

Land Administration (South West Native Title Settlement) Bill 2015

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Western Australia

LEGISLATIVE ASSEMBLY

Land Administration (South West Native Title Settlement) Bill 2015

A Bill for

An Act —

- **to provide for the conveyance of freehold title, the creation of reserves and the making of management orders in respect of reserves, and the grant of leasehold interests, for the benefit of the Noongar people; and**
- **to provide for licences to enable the Noongar people to access, and carry out activities for Aboriginal Customary Purposes, on certain unallocated Crown land and unmanaged reserves, and for related purposes.**

Preamble

1 **Preamble**

2 1. The State has entered into agreements with the Noongar people for
3 the settlement of all claims by the Noongar people in pending and
4 future applications under the *Native Title Act 1993*
5 (Commonwealth) for the determination of native title and for
6 compensation payable for acts affecting that native title.

7 2. In exchange for compensation in the form of the payment and
8 provision by the State of benefits under the agreements, the
9 Noongar people consent —

10 (a) to surrender any native title rights and interests that exist
11 in relation to the areas of the State to which the
12 agreements relate; and

13 (b) to the validation of all acts that, historically, may have
14 been done invalidly in relation to those areas.

15 3. The compensation under the agreements also compensates the
16 Noongar people for the loss, surrender, diminution, impairment and
17 other effects on their native title rights and interests of all acts that
18 have been done in relation to those areas.

19 4. The benefits to be provided by the State under the agreements
20 include —

21 (a) the allocation of freehold land, leasehold land and reserved
22 land to be held on trust for the benefit of the Noongar
23 people; and

24 (b) the grant of licences to enable the Noongar people to
25 access, and carry out activities for Aboriginal Customary
26 Purposes on, certain unallocated Crown land and
27 unmanaged reserves.

- 1 5. It is appropriate for the Parliament to legislate to enable the State to
2 carry out its obligations under the agreements in relation to the
3 provision of the benefits referred to in clause 4(a) and (b).

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary matters

1. Short title

This is the *Land Administration (South West Native Title Settlement) Act 2015*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation.

3. Terms used

In this Act, unless the contrary intention appears —

Aboriginal Customary Purpose has the meaning given in the settlement terms Annexure O clause 1.1;

Crown land has the meaning given in the LAA section 3(1);

LAA means the *Land Administration Act 1997*;

land access licence means a licence in force under the LAA section 91 because of the operation of Part 4;

Land Base Strategy has the meaning given in the settlement terms clause 1.3;

Land Sub has the meaning given in the settlement terms clause 1.3;

licence amendment means an amendment to a land access licence other than an amendment to the Licence Area because of the settlement terms Annexure O clause 2.3, 2.4, 2.5 or 2.8;

Licence Area has the meaning given in the settlement terms Annexure O clause 1.1;

Licensee has the same meaning as in the settlement terms Annexure O;

- 1 ***Licensee's Agents*** has the meaning given in the settlement
2 terms Annexure O clause 1.1;
- 3 ***Licensee's Members*** has the meaning given in the settlement
4 terms Annexure O clause 1.1;
- 5 ***management order*** means an order made under the LAA
6 section 46(1) placing the care, control and management of a
7 reserve with the Land Sub;
- 8 ***Minister for Lands*** means the Minister as defined in the LAA
9 section 3(1);
- 10 ***Noongar Land Estate*** has the meaning given in the settlement
11 terms clause 1.3;
- 12 ***Regional Corporation*** means a Regional Corporation appointed
13 under the Trust Deed clause 4 and includes a replacement
14 Regional Corporation appointed under that clause;
- 15 ***reserve*** has the meaning given in the LAA section 3(1);
- 16 ***settlement ILUA*** means any of the following indigenous land
17 use agreements under the *Native Title Act 1993*
18 (Commonwealth) section 24CA executed by the State on
19 8 June 2015 as in force from time to time for as long as the
20 agreement continues in force —
- 21 (a) Ballardong People Indigenous Land Use Agreement;
- 22 (b) Gnaala Karla Booja Indigenous Land Use Agreement;
- 23 (c) South West Boojarah #2 Indigenous Land Use
24 Agreement;
- 25 (d) Wagyl Kaip & Southern Noongar Indigenous Land Use
26 Agreement;
- 27 (e) Whadjuk People Indigenous Land Use Agreement;
- 28 (f) Yued Indigenous Land Use Agreement;
- 29 Note for this definition:
- 30 Clause 17 of each settlement ILUA provides for the publication of the
31 settlement ILUA as executed, and any variations to it, on the
32 Agreements, Treaties and Negotiated Settlements database (ATNS) at
33 www.atns.net.au and on relevant State and Government Party
34 websites.

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1 **settlement terms** means the document entitled “South West
2 Settlement Terms” that is set out in Schedule 10 to a settlement
3 ILUA;

4 **Trust** has the meaning given in the settlement terms clause 1.3;

5 **Trust Deed** has the meaning given in the settlement terms
6 clause 1.3;

7 **unallocated Crown land** has the meaning given in the LAA
8 section 3(1);

9 **unmanaged reserve** has the meaning given in the LAA
10 section 3(1).

11 **4. Notes not part of Act**

12 A note set out at the foot of a provision of this Act is provided
13 to assist understanding and does not form part of this Act.

14 **5. Purposes**

15 The purposes of this Act are —

16 (a) to provide for the implementation of the Land Base
17 Strategy for the purpose of establishing the Noongar
18 Land Estate in accordance with the settlement terms;
19 and

20 (b) to provide for land access licences in accordance with
21 the settlement terms.

22 **6. Act binds Crown**

23 This Act binds the State and, so far as the legislative power of
24 the State permits, the Crown in all its other capacities.

25 **7. Government Agreements Act 1979 does not apply**

26 The *Government Agreements Act 1979* does not apply to or in
27 relation to any of the following regardless of whether the
28 administration of this Act is for the time being committed by the

- 1 Governor to, or approved by the Governor to be placed under
2 the control of, the Minister administering that Act —
- 3 (a) a settlement ILUA;
- 4 (b) any variation of a settlement ILUA;
- 5 (c) any document, instrument or other thing made,
6 executed, issued or obtained for the purposes of a
7 settlement ILUA or the implementation of a settlement
8 ILUA.

- 1 **Part 2 — General matters relating to LAA**
- 2 **8. Functions and powers of Minister for Lands**
- 3 (1) The Minister for Lands has all the functions and powers
4 necessary or convenient for the purposes of this Act.
- 5 (2) Subsection (1) is not limited by Part 3 or 4.
- 6 **9. Relationship with LAA**
- 7 (1) If there is an inconsistency between this Act and the LAA, this
8 Act prevails to the extent of the inconsistency.
- 9 (2) Without limiting subsection (1), the *Land Administration*
10 *Regulations 1998* regulations 4 and 12 do not apply in relation
11 to any conveyance or transfer of the fee simple in Crown land
12 for the purposes of implementing the Land Base Strategy.

1 **Part 3 — Land Base Strategy**

2 **10. Power of Minister for Lands to implement Land Base**
3 **Strategy**

4 (1) The Minister for Lands may, on behalf of the State, do anything
5 that is necessary or convenient to be done for the purposes of
6 implementing the Land Base Strategy.

7 (2) Subsection (1) applies in respect of the doing of a thing even if
8 the LAA does not expressly or impliedly authorise the doing of
9 the thing or that the LAA expressly or impliedly prohibits the
10 doing of the thing.

11 (3) In this section, a reference to the doing of a thing includes a
12 reference to an omission to do a thing.

13 **11. Exemption from transfer duty**

14 Transfer duty is not payable under the *Duties Act 2008*
15 Chapter 2 in respect of any transfer or lease of land in
16 accordance with the Land Base Strategy to the Trust or the Land
17 Sub.

18 **12. Compensation for revocation of management order**

19 (1) This section applies if a management order is revoked in the
20 circumstances described in the Land Base Strategy clause 4(b).

21 (2) The provision of alternative reserve land or compensation in
22 accordance with the Land Base Strategy clause 4(b) is in
23 addition to any compensation payable under the LAA
24 section 50(3) or 204(1) in respect of the revocation.

25 (3) The LAA section 204(2) does not apply in respect of the
26 revocation.

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Part 4 — Land access licences

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Division 1 — Grant and terms of licences

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13. Grant of licence

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(1) The Minister for Lands must grant to a Regional Corporation a licence in accordance with the settlement terms clause 13.1(b) or (d).

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(2) The LAA section 48(1) does not apply in respect of the grant of a licence under subsection (1).

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(3) A licence granted under subsection (1) is to be taken to be a licence granted under the LAA section 91(1).

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14. Terms and conditions of licence

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(1) The terms and conditions of a land access licence are the terms and conditions set out in the settlement terms Annexure O and includes those terms and conditions as amended from time to time under section 15(1).

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(2) The LAA section 91(2)(a) to (c) do not apply in respect of a land access licence.

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15. Amendment of licence

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(1) A land access licence can only be amended in accordance with the settlement terms.

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21

(2) The LAA section 91(2)(d) does not apply in respect of a land access licence.

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16. Suspension or termination of licence

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(1) A land access licence can only be suspended or terminated in accordance with its terms and conditions.

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(2) The LAA section 91(3) does not apply in respect of a land access licence.

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Division 2 — Legal effect of licences

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17. Approval for co-existence of certain rights not required

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(1) The LAA does not prevent the simultaneous existence on the same area of Crown land of a land access licence and another right referred to in the LAA section 91(5).

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(2) For the purposes of subsection (1) an approval referred to in the LAA section 91(5) is not required.

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18. Effect of licence on unallocated Crown land

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Land does not cease to be unallocated Crown land because of the existence of a land access licence in respect of the land.

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19. Effect of licence on creation of other interests

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The creation, grant or exercise under any written law of an interest, right, title or power in respect of land is not affected by the existence, at the time of the creation, grant or exercise, of a land access licence in respect of the land.

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20. Application of *Property Law Act 1969*

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A land access licence is not property for the purposes of the *Property Law Act 1969*.

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Division 3 — Parliamentary scrutiny of licence amendments

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21. Tabling and disallowance of licence amendment

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(1) The Minister for Lands must cause a licence amendment to be laid before each House of Parliament within 12 sitting days of the House after the day on which the licence amendment takes effect.

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(2) The *Interpretation Act 1984* section 42(2) and (3) apply in relation to a licence amendment as if it were a regulation.

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- 1 (3) If a licence amendment is disallowed under this section or is not
2 laid before both Houses of Parliament in compliance with this
3 section, the relevant land access licence as it was in effect
4 immediately before the licence amendment came into effect
5 revives on and after the day of disallowance or the day
6 following the last day for compliance.
- 7 (4) The Minister for Lands must, as soon as is practicable, notify
8 the holder of the relevant land use licence if a licence
9 amendment is disallowed under this section or is not laid before
10 both Houses of Parliament in compliance with this section.

11 **Division 4 — Liability of State in respect of licences**

12 **22. Acts or activities of Crown**

13 Nothing done under this Part, or under a land access licence, is
14 to be taken to be an act of the Crown or an activity undertaken
15 by the Crown for the purposes of the LAA section 264(2)(a).

16 **23. Entry and use of Licence Area**

17 A Licensee under a land access licence, the Licensee's
18 Members and the Licensee's Agents enter and use the Licence
19 Area under the land access licence entirely at their own risk.

20 **24. Occupier in relation to Licence Area**

21 Nothing done under this Part is to be taken into account in
22 determining (whether under the *Occupiers' Liability Act 1985*,
23 under the common law or otherwise) if the Crown is an occupier
24 of a Licence Area.

25 **25. Foreseeability of risk**

26 Nothing done under this Part is to be taken into account in
27 determining, for the purposes the *Civil Liability Act 2002*
28 section 5B(1)(a), if a risk was foreseeable.

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Part 5 — Miscellaneous matters

26. Regulations

The Governor may make regulations prescribing matters —

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for giving effect to this Act.

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1 **Part 6 — *Land Administration Act 1997* amended**

2 **27. Act amended**

3 This Part amends the *Land Administration Act 1997*.

4 **28. Section 91 amended**

5 After section 91(6) insert:

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7 (7) The operation of this section is affected by the *Land*
8 *Administration (South West Native Title Settlement)*
9 *Act 2015* Part 4.

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11

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Aboriginal Customary Purpose.....	3
Crown land.....	3
LAA	3
land access licence	3
Land Base Strategy	3
Land Sub	3
licence amendment	3
Licence Area	3
Licensee	3
Licensee’s Agents	3
Licensee’s Members	3
management order.....	3
Minister for Lands	3
Noongar Land Estate	3
Regional Corporation.....	3
reserve.....	3
settlement ILUA	3
settlement terms	3
Trust.....	3
Trust Deed	3
unallocated Crown land	3
unmanaged reserve	3