

What impact does the *Land and Public Works Amendment Bill 2022* have on native title?

In March 2023, the Western Australian State Parliament passed the *Land and Public Works Amendment Act 2023* (WA) (Act), which amends the *Land Administration Act 1997* (WA) (LAA) and the *Public Works Act 1902* (WA) (Public Works Act).

Prior to the Act being released for consultation, the State Government also released a draft policy document titled '*Exposure Draft: Proposed policy framework guiding the use of Diversification Leases on Crown Land under the Land Administration Act 1997 – June 2022*' (Draft Policy).

The Act has not yet come into force, and the State Government has not yet said when it expects to start.

This fact sheet outlines the key amendments made under the Act, and some of the key policy changes proposed in the Draft Policy.

Diversification leases

The Act amends the LAA to include a new type of land tenure, called a 'diversification lease'. It is designed for one lease to have multiple uses. A diversification lease is like a "General Lease", but it does not give the leaseholder exclusive possession. This means that if a diversification lease is granted over native title, Native Title Holders will continue to be able to exercise native title rights on the land.

The Act and LAA does not specify particular uses for a diversification lease, however the Draft Policy states it could be used for any one of the following purposes:

- Carbon farming;
- Renewable energy;
- Environmental offsets for mining companies, or where their activities are substantially inconsistent with existing pastoral uses;
- Conservation purposes;
- Renewable energy;
- Aboriginal economic development and land management; and
- Other multiple concurrent uses, for example, grazing livestock, horticulture, agriculture, tourism and carbon farming.

The State Government has not clarified the process for the grant of a diversification lease. However, the Draft Policy states that each application for a diversification lease will be assessed on a 'case by case' basis.

A diversification lease cannot co-exist with a pastoral lease, so if a person wants to grant a diversification lease over a pastoral lease, the pastoral lessee would have to surrender their pastoral lease.

A diversification lease does not extinguish native title.

A diversification lease must comply with the native title future act process before it can be granted. The State Government has said that it will only grant a diversification lease over native title land if the leaseholder first enters into an Indigenous Land Use Agreement (ILUA) with the Native Title Holders. ILUAs can only be entered into with the consent of the Native Title Holders. A diversification lease granted with an ILUA will not extinguish native title.



Amendments to the Public Works Act

The Act makes the following key amendments to the Public Works Act:

- A replacement definition of 'public work' to mean a work, facility, building, structure or other thing as declared;
- An additional section which states the Governor may, by order, declare a work, facility, building, structure or thing specified in the order, as a public work; and
- The inclusion of Schedule 1, which includes a number of additional classes of public work, including work for 'the production, generation, transmission, distribution or storage of electricity, gas or any other form or source of energy.'

Therefore, the State Government will have the power to compulsorily acquire land for more purposes, including, in theory, for a renewable energy project.

However, under the Draft Policy, the State Government states that all renewable energy projects must be subject to an ILUA.

While there was some consultation on the broad concept of a diversification lease, YMAC believes none of the consultation:

- allowed any opportunity for partnership or shared decision-making with First Nations peoples or entities,
- featured genuine engagement with First Nations entities where feedback was reflected on and adopted, or
- included discussions on amendments to the Public Works Act or amendments to the pastoral lease provisions of the LAA.

YMAC raised these concerns in our submissions to the State Government. (To read these and more of YMAC's submissions, visit our [website](#).)

Call and ask to speak with someone from YMAC's Legal Team in our Perth office to find out more.

Current at June 2023. Please note, information in this fact sheet is provided by YMAC in good faith on an "as is" basis; it does not constitute any form of legal advice. YMAC believes this information to be accurate and current at the date of publication, however, inadvertent errors can occur and the applicable laws, rules, policies and regulations often change. YMAC will not be liable for any loss or damage whatsoever suffered as a result of reliance upon this information, or through directly or indirectly applying it.

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