

Explanatory Statement

Issued by the authority of the Minister for Families, Community Services and Indigenous Affairs

Native Title Act 1993

Recognition as Representative Aboriginal/Torres Strait Islander Body 2013 (No. 7)

This instrument is made under subsection 203AD(1) of the *Native Title Act 1993* (the Act).

Under this subsection, the Commonwealth Minister for Families, Community Services and Indigenous Affairs may, by legislative instrument, recognise an eligible body that has applied under section 203AB of the Act as the representative body for an area, if the Minister is satisfied that:

- (a) if the body is already a representative body, that it satisfactorily performs its existing functions; and
- (b) the body would be able to perform satisfactorily the functions of a representative body.

Paragraph 203AD(3A) of the Act provides that the period of recognition specified in the instrument of recognition must be at least one year but no more than six years.

In accordance with section 203A of the Act, the Minister invited the Central Land Council (CLC) to apply for recognition as the representative body for the area described in the Schedule to the instrument (the area) for the period 1 July 2013 to 30 June 2015. The recognition period was limited to two years in order to align with the implementation of potential changes as a result of the current national review of Native Title organisations. The CLC subsequently submitted an application for recognition as the representative body for the area.

On the basis of the information provided, the Minister was satisfied that the CLC satisfactorily performs its existing functions and would be able to continue to perform satisfactorily the functions of a representative body, as required under section 203AD of the Act. The Minister subsequently decided to recognise the CLC as the representative body for the area for a period of two years from 1 July 2013.

The instrument provides that the recognition of the CLC as the representative body for the area commences on 1 July 2013 and will cease to have effect at the end of 30 June 2015. The instrument also revokes, with effect from its commencement, the ***Recognition as Representative Aboriginal/Torres Strait Islander Body 2007 (No. 6)***.

The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The instrument is not regulatory in nature, will not impact on business activity and will have no compliance costs for business or competition impact.

Consultation

Invitations to apply for recognition as a representative body for the period 1 July 2013 to 30 June 2015 were extended to currently recognised representative bodies satisfactorily performing their functions. Applications were subject to the required assessment process after which the Minister decided to continue recognition. In this context, the

extent of consultation is reasonably limited to the organisations involved and the expert advice of Departmental Native Title Officers.

Statement of Compatibility with Human Rights

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

This instrument 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 Instrument

This instrument provides for the recognition of Central Land Council as the representative Aboriginal/Torres Strait Islander body for the Southern Northern Territory area, as described in the schedule to the Instrument.

Human rights implications

The Instrument engages the following human rights:

- the right to enjoy and benefit from culture, and
- the right to self-determination.

The right to enjoy and benefit from culture

The right to enjoy and benefit from culture is contained in Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR) and Article 15 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Article 27 of the ICCPR protects the rights of individuals belonging to minorities within a country to enjoy their own culture. Article 15 of the ICESCR protects the right of all persons to take part in cultural life.

The United Nations Human Rights Committee has stated that culture can manifest itself as a particular way of life associated with the use of land resources, especially in the case of Indigenous peoples, which may include such traditional activities as fishing or hunting and the right to live on lands protected by law.¹

The United Nations Committee on Economic, Social and Cultural Rights has stated that Indigenous peoples' cultural values and rights associated with their ancestral lands and their relationship with nature should be regarded with respect and protected.²

The *Native Title Act 1993* as a whole promotes the rights to enjoy and benefit from culture by creating processes through which native title can be recognised, and providing protection for native title rights and interests. The instrument recognises the Central Land Council as the representative Aboriginal/Torres Strait Islander body for the Southern Northern Territory area. Their role is to, among other things, facilitate and assist registered native title bodies corporate, native title holders and claimants to gain formal recognition of their native title rights and in the exercise of those rights. Representative Aboriginal/Torres Strait Islander bodies are instrumental in ensuring that native title holders can use land resources, enabling the exercise of their right to enjoy and benefit from culture.

¹ United Nations Human Rights Committee, General Comment No. 23 (1994).

² The Committee on Economic, Social and Cultural Rights, General Comment No. 21 (2009).

The right to self-determination

The right to self-determination is a collective right applying to groups of 'peoples'. This is in contrast to the rights to culture which protect the rights of individuals within a group. The right to self-determination, as set out in Article 1 of the ICCPR and Article 1 of the ICESCR, entails the entitlement of peoples to have control over their destiny and to be treated respectfully. This includes peoples being free to pursue their economic, social and cultural development.

The principles contained in the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) are also relevant to this Instrument. While the Declaration is not included in the definition of 'human rights' under the *Human Rights (Parliamentary Scrutiny) Act 2011*, it provides some useful context on how human rights standards under the international treaties apply to the particular situation of Indigenous peoples. In particular, the following Articles are relevant to the instrument:

- Article 8(2)(a) provides that States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of depriving Indigenous peoples of their integrity as distinct peoples, or of their cultural values or ethnic identities.
- Article 8(2)(b) provides that States shall provide effective mechanisms for prevention of, and redress for any action which has the effect of dispossessing Indigenous peoples of their lands, territories or resources.
- Article 26(3) provides that States shall give legal recognition and protection to these lands, territories and resources.
- Article 27 provides that States shall establish and implement, in conjunction with Indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to Indigenous peoples' laws, traditions, customs and land tenure systems, to recognise and adjudicate the rights of Indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used.

The Native Title Act is intended to assist native title holders to fully enjoy their rights and interests in relation to native title, which is intended to further advance the process of reconciliation among all Australians. It is important that appropriate bodies are recognised to represent Aboriginal and Torres Strait Islander people and to assist them to pursue their native title rights and interests. This instrument is a key component of the special procedure in the Act for ascertainment of these native title rights and interests. Providing recognition for representative Aboriginal/Torres Strait Islander bodies will further advance the ability of Aboriginal and Torres Strait Islander peoples to control their destiny through pursuing economic, social and cultural development in relation to native title.

Conclusion

The Instrument is compatible with human rights because it advances human rights for Native Title claimants and holders, particularly the right to enjoy and benefit from culture through exercising Native Title rights and the right to self-determination supported by economic participation opportunities that arise as a result of the exercise of Native Title Rights.