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1999B00146



Native Title (Prescribed Bodies Corporate) Regulations 1999

Statutory Rules 1999 No. 1

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I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations under the *Native Title Act 1993*.

Dated 7 JUL 1999 1999.

WILLIAM DEANE

Governor-General

By His Excellency's Command,

JOHN HERRON

Minister for Aboriginal and Torres Strait Islander Affairs



Native Title (Prescribed Bodies Corporate) Regulations 1999

Statutory Rules 1999 No. *h*¹

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made under the

Native Title Act 1993

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1 Name of regulations

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

2 Commencement

These regulations commence, or are taken to have commenced, as follows:

- (a) on 30 September 1998 — regulation 4;
- (b) on gazettal — the remainder.

3 Interpretation

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

Aboriginal association has the same meaning as in the *Aboriginal Councils and Associations Act 1976*.

Act means the *Native Title Act 1993*.

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

prescribed body corporate means a body corporate prescribed by regulation 4.

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

- (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.

4 Prescribed bodies corporate (Act s 59)

- (1) An Aboriginal association is prescribed for section 59 of the Act if it is incorporated under the *Aboriginal Councils and Associations Act 1976*:
 - (a) on or after 30 December 1994; and
 - (b) for the purpose of being the subject of a section 56 or 57 determination.
- (2) An Aboriginal association is taken to be incorporated for the purpose of being the subject of a section 56 or 57 determination only if:
 - (a) all members of the association are persons who, at the time of making of the section 56 or 57 determination, are included, or proposed to be included, in the native title determination as native title holders; and
 - (b) the purpose of becoming a registered native title body corporate is set out in the objects of the association; and
 - (c) at all times after the section 56 or 57 determination is made, all members of the association are persons who have native title rights and interests in relation to the land or waters to which the native title determination relates.

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

A prescribed body corporate may be a trustee for, or act as an agent or representative of, more than 1 group of common law holders in relation to a native title determination if the determination applies to each group.

6 Functions of prescribed body corporate acting as trustee (Act s 56)

- (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 money (including payments received as compensation or otherwise related to the native title rights and interests) in trust;
 - (c) to invest or otherwise apply money held in trust as directed by the common law holders;
 - (d) to consult with the common law holders in accordance with regulation 8;
 - (e) to perform any other function relating to the native title rights and interests as directed by the common law holders.
- (2) Without limiting subregulation (1), in order to perform its functions, a prescribed body corporate may, on behalf of the common law holders:
- (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.

Note A prescribed body corporate acting as trustee for common law holders is also subject to r 8, 9 and 10.

7 Functions of registered native title body corporate not acting as trustee (Act s 57)

- (1) For paragraph 57 (3) (b) of the Act, if a prescribed body corporate that does not hold native title rights and interests in trust for the common law holders of the rights and interests becomes a registered native title body corporate, the body corporate has the following functions:
- (a) to act as agent or representative of the common law holders in respect of matters relating to those rights and interests;
 - (b) to manage the rights and interests of the common law holders as authorised by the common law holders;
 - (c) to hold money (including payments received as compensation or otherwise related to the native title rights and interests) in trust;

- (d) to invest or otherwise apply money held in trust as directed by the common law holders;
 - (e) to consult with the common law holders in accordance with regulation 8;
 - (f) to perform any other function relating to those rights and interests as directed by the common law holders.
- (2) Without limiting subregulation (1), in order to perform its functions, a prescribed body corporate may, on behalf of the common law holders:
- (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.

Note A prescribed body corporate acting as agent or representative of the common law holders is also subject to r 8, 9 and 10.

8 Consultation with, and consent of, common law holders

- (1) In this regulation:
- native title decision* means a decision:
- (a) to surrender native title rights and interests in relation to land or waters; or
 - (b) to do, or agree to do, any other act that would affect the native title rights or interests of the common law holders.
- (2) A prescribed body corporate acting as trustee for, or agent or representative of, common law holders of native title rights and interests must consult with, and obtain the consent of, the common law holders in accordance with this regulation before making a native title decision.

- (3) The prescribed body corporate must ensure that the common law holders understand the purpose and nature of a proposed native title decision by:
 - (a) consulting, and considering the views of, a representative body for the area that includes the land or waters to which the proposed decision relates; and
 - (b) if the prescribed body corporate considers it to be appropriate and practicable — giving notice of those views to the common law holders.
- (4) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the common law holders, must be followed in relation to the giving of the consent mentioned in subregulation (2), the consent must be given in accordance with that process.
- (5) If subregulation (4) does not apply, the consent must be given by the common law holders in accordance with the process of decision-making agreed to, or adopted, by them for the proposed native title decision, or for decisions of the same kind as that decision.
- (6) If the prescribed body corporate acts as trustee for, or agent or representative of, more than 1 group of common law holders, the body corporate must consult with, and obtain the consent of, only those groups of common law holders whose native title rights or interests would be affected by the proposed native title decision.
- (7) 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.
- (8) Subregulation (7) does not apply in relation to an indigenous land use agreement of a kind described in section 24EB or 24EBA of the Act.

9 Evidence of consultation and consent

- (1) In this regulation:
native title decision has the meaning given in subregulation 8 (1).
- (2) Common law holders of native title rights and interests are taken to have been consulted on, and to have consented to, a proposed native title decision of a prescribed body corporate if a document, signed in accordance with subregulation (3) or (4), certifies:
- (a) that the common law holders have been consulted about, and have consented to, the proposed decision; or
- (b) that:
- (i) the proposed decision is of a kind about which the common law holders have been consulted; and
- (ii) the common law holders have decided that decisions of that kind can be made by the body corporate.
- (3) A document mentioned in subregulation (2) is signed in accordance with this subregulation if:
- (a) the document is signed by at least 5 members of the prescribed body corporate; and
- (b) each of the signatories is a common law holder (*an affected common law holder*) whose native title rights and interests would be affected by the proposed native title decision.
- (4) However, if there are fewer than 5 members of the prescribed body corporate who are affected common law holders, a document mentioned in subregulation (2) is signed in accordance with this subregulation if:
- (a) the document is signed by at least 5 members of the body corporate; and
- (b) each affected common law holder who is a member of the body corporate signs the document.

- (5) Subregulation 8 (3) is taken to have been complied with if:
- (a) a document, signed by at least 5 members of the prescribed body corporate, certifies that:
 - (i) a representative body for the area that includes the land or waters to which the proposed native title decision relates has been consulted about the proposed decision; and
 - (ii) the views of the body have been considered in accordance with this regulation; and
 - (b) a document is signed by an authorised member of the representative body and certifies that the representative body has been consulted about the proposed native title decision by the body corporate.

10 Access to certain documents

- (1) In this regulation:
document includes part of a document.
- (2) A prescribed body corporate must, in accordance with subregulation (3), make a copy of a document available to a person if:
- (a) the body corporate has made a decision to which regulations 8 and 9 apply; and
 - (b) the document was created to provide evidence of consultation and consent described in regulation 9.
- (3) The person is entitled to a copy of the document if the person:
- (a) has a substantial interest in the decision to which the document relates; and
 - (b) makes a request in writing to the prescribed body corporate for a copy of the document.

**11 Native Title (Prescribed Bodies Corporate)
Regulations — repeal**

The following statutory rules are repealed:

- 1994 No. 440
- 1998 No. 120.

Note

1. Made by the Governor-General on ^h 1999, and notified in
the *Commonwealth of Australia Gazette* on ^h 1999.

7 July /
14 July /