

CONFIDENTIAL

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY/COUNCIL

DRAFT 2

TITLES VALIDATION AMENDMENT BILL 1998

A BILL FOR

AN ACT to amend the *Titles Validation Act 1995*.

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Titles Validation Amendment Act 1998*.

Titles Validation Amendment Bill 1998

Commencement

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

The Act amended

5 3. The amendments in this Act are to the *Titles Validation Act 1995**.

[* *Act No. 16 of 1995.*]

10 Note: The definitions in the *Native Title Act 1993* ("the NTA") apply also in the *Titles Validation Act 1995* (see section 4 (2) of the latter). There is attached to this Act a list of the words and expressions that are defined in the NTA and used in the provisions inserted in the principal Act by this Act. The list shows where in the NTA each definition can be found.

Long title replaced

15 4. The long title is repealed and the following long title is inserted instead —

“

An ACT to make provision in relation to native title as permitted by the *Native Title Act 1993* of the Commonwealth, namely —

- 20
- under sections 19 and 22F of that Act, to validate past acts and intermediate period acts attributable to the State and to provide for the effects of the validation;

25

 - under sections 23E and 23I of that Act, to confirm the effect on native title of acts attributable to the State done on or before 23 December 1996; and

30

 - under section 212 of that Act, to confirm certain rights relating to natural resources and public access.

”

Section 12 amended

5. Section 12 (1) is amended by deleting "Native" and inserting instead —

" Under section 20 of the NTA native "

5 Parts 2A, 2B and 2C inserted

6. After Part 2 the following Parts are inserted —

"

PART 2A — VALIDATION OF INTERMEDIATE PERIOD ACTS

10 **Validation of intermediate period acts attributable to the State (s. 22F NTA)**

12A. Every intermediate period act attributable to the State is valid and is taken always to have been valid.

15 Notes: The expression "intermediate period act" is defined in section 232A of the NTA as an act that took place between 1 January 1994 and 23 December 1996 and that meets the various conditions set out in that section.

20 Under section 22H of the NTA the State must within 6 months of the commencement of this Act notify certain details relating to intermediate period acts to the public and to native title bodies and claimants in relation to the affected land or waters. The details relate to mining rights granted between 1 January 1994 and 23 December 1996 in respect of land and waters that are or were the subject of a freehold or leasehold grant or public work.

25

Effect of validation — category A intermediate period acts consisting of grant of freehold and certain leases or vesting of land or waters (ss. 22F & 22B (a) NTA)

5 **12B.** (1) A category A intermediate period act to which section 232B (2), (3) or (4) of the NTA applies extinguishes all native title in relation to the land or waters concerned.

(2) Subsection (1) has effect subject to section 24EBA (6) of the NTA.

10 Notes: The expression "category A intermediate period act" is defined in section 232B of the NTA to mean (subject to that section) —

- the grant or vesting of a freehold;
- the grant or vesting of a Scheduled interest;
- 15 • the grant or vesting of certain leaseholds (commercial leases, exclusive agricultural and pastoral leases, residential leases, community purpose leases, other leases (other than mining leases) that confer a right of exclusive possession, and in certain circumstances mining leases so far as they apply to certain developed land); and
- 20 • the construction or establishment of a public work (see section 12C of this Act).

This section does not apply to an act if section 12H of this Act applies to it.

25 **Effect of validation — category A intermediate period acts involving public works (ss. 22F & 22B (b) NTA)**

30 **12C.** (1) A category A intermediate period act to which section 232B (7) of the NTA applies 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.

Titles Validation Amendment Bill 1998

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

(3) Subsection (1) has effect subject to section 24EBA (6) of the NTA.

5 Note: This section does not apply to an act if section 12I of this Act applies to it.

Effect of validation — inconsistent category B intermediate period acts (ss. 22F & 22B (c) NTA)

10 **12D.** (1) 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, extinguishes the native title to the extent of the inconsistency.

15 (2) Subsection (1) has effect subject to section 24EBA (6) of the NTA.

Notes: The expression "category B intermediate period act" is defined in section 232C of the NTA as the grant of a lease that is not a category A intermediate period act; but the definition does not include —

- 20
- mining leases; and
 - certain leases for the benefit of Aboriginal peoples and subleases derived from such leases.

This section does not apply to an act if section 12H or 12L of this Act applies to it.

25 **Effect of validation — category C and category D intermediate period acts (ss. 22F & 22B (d) NTA)**

12E. (1) The non-extinguishment principle applies to all category C and category D intermediate period acts.

Titles Validation Amendment Bill 1998

(2) Subsection (1) has effect subject to section 24EBA (6) of the NTA.

Notes: The expression "category C intermediate period act" is defined in section 232D of the NTA as the grant of a mining lease; and the expression "category D intermediate period act" is defined in section 232E of that Act as an intermediate period act that is not in category A, B or C.

This section does not apply to an act if section 12L of this Act applies to it.

10 **Preservation of beneficial reservations and conditions (ss. 22F & 22C NTA)**

12F. If —

- 15 (a) an intermediate period act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples; or
- 20 (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 peoples (whether arising under legislation, at common law or in equity and whether or not rights of usage),

nothing in section 12B, 12C, 12D or 12E affects that reservation or condition or those rights or interests.

Compensation

25 **12G.** (1) Under section 22G of the NTA native title holders are entitled to compensation because of the validation by this Act of an intermediate period act 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.

5 **PART 2B — CONFIRMATION OF PAST
EXTINGUISHMENT OF NATIVE TITLE BY CERTAIN
VALID OR VALIDATED ACTS**

**Confirmation of extinguishment of native title by
previous exclusive possession acts of State, other
than public works (ss. 23E & 23C (1) NTA)**

10 **12H.** (1) If an act is a previous exclusive possession act
under section 23B (2) of the NTA (including because of
section 23B (3)) and is attributable to the State —

15 (a) the act extinguishes any 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.

20 (2) If this section applies to the act, sections 6, 8, 12B
and 12D do not apply to the act.

Note: Under section 23B (2) and (3) of the NTA, the estates and interests
to which this section applies are those validly granted or vested on
or before 23 December 1996 and consisting of —

- 25 • a Scheduled interest;
- a freehold estate (including what is taken by
section 23B (3) to be a freehold estate); and
- certain leaseholds (commercial leases, exclusive
agricultural and pastoral leases, residential leases,
community purpose leases, other leases (other than

Titles Validation Amendment Bill 1998

mining leases) that confer a right of exclusive possession, and in certain circumstances mining leases so far as they apply to certain developed land).

5 **Confirmation of extinguishment of native title by previous exclusive possession acts of State consisting of public works (ss. 23E & 23C (2) NTA)**

12I. (1) If an act is a previous exclusive possession act under section 23B (7) of the NTA (which deals with public works) and is attributable to the State —

10 (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

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

(2) If this section applies to the act, sections 7 and 12C do not apply to the act.

20 Note: Under section 23B (7) of the NTA, the public works to which this section applies are those validly undertaken and commenced to be constructed or established on or before 23 December 1996.

Preservation of beneficial reservations and conditions (ss. 23E & 23D NTA)

12J. If —

25 (a) a previous exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples; or

- 5 (b) the doing of a previous exclusive possession act attributable to the State 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 section 12H or 12I affects that reservation or condition or those rights or interests.

10 **Confirmation of validity of use of certain land held by Crown etc. (ss. 23E & 23DA NTA)**

15 **12K.** To avoid doubt, if an act is a previous exclusive possession act because of paragraph (b) of section 23B (9C) of the NTA (which deals with grants to the Crown etc.), the use of the land or waters concerned as mentioned in that paragraph is valid.

Confirmation of partial extinguishment of native title by previous non-exclusive possession acts of State (ss. 23I & 23G NTA)

20 **12L.** (1) Subject to subsection (2), if a previous non-exclusive possession act (see section 23F of the NTA) is attributable to the State —

- 25 (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

Titles Validation Amendment Bill 1998

the doing of any activity in giving effect to them, prevail over the native title rights and interests but do not extinguish them;

5 (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 —

10 (i) if, apart from this Act, the act extinguishes the native title rights and interests, the native title rights and interests are extinguished; and

15 (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.

20 (2) If the act is the grant of a pastoral lease or an agricultural lease to which section 6 applies, this section does not apply to the act.

(3) If this section applies to the act, sections 6, 8, 9, 12D and 12E do not apply to the act.

25 Note: Under section 23F of the NTA, the estates and interests to which this section applies are those arising from —

- 30
- non-exclusive agricultural leases and non-exclusive pastoral leases validly granted on or before 23 December 1996;
 - legally enforceable rights to the grant of such leases created on or before that date but exercised after that date; and

Titles Validation Amendment Bill 1998

- arrangements for the grant of such leases completed after that date but made on or before that date in good faith and evidenced in writing.

5 **Preservation of beneficial reservations and conditions (ss. 23I & 23H NTA)**

12M. If —

- 10 (a) a previous non-exclusive possession act attributable to the State contains a reservation or condition for the benefit of Aboriginal peoples; or
- 15 (b) the doing of a previous non-exclusive possession act attributable to the State 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 section 12L affects that reservation or condition or those rights or interests.

Notification (ss. 23I & 23HA NTA)

20 **12N. In the case of a previous non-exclusive possession act to which section 23F (3) (c) (ii) of the NTA applies —**

- (a) notice must be given, in the way determined in writing by the Commonwealth Minister, to any —
- 25 (i) representative Aboriginal/Torres Strait Islander bodies;

Titles Validation Amendment Bill 1998

(ii) registered native title bodies corporate; and

(iii) registered native title claimants,

5 in relation to the land or waters that 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.

10 Note: The acts to which section 23F (3) (c) (ii) of the NTA applies are those giving effect after 23 December 1996 to arrangements made on or before that date in good faith, and evidenced in writing, for the grant of non-exclusive agricultural leases or non-exclusive pastoral leases.

Compensation

15 120. (1) Under section 23J of the NTA native title holders are entitled to compensation for any extinguishment under this Part of their native title rights and interests by an act, but only to the extent (if any) that the native title
20 rights and interests were not extinguished otherwise than under this Act.

(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 2C — VALIDATION OF FUTURE ACTS
BY AGREEMENT**

**How future acts of State may be validated by
agreement**

- 5 **12P.** (1) Section 12Q applies if —
- (a) details are on the Register of Indigenous Land
 Use Agreements of an agreement that includes a
 statement to the effect that the parties agree
 to —
- 10 (i) the validating of a particular future act
 (other than an intermediate period act), or
 future acts (other than intermediate period
 acts) included in classes, that have already
 been done invalidly; or
- 15 (ii) the validating, subject to conditions, of a
 particular future act (other than an
 intermediate period act), or of future acts
 (other than intermediate period acts)
20 included in classes, that have already been
 done invalidly;
- (b) the future act or class of acts is attributable to
 the State;
- (c) the State is a party to the agreement; and
- 25 (d) where, whether under the agreement or
 otherwise, a person other than the Crown in
 right of the Commonwealth or the State, is or

Titles Validation Amendment Bill 1998

may become liable to pay compensation in relation to the act or class of acts, that person is a party to the agreement.

5

[Would the Commonwealth need to be a party if it is going to meet the compensation liability of the State?]

Validation

12Q. If the requirements of section 12P are satisfied in respect of a future act or class of future acts —

10

(a) the act is valid and is taken always to have been valid; or

(b) all acts included in the class are valid and are taken always to have been valid,

as the case may require.

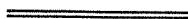
15

”.

Section 14 amended

7. After section 14 (d), the following paragraph is inserted —

“ (da) stock routes; ”.



Titles Validation Amendment Bill 1998

LIST OF DEFINED WORDS AND EXPRESSIONS

This is a list of words and expressions used in this Bill (including in the notes) and defined in the *Native Title Act 1993*. Column 2 indicates the section of that Act in which each definition can be found. The list is not part of the Bill.

<i>Word or expression</i>	<i>Section of NTA</i>
Aboriginal peoples	253
act	226
agricultural lease	247
attributable	239
category A intermediate period act	232B
category B intermediate period act	232C
category C intermediate period act	232D
category D intermediate period act	232E
commercial lease	246
Commonwealth Minister	253
community purposes lease	249A
exclusive agricultural lease	247A
exclusive pastoral lease	248A
extinguish	237A
future act	233
intermediate period act	232A
land	253
land or waters on which a public work is constructed, established or situated	251D
lease	242
mining lease	245
native title	223
native title rights and interests	223
native title holder	224
non-extinguishment principle	238
past act	228
pastoral lease	248
previous exclusive possession act	23B
previous non-exclusive possession act	23F
public work	253

Titles Validation Amendment Bill 1998

representative Aboriginal/Torres Strait Islander body	253
Register of Indigenous Land Use Agreements	253
registered native title body corporate	253
registered native title claimant	253
residential lease	249
Scheduled interest	249C
valid	253
waters	253