt may be recovered by the Minister in a court of competent jurisdiction.

(5) Subsection (4) does not apply to any compensation that has been paid to a person, other than a trustee under the NTA, if a period of 3 years or more has passed since the land was taken or resumed.

(6) This section has no effect in relation to any person, not being a native title holder, who had an estate or interest in the land immediately before it was taken or resumed.

References to “owner” to include native title holders

9S. References to “owner” or “owners” in sections 19, 25, 82 (2), 83A (3), 92, 112 (2), 112A (2), 113 and 119 are to be treated as including references to the relevant native title holders.

”

Section 13 amended

8. After section 13 (5) of the principal Act the following subsection is inserted —

“

(6) In the case of land in relation to which native title exists, the reference in subsection (4) to “the owner or occupier of land” includes native title holders.

”

Section 17 amended

9. Section 17 (1) of the principal Act is amended by deleting “and Part IIA”.

Part IIA repealed and a Part substituted

10. Part IIA of the principal Act is repealed and the following Part is substituted —

“

**PART IIA — TAKING LANDS FOR PURPOSE OF
CONFERRAL OF INTERESTS**

**Land may be taken to confer interests under
written law**

33C. (1) The Governor may by order authorize the taking of land for the purpose of the grant under a written law of any estate, interest, right, power or privilege in, over or in relation to the land.

(2) The Governor may only exercise the power conferred by subsection (1) in respect of any land if every proposed grant will be for the purpose of enabling the use or development of the land in a way that, in the opinion of the Governor, confers an economic or social benefit on the State or the relevant region or locality.

(3) Nothing in this Part affects the power under a written law to make a grant of a kind referred to in subsection (1) in, over or in relation to land where the land has been taken or resumed under Part II for a public work and the grant is necessary for, or incidental to, the carrying out of that public work.

Taking to be effected as if for public work

33D. A taking of land that is authorized under section 33C is to be effected in accordance with this Act as if the land were required for a public work.

Modification of Act

33E. (1) For the purposes of this Part the references to “public work”, “public works” and “work” in the provisions of this Act mentioned in the table to this subsection are to be treated as including the purpose referred to in section 33C.

Table

s. 2 (23)	s. 34 (1)	s. 112A
s. 15 (2)	s. 34 (4)	s. 119
s. 17	s. 49A	Schedule 3
s. 18	s. 63*	Schedule 8
s. 26	s. 78	Schedule 9
s. 28 (1)	s. 79	
s. 32	s. 80	

*except paragraph (e) (ii)

(2) For the purposes of this Part the references to “public work” and “work” in section 29 and 29B are also to be treated as including the purpose referred to in section 33C, but subject to the following —

- (a) this subsection does not apply to the references in section 29 (1) (second occurrence), (3) (ca) (iv), (5) and (7) (a) (i);
- (b) the word “other” in section 29 (1), (5) and (7) (a) (i) is to be disregarded; and
- (c) section 29B (1) (a) does not apply where land has been taken under this Part.

(3) For the purposes of this Part, section 29A (1) is to be read as if the words “Act for a public work is not being used for any public work” were replaced by the following —

“

Part has not been the subject of a grant for which it was taken or resumed

”

(4) Except as provided in this section, references in this Act to “public work” or “public works” do not include the purposes referred to in section 33C.

Compensation may be payable by person receiving interest in land taken

33F. (1) Where it is proposed that land be taken under this Part —

- (a) at the request of a person; and
- (b) for the purpose of the grant to that person of a kind mentioned in section 33C,

the Minister and the person may enter into an agreement as to the amount or the maximum amount that the person will be liable to pay to the Crown in respect of the taking, if it occurs, by way of reimbursement —

- (c) of the moneys referred to in section 81 or for compensation given under section 45A; and
- (d) any compensation payable under section 23 (3) (c) or 23 (4) (b) of the NTA.

(2) If the proposal is carried out, the Minister may in writing require the person to pay to the Crown

the amount or the maximum amount so agreed upon, and at such time or times as the Minister may specify.

(3) An amount required to be paid by a person under this section is a debt due by that person to the Crown and may be recovered by the Minister in a court of competent jurisdiction.

”.

Section 45A inserted

11. After section 45 of the principal Act the following section is inserted —

“

Requests for non-monetary compensation

45A. (1) A claimant may request that the claim be satisfied, in whole or in part, by compensation in a form other than money (for example by the transfer of property or the provision of goods or services).

(2) Where such a request is made the respondent must —

- (a) consider the request; and
- (b) negotiate in good faith in relation to it.

”.

Section 78 amended

12. Section 78 of the principal Act is amended —

(a) by deleting “easement, right of way, right of occupation, or any other” and substituting the following —

“ estate or interest, or any ”; and

- (b) by inserting after “any land” the following —
“ , or part of any land, ”.

Section 79 amended

13. Section 79 of the principal Act is amended —

- (a) by deleting “easement, right of way, right of occupation, or any other” and substituting the following —
“ estate or interest, or any ”;
- (b) by inserting after “any land” the following —
“ , or part of any land, ”; and
- (c) by deleting “such easements” and substituting the following —
“ such estates, interests, ”.

Various provisions amended

14. The principal Act is amended by deleting “*Public Works Act 1902*” wherever it occurs in the provisions referred to in the table to this section and substituting in each case the following —

“ *Land Acquisition and Public Works Act 1902* ”.

TABLE

Section 116
Schedule 3 Forms A and B
Schedules 4 to 9

**PART 3 — LAND (TITLES AND TRADITIONAL USAGE)
ACT 1993**

Repeal of Act

15. The *Land (Titles and Traditional Usage) Act 1993** is repealed.

[* *Act No. 21 of 1993.*]

PART 4 — LAND ACT 1933

Principal Act

16. In this Part the *Land Act 1933** is referred to as the principal Act —

[* *Reprinted as at 2 May 1985.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, pp. 113-4 and Acts Nos. 84 of 1994 and 5 of 1995.]

Section 7A repealed

17. Section 7A of the principal Act is repealed.

Part 1A repealed

18. Part 1A of the principal Act is repealed.

PART 5 — MINING ACT 1978

Principal Act

19. In this Part the *Mining Act 1978** is referred to as the principal Act.

[* *Reprinted as at 1 August 1988.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 141.]*

Section 19 amended

20. Section 19 (6a) of the principal Act is repealed.

Section 39A repealed

21. Section 39A of the principal Act is repealed.

Section 49 amended

22. Section 49 (3) of the principal Act is repealed.

Section 56 amended

23. Section 56 (1a) of the principal Act is repealed.

Section 56A amended

24. Section 56A (5a) of the principal Act is repealed.

Section 56AA repealed

25. Section 56AA of the principal Act is repealed.

Section 67 amended

26. Section 67 (3) of the principal Act is repealed.

Section 70 amended

27. Section 70 (5a) of the principal Act is repealed.

Section 70O repealed

28. Section 70O of the principal Act is repealed.

Section 75 amended

29. Section 75 (8) of the principal Act is repealed.

Section 85C repealed

30. Section 85C of the principal Act is repealed.

Section 90A repealed

31. Section 90A of the principal Act is repealed.

Section 94 amended

32. Section 94 (3a) of the principal Act is repealed.

Division 5A of Part IV repealed

33. Division 5A of Part IV of the principal Act is repealed.

PART 6 — MINING AMENDMENT ACT 1994

Sections 22, 27, 38, 39 and 40 repealed

34. Sections 22, 27, 38, 39 and 40 of the *Mining Amendment Act 1994** are repealed.

[* *Act No. 58 of 1994.*]

PART 7 — PETROLEUM ACT 1967

Principal Act

35. In this Part the *Petroleum Act 1967** is referred to as the principal Act.

[* *Reprinted as at 17 December 1992.*
For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, pp. 161-2.]

Section 62A repealed

36. Section 62A of the principal Act is repealed.

Division 3A of Part III repealed

37. Division 3A of Part III of the principal Act is repealed.

PART 8 — PETROLEUM (SUBMERGED LANDS) ACT 1982

Principal Act

38. In this Part the *Petroleum (Submerged Lands) Act 1982** is referred to as the principal Act.

[* *Reprinted as at 24 March 1992.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 163.]*

Section 52A repealed

39. Section 52A of the principal Act is repealed.

Section 66A repealed

40. Section 66A of the principal Act is repealed.

Division 4A of Part III repealed

41. Division 4A of Part III of the principal Act is repealed.

PART 9 — PETROLEUM PIPELINES ACT 1969

Principal Act

42. In this Part the *Petroleum Pipelines Act 1969** is referred to as the principal Act.

[* *Reprinted as at 19 February 1992.*

*For subsequent amendments see 1994 Index to
Legislation of Western Australia, Table 1, p. 162.]*

Section 10A repealed

43. Section 10A of the principal Act is repealed.

Part IIA repealed

44. Part IIA of the principal Act is repealed.

PART 10 — PEARLING ACT 1990

Principal Act

45. In this Part the *Pearling Act 1990** is referred to as the principal Act.

[* *Act No. 88 of 1990.*

For subsequent amendments see 1994 Index to Legislation of Western Australia, Table 1, p. 159 and Act No. 23 of 1994.]

Sections 23A and 23B repealed

46. Sections 23A and 23B of the principal Act are repealed.

Division 3 of Part 3 repealed

47. Division 3 of Part 3 of the principal Act is repealed.
