

Land Titles Validation Bill

No.

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By Authority L. V. North, Government Printer Melbourne



LEGISLATIVE ASSEMBLY

Read 1° 9 November 1994

(Brought in by Mr Kennett and Mr McNamara)

A BILL

to validate, in accordance with the Native Title Act 1993 of the Commonwealth, certain past acts, to make certain other provisions, to repeal the **Land Titles Validation Act 1993** and for other purposes.

Land Titles Validation Act 1994

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is—

- 5 (a) to validate, in accordance with the Native Title Act 1993 of the Commonwealth, past acts that are invalidat because of the existence of native title;

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984.**)

Land Titles Validation

- (b) to provide for compensation rights for the holders of native title which has been affected by past acts attributable to the State;
- (c) to confirm certain existing rights.

2. Commencement

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- (1) Part 1 comes into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act come into operation on a day or days to be proclaimed.

3. Definition

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In this Act—

“Commonwealth Act” means the Native Title Act 1993 of the Commonwealth.

4. Definitions in Commonwealth Act

- (1) Words and expressions used in the Commonwealth Act and in this Act have the same meanings in this Act as they have in the Commonwealth Act.
- (2) Sub-section (1) does not apply to the extent that the context or subject-matter otherwise indicates or requires.

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5. Act to bind Crown

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

PART 2—VALIDATION OF PAST ACTS

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6. Validation of past acts attributable to the State

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

7. Category A past acts that are not public works

A category A past act attributable to the State that is not a past act to which section 229 (4) (which deals with public works) of the Commonwealth Act applies extinguishes native title.

8. Category A past acts that are public works

(1) A category A past act—

(a) attributable to the State; and

(b) to which section 229 (4) (which deals with public works) of the Commonwealth Act 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) (which deals with works completed after 1 January 1994) of the Commonwealth Act applies to the past act, the extinguishment is taken to have happened on 1 January 1994.

9. Inconsistent category B past acts

A category B past act—

(a) attributable to the State; and

(b) 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.

10. Category C and D past acts

The non-extinguishment principle applies to all category C and D past acts attributable to the State.

11. *Extinguishment not of itself a right to eject from certain pastoral land*

The extinguishment of native title effected by this Part does not by itself confer a 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 Part.

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12. *Preservation of beneficial reservations and conditions*

If—

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(a) a past act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders; or

(b) the doing of a past act attributable to the State would affect rights or interests (other than native title rights and interests) of Aboriginal peoples or Torres Strait Islanders (whether arising under legislation, at common law or in equity and whether or not rights of usage)—

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

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13. *Compensation because of validation of past act*

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

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(2) The compensation is payable by the State.

(3) Compensation shall be determined in accordance with the principles contained in Division 5 of Part 2 of the Commonwealth Act.

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PART 3—CONFIRMATION OF RIGHTS

14. *Confirmation of ownership of natural resources*

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- (1) The existing ownership of all natural resources owned by the State is confirmed.
 - (2) All existing rights of the State 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 other public or private fishing rights.

10 **15. *Confirmation of public access to beaches***

Existing public access to and enjoyment of the following is confirmed—

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- (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.

20 **16. *Effect of confirmation***

Any confirmation under section 14 or 15 does not extinguish or impair any native title rights and interests and does not affect any conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal peoples or Torres Strait Islanders.

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PART 4—GENERAL

17. *Repeal*

The Land Titles Validation Act 1993 is repealed.

No. 65/1993.





