



Native Title Amendment Act (No. 1) 2010

No. 144, 2010

An Act to amend the *Native Title Act 1993*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Native Title Amendment Act (No. 1) 2010

No. 144, 2010

An Act to amend the *Native Title Act 1993*, and for related purposes

[Assented to 15 December 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Native Title Amendment Act (No. 1) 2010*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to public housing etc.

Native Title Act 1993

1 After paragraph 24AA(4)(f)

Insert:

- (fa) section 24JAA (public housing etc.);

2 At the end of section 24AB

Add:

- (3) However, if, apart from subsection (2), a future act could be covered, to any extent, by both section 24JAA and section 24KA, then:
 - (a) if the act is notified in accordance with subsections 24JAA(10) to (12), it is not covered, to that extent, by section 24KA; and
 - (b) if the act is not notified in accordance with subsections 24JAA(10) to (12), it is not covered, to that extent, by section 24JAA.

Note: This allows for things, such as the construction of roads and electricity transmission or distribution facilities, to be done under either Subdivision JA or Subdivision K when done in connection with housing or facilities covered by Subdivision JA.

3 After Subdivision I of Division 3 of Part 2

Insert:

Subdivision JA—Public housing etc.

24JAA Public housing etc.

Coverage of Subdivision

- (1) This Subdivision applies to a future act if:
 - (a) it relates, to any extent, to an onshore place; and
 - (b) it relates to:

- (i) an area over which a freehold estate exists or a lease is in force, or that is vested in any person, where the grant of the freehold estate or lease or the vesting took place under legislation that makes provision for the grant or vesting of such things only to, in or for the benefit of Aboriginal peoples or Torres Strait Islanders; or
 - (ii) an area that is held expressly for the benefit of, or held on trust, or reserved, expressly for the benefit of, Aboriginal peoples or Torres Strait Islanders; and
- (c) it either:
- (i) permits or requires the construction, operation, use, maintenance or repair by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities (the *action body*), of any of the things listed in subsection (3); or
 - (ii) consists of the construction, operation, use, maintenance or repair by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities (the *action body*), of any of the things listed in subsection (3); and
- (d) it is done or commenced as follows:
- (i) if the act is covered by subparagraph (c)(i)—it is done within the period of 10 years beginning on the day on which the *Native Title Amendment Act (No. 1) 2010* commences;
 - (ii) if the act is covered by subparagraph (c)(ii)—it is commenced within the period of 10 years beginning on the day on which the *Native Title Amendment Act (No. 1) 2010* commences; and
- (e) a law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be:
- (i) in the area in which the act is done; and
 - (ii) of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.

Compulsory acquisitions not covered

- (2) To avoid doubt, this Subdivision does not apply to a future act that is the compulsory acquisition of the whole or part of any native title rights and interests.

Public housing etc.

- (3) For the purposes of paragraph (1)(c), the things are as follows:
- (a) public housing provided for Aboriginal people or Torres Strait Islanders living in, or in the vicinity of, the area;
 - (b) any of the following that benefit those people:
 - (i) public education facilities;
 - (ii) public health facilities;
 - (iii) police facilities;
 - (iv) emergency facilities;
 - (c) staff housing provided in connection with housing or facilities covered by paragraph (a) or (b);
 - (d) any of the following provided in connection with housing or facilities covered by paragraph (a), (b) or (c):
 - (i) things listed in subsection 24KA(2);
 - (ii) sewerage treatment facilities;
 - (iii) things prescribed by the regulations.

Note: This subsection does not mean that facilities that benefit Aboriginal people or Torres Strait Islanders could not also benefit other people.

Validation of act

- (4) If this Subdivision applies to a future act, then, subject to subsections (5) and (6), the act is valid.
- (5) An act to which this Subdivision applies is invalid to the extent that it affects native title unless:
- (a) if the act is covered by subparagraph (1)(c)(i)—before it is done; or
 - (b) if the act is covered by subparagraph (1)(c)(ii)—before it is commenced;
- the action body:
- (c) gives notice of, and an opportunity to comment on, the act in accordance with subsections (10) to (12); and

- (d) provides a report to the Commonwealth Minister in accordance with subsection (16).
- (6) An act to which this Subdivision applies is invalid to the extent that it affects native title if:
 - (a) if the act is covered by subparagraph (1)(c)(i)—it is done before; or
 - (b) if the act is covered by subparagraph (1)(c)(ii)—it is commenced before;the end of the consultation period.

Non-extinguishment principle

- (7) The non-extinguishment principle applies to the act.

Compensation

- (8) If any native title holders would be entitled to compensation under subsection 17(2) for the act on the assumption that it was a past act referred to in that section, the native title holders are entitled to compensation for the act in accordance with Division 5.

Who pays compensation

- (9) The native title holders may recover the compensation from:
 - (a) if the act is attributable to the Commonwealth:
 - (i) if a law of the Commonwealth provides that a person other than the Crown in right of the Commonwealth is liable to pay the compensation—that person; or
 - (ii) if not—the Crown in right of the Commonwealth; or
 - (b) if the act is attributable to a State or Territory:
 - (i) if a law of the State or Territory provides that a person other than the Crown in any capacity is liable to pay the compensation—that person; or
 - (ii) if not—the Crown in right of the State or Territory.

Notice

- (10) The action body must:
 - (a) notify each of the following, in the way determined, by legislative instrument, by the Commonwealth Minister, that the act is to be done:
-

- (i) any registered native title claimant in relation to land or waters in the area;
 - (ii) any registered native title body corporate in relation to land or waters in the area;
 - (iii) any representative Aboriginal/Torres Strait Islander body in relation to land or waters in the area; and
- (b) give them an opportunity to comment on the act.
- (11) The notice must:
- (a) specify a day as the **notification day** for the act; and
 - (b) contain statements to the effect that:
 - (i) comments on the act; and
 - (ii) requests under subsection (13) to be consulted about the act;must be made within the period of 2 months that begins on the notification day.
- (12) The notification day must be a day by which, in the action body's opinion, it is reasonable to assume that all notices under subsection (10) in relation to the act will have been received by, or will otherwise have come to the attention of, the persons who must be notified under that subsection.

Consultation

- (13) Any registered native title claimant or registered native title body corporate may, in writing, request to be consulted about the doing of the act so far as it affects their registered native title rights and interests.
- (14) If a request to be consulted is made within the time specified in paragraph (11)(b), the action body must consult with the claimant or body corporate about ways of minimising the act's impact on registered native title rights and interests in relation to land or waters in the area, and, if relevant, any access to the land or waters or the way in which any thing authorised by the act might be done.
- (15) In consulting with a claimant or body corporate, the action body must comply with any requirements determined, by legislative instrument, by the Commonwealth Minister.

Report

- (16) The action body must provide the Commonwealth Minister with a report on the things done under subsections (10) to (12) and (14) and (15) in relation to the act. The report:
- (a) must be provided:
 - (i) in writing in accordance with any requirements determined, by legislative instrument, by the Commonwealth Minister; and
 - (ii) whether or not there were comments on, or requests to be consulted about, the act; and
 - (b) may be published by the Commonwealth Minister.

Note: The *Privacy Act 1988* contains provisions relevant to the use and disclosure of information.

Multiple action bodies

- (17) If there are 2 or more action bodies for the act, it is sufficient if only one of those bodies meets the requirements of subsections (10) to (12) and (14) to (16) in relation to the act.

Multiple acts

- (18) Notice of 2 or more acts to which this Subdivision applies may be given in the same notice under subsection (10).

Definitions

- (19) In this section:

consultation period means the period that:

- (a) begins on the notification day; and
- (b) ends:
 - (i) if no claimant or body corporate requests under subsection (13) to be consulted about the act—2 months later; or
 - (ii) if one or more claimants or bodies corporate request to be consulted about the act—4 months later, or at such earlier time after the time specified in paragraph (i) as each claimant and body corporate that requested to be consulted has notified, in writing, that they have been consulted.

registered native title rights and interests means native title rights and interests described in an entry on:

- (a) the Register of Native Title Claims; or
- (b) the National Native Title Register.

4 Section 222 (after table item dealing with procedural right)

Insert:

public education facilities	253
public health facilities	253
public housing	253

5 Section 253

Insert:

public education facilities means education facilities operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

6 Section 253

Insert:

public health facilities means health facilities operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

7 Section 253

Insert:

public housing means housing operated by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities.

8 Compensation for acquisition of property

- (1) If the operation of this Act would result in an acquisition of property to which paragraph 51(xxxi) of the Constitution applies from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of

Schedule 1 Amendments relating to public housing etc.

competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) In this item:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

[*Minister's second reading speech made in—
Senate on 30 September 2010
House of Representatives on 25 November 2010*]

(212/10)
