



Native Title Amendment Bill (No. 1) 2010

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Contents

Purpose	2
Background	2
Committee consideration	3

Native Title Amendment Bill (No. 1) 2010

Date introduced: 30 September 2010

House: Senate

Portfolio: Attorney-General

Commencement: The day after Royal Assent.

Links: The links to [the Bill, its Explanatory Memorandum and second reading speech](#) can be found on the Bills home page, or through <http://www.aph.gov.au/bills/>. When bills have been passed they can be found at the ComLaw website, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Native Title Act 1993* (the primary Act or the NTA) so that the procedural rights of native title holders are curtailed when land is required for public education and health facilities, for public housing and for a wide range of other public facilities.

Background

This Bill is so close to being identical to the Native Title Amendment Bill (No. 2) 2009 that a new Bills Digest has not been produced. The Native Title Amendment Bill (No. 2) 2009 ('the original Bill' or 'NTAB No 2') lapsed on the proroguing of Parliament, 28 September 2010. The original Bill's home page can be found here

<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fbillh%2Fome%2Fr4230%22>

and the original Bills Digest can be found here:

<http://www.aph.gov.au/library/pubs/bd/2009-10/10bd118.pdf> or
<http://www.aph.gov.au/library/pubs/bd/2009-10/10bd118.htm>

The one textual change between the two Bills is the addition of another explicit criterion in respect of which the NTA's Future Act processes can be curtailed. The current Bill adds to the previous categories of public housing covered, so that it explicitly allows for 'staff housing provided in connection with housing or facilities' that benefit Aboriginal or Torres Strait Islanders -- facilities which the legislation nominates as covering

- (i) public education facilities;
- (ii) public health facilities;

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- (iii) police facilities;
- (iv) emergency facilities;

Committee consideration

The original Bill was referred to the Senate Legal and Constitutional Affairs Committee for inquiry and that Committee reported on 24 February 2010. Details of the inquiry and the Report can be found at: http://www.aph.gov.au/Senate/committee/legcon_ctte/nativetitle_two/index.htm

Many of the issues raised in the Senate Committee's Report are examined in the original Digest, but, in summary, the Report explained the background to the Bill, and the effects the Bill would have if passed and canvasses the range of submissions from various academics, indigenous organisations and their supporters which argued the Bill's amendments were unnecessary and paternalistic or racist and that the framework is already in place to facilitate the construction of facilities such as the Bill had in mind.

The Report also examined the evidence given by the Federal Government, in the form of the Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs, and the Queensland and WA Government who argued that the measures were necessary, beneficial to indigenous communities and should be seen as a special measure and not, therefore, a breach of the *Race Discrimination Act 1975*. They draw attention to the fact the Australian Human Rights Commission, while recommending the Government examine alternative approaches, did not explicitly state that the measures were not covered by the 'special measures' provisions in the *Race Discrimination Act 1975*.

The Majority Report recommends the Bill be passed with the adjustment regarding housing for staff (that is the one textual change made between the Original Bill and the current Bill). In their comments the Opposition comes to the same conclusion, that is it supports the recommendations of the Majority, but also recommends that Indigenous Land Use Agreements be given support and that a 'template' for such agreements should be developed. They also express concern at the state of housing and infrastructure for indigenous communities. Senator Siewert, the Australian Greens member of the Committee puts in a Minority Report which recommends that the Bill not be passed and that the framework provided for under the *Native Title Act 1993*, that is Indigenous Land Use Agreements, be employed to greater effect. In the event that the Bill progresses she recommends the adoption of amendments suggested by the National Native Title Council.¹

For a more detailed account of the key issues, the main provisions, et cetera please consult the Digest for the original Bill.

1. National Native Title Council, *Supplementary Submission 16B* to the Senate Legal and Constitutional Affairs Committee *Inquiry into the Native Title Amendment Bill (No. 2) 2009*, viewed 23 October 2010, <https://senate.aph.gov.au/submissions/committees/viewdocument.aspx?id=3f537e2a-004e-4937-af42-4fdc08556caf>

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