

# **TITLES VALIDATION ACT 1995**

**(No. 16 of 1995)**

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# TITLES VALIDATION ACT 1995

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No. 16 of 1995

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**AN ACT to validate, under section 19 of the *Native Title Act 1993* of the Commonwealth, past acts attributable to the State, to provide for the effects of the validation, and to confirm certain rights.**

*[Assented to 4 July 1995.]*

The Parliament of Western Australia enacts as follows:

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Titles Validation Act 1995*.

### **Commencement**

2. This Act comes into operation on the day on which it receives the Royal Assent.

### **Act binds the Crown**

3. This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, in all its other capacities.

### **Interpretation**

4. (1) In this Act the *Native Title Act 1993* of the Commonwealth is referred to as the NTA.

(2) Unless the contrary intention appears, a word or expression used in this Act has the same meaning as it has in the NTA.

Note: Section 222 of the NTA lists and shows the location of all of the words and expressions defined in the NTA.

- (3) Notes in this Act are provided to assist understanding and do not form part of the Act.

## **PART 2 — VALIDATION OF PAST ACTS**

### **Validation of past acts attributable to the State (*s. 19 NTA*)**

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

Note: In the NTA —

- “act” is defined in section 226;
- “past act” is defined in section 228; and
- “attributable” is defined in section 239.

### **Effect of validation — category A past acts that are not public works (*ss. 19 & 15 (1) (a) NTA*)**

**6.** A category A past act, other than a past act to which section 229 (4) of the NTA applies, extinguishes the native title concerned.

Note: In the NTA —

- “category A past act” is defined in section 229 to mean (with exceptions and qualifications) —
  - (a) freehold grants;
  - (b) some leasehold grants (commercial, agricultural, pastoral and residential leases and, in certain circumstances, mining leases so far as they apply to certain developed land); and
  - (c) public works;
- “lease”, “permit” and various types of leases are defined in sections 242 to 249; and
- “public work” is defined in section 253.

**Effect of validation — category A past acts that are public works (ss. 19 & 15 (1) (b) NTA)**

7. (1) A category A past act to which section 229 (4) of the NTA applies 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.

(2) If section 229 (4) (a) of the NTA applies to the past act, the extinguishment is taken to have happened on 1 January 1994.

Note: Section 229 (4) (a) of the NTA applies to a past act consisting of the construction or establishment of any public work if the work commenced to be constructed or established before 1 January 1994 and the construction or establishment had not been completed by that day.

**Effect of validation — inconsistent category B past acts (ss. 19 & 15 (1) (c) NTA)**

8. 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 extinguishes the native title to the extent of the inconsistency.

Note: In the NTA “category B past act” is defined in section 230 (with exceptions and qualifications) as leasehold grants, other than leases that are category A past acts and mining leases.

**Effect of validation — category C and category D past acts (ss. 19 & 15 (1) (d) NTA)**

9. The non-extinguishment principle applies to all category C and category D past acts.

Note: In the NTA —

- “category C past act” is defined in section 231 to mean the grant of a mining lease;
- “mining lease” is defined in section 245;
- “category D past act” is defined in section 232 as a past act that is not in category A, B, or C; and
- the effect of the non-extinguishment principle is set out in section 238.

**Extinguishment does not confer right to eject or remove Aboriginal persons (*ss. 19 & 15 (2) NTA*)**

10. The extinguishment effected by this Act does not by itself confer any right to eject or remove any Aboriginal persons who 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 this Act.

**Preservation of beneficial reservations and conditions (*ss. 19 & 16 NTA*)**

11. If —

- (a) a past act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples; or
- (b) the doing of the act would affect rights or interests (other than native title rights and interests) of Aboriginal peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage),

nothing in this Act affects that reservation or condition or those rights or interests.

Note: For definitions of some of the words used in this section see the note to section 5 of this Act.

**Compensation (*ss. 20 & 17 NTA*)**

12. (1) Native title holders are entitled to compensation because of the validation under this Act of a past act attributable to the State if they would be entitled to compensation under section 17 (1) or (2) of the NTA on the assumption that that section applies to acts attributable to the State.

(2) The compensation is payable by the State.

(3) Compensation is to be determined in accordance with the principles contained in Division 5 of Part 2 of the NTA.



### **PART 3 — CONFIRMATION OF CERTAIN RIGHTS**

Note: Under section 212 (3) of the NTA, the confirmation made by this Part does not extinguish or impair native title rights and interests and does not affect a conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples.

#### **Confirmation of ownership of natural resources etc. (s. 212 (1) NTA)**

**13.** (1) The existing ownership of all natural resources owned by the Crown is confirmed.

(2) All existing rights of the Crown 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 any other public or private fishing rights.

#### **Confirmation of access to certain places (s. 212 (2) NTA)**

**14.** 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;
- (e) areas that were public places at the end of 31 December 1993.