

South Australia



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A.D. 2000

**NATIVE TITLE (SOUTH AUSTRALIA) (VALIDATION AND
CONFIRMATION) AMENDMENT ACT 2000**

No. 84 of 2000

[Assented to 14 December 2000]

An Act to amend the Native Title (South Australia) Act 1994.

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The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Native Title (South Australia) (Validation and Confirmation) Amendment Act 2000*.

(2) The *Native Title (South Australia) Act 1994* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Substitution of heading to Part 6

3. The heading to Part 6 of the principal Act is repealed and the following headings are substituted:

**PART 6
VALIDATION AND EFFECT OF CERTAIN ACTS**

DIVISION 1—PRELIMINARY

Insertion of heading to Part 6 Division 2

4. The following heading is inserted after section 31 of the principal Act:

DIVISION 2—VALIDATION

Insertion of ss. 32A to 32C and Division heading

5. The following sections and heading are inserted after section 32 of the principal Act:

Validation of intermediate period acts attributable to the State

32A. Every intermediate period act attributable to the State is valid and is taken always to have been valid.¹

¹ See s. 22F NTA. An intermediate period act is defined in s. 232A NTA. The term covers certain acts that took place between 1 January 1994 and 23 December 1996. An act attributable to the State is defined in s. 239 NTA. Valid is defined in s. 253 NTA.

Validation by agreement of future acts attributable to State

32B. (1) If—

- (a) an indigenous land use agreement to which the State is a party provides for the retrospective validation or conditional validation of a future act, or a class of future acts, attributable to the State; and
- (b) the requirements of section 24EBA(1) of the NTA are satisfied in relation to the agreement,

the future act or class of future acts is valid and is taken always to have been valid.¹

(2) In this section—

"future act" does not include an intermediate period act.

- ^{1.} See ss. 24EBA(1) and (3) NTA. Indigenous land use agreements are defined in ss. 24BA, 24CA and 24DA NTA. A future act is defined in s. 233 NTA. An act attributable to the State is defined in s. 239 NTA. Valid is defined in s. 253 NTA.

Section 24EBA(1) NTA requires—

- details of the agreement to be on the Register of Indigenous Land Use Agreements (see Part 8A NTA); and
- any person (other than the Crown in right of the Commonwealth, a State or a Territory) who is or may become liable under the agreement or otherwise to pay compensation in relation to the act or class of acts to be a party to the agreement.

DIVISION 3—PAST ACTS

Application of Division 3

32C. This Division does not apply to a previous exclusive possession act.¹

(2) This Division does not apply to a previous non-exclusive possession act unless the act is a category A past act consisting of the grant of a pastoral lease or an agricultural lease.²

^{1.} See ss. 23E and 23C(3) NTA.

^{2.} See ss. 23I and 23G(2) and (3) NTA.

Insertion of ss. 36A to 36J and Division headings

6. The following sections and headings are inserted after section 36 of the principal Act:

DIVISION 4—INTERMEDIATE PERIOD ACTS

Application of Division 4

36A. This Division does not apply to a previous exclusive possession act or a previous non-exclusive possession act.¹

^{1.} See ss. 23E and 23C(3) NTA and ss. 23I and 23G(3) NTA.

Effect of validation—category A intermediate period acts that are not public works

36B. A category A intermediate period act (except such an act consisting of the construction or establishment of a public work) extinguishes the native title concerned.¹

^{1.} See ss. 22F and 22B(a) NTA. A category A intermediate period act is defined in s. 232B NTA. This category covers freehold estates, certain leasehold grants (Scheduled interests, commercial, exclusive agricultural, exclusive pastoral, residential and community purposes leases and those parts of mining leases that are taken to be "dissected" under s. 245 NTA, such as lands on which there are city, town or private residences), certain vestings and public works. Lease, permit and various types of leases are defined in ss. 242 to 249B NTA. Scheduled interest is defined in s. 249C NTA. Public work is defined in s. 253 NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see s. 24EBA(1)(a)(iii) and (6) NTA.

Effect of validation—category A intermediate period acts that are public works

36C. (1) A category A intermediate period act consisting of the construction or establishment of a public work extinguishes native title in relation to the land or waters on which the public work (on completion of its construction or establishment) was or is situated.¹

(2) The extinguishment is taken to have happened when the construction or establishment began.²

¹ See ss. 22F and 22B(b)(i) NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see s. 24EBA(1)(a)(iii) and (6) NTA.

² See s. 22B(b)(ii) NTA.

Effect of validation—inconsistent category B intermediate period acts

36D. A category B intermediate period act wholly or partly inconsistent with the continued existence, enjoyment or exercise of rights conferred by the native title concerned extinguishes the native title to the extent of the inconsistency.¹

¹ See ss. 22F and 22B(c) NTA. A category B intermediate period act is defined in s. 232C NTA. This category covers leasehold grants (other than leases that are category A intermediate period acts and mining leases). An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see s. 24EBA(1)(a)(iii) and (6) NTA.

Effect of validation—category C and D intermediate period acts

36E. The non-extinguishment principle applies to all category C and D intermediate period acts.¹

¹ See ss. 22F and 22B(d) NTA. A category C intermediate period act is defined in s. 232D NTA. This category covers mining leases. Mining lease is defined in s. 245 NTA and mine in s. 253 NTA. A category D intermediate period act is defined in s. 232E NTA. It is the residual category of intermediate period acts. The effect of the non-extinguishment principle is set out in s. 238 NTA. An indigenous land use agreement registered under the NTA may change the effect of validation of intermediate period acts—see s. 24EBA(1)(a)(iii) and (6) NTA.

DIVISION 5—PREVIOUS EXCLUSIVE AND NON-EXCLUSIVE POSSESSION ACTS

Effect of previous exclusive possession acts attributable to the State (other than public works)

36F. (1) A previous exclusive possession act (apart from an excepted act) attributable to the State extinguishes native title in relation to the land or waters covered by the freehold estate, Scheduled interest or lease concerned.¹

(2) The extinguishment is taken to have happened when the act was done.²

(3) However, no implication is to be drawn from this section that Parliament intends to alter the effect of an excepted act if its effect, apart from this section, was to extinguish native title.

(4) In this section—

"excepted act" means—

- (a) a previous exclusive possession act consisting of the construction or establishment of a public work; or
- (b) a previous exclusive possession act consisting of the grant or vesting of an interest under a lease that was acquired by the Indigenous Land Corporation before the date of assent to the *Native Title (South Australia) (Validation and Confirmation) Amendment Act 2000*; or
- (c) a previous exclusive possession act that was subject to a reservation or condition expressly for the benefit of Aboriginal people; or
- (d) a previous exclusive possession act consisting of the grant or vesting of a Scheduled interest if—
 - (i) the interest had ceased to exist by 23 December 1996; or
 - (ii) the interest arose under a miscellaneous lease granted solely or primarily for any of the following:
 - grazing and cultivation;
 - grazing, cultivation and nursery;
 - land based aquaculture and grazing;
 - vegetable and fodder growing and grazing;
 - fellmongering establishment; or
 - (iii) the interest arose under a lease granted under section 35 of the *National Parks and Wildlife Act 1972* solely or primarily for any of the following—
 - garden;
 - grazing and cropping;

¹ See ss. 23E and 23C(1)(a) NTA. A previous exclusive possession act is defined in s. 23B NTA. The term covers certain grants of freehold estates or leases on or before 23 December 1996 and public works if construction or establishment commenced on or before 23 December 1996. An act attributable to the State is defined in s. 239 NTA and, for certain purposes, s. 23JA NTA. Various types of leases are defined in ss. 242 to 249B NTA. Scheduled interest is defined in s. 249C NTA. Public work is defined in s. 253 NTA.

² See s. 23C(1)(b) NTA.

Effect of previous exclusive possession acts that are public works attributable to the State

36G. (1) A previous exclusive possession act attributable to the State consisting of the construction or establishment of a public work 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.¹

(2) The extinguishment is taken to have happened when the construction or establishment of the public work began.²

¹ See ss. 23E and 23C(2)(a) NTA. An act attributable to the State is defined in s. 239 NTA and, for certain purposes, s. 23JA NTA.

² See s. 23C(2)(b) NTA.

Confirmation of validity of use of certain land held by Crown etc.

36H. To avoid doubt, if an act consisting of the grant or vesting of an interest in relation to land or waters to or in the Crown in any capacity or a statutory authority becomes a previous exclusive possession act when the land or waters are used to any extent in a way that extinguishes native title in relation to the land or waters, the use of the land or waters in that way is valid.¹

¹ See ss. 23E and 23DA NTA.

Effect of previous non-exclusive possession acts attributable to the State

36I. (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, re-made, re-granted or extended, is in force; and
- (c) any extinguishment under this subsection is taken to have happened when the act was done.¹

(2) This section does not apply to a previous non-exclusive possession act that is a category A past act consisting of the grant of a pastoral lease or an agricultural lease.²

¹ See ss. 23I and 23G(1) NTA. A previous non-exclusive possession act is defined in s. 23F NTA. An act attributable to the State is defined in s. 239 NTA and, for certain purposes, s. 23JA NTA.

² See s. 23G(2) NTA.

Notification of certain non-exclusive agricultural or pastoral leases

36J. (1) Before granting a non-exclusive agricultural lease or non-exclusive pastoral lease to give effect to, or otherwise because of, an offer, commitment, arrangement or undertaking made or given in good faith on or before 23 December 1996 (and of which there is written evidence created at or about the time the offer, commitment, arrangement or undertaking was made)—

- (a) notice of the proposed grant must be given to—
 - (i) all registered representatives of holders of native title in the land concerned; and
 - (ii) all registered representatives of persons who are registered under the law of the Commonwealth or the State as claimants to native title in the land concerned; and
 - (iii) the relevant representative Aboriginal body; and
- (b) those persons must be given an opportunity to comment.¹

(2) A notice under subsection (1)—

- (a) may relate to a number of different leases proposed to be granted over a specified period;
- (b) must be given in the way determined in writing by the Commonwealth Minister for the purposes of the NTA.²

¹ See ss. 23I and 23HA NTA. A non-exclusive agricultural lease is defined in s. 247B NTA and a non-exclusive pastoral lease in s. 248B NTA.

² See ss. 23I and 23HA NTA.

DIVISION 6—MISCELLANEOUS**Substitution of s. 38**

7. Section 38 of the principal Act is repealed and the following section is substituted:

Preservation of beneficial reservations and conditions

38. If—

- (a) a past act, intermediate period act, previous exclusive possession act, or previous non-exclusive possession 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 rights conferred by native title) 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.¹

¹ See ss 19 and 16 NTA; ss 22F and 22C NTA; 23E and 23D NTA; ss 23I and 23H NTA. An act attributable to the State is defined in s. 239 NTA and, for certain purposes, s. 23JA NTA.

Amendment of s. 39—Confirmation

8. Section 39 of the principal Act is amended—

(a) by inserting after paragraph (d) of subsection (4) the following paragraph:

(da) stock-routes;;

(b) by striking out from subsection (5)(a) "or impairs".