

NORTHERN TERRITORY OF AUSTRALIA

CONFIRMATION OF TITLES TO LAND
(REQUEST) BILL 1993

TABLE OF PROVISIONS

Clause

1. Short title
2. Request for commonwealth legislation
3. Approval of repeal or amendments

SCHEDULE

NORTHERN TERRITORY (CONFIRMATION OF
TITLES TO LAND) BILL 1993

1. Short title
2. Commencement
3. application
4. Act binds Crown
5. Interpretation
6. Validation of titles and laws
7. *Racial Discrimination Act*
8. Compensation



NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

requesting the Parliament of the Commonwealth to enact
legislation relating to certain rights of
Aboriginal inhabitants of Australia in or in
relation to land in the Territory

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:

1. SHORT TITLE

This Act may be cited as the *Confirmation of Titles to Land (Request) Act 1993*.

2. REQUEST FOR COMMONWEALTH LEGISLATION

(1) The Legislative Assembly requests the enactment by the Parliament of the Commonwealth of an Act in, or substantially in, the terms set out in the Schedule and, subject to subsection (2), the continuation in force of the Act when so enacted.

(2) The Legislative Assembly requests the Parliament of the Commonwealth not to amend the Act when enacted as referred to in subsection (1), and as amended and in force at the relevant time, except with the approval of the Administrator.

3. APPROVAL OF REPEAL OR AMENDMENTS

For the purposes of section 2(2), the Administrator may, by notice in the *Gazette*, approve the repeal of, or the terms of amendments to, the Act referred to in that section.

Confirmation of Titles to Land (Request)

SCHEDULE

NORTHERN TERRITORY (CONFIRMATION
OF TITLES TO LAND) ACT 1993

A BILL

FOR

An Act relating to certain rights of Aboriginal
inhabitants of Australia in or in relation to land
in the Northern Territory

The Parliament of Australia enacts:

1. SHORT TITLE

This Act may be cited as the *Northern Territory
(Confirmation of Titles to Land) Act 1993*.

2. COMMENCEMENT

This Act commences on the day on which this Act
receives the Royal Assent.

3. APPLICATION

This Act extends to the coastal waters of the
Territory.

4. ACT BINDS CROWN

This Act binds the Crown in right of the Commonwealth
and of the Northern Territory, and in right of each of the
States.

5. INTERPRETATION

(1) In this Act, unless the contrary intention
appears:

"Administrator" means the Administrator of the
Northern Territory;

"coastal waters of the Territory" has the same
meaning as it has in the *Coastal Waters
(Northern Territory) Act 1980*;

"customary title" means:

- (a) a right of any nature to or to the use or
enjoyment of land by any of the Aboriginal
inhabitants of Australia in accordance with
Aboriginal traditional laws or customs,
which right is or may in future be
rearranged as a legal right by the common
law in force in the Northern Territory; or

Confirmation of Titles to Land (Request)

- (b) a right comprised in, or directly or indirectly arising out of, derived from or associated with a right of a kind referred to in subparagraph (a) of this definition, whether or not the right is itself a right to or to the use or enjoyment of land;

"grant" includes the bringing into existence of a title to land however that grant is described, and a purported grant;

"just terms" means just terms within the meaning of paragraph (xxxi) of section 51 of the Constitution and section 50(1) of the *Northern Territory (Self-Government) Act 1978*;

"land" includes land covered permanently or intermittently by water (including by the coastal waters of the Territory), the water itself, any part of the surface of that land or water, the minerals in the land or water, and all rights, title and interests to or in such minerals;

"minerals" means all substances that normally occur naturally in, on or as part of the earth's crust, or are dissolved or suspended in water within or on the earth's crust, or any waste minerals deposited on the earth's crust as a result of past activity;

"title to land" includes a right or interest in or in respect of land in the Northern Territory, whether proprietary or otherwise, and any right to the use or occupation of land in the Northern Territory;

"use" includes any use associated with or incidental to mining, prospecting or exploration.

(2) A reference in this Act to land in the geographical area that now constitutes the Northern Territory includes a reference to land covered, whether permanently or intermittently, by the coastal waters of the Territory, and those coastal waters.

6. VALIDATION OF TITLES AND LAWS

(1) This section applies:

- (a) notwithstanding any other law of the Commonwealth, the Northern Territory or a State; and
- (b) only in relation to a customary title which, but for this Act, was not extinguished by, or by action under, the grant of another title to land.

Confirmation of Titles to Land (Request)

(2) The Parliament of the Commonwealth hereby validates every title to land granted at any time before the commencement of this Act in respect of land in the geographical area that now constitutes the Northern Territory.

(3) The Parliament of the Commonwealth hereby validates all laws of the Northern Territory and the Commonwealth that at any time after and including 31 October 1975 -

- (a) were passed or were purported to have been passed by the Legislative Assembly of the Northern Territory or the Parliament of the Commonwealth;
- (b) that have been or purported to have been in force in the Northern Territory (whether or not still in force or purported to be still in force); and
- (c) which granted, or which enabled or authorised or which purported to enable or authorise the grant of, title to land,

and which laws would, but for this Act, have been, in whole or in part, invalid or ineffective for the purposes of any such grant.

(4) For the avoidance of doubt, a validation by subsection (2) or (3) has or is deemed to have effect on and from the date the title to the land was granted or, as the case may be, the law was passed or was purported to have been passed by the Legislative Assembly of the Northern Territory or the Parliament of the Commonwealth.

(5) The Parliament of the Commonwealth hereby declares that any law of a kind referred to in subsection (3) made or continued in force after the commencement of this Act which would, but for this Act, have been in whole or in part, invalid or ineffective for the purposes of a grant of a kind referred to in that subsection will not be invalid or ineffective by reason only of such an impediment.

(6) On the grant of a title to land which was inconsistent with a customary title, or which authorised or purported to authorise action which was inconsistent with customary title, the following is deemed to have occurred:

- (a) the customary title became subject to the title to land so granted to the extent of any such inconsistency;
- (b) the validity and effectiveness of the title to land so granted was and is unaffected by the customary title;

Confirmation of Titles to Land (Request)

- (c) the title to land so granted was, is, will be, and will hereafter be treated as always having been valid and effective for all purposes according to its tenor, notwithstanding the customary title; and
- (d) the person formerly entitled to the customary title is entitled to recover from the Commonwealth, in accordance with this Act, such compensation for the effect of the grant of that title to land as would have been recoverable in similar circumstances by the owner of a title to land of a kind most nearly corresponding to the customary title.

7. *RACIAL DISCRIMINATION ACT*

Without limiting the generality of sections 6, and for the purpose of resolving doubts as to the effect of the *Racial Discrimination Act 1975*, it is hereby declared that, notwithstanding any other law of the Commonwealth or of the Northern Territory, that Act does not have the effect, has never had the effect and shall not hereafter be treated as having or ever having had the effect, directly or indirectly, of invalidating, impairing or otherwise adversely affecting any title to land granted before or after the commencement of this Act.

8. *COMPENSATION*

(1) Subject to this section, the Commonwealth is liable to pay to a person who had, by virtue of a customary title to land (being a specie of property that was acquired before or after the commencement of this Act by any person as a result of section 6), such compensation as is agreed on between the Commonwealth and the person or, if agreement cannot be reached, compensation on just terms determined in an action by the person against the Commonwealth in the Supreme Court of the Northern Territory.

(2) A person is not entitled to compensation under this section unless, within 12 months after the commencement of this Act or the date of the acquisition, whichever is the later, the person lodges with the Administrator a claim in writing for compensation in respect of the title to land acquired, specifying the land in relation to which the claim is made, the nature of the title to the land, the date (whether before or after the commencement of this Act) it is alleged the acquisition occurred, the amount of compensation claimed, and the person's address in the Territory for service.

(3) If, at any time after a person has lodged a claim under this section, the Administrator serves on the person a notice in writing that the Administrator is satisfied that no agreement, or no further agreement, can be reached in respect of the claim, an action by the

Confirmation of Titles to Land (Request)

person against the Commonwealth under this section for compensation in respect of the title to the land claimed by virtue of customary title shall not be instituted later than one month after service of the notice.

(4) Where an action has been instituted under this section in the Supreme Court of the Northern Territory and, on application by the Commonwealth for an order under this subsection the Court is not satisfied that the person claiming compensation is diligently prosecuting the action, the Court may dismiss the action for want of prosecution.

(5) Where an action brought by a person is dismissed under subsection (4), no further action by the person lies in relation to any title to the land claimed by virtue of customary title.

(6) No appeal lies from the decision of the Supreme Court of the Northern Territory in an action under this section.

(7) A notice by the Administrator for the purposes of this section may be served by post on the claimant at the claimant's address in the Northern Territory for service set out in the claim lodged with the Administrator.

(8) For the purposes of this section, and notwithstanding section 34 of the *Interpretation Act* of the Northern Territory, the Administrator shall not act except with and in accordance with the advice of the Commonwealth.

