

EXPLANATORY STATEMENT

Native Title (Revocation of Recognition Instruments) Determination 2012

Background

In February 2009, the *Updated Economic and Fiscal Outlook* announced that the Government would undertake a **review of pre-2008 Commonwealth subordinate legislation and other regulation** (the Review) "... to document those regulations which impose net costs on business, and identify the scope to improve regulatory efficiency". The Department of Finance and Deregulation (Finance) was tasked with the responsibility of co-ordinating the Review on the Government's behalf. A **Pre-2008 Review of Subordinate Legislation Final Report** (Final Report) was completed for each portfolio and agreed between the Minister Assisting on Deregulation and each Portfolio Minister. Responsibility for actioning the recommendations of each report resides with individual Ministers.

The Review identified in relation to the Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) portfolio 10 'in-scope' policy clusters, that included background information, relevant review history and Finance's recommendations. Policy cluster 8 dealt with Native Title Regulations.

Finance recommended in the Final Report that FaHCSIA take action to remove the instruments relating to representative bodies because these instruments recognise various land councils as representative bodies for those who hold native title and were superseded by new regulation primarily in 2007 and different funding arrangements and therefore have no ongoing effect. A summary of what has happened in relation to the various representative bodies whose recognition instruments are now redundant is included in this explanatory statement.

These instruments are enabled by the *Native Title Act 1993* (the Act).

Purpose

The purpose of the ***Native Title (Revocation of Recognition Instruments) Determination 2012*** (the Determination) is to revoke sixteen instruments made under subsection 203AD(1) of the Act. These instruments were identified in the Final Report as being redundant (see section 3 of the Determination).

Legislative Authority

The Determination is a legislative instrument as provided by subsection 203AD(1) of the Act. It commences on the day after it is registered on the Federal Register of Legislative Instruments (see section 2 of the Determination).

The Determination is made under subsection 203AD(1) of the Act.

Cessation

This Determination ceases to have effect at the end of the day on which it commences (see section 4 of the Determination).

Consultation

Consultation was considered unnecessary because the Determination is removing redundant regulation and is therefore of a minor or machinery nature and does not substantially alter existing arrangements (see paragraph 18(2)(a) of the *Legislative Instruments Act 2003*).

Regulatory Impact Analysis

The Determination is not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.

Removing redundant regulation reduces costs incurred by business in understanding and complying with outdated regulatory requirements and is part of a range of better regulation initiatives being taken forward by the Government to improve the quality of regulatory stock and ensure regulation does not impose unnecessary costs and inefficiencies on business.

Summary of changes to the redundant regulation

The table below provides information about the changed arrangements.

Revoked Instrument	Updated Instrument or funding	Comment
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 1)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 2)</i>	Made in relation to the Central Queensland Land Council which ceased being a representative body on 30 June 2008, with its region being absorbed into that of the North Queensland Land Council.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 2)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 6)</i>	Made in relation to the Central Land Council. The updated instrument will cease after 30 June 2013.

Revoked Instrument	Updated Instrument or funding	Comment
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 3)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 5)</i>	Made in relation to the Northern Land Council. The updated instrument will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 4)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 8)</i>	Made in relation to the Torres Strait Regional Authority. The updated instrument will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 5)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 1)</i>	Made in relation to the Aboriginal Legal Rights Movement Inc. which ceased being a representative body on 30 June 2008 of its own choice. It was replaced by the South Australian Native Title Services a body funded under section 203FE of the Act from 1 July 2008 to date in respect of this region. A recognition instrument is not required because of the funding arrangements.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 6)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 10)</i>	Made in relation to the Carpentaria Land Council which ceased being a representative body on 30 June 2008 of its own choice. It was then funded under section 203FE of the Act from 1 July 2008 to date in respect of half of its region. A recognition instrument is not required because of the funding arrangements. The remaining half of this region was incorporated into the region represented by the Queensland South Native Title Services Ltd another body funded under section 203FE and therefore a recognition instrument is not required.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 7)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 11)</i>	Made in relation to the Kimberley Land Council. The updated instrument will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 8)</i>		Made in relation to the Ngaanyatjarra Council which ceased being a representative body on 30 June 2007 and was replaced by the Central Desert Aboriginal Corporation a body funded under section 203FE of the Act from 1 July 2007 to date in respect of this region. A recognition instrument is not required because of the funding arrangements.

Revoked Instrument	Updated Instrument or funding	Comment
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 9)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 13) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2010 (No. 4)</i>	Made in relation to the Yamatji Barna Baba Maaja Aboriginal Corporation in relation to the Geraldton region. The 2007 updated instrument was scheduled to cease from 1 July 2011 but it was revoked and replaced by the 2010 updated instrument that will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 10)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 7) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2010 (No. 3)</i>	Made in relation to the Goldfields Land Council. The 2007 updated instrument was scheduled to cease from 1 July 2010 but it was revoked and replaced by the 2010 updated instrument that will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 11)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 13) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2010 (No. 4)</i>	Made in relation to the Yamatji Barna Baba Maaja Aboriginal Corporation in relation to the Pilbara region. The 2007 updated instrument was scheduled to cease from 1 July 2011 but it was revoked and replaced by the 2010 updated instrument that will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2000 (No. 12)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 9)</i>	Made in relation to the Gurang Land Council which ceased being a representative body on 30 June 2008 of its own choice when the updated instrument ceased. It was replaced by the Queensland South Native Title Services Ltd a body funded under section 203FE of the Act. A recognition instrument is not required because of the funding arrangements.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 1)</i>	<i>Representative Aboriginal/Torres Strait Islander Body 2007 (No. 12) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2010 (No. 2)</i>	Made in relation to the Cape York Land Council. The 2007 updated instrument was scheduled to cease from 1 July 2010 but it was revoked and replaced by the 2010 updated instrument that will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 2)</i>		Made in relation to the Queensland South Representative Body Aboriginal Corporation. It ceased being a representative body in June 2005 by a decision of the then Minister. It was replaced by the Queensland South Native Title Services Ltd a body funded under section 203FE of the Act. A recognition instrument is not required because of the funding arrangements.

Revoked Instrument	Updated Instrument or funding	Comment
<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 3)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 4)</i>	Made in relation to the North Queensland Land Council. The updated instrument will cease after 30 June 2013.
<i>Recognition of Representative Aboriginal/Torres Strait Islander Bodies 2001 (No. 4)</i>	<i>Recognition of Representative Aboriginal/Torres Strait Islander Body 2007 (No. 3) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2008 (No. 1) and the Recognition of Representative Aboriginal/Torres Strait Islander Body 2010 (No. 1)</i>	Made in relation to the South West Aboriginal Land and Sea Council. The 2007 updated instrument was scheduled to cease from 1 July 2008 but it was revoked and replaced by the 2008 updated instrument. The 2008 updated instrument was scheduled to cease from 1 July 2010 but it was in turn revoked and replaced by the 2010 updated instrument that will cease after 30 June 2013.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

The Determination is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Determination

The Determination revokes 16 legislative instruments that are redundant and that do not need to be retained as current subordinate regulation on the Federal Register of Legislative Instruments.

All of the 16 legislative instruments that have been revoked were superseded by new regulation or different funding arrangements and therefore have no ongoing effect.

Human rights implications

The Determination does not engage any of the applicable rights or freedoms.

Conclusion

The Determination is compatible with human rights as it does not raise any human rights issues.

**The Hon Jenny Macklin MP, Minister for Families, Community Services
and Indigenous Affairs and Minister for Disability Reform**