

**1999**

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**NATIVE TITLE (AMENDMENT) BILL 1999**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Gary Humphries MLA, Minister for Justice and Community Safety**

## **NATIVE TITLE AMENDMENT BILL 1999**

### **Background to the Bill**

#### **The High Court's *Mabo* decision**

A majority of the High Court decided in the *Mabo* case (*Mabo v Queensland (No. 2)* (1992) 175 CLR 1) that the common law of Australia recognises a form of native title. The High Court explained that native title can continue to exist in accordance with the laws and customs of indigenous people:

- where those people have maintained their traditional connection with the land; and
- where their title has not been extinguished by acts of Imperial, Colonial, State, Territory or Commonwealth governments.

#### **The Commonwealth Native Title Act 1993**

In response to the implications of the High Court's decision for land management in Australia and concerns that some acts done over land in Australia may have been done invalidly because they affected pre-existing native title interests in a manner contrary to the *Racial Discrimination Act 1975 (Cwlth)*, the Commonwealth Parliament enacted the *Native Title Act 1993 (Cwlth)*.

That Act came into force on 1 January 1994 and, in summary, it:

- recognised native title rights and set down some basic principles in relation to native title in Australia;
- provided for the validation of past acts which may be invalid because of the existence of native title;
- provided for a future act regime in which native title rights are protected and conditions are imposed on acts affecting native title land and waters; and
- provided a process by which native title rights can be established and compensation determined, and by which determinations can be made as to whether future grants can be made or acts done over native title land and waters.

The validation provisions in the Commonwealth *Native Title Act 1993* validated past Commonwealth acts and enabled the States and Territories to pass similar legislation to validate any invalid past acts done by those States and Territories. All the States and Territories have done so, with the ACT including validation provisions in its *Native Title Act 1994*.

#### **The effect of the *Wik* decision**

On 23 December 1996, the High Court in the *Wik* decision (*Wik Peoples v Queensland (1996) 187 CLR 1*) found that native title could continue to co-exist with some statutory tenures, such as some types of pastoral leases. The types of tenures which may co-exist with native title are those where the legislation under

which the tenures are granted shows no intention to confer exclusive possession on the tenure holder. In the *Wik* case, the High Court found that the pastoral leases in question would not be regarded by the common law as “leases” and did not confer a right of exclusive possession on the pastoral lessee.

Before the *Wik* decision, it was assumed that comments in the *Mabo* decision to the effect that leases extinguish native title would mean that pastoral leases had extinguished native title over much of mainland Australia. Governments in Australian jurisdictions proceeded to do various acts over areas covered by pastoral leases on the assumption that since native title no longer existed in those areas there was no need to follow the processes in the *Commonwealth Native Title Act 1993* for doing those acts. The *Wik* decision showed that assumption was wrong, with the result that some acts done after the commencement of the Commonwealth’s legislation on 1 January 1994 could be invalid because they did not comply with that legislation.

### **The Commonwealth’s 1998 amendments**

The Commonwealth decided to amend its native title legislation to address issues arising from the *Wik* decision and other native title cases. The *Native Title Amendment Act 1998 (Cwlth)* was passed in 1998 after a lengthy debate in the Commonwealth Parliament. Among other matters the Commonwealth’s amendments enable the States and Territories to pass legislation to validate certain acts, known as “intermediate period acts”. These are acts done between 1 January 1994 and the date of the *Wik* decision which may have been invalid because, contrary to what was believed at that time, native title had not been extinguished in those areas. The new Commonwealth legislation also enables the States and Territories to confirm the effect of certain types of acts, including validated acts, on native title to avoid the need for litigation about the effect on native title of each interest granted or act done since settlement and to confirm that certain rights to use stock routes can continue to be exercised.

### **Outline of amendments in the Native Title (Amendment) Bill 1999**

The Government believes that to be consistent with the position taken by the Legislative Assembly in the Preamble to the *Native Title Act 1994*, it is appropriate that the Territory continues to participate in the national scheme as amended by the Commonwealth’s *Native Title Amendment Act 1998*.

The Native Title (Amendment) Bill 1999 amends the *Native Title Act 1994*, as permitted by the Commonwealth legislation, to include new provisions dealing with the validation of intermediate period acts, confirming the effects of certain types of acts and confirming rights to use stock routes. The Bill also makes a number of consequential amendments to the Preamble and other provisions in the *Native Title Act 1994* to reflect the inclusion of the new provisions.

### **Financial Implications**

The Commonwealth’s native title legislation provides for compensation to be paid to native title holders if their native title rights are affected by the new validation or confirmation provisions. As was the case with the validation provisions contained in

the Commonwealth's *Native Title Act 1993*, the new validation and confirmation provisions in the Commonwealth legislation make it clear that if the Territory enacts complementary validation and confirmation legislation it will become liable to pay any compensation entitlements that might arise under the Commonwealth legislation for acts attributable to the Territory. The Commonwealth Government has offered all States and Territories financial assistance, amounting to 75% of the liability incurred, in relation to compensation liabilities arising under the Commonwealth's native title legislation.

It is considered extremely unlikely that the new validation or confirmation provisions will in fact affect any native title rights in the Territory that have not already been extinguished, so the amendments in the Bill are not expected to result in any additional liability for the Territory.

#### **Format of Explanatory Memorandum**

The provisions in the Bill must be consistent with the Commonwealth's provisions if they are to be valid. For that reason, several clauses in the Bill refer to relevant provisions of, and terms used in, the amended Commonwealth *Native Title Act 1993*. To assist in the understanding of the Bill, this Memorandum includes short margin notes which indicate the provisions in the Commonwealth legislation which are relevant to the clauses in the Bill being discussed in the adjoining text. To provide further assistance in understanding the effect of the provisions in the Bill, the paragraphs shaded in grey contain brief explanations of the meaning or effect of relevant provisions or terms in the Commonwealth legislation and parts of tables shaded in grey deal with Commonwealth provisions.

The electronic version of this Explanatory Memorandum is available at the address below and contains links to the High Court's *Mabo* and *Wik* decisions, the Commonwealth's native title legislation and the ACT *Native Title Act 1994*.

**<http://www.dpa.act.gov.au/ag>**

## **Notes on Clauses**

### **Clause 1     Short title**

This clause explains that when the Bill becomes an Act, it will be known as the *Native Title (Amendment) Act 1999*.

### **Clause 2     Commencement**

The Bill, once enacted, will commence when a notice of the enactment is published in the *Gazette*.

### **Clause 3     Principle Act**

This clause makes it clear that whenever a provision in the Bill uses the term "Principal Act", that term means the *Native Title Act 1994*. This Explanatory Memorandum also uses this term in this way.

## **Overview – Amendments resulting from changes to Commonwealth legislation**

Clauses 4 to 8 are basically consequential on the insertion into the Principal Act of new provisions for validating of intermediate period acts and confirming the effect on native title of particular types of acts known as "previous exclusive possession acts" and "previous non-exclusive possession acts".

### **Clause 4     Preamble**

The current Preamble to the *Native Title Act 1994* provides a brief outline of the background to the enactment of that Act and describes the objects of the national scheme established by the Commonwealth *Native Title Act 1993*. This clause has the effect of inserting a reference to the validation of intermediate period acts in the description of the objects of the national scheme so that the description reflects the changes in that scheme as a result of the Commonwealth's 1998 amendments.

### **Clause 5     Objects**

Section 3 of the Principal Act contains a list of the objects of that Act. The amendment in clause 5 ensures that list of objects includes the validation of intermediate period acts and confirmation of the effects on native title of previous exclusive possession acts and previous non-exclusive possession acts.

### Clause 6 Notes

Some of the provisions to be inserted into the Principal Act by the Bill have notes which refer to relevant provisions in the Commonwealth *Native Title Act 1993*. Clause 6 puts beyond doubt that the purpose of the notes is only to assist readers of the ACT.

### Clause 7 Heading to Part 2

This clause amends the heading to Part 2 of the Principal Act so that it will more accurately reflect the contents of that Part after new provisions are inserted by this Bill.

### Clause 8 Relationship to Commonwealth Native Title Act

This amendment to section 6 in the Principal Act identifies the provisions in the Commonwealth *Native Title Act 1993* which enable the ACT to make its own provisions for validating intermediate period acts and confirming the effect of certain acts on native title.

The Commonwealth provisions which allow the States and Territories to legislate for validation and confirmation require the State and Territory legislation to have the same effect as the Commonwealth legislation. In effect, the Commonwealth provisions are a "template" for State and Territory provisions.

Table 1 lists the Commonwealth provisions which authorise States and Territories to legislate, the Commonwealth "template" provisions and the corresponding ACT provisions as inserted or amended by this Bill.

**Table 1**

Description	Cwith - authorise	Cwith - "template"	ACT equivalent
Validation of intermediate period acts and confirmation of their effects	s.22F	s.22A s.22B s.22C	s.7 s.8A s.9
Confirmation of effect of previous exclusive possession acts	s.23E	s.23C s.23D s.23DA	s.8B s.9 s.8B(4)
Confirmation of effect of previous non-exclusive possession acts	s.23I	s.23G s.23H s.23HA	s.8C s.9 s.8D
Confirmation of public rights	s.212(2)	s.212(2)	s.12

## Overview – Validation of intermediate period acts

The High Court decided in the *Wik* case that native title could co-exist with certain forms of statutory leases if those leases did not confer a right of exclusive possession. Previously it had been believed that leases extinguished native title completely.

The processes in the Commonwealth *Native Title Act 1993* for validly doing acts or granting interests after 1 January 1994 in areas where native title exists are sometimes referred to as the “future act processes”. Between 1 January 1994 and the date of the *Wik* decision (23 December 1996) the future act processes were not followed for acts over areas where native title was believed to have been extinguished, on the basis that the future act processes only need to be followed where native title exists. However, the *Wik* case showed that the belief that native title was always extinguished by pastoral leases was wrong. Doubts then arose about the validity of acts done or interests granted between 1 January 1994 and 23 December 1996 on the basis of a mistaken belief that native title had been extinguished.

The purpose of the validation provisions is to ensure the validity of acts whose validity has been called into doubt as a result of the *Wik* decision. The acts which are validated by the new provisions are known as “intermediate period acts”. It is thought unlikely that there are any “intermediate period acts” in the Territory because, unlike the Queensland pastoral leases, rural leases in the Territory are believed to have extinguished native title completely so acts can be done validly in those areas without following the future act processes. It is, however, appropriate to legislate to remove any uncertainty.

Cwith s. 22A  
and s.22F

### Clause 9 Validation

This amendment has the effect of declaring that any “intermediate period acts” attributable to the Territory are valid.

#### What is an “intermediate period act”?

Section 232A of the Commonwealth *Native Title Act 1993* defines the term “intermediate period act”. In brief, an intermediate period act is an act that was:

- done between 1/1/94 and 23/12/96;
- not a legislative act, other than a legislative act creating an interest in land or reserving land for a particular purpose;
- invalid because native title existed in the area affected by the act; and
- done over an area all or part of which was previously covered by a freehold interest, a lease (but not a mining lease) or a public work.

**What does "attributable" mean**

Section 239 of the Commonwealth *Native Title Act 1993* defines the term "attributable". In brief, an act is attributable to a particular jurisdiction if it was done by:

- the Crown in right of that jurisdiction;
- the Parliament or Legislative Assembly of that jurisdiction; or
- a person acting under a law of that jurisdiction.

**Overview of amendments confirming the effect of certain acts on native title**

The amendments in clauses 10 and 11 deal with the effect of various types of acts, including acts which have been validated, on native title. In order to limit the need for litigation on a case-by-case basis about the effects of individual grants or other acts, the Commonwealth *Native Title Act 1993* was amended to include provisions which state conclusively the effect of particular categories of acts on native title. In this Explanatory Memorandum, provisions which set out the effects of particular acts on native title are referred to as "confirmation provisions".

The Commonwealth confirmation provisions, on which the confirmation provisions in Clauses 10 and 11 are based, generally reflect the common law principles concerning the extinguishment of native title by acts of the Crown set out in previous native title decisions in Australia such as *Mabo* and *Wik*. It is thought extremely unlikely that the confirmation provisions dealing with previous exclusive possession acts and previous non-exclusive possession acts would themselves result in the extinguishment of native title.

The provisions in the Commonwealth *Native Title Act 1993* dealing with the effects of "intermediate period acts" are similar as the provisions in that act which deal with the effect of "past acts" and like those provisions have some potential to affect native title rights adversely. As explained previously, it is unlikely that any intermediate period acts occurred in the Territory.

The Commonwealth *Native Title Act 1993* ensures that native title holders whose native title is adversely affected by the validation or confirmation provisions are eligible for compensation. Where the act giving rise to a compensation liability is attributable to the Territory, the liability will belong to the Territory.

Cwllh  
s.23C(3)  
and  
s.23G(3)

**Clause 10 Extinguishment of native title – past acts**

It is possible that a "past act" is also a "previous exclusive possession act" or a "previous non-exclusive possession act". Section 8 of the Principal



Act deals with the effects of validated "past acts". The amendment made by clause 10 inserts new subsection 8(6) of the ACT *Native Title Act 1994* which has the same effect as subsections 23C(3) and 23G(2) of the Commonwealth *Native Title Act 1993*.

The operation of new subsection 8(6) of the Principle Act is closely linked to new subsections 8A(1) and new subsection 8C(1), which are inserted by clause 11. These provisions have a fairly complicated interaction which is summarised on the following page in Table 2, which explains which ACT provisions will apply to which acts. That Table also lists the corresponding Commonwealth provisions.

Without these provisions a "past act" or an "intermediate period act" could be covered by more than one set of confirmation provisions, which could cause considerable confusion.

**Table 2**

Types of act	ACT	Cwth
"past acts" and "intermediate period acts" which are also "previous exclusive possession acts"	s.8B	s.23C
"past acts" which are also "previous non-exclusive possession acts" <u>except</u> any "past acts" which are the grant of an agricultural or pastoral lease	s.8C	s.23G
"intermediate period acts" which are also "previous non-exclusive possession acts"	s.8C	s.23G
"past acts" which are also "previous non-exclusive possession acts" consisting of the grant of an agricultural or pastoral lease	s.8	s.15(1)(a)
"past acts" which are <u>neither</u> "previous exclusive possession acts" <u>nor</u> "previous non-exclusive possession acts"	s.8	s.15
"intermediate period acts" which are <u>neither</u> "previous exclusive possession acts" <u>nor</u> "previous non-exclusive possession acts"	s.8A	s.22B

#### **Clause 11 Insertion**

This clause inserts new sections 8A to 8D into the Principal Act.

Cwth s.22B

#### **New Section 8A Extinguishment of native title – intermediate period acts**

New section 8A sets out the effects of certain "intermediate period acts" which are attributable to the Territory on native title. This provision uses several terms from the Commonwealth *Native Title Act 1993* which are explained in the shaded paragraphs below.

As Table 2 shows, new section 8A only applies to "intermediate period acts" attributable to the Territory which are neither "previous exclusive possession acts" nor "previous non-exclusive possession acts". Also, a

registered "indigenous land use agreement" can vary the effect of section 8A.

Subject to these exceptions, new section 8A has the effect that:

- Category A intermediate period acts, other than public works, extinguish native title in relation to all the area covered by those acts;
- Category A intermediate period acts which are public works extinguish native title in relation to areas which the public work covers on its completion, and the extinguishment occurs from the date that construction or establishment of the public work started;
- Category B intermediate period acts extinguish native title only to the extent that those acts are inconsistent with native title rights in the same area;
- Category C intermediate period acts and Category D intermediate period acts are covered by the "non-extinguishment principle".

**What is a "Category A intermediate period act"**

Section 232B of the Commonwealth *Native Title Act 1993* explains that a "Category A intermediate period act" is an intermediate period act consisting of the grant or vesting of freehold, "Scheduled interests", other interests conferring a right of exclusive possession and certain types of leases. The leases covered by section 232B are those which, expressly or impliedly, confer a right of exclusive possession. The definition does not apply to grants or interests for Aboriginal or Torres Strait Islander land rights purposes.

**What is a "Category B intermediate period act"**

Section 232C of the Commonwealth *Native Title Act 1993* explains that a "Category B intermediate period act" is an intermediate period act which consists of the grant of a lease which is neither a Category A intermediate period act nor a mining lease. The definition does not apply to grants or interests for Aboriginal or Torres Strait Islander land rights purposes.

**What is a "Category C intermediate period act"**

Section 232D of the Commonwealth *Native Title Act 1993* explains that a "Category C intermediate period act" is an intermediate period act consisting of the grant of a mining lease.

**What is a "Category D intermediate period act"**

Section 232E of the Commonwealth *Native Title Act 1993* explains that intermediate period acts which do not fall into the other categories are "Category D intermediate period acts".

**What does "extinguish" mean**

The term "extinguish" is defined in section 237A of the Commonwealth *Native Title Act 1993*. The definition makes it clear that extinguishment is permanent and that native title cannot be revived once extinguished.

**What is the "non-extinguishment principle"**

This principle is set out in section 238 of the Commonwealth *Native Title Act 1993* and explains the relationship between the acts to which it applies and any native title rights in areas subject to those acts. In brief, where the non-extinguishment principle applies to an act, native title rights and interests are not extinguished by that act. If the act is wholly inconsistent with the native title rights, the native title rights and interests have no effect on that act. If the act is partly inconsistent with the native title rights, the native title rights will have no effect on that act to the extent of the inconsistency. Once the act or its effects no longer exist, the native title rights and interests "revive" in full.

**What is a registered "indigenous land use agreement"**

The Commonwealth *Native Title Act 1993* has new provisions which enable governments, indigenous people who hold or claim native title rights and other parties to make agreements which are related to native title issues. The new provisions explain the types of agreements which are possible and the processes for making and registering such agreements, and they allow an indigenous land use agreement to alter the application or effect of the validation provisions for intermediate period acts.

In brief, a registered indigenous land use agreement is an agreement that:

- was made under sections 24BA, 24CA or 24DA of the Commonwealth *Native Title Act 1993*; and
- has been registered on the Register of Indigenous Land Use Agreements established under section 199A of the Commonwealth *Native Title Act 1993*.

Cwlth s.23B,  
s.23C and  
s.23E

**New Section 8B Extinguishment of native title – previous exclusive possession acts**

This section makes it clear that "previous exclusive possession acts" attributable to the Territory have extinguished native title. The effect of the section is that:

- a "previous exclusive possession act", other than a public work, extinguishes native title in relation to all the area covered by the acts;
- a "previous exclusive possession act" which is a public work extinguishes native title in relation to areas which the public work covers on its completion, and the extinguishment occurs from the date that construction or establishment of the public work started.

It is considered that ACT leases, including rural leases, confer rights of exclusive possession and would be covered by section 8B.

Cwith  
s.23B(9)(1)(b),  
s.23DA and  
s.23E

New subsection 8B(4) ensures that if an act is a "previous exclusive possession act" because it involves the use by the Crown of areas vested in the Crown in circumstances where the vesting itself did not extinguish native title, the use of the area is valid.

Cwith  
s.23JA

Some acts done by New South Wales over areas now within the ACT before the establishment of the ACT will also be covered by section 8B. These include grants of freehold, which covered much of the area in the ACT and which were converted into leasehold when New South Wales surrendered the area to the Commonwealth in 1909. These New South Wales acts are "attributable" to the Territory under section 23JA of the Commonwealth *Native Title Act 1993*.

#### **What is a "previous exclusive possession act"**

Section 23B of the Commonwealth *Native Title Act 1993* defines the term "previous exclusive possession act". It covers certain acts done before 23 December 1996. In summary, the relevant acts are valid or validated: freehold interests, commercial leases, "Scheduled interests", "exclusive agricultural leases", "exclusive pastoral leases", residential leases, community purpose leases, parts of mining leases used for mining communities or residential purposes, other leases and grants or vesting of interests which confer a right of exclusive possession, and public works. Acts which are done for Aboriginal or Torres Strait Islander land rights purposes are not covered by the definition even if they involve the grant of freehold, as those grants are not regarded as being inconsistent with native title rights and interests.

#### **What are "exclusive agricultural leases" and "exclusive pastoral leases"**

Sections 247A and 248A of the Commonwealth *Native Title Act 1993* explain that "exclusive agricultural leases" and "exclusive pastoral leases" are agricultural or pastoral leases which confer a right of exclusive possession on the lessee or which are "Scheduled interests".

#### **What is a "Scheduled interest"**

Section 249C of the Commonwealth *Native Title Act 1993* defines the term "Scheduled interest". In summary, it means an interest listed in Schedule 1 to the Commonwealth *Native Title Act 1993* or covered by a regulation made under section 249C. Acts which are excluded from the definition of "previous exclusive possession act" are not Scheduled interests even if they are listed in Schedule 1.

Schedule 1 does not list any interests created under ACT legislation because it is thought that the other interests listed in section 23B of the Commonwealth *Native Title Act 1993* cover all the various types of interests created under ACT legislation which confer rights of exclusive possession. However, Schedule 1 is still relevant to the ACT. Much of

what is now the ACT was previously covered by interests created under New South Wales legislation, including interests listed in Schedule 1. However, as New South Wales no longer has legislative power over areas in the ACT, the effect of New South Wales "Scheduled interests" can only be confirmed by ACT legislation. This is made clear by section 23JA of the Commonwealth *Native Title Act 1993* which explains that acts before the establishment of the Territory are "attributable" to the Territory.

#### **What is a "public work"**

Section 253 of the Commonwealth *Native Title Act 1993* defines the term "public work". In summary, this term covers things built or established by the Crown in any capacity (including local government or statutory authorities) including: buildings and other fixtures (including memorials); roads, railway and bridges; stock routes; wells and bores and major earthworks. It also applies to buildings on non-leasehold land which are constructed with the authority of the Crown.

*Cw/lt h s.23F,  
s.23G, s.23I*

#### **New Section 8C Extinguishment of native title – previous non-exclusive possession acts**

This section explains the effects of certain "previous non-exclusive possession acts" attributable to the Territory. Pastoral and agricultural leases which have been validated under section 8 are not covered by new section 8C; the effect of those acts is dealt with in section 8.

The basis for new section 8C is the issue of inconsistency between rights and interests created by the Crown and native title rights and interests in the same area. New section 8C confirms that:

- any rights and interests under the previous non-exclusive possession act which are not inconsistent with any native title rights and interests prevail over but do not extinguish the native title rights and interests; and
- any rights and interests under the previous non-exclusive possession act which are inconsistent with native title rights and interests will either:
  - extinguish the native title rights and interests if that is the common law effect; or
  - suspend the native title rights and interests while the previous non-exclusive possession remains in force.

It is not considered likely that any interests created under ACT legislation would be "previous non-exclusive possession acts" but it is conceivable that some New South Wales acts done before the establishment of the ACT may fall into this category. New section 8C would apply to those acts, unless they are covered by section 8. As explained above, only the

ACT can confirm the effect of New South Wales acts done over areas now within the ACT before its establishment.

**What is a "previous non-exclusive possession act"**

Section 23F defines the term "previous non-exclusive possession act". In summary, these are acts:

- done either before 23 December 1996 or as a result of good-faith arrangements made before that date and evidenced in writing;
- consisting of the grant of a non-exclusive pastoral lease or non-exclusive agricultural lease.

**What are "non-exclusive agricultural leases" and "non-exclusive pastoral leases"**

Sections 247B and 248B of the *Commonwealth Native Title Act 1993* define these terms. In summary, these are agricultural or pastoral leases which do not confer a right of exclusive possession and which are not "Scheduled interests".

**What are "agricultural leases" and "pastoral leases"**

Sections 247 and 248 of the *Commonwealth Native Title Act 1993* explain that an agricultural lease is one solely or primarily for agricultural purposes, and a pastoral lease is one solely or primarily for raising or grazing livestock.

Cwith  
s.23HA

#### **New Section 8D Notification**

New section 8D requires the Territory to notify certain persons claiming or holding native title rights, or who are "representative Aboriginal/Torres Strait Islander bodies" about any previous non-exclusive possession acts which are done as a result of good-faith arrangements made before 23 December 1996 and evidenced in writing.

This notification provision is included because it is required by the Commonwealth legislation, however, it is not believed that it will apply to any acts attributable to the Territory.

**What is a "representative Aboriginal/Torres Strait Islander body"**

In brief, this term refers to a body or organisation which has been approved by the Commonwealth Minister to assist and represent native title claimants and other indigenous people within a particular area in native title matters. The Commonwealth provides funding through the Aboriginal and Torres Strait Islander Commission to representative Aboriginal/Torres Strait Islander bodies, including funding for native title litigation.

*Cwlth s.16,  
s.22C,  
s.23D and  
s.23H*

**Clause 12 Preservation of beneficial reservations and conditions**

This clause amends section 9 of the Principal Act, which preserves any conditions and reservations which benefit Aboriginal or Torres Strait islander people and which are contained in validated acts attributable to Territory. The amendment ensures that those types of conditions and reservations are similarly preserved under the new validation and confirmation provisions inserted by the Bill.

*Cwlth  
s.212*

**Clause 13 Confirmation of access to waterways and public places**

This clause amends section 12 of the Principal Act, which protects public access to and use of waterways and public places. The amendment ensures that existing rights to use stock routes are also protected. The ACT has eight stock routes, including links to stock routes in New South Wales.