

2013-2014

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Aboriginal and Torres Strait Islander
Amendment (A Stronger Land Account)
Bill 2014**

No. , 2014

(Senator Siewert)

**A Bill for an Act to amend the *Aboriginal and
Torres Strait Islander Act 2005*, and for related
purposes**

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1 **Schedule 1—Amendments**

2 **Part 1—Land Account**

3 *Aboriginal and Torres Strait Islander Act 2005*

4 **1 Before Division 1 of Part 4A**

5 Insert:

6 **Division 1A—Objects of Part**

7 **191AB Objects of Part**

8 (1) The objects of this Part are the following:

9 (a) to acknowledge the special relationship that Aboriginal
10 persons and Torres Strait Islanders have with their lands;

11 (b) to acknowledge that land has an economic, cultural, social
12 and environmental value for Aboriginal persons and Torres
13 Strait Islanders;

14 (c) to acknowledge the past injustices suffered by Aboriginal
15 persons and Torres Strait Islanders, arising from the
16 dispossession of their land;

17 (d) to ensure that Aboriginal persons and Torres Strait Islanders
18 receive the recognition within the Australian nation to which
19 their prior rights and interests in their traditional lands and
20 their rich and diverse culture entitle them to aspire;

21 (e) to provide a compensatory mechanism for Aboriginal persons
22 and Torres Strait Islanders that addresses their ongoing land
23 needs.

24 (2) Division 10 provides for the Aboriginal and Torres Strait Islander
25 Land Account, which was established for the land-related benefit
26 of Aboriginal persons and Torres Strait Islanders.

27 (3) In this Act:

28 *land-related benefit* means the acquisition and management of
29 land by or on behalf of Aboriginal persons and Torres Strait
30 Islanders, as mentioned in sections 191B and 192X.

1 **2 Section 192X**

2 Repeal the section, substitute:

3 **192X Purpose of Land Account**

4 (1) The purpose of the Land Account is the making of payments to the
5 Indigenous Land Corporation under this Division.

6 (2) Despite section 193J, money held by the Indigenous Land
7 Corporation that was paid to it from the Land Account must be
8 applied only:

9 (a) in payment or discharge of the costs, expenses and other
10 obligations incurred by the Corporation in the performance of
11 its functions or the exercise of its powers under:

12 (i) this Act; or

13 (ii) any other law;

14 as in force at the commencement of this subsection; and

15 (b) in payment of any remuneration and allowances payable to
16 any person under:

17 (i) this Act; or

18 (ii) any other law;

19 as in force at the commencement of this subsection; and

20 (c) in making any other payments which the Corporation is
21 authorised or required to make under:

22 (i) this Act; or

23 (ii) any other law;

24 as in force at the commencement of this subsection.

25 Note: The purposes of the Indigenous Land Corporation are:

26 (a) to assist Aboriginal persons and Torres Strait Islanders to acquire
27 land; and

28 (b) to assist Aboriginal persons and Torres Strait Islanders to manage
29 indigenous-held land;

30 so as to provide economic, environmental, social or cultural benefits
31 for Aboriginal persons and Torres Strait Islanders (see section 191B).

32 **3 Subsection 193(3) (heading)**

33 Repeal the heading, substitute:

1 *Additional payments—2011-2014*

2 **4 Subsection 193(3)**

3 After “1 July 2011”, insert “and before 1 July 2014”.

4 **5 Subsection 193(5)**

5 Omit “For the purposes of subsections (3) and (4), the”, substitute
6 “The”.

7 **6 After subsection 193(5)**

8 Insert:

9 *Additional payments—later financial years*

10 (5A) On the first business day in December of a financial year (the
11 **current year**) beginning on or after 1 July 2014, an amount is to be
12 paid to the Indigenous Land Corporation, out of the Land Account,
13 if the real return from investment of the Land Account for the
14 previous financial year exceeds \$50 million.

15 (5B) The amount to be paid is half of the excess.

16 (5C) The **real return** from investment of the Land Account for the
17 previous financial year is the amount worked out using the
18 following formula:

$$\text{Indexation factor} \times \text{Return}$$

19 where:

20 **indexation factor** means the indexation factor for the current year
21 worked out under section 192Y.

22 **return** is the actual capital value of the Land Account for the
23 current year less the actual capital value of the Land Account for
24 the previous financial year.

25 Note: If income is received by the Commonwealth from the investment of an
26 amount standing to the credit of the Land Account, an amount equal to
27 the income must be credited to the Land Account (see
28 subsection 192W(4)).

1 **7 Subsection 193(6)**

2 Omit “subsection (2) or (3)”, substitute “this section”.

3 **8 Subsection 193G(1)**

4 Omit “the investment policy”, substitute “the projected financial
5 requirements of the Indigenous Land Corporation and the investment
6 policy”.

7 **9 After section 193G**

8 Insert:

9 **193GA Finance Minister to have regard to advice of Indigenous**
10 **Land Corporation**

11 (1) The Indigenous Land Corporation may give the Finance Minister
12 advice about the projected financial requirements of the Indigenous
13 Land Corporation.

14 (2) The Indigenous Land Corporation may give the Finance Minister
15 advice as to how the Land Account should be managed, in order to
16 meet the projected financial requirements of the Indigenous Land
17 Corporation.

18 (3) The Finance Minister must, in making a decision in relation to the
19 investment policy of the Land Account, have regard to any advice
20 given by the Indigenous Land Corporation under subsection (2).

21 **10 At the end of Division 10 of Part 4A**

22 Add:

23 **193IA Changes to purpose of Indigenous Land Corporation and**
24 **Land Account**

25 (1) This section applies to a Bill for an Act that:
26 (a) is introduced into either House of the Parliament; and
27 (b) contains a provision (the *proposed provision*) that would:
28 (i) amend section 191AB or 191B or this Division; or
29 (ii) would otherwise alter the operation of any of the
30 provisions mentioned in subparagraph (i).

- 1 (2) Subject to subsection (6), the Bill is referred to the joint
2 parliamentary committee responsible for the scrutiny of issues
3 related to Aboriginal persons and Torres Strait Islanders (the *joint*
4 *committee*).
- 5 (3) The joint committee must, not less than 10 sitting days and not
6 more than 6 months after the introduction of the Bill, table in each
7 House a report that meets the requirements contained in
8 subsections (4) and (5).
- 9 (4) In preparing the report, the joint committee must consult with
10 Aboriginal persons and Torres Strait Islanders, including
11 prominent Indigenous organisations in all States and Territories, on
12 the proposed provision.
- 13 (5) The report must include:
14 (a) an assessment of whether the Aboriginal persons and Torres
15 Strait Islanders consider that the proposed provision is
16 necessary, having regard to the likely impact of the proposed
17 provision on the ability of Aboriginal persons and Torres
18 Strait Islanders to acquire or manage land for their economic,
19 social, cultural or environmental benefit; and
20 (b) details of the consultation process that was undertaken by the
21 joint committee in preparing the report, including the number
22 of Aboriginal and Torres Strait Islander persons or
23 organisations that were consulted.
- 24 (6) If there is no joint parliamentary committee:
25 (a) the Bill is referred to both the House of Representatives and
26 Senate committees responsible for the scrutiny of issues
27 related to Aboriginal persons and Torres Strait Islanders; and
28 (b) the House of Representatives committee must, not less than
29 10 sitting days and not more than 6 months after the
30 introduction of the bill, table in the House a report that meets
31 the requirements contained in subsections (4) and (5); and
32 (c) the Senate committee must, not less than 10 sitting days and
33 not more than 6 months after the introduction of the bill,
34 table in the Senate a report that meets the requirements
35 contained in subsections (4) and (5).

1 **Part 2—Indigenous Land Corporation**

2 *Aboriginal and Torres Strait Islander Act 2005*

3 **11 After subsection 191F(1)**

4 Insert:

5 *Indigenous Land Corporation to operate in accordance with good*
6 *governance principles etc.*

7 (1A) Without limiting subsection (1), the Indigenous Land Corporation
8 must, in performing its functions and exercising its powers, ensure
9 that its business and administration is conducted:

10 (a) efficiently; and

11 (b) in accordance with principles of good governance,
12 transparency, financial accountability and ethical
13 procurement.

14 **12 Section 191L**

15 Repeal the section, substitute:

16 **191L Powers of Minister**

17 (1) Except as expressly provided in this Act or the *Public Governance,*
18 *Performance and Accountability Act 2013*, the Minister is not
19 empowered to direct the Indigenous Land Corporation in relation
20 to any of its activities.

21 (2) In deciding whether to make a request of the Indigenous Land
22 Corporation for any reason, the Minister must have regard to the
23 importance of maintaining the independence of the Indigenous
24 Land Corporation.

25 **13 Section 191W**

26 Repeal the section, substitute:

1 **191W Responsibilities of Indigenous Land Corporation Board**

2 The responsibilities of the Indigenous Land Corporation Board are
3 to:

- 4 (a) ensure the proper and efficient performance of the functions
5 of the Indigenous Land Corporation for the purposes
6 mentioned in section 191B; and
7 (b) determine the policy of the Indigenous Land Corporation
8 with respect to any matter; and
9 (c) ensure that the Indigenous Land Corporation, its subsidiaries
10 and Indigenous Land Corporation officers comply with the
11 highest standards of good governance, transparency, financial
12 accountability and ethical procurement.

13 **14 Subsection 191X(3)**

14 Repeal the subsection, substitute:

15 *Consultation*

- 16 (3) The Minister must, before appointing a person as an Indigenous
17 Land Corporation Director, consult:
18 (a) the Nomination Committee; and
19 (b) the Finance Minister.

20 **15 At the end of section 191X**

21 Add:

22 *Staggering of appointments*

- 23 (5) The Minister must, in appointing persons as Indigenous Land
24 Corporation Directors (including specifying the periods of
25 appointment), ensure that the majority of the appointments of the
26 members of the Indigenous Land Corporation Board would not
27 expire at, or about, the same time.
28 (6) Subsection (5) does not affect the validity of any appointment.

29 **16 After section 191X**

30 Insert:

1 **191XA Nomination Committee**

- 2 (1) The Minister must establish a Nomination Committee, to make
3 recommendations to the Minister about appropriate persons for
4 appointment as Indigenous Land Corporation Directors.
- 5 (2) The Nomination Committee must consist of at least 3 members.
- 6 (3) The members of the Nomination Committee must:
7 (a) be eminent persons; and
8 (b) be Aboriginal persons or Torres Strait Islanders; and
9 (c) have skills and expertise relevant to the functions of the
10 Indigenous Land Corporation.
- 11 (4) In appointing persons to the Nomination Committee, the Minister
12 must have regard to the gender balance of the Nomination
13 Committee.

14 *Chairperson*

- 15 (5) The Minister must appoint a member of the Nomination
16 Committee as its Chairperson.
- 17 (6) The Minister must, before appointing a person as a member, or as
18 the Chairperson, of the Nomination Committee, consult:
19 (a) the joint parliamentary committee responsible for the scrutiny
20 of issues relating to Aboriginal persons and Torres Strait
21 Islanders on the suitability of the candidate proposed for
22 appointment, or
23 (b) if there is no joint parliamentary committee—both the House
24 and the Senate committee responsible for the scrutiny of
25 issues related to Aboriginal persons and Torres Strait
26 Islanders on the suitability of the candidate proposed for
27 appointment.

28 *Terms and conditions*

- 29 (7) A member of the Nomination Committee holds office on such
30 terms and conditions (if any) as are determined by the Minister by
31 notice published in the *Gazette*.

1 **191XB Consultation with Nomination Committee**

- 2 (1) The Minister must, before appointing an Indigenous Land
3 Corporation Director, request that the Nomination Committee
4 prepare a report proposing potential candidates for appointment.
- 5 (2) Subject to subsections (3), (4) and (5), the Nomination Committee
6 must determine procedures for its operation.
- 7 (3) The Nomination Committee must:
8 (a) maintain a list of potential candidates for appointment as
9 Indigenous Land Corporation Directors; and
10 (b) meet at least once in every 12 month period for the purposes
11 of discussing and updating the list.
- 12 (4) In preparing a report under subsection (1), or in maintaining the list
13 under subsection (3), the Nomination Committee must have regard
14 to the following:
15 (a) the gender balance of the Indigenous Land Corporation
16 Board;
17 (b) the requirements of subsection 191X(4);
18 (c) whether a person recommended for appointment is a fit and
19 proper person to be an Indigenous Land Corporation
20 Director.
- 21 (5) A report under subsection (1), or a list under subsection (3):
22 (a) must not contain more than 10 potential candidates for
23 appointment; and
24 (b) must not be disclosed by a member of the Nomination
25 Committee or an Indigenous Land Corporation officer, other
26 than for a purpose authorised by the Indigenous Land
27 Corporation Board.
- 28 (6) If the Minister makes an appointment, the Minister must make a
29 statement, in writing, indicating whether or not the person
30 appointed was a candidate proposed by the Nomination
31 Committee.
- 32 (7) A statement under subsection (6) must be published:
33 (a) on the Indigenous Land Corporation's website; or

1 (b) by any other means that the Indigenous Land Corporation
2 Board considers appropriate.

3 **17 At the end of Division 5 of Part 4A**

4 Add:

5 **191YA Committees**

6 For the purpose of performing its functions, or exercising its
7 powers, the Indigenous Land Corporation Board may establish
8 such committees as it considers necessary.

9 **191YB Audit and Risk Management Committee**

10 (1) Without limiting section 191YA, the Indigenous Land Corporation
11 Board must establish an audit and risk management committee (the
12 ***Audit and Risk Management Committee***).

13 *Note:* This requirement is in addition to the requirement contained in
14 section 92 of the *Public Governance, Performance and Accountability*
15 *Act 2013*.

- 16 (2) The functions of the Audit and Risk Management Committee are:
- 17 (a) to advise the Indigenous Land Corporation Board on:
- 18 (i) the Indigenous Land Corporation's governance
19 framework and assurance mechanisms; and
- 20 (ii) the key risks to the Indigenous Land Corporation,
21 including risks relating to carrying out its functions; and
- 22 (b) any other functions that the Indigenous Land Corporation
23 Board determines.
- 24 (3) The Indigenous Land Corporation Board must appoint the
25 members of the Audit and Risk Management Committee, including
26 the Chairperson, for a period not exceeding 4 years.
- 27 (4) The members of the Audit and Risk Management Committee, other
28 than the Chairperson:
- 29 (a) must be members of the Indigenous Land Corporation Board;
30 and

- 1 (b) cease to hold office as members of the Audit and Risk
2 Management Committee if they cease to be members of the
3 Indigenous Land Corporation Board.
- 4 (5) The Chairperson of the Audit and Risk Management Committee
5 must not be a current or former Indigenous Land Corporation
6 officer.
- 7 (6) The Indigenous Land Corporation Board, before appointing the
8 Chairperson of the Audit and Risk Management Committee, must
9 consult the Minister in relation to the proposed appointment.
- 10 (7) The Chairperson holds office on such terms and conditions (if any)
11 as are determined by the Minister by notice published in the
12 *Gazette*.

13 **18 Section 191Z**

14 Repeal the section, substitute:

15 **191Z Period of appointment**

- 16 (1) An Indigenous Land Corporation Director holds office for such
17 period, not exceeding 3 years, as is specified in the instrument of
18 appointment.
- 19 (2) An Indigenous Land Corporation Director may be reappointed but
20 cannot be reappointed more than once.
- 21 (3) If the Minister decides to reappoint an Indigenous Land
22 Corporation Director, the decision to reappoint must not be made
23 more than 3 months before the end of the Director's term of
24 appointment.

25 **19 Application of amendment**

- 26 (1) Subsection 191Z(1) of the *Aboriginal and Torres Strait Islander Act*
27 *2005*, as amended by this Schedule, applies to appointments made after
28 the commencement of this item.
- 29 (2) Subsections 191Z(2) and (3) of the *Aboriginal and Torres Strait*
30 *Islander Act 2005*, as amended by this Schedule, apply to
31 reappointments made after the commencement of this item (whether the

1 relevant Indigenous Land Corporation Director was originally
2 appointed before, on or after that commencement).

3 **20 Section 192F**

4 Repeal the section, substitute:

5 **192F Disclosure of interests**

6 *Notification of business interests to Minister—Chairperson*

7 (1) The Indigenous Land Corporation Chairperson must give written
8 notice to the Minister of all direct or indirect pecuniary interests
9 that the Chairperson has or acquires in any business, or in any body
10 corporate carrying on a business.

11 *Notification of business interests to Indigenous Land Council
12 Board—Directors*

13 (2) Without limiting the requirements of section 29 of the *Public
14 Governance, Performance and Accountability Act 2013*, an
15 Indigenous Land Corporation Director must also disclose to the
16 Indigenous Land Corporation Board all direct or indirect pecuniary
17 interests that the Director has or acquires in any business, or in any
18 body corporate carrying on a business.

19 *Register of interests*

20 (3) The Indigenous Land Corporation Board must keep a register of
21 the interests disclosed in accordance with subsections (1) and (2).

22 **21 After section 192S**

23 Insert:

24 **192SA Code of conduct**

25 (1) The Indigenous Land Corporation Board must determine a code of
26 conduct for Indigenous Land Corporation officers.

27 (2) In determining the code of conduct, the Indigenous Land
28 Corporation Board must have regard to the content of the APS

- 1 Code of Conduct, set out in section 13 of the *Public Service Act*
2 *1999*.
- 3 (3) The code of conduct must be published:
4 (a) on the Indigenous Land Corporation's website; or
5 (b) by any other means that the Indigenous Land Corporation
6 Board considers appropriate.
- 7 (4) Indigenous Land Corporation officers must comply with the code
8 of conduct.
- 9 (5) A determination under subsection (1) is not a legislative
10 instrument.

1 **Part 3—Other amendments**

2 *Aboriginal and Torres Strait Islander Act 2005*

3 **22 Subsection 4(1)**

4 Insert:

5 *actual capital value* has the meaning given by subsection 193(5).

6 *Audit and Risk Management Committee* has the meaning given by
7 section 191YB.

8 *Indigenous Land Corporation officer* means any of the following:

- 9 (a) an Indigenous Land Corporation Director;
10 (b) an employee engaged under section 192S;
11 (c) a person performing duties on behalf of the Indigenous Land
12 Corporation under section 192T;
13 (d) an officer or employee made available to the Indigenous
14 Land Corporation under section 192U;
15 (e) a consultant engaged under section 192V;
16 (f) a member, officer, employee or consultant of a subsidiary of
17 the Indigenous Land Corporation.

18 *land-related benefit* has the meaning given by
19 subsection 191AB(3).

20 *Nomination Committee* means the committee established under
21 section 191XA.

22 *real return* has the meaning given by subsection 193(5C).