



Australian Capital Territory

# **Native Title Act 1994    No 71**

## **Republication No 1**

Republication date: 13 June 2002

Last amendment made by [Act 2001 No 44](#)

Amendments incorporated to 12 September 2001

Unauthorised version prepared by ACT Parliamentary Counsel's  
Office

## About this republication

### The republished law

This is a republication of the *Native Title Act 1994* as in force on 13 June 2002. It includes any amendment, repeal or expiry affecting the republished law to 12 September 2001 and any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes).

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see [Legislation Act 2001](#), section 95.

### Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to  
12 September 2001



Australian Capital Territory

# Native Title Act 1994

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Australian Capital Territory

# **Native Title Act 1994**

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An Act relating to native title

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## Preamble

- 1 Before European settlement, land in Australia had been occupied, used and enjoyed since time immemorial by Aboriginal peoples and Torres Strait Islanders in accordance with their traditions.
- 2 Land is of spiritual, social, historical, cultural and economic importance to Aboriginal peoples and Torres Strait Islanders. In the Australian Capital Territory, there are sites that provide evidence of their use by various groups of Aboriginal peoples at different times for a variety of purposes.
- 3 Since European settlement, many Aboriginal peoples and Torres Strait Islanders have been dispossessed and dispersed.
- 4 However, some Aboriginal peoples and Torres Strait Islanders have maintained their ancestors' traditional, customary or historical affiliation with particular areas.
- 5 In the Native Title Decision ((1992) 175 C.L.R. 1), the High Court—
  - (a) rejected the doctrine that Australia was *terra nullius* (land belonging to no-one) at the time of European settlement; and
  - (b) held that the common law of Australia recognises a form of native title that reflects the entitlement of the indigenous inhabitants of Australia, in accordance with their laws and customs, to their traditional lands; and
  - (c) held that native title rights may be extinguished by valid government acts that are inconsistent with the continued existence of those rights, such as the grant of freehold or leasehold estates.
- 6 The [Native Title Act 1993](#) (Cwlth) provides a national scheme with the following objects:
  - (a) to provide for the recognition and protection of native title;

- (b) to establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings;
  - (c) to establish a mechanism for determining claims to native title;
  - (d) to provide for, or permit, the validation of past acts invalidated because of the existence of native title.
- 7 The Legislative Assembly intends the Australian Capital Territory to participate in the national scheme enacted by the Commonwealth Parliament.
- 8 The Legislative Assembly for the Australian Capital Territory therefore enacts as follows:





## Part 1 Preliminary

### 1 Name of Act

This Act is the *Native Title Act 1994*.

### 3 Objects

The main objects of this Act are, in accordance with the [Commonwealth Native Title Act](#):

- (a) to validate past acts invalidated because of the existence of native title;
- (b) to confirm existing rights to natural resources and access to waterways and public places.

### 4 Meaning of *Commonwealth Native Title Act*

In this Act:

*Note* A definition applies except so far as the contrary intention appears (see [Legislation Act 2001](#), s 155).

*Commonwealth Native Title Act* means the [Native Title Act 1993](#) (Cwlth).

### 5 Interpretation—Commonwealth Native Title Act definitions

Words and expressions used in this Act have the same meanings as they have in the [Commonwealth Native Title Act](#).

## **Part 2**

# **Past acts attributable to the Territory**

### **6 Relationship to Commonwealth Native Title Act**

This part is enacted in accordance with the [Commonwealth Native Title Act](#), section 19.

### **7 Validation**

A past act attributable to the Territory is valid, and is to be taken always to have been valid.

### **8 Extinguishment of native title**

- (1) A category A past act attributable to the Territory, other than an act to which the [Commonwealth Native Title Act](#), section 229 (4) applies, extinguishes the native title concerned.
- (2) A category A past act attributable to the Territory to which the [Commonwealth Native Title Act](#), section 229 (4) applies—
  - (a) in any case—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; and
  - (b) if that Act, section 229 (4) (a) applies—is to be taken to have extinguished that native title on 1 January 1994.
- (3) A category B past act attributable to the Territory 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.
- (4) The non-extinguishment principle applies to a category C past act, or a category D past act, that is attributable to the Territory.

- (5) The extinguishment effected by this section does not by itself give 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, regrant or extension of which is validated by section 7.

## **9 Preservation of beneficial reservations and conditions**

- (1) If an act attributable to the Territory contains a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders, nothing in section 8 affects that reservation or condition.
- (2) If the doing of an act attributable to the Territory would affect non-native title rights and interests of Aboriginal people or Torres Strait Islanders, nothing in section 8 affects those rights and interests.
- (3) In this section:

*non-native title rights and interests* means rights or interests, other than native title rights and interests, arising under legislation, at common law or in equity and whether or not rights of usage.

## **Part 3 Confirmation of rights and access**

### **10 Relationship to Commonwealth Native Title Act**

This part is enacted in accordance with the [Commonwealth Native Title Act](#), section 212.

### **11 Confirmation of rights**

- (1) The existing ownership by the Crown in right of the Territory of any natural resources is confirmed.
- (2) Any existing right of the Crown in right of the Territory to use, control and regulate the flow of water is confirmed.
- (3) Any existing fishing access rights are confirmed to prevail over any other public or private fishing rights.

### **12 Confirmation of access to waterways and public places**

Existing public access to and enjoyment of the following places is confirmed:

- (a) waterways;
- (b) beds and banks or foreshores of waterways;
- (c) areas that were public places at the end of 31 December 1993.

### **13 Effect of confirmation on native title**

As provided by the [Commonwealth Native Title Act](#), section 212 (3), a confirmation under this part does not—

- (a) extinguish or impair any native title rights and interests; or
- (b) affect a conferral of land or waters, or an interest in land or waters, under a law that confers benefits only on Aboriginal people or Torres Strait Islanders.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

### 2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/repealed	

## Endnotes

3      Legislation history

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### 3      **Legislation history**

#### **Native Title Act 1994 A1994-71**

notified 1 November 1994 ([Gaz 1994 No S229](#))

commenced 1 November 1994 (s 2)

as amended by

#### **[Legislation \(Consequential Amendments\) Act 2001 A2001-44 pt 257](#)**

notified 26 July 2001 ([Gaz 2001 No 30](#))

s 1, s 2 commenced 26 July 2001 (IA s 10B)

pt 257 commenced 12 September 2001 (s 2 and [Gaz 2001 No S65](#))

### 4      **Amendment history**

#### **Commencement**

s 2                      om [A2001-44](#) amdt 1.2909

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