



Native Title Amendment (Indigenous Land Use Agreements) Act 2017

No. 53, 2017

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Native Title Amendment (Indigenous Land Use Agreements) Act 2017

No. 53, 2017

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

[Assented to 22 June 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Native Title Amendment (Indigenous Land Use Agreements) Act 2017*.

No. 53, 2017 *Native Title Amendment (Indigenous Land Use Agreements) Act 2017*

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day this Act receives the Royal Assent.	22 June 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Native Title Act 1993

1 Paragraph 24CD(2)(a)

Repeal the paragraph (including the notes), substitute:

- (a) for each registered native title claimant in relation to land or waters in the area:
 - (i) if a person or persons have been nominated or determined under subsection 251A(2) by the native title claim group concerned to be a party to the agreement—that person or those persons; or
 - (ii) if no persons have been nominated or determined under subsection 251A(2) by the native title claim group concerned to be a party to the agreement—a majority of the persons who comprise the registered native title claimant; and

Note: The agreement will bind all members of the native title claim group concerned: see paragraph 24EA(1)(b).

2 Subparagraph 24CG(3)(b)(ii) (note)

Omit “section 251A”, substitute “subsection 251A(1)”.

3 Section 251A

Before “For”, insert “(1)”.

5 At the end of section 251A

Add:

- (2) Without limiting subsection (1), when authorising the making of the agreement, a native title claim group may do either or both of the following:
 - (a) nominate one or more of the persons who comprise the registered native title claimant for the group to be a party or parties to the agreement;

Schedule 1 Amendments

Part 1 Amendments

- (b) specify a process for determining which of the persons who comprise the registered native title claimant for the group is to be a party, or are to be parties, to the agreement.

7 Section 253 (paragraph (a) of the definition of *authorise*)

Omit “section 251A”, substitute “subsection 251A(1)”.

Part 2—Application, transitional and saving provisions

8 Application of amendments

The amendments made by Part 1 of this Schedule apply in relation to agreements that are made on or after the commencement of this Act.

9 Validating agreements and registration on or before 2 February 2017

- (1) This item applies if:
- (a) an agreement in relation to an area was made on or before 2 February 2017; and
 - (b) the agreement purported to be an indigenous land use agreement (within the meaning of section 24CA of the *Native Title Act 1993*) in relation to the area; and
 - (c) the agreement was not an indigenous land use agreement (within the meaning of that section) only because:
 - (i) if there was only one registered native title claimant in relation to land or waters in the area—not all of the persons who comprised that registered native title claimant were parties to the agreement; and
 - (ii) if there was more than one registered native title claimant in relation to land or waters in the area—not all of the persons who comprised those registered native title claimants were parties to the agreement; and
 - (d) for each registered native title claimant in relation to land or waters in the area, at least one of the persons who comprised that registered native title claimant was a party to the agreement.
- (1A) This item also applies if:
- (a) paragraphs (1)(a) and (b) apply to an agreement; and
 - (b) the agreement was not an indigenous land use agreement (within the meaning of that section) only because:
 - (i) if there was only one registered native title claimant in relation to land or waters in the area—none of the persons who comprised that registered native title claimant was a party to the agreement; and

Schedule 1 Amendments

Part 2 Application, transitional and saving provisions

- (ii) if there was more than one registered native title claimant in relation to land or waters in the area—for any registered native title claimant, none of the persons who comprised that registered native title claimant was a party to the agreement; and
 - (c) the agreement was registered on the Register of Indigenous Land Use Agreements on or before 2 February 2017.
- (2) The agreement is taken to be, and always to have been, an indigenous land use agreement (within the meaning of section 24CA of the *Native Title Act 1993*) in relation to the area.
- (3) Without limiting subitem (2), if on or before 2 February 2017 the agreement was registered on the Register of Indigenous Land Use Agreements, then the registration of the agreement is taken to be, and always to have been, as valid and effective as it would have been had the agreement been, and always been, an indigenous land use agreement.

Note: Sections 24EA, 24EB and 24EBA of the *Native Title Act 1993* provide for the effect of the registration of the agreement.

- (4) This item does not apply to the agreements known as:
 - (a) the Wagyl Kaip and Southern Noongar ILUA;
 - (b) the Ballardong People ILUA;
 - (c) the South West Boojarah #2 ILUA;
 - (d) the Whadjuk People ILUA.

Note: Item 12 deals with the agreements referred to subitem (4) of this item.

10 Validating applications for registration made on or before 2 February 2017—agreements

- (1) This item applies if.
 - (a) an agreement in relation to an area was made on or before 2 February 2017; and
 - (b) the agreement was not an indigenous land use agreement; and
 - (c) on or before 2 February 2017, an application was purportedly made to register the agreement on the Register of Indigenous Land Use Agreements; and
 - (d) the application was not valid only because the agreement was not an indigenous land use agreement; and
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- (e) because of the operation of subitem 9(2), the agreement was an indigenous land use agreement (within the meaning of section 24CA of the *Native Title Act 1993*).
- (2) The application is taken to be, and always to have been, as valid and effective as it would have been if the agreement had been, and had always been, an indigenous land use agreement.

12 Validating particular agreements

- (1) This item applies to an agreement if:
 - (a) item 9 would have applied to the agreement; but
 - (b) because of subitem 9(4), that item does not apply to the agreement.
- (2) From the commencement of this Act, the agreement is taken to be an indigenous land use agreement (within the meaning of section 24CA of the *Native Title Act 1993*).

13 Compensation

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) The Consolidated Revenue Fund is appropriated for the purposes of making payments under this item.

14 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Amendments

Part 2 Application, transitional and saving provisions

- (2) Without limiting subitem (1), the rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to:
- (a) the amendments made by Part 1 of this Schedule; or
 - (b) a matter referred to in a provision of this Part.
- (3) Without limiting subitem (1) or (2), the rules may prescribe matters relating to agreements made, or purportedly made, before the commencement of this Act.
- (4) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (5) This Act (other than subitem (4)) does not limit the rules that may be made for the purposes of subitem (1).
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*[Minister's second reading speech made in—
House of Representatives on 15 February 2017
Senate on 16 February 2017]*

(32/17)
