

**LAND ADMINISTRATION (SOUTH WEST NATIVE TITLE SETTLEMENT)
BILL 2015**

EXPLANATORY MEMORANDUM

Introduction

This Bill provides for the implementation of certain provisions of the native title settlement reached between the State and Noongar people in the south west of the State.

As with the *Noongar (Koorah, Nitja, Boordahwan) (Past, Present, Future) Recognition Bill 2015*, which provides for the recognition of the Noongar people as the traditional owners of Noongar lands in the south west of the State, the passage and commencement of this Bill is also a precondition to the commencement of the settlement under the 6 indigenous land use agreements entered into with the Noongar people (each a settlement ILUA).

Each settlement ILUA relates to a different area of land in the south west of the State and is made with all those Noongar persons who may hold native title in relation to each of the areas. Each of the settlement ILUAs contains similar settlement terms providing for a single comprehensive package of benefits to be provided to the Noongar people as compensation for the surrender, loss or impairment of any native title rights and interests in relation to land and waters in the south west of the State and the validation of acts that may have been done invalidly in respect of those lands and waters. The settlement terms are set out in Schedule 10 to each settlement ILUA.

This Bill provides for the implementation by the Minister for Lands, acting on behalf of the State, of certain of the State's obligations under the settlement ILUAs. In particular it provides for the implementation of a Land Base Strategy for the establishment of the Noongar Land Estate, the grant of a land access licence to each of the six Regional Corporations in accordance with the settlement terms and for related matters.

The Noongar Land Estate is land allocated to the Noongar Boodja Trust to be held in trust for the benefit of the Noongar people. The establishment of the Noongar Land Estate will result in the allocation of up to 20,000 hectares of freehold land and up to 300,000 hectares of Crown land either under lease or as reserves under management order to the Noongar Boodja Trust. The Land Base Strategy is the arrangement for the establishment and implementation of the Noongar Land Estate which is set out in clause 8 and Annexure J of the settlement terms.

A land access licence is to be granted by the Minister for Lands to each Regional Corporation that is to be established to represent the relevant Noongar people under each settlement ILUA and will allow those people to access and undertake customary activities on certain unallocated Crown land and unmanaged reserves (clause 13.1 of the settlement terms). The terms of the licence are set out in Annexure O of the settlement terms.

Clauses

Preamble

The preamble contains the background for the Bill. It refers to the agreements entered into with the Noongar people for the settlement of their native title claims and it lists certain benefits to be provided to the Noongar people by the State. The provision of those benefits will be facilitated by the enactment of the Bill.

Part 1 – Preliminary matters

Clause 1 Short title

This clause provides that the short title of this Act is the *Land Administration (South West Native Title Settlement) Act 2015*.

Clause 2 Commencement

This clause provides for the commencement dates for the Act. Sections 1 and 2 commence on the day on which the Act receives Royal Assent. The rest of the Act commences on a day fixed by proclamation.

Clause 3 Terms used

This clause contains definitions. Many of the terms are defined by reference to terms defined in the *Land Administration Act 1997* (LAA) and terms defined in a settlement ILUA. Each of the settlement ILUAs is available on certain Government party websites, for example: www.dpc.wa.gov.au.

Clause 4 Notes not part of the Act

This clause provides that notes set out at the foot of a provision to assist understanding are not part of the Act.

Clause 5 Purpose

This clause sets out the purpose of the Act, which is to provide for the implementation of the Land Base Strategy for the purpose of establishing the Noongar Land Estate in accordance with the settlement terms and to provide for land access licences in accordance with the settlement terms.

Clause 6 Act binds Crown

This clause provides that the Act binds the State.

Clause 7 Government Agreement Act 1979 does not apply

This clause provides that the *Government Agreement Act 1979* does not apply to a settlement ILUA, any variation to a settlement ILUA or any document or other thing made, executed, issued or obtained for the purposes of a settlement ILUA or the implementation of a settlement ILUA.

Part 2 – General matters relating to LAA

Clause 8 Functions of the Minister for Lands

This clause provides that the Minister for Lands has all the functions and powers necessary or convenient for the purposes of this Act. The generality of this clause is not limited by Part 3 or 4 of the Act.

Clause 9 Relationship with the LAA

Subclause 9(1) provides that if there is an inconsistency between this Act and the *Land Administration Act 1997* (the LAA), this Act prevails to the extent of the inconsistency. Subclause 9(2) provides that regulations 4 and 12 of the *Land Administration Regulations 1998* do not apply to the transfer of the land in fee simple for the purposes of the Land Base Strategy.

Part 3 – Land Base Strategy

Clause 10 Power of Minister for Lands to implement Land Base Strategy

This clause provides that the Minister for Lands may, on behalf of the State, do anything that is necessary or convenient for the purposes of implementing the Land Base Strategy.

Clause 11 Exemption from transfer duty

This clause provides that transfer duty under the *Duties Act 2008* is not payable for the transfer or lease of land to the Trust or the Land Sub in accordance with the Land Base Strategy.

Clause 12 Compensation for revocation of management order

This clause provides that additional compensation is payable if a management order is revoked in circumstances described in clause 4(b) of the Land Base Strategy.

Part 4 – Land access licences

Clause 13 Grant of licence

This clause provides that the Minister for Lands must grant a licence to a Regional Corporation in accordance with the terms of clause 13.1 of the settlement terms. The land access licence is taken to be a licence granted under s. 91(1) of the LAA.

Clause 14 Terms and conditions of licence

This clause dis-applies s. 91(2)(a) to (c) of the LAA and provides that the terms and conditions of a land access licence are the terms and conditions set out in Annexure O of the settlement terms as amended from time to time under section 15(1).

Clause 15 Amendment of licence

This clause dis-applies s. 91(2)(d) of the LAA and provides that a land access licence may only be amended in accordance with the settlement terms.

Clause 16 Suspension or termination of licence

This clause dis-applies s. 91(3) of the LAA and provides that a land access licence may only be suspended or terminated in accordance with its terms and conditions.

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

This clause provides that 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 section 91(5) the LAA and that approval under section 91(5) LAA is not required.

Clause 18 Effect of licence on unallocated Crown land

This clause provides that land does not cease to be unallocated Crown land because of the existence of the land access licence.

Clause 19 Effect of licence on creation of other interests

This clause provides that the existence of the land access licence at the relevant time does not affect the creation, grant or exercise of an interest, right, title or power in respect of the land under any written law.

Clause 20 Application of *Property Law Act 1969*

This clause provides that a land access licence is not property for the purposes of the *Property Law Act 1969*.

Clause 21 Tabling and disallowance of licence amendment

This clause provides for any licence amendment to be laid before each house of Parliament and to have no effect if disallowed by either house or not tabled within the required time. If that occurs the former licence revives on and after the day of disallowance or the day following the last day for compliance.

Clause 22 Acts or activities of Crown

This clause provides that nothing done under the land access licence is taken to be an act of, or an activity undertaken by, the Crown for the purposes of section 264(2)(a) of the LAA.

Clause 23 Entry and use of Licence Area

This clause provides that the Licensee and the Licensee's Members and Licensee's Agents enter and use the Licence Area under the land access licence entirely at their own risk.

Clause 24 Occupier in relation to Licence Area

This clause provides that nothing done under Part 4 is to be taken into account in determining if the Crown is an occupier of a Licence Area for any purpose.

Clause 25 Foreseeability of risk

This clause provides that nothing done under Part 4 is to be taken into account in determining if a risk was foreseeable.

Part 5 – Miscellaneous matters

Clause 26 Regulations

This clause provides that the Governor may make regulations to give effect to the Act.

Part 6 – LAA Amended

Clause 27 Act amended

This clause provides that Part 6 amends the LAA.

Clause 28 Section 91 Amended

This clause amends section 91 of the LAA by adding a new section 91(7) which notes that the operation of that section is affected by Part 4 of this Act.