

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Native Title (Amendment) Bill 1999

A BILL

FOR

An Act to amend the *Native Title Act 1994*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1. **Short title**
This Act may be cited as the *Native Title (Amendment) Act 1999*.
- 5 2. **Commencement**
This Act commences on the day on which it is notified in the *Gazette*.
3. **Principal Act**
In this Act, "Principal Act" means the *Native Title Act 1994*.¹

4. Preamble

The Preamble to the Principal Act is amended by inserting in paragraph 6 (d) “, and intermediate period acts,” after “past acts”.

5. Objects

5 Section 3 of the Principal Act is amended—

(a) by inserting in paragraph (a) “, and intermediate period acts,” after “past acts”; and

(b) by inserting after paragraph (a) the following paragraph:

10 “(ab) to confirm the effect on native title of previous exclusive possession acts and previous non-exclusive possession acts;”.

6. Insertion

After section 5 of the Principal Act the following section is inserted in Part 1:

15 “5A. Notes

A note in the text of this Act is explanatory and is not part of the Act.”.

7. Heading to Part 2

20 The heading to Part 2 of the Principal Act is amended by omitting “PAST”.

8. Relationship to Commonwealth Native Title Act (Cwlth NTA s 19, 22F, 23E and 23I)

Section 6 of the Principal Act is amended by omitting “section 19” and substituting “sections 19, 22F, 23E and 23I”.

25 **9. Validation (Cwlth NTA s 19 and 22F)**

Section 7 of the Principal Act is amended by inserting “, or an intermediate period act,” after “past act”.

10. Extinguishment of native title—past acts (Cwlth NTA s 15)

30 Section 8 of the Principal Act is amended by adding at the end the following subsection:

“(6) This section does not apply to an act if section 8B or 8C applies to the act.”.

11. Insertion

After section 8 of the Principal Act the following sections are inserted:

5 **“8A. Extinguishment of native title—intermediate period acts (Cwlth NTA s 22B)**

“(1) This section applies to an intermediate period act attributable to the Territory (other than an act to which section 8B or 8C applies).

Note “Attributable” is defined in Cwlth NTA s 239, and “intermediate period act” in s 232A.

10 “(2) If it is a category A intermediate period act to which subsection 232B (2), (3) or (4) of the Commonwealth Native Title Act applies, the act extinguishes all native title in relation to the land or waters concerned.

Note “Category A intermediate period act” is defined in Cwlth NTA s 232B, and “extinguish” in s 237A. Cwlth NTA s 232B (2), (3) and (4) deal with things such as the grant or vesting of freehold estates and certain leases.

15 “(3) If it is a category A intermediate period act to which subsection 232B (7) of the Commonwealth Native Title Act applies—

- 20 (a) the act extinguishes the 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; and
(b) the extinguishment is taken to have happened when the construction or establishment began.

Note Cwlth NTA s 232B (7) deals with intermediate period acts that are public works.

25 “(4) If it is 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, the act extinguishes the native title to the extent of the inconsistency.

Note “Category B intermediate period act” is defined in Cwlth NTA s 232C.

30 “(5) If it is a category C intermediate period act or a category D intermediate period act, the non-extinguishment principle applies to it.

Note “Category C intermediate period act” is defined in Cwlth NTA s 232D, “category D intermediate period act” in s 232E, and “non-extinguishment principle” in s 238.

“(6) This section is subject to subsection 24EBA (6) of the Commonwealth Native Title Act.

35 *Note* Cwlth NTA s 24EBA (6) provides that a registered Indigenous Land Use Agreement may change the effect of this section.

“8B. Extinguishment of native title—previous exclusive possession acts (Cwlth NTA s 23C)

“(1) This section applies to a previous exclusive possession act attributable to the Territory.

5 *Note* “Attributable” is defined in Cwlth NTA s 23JA and 239, and “previous exclusive possession act” in s 23B.

“(2) If it is a previous exclusive possession act under subsection 23B (2) of the Commonwealth Native Title Act (including because of subsection 23B (3) of that Act)—

10 (a) the act extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned; and

(b) the extinguishment is taken to have happened when the act was done.

15 *Note* “Extinguish” is defined in Cwlth NTA s 237A. Cwlth NTA s 23B (2) deals with acts other than public works.

“(3) If it is a previous exclusive possession act under subsection 23B (7) of the Commonwealth Native Title Act—

20 (a) the 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; and

(b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

Note Cwlth NTA s 23B (7) deals with public works.

25 “(4) To remove any doubt, if it is a previous exclusive possession act under paragraph 23B (9C) (b) of the Commonwealth Native Title Act, use of the land or waters concerned as mentioned in that paragraph is valid.

Note Cwlth NTA s 23B (9C) (b) deals with grants from the Crown to the Crown.

30 **“8C. Extinguishment of native title—previous non-exclusive possession acts (Cwlth NTA s 23G)**

“(1) This section applies to a previous non-exclusive possession act attributable to the Territory (other than the grant of a pastoral lease or an agricultural lease to which subsection 8 (1) applies).

35 *Note* “Agricultural lease” is defined in Cwlth NTA s 247, “attributable” in s 23JA and 239, “pastoral lease” in s 248, and “previous non-exclusive possession act” in s 23F.

“(2) To the extent that it 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 act prevails over the native title rights and interests but does not extinguish them.

40 *Note* “Extinguish” is defined in Cwlth NTA s 237A.

- “(3) To the extent that it 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—
- 5 (a) if (apart from this Act) the act extinguishes the native title rights and interests—the native title rights and interests are extinguished; and
- (b) 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.
- 10 “(4) Any extinguishment under this section is taken to have happened when the act was done.

“8D. Notification (Cwlth NTA s 23HA)

If subparagraph 23F (3) (c) (ii) of the Commonwealth Native Title Act applies to a previous non-exclusive possession act—

- 15 (a) notice must be given, in the way determined 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
- 20 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) they must be given an opportunity to comment on the act or class of acts.”.

25 *Note* “Previous non-exclusive possession act” is defined in Cwlth NTA s 23F. Cwlth NTA s 23F (3) (c) (ii) deals with previous non-exclusive possession acts that give effect to certain offers etc made before 23 December 1996.

12. Preservation of beneficial reservations and conditions (Cwlth NTA s 16, 22C, 23D and 23H)

Section 9 of the Principal Act is amended—

- 30 (a) by inserting in subsection (1) “, 8A, 8B or 8C” after “section 8”; and
- (b) by inserting in subsection (2) “, 8A, 8B or 8C” after “section 8”.

13. Confirmation of access to waterways and public places (Cwlth NTA s 212)

35 Section 12 of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

“(ba) stock routes;”.

NOTES

Principal Act

1. Act No. 71, 1994.

Section headings

On the day on which the *Native Title Act 1994* is amended by this Act, in addition to any alteration of section headings indicated in the text of this Act, headings to sections of the Principal Act are altered as set out in the following table:

Section	Alteration
10	Add at the end "(Cwlth NTA s 212)".
11	Add at the end "(Cwlth NTA s 212)".
13	Add at the end "(Cwlth NTA s 212)".