



Native Title (Queensland) Act 1993

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Reprint note

Sections 25 to 27 were incorrectly omitted from an earlier version of this reprint due to an incorrect code that set the status of the provisions as repealed.

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Queensland

Native Title (Queensland) Act 1993

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Native Title (Queensland) Act 1993

An Act about native title

Preamble

- (1) Before European settlement, land in what is now the State of Queensland had been occupied, used and enjoyed since time immemorial by Aboriginal people in accordance with Aboriginal tradition, and was occupied, used and enjoyed by Torres Strait Islanders in accordance with Island custom.
- (2) Land is of spiritual, social, historical, cultural and economic importance to Aboriginal people and Torres Strait Islanders.
- (3) After European settlement many Aboriginal people were dispossessed and dispersed.
- (4) However, some Aboriginal people and many Torres Strait Islanders have maintained their ancestors' traditional or customary affiliation with particular areas.
- (5) The High Court of Australia has—
 - rejected the doctrine that Australia was terra nullius (land belonging to no-one) at the time of European settlement; and
 - held that the common law of Australia recognises native title rights of Australia's indigenous inhabitants; and
 - held that native title is extinguished by valid government acts that are inconsistent with the continued existence of native title rights and interests, such as the grant of freehold or leasehold estates.
- (6) The Commonwealth Government has proposed legislation to provide a national scheme for the recognition and protection of native title and for its coexistence with the existing land management systems.

- (7) It is the intention of the Parliament that Queensland should participate in the national scheme proposed by the Commonwealth Government.

Part 1 Preliminary

1 Short title

This Act may be cited as the *Native Title (Queensland) Act 1993*.

2 Commencement

- (1) This Act (including subsections (3) and (4) of this section) commences on a day to be fixed by proclamation.
- (2) Section 15C(1) of the *Acts Interpretation Act 1954* does not apply to subsections (3) and (4) of this section.
- (3) The following sections are taken to have commenced immediately after the commencement of section 1.03 of the *Aboriginal Land Act 1991*—
- section 157 (Amended Act)
 - section 158 (Amendment of s.1.03 (Definitions))
 - section 159 (Insertion of new s.1.04A (Meaning of *native title interests*))
 - section 160 (Amendment of s.2.13 (Lands that are available Crown land—general))
 - section 161 (Amendment of s.3.06 (Existing interests))
 - section 162 (Amendment of s.5.08 (Existing interests)).
- (4) The following sections are taken to have commenced immediately after the commencement of section 1.04 of the *Torres Strait Islander Land Act 1991*—
- section 165 (Amended Act)
 - section 166 (Amendment of s.1.04 (Definitions))

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- section 167 (Insertion of new s.1.05A (Meaning of *native title interests*))
 - section 168 (Amendment of s.2.10 (Lands that are available Crown land—general))
 - section 169 (Amendment of s.3.06 (Existing interests))
 - section 170 (Amendment of s.5.08 (Existing interests)).

3 Objects of Act

- (1) The main objects of the Commonwealth Native Title Act are—
 - (a) to provide for the recognition and protection of native title; and
 - (b) to establish ways in which future dealings affecting native title may proceed and to set standards for the dealings; and
 - (c) to establish a mechanism for determining claims to native title; and
 - (d) to provide for, or permit, the validation of past acts, and intermediate period acts, invalidated because of the existence of native title.
- (2) The main objects of this Act are—
 - (a) in accordance with the Commonwealth Native Title Act, to validate past acts, and intermediate period acts, invalidated because of the existence of native title and to confirm certain rights; and
 - (b) to ensure that Queensland law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title.

4 Definitions

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*
- *Petroleum and Gas (Production and Safety) Act 2004*
- an Act prescribed by regulation.

5 Words and expressions used in Commonwealth Native Title Act

- (1) Words and expressions used in the Commonwealth Native Title Act and this Act have the same meanings in this Act as they have in the Commonwealth Native Title Act.

Editor's note—

Section 222 of the Commonwealth Native Title Act sets out a list of definitions used in that Act.

- (2) Subsection (1) applies except so far as the context or subject matter otherwise indicates or requires.
- (3) However, subsection (1) does not apply to a word or expression defined in section 4 (Definitions).

6 Act binds all persons

This Act binds all persons, including the State.

Part 2 Validation and its effects

Division 1 General

7 Object of part

- (1) The object of this part is to—
- (a) validate, under section 19 of the Commonwealth Native Title Act, past acts attributable to the State; and

Editor's note—

An **act** is defined in the Commonwealth Native Title Act, section 226.

A **past act** is defined in the Commonwealth Native Title Act, section 228.

An act **attributable** to the State is defined in the Commonwealth Native Title Act, section 239.

- (b) validate, under section 22F of the Commonwealth Native Title Act, intermediate period acts attributable to the State; and

Editor's note—

For what is an **intermediate period act**, see the Commonwealth Native Title Act, 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.

- (c) provide for the effects of the validation.
- (2) The object of this part is also to validate, under section 24EBA(3) of the Commonwealth Native Title Act, certain future acts.

8 Validation of past acts attributable to State

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

8A Validation of intermediate period acts attributable to State

Every intermediate period act attributable to the State is valid, and is taken always to have been valid.

9 Application of remaining provisions of part

The remaining provisions of this part, other than division 4, 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.

Division 2 Effect of validation of past acts on native title

10 Category A past acts that are not public works

- (1) This section applies if the past act is a category A past act, but is not a category A past act to which section 229(4) (which deals with public works) of the Commonwealth Native Title Act applies.

Editor's note—

Category A past act is defined in the Commonwealth Native Title Act, section 229. This category covers freehold grants, some leasehold grants (commercial, agricultural, pastoral and residential leases) and public works. *Lease* and the various types of leases are defined in the Commonwealth Native Title Act, sections 242 to 249B. *Public work* is defined in the Commonwealth Native Title Act, section 253.

- (2) The past act extinguishes native title.

11 Category A past acts that are public works

- (1) This section applies if the past act is a category A past act to which section 229(4) of the Commonwealth Native Title Act applies.

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

12 Inconsistent category B past acts

- (1) This section applies if the past act is a category B past act that is wholly or partly inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests concerned.

Editor's note—

Category B past act is defined in the Commonwealth Native Title Act, section 230. This category covers leasehold grants (other than leases that are category A past acts and mining leases).

- (2) The past act extinguishes the native title to the extent of the inconsistency.

13 Category C and D past acts

- (1) This section applies if the past act is a category C or D past act.

Editor's note—

Category C past act is defined in the Commonwealth Native Title Act, section 231. This category deals with the grant of mining leases. **Mining lease** is defined in the Commonwealth Native Title Act, section 245 and **mine** in the Commonwealth Native Title Act, section 253.

Category D past act is defined in the Commonwealth Native Title Act, section 232. It is the residual category of past acts.

- (2) The non-extinguishment principle applies to the past act.

Editor's note—

The effect of the **non-extinguishment principle** is set out in the Commonwealth Native Title Act, section 238.

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

13AA Category A intermediate period acts dealing with the granting or vesting of certain interests in land or waters

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

13AB Category A intermediate period acts that are public works

- (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.

13AC Category B intermediate period acts

- (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.

13AD Category C and D intermediate period acts

- (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.

Editor's note—

For category C intermediate period acts, the State must also comply with the Commonwealth Native Title Act, section 22H (Requirement to notify: mining rights).

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

Sections 13AA to 13AD apply subject to section 24EBA(6) of the Commonwealth Native Title Act.

Division 2B Effect of extinguishment under division 2 or 2A

13A Effect of extinguishment

An extinguishment under division 2 or 2A does not by itself confer a right to eject or remove any Aboriginal persons who may 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 division 2 or 2A.

Division 3 Other effects of validation under division 2 or 2A

14 Preservation of beneficial reservations and conditions—past acts

- (1) This section applies if—
- (a) the past act contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders;
or
 - (b) the doing of the past 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).

- (2) Division 2 (Effect of validation of past acts on native title) does not affect a reservation or condition mentioned in subsection (1)(a) or rights or interests mentioned in subsection (1)(b).

14A Preservation of beneficial reservations and conditions—intermediate period acts

- (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).

15 Compensation

- (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.

Division 4 Validation of certain future acts

15A Effect of registration on previous acts covered by indigenous land use agreements (NTA, s 24EBA(1) and (3))

- (1) This section applies if—
 - (a) details are on the Register of Indigenous Land Use Agreements of an agreement that includes a statement to the effect that the parties agree to—
 - (i) the validating of a particular future act (other than an intermediate period act), or future acts (other than intermediate period acts) included in classes, that have already been done invalidly; or
 - (ii) the validating, subject to conditions, of a particular future act (other than an intermediate period act), or of future acts (other than intermediate period acts) included in classes, that have already been done invalidly; and
 - (b) the future act or class of acts is attributable to the State; and
 - (c) the State is a party to the agreement; and
 - (d) if, under the agreement or otherwise, a person other than the Crown in right of the Commonwealth, a State or a Territory is or may become liable to pay compensation in relation to the act or class of acts—that person is a party to the agreement.
- (2) If this section applies in relation to a future act, the act is valid, and is taken always to have been valid.
- (3) If this section applies in relation to a class of future acts, all acts included in the class are valid, and are taken always to have been valid.

Part 3 Confirmation of certain rights

16 Object of part

The object of this part is to confirm, in accordance with section 212 (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act—

- (a) the ownership of natural resources and certain water and fishing access rights; and
- (b) public access to and enjoyment of beaches and certain other places.

17 Confirmation of ownership of natural resources etc.

- (1) The existing ownership of all natural resources owned by the State is confirmed.
- (2) All existing rights of the State to use, control and regulate the flow of water are confirmed.
- (3) All existing fishing access rights under State law are confirmed to prevail over other public or private fishing rights.

Examples for subsection (1)—

Example 1—Minerals and petroleum

With the exception of minerals on certain freehold titles granted between 1860 and 1910, the State owns all minerals (e.g. bauxite, coal and gold) and petroleum in Queensland—see s 8 *Mineral Resources Act 1989* and earlier provisions and s 9 *Petroleum Act 1923* and s 26 *Petroleum and Gas (Production and Safety) Act 2004*. This ownership is confirmed by subsection (1).

Example 2—Quarry material

The State owns quarry material on certain lands in Queensland, including all Crown lands—see s 45 *Forestry Act 1959*. This ownership is confirmed by subsection (1).

Example 3—Fauna

With limited exceptions, the State owns all indigenous fauna in Queensland—see s 7 *Fauna Conservation Act 1974*. This ownership is confirmed by subsection (1).

18 Confirmation of access to beaches etc.

Existing public access to and enjoyment of the following places is confirmed—

- (a) waterways;
- (b) beds and banks or foreshores of waterways;
- (c) coastal waters;
- (d) beaches;
- (da) stock routes;
- (e) areas that were public places at the end of 31 December 1993.

18A Effect of confirmation under part

Under section 212(3) (Confirmation of ownership of natural resources, access to beaches etc.) of the Commonwealth Native Title Act, a confirmation under this part does not extinguish 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.

Part 4 Confirmation of total or partial extinguishment of native title by particular previous acts**Division 1 Objects****19 Objects of pt 4**

The objects of this part are—

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

Editor's note—

For the authorising provision, see the Commonwealth Native Title Act, 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 the Commonwealth Native Title Act, section 23B.

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

Editor's note—

For the authorising provision of the Commonwealth Native Title Act, see the Commonwealth Native Title Act, 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 the Commonwealth Native Title Act, section 23F.

Division 2 Confirmation of extinguishment or partial extinguishment

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

- (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.
- (2) The act extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned.

Editor's note—

Scheduled interest is defined in section 249C of the Commonwealth Native Title Act.

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

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

- (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.

22 Other extinguishment provisions do not apply

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

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

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

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

24 Preservation of beneficial reservations and conditions

- (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.

25 Confirmation of validity of use of certain land held by State etc.

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.

Editor's note—

For the authorising provision, see the Commonwealth Native Title Act, section 23E (Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory).

26 Notification

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.

Editor's note—

For the authorising provision see the Commonwealth Native Title Act, section 23I (Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory).

27 Compensation

- (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.

Part 11 Miscellaneous

144 Compulsory acquisition of native title

- (1) The power of compulsory acquisition under a compulsory acquisition Act includes—
 - (a) power to compulsorily acquire, for the purposes of the compulsory acquisition Act, native title rights and interests in relation to any land or waters; and
 - (b) if native title rights and interests are compulsorily acquired in relation to land or waters, power to compulsorily acquire at the same time any non-native title rights and interests in relation to the land or waters.
- (2) To remove any doubt, it is declared that—
 - (a) native title rights and interests in relation to any land may be acquired under a compulsory acquisition Act even though the Act would not otherwise apply to the land; and

-
- (b) all non-native title rights and interests in relation to the land may be acquired in accordance with subsection (1)(b) under a compulsory acquisition Act even though the Act would not otherwise apply to the land.

Examples—

- 1 As a result of the operation of subsection (2)(a), native title rights and interests in relation to unallocated State land under the *Land Act 1994* may be acquired under the *Acquisition of Land Act 1967* even though the *Acquisition of Land Act 1967* would not otherwise apply to the unallocated State land.
 - 2 As a result of the operation of subsection (2)(b), if native title rights and interests in relation to particular unallocated State land are acquired under the *Acquisition of Land Act 1967*, all non-native title rights and interests in relation to that unallocated State land may also be acquired at the same time under the *Acquisition of Land Act 1967* even though the *Acquisition of Land Act 1967* would not otherwise apply to the unallocated State land.
- (3) Subsection (2) does not limit subsection (1).
- (3A) Subsections (3B) and (3C) apply if—
- (a) native title rights and interests in relation to land or waters are acquired under a compulsory acquisition Act; and
 - (b) the holders of the rights and interests are entitled to compensation under the Commonwealth Native Title Act for the acquisition.
- (3B) If the person who acquires the rights and interests is not the State, that person is liable to pay the compensation.
- (3C) However, the State is liable to pay the compensation if, when the compensation is required to be paid, it is not reasonably practicable for the holders to otherwise recover the compensation.

Note—

See the *Native Title Act 1993* (Cwlth), section 24MD(4)(b)(i) in relation to the recovery of compensation.

- (4) In this section—

compulsory acquisition Act means an Act, other than the *Land Act 1994*, providing for compulsory acquisition in relation to land or waters, including, for example, any of the following—

- *Acquisition of Land Act 1967*
- *Electricity Act 1994*
- *Petroleum and Gas (Production and Safety) Act 2004*
- *State Development and Public Works Organisation Act 1971*
- *Transport Planning and Coordination Act 1994*.

145 Regulation-making power

The Governor in Council may make regulations under this Act.

146 Section headings—Commonwealth Native Title Act

A reference in a section heading to a provision of the Commonwealth Native Title Act does not form part of this Act.