



# **Native Title (Prescribed Bodies Corporate) Regulations 1999**

**Statutory Rules No. 151, 1999**

made under the

*Native Title Act 1993*

## **Compilation No. 4**

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## About this compilation

### This compilation

This is a compilation of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* that shows the text of the law as amended and in force on 25 March 2021 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of regulations

These regulations are the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

### 3 Interpretation

- (1) In these regulations, unless the contrary intention appears:

**Aboriginal and Torres Strait Islander corporation** has the same meaning as in the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

**Act** means the *Native Title Act 1993*.

**chief executive officer**, of a prescribed body corporate or registered native title body corporate, means:

- (a) if the body corporate is an Aboriginal and Torres Strait Islander corporation—the person primarily and directly responsible to the directors for the general and overall management of the body corporate; or
- (b) if the body corporate is the Indigenous Land and Sea Corporation—the Chief Executive Officer of the Indigenous Land and Sea Corporation; or
- (c) in any other case—the officer having the day to day management of the affairs of the body corporate.

**high level decision** means a decision covered by paragraph (a), (b), (c) or (d) of the definition of **native title decision**.

**low level decision** means a native title decision other than a high level decision.

**native title decision** means a decision:

- (a) to surrender native title rights and interests in relation to land or waters; or
- (b) to enter an indigenous land use agreement under Subdivision B, C or D of Division 3 of Part 2 of the Act or an agreement under Subdivision P (right to negotiate) of that Division; or
- (c) to allow a person who is not a common law holder, or a class of persons who are not common law holders, to become members of a prescribed body corporate; or
- (d) to include one or more consultation processes in the constitution of a prescribed body corporate; or
- (e) to do, or to agree to, any act that would otherwise affect the native title rights or interests of the common law holders (other than a decision to make a compensation application).

**native title determination** means a determination, mentioned in paragraph 55(b) of the Act, that native title exists.

**prescribed body corporate** means:

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- (a) a body corporate prescribed by regulation 4; or
- (b) the Indigenous Land and Sea Corporation continued in existence by section 191A of the *Aboriginal and Torres Strait Islander Act 2005*.

**section 56 or 57 determination** means a determination under section 56 or 57 of the Act.

**specified native title determination** has the meaning given by subregulation 8B(2).

**specified persons** has the meaning given by subregulations 8B(3) and (4).

**standing instructions decision** means a native title decision that is:

- (a) a low level decision; or
  - (b) a decision to enter an indigenous land use agreement under Subdivision B, C or D of Division 3 of Part 2 of the Act in relation to the doing of an act by or for the benefit of the prescribed body corporate; or
  - (c) a decision to enter an agreement under Subdivision P (right to negotiate) of that Division in relation to which the prescribed body corporate is the only grantee party.
- (2) For these regulations, a number of common law holders constitute a **group of common law holders** if they belong to a tribe, clan or family, or a descent, language or other group, recognised as such in accordance with Aboriginal or Torres Strait Islander traditional laws and customs applying to them.

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## Part 2—Prescribed bodies corporate

### 4 Prescribed bodies corporate (Act s 59)

- (1) An Aboriginal and Torres Strait Islander corporation is prescribed for section 59 of the Act if it is registered for the purpose of being the subject of a section 56 or 57 determination.
- (2) An Aboriginal and Torres Strait Islander corporation is taken to be registered for the purpose of being the subject of a section 56 or 57 determination only if:
  - (a) the purpose of becoming a registered native title body corporate is set out in the objects of the corporation; and
  - (b) all members of the corporation are:
    - (i) persons who, at the time of making of the section 56 or 57 determination, are included, or are proposed to be included, in the native title determination as native title holders; or
    - (ii) persons to whom the persons mentioned in subparagraph (i) have consented; and
  - (c) at all times after the section 56 or 57 determination is made, all members of the corporation are:
    - (i) persons who have native title rights and interests in relation to the land or waters to which the native title determination relates; or
    - (ii) persons, or a class of persons, to whom the persons mentioned in subparagraph (i) have consented; and
  - (d) the corporation meets the Indigeneity requirement mentioned in section 29-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

#### 4A Obtaining consent to subsequent determination in relation to a prescribed body corporate

For subsection 59A(3) of the Act, the consent of the common law holders must be obtained in the following way:

- (a) the prescribed body corporate must consult the common law holders for whom the prescribed body corporate holds native title rights and interests in trust or for whom it is an agent prescribed body corporate (the **initial holders**) and obtain their consent:
  - (i) if there is a process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the initial holders, must be followed in relation to the giving of the consent—in accordance with that process; or
  - (ii) if subparagraph (i) does not apply—in accordance with the process of decision-making agreed to, or adopted, by the initial holders in relation to giving the consent; and
- (b) the common law holders who were not the initial holders (the **subsequent holders**) must nominate the prescribed body corporate under section 56 or

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57 of the Act in the same way as for the determination for the initial holders.

### **5 Prescribed body corporate may act for more than 1 group of common law holders**

A prescribed body corporate may hold native title rights and interests in trust for more than one group of common law holders or be an agent prescribed body corporate in relation to a native title determination if the determination applies to each group.

### **6 Functions of prescribed body corporate acting as trustee**

#### *Body corporate that holds native title rights and interests*

- (1) For subsection 56(4) of the Act, if a prescribed body corporate holds native title rights and interests in trust under section 56, the body corporate has the following functions:
- (a) to manage the native title rights and interests of the common law holders of those rights and interests;
  - (b) to hold in trust money connected with the holding in trust of the native title rights and interests (including payments received as compensation or otherwise related to the native title rights and interests);
  - (c) to invest or otherwise apply the money held in trust as directed by the common law holders;
  - (d) to consult with the common law holders in accordance with regulations 8, 8A and 8B;
  - (e) to perform any other function relating to the holding in trust of the native title rights and interests as directed by the common law holders.

#### *Body corporate that makes compensation application in relation to extinguished area*

- (1A) For the purposes of section 58 of the Act, a registered native title body corporate that:
- (a) holds native title rights and interests in trust; and
  - (b) makes a compensation application on behalf of all the persons who claim to be entitled to the compensation;
- has the following functions:
- (c) to consult with the persons who claim to be entitled to the compensation in accordance with regulation 8B;
  - (d) to hold in trust payments received as compensation;
  - (e) to invest or otherwise apply the money held in trust as directed by the persons entitled to the compensation;
  - (f) to perform any other function relating to the compensation as directed by the persons entitled to the compensation.



*General*

- (2) Without limiting subregulation (1) or (1A), in order to perform its functions, a prescribed body corporate or registered native title body corporate may, on behalf of the common law holders or persons entitled to, or who claim to be entitled to, the compensation:
- (a) consult other persons or bodies; and
  - (b) enter into agreements; and
  - (c) exercise procedural rights; and
  - (d) accept notices required by any law of the Commonwealth, a State or a Territory to be given to the common law holders or persons entitled to, or who claim to be entitled to, the compensation.

Note: A prescribed body corporate, or registered native title body corporate, acting as trustee for common law holders is also subject to regulations 8 to 10.

**7 Functions of registered native title body corporate not acting as trustee***Body corporate that does not hold native title rights and interests*

- (1) For the purposes of section 58 of the Act, a registered native title body corporate that is an agent prescribed body corporate in relation to native title rights and interests of common law holders has the following functions:
- (a) to act as agent of the common law holders in respect of matters relating to the native title;
  - (b) to manage the rights and interests of the common law holders as authorised by the common law holders;
  - (c) to hold in trust money connected with the native title rights and interests (including payments received as compensation or otherwise related to those rights and interests);
  - (d) to invest or otherwise apply the money held in trust as directed by the common law holders;
  - (e) to consult with the common law holders in accordance with regulations 8, 8A and 8B;
  - (f) to perform any other function relating to those rights and interests as directed by the common law holders.

*Body corporate that makes compensation application in relation to extinguished area*

- (1A) For the purposes of section 58 of the Act, a registered native title body corporate that:
- (a) does not hold native title rights and interests in trust; and
  - (b) makes a compensation application on behalf of all the persons who claim to be entitled to the compensation;
- has the following functions:
- (c) to consult with the persons who claim to be entitled to the compensation in accordance with regulation 8B;

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- (d) to hold in trust payments received as compensation;
- (e) to invest or otherwise apply the money held in trust as directed by the persons entitled to the compensation;
- (f) to perform any other function relating to the compensation as directed by the persons entitled to the compensation.

### *General*

- (2) Without limiting subregulation (1) or (1A), in order to perform its functions, a registered native title body corporate may, on behalf of the common law holders or persons entitled to, or who claim to be entitled to, the compensation:
  - (a) consult other persons or bodies; and
  - (b) enter into agreements; and
  - (c) exercise procedural rights; and
  - (d) accept notices required by any law of the Commonwealth, a State or a Territory to be given to the common law holders or persons entitled to, or who claim to be entitled to, the compensation.

Note: An agent prescribed body corporate is also subject to regulations 8 to 10.

## **8 Consultation with, and consent of, common law holders in relation to native title decisions**

### *Consultation and consent required before a native title decision is made*

- (1) Before making a native title decision, a prescribed body corporate that:
  - (a) holds native title rights and interests in trust for the common law holders; or
  - (b) is an agent prescribed body corporate that has become a registered native title body corporate;must consult and obtain consent in relation to the decision:
  - (c) if the decision is a high level decision—in accordance with this regulation; or
  - (d) if the decision is a low level decision—in accordance with this regulation or regulation 8A.

### *No need to consult or obtain consent in relation to a standing instructions decision if covered by approval*

- (2) However, the prescribed body corporate does not need to consult and obtain consent in relation to a standing instructions decision covered by an approval under subregulation (8).

### *Consultation and consent processes*

- (3) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of:
  - (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law

holders on whom the proposed native title decision would have an effect;  
or

(b) in any other case—the common law holders;

must be followed in relation to the giving of the consent mentioned in subregulation (1), the consent must be given in accordance with that process.

- (4) If subregulation (3) does not apply, the consent must be given in accordance with the process of decision-making agreed to, or adopted, for the proposed native title decision, or for decisions of the same kind as that decision, by:
- (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the proposed native title decision would have an effect;  
or
- (b) in any other case—the common law holders.

*Effect of failure to consult or obtain consent*

- (6) An agreement that gives effect to a native title decision of a prescribed body corporate has no effect to the extent that it applies to the decision, if the body corporate does not comply with this regulation.
- (7) Subregulation (6) does not apply to an indigenous land use agreement of a kind described in section 24EB or 24EBA of the Act.

*Approval for standing instructions decisions*

- (8) A standing instructions decision is covered by an approval under this subregulation if:
- (a) the prescribed body corporate has the approval of the following to make decisions of that kind without needing to consult and obtain further consent:
- (i) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the decision would have an effect;
- (ii) in any other case—the common law holders; and
- (b) any conditions imposed by the common law holders mentioned in subparagraph (a)(i) or (ii) on the approval have been met in relation to the decision.
- (9) The common law holders mentioned in subparagraph (8)(a)(i) or (ii) may give or revoke an approval, and impose, vary or revoke conditions on an approval:
- (a) if the approval relates to low level decisions—using a relevant consultation process in the constitution of the prescribed body corporate; or
- (b) in any case:
- (i) if there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of those common law holders, must be followed in relation to giving the approval—in accordance with that process; or

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- (ii) if subparagraph (i) does not apply—in accordance with the process of decision-making agreed to, or adopted, by those common law holders in relation to giving the approval.

### 8A Alternative consultation processes in relation to native title decisions

- (1) This regulation applies to the making of a low level decision if the prescribed body corporate has in its constitution one or more consultation processes to which the following have consented:
  - (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the decision would have an effect;
  - (b) in any other case—the common law holders.
- (2) Before making a native title decision, the prescribed body corporate must consult and obtain consent in relation to the decision using the relevant consultation process in its constitution.

### 8B Consultation and consent in relation to the making of compensation applications

- (1) Before making a compensation application, a registered native title body corporate must consult and obtain consent in relation to the making of the application in accordance with this regulation.

#### *Identify relevant determinations*

- (2) Any of the following is a **specified native title determination** for the compensation application:
  - (a) a native title determination in relation to an area of land or waters to which the compensation application relates;
  - (b) if, in relation to an area of land or waters to which the compensation application relates (the **relevant land or waters**), there is no native title determination—the native title determination that covers the area of land or waters whose external boundary includes the relevant land or waters.

Note 1: A native title determination is a determination that native title exists: see the definition of **native title determination** in subregulation 3(1).

Note 2: Paragraph (a) of this subsection relates to applications made by a registered native title body corporate under paragraph (1) in the item dealing with compensation applications in the table in subsection 61(1) of the Act. Paragraph (b) of this subsection relates to applications made under paragraph (1A) of that item by a registered native title body corporate on behalf of all the persons who claim to be entitled to the compensation, being the common law holders in relation to the native title determination mentioned in paragraph (b) of this subsection.

#### *Identify relevant common law holders*

- (3) The **specified persons** for the compensation application are the common law holders included in any specified native title determination for the compensation application.

- (4) However, if:
- (a) it has been determined that native title exists in relation to all of the land or waters to which the compensation application relates; and
  - (b) a specified native title determination for the compensation application identifies classes of common law holders;
- the classes of common law holders identified in the specified native title determination who possess native title rights and interests in relation to the land or waters to which the compensation application relates are *specified persons* for the compensation application instead of all the common law holders included in the specified native title determination.

*Identify and follow appropriate consultation process*

- (5) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the specified persons, must be followed in relation to the giving of the consent, the consent must be given in accordance with that process.
- (6) If subregulation (5) does not apply, the consent must be given in accordance with the process of decision-making agreed to, or adopted, for the compensation application, or for compensation applications of the same kind, by the specified persons.

## **9 Certificate in relation to consultation and consent**

- (1) As soon as practicable after:
- (a) a native title decision is made by a prescribed body corporate that:
    - (i) holds native title rights and interests in trust for the common law holders; or
    - (ii) is an agent prescribed body corporate that has become a registered native title body corporate; or
  - (b) a registered native title body corporate decides to make a compensation application;
- the body corporate must prepare a certificate in writing.
- (2) The certificate must certify that:
- (a) for a high level decision other than a standing instructions decision—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8; or
  - (b) for a high level decision that is a standing instructions decision:
    - (i) if the decision is covered by an approval under subregulation 8(8)—the decision is of that kind; or
    - (ii) in any case—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8; or
  - (c) for a low level decision:
    - (i) if the decision is covered by an approval under subregulation 8(8)—the decision is of that kind; or

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- (ii) in any case—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8 or 8A; or
- (d) for a decision to make a compensation application—the body corporate has consulted and obtained consent in relation to the making of the compensation application in accordance with regulation 8B.

Note: The Registrar of Aboriginal and Torres Strait Islander Corporations has functions in relation to certificates prepared under this regulation: see section 55A of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017*.

- (3) The certificate must include the following:
  - (a) the date of the certificate;
  - (b) details of the process of making the decision;
  - (c) details (including names) of the persons who participated in the process of making the decision;
  - (d) if the certificate is of a kind mentioned in subparagraph (2)(b)(i) or (c)(i)—details of the process of approval under subregulation 8(8);
  - (e) if paragraph (d) does not apply—details of the consultation and consent process.
- (4) The certificate must be:
  - (a) executed by the body corporate in accordance with subsection 99-5(1) or (2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
  - (b) signed by the chief executive officer of the body corporate.
- (5) The body corporate may collect (within the meaning of the *Privacy Act 1988*) personal information (within the meaning of that Act) about common law holders or persons who claim to be entitled to compensation for the purposes of preparing a certificate.
- (6) A certificate prepared in accordance with this regulation in relation to a native title decision is prima facie evidence that the body corporate has consulted and obtained consent in relation to the decision as required by regulation 8.
- (7) A certificate prepared in accordance with this regulation in relation to a decision to make a compensation application is prima facie evidence that the body corporate has consulted and obtained consent in relation to the making of the compensation application as required by regulation 8B.

### 10 Access to certificates

- (1) If a prescribed body corporate that:
  - (a) holds native title rights and interests in trust for the common law holders; or
  - (b) is an agent prescribed body corporate that has become a registered native title body corporate;makes a native title decision, the body corporate must give a copy of a certificate under regulation 9 to any person who is entitled to it under subregulation (3).

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- (2) If a registered native title body corporate decides to make a compensation application, the body corporate must give a copy of a certificate under regulation 9 to any person who is entitled to it under subregulation (3).
- (3) The person is entitled to a copy of the certificate if the person:
  - (a) is a common law holder or has a substantial interest in the decision to which the certificate relates; and
  - (b) makes a request in writing to the body corporate for a copy of the certificate.
- (4) For the purposes of the *Privacy Act 1988* and without limiting subregulation (3), the Registrar of Aboriginal and Torres Strait Islander Corporations is entitled under subregulation (3) to a copy of a certificate for the purposes of the Registrar performing the functions mentioned in section 55A of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* if the Registrar makes a request in writing to the body corporate for a copy of the certificate.

## **Part 3—Changes to holding of native title rights and interests**

### **11 Determination of Indigenous Land and Sea Corporation as agent prescribed body corporate**

- (1) The Federal Court may determine the Indigenous Land and Sea Corporation to be an agent prescribed body corporate under paragraph 56(4)(e), 57(2)(c) or 60(b) of the Act.

Note: Subsection 59(2) of the Act allows the regulations to prescribe the body corporate, or kinds of body corporate, that may be determined by the Federal Court under paragraph 57(2)(c) of the Act.

- (2) The Registrar of the Federal Court is to give the Indigenous Land and Sea Corporation reasonable notice in writing before the Federal Court makes a determination under paragraph 57(2)(c) of the Act that the Indigenous Land and Sea Corporation is to be the prescribed body corporate.

Note: For the requirements for notice before determinations under paragraph 56(4)(c) or (e) or 60(b) of the Act—see regulations 12, 13, 16 and 17.

- (3) If the Federal Court determines the Indigenous Land and Sea Corporation to be the agent prescribed body corporate, the determination must be for an initial period of 5 years.
- (4) Before the end of the initial period or of any extension of the determination, if the common law holders have not applied for a determination under regulation 15 or 16, the Federal Court must extend the determination for up to one year.

Note: For the ways the Indigenous Land and Sea Corporation can be replaced as the prescribed body corporate—see regulations 15 and 16.

### **12 Replacement of trustee prescribed body corporate**

- (1) For paragraphs 56(4)(b) and (c) of the Act, the common law holders:
  - (a) may apply to the Federal Court for a determination to replace an existing prescribed body corporate that is the trustee of the native title with another prescribed body corporate as trustee; and
  - (b) if they do—must comply with the notification requirements mentioned in regulation 18.
- (2) The Federal Court:
  - (a) must determine the application as soon as practicable after receiving the application; and
  - (b) may make orders about any matter necessary or appropriate to give effect to the common law holders' wishes, or to assist the transition to the replacement prescribed body corporate.



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**13 Replacement of trustee prescribed body corporate by agent prescribed body corporate**

- (1) For subparagraph 56(4)(d)(i) and paragraphs 56(4)(e) and (f) of the Act, the common law holders:
    - (a) may apply to the Federal Court for a determination to terminate a trust, if native title rights and interests are held by a prescribed body corporate in trust; and
    - (b) if they do—must comply with the notification requirements mentioned in regulation 18; and
    - (c) may nominate an agent prescribed body corporate to replace the prescribed body corporate.
  - (2) The Federal Court may:
    - (a) determine that:
      - (i) the trust is terminated; and
      - (ii) a prescribed body corporate, whether or not it is the prescribed body corporate that held the rights and interests in trust, is to be the agent prescribed body corporate; and
    - (b) make orders about any matter relating to the termination of the trust, the performance of those functions and the transition from the trust arrangement to the new arrangement.
- Note: An agent prescribed body corporate that becomes a registered native title body corporate has the functions listed in subregulation 7(1).
- (3) When the trust is terminated, the native title rights and interests are held by the common law holders.

**14 Replacement of trustee prescribed body corporate in liquidation**

- (1) For subparagraph 56(4)(d)(ii) and paragraph 56(4)(f) of the Act, a liquidator who has been appointed for a prescribed body corporate that holds native title rights and interests in trust must, within 14 days after being appointed:
  - (a) apply to the Federal Court for the determination of a prescribed body corporate to perform the functions mentioned in subsection 57(3) of the Act; and
  - (b) if the liquidator nominates the Indigenous Land and Sea Corporation as the prescribed body corporate—give the Indigenous Land and Sea Corporation written notice of the application.
- (2) The Federal Court:
  - (a) must determine the application as soon as practicable after receiving the application; and
  - (b) must determine that the trust is terminated; and
  - (c) may make orders about any matter relating to the termination of the trust or the transition to the replacement prescribed body corporate.

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- (3) When the trust is terminated, the native title rights and interests are held by the common law holders.

### **15 Replacement of agent prescribed body corporate by trustee prescribed body corporate**

- (1) For paragraph 56(7)(a) of the Act, the common law holders:
- (a) may apply to the Federal Court for a determination that a prescribed body corporate hold the rights and interests from time to time comprising the native title in trust for the common law holders if:
    - (i) there is an agent prescribed body corporate; and
    - (ii) the common law holders decide that they want the rights and interests held in trust; and
  - (b) if they do—must comply with the notification requirements mentioned in regulation 18.
- (2) The Federal Court may:
- (a) determine that a prescribed body corporate, whether or not it is the agent body corporate, is to hold the rights and interests in trust for the common law holders; and
  - (b) make orders about any matter relating to the termination of the trust, the performance of those functions and the transition to the replacement prescribed body corporate.

### **16 Replacement of agent prescribed body corporate**

- (1) For subparagraph 60(a)(i) of the Act, the common law holders:
- (a) may apply to the Federal Court for a determination to replace an agent prescribed body corporate with another agent prescribed body corporate; and
  - (b) if they do—must comply with the notification requirements mentioned in regulation 18.
- (2) The Federal Court:
- (a) must determine the application as soon as practicable after receiving the application; and
  - (b) may make orders about any matter necessary or appropriate to give effect to the common law holders' wishes, or to assist the transition to the replacement agent prescribed body corporate.

### **17 Replacement of agent prescribed body corporate in liquidation**

- (1) For subparagraph 60(a)(ii) of the Act, a liquidator who has been appointed for an agent prescribed body corporate must, within 14 days after being appointed:
- (a) apply to the Federal Court for the determination of another prescribed body corporate to perform the functions mentioned in subsection 57(3) of the Act; and

- (b) if the liquidator nominates the Indigenous Land and Sea Corporation as the prescribed body corporate—give the Indigenous Land and Sea Corporation written notice of the application.
- (2) The Federal Court:
- (a) must determine the application as soon as practicable after receiving the application; and
  - (b) may make orders about any matter relating to the replacement or the transition to the replacement agent prescribed body corporate.

## **18 Notification requirements**

- (1) This regulation applies to an application to the Federal Court under subregulation 12(1), 13(1), 15(1) or 16(1).
- (2) The applicant must, at least 14 days before applying to the Federal Court, notify the matters mentioned in subregulation (3) to:
- (a) for an application under subregulation 12(1) or 13(1)—the prescribed body corporate that is the trustee of the native title; or
  - (b) for an application under subregulation 15(1) or 16(1)—the agent prescribed body corporate.
- (3) For subregulation (2), the matters are:
- (a) the applicant's intention to apply to the Federal Court for the determination; and
  - (b) any alternative arrangements the applicant would prefer for the holding of the native title, such as a suggested alternative prescribed body corporate.
- (4) The application must include:
- (a) the information mentioned in paragraph (3)(b); and
  - (b) the written consent of any nominated prescribed body corporate.

## Part 4—Fees for services charged by registered native title bodies corporate

### 19 Definitions

In this Part:

**applicant** means the person making a request for an opinion under subsection 60AC(1) of the Act.

**body corporate** means a registered native title body corporate.

**Registrar** has the meaning given by subsection 60AC(1) of the Act.

### 20 Fees for services

For subsection 60AB(2) of the Act, a body corporate may charge a person, other than a person mentioned in subsection 60AB(4) of the Act, a fee for costs it incurs in performing the following functions:

- (a) activities related to providing comments on proposed future acts under any of the following provisions of the Act:
  - (i) paragraph 24GB(9)(d);
  - (ii) paragraph 24GD(6)(b);
  - (iii) subparagraph 24GE(1)(f)(ii);
  - (iv) paragraph 24HA(7)(b);
  - (v) paragraph 24ID(3)(b);
  - (vi) paragraph 24JB(6)(b);
  - (vii) paragraph 24JB(7)(b);
- (b) activities related to the exercise of procedural rights under subsection 24KA(7), 24MD(6A) or 24NA(8) of the Act;
- (c) activities related to consultations under section 24JAA or paragraph 24MD(6B)(e) of the Act;
- (d) activities related to the exercise of procedural rights for acts or provisions mentioned in a determination under section 26A, 26B or 43A of the Act;
- (e) activities related to making submissions under paragraph 26C(5)(b) of the Act.

*Example of activities for paragraphs (a) and (e)*

Contacting affected common law holders.

*Examples of activities for paragraph (c)*

Arranging meetings or travel, or obtaining legal advice.

Note: Subsection 60AB(5) of the Act specifies functions for which a registered native title body corporate may not charge a fee.

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**21 Application for opinion of Registrar about fees charged for services**

- (1) For paragraph 60AC(5)(b) of the Act, this regulation sets out the process by which a request to the Registrar is made by an applicant and considered by the Registrar.
- (2) The request must comply with all of the following requirements:
  - (a) it must be made within 21 days after the person is charged a fee by the body corporate;
  - (b) it must be in writing;
  - (c) if it is made by or on behalf of a body, it must be signed by:
    - (i) a director or secretary of the body; or
    - (ii) if the body does not have a director or secretary—a person with authority to make the request for the body;
  - (d) if it is made by an individual, it must be signed by the individual and have the name of the individual printed next to the signature;
  - (e) it must include the following:
    - (i) the name and address of the applicant;
    - (ii) the address, corporation name and Indigenous Corporation Number of the body corporate that charged the fee;
    - (iii) any document provided by the body corporate that mentions the functions for which the fee has been charged;
    - (iv) any document provided by the body corporate explaining the charge and its calculation;
    - (v) a description of the services provided, or claimed to be provided, by the body corporate;
    - (vi) a statement about why the applicant considers that the fee charged is not one that the body corporate may charge the applicant under regulation 20 or subsection 60AB(1) of the Act.
- Note: The functions for which fees for costs may be charged by a body corporate are mentioned in regulation 20 and subsection 60AB(1) of the Act. Subsection 60AB(4) of the Act lists the persons who may not be charged fees, and subsection 60AB(5) of the Act mentions functions for which fees cannot be charged.
- (3) The applicant must give a copy of the request, within 7 days after lodging the request, to the body corporate that has charged the applicant the disputed fee.
- (4) The request may be withdrawn in writing at any time before the Registrar gives an opinion about the fee.
- (5) The Registrar may:
  - (a) ask the applicant, in writing, for more information within a period specified by the Registrar; and
  - (b) ask the body corporate that has charged the fee, in writing, to provide information or documents, within a period specified by the Registrar, about any of the following:
    - (i) the function performed or service provided to which the fee relates;
    - (ii) the amount of the fee;

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- (iii) how the amount of the fee was calculated; and
- (c) extend the periods mentioned in paragraphs (a) and (b) for receipt of the information or documents; and
- (d) if the applicant does not comply with the request mentioned in paragraph (a) within the period or any extended period:
  - (i) treat the application as being withdrawn; and
  - (ii) notify the applicant in writing accordingly.
- (6) A request under paragraph (5)(a) must state that, if the applicant does not comply with the request within the period or any extended period, the application will be treated as being withdrawn and the applicant will be notified accordingly.
- (7) For subparagraph (5)(d)(ii), the notice must be given within 14 days after the Registrar makes the decision to treat the application as being withdrawn.
- (8) If a request is made under paragraph (5)(b) or the period mentioned in paragraph (5)(b) is extended under paragraph (5)(c), the Registrar must tell the applicant, in writing, of the period that has been specified for the body corporate to provide the information or documents.

### 22 Opinion of Registrar about fees charged for services

- (1) For paragraph 60AC(5)(d) of the Act, if the Registrar gives an opinion under subsection 60AC(2) of the Act, the Registrar must give the opinion and the reasons for the opinion:
  - (a) within 28 days after:
    - (i) the day when the Registrar received the request for the opinion; or
    - (ii) if a request was made under paragraph 21(5)(a) or (b)—the end of the period mentioned in the request or any extended period; or
    - (iii) if a request was made under both paragraphs 21(5)(a) and (b)—the latest of the following:
      - (A) the period mentioned in the request made under paragraph 21(5)(a);
      - (B) the period mentioned in the request made under paragraph 21(5)(b);
      - (C) any extended period; and
  - (b) in writing; and
  - (c) to the applicant and to the body corporate that charged the fee.
- (2) The Registrar must give a copy of the opinion to the Secretary of the Department within the same 28 day period mentioned in paragraph (1)(a).

### 23 Reconsideration of Registrar's opinion or decision not to give an opinion

- (1) If an applicant requests an opinion under regulation 21, the applicant, or the body corporate that charged the fee in dispute, may ask the Registrar to reconsider:
  - (a) if the Registrar gave an opinion under subsection 60AC(2) of the Act—the opinion; or

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- (b) if the Registrar did not give an opinion under subsection 60AC(2) of the Act within the period mentioned in subregulation 22(1)—the Registrar’s decision not to give an opinion.
- (2) A request for reconsideration must be made by written notice given to the Registrar within the following period:
    - (a) if an opinion was given by the Registrar under subsection 60AC(2) of the Act—28 days after the person is notified in writing of the Registrar’s opinion; or
    - (b) if no opinion has been given by the Registrar within the period mentioned in subregulation 22(1)—28 days after the period mentioned in subregulation 22(1) has ended; or
    - (c) if the Registrar considers it appropriate—a longer period allowed by the Registrar.
  - (3) The notice must set out the reasons for making the request.
  - (4) If the Registrar is satisfied that there is sufficient reason to reconsider a matter mentioned in paragraph (1)(a) or (b), the Registrar may reconsider the matter on his or her own initiative.

## **24 Request for further information or documents**

- (1) This regulation applies if:
  - (a) an applicant or a body corporate asks the Registrar to reconsider a matter under subregulation 23(1); or
  - (b) the Registrar decides to reconsider a matter mentioned in paragraph 23(1)(a) or (b) on his or her own initiative under subsection 23(4).
- (2) The Registrar may ask the applicant or the body corporate that charged the fee in dispute for information or documents relating to the fee in dispute.
- (3) A request made under subregulation (2) must:
  - (a) be in writing; and
  - (b) be made within 28 days after:
    - (i) the Registrar received the notice mentioned in subregulation 23(2); or
    - (ii) if the Registrar decided to reconsider a matter mentioned in paragraph 23(1)(a) or (b) on his or her own initiative—the day the Registrar decided to reconsider the matter; and
  - (c) specify the period when the requested information or document is required to be provided to the Registrar; and
  - (d) if the request is made to the person who sought reconsideration—state that if the request is not complied with within the period or any extended period allowed by the Registrar, the request for reconsideration will be treated as being withdrawn.
- (4) The Registrar may extend the period mentioned in paragraph (3)(c).

## Regulation 25

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- (5) If a request mentioned in subregulation (2) is made to the person who sought reconsideration and the person fails to comply with the request, the Registrar may:
  - (a) treat the request for reconsideration as being withdrawn; and
  - (b) notify the applicant and body corporate in writing accordingly.
- (6) For paragraph (5)(b), the notice must be given within 14 days after the Registrar makes the decision to treat the request for reconsideration as being withdrawn.
- (7) If the Registrar makes a request under subregulation (2) or extends the period mentioned in the request under subregulation (4), the Registrar must tell the applicant and the body corporate, in writing, of the period that has been specified for the information or documents to be provided to the Registrar.

### **25 Registrar's opinion following reconsideration**

- (1) If after reconsidering a matter mentioned in paragraph 23(1)(a) or (b) the Registrar forms an opinion under subsection 60AC(2) of the Act, the Registrar must tell the applicant and the body corporate that charged the fee in dispute of the opinion and reasons for the opinion, in writing, within the following period:
  - (a) if the Registrar did not make a request under subregulation 24(2)—within 28 days after:
    - (i) receiving the notice mentioned in subregulation 23(2); or
    - (ii) if the Registrar decided to reconsider the matter on his or her own initiative under subregulation 23(4)—the day the Registrar decided to reconsider the matter;
  - (b) if the Registrar made a request under subregulation 24(2) to the applicant or the body corporate and the period mentioned in the request was not extended under subregulation 24(4)—within 28 days after the end of the period mentioned in the request;
  - (c) if the Registrar made a request under subregulation 24(2) to the applicant or the body corporate and the period mentioned in the request was extended under subregulation 24(4)—within 28 days after the end of the extended period;
  - (d) if the Registrar made a request under subregulation 24(2) to the applicant and the body corporate and the period mentioned in each request was not extended under subregulation 24(4)—within 28 days after the end of the period mentioned in the requests that ends the latest;
  - (e) if the Registrar made a request under subregulation 24(2) to the applicant and the body corporate and the period mentioned in one or more of the requests was extended under subregulation 24(4)—within 28 days after the end of the extended period that ends the latest.
- (2) The Registrar must give a copy of the opinion mentioned in subregulation (1) to the Secretary of the Department within the same period that the Registrar is required to tell the applicant and body corporate under subregulation (1).
- (3) If the Registrar does not give an opinion within the period required under subregulation (1), the Registrar is taken to have:



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- (a) if the Registrar had given an opinion in accordance with regulation 22—confirmed the opinion given; or
  - (b) in all other cases—decided not to give an opinion.
- (4) A person may apply to the Administrative Appeals Tribunal for review of:
- (a) an opinion of the Registrar given under subregulation (1); or
  - (b) an opinion of the Registrar confirmed by paragraph (3)(a); or
  - (c) a decision of the Registrar mentioned in paragraph (3)(b).

## 26 Time for payment of fee

- (1) For paragraph 60AC(5)(c) of the Act, a body corporate must not require an applicant to pay a fee in dispute, and no interest is payable on the amount of the fee, until:
- (a) if no request for reconsideration is made in accordance with subregulation 23(2)—the time for making a request under subregulation 23(2) has passed; or
  - (b) if a request for reconsideration is made in accordance with subregulation 23(2) or the Registrar decided to reconsider a matter mentioned in paragraph 23(1)(a) or (b) on his or her own initiative under subregulation 23(4)—the time for making an application to the Administrative Appeals Tribunal for review of an opinion or decision mentioned in subregulation 25(4) has ended.
- (2) If a fee is to be paid under subregulation (1), the fee must be paid by the end of whichever of the following periods ends the latest:
- (a) if no request for reconsideration was made in accordance with subregulation 23(2)—28 days after the time for making a request under subregulation 23(2) has passed;
  - (b) if a request for reconsideration was made under subregulation 23(2) or the Registrar decided to reconsider a matter mentioned in paragraph 23(1)(a) or (b) on his or her own initiative under subregulation 23(4)—28 days after the time for making an application to the Administrative Appeals Tribunal for review of an opinion or decision mentioned in subregulation 25(4) has ended;
  - (c) the period that the body corporate that charged the fee specifies in writing to the applicant.

Note: If the Registrar gives an opinion that the fee is not one that the body corporate may charge under section 60AB of the Act, the body corporate must withdraw the charge—see subsection 60AC(3) of the Act.

## Part 5—Application, saving and transitional provisions

### Division 1—Application of amendments made by the Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021

#### 27 Application of amendments made by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*

##### *Definitions*

- (1) In this regulation:

***amending regulations*** means the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*.

***commencement time*** means the commencement of Schedule 1 to the amending regulations.

##### *Consent for subsequent determinations of native title*

- (2) The amendments of regulation 4A made by the amending regulations apply in relation to any consent obtained after the commencement time.

##### *Functions of bodies corporate*

- (3) The amendments of regulation 6 made by the amending regulations apply in relation to any prescribed body corporate, or registered native title body corporate, that holds native title rights and interests in trust after the commencement time, whether determined to hold the rights and interests in trust before or after the commencement time.
- (4) The amendments of regulation 7 made by the amending regulations apply in relation to any registered native title body corporate after the commencement time, whether it became a registered body corporate before or after the commencement time.

##### *Consent for native title decisions and compensation applications*

- (5) The amendments of regulations 3, 8 and 10 made by the amending regulations (other than the amendment of the definition of ***prescribed body corporate*** in regulation 3), and regulations 8A, 8B and 9 as inserted by the amending regulations, apply in relation to:
- (a) any native title decision made after the commencement time; and
  - (b) any compensation application made after the commencement time.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Number and year	FRLI registration or gazettal	Commencement	Application, saving and transitional provisions
151, 1999	14 July 1999	r 4: 30 Sept 1998 (r 2(a)) Remainder: 14 July 1999 (r 2(b))	
186, 2007	29 June 2007 (F2007L01941)	1 July 2007 (r 2)	—
257, 2011	14 Dec 2011 (F2011L02677)	15 Dec 2011 (r 2)	—
27, 2012	14 Mar 2012 (F2012L00578)	15 Mar 2012 (s 2)	—

  

Name	Registration	Commencement	Application, saving and transitional provisions
Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021	22 Mar 2021 (F2021L00292)	Sch 1 (items 20–59): 25 Mar 2021 (s 2(1) item 1)	—

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

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Provision affected	How affected
<b>Part 1</b>	
Part 1 heading.....	ad No 257, 2011
r 2 .....	rep LA s 48D
r 3 .....	am No 186, 2007; No 257, 2011; No 27, 2012; F2021L00292
<b>Part 2</b>	
Part 2 heading.....	ad No 257, 2011
r 4 .....	rs No 186, 2007 am No 257, 2011
r 4A .....	ad No 257, 2011 am F2021L00292
r 5 .....	am No 257, 2011
r 6 .....	am No 257, 2011; F2021L00292
r 7 .....	am No 257, 2011; F2021L00292
r 8 .....	rs No 257, 2011 am F2021L00292
r 8A .....	ad No 257, 2011 rs F2021L00292
r 8B.....	ad F2021L00292
r 9 .....	rs No 257, 2011; F2021L00292
r 10 .....	am F2021L00292
<b>Part 3</b>	
Part 3 heading.....	ad No 257, 2011
r 11 .....	rs No 257, 2011 am F2021L00292
r 12 .....	ad No 257, 2011
r 13 .....	ad No 257, 2011 am F2021L00292
r 14 .....	ad No 257, 2011 am F2021L00292
r 15 .....	ad No 257, 2011
r 16 .....	ad No 257, 2011
r 17 .....	ad No 257, 2011 am F2021L00292
r 18 .....	ad No 257, 2011
<b>Part 4</b>	
Part 4 .....	ad No 257, 2011
r 19 .....	ad No 257, 2011

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
r 20 .....	ad No 257, 2011
r 21 .....	ad No 257, 2011
r 22 .....	ad No 257, 2011
	ed C4
r 23 .....	ad No 257, 2011
r 24 .....	ad No 257, 2011
r 25 .....	ad No 257, 2011
r 26 .....	ad No 257, 2011
<b>Part 5</b>	
Part 5 .....	ad F2021L00292
<b>Division 1</b>	
r 27 .....	ad F2021L00292

## Endnotes

### Endnote 5—Editorial changes

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#### **Endnote 5—Editorial changes**

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

#### **Subparagraph 22(1)(a)(ii)**

##### **Kind of editorial change**

Update to a cross-reference

##### **Details of editorial change**

Subparagraph 22(1)(a)(ii) refers to “subparagraph 21(5)(a) or (b)”.

This compilation was editorially changed to omit “subparagraph 21(5)(a) or (b)” and substitute “paragraph 21(5)(a) or (b)” in subparagraph 22(1)(a)(ii) to update the cross-reference.