
STATEMENT BY SENATOR SID SPINDLER

1.87 The Australian Democrats support the central purpose of the Native Title Bill - to recognise and protect native title - and I am in general agreement with the Committee's Report.

1.88 However, the Committee's hearings have elicited a wide range of technical concerns and the following amendments are considered necessary to ensure that the bill's objectives are met:

1. The preamble, page 3, after the words "among all Australians." add a new sentence "It is the intention of the Parliament that the Racial Discrimination Act shall prevail over the provisions of this Act."

This amendment is designed to ensure that the provisions of this bill are not applied so as to lessen, avoid or contravene the Racial Discrimination Act. The stated intent of Parliament will assist in resolving any doubt which may arise on this aspect of the legislation.

2. Clause 11, page 8, insert a new subclause [2] -

[2] Any law passed by a State or Territory passed after 30 June 1993 which is a law providing for the extinguishment of native title has no effect unless it conforms to the principles of this act and any act done pursuant to such a law is deemed not to have any effect.

This amendment strengthens the Government's powers to overturn State legislation. Concerns have been raised in evidence before the Inquiry that the powers laid down in section 208 of the Bill may not alone be sufficient to override the WA legislation.

3. Clause 13, page 9, insert a new clause 13[a] -

13[a] Where a past act which consists of the making, amendment or repeal of legislation is to be validated, only the rights and interests granted under the legislation prior to 31 December 1993 may be validated.

This limits the validation of past acts and thereby closes a loophole which may have allowed States to apply blanket validation to discriminatory laws and also to issue leases etc. with automatic renewal rights. This provision will also ensure that when leases come up for renewal, the right to negotiate remains.

4. Clause 22, page 12, delete subclause [3] and replace with the following new subclause [3] -

[3] If the whole or part of the rights or interests comprising native title is acquired under a compulsory acquisition act:

[a] native title is not extinguished until the land is used for the purpose for which it was acquired; and

[b] native title holders are entitled to compensation on just terms for the acquisition in accordance with Division 5.

This clause provides protection against the use of the compulsory acquisition provisions to extinguish native title. The amendment also provides for compensation on just terms under the Native Title Bill, thus reinforcing and complementing the provisions of existing compulsory acquisition legislation at State or Federal level.

The amendment will prevent any state from denying existing native title, a claim to native title or the right to negotiation over the land until such time as it is actually used for the prescribed public purpose for which it is acquired. If it is used for any other purpose, native title and negotiating rights are not extinguished.

5. Clause 22, page 13, delete subparagraph [4][b][iii].

6. Clause 22, pages 13 and 14, delete subclause [6] and replace with new subclause [6] -

[6] In the case of any act to which this section applies [other than a low impact future act or one to which Subdivision B applies], the native title holders have the same procedural rights as they would have in relation to the act on the assumption that they held ordinary title to any land or waters concerned.

These are consequential to amendment at clause 22 and ensure that compensation is payable.

7. Clause 25, page 15, subclause [2] after the words "an onshore place" add -
an offshore place and on-shore grants over waters.

This ensures that off-shore grants and on-shore grants over water areas are included for native title claims.

8. Clause 44, page 25, add an additional part [c] -

[c] all mining leases granted after 31 October 1975.

To avoid complex litigation, all mining leases after 1975 should be guaranteed not to extinguish native title. At present, only those which are validated will not extinguish native title.

9. Clause 41, page 24, subparagraph [2] add a new subclause [j] -

[j] Any state tribunal must make provision for the same time limits for negotiation and arbitration as are in clauses 33 and 34.

This ensures that State run tribunals must make provisions for the same time limits as the Commonwealth Tribunal.

10. Clause 45, page 26, subparagraph [2] add a new subclause [a] -

[a] Traditional connection with land may be regarded as having been maintained for the purpose of this section even if occupation or use of, or presence on, the land was not continuous, so long as it was maintained in accordance with Aboriginal tradition

It allows for Aboriginal properties which have been purchased after a period of forced absence to have native title reasserted where traditional ownership can be established.

11. Clause 45, page 26, line 15, delete subclause 3 [b] and substitute a new subclause [b] -

[b] The native title rights and interests prevail over the lease and any other prior act affecting the native title.

This provision will ensure that a pastoral lease converted into native title is not subject to onerous conditions which would render the title meaningless.

12. Clause 51, page 30, line 39, add the following sentence -

Compensation on just terms shall be payable to States as well as persons.

This is necessary to ensure that States can be paid compensation on reversal of their legislation. Without this provision reversal of State legislation would be unconstitutional.

13. Clause 53, page 31, line 28, delete the word "corporate"
14. Clause 53, page 31, line 36, delete the phrase "prescribed body corporate" and substitute "person, association, trustee or prescribed body corporate".
15. Clause 53, page 31, line 37, delete the phrase "prescribed body corporate" and substitute "person, association, trustee or prescribed body corporate".
16. Clause 53, page 32, line 1, delete the phrase "prescribed body corporate" and substitute "person, association, trustee or prescribed body corporate".
17. Clause 53, page 32, line 6, subparagraph [3] before "prescribed body corporate" add -
- "person, association, trustee or"
18. Clause 53, page 32, after subclause [6] insert -

[7] If the common law holders of native title decide that a person or association is to hold the rights and interests, the common law

holders must, when the determination is made, nominate a body corporate for the purpose of:

[a] holding compensation in relation to rights and interests;
and

[b] receiving notices for the purposes of this Act in relation to the rights and interests.

12-18. *These amendments enable native title holders to elect an alternative structure to a body corporate.*

19. Clause 53, page 32, after new subclause [7] insert -

[8] A native title interest held by a body corporate under this section cannot be restrained, garnisheed, seized, sold or otherwise acquired as the result of debts owed by or other liabilities incurred by the body corporate.

Protects native title from claim as an asset in case of mismanagement or criminal activity on the part of individuals.

20. Clause 56, page 35, subparagraph 1[a] delete subclause [i]

21. Clause 56, page 35, delete subparagraph 1[b]

22. Clause 56, page 35, add new subclause

[d] may provide supporting evidence on request from the registrar regarding title searches undertaken.

19-22. *These amendments shift the onus for searching titles registers back onto the registrar but do not impose extra time delays and do not leave it open for vexatious claims to be made.*

23. Clause 74, page 42, add a new sentence -

Upon application of any party, a claim for a declaration of native title currently pending and in the early stages in any court of a State or Territory must be transferred to the Federal Court.

Ensures that claimants can change forums in the initial stages of the process.

24. Clause 108, page 53, delete subparagraph [2]

Deletes the age limit for non presidential members to ensure that the accumulated knowledge of older people is available to tribunals.

25. Clause 197, page 86, subclause [3] alter the phrase "subsection [2]" to read "subsections [1] and [2]"

Ensures that there is no discrimination against hunting and fishing rights.

26. Clause 208, page 95, subclause [3] after the phrase "If native title rights and interests as defined by subsection [1] are" add "or have been at any time in the past"

Subclause [3] applies the Act to any statutory rights which native title has been transformed into. For clarity we have suggested additional words to ensure that the wider definition is clearly retrospective.

27. Clause 211, page 97, delete subclause [4]

Past acts can be excluded under 213[10]. There is no need to exclude acts generally. This amendment deletes the provision to exclude acts by regulation.

28. Clause 213, page 99, subclause [9] insert a new subclause [9] [f] An act in relation to Aboriginal land that takes place on or after 1 January 1994 is a past act if

[i] the later act would be a past act under subsection [2] if that subsection were not limited in its application to acts taking place before a particular date; and

[ii] the later act takes place in an exercise of a right created before January 1994 and which is legally enforceable pursuant to the legislation under which the land was granted.

This amendment will ensure that the definition of past acts includes an appropriate reference to Aboriginal land.

29. Clause 213, page 100, add to subclause 10

[c] any act in bad faith

This provision makes certain that acts in bad faith are excluded from validation.

30. Clause 214, page 100, insert in paragraph [3][d]

[iv] in relation to land or waters which on 1 January 1994 is Aboriginal land.

31. Clause 214, page 100, subparagraph [3][a], after the phrase "a commercial lease" add "on which infrastructure has been developed."

- 30 -31. *These amendments refine the very loose definition of category "A" leases offered in the Bill, to exclude Aboriginal land and to offer a clearer understanding of what is meant by the term "commercial lease".*

It may be that there is a need for further revision of the definition of category "B", "C", and "D" leases as a consequence of these amendments.

32. Clause 218, page 102, in subclause [1] insert the following paragraphs after paragraph [c] -

[d] it is not done in relation to land held by or for the benefit of Aboriginal peoples or Torres Strait Islanders pursuant to
[i] The Aboriginal Land Rights [Northern Territory] Act 1976, the Aboriginal Land [Lake Condah and Framlingham Forest] Act 1987, and the Aboriginal Land Grant [Jervis Bay Territory] Act 1986 of the Commonwealth;

[ii] the Pitjantjatjara Land Rights Act 1981, the Aboriginal Lands Trust Act 1966 and the Maralinga Tjarutja Act of South Australia or

[iii] other such Acts as prescribed; and

[e] it is not a grant of land to a person or body pursuant to any other Acts mentioned in or prescribed under paragraph [d] of this section.

This amendment will ensure that no future legislation can discriminate against native title.

33. Clause 227, page 106, delete.

The deletion of this clause will ensure that the common law definition of "lease" applies. The definition offered by the Bill is too wide and creates ambiguity about some grants which do not involve exclusive possession but may be categorised as leases, such as some grazing licences.

34. Clause 238, page 111, insert the following definition before the definition of 'Aboriginal peoples' -

Aboriginal land means land held by or for the benefit of Aboriginal peoples or Torres Strait Islanders pursuant to -

(a) the Aboriginal Land Rights (Northern Territory) Act 1976, the Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987, and the Aboriginal Land Grant (Jervis Bay Territory) Act 1986 of the Commonwealth;

(b) the Pitjantjatjara Land Rights Act 1981, the Aboriginal Lands Trust Act 1966 and the Maralinga Tjarutja Act of South Australia; and

(c) such other Acts as are prescribed for the purposes of this definition.

The insertion of this definition will clarify the use of this term throughout the Bill.

35. Create a new part, Part 10A

The operation of this Bill and its effects shall be reviewed in two years by a select committee of the Parliament and a report presented to the Parliament at that time.

In particular, this review shall examine the effectiveness of the Tribunal and assess participation by the States in the Tribunal system.

It shall also examine whether the powers of delegation of the registrar are appropriate.

Further, it shall also examine the extent to which native title has been preserved and impaired under the operation of this Bill, and the effect of the compensation provisions.

It shall also examine the operations of the Land Acquisition Fund.

This amendment makes provision for a period of review of the operation of the Bill after a period of operation to ensure it is accomplishing what is expected of it and to allow for consultation concerning its future operation.

1.89 These amendments may be subject to revision and will be moved in the Senate during the Committee stages by the Australian Democrats.

1.90 We will also seek to ensure a proper consultative process begins as soon as possible to ensure wide ranging negotiations take place concerning the form and content of the Land Acquisition Fund and the promised social justice package.

1.91 The Democrats have stated consistently that support for this legislation is contingent upon extensive social justice measures being instigated by the Government to address the needs of dispossessed indigenous peoples who will not directly benefit from native title legislation.