

Queensland



**NATIVE TITLE
(QUEENSLAND)
AMENDMENT BILL 1997**

Queensland



NATIVE TITLE (QUEENSLAND) AMENDMENT BILL 1997

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1997

A BILL

FOR

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

Native Title (Queensland) Amendment Bill

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Native Title (Queensland) Amendment Act 1997*.

3

4

Commencement

5

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

6

(2) The *Acts Interpretation Act 1954*, section 15DA does not apply to this Act.

7

8

Act amended

9

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

10

Replacement of s 4 (Definitions)

11

Clause **4.** Section 4—

12

 omit, insert—

13

‘Definitions

14

 ‘**4.** In this Act—

15

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

16

17

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

18

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

19

 • the *Mineral Resources Act 1989*

20

 • the *Petroleum Act 1923*

21

 • an Act prescribed by regulation.

22

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

23

24

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Amendment of s 7 (Object of part)

Clause	5.(1) Section 7(b)—	2
	<i>renumber</i> as section 7(c).	3
	(2) Section 7—	4
	<i>insert</i> —	5
	‘(b) validate, under section 22F of the Commonwealth Native Title Act, intermediate period acts attributable to the State; ¹ and’.	6
		7

Insertion of new s 8A 8

Clause	6. After section 8—	9
	<i>insert</i> —	10
	‘Validation of intermediate period acts attributable to State	11
	‘8A. Every intermediate period act attributable to the State is valid, and is taken always to have been valid.’.	12
		13

Amendment of s 9 (Application of remaining provisions of part) 14

Clause	7. Section 9(1), from ‘apply’—	15
	<i>omit, insert</i> —	16
	‘apply to the following acts attributable to the State—	17
	(a) past acts validated by section 8;	18
	(b) intermediate period acts validated by section 8A.’.	19

Insertion of new s 9A 20

Clause	8. Part 2, division 2, before section 10—	21
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¹ 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.

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insert—

‘Application of div 2

‘9A. This division does not apply to an act to which section 18C, 18D or 18E applies.’.

Insertion of new ss 13AA–13AD

Clause 9. After section 13—

insert—

‘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 to which section 232B(2), (3), (4) or (6) of the Commonwealth Native Title Act applies.

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

‘Category A intermediate period acts that are public works

‘13AB.(1) This section applies to a public work that is a category A intermediate period act to which section 232B(7) of the Commonwealth Native Title Act applies.

‘(2) The intermediate period 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 started.

‘Inconsistent category B intermediate period acts

‘13AC.(1) This section applies if a category B intermediate period act 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.

	‘Category C and D intermediate period acts	1
	‘13AD.(1) This section applies if an intermediate period act is a category C or D intermediate period act.	2 3
	‘(2) The non-extinguishment principle applies to the intermediate period act.’.	4 5
	Insertion of new s 14A	6
Clause	10. After section 14—	7
	<i>insert—</i>	8
	‘Preservation of beneficial reservations and conditions	9
	‘14A.(1) This section applies if—	10
	(a) an intermediate period act attributable to the State contains a reservation or condition for the benefit of Aboriginal people or Torres Strait Islanders; or	11 12 13
	(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 people or Torres Strait Islanders, whether under legislation, at common law or in equity, and whether or not rights of usage.	14 15 16 17 18
	‘(2) Section 8A ² does not affect a reservation or condition mentioned in subsection (1)(a) or rights or interests mentioned in subsection (1)(b).’.	19 20
	Amendment of s 15 (Compensation (NTA, ss 19 and 16))	21
Clause	11.(1) Section 15, heading, ‘(NTA, ss 19 and 16)’—	22
	<i>omit.</i>	23
	(2) Section 15—	24
	<i>insert—</i>	25
	‘(1A) Native title holders are entitled to compensation under this Act because of the validation of an intermediate period act attributable to the	26 27

² Section 8A (Validation of intermediate period acts attributable to State)

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State.’. 1

(3) Section 15(4)— 2

omit, insert— 3

‘(4) Jurisdiction may be conferred on Wardens Courts to decide the 4
compensation.’. 5

Insertion of new pt 3A 6

Clause 12. After part 3— 7

insert— 8

**‘PART 3A—CONFIRMATION OF TOTAL OR 9
PARTIAL EXTINGUISHMENT OF NATIVE TITLE BY 10
PARTICULAR PREVIOUS ACTS 11**

‘Division 1—General 12

‘Object of pt 3A 13

‘18B. The object of this part is to confirm, in accordance with 14
sections 23E and 23I³ of the Commonwealth Native Title Act— 15

(a) the total extinguishment of native title by previous exclusive 16
possession acts⁴ attributable to the State; and 17

(b) the partial extinguishment of native title by previous 18
non-exclusive possession acts⁵ attributable to the State. 19

³ Section 23E (Confirmation of extinguishment of native title by previous exclusive possession acts of State or Territory). Section 23I (Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State or Territory)

⁴ A “previous exclusive possession act” is defined in s 23B NTA.

⁵ A “previous non-exclusive possession act” is defined in s 23F NTA.

<i>Division 2—Confirmation of extinguishment or partial extinguishment</i>	1
‘Confirmation of total extinguishment of native title by certain acts that are not public works	2 3
‘18C.(1) This section applies if the act is a previous exclusive possession act under section 23B(2) (including because of section 23B(3), (4) or (5)) or under section 23B(6) of the Commonwealth Native Title Act.	4 5 6
‘(2) The act totally extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest ⁶ or lease concerned.	7 8 9
‘(3) The extinguishment is taken to have happened when the act was done.	10 11
‘Confirmation of total extinguishment of native title by certain acts that are public works	12 13
‘18D.(1) This section applies if the act is a previous exclusive possession act under section 23B(7) or (8) of the Commonwealth Native Title Act.	14 15
‘(2) The act totally 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.	16 17 18
‘(3) The extinguishment is taken to have happened when the construction or establishment of the public work started.	19 20
‘Confirmation of partial extinguishment of native title by previous non-exclusive possession acts	21 22
‘18E.(1) A previous non-exclusive possession act extinguishes native title rights and interests in relation to the land or waters covered by the lease concerned to the extent that the act involves the grant of rights and interests that are inconsistent with the native title rights and interests.	23 24 25 26
‘(2) Native title rights and interests in relation to the land or waters covered by the lease are extinguished to the extent that they confer	27 28

⁶ “Scheduled interest” is defined in s 249C NTA.

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possession, occupation, use and enjoyment of the land or waters to the exclusion of all others. 1
2

‘(3) The extinguishment is taken to have happened when the act was done. 3
4

‘(4) However, this section does not apply if the act is the grant of a pastoral lease or an agricultural lease to which section 10⁷ applies. 5
6

‘Other extinguishment provisions do not apply 7

‘18F. If section 18C, 18D or 18E applies to an act, sections 10 to 13AD do not apply to the act. 8
9

***‘Division 3—Effect of confirmation of total or partial extinguishment of native title 10
11***

‘Preservation of beneficial reservations and conditions 12

‘18G.(1) This section applies if— 13

(a) a previous exclusive possession act or previous non-exclusive possession act contains a reservation or condition for the benefit of Aboriginal people or Torres Strait Islanders; or 14
15
16

(b) the doing of a previous exclusive possession act or previous non-exclusive possession act would affect rights or interests, other than native title rights and interests, of Aboriginal people or Torres Strait Islanders, whether arising under legislation, at common law or in equity and whether or not rights of usage. 17
18
19
20
21

‘(2) Sections 18B, 18C and 18D do not affect a reservation or condition mentioned in subsection 1(a) or rights or interests mentioned in subsection 1(b). 22
23
24

⁷ Section 10 (Category A past acts that are not public works (NTA, ss 18 and 14(a))

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‘Compensation

‘**18H.(1)** Native title holders are entitled to compensation under this Act for any extinguishment under this part of their native title rights and interests by an act, if they would be entitled to compensation under section 23J(1)⁸ of the Commonwealth Native Title Act on the assumption that section 23J applies to acts attributable to the State.

‘**(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.

‘**(4)** To the extent that they are relevant, the criteria for the determination of compensation in section 51⁹ of the Commonwealth Native Title Act apply to the determination of compensation payable under this Act.’.

Omission of pts 4–10

Clause 13. Parts 4 to 10—
omit.

Omission of ss 144–144B

Clause 14. Sections 144, 144A and 144B—
omit.

Omission of pt 12 div 2 (Compulsory acquisition)

Clause 15. Part 12, division 2—
omit.

⁸ Section 23J (Compensation)

⁹ Section 51 (Criteria for determining compensation)

Omission of pt 13 (Amendment of Acts)

1

Clause **16.** Part 13—
 omit.

2

3

Other Acts amended

4

Clause **17.** The schedule amends each Act mentioned in it.

5

SCHEDULE

1

OTHER ACTS AMENDED

2

section 17

3

ABORIGINAL LAND ACT 1991

4

1. Section 119(a)(iv)—

5

omit.

6

FOSSICKING ACT 1994

7

**1. Section 11(4), definition “registered native title body corporate”,
‘Native Title (Queensland) Act 1993’—**

8

9

omit, insert—

10

‘Native Title Act 1993 (Cwlth)’.

11

LAND ACT 1994

12

1. Section 29(1), ‘a native title register’—

13

omit, insert—

14

‘the native title register’.

15

2. Section 29(2)—

16

omit, insert—

17

‘(2) In this section—

18

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

1
2

TORRES STRAIT ISLANDER LAND ACT 1991

3

1. Section 116(a)(iv)—

4

omit.

5

6