

NORTHERN TERRITORY OF AUSTRALIA
VALIDATION OF TITLES AND ACTIONS ACT 1994

No. 2 of 1994

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NORTHERN TERRITORY OF AUSTRALIA

No. 2 of 1994

AN ACT

to validate under section 19 of the *Native Titles Act 1993* of the Commonwealth past acts invalid because of the existence of native title and, in accordance with that Act, to confirm certain rights, and for related purposes

[Assented to 10 March 1994]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

PART 1 - PRELIMINARY

1. SHORT TITLE

This Act may be cited as the *Validation of Titles and Actions Act 1994*.

2. ACT BINDS THE CROWN

This Act binds the Crown not only in right of the Territory but, to the extent that the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

3. INTERPRETATION

(1) In this Act "Commonwealth Act" means the *Native Titles Act 1993* of the Commonwealth.

(2) Unless the contrary intention appears, a word or expression used in the Commonwealth Act has the same meaning in this Act as it has in the Commonwealth Act.

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PART 2 - VALIDATION OF PAST ACTS

4. VALIDATION OF PAST ACTS ATTRIBUTABLE TO TERRITORY

Every past act attributable to the Territory is valid and is taken always to have been valid.

PART 3 - EFFECT OF VALIDATION ON NATIVE TITLE

5. CATEGORY A PAST ACTS THAT ARE NOT PUBLIC WORKS

A category A past act, that is not a past act to which section 229(4) (which deals with public works) of the Commonwealth Act applies, extinguishes native title concerned.

6. CATEGORY A PAST ACTS THAT ARE PUBLIC WORKS

(1) A category A past act to which section 229(4) of the Commonwealth Act applies extinguishes 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.

(2) If section 229(4)(a) (which deals with works completed after 1 January 1994) of the Commonwealth Act applies to the past act, the extinguishment is taken to have happened on 1 January 1994.

7. INCONSISTENT CATEGORY B PAST ACTS

A category B past act 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.

8. CATEGORY C AND D PAST ACTS

The non-extinguishment principle applies to all category C and D past acts.

9. EXTINGUISHMENT NOT OF ITSELF A RIGHT TO EJECT FROM CERTAIN PASTORAL LAND

An extinguishment effected by this Part does not of itself confer a right to eject or remove an Aboriginal person who resides on or who exercises access over land or waters covered by a pastoral lease the grant, re-grant or extension of which is validated by Part 2.

PART 4 - PAST GRANTS OF TITLE

10. VALIDATION OF GRANTS OF TITLE BEFORE 1911

(1) Every grant of title, whether freehold or leasehold, of land (whether or not covered by water) in the geographical area that now constitutes the Northern Territory made at any time before 1 January 1911 by the

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Crown in any capacity, to the extent that there could be any doubt about its validity because of the possibility of the existence of native title affecting the land at the time of the grant, is confirmed to be, and shall be taken always to have been, validly made.

(2) To the extent that the operation of subsection (1) constitutes an acquisition of property within the meaning of section 50 of the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, the property shall be acquired on just terms.

PART 5 - OTHER EFFECTS OF VALIDATION

11. PRESERVATION OF BENEFICIAL RESERVATIONS AND CONDITIONS

If -

- (a) an act attributable to the Territory contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of the act would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage),

nothing in Part 3 affects that reservation or condition, or those rights or interests.

PART 6 - CONFIRMATION OF CERTAIN RIGHTS UNDER SECTION 212 OF COMMONWEALTH ACT

12. CONFIRMATION OF OWNERSHIP OF NATURAL RESOURCES, &c.

(1) The existing ownership of all natural resources owned by the Territory is confirmed.

(2) All existing rights of the Territory to use, control and regulate the flow of water are confirmed.

(3) All existing fishing rights under Territory law are confirmed to prevail over other public or private fishing rights.

13. CONFIRMATION OF ACCESS TO BEACHES, &c.

(1) Existing public access to and enjoyment of the following places is confirmed:

- (a) waterways;
- (b) beds and banks or foreshores of waterways;

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- (c) coastal waters;
- (d) beaches;
- (e) areas that were public places at the end of 31 December 1993.

(2) The confirmation by subsection (1) of this section does not extinguish or impair any native title rights and interests and does not affect any conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.
