

Queensland



**NATIVE TITLE  
(QUEENSLAND) STATE  
PROVISIONS ACT 1998**

**Act No. 30 of 1998**



# Queensland



## NATIVE TITLE (QUEENSLAND) STATE PROVISIONS ACT 1998

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Queensland



# **Native Title (Queensland) State Provisions Act 1998**

## **Act No. 30 of 1998**

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**An Act to amend the *Native Title (Queensland) Act 1993*, and for related purposes**

*[Assented to 3 September 1998]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

**1.** This Act may be cited as the *Native Title (Queensland) State Provisions Act 1998*.

### **Commencement**

**2.(1)** This Act commences on a day to be fixed by proclamation.

**(2)** However, if a provision has not commenced under subsection (1) before the day that is 9 months after the commencement of section 2 of the *Native Title Amendment Act 1998* (Cwlth), the provision commences on that day.

## **PART 2—AMENDMENT OF NATIVE TITLE (QUEENSLAND) ACT 1993**

### **Act amended in pt 2**

**3.** This part amends the *Native Title (Queensland) Act 1993*.

### **Amendment of s 3 (Objects of Act)**

**4.** Section 3(1)(d) and (2)(a), after ‘past acts’—

*insert—*

‘, and intermediate period acts,’.



**Replacement of s 4 (Definitions)**

5. Section 4—

*omit, insert—*

**‘Definitions**

‘4. In this Act—

“**Commonwealth Native Title Act**” means the *Native Title Act 1993* (Cwlth).

“**NTA**”, in a section heading, means the Commonwealth Native Title Act.

“**State mining Act**” means any of the following Acts—

- *Mineral Resources Act 1989*
- *Petroleum Act 1923*
- an Act prescribed by regulation.

“**Wardens Court**” means a Wardens Court established under the *Mineral Resources Act 1989*.’.

**Amendment of s 7 (Object of Part)**

6.(1) Section 7(b)—

*renumber* as section 7(c).

(2) Section 7—

*insert—*

‘(b) validate, under section 22F of the Commonwealth Native Title Act, intermediate period acts attributable to the State;<sup>1</sup> and’.

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<sup>1</sup> For what is an “**intermediate period act**”, see the *Native Title Act 1993* (Cwlth), section 232A. There are 4 categories of intermediate period acts, called category A, B, C and D intermediate period acts. They are defined in sections 232B to 232E and deal with a number of things, including leasehold and freehold interests in land, other interests in land and waters, and public works.

**Insertion of new s 8A**

7. After section 8—

*insert—*

**‘Validation of intermediate period acts attributable to State**

‘**8A.** Every intermediate period act attributable to the State is valid, and is taken always to have been valid.’

**Amendment of s 9 (Application of remaining provisions of Part)**

**8.(1)** Section 9(1), from ‘apply’—

*omit, insert—*

‘apply—

- (a) to a past act attributable to the State that is validated by section 8; and
- (b) to an intermediate period act attributable to the State that is validated by section 8A.’

**(2)** Section 9(2) and (3)—

*omit.*

**Amendment of pt 2, div 2 hdg (Effect of validation on native title)**

**9.** Part 2, division 2, heading, after ‘*validation*’—

*insert—*

‘*of past acts*’.

**Insertion of new pt 2, div 2A**

**10.** After section 13—

*insert—*

*‘Division 2A—Effect of validation of intermediate period acts on native title*

**‘Category A intermediate period acts dealing with the granting or vesting of certain interests in land or waters**

**‘13AA.(1)** This section applies to a category A intermediate period act within the meaning of section 232B(2), (3) or (4) of the Commonwealth Native Title Act.<sup>2</sup>

**‘(2)** The intermediate period act extinguishes all native title in relation to the land or waters concerned.

**‘Category A intermediate period acts that are public works**

**‘13AB.(1)** This section applies to a category A intermediate period act within the meaning of section 232B(7) of the Commonwealth Native Title Act.

**‘(2)** The intermediate period act extinguishes the native title in relation to the land or waters on which, on completion of its construction or establishment, the public work concerned was or is situated.

**‘(3)** The extinguishment is taken to have happened when the construction or establishment started.

**‘Category B intermediate period acts**

**‘13AC.(1)** This section applies to a category B intermediate period act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned.

**‘(2)** The intermediate period act extinguishes the native title to the extent of the inconsistency.

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<sup>2</sup> Section 232B (Category A intermediate period acts).

**‘Category C and D intermediate period acts**

**‘13AD.(1)** This section applies if an intermediate period act is a category C or D intermediate period act.

**‘(2)** The non-extinguishment principle applies to the intermediate period act.<sup>3</sup>

**‘Sections 13AA to 13AD apply subject to registered indigenous land use agreements**

**‘13AE.** Sections 13AA to 13AD apply subject to section 24EBA(6) of the Commonwealth Native Title Act.<sup>4</sup>

*‘Division 2B—Effect of extinguishment under division 2 or 2A’.*

**Amendment of s 13A (Effect of extinguishment (s 15(2) NTA))**

**11.** Section 13A, ‘this Division’—

*omit, insert—*

‘division 2 or 2A’.

**Amendment of pt 2, div 3 hdg (Other effects of validation)**

**12.** Part 2, division 3, heading, after ‘*validation*’—

*insert—*

‘*under division 2 or 2A*’.

<sup>3</sup> For category C intermediate period acts, the State must also comply with the *Native Title Act 1993* (Cwlth) section 22H (Requirement to notify: mining rights).

<sup>4</sup> Section 24EBA (Effect of registration on previous acts covered by indigenous land use agreements)

**Amendment of s 14 (Preservation of beneficial reservations and conditions (NTA, ss.18 and 15))**

**13.(1)** Section 14, heading, ‘**conditions**’—

*omit, insert—*

‘**conditions—past acts**’.

**(2)** Section 14(2), ‘of native title’—

*omit, insert—*

‘of past acts on native title’.

**Insertion of new s 14A**

**14.** After section 14—

*insert—*

**‘Preservation of beneficial reservations and conditions—intermediate period acts**

**‘14A.(1)** This section applies if—

- (a) an intermediate period act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of an intermediate period act attributable to the State 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.

**‘(2)** Division 2A does not affect a reservation or condition mentioned in subsection (1)(a) or rights or interests mentioned in subsection (1)(b).’.

**Replacement of s 15 (Compensation (NTA, ss.19 and 16))**

**15.** Section 15—

*omit, insert—*

**‘Compensation**

**‘15.(1)** Under the Commonwealth Native Title Act, native title holders are, subject to that Act, entitled to compensation because of the validation by this Act of past acts and intermediate period acts attributable to the State.

**‘(2)** The compensation is payable by the State.’.

**Amendment of s 18A (Effect of confirmation under Part (s 212(3) NTA))**

**16.** Section 18A, ‘or impair’—

*omit.*

**Replacement of pts 4–10**

**17.** Parts 4 to 10—

*omit, insert—*

**‘PART 4—CONFIRMATION OF TOTAL OR  
PARTIAL EXTINGUISHMENT OF NATIVE TITLE BY  
PARTICULAR PREVIOUS ACTS*****‘Division 1—Objects*****‘Objects of pt 4**

**‘19.** The objects of this part are—

- (a) to confirm the total extinguishment of native title by previous exclusive possession acts attributable to the State;<sup>5</sup> and

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<sup>5</sup> For the authorising provision, see the *Native Title Act 1993* (Cwlth) section 23E (Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory). For what is a “**previous exclusive possession act**”, see section 23B NTA.

- (b) to confirm the partial extinguishment of native title by previous non-exclusive possession acts attributable to the State.<sup>6</sup>

*Division 2—Confirmation of extinguishment or partial extinguishment*

**‘Confirmation of extinguishment of native title by certain acts that are not public works**

**‘20.(1)** This section applies to an act that is a previous exclusive possession act under section 23B(2) (including because of section 23B(3)) of the Commonwealth Native Title Act.<sup>7</sup>

**‘(2)** The act extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest<sup>8</sup> or lease concerned.

**‘(3)** The extinguishment is taken to have happened when the act was done.

**‘Confirmation of extinguishment of native title by certain acts that are public works**

**‘21.(1)** This section applies to an act that is a previous exclusive possession act under section 23B(7) of the Commonwealth Native Title Act.

**‘(2)** The act extinguishes native title in relation to the land or waters on which, on completion of its construction or establishment, the public work concerned was or is situated.

**‘(3)** The extinguishment is taken to have happened when the construction or establishment of the public work started.

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<sup>6</sup> For the authorising provision of the *Native Title Act 1993* (Cwlth), see section 23I (Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory). For what is a **“previous non-exclusive possession act”**, see section 23F of the *Native Title Act 1993* (Cwlth).

<sup>7</sup> *Native Title Act 1993* (Cwlth), section 23B (Previous exclusive possession act)

<sup>8</sup> **“Scheduled interest”** is defined in s 249C of the *Native Title Act 1993* (Cwlth).

**‘Other extinguishment provisions do not apply**

‘22. If section 20 or 21 applies to an act, sections 10 to 13AE do not apply to the act.

**‘Confirmation of partial extinguishment of native title by previous non-exclusive possession acts**

‘23.(1) Subject to subsection (2), if a previous non-exclusive possession act is attributable to the State—

- (a) to the extent that the act involves the grant of rights and interests that are not inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned, the rights and interests granted, and the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them; and
- (b) to the extent that the act involves the grant of rights and interests that are inconsistent with native title rights and interests in relation to the land or waters covered by the lease concerned—
  - (i) if, apart from this Act, the act extinguishes the native title rights and interests—the native title rights and interests are extinguished; and
  - (ii) in any other case—the native title rights and interests are suspended while the lease concerned, or the lease as renewed, remade, regranted, or extended, is in force; and
- (c) any extinguishment under this subsection is taken to have happened when the act was done.

‘(2) This section does not apply if the act is the grant of a pastoral lease or an agricultural lease to which section 10<sup>9</sup> applies.

‘(3) If this section applies to an act, sections 10 to 13AE do not apply to the act.

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<sup>9</sup> Section 10 (Category A past acts that are not public works (*Native Title Act 1993* (Cwlth), ss 18 and 14(a))



***Division 3—Effect of confirmation of total or partial extinguishment of native title***

**‘Preservation of beneficial reservations and conditions**

**‘24.(1) If—**

- (a) a previous exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of a previous exclusive possession act attributable to the State 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;

neither section 20 or 21 affects the reservation or condition or the rights or interests.

**‘(2) If—**

- (a) a previous non-exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or
- (b) the doing of a previous non-exclusive possession act attributable to the State 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;

section 23 does not affect the reservation or condition or the rights or interests.

**‘Confirmation of validity of use of certain land held by State etc.**

**‘25.** To remove doubt, it is declared that if an act is a previous exclusive possession act because of section 23B(9C)(b) of the Commonwealth Native

Title Act, the use of the land or waters concerned as mentioned in that paragraph is valid.<sup>10</sup>

### **‘Notification**

‘26. For a previous non-exclusive possession act to which section 23F(3)(c)(ii) of the Commonwealth Native Title Act applies—

- (a) notice must be given, in the way decided in writing by the Commonwealth Minister, to any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters that will be affected by the act about the doing or proposed doing of the act, or acts of that class, in relation to the land or waters concerned; and
- (b) the persons given notice must be given an opportunity to comment on the act or class of acts.<sup>11</sup>

### **‘Compensation**

‘27.(1) Under the Commonwealth Native Title Act, native title holders are, subject to that Act, entitled to compensation for any extinguishment under this part of their native title rights and interests.

‘(2) However, the native title holders are entitled to compensation only to the extent, if any, that the native title rights and interests were not extinguished otherwise than under this Act.

‘(3) The compensation is payable by the State.’

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<sup>10</sup> For the authorising provision, see section 23E of the *Native Title Act 1993* (Cwlth) (Confirmation of extinguishment of native title by previous exclusive possessive acts of State or Territory).

<sup>11</sup> For the authorising provision see section 23I of the *Native Title Act 1993* (Cwlth) (Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory).

**Replacement of ss 144–144B**

**18.** Sections 144, 144A and 144B—

*omit, insert—*

**‘Declaration about compulsory acquisitions**

**‘144.(1)** A compulsory acquisition Act, in relation to land or waters to which it applies, is taken to expressly permit both—

- (a) the compulsory acquisition by the State of native title rights and interests; and
- (b) the compulsory acquisition by the State of non-native title rights and interests in relation to the land or waters.

**‘(2)** In this section—

**“compulsory acquisition Act”** means each of the following Acts—

- *Acquisition of Land Act 1967*
- *Electricity Act 1994*
- *State Development and Public Works Organization Act 1971*
- *Transport (Gladstone East End to Harbour Corridor) Act 1996*
- *Transport Planning and Coordination Act 1994.*’

**Omission of pt 12, div 2 (Compulsory acquisition)**

**19.** Part 12, division 2—

*omit.*

**Omission of pts 13–14**

**20.** Parts 13 and 14—

*omit.*

**PART 3—OTHER ACTS AMENDED****Other Acts amended**

21. The schedule amends each Act mentioned in it.

**SCHEDULE****OTHER ACTS AMENDED**

section 21

**ABORIGINAL LAND ACT 1991****1. Section 119(a)(iv)—***omit.***FOSSICKING ACT 1994****1. Section 11(4), definition “registered native title body corporate”,  
‘Native Title (Queensland) Act 1993’—***omit, insert—**‘Native Title Act 1993 (Cwlth)’.***LAND ACT 1994****1. Section 29(1), ‘a native title register’—***omit, insert—**‘the native title register’.***2. Section 29(2)—***omit, insert—**‘(2) In this section—*

## SCHEDULE (continued)

**“native title register”** means the National Native Title Register under the *Native Title Act 1993* (Cwlth).’.

**TORRES STRAIT ISLANDER LAND ACT 1991****1. Section 116(a)(iv)—**

*omit.*