



ENVIRONMENT, RESOURCES AND DEVELOPMENT COURT (NATIVE TITLE) AMENDMENT ACT 1994

No. 93 of 1994

SUMMARY OF PROVISIONS

1. **Short title**
2. **Commencement**
3. **Amendment of s. 3—Interpretation**
4. **Amendment of s. 10—Commissioners**
5. **Substitution of s. 13**
 13. **Disclosure of interest by members of the Court**
6. **Amendment of s. 15—Constitution of Court**
7. **Amendment of s. 18—Time and place of sittings**
8. **Insertion of s. 20A**
 - 20A. **Transfer of cases between the Court and the Supreme Court**



ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 93 of 1994

An Act to amend the Environment, Resources and Development Court Act 1993.

[Assented to 15 December 1994]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Environment, Resources and Development Court (Native Title) Amendment Act 1994*.

(2) The *Environment, Resources and Development Court Act 1993* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 3—Interpretation

3. Section 3 of the principal Act is amended by inserting after the definition of "evidentiary material" in subsection (1) the following definitions:

"**native title commissioner**" means a commissioner with expertise in Aboriginal law, traditions and customs;

"**native title jurisdiction**" means the jurisdiction of the Court to hear and determine a native title question;

"**native title question**"—see Part 2 *Native Title (South Australia) Act 1994*.

Amendment of s. 10—Commissioners

4. Section 10 of the principal Act is amended—

(a) by striking out from subsection (2) "A commissioner" and substituting "A commissioner (other than a native title commissioner)";

(b) by inserting after subsection (2) the following subsections:

(2a) A commissioner appointed as a native title commissioner must be a person with expertise in Aboriginal law, traditions and customs.

(2b) Before the Governor appoints a commissioner as a native title commissioner, the Minister must consult about the proposed appointment with the Commonwealth Minister designated by regulation.

Substitution of s. 13

5. Section 13 of the principal Act is repealed and the following section is substituted:

Disclosure of interest by members of the Court

13. If the Court is constituted of, or includes, a member who has a pecuniary or other interest that could conflict with the proper performance of the member's official functions in proceedings before the Court, the member—

- (a) must disclose the interest to the parties to the proceedings; and
- (b) must not take part in the proceedings or exercise powers affecting the proceedings—
 - (i) if the Presiding Member of the Court directs the member to withdraw from the proceedings; or
 - (ii) if a party to the proceedings does not consent to the member hearing and determining, or participating in the hearing and determination of, the proceedings.

Amendment of s. 15—Constitution of Court

6. Section 15 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsections:

(1a) When sitting to exercise its native title jurisdiction the Court must consist of, or include, a legal practitioner of at least 5 years' standing.

(1b) If the Court, when sitting to exercise its native title jurisdiction is to consist of, or include, a commissioner or two or more commissioners, the commissioner or at least one-half the number of the commissioners must be native title commissioners.;

(b) by inserting in subsection (10)(a)(i) "law or" after "questions of".

Amendment of s. 18—Time and place of sittings

7. Section 18 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(4) Registries of the Court will be at the places determined by the Governor.

Insertion of s. 20A

8. The following section is inserted after section 20 of the principal Act:

Transfer of cases between the Court and the Supreme Court

20A. (1) The Environment, Resources and Development Court may, on application by a party, or on its own initiative, refer proceedings to which this section applies to the Supreme Court for hearing and determination.

(2) The Supreme Court may, on the application by a party or on its own initiative, remove proceedings to which this section applies from the Environment, Resources and Development Court into the Supreme Court for hearing and determination.

(3) In deciding whether proceedings to which this section applies should be heard by the Supreme Court or the ERD Court, the following matters must be taken into account:

- (a) the importance of the questions involved in the proceedings; and
 - (b) the complexity of the legal and factual questions involved in the proceedings.
- (4) This section applies to—
- (a) proceedings involving a native title question; or
 - (b) proceedings involving a question about mining, or exploration for minerals or petroleum; or
 - (c) proceedings related to compulsory acquisition of land; or
 - (d) proceedings of a class prescribed by regulation.

1. See Part 3 of the *Native Title (South Australia) Act 1994*.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor