

1994

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Chief Minister)

Native Title Bill 1994

A BILL

FOR

An Act relating to native title

Preamble

1. Before European settlement, land in Australia had been occupied, used and enjoyed since time immemorial by Aboriginal peoples and Torres Strait Islanders in accordance with their traditions.
2. Land is of spiritual, social, historical, cultural and economic importance to Aboriginal peoples and Torres Strait Islanders. In the Australian Capital Territory, there are sites which provide evidence of their use by various groups of Aboriginal peoples at different times for a variety of purposes.
3. Since European settlement, many Aboriginal peoples and Torres Strait Islanders have been dispossessed and dispersed.
4. However, some Aboriginal peoples and Torres Strait Islanders have maintained their ancestors' traditional, customary or historical affiliation with particular areas.

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5. In the Native Title Decision ((1992), 175 C.L.R. 1), the High Court—
- (a) rejected the doctrine that Australia was *terra nullius* (land belonging to no-one) at the time of European settlement;
 - (b) held that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional lands; and
 - (c) held that native title rights may be extinguished by valid government acts that are inconsistent with the continued existence of those rights, such as the grant of freehold or leasehold estates.
6. The *Native Title Act 1993* of the Commonwealth provides a national scheme with the following objects:
- (a) to provide for the recognition and protection of native title;
 - (b) to establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings;
 - (c) to establish a mechanism for determining claims to native title;
 - (d) to provide for, or permit, the validation of past acts invalidated because of the existence of native title.
7. The Legislative Assembly intends the Australian Capital Territory to participate in the national scheme enacted by the Commonwealth Parliament.
8. The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Native Title Act 1994*.

Commencement

- 5 2. This Act commences on the day on which it is notified in the *Gazette*.

Objects

3. The main objects of this Act are, in accordance with the Commonwealth Native Title Act:

- (a) to validate past acts invalidated because of the existence of native title;
- (b) to confirm existing rights to natural resources and access to waterways and public places.

5 Interpretation

4. In this Act, unless the contrary intention appears—

“Commonwealth Native Title Act” means the *Native Title Act 1993* of the Commonwealth.

Interpretation—Commonwealth Native Title Act definitions

- 10 5.** Words and expressions used in this Act have the same meanings as they have in the Commonwealth Native Title Act, unless the contrary intention appears.

PART II—PAST ACTS ATTRIBUTABLE TO THE TERRITORY

15 Relationship to Commonwealth Native Title Act

6. This Part is enacted in accordance with section 19 of the Commonwealth Native Title Act.

Validation

- 20 7.** A past act attributable to the Territory is valid, and is to be taken always to have been valid.

Extinguishment of native title

8. (1) A category A past act attributable to the Territory, other than an act to which subsection 229 (4) of the Commonwealth Native Title Act applies, extinguishes the native title concerned.

- 25 (2)** A category A past act attributable to the Territory to which subsection 229 (4) of the Commonwealth Native Title Act applies—

- (a) in any case—extinguishes the native title in relation to the land or waters on which the public work concerned (on completion of its construction or establishment) was or is situated; and
- 30 (b)** if paragraph 229 (4) (a) of that Act applies—is to be taken to have extinguished that native title on 1 January 1994.

- 35 (3)** A category B past act attributable to the Territory that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned extinguishes the native title to the extent of the inconsistency.

(4) The non-extinguishment principle applies to a category C past act, or a category D past act, that is attributable to the Territory.

5 (5) The extinguishment effected by this section does not by itself confer any right to eject or remove any Aboriginal persons who reside on or who exercise access over land or waters covered by a pastoral lease the grant, re-grant or extension of which is validated by section 7.

Preservation of beneficial reservations and conditions

10 9. (1) If an act attributable to the Territory contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders, nothing in section 8 affects that reservation or condition.

(2) If the doing of an act attributable to the Territory would affect non-native title rights and interests of Aboriginal people or Torres Strait Islanders, nothing in section 8 affects those rights and interests.

15 (3) In this section—
“non-native title rights and interests” means rights or interests, other than native title rights and interests, arising under legislation, at common law or in equity and whether or not rights of usage.

PART III—CONFIRMATION OF RIGHTS AND ACCESS

Relationship to Commonwealth Native Title Act

20 10. This Part is enacted in accordance with section 212 of the Commonwealth Native Title Act.

Confirmation of rights

25 11. (1) The existing ownership by the Crown in right of the Territory of any natural resources is confirmed.

(2) Any existing right of the Crown in right of the Territory to use, control and regulate the flow of water is confirmed.

(3) Any existing fishing access rights are confirmed to prevail over any other public or private fishing rights.

Confirmation of access to waterways and public places

30 12. Existing public access to and enjoyment of the following places is confirmed:

- (a) waterways;
- (b) beds and banks or foreshores of waterways;
- (c) areas that were public places at the end of 31 December 1993.

Effect of confirmation on native title

13. As provided by subsection 212 (3) of the Commonwealth Native Title Act, a confirmation under this Part does not—

- (a) extinguish or impair any native title rights and interests; or
- 5 (b) affect a conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal people or Torres Strait Islanders.