



Native Title (Tasmania) Act 1994

An Act to validate pursuant to section 19 of the *Native Title Act 1993* of the Commonwealth past acts invalid because of the existence of native title and, in accordance with that Act, to confirm certain rights and for related purposes

[Royal Assent 16 December 1994]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Native Title (Tasmania) Act 1994*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) In this Act, *Commonwealth Act* means the *Native Title Act 1993* of the Commonwealth.

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

4. Act binds Crown

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

PART 2 - Validation of Past Acts

5. Validation of past acts attributable to State

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

PART 3 - Effect of Validation on Native Title

6. Category A past acts that are not public works

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

7. Category A past acts that are public works

(1) A category A past act to which section 229 (4) 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.

8. Inconsistent category B past acts

A category B past act 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.

9. Category C and D past acts

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

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

An extinguishment effected by this Part does not of itself confer a right to eject or remove an Aboriginal person who resides on or who exercises access over land or water covered by a pastoral lease the grant, re-grant or extension of which is validated by Part 2.

PART 4 - Other Effects of Validation

11. Preservation of beneficial reservations and conditions

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 Part 3 affects that reservation or condition or those rights or interests.

PART 5 - Compensation

12. Compensation

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

PART 6 - Confirmation of Certain Rights Under Section 212 of Commonwealth Act

13. Confirmation of ownership of natural resources, &c.

- (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.
- (4) Any confirmation under this section 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.

14. Confirmation of access to beaches, &c.

- (1) 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.

(2) Any confirmation under this section 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.

PART 7 - Miscellaneous

15. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Premier; and
- (b) the Department responsible to the Premier in relation to the administration of this Act is the Department of Premier and Cabinet.

Table Of Amendments

Act	Number and year	Date of commencement
Native Title (Tasmania) Act 1994	No. 81 of 1994	29.12.1994