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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Native Title Amendment (Technical
Amendments) Bill 2007**

No. , 2007

(Attorney-General)

**A Bill for an Act to amend legislation in relation to
native title, and for related purposes**

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1 **A Bill for an Act to amend legislation in relation to**
2 **native title, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Native Title Amendment (Technical*
6 *Amendments) Act 2007*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedule 1, items 1 to 89	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, items 90 and 91	Immediately after the commencement of Schedule 2 to the <i>Native Title Amendment Act 2007</i> .	
4. Schedule 1, items 92 to 139	At the same time as the provision(s) covered by table item 2.	
5. Schedule 2, items 1 to 3	The day after this Act receives the Royal Assent.	
6. Schedule 2, item 4	1 July 2007.	1 July 2007
7. Schedule 2, items 5 to 12	At the same time as the provision(s) covered by table item 5.	
8. Schedule 3, items 1 to 6	At the same time as the provision(s) covered by table item 5.	
9. Schedule 3, item 7	1 July 2008.	1 July 2008
10. Schedule 3, item 8 to 12	At the same time as the provision(s) covered by table item 5.	
11. Schedule 4	At the same time as the provision(s) covered by table item 2.	

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

1
2
3
4
5

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Amendment of the Native Title**
3 **Act 1993**

4 **Part 1—Amendments**

5 *Native Title Act 1993*

6 **1 Subsection 13(2) (note)**

7 Repeal the note, substitute:

8 Note: In these circumstances, the compensation application must be
9 accompanied by the affidavit, and contain the information, that would
10 be required for a native title determination application for the area: see
11 subsection 62(3).

12 **2 Subsection 24AA(3)**

13 Repeal the subsection, substitute:

14 (3) A future act will be valid if the parties to certain agreements (called
15 indigenous land use agreements—see Subdivisions B, C and D)
16 consent to it being done and, at the time it is done, details of the
17 agreement are on the Register of Indigenous Land Use
18 Agreements. An indigenous land use agreement, details of which
19 are on the Register, may also validate a future act (other than an
20 intermediate period act) that has already been invalidly done.

21 **3 After paragraph 24BB(e)**

22 Insert:

23 (eaa) providing a framework for the making of other agreements
24 about matters relating to native title rights and interests;

25 **4 Section 24BF**

26 Before “Persons”, insert “(1)”.

27 **5 At the end of section 24BF**

28 Add:

29 (2) The NNTT must not use or disclose information to which it has
30 had access only because it has provided assistance in negotiating
31 the agreement for any purpose other than providing that assistance

1 without the prior consent of the person who provided the NNTT
2 with the information.

3 **6 At the end of section 24BG**

4 Add:

5 *Registrar may assist parties*

6 (3) The Registrar may give such assistance as he or she considers
7 reasonable to help a party to the agreement prepare the application
8 and accompanying material.

9 **7 Subsection 24BH(1)**

10 Repeal the subsection, substitute:

11 *Notice to persons who are not parties to an agreement*

12 (1) The Registrar must give notice of the agreement, in accordance
13 with subsection (2), to any of the following who are not parties to
14 the agreement:

- 15 (a) the Commonwealth Minister;
16 (b) if the agreement covers an area within the jurisdictional
17 limits of a State or Territory—the State Minister or the
18 Territory Minister for the State or Territory;
19 (c) any representative Aboriginal/Torres Strait Islander body for
20 the area covered by the agreement;
21 (d) any local government body for the area covered by the
22 agreement;
23 (e) any other person whom the Registrar, having regard to the
24 nature of the agreement, considers appropriate.

25 **8 Subsection 24BH(2)**

26 Omit “paragraph (1)(a) or (b)”, substitute “subsection (1)”.

27 **9 Paragraph 24BH(2)(a)**

28 Repeal the paragraph, substitute:

29 (a) identify the area covered by the agreement, whether by
30 including a map or otherwise; and

31 **10 Paragraph 24BH(2)(c)**

1 Repeal the paragraph, substitute:

2 (c) set out:

- 3 (i) any statements included in the agreement that are of a
4 kind mentioned in paragraph 24EB(1)(b), (c) or (d) or
5 24EBA(1)(a); or
6 (ii) a summary of any statements included in the agreement
7 that are of that kind, together with information about
8 where further detail about the statements may be
9 obtained.

10 **11 At the end of section 24BH**

11 Add:

12 *Notice to specify day*

- 13 (3) The notice under subsection (1) must specify a day as the
14 **notification day** for the agreement. Each such notice in relation to
15 the agreement must specify the same day.

16 *Which days may be specified*

- 17 (4) That day must be a day by which, in the Registrar's opinion, it is
18 reasonable to assume that all notices under subsection (1) in
19 relation to the agreement will have been received by, or will
20 otherwise have come to the attention of, the persons who must be
21 notified under that subsection.

22 *Notice to parties to the agreement*

- 23 (5) The Registrar must give notice to the parties to the agreement of
24 the notification day for the agreement that was specified in the
25 notice under subsection (1).

26 **12 Subsection 24BI(2)**

27 Omit "after the Registrar gives notice under section 24BH", substitute
28 "after the notification day".

29 **13 Paragraph 24BI(3)(a)**

30 Omit "after the Registrar gives notice under section 24BH", substitute
31 "after the notification day".

32 **14 After paragraph 24CB(e)**

1 Insert:

2 (eaa) providing a framework for the making of other agreements
3 about matters relating to native title rights and interests;

4 **15 Section 24CF**

5 Before “Persons”, insert “(1)”.

6 **16 At the end of section 24CF**

7 Add:

8 (2) The NNTT must not use or disclose information to which it has
9 had access only because it provided assistance in negotiating the
10 agreement for any purpose other than providing that assistance
11 without the prior consent of the person who provided the NNTT
12 with the information.

13 **17 At the end of section 24CG**

14 Add:

15 *Registrar may assist parties*

16 (4) The Registrar may give such assistance as he or she considers
17 reasonable to help a party to the agreement prepare the application
18 and accompanying material.

19 *Certification not affected if Aboriginal/Torres Strait Islander body*
20 *subsequently ceases to be recognised*

21 (5) To avoid doubt, the certification of an application under Part 11 by
22 a representative Aboriginal/Torres Strait Islander body is not
23 affected merely because, after certification, the recognition of the
24 body as the representative Aboriginal/Torres Strait Islander body
25 for the area concerned is withdrawn or otherwise ceases to have
26 effect.

27 **18 Paragraph 24CH(2)(a)**

28 Repeal the paragraph, substitute:

29 (a) identify the area covered by the agreement, whether by
30 including a map or otherwise; and

31 **19 Paragraph 24CH(2)(c)**

1 Repeal the paragraph, substitute:

2 (c) set out:

3 (i) any statements included in the agreement that are of a
4 kind mentioned in paragraph 24EB(1)(b), (c) or (d) or
5 24EBA(1)(a); or

6 (ii) a summary of any statements included in the agreement
7 that are of that kind, together with information about
8 where further detail about the statements may be
9 obtained; and

10 **20 At the end of section 24CI**

11 Add:

12 *Information obtained to provide assistance not to be used or*
13 *disclosed in other contexts*

14 (3) The NNTT must not use or disclose information to which it has
15 had access only because it provided assistance under subsection (2)
16 for any purpose other than providing that assistance without the
17 prior consent of the person who provided the NNTT with the
18 information.

19 **21 Subsection 24CK(4)**

20 After “any information given”, insert “to the Registrar”.

21 **22 Subparagraph 24CL(2)(b)(ii)**

22 Omit “subsection 190D(2)”, substitute “subsection 190F(1) or on
23 reconsideration by the Registrar under section 190E”.

24 **23 Subparagraph 24CL(2)(b)(iii)**

25 Omit “section 190D”, substitute “section 190E or 190F”

26 **24 Section 24DG**

27 Before “Persons”, insert “(1)”.

28 **25 At the end of section 24DG**

29 Add:

1 *Information obtained in providing assistance not to be used or*
2 *disclosed in other contexts*

- 3 (2) The NNTT must not use or disclose information to which it has
4 had access only because it provided assistance in negotiating the
5 agreement for any purpose other than providing that assistance
6 without the prior consent of the person who provided the NNTT
7 with the information.

8 **26 At the end of section 24DH**

9 Add:

10 *Registrar may assist parties*

- 11 (3) The Registrar may give such assistance as he or she considers
12 reasonable to help a party to the agreement prepare the application
13 and accompanying material.

14 **27 Paragraph 24DI(2)(a)**

15 Repeal the paragraph, substitute:

- 16 (a) identify the area covered by the agreement, whether by
17 including a map or otherwise; and

18 **28 Paragraph 24DI(2)(c)**

19 Repeal the paragraph, substitute:

20 (c) set out:

- 21 (i) any statements included in the agreement that are of a
22 kind mentioned in paragraph 24EB(1)(b) or (c) or
23 24EBA(1)(a); or
24 (ii) a summary of any statements included in the agreement
25 that are of that kind, together with information about
26 where further detail about the statements may be
27 obtained; and

28 **29 At the end of subsection 24DJ(1)**

29 Add:

30 Note: Section 77A sets out the material and fees that must accompany the
31 application, and includes a requirement to state reasons why it would
32 not be fair and reasonable to register the agreement.

33 **30 At the end of section 24DJ**

1 Add:

2 *Information obtained in providing assistance not to be used or*
3 *disclosed in other contexts*

4 (3) The NNTT must not use or disclose information to which it has
5 had access only because it provided assistance under subsection (2)
6 for any purpose other than providing that assistance without the
7 prior consent of the person who provided the NNTT with the
8 information.

9 **31 Subparagraph 24FE(b)(ii)**

10 Omit “subsection 190D(2)”, substitute “subsection 190F(1) or on
11 reconsideration by the Registrar under section 190E”.

12 **32 Subparagraph 24FE(b)(iii)**

13 Omit “section 190D”, substitute “section 190E or 190F”.

14 **33 After subsection 24IC(2)**

15 Insert:

16 *Replacing 2 or more leases etc. with a single lease etc.*

17 (2A) If a single lease, licence, permit or authority is granted in place of,
18 respectively, 2 or more leases, licences, permits or authorities (the
19 *original leases etc.*), then:

20 (a) for the purpose of subsection (1), the single grant is taken to
21 be a renewal of the original leases etc.; and

22 (b) paragraphs (1)(b) to (e) apply as if a reference in those
23 paragraphs to the original lease etc. were a reference to the
24 original leases etc.

25 **34 After paragraph 24KA(2)(l)**

26 Insert:

27 (la) an automatic weather station;

28 **35 Paragraph 24KA(8)(b)**

29 Repeal the paragraph, substitute:

30 (b) there is no registered native title body corporate, or there are
31 no registered native title bodies corporate, in relation to the
32 whole of the land or waters in the area concerned;

1 **36 Paragraph 24KA(8)(c)**

2 Omit “for the area concerned”, substitute “for that part of the area
3 concerned for which there is no registered native title body corporate”.

4 **37 Paragraph 24KA(8)(d)**

5 Omit “in the area concerned”, substitute “in that part of the area
6 concerned for which there is no registered native title body corporate”.

7 **38 Paragraph 24KA(9)(b)**

8 Repeal the paragraph, substitute:

9 (b) there is no registered native title body corporate, or there are
10 no registered native title bodies corporate, in relation to the
11 whole of the land or waters in the area concerned;

12 **39 Paragraph 24KA(9)(c)**

13 Omit “in the area concerned”, substitute “in that part of the area
14 concerned for which there is no registered native title body corporate”.

15 **40 Paragraph 24KA(9)(d)**

16 Omit “for the area concerned”, substitute “for that part of the area
17 concerned for which there is no registered native title body corporate”.

18 **41 Paragraph 24MD(6B)(b)(note)**

19 Repeal the note.

20 **42 After subparagraph 24MD(6B)(c)(iii)**

21 Insert:

22 and (iv) the Registrar;

23 **43 Paragraph 24MD(7)(b)**

24 Repeal the paragraph, substitute:

25 (b) there is no registered native title body corporate, or there are
26 no registered native title bodies corporate, in relation to the
27 whole of the land or waters in the area concerned;

28 **44 Paragraph 24MD(7)(c)**

29 Omit “for the area concerned”, substitute “for that part of the area
30 concerned for which there is no registered native title body corporate”.

1 **45 Paragraph 24MD(7)(d)**

2 Omit “in the area concerned”, substitute “in that part of the area
3 concerned for which there is no registered native title body corporate”.

4 **46 Paragraph 24MD(8)(b)**

5 Repeal the paragraph, substitute:

6 (b) there is no registered native title body corporate, or there are
7 no registered native title bodies corporate, in relation to the
8 whole of the land or waters in the area concerned;

9 **47 Paragraph 24MD(8)(c)**

10 Omit “in the area concerned”, substitute “in that part of the area
11 concerned for which there is no registered native title body corporate”.

12 **48 Paragraph 24MD(8)(d)**

13 Omit “for the area concerned”, substitute “for that part of the area
14 concerned for which there is no registered native title body corporate”.

15 **49 Paragraph 24NA(9)(b)**

16 Repeal the paragraph, substitute:

17 (b) there is no registered native title body corporate, or there are
18 no registered native title bodies corporate, in relation to the
19 whole of the land or waters in the area concerned;

20 **50 Paragraph 24NA(9)(c)**

21 Omit “for the area concerned”, substitute “for that part of the area
22 concerned for which there is no registered native title body corporate”.

23 **51 Paragraph 24NA(9)(d)**

24 Omit “in the area concerned”, substitute “in that part of the area
25 concerned for which there is no registered native title body corporate”.

26 **52 Paragraph 24NA(10)(b)**

27 Repeal the paragraph, substitute:

28 (b) there is no registered native title body corporate, or there are
29 no registered native title bodies corporate, in relation to the
30 whole of the land or waters in the area concerned;

31 **53 Paragraph 24NA(10)(c)**

1 Omit “in the area concerned”, substitute “in that part of the area
2 concerned for which there is no registered native title body corporate”.

3 **54 Paragraph 24NA(10)(d)**

4 Omit “for the area concerned”, substitute “for that part of the area
5 concerned for which there is no registered native title body corporate”.

6 **55 Paragraph 28(2)(a)**

7 Repeal the paragraph, substitute:

- 8 (a) in a case where an amount is to be secured by bank guarantee
9 in favour of the Registrar in compliance with a condition of a
10 determination made under section 36A or 38 or a declaration
11 made under section 42—the Registrar is informed by the
12 Government party as mentioned in item 2 of the table in
13 subsection 52(2) that it no longer proposes to do the act; and

14 **56 Subsection 29(8)**

15 Repeal the subsection, substitute:

16 *Multiple acts*

- 17 (8) The Commonwealth Minister may, by legislative instrument,
18 determine the circumstances and manner in which notice to a
19 person under subsection (2) of 2 or more acts to which this
20 Subdivision applies may be given in the same notice.
- 21 (8A) Notice to the public under subsection (3) of 2 or more acts to
22 which this Subdivision applies may be given in the same notice.

23 **57 At the end of section 31**

24 Add:

25 *Information obtained in providing assistance not to be used or*
26 *disclosed in other contexts*

- 27 (4) If the NNTT is the arbitral body, it must not use or disclose
28 information to which it has had access only because it provided
29 assistance under subsection (3) for any purpose other than:
30 (a) providing that assistance; or
31 (b) establishing whether a negotiation party has negotiated in
32 good faith as mentioned in paragraph (1)(b);

1 without the prior consent of the person who provided the NNTT
2 with the information.

3 **58 Subsection 36C(5)**

4 Repeal the subsection, substitute:

5 *Bank guarantee condition*

- 6 (5) If a condition to be complied with is that an amount is to be
7 secured by bank guarantee:
- 8 (a) the arbitral body must:
 - 9 (i) determine the amount; and
 - 10 (ii) specify the person who must secure the amount in that
11 way; and
 - 12 (b) the condition is not complied with unless:
 - 13 (i) the guarantee is given by an authorised deposit-taking
14 institution within the meaning of the *Banking Act 1959*;
15 and
 - 16 (ii) the guarantee is secured in favour of the Registrar; and
 - 17 (iii) regulations made under subsection (5A) are complied
18 with.
- 19 (5A) The regulations may make provision in relation to the securing of
20 an amount by bank guarantee in compliance with such a condition,
21 and any other matter in relation to such a guarantee.

22 **59 Subsection 41(3)**

23 Repeal the subsection, substitute:

24 *Bank guarantee condition*

- 25 (3) If, in the case of a determination by an arbitral body, a condition to
26 be complied with is that an amount is to be secured by bank
27 guarantee:
- 28 (a) the arbitral body must:
 - 29 (i) determine the amount; and
 - 30 (ii) specify the person who must secure the amount in that
31 way; and
 - 32 (b) the condition is not complied with unless:

- 1 (i) the guarantee is given by an authorised deposit-taking
2 institution within the meaning of the *Banking Act 1959*;
3 and
4 (ii) the guarantee is secured in favour of the Registrar; and
5 (iii) regulations made under subsection (4) are complied
6 with.
- 7 (4) The regulations may make provision in relation to the securing of
8 an amount by bank guarantee in compliance with such a condition,
9 and any other matter in relation to such a guarantee.

10 **60 Subsection 42(5)**

11 Repeal the subsection, substitute:

12 *Bank guarantee condition*

- 13 (5) If a condition to be complied with is that an amount is to be
14 secured by bank guarantee:
15 (a) the arbitral body must:
16 (i) determine the amount; and
17 (ii) specify the person who must secure the amount in that
18 way; and
19 (b) the condition is not complied with unless:
20 (i) the guarantee is given by an authorised deposit-taking
21 institution within the meaning of the *Banking Act 1959*;
22 and
23 (ii) the guarantee is secured in favour of the Registrar; and
24 (iii) regulations made under subsection (5A) are complied
25 with.
- 26 (5A) The regulations may make provision in relation to the securing of
27 an amount by bank guarantee in compliance with such a condition,
28 and any other matter in relation to such a guarantee.

29 **61 Paragraph 43(2)(j)**

30 Repeal the paragraph, substitute:

- 31 (j) make appropriate provision for compensation for the act,
32 including provision for bank guarantees on similar terms to
33 those in subsections 36C(5), 41(3) and 42(5), and regulations
34 made for the purposes of subsections 36C(5A), 41(4) and
35 42(5A); and
-

1 **62 After subsection 43(2)**

2 Insert:

3 *Effect of including conjunctive agreement/determination provisions*
4 *and expedited procedure provisions*

- 5 (2A) If the only reason for the Commonwealth Minister not being of the
6 opinion that the alternative provisions comply with subsection (2)
7 is that they include conjunctive agreement/determination
8 provisions or expedited procedure provisions (see subsection (5)),
9 the alternative provisions nevertheless comply with subsection (2).

10 **63 At the end of section 43**

11 Add:

12 *Meaning of certain expressions*

- 13 (5) In this section:

14 *conjunctive agreement/determination provisions* means
15 provisions that:

- 16 (a) are included in alternative provisions; and
17 (b) in the opinion of the Commonwealth Minister, have an effect,
18 in combination with the other alternative provisions, that is
19 similar to the effect that subsection 26D(2) of this Act has in
20 combination with the other provisions of this Subdivision.

21 *expedited procedure provisions* means provisions that:

- 22 (a) are included in alternative provisions; and
23 (b) in the opinion of the Commonwealth Minister, have an effect,
24 in combination with the other alternative provisions, that is
25 similar to the effect that section 32 of this Act has in
26 combination with the other provisions of this Subdivision.

27 **64 After subsection 43(3)**

28 Insert:

- 29 (3A) If, at any time, the alternative provisions cease to have ongoing
30 effect, the Commonwealth Minister must, by legislative
31 instrument, revoke the determination made under paragraph (1)(b).

32 **65 After subsection 43A(9)**

1 Insert:

2 (9A) If, at any time, the alternative provisions cease to have ongoing
3 effect, the Commonwealth Minister must, by legislative
4 instrument, revoke the determination made under paragraph (1)(b).

5 **66 After subsection 44B(4)**

6 Insert:

7 *Information obtained in providing assistance not to be used or*
8 *disclosed in other contexts*

9 (4A) The NNTT must not use or disclose information to which it has
10 had access only because it provided assistance in negotiating the
11 agreement for any purpose other than providing that assistance
12 without the prior consent of the person who provided the NNTT
13 with the information.

14 **67 Section 44F**

15 Before “If”, insert “(1)”.

16 **68 At the end of section 44F (after the note)**

17 Add:

18 (2) The NNTT must not use or disclose information to which it has
19 had access only because it mediated in the dispute for any purpose
20 other than mediating the dispute without the prior consent of the
21 person who provided the NNTT with the information.

22 **69 Section 52**

23 Repeal the section, substitute:

24 **52 Bank guarantee required under *right to negotiate* procedures**

25 (1) This section applies if a condition to be complied with under:
26 (a) a determination made under section 36A; or
27 (b) a determination made under section 38; or
28 (c) a declaration made under section 42;
29 in respect of an act is that an amount is to be secured by bank
30 guarantee given by an authorised deposit-taking institution within

1 the meaning of the *Banking Act 1959* (an *ADI*) in favour of the
2 Registrar.

3 *Directions to ADI and payments to ultimate beneficiaries*

4 (2) The Registrar must take the action set out in column 3 of the
5 following table in the circumstances set out in column 2 of the
6 table:
7

Directions to ADI and payments to ultimate beneficiaries		
Item	If:	the Registrar must:
1	an approved determination of native title is made to the effect that there is no native title in relation to the area concerned immediately before the act takes place	direct the ADI to cancel the bank guarantee.
2	the Government party informs the Registrar in writing that it is not going to do the act	direct the ADI to cancel the bank guarantee.
3	(a) an approved determination of native title is made to the effect that the native title parties concerned are (disregarding any holding of the native title in trust under Division 6) the native title holders in relation to the area affected by the act; and (b) the registered native title body corporate advises the Registrar that it wishes to accept the amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act; and (c) the person who secured the amount by bank guarantee advises the Registrar that the person agrees to the registered native title body corporate accepting the	(a) direct the ADI to pay the amount secured to the Registrar; and (b) pay that amount to the registered native title body corporate in relation to the area concerned.

Directions to ADI and payments to ultimate beneficiaries

Item	If:	the Registrar must:
	amount instead of any compensation to which the native title holders may be entitled under Division 3 for the act	
4	<p>(a) a determination is made, on a claim for compensation in respect of the act, that a person (the <i>ultimate beneficiary</i>) is entitled to compensation:</p> <p style="margin-left: 20px;">(i) in accordance with this Division; or</p> <p style="margin-left: 20px;">(ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed; and</p> <p>(b) the amount secured is less than or equal to the amount determined</p>	<p>(a) direct the ADI to pay the amount secured to the Registrar; and</p> <p>(b) pay that amount to the ultimate beneficiary.</p>
5	<p>(a) a determination is made, on a claim for compensation in respect of the act, that a person (the <i>ultimate beneficiary</i>) is entitled to compensation:</p> <p style="margin-left: 20px;">(i) in accordance with this Division; or</p> <p style="margin-left: 20px;">(ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the</p>	<p>(a) direct the ADI to pay the amount secured (the <i>original amount</i>) to the Registrar; and</p> <p>(b) pay an amount equal to the amount determined to the ultimate beneficiary; and</p> <p>(c) pay the remainder to the person who secured the original amount by bank guarantee.</p>

Schedule 1 Amendment of the Native Title Act 1993
Part 1 Amendments

Directions to ADI and payments to ultimate beneficiaries		
Item	If:	the Registrar must:
	<p>compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed; and</p> <p>(b) the amount secured by bank guarantee is more than the amount determined</p>	
6	<p>a determination is made, on a claim for compensation in respect of the act:</p> <p>(a) in accordance with this Division; or</p> <p>(b) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed;</p> <p>that no person is entitled to compensation</p>	direct the ADI to cancel the guarantee.
7	<p>(a) the person who secured the amount by bank guarantee obtains an alternative bank guarantee from an ADI in favour of the Registrar; and</p> <p>(b) the alternative bank guarantee complies with regulations made for the purposes of subsection 36C(5A), 41(4) or 42(5A) (as the case requires)</p>	direct the ADI to cancel the guarantee.
8	(a) the Registrar applies to the Federal Court in accordance with subsection (3) for an order in relation to the	(a) direct the ADI to pay the secured amount (the original amount) to the Registrar; and

Directions to ADI and payments to ultimate beneficiaries

Item	If:	the Registrar must:
	amount secured; and (b) the court orders that an amount be paid to a person (the <i>ultimate beneficiary</i>)	(b) pay an amount to the ultimate beneficiary equal to the amount the court orders to be paid; and (c) if the amount the court orders to be paid is less than the amount secured—pay the remainder to the person who secured the original amount by bank guarantee.
9	(a) none of the other items apply; and (b) the Federal Court decides, on application by any person, that it would be just and equitable in all the circumstances to pay the amount secured by bank guarantee to a person (the <i>ultimate beneficiary</i>)	(a) direct the ADI to pay the amount secured to the Registrar; and (b) pay that amount to the ultimate beneficiary.

Application to the Federal Court where compensation includes transfer of property or provision of goods or services

(3) If:

- (a) a determination is made, on a claim for compensation in respect of the act:
 - (i) in accordance with this Division; or
 - (ii) on just terms under a law of the Commonwealth or of a State or Territory dealing with the compulsory acquisition of rights or interests in the land or waters in relation to which compensation is claimed;
- that a person is entitled to compensation; and
- (b) some or all of the compensation is constituted by the transfer of property or the provision of goods or services;

the Registrar must apply to the Federal Court for a direction as to the payment of the amount secured.

1 *Federal Court jurisdiction*

2 (4) The Federal Court has jurisdiction in relation to the matters
3 mentioned in:

4 (a) item 9 of the table in subsection (2); and

5 (b) subsection (3).

6 *Compensation payable is greater amount than that secured*

7 (5) If:

8 (a) a determination is made, on a claim for compensation in
9 respect of the act:

10 (i) in accordance with this Division; or

11 (ii) on just terms under a law of the Commonwealth or of a
12 State or Territory dealing with the compulsory
13 acquisition of rights or interests in the land or waters in
14 relation to which compensation is claimed;

15 that a person is entitled to compensation; and

16 (b) the amount secured by the bank guarantee is less than the
17 amount determined;

18 the Government party must pay the shortfall to the person.

19 *No compensation if already paid under bank guarantee*

20 (6) Subject to section 53, if the Registrar pays an amount to a
21 registered native title body corporate in accordance with item 3 of
22 the table in subsection (2), there is no entitlement to compensation
23 under Division 3 for the act.

24 **70 Paragraph 57(2)(a)**

25 Repeal the paragraph, substitute:

26 (a) first, it must request a representative of the common law
27 holders to:

28 (i) nominate, in writing given to the Federal Court within a
29 specified period, a prescribed body corporate for the
30 purpose; and

31 (ii) include with the nomination the written consent of the
32 body corporate;

33 **71 Subparagraph 62(1)(a)(ii)**

1 Omit “an entry in the National Native Title Register”, substitute “an
2 approved determination of native title”.

3 **72 Subparagraph 62(1)(a)(v)**

4 Repeal the subparagraph, substitute:

5 (v) setting out details of the process of decision-making
6 complied with in authorising the applicant to make the
7 application and to deal with matters arising in relation to
8 it; and

9 **73 Paragraph 62(2)(c)**

10 After “carried out”, insert “by or on behalf of the native title claim
11 group”.

12 **74 After paragraph 62(2)(g)**

13 Insert:

14 (ga) details of any notifications under paragraph 24MD(6B)(c), of
15 which the applicant is aware, that have been given and that
16 relate to the whole or a part of the area;

17 **75 Subsection 62(2) (note)**

18 After “Notices under”, insert “paragraph 24MD(6B)(c) and”.

19 **76 Subparagraph 62(3)(a)(iv)**

20 Repeal the subparagraph, substitute:

21 (iv) setting out details of the process of decision-making
22 complied with in authorising the applicant to make the
23 application and to deal with matters arising in relation to
24 it; and

25 **77 At the end of section 62A**

26 Add:

27 Note: This section deals only with claimant applications and compensation
28 applications. For provisions dealing with indigenous land use
29 agreements, see Subdivisions B to E of Division 3 of Part 2.

30 **78 Subsection 64(3)**

31 Repeal the subsection, substitute:

1 *Application may be amended despite current action by Registrar or*
2 *Federal Court*

- 3 (3) In the case of a claimant application, the fact that:
- 4 (a) the Registrar is, under section 190A, considering the claim
 - 5 made in the application; or
 - 6 (b) the Registrar is, under section 190E, reconsidering the claim
 - 7 made in the application; or
 - 8 (c) the Federal Court is, on the application of the applicant under
 - 9 subsection 190F(1), reviewing the decision of the Registrar in
 - 10 relation to the claim;
- 11 does not prevent amendment of the application.

12 **79 Subsection 64(5)**

13 Repeal the subsection.

14 **80 Subparagraph 66(3)(a)(iv)**

15 Omit “, when the application was filed in the Federal Court, held”,
16 substitute “when the notice is given, holds”.

17 **81 After subsection 66A(1)**

18 Insert:

19 *Amending claims to re-include area*

- 20 (1A) If:
- 21 (a) the Registrar is given a copy of an amended application
 - 22 under section 64; and
 - 23 (b) the amendment concerned is to re-include in the area covered
 - 24 by the application an area of land or waters that was covered
 - 25 by the original application;
- 26 the Registrar must:
- 27 (c) give notice of the amended application to each person who,
 - 28 when the Registrar receives the copy, is a party to a
 - 29 proceeding under Part 4 in relation to the application; and
 - 30 (d) if, when the Registrar receives the copy, the period specified
 - 31 in the notice in accordance with paragraph 66(10)(c) has not
 - 32 ended:

- 1 (i) give notice of the amended application to all persons to
2 whom the Registrar gave notice of the application in
3 accordance with paragraph 66(3)(a); and
4 (ii) notify the public in the determined way of the amended
5 application; and
6 (e) give notice of the amended application to each person whom
7 the Registrar would, under subsections 66(3) and 66(5), be
8 obliged to give notice if the application as amended were a
9 new application, but to whom notice is not already required
10 to be given under paragraph (c) or (d).
- 11 (1B) A notice under paragraph (1A)(e) must specify a day as the
12 ***notification day*** for the amendment.
- 13 (1C) Each such notice in relation to the amendment must:
14 (a) specify the same day; and
15 (b) state that a person who wants to be a party in relation to the
16 amended application must notify the Federal Court, in
17 writing, within the period of 3 months starting on the
18 notification day, or, after that period, get the leave of the
19 Federal Court under subsection 84(5) to become a party.

20 **82 Subsection 66B(1)**

21 Repeal the subsection, substitute:

22 *Application to replace applicant in claimant application*

- 23 (1) One or more members of the native title claim group (the ***claim***
24 ***group***) in relation to a claimant application, or of the compensation
25 claim group (also the ***claim group***) in relation to a compensation
26 application, may apply to the Federal Court for an order that the
27 member, or the members jointly, replace the current applicant for
28 the application on the grounds that:
29 (a) one or more of the following applies to a person who is,
30 either alone or jointly with one or more other persons, the
31 current applicant:
32 (i) the person consents to his or her replacement or
33 removal;
34 (ii) the person has died or become incapacitated;

- 1 (iii) the person is no longer authorised by the claim group to
2 make the application and to deal with matters arising in
3 relation to it;
- 4 (iv) the person has exceeded the authority given to him or
5 her by the claim group to make the application and to
6 deal with matters arising in relation to it; and
- 7 (b) the member or members are authorised by the claim group to
8 make the application and to deal with matters arising in
9 relation to it.

10 **83 At the end of subsection 66B(1)**

11 Add:

12 Note: Section 251B states what it means for a person or persons to be
13 authorised by all the persons in the claim group to deal with matters in
14 relation to a claimant application or a compensation application.

15 **84 Subsection 69(1) (table item dealing with claim**
16 **registration application)**

17 Omit “subsection 190D(2)”, substitute “subsection 190F(1)”.

18 **85 At the end of section 82**

19 Add:

20 *Maximising use of video links, audio links and other appropriate*
21 *means of giving testimony, appearing and making submissions*

- 22 (3) The Court or a Judge must exercise the discretion under
23 section 47B of the *Federal Court of Australia Act 1976* to allow a
24 person to appear before the Court or Judge, or make a submission
25 to the Court or Judge, by way of video link, audio link or other
26 appropriate means if the Court or the Judge is satisfied that:
- 27 (a) the conditions set out in section 47C in relation to the video
28 link, audio link or other appropriate means are met; and
29 (b) it is not contrary to the interests of justice to do so.

30 **86 Paragraph 84(3)(b)**

31 Repeal the paragraph, substitute:

- 32 (b) the person notifies the Federal Court, in writing, that the
33 person wants to be a party to the proceeding:

- 1 (i) within the period specified in the notice under
2 section 66; or
3 (ii) if notice of an amended application is given under
4 paragraph 66A(1A)(e)—within the period specified in
5 the notice under that paragraph.

6 **87 After subsection 84(6)**

7 Insert:

- 8 (6A) In determining, for the purposes of subsection (6), when the first
9 hearing of the proceedings starts, disregard directions hearings.

10 **88 After section 84C**

11 Insert:

12 **84D Proceedings affected by possible defect in authorisation**

- 13 (1) The Federal Court may make an order requiring:
14 (a) a person who, either alone or jointly with another person,
15 made an application under section 61, to produce evidence to
16 the court that he or she was authorised to do so; or
17 (b) a person who has dealt with a matter, or is dealing with a
18 matter, arising in relation to such an application, to produce
19 evidence to the court that he or she is authorised to do so.
- 20 (2) An order under subsection (1) may be made:
21 (a) on the Federal Court's own motion; or
22 (b) a party to the proceedings; or
23 (c) on the application of a member of the native title claim group
24 or compensation claim group in relation to the application.
- 25 (3) Subsection (4) applies if:
26 (a) an application does not comply with section 61 (which deals
27 with the basic requirements for applications) because it was
28 made by a person or persons who were not authorised by the
29 native title claim group to do so; or
30 (b) a person has dealt with, or deals with, a matter arising in
31 relation to such an application when the person was not
32 authorised to do so.

- 1 (4) The Federal Court may, after balancing the need for due
2 prosecution of the application and the interests of justice:
3 (a) hear and determine the application, despite the defect in
4 authorisation; or
5 (b) make such other orders as the court considers appropriate.

6 **89 After subsection 86F(2)**

7 Insert:

8 *Information obtained in providing assistance not to be used or*
9 *disclosed in other contexts*

- 10 (2A) The NNTT must not use or disclose information to which it has
11 had access only because it provided assistance in negotiating the
12 agreement except for the following purposes:
13 (a) providing assistance in negotiating the agreement;
14 (b) mediating in relation to the whole or any part of the
15 proceeding;
16 without the prior consent of the person who provided the NNTT
17 with the information.

18 **90 Paragraph 87(1)(d)**

19 Repeal the paragraph.

20 **91 Subparagraph 87A(1)(c)(v)**

21 Repeal the subparagraph, substitute:

- 22 (v) each person who holds an interest in relation to land or
23 waters in any part of the determination area at the time
24 the agreement is made, and who is a party to the
25 proceeding at the time the agreement is made;

26 **92 At the end of section 124**

27 Add:

28 *Constitution—inquiry into objection to registration of indigenous*
29 *land use agreement*

- 30 (3) The Tribunal must not be constituted by, or include, for the
31 purposes of an inquiry in relation to a subsection 24DJ(1) objection
32 application, a member who has assisted a party to the agreement to

1 which the application relates in negotiations as mentioned in
2 subsection 24DJ(2), unless the parties otherwise agree.

3 **93 Paragraph 139(d)**

4 After “indigenous land use agreement”, insert “(a *subsection 24DJ(1)*
5 *objection application*)”.

6 **94 Subsection 141(4)**

7 Omit “into whether a person satisfies the Tribunal that it would not be
8 fair and reasonable to register an indigenous land use agreement”,
9 substitute “in relation to a subsection 24DJ(1) objection application”.

10 Note: The heading to subsection 141(4) is replaced by the heading “*Subsection 24DJ(1)*
11 *objection applications*”.

12 **95 After section 163**

13 Insert:

14 **163AA Reports after inquiries into subsection 24DJ(1) objection**
15 **applications**

16 *Tribunal to make report*

17 (1) After holding an inquiry in relation to a subsection 24DJ(1)
18 objection application, the Tribunal must make a report about the
19 matters covered by the inquiry.

20 *Tribunal must state findings of fact*

21 (2) The Tribunal must state in the report any findings of fact upon
22 which it is based.

23 **96 Subsection 169(2)**

24 Omit “relating to registration of an indigenous land use agreement”,
25 substitute “in relation to a subsection 24DJ(1) objection application”.

26 Note: The heading to subsection 169(2) is replaced by the heading “*Subsection 24DJ(1)*
27 *objection applications*”.

28 **97 Paragraph 190(1)(a)**

29 After “under section 190A”, insert “or on reconsideration under
30 section 190E”.

1 **98 Paragraph 190(3)(a)**

2 Repeal the paragraph, substitute:

- 3 (a) amend the Register to reflect the amendment if:
- 4 (i) the claim is accepted for registration under
- 5 section 190A; or
- 6 (ii) the claim is accepted for registration on reconsideration
- 7 under section 190E; or
- 8 (iii) the claim is accepted for registration under section 190A
- 9 but, because subsection 190A(1A) applies, the Registrar
- 10 need not consider the claim made in an amended
- 11 application; or

12 **99 Paragraph 190(3)(b)**

13 After “under section 190A”, insert “or on reconsideration under

14 section 190E”.

15 **100 After paragraph 190(4)(d)**

16 Insert:

- 17 (da) if an approved determination of native title is made to the
- 18 effect that native title exists in relation to an area:
- 19 (i) but no determination has yet been made under
- 20 section 56; or
- 21 (ii) a determination has been made under section 56 that the
- 22 native title rights and interests are to be held by the
- 23 common law holders, but no determination has yet been
- 24 made under subsection 57(2) of which prescribed body
- 25 corporate is to perform the functions mentioned in
- 26 subsection 57(3);
- 27 amend the entry on the Register that relates to the claim so
- 28 that it reflects that fact; or

29 **101 Subsection 190A(2)**

30 Repeal the subsection, substitute:

31 *Effect of certain notices*

- 32 (2) If, either before the Registrar begins to do so or while he or she is
- 33 doing so, a notice is given in accordance with:
- 34 (a) paragraph 24MD(6B)(c); or

- 1 (b) section 29; or
2 (c) a provision of a law of a State or Territory that corresponds
3 to section 29 and is covered by a determination in force under
4 section 43; or
5 (d) a provision of a law of a State or Territory that corresponds
6 to section 29 and is covered by a determination in force under
7 section 43A;
8 in relation to an act affecting any of the land or waters in the area
9 covered by the application, the Registrar must use his or her best
10 endeavours to finish considering the claim by the end of:
11 (e) in a paragraph (a) case—2 months after the notice is given; or
12 (f) in a paragraph (b) case—4 months after the notification day
13 specified in the notice; or
14 (g) in a paragraph (c) case—the period, in the law of the State or
15 Territory, that corresponds to the period of 4 months
16 mentioned in paragraph 30(1)(a); or
17 (h) in a paragraph (d) case—the period at the end of which any
18 person who is a registered native title claimant or registered
19 native title body corporate has a right to be consulted about
20 the act, to object to the act or to participate in negotiations
21 about the act.

22 *Otherwise, claim to be considered as soon as is practicable*

- 23 (2A) In any other case, the Registrar must finish considering the claim
24 as soon as is practicable.

25 **102 Subsection 190A(6)**

26 Repeal the subsection, substitute:

27 *Test for registration*

- 28 (6) The Registrar must accept the claim for registration if:
29 (a) either:
30 (i) the claim was made in an application given to the
31 Registrar under section 63; or
32 (ii) the claim was made in an amended application given to
33 the Registrar under subsection 64(4) and
34 subsection (6A) of this section does not apply; and
35 (b) the claim satisfies all of the conditions in:

- 1 (i) section 190B (which deals mainly with the merits of the
2 claim); and
3 (ii) section 190C (which deals with procedural and other
4 matters).

5 (6A) The Registrar must accept the claim (the *later claim*) for
6 registration if:

- 7 (a) a claim (the *earlier claim*) was made in an application given
8 to the Registrar under section 63 or subsection 64(4) (the
9 *earlier application*); and
10 (b) the Registrar accepted the earlier claim for registration under
11 subsection (6) of this section; and
12 (c) the later claim was made in an application given to the
13 Registrar under subsection 64(4) that amends the earlier
14 application; and
15 (d) the Registrar is satisfied that:
16 (i) the only effect of the amendment is to reduce the area of
17 land or waters covered by the application, and the
18 information and map contained in the application, as
19 amended, are sufficient for it to be said with reasonable
20 certainty whether native title rights and interest are
21 claimed in relation to particular land or waters; or
22 (ii) the only effect of the amendment is to remove a right or
23 interest from those claimed in the application; or
24 (iii) the representative body, or one of the representative
25 bodies, recognised for the area covered by the
26 application has changed or been replaced with a body to
27 whom funding is made available under section 203FE,
28 and the only effect of the amendment is to change the
29 name of the body in the application; or
30 (iv) a body to whom funding was made available under
31 section 203FE in relation to all or part of the area
32 covered by the application has changed or been replaced
33 by another such body or a representative body, and the
34 only effect of the amendment is to change the name of
35 the body in the application; or
36 (v) the only effect of the amendment is to alter the address
37 for service of the person who is, or persons who are, the
38 applicant.

1 (6B) If neither subsection (6) nor (6A) applies, the Registrar must not
2 accept the claim for registration.

3 Note: The fact that the Registrar is considering the claim under this section
4 does not mean that the application cannot be amended: see subsection
5 64(3).

6 **103 Subsection 190B(1)**

7 Omit “paragraph 190A(6)(a)”, substitute “subparagraph 190A(6)(b)(i)”.

8 **104 Subsection 190C(1)**

9 Omit “paragraph 190A(6)(b)”, substitute “subparagraph
10 190A(6)(b)(ii)”.

11 **105 Paragraph 190C(4)(a) (at the end of the note)**

12 Add “A representative Aboriginal/Torres Strait Islander body may
13 certify the application, even if it is only the representative body for part
14 of the area claimed.”.

15 **106 After subsection 190C(4)**

16 Insert:

17 *Certification not affected if Aboriginal/Torres Strait Islander body*
18 *subsequently ceases to be recognised*

19 (4A) To avoid doubt, the certification of an application under Part 11 by
20 a representative Aboriginal/Torres Strait Islander body is not
21 affected merely because, after certification, the recognition of the
22 body as the representative Aboriginal/Torres Strait Islander body
23 for the area concerned is withdrawn or otherwise ceases to have
24 effect.

25 **107 Section 190D**

26 Repeal the section, substitute:

27 **190D If the claim cannot be registered—notice of decision**

28 (1) If the Registrar does not accept the claim for registration, the
29 Registrar must, as soon as practicable, give the applicant and the
30 Federal Court written notice of his or her decision not to accept the
31 claim, including a statement of the reasons for the decision.

1 *Content of notice where failure to satisfy physical connection test*

- 2 (2) If the only reason why the Registrar cannot accept the claim for
3 registration is that the condition in subsection 190B(7) (which is
4 about a physical connection with the claim area) is not satisfied,
5 the notice must advise the applicant of the applicant's right to
6 make an application to the Federal Court under section 190F and of
7 the power of the Court to make an order in accordance with that
8 section in respect of the application.

9 *Statements of reasons must specify whether section 190B satisfied*

- 10 (3) The statement of reasons for the decision must include a statement
11 on:
12 (a) whether, in the opinion of the Registrar, the claim for
13 registration satisfies all of the conditions in section 190B; and
14 (b) whether, in the opinion of the Registrar, it is not possible to
15 determine whether the claim for registration satisfies all of
16 the conditions in section 190B because of a failure to satisfy
17 section 190C.

18 **190E If the claim cannot be registered—reconsideration by the**
19 **Registrar**

- 20 (1) If the Registrar gives the applicant a notice under subsection
21 190D(1), then, subject to subsections (4) and (5), the applicant may
22 apply to the Registrar to reconsider the claim made in the
23 application.
- 24 (2) The application must:
25 (a) be in writing; and
26 (b) be made within 42 days after the notice under subsection
27 190D(1) is given; and
28 (c) state the basis on which the review is sought.
- 29 (3) Sections 190A, 190B, 190C and 190D apply in relation to the
30 reconsideration of a claim in the same way as they apply to the
31 consideration of a claim.
- 32 (4) The applicant may not make an application to the Registrar for the
33 reconsideration of the claim if the applicant has already made an
34 application to the Federal Court under subsection 190F(1) for
35 review of the decision.

- 1 (5) The applicant may apply to the Registrar for reconsideration of the
2 claim no more than once.

3 **190F If the claim cannot be registered—review by Federal Court**

4 *Applicant may apply to Federal Court for review*

- 5 (1) If the Registrar gives the applicant a notice under subsection
6 190D(1), the applicant may apply to the Federal Court for a review
7 of the Registrar's decision not to accept the claim.

8 *Federal Court has jurisdiction*

- 9 (2) The Court has jurisdiction to hear and determine an application
10 made to it under subsection (1).

11 *Court order where physical connection test failed*

- 12 (3) If, on an application under subsection (1) in a case to which
13 subsection 190D(2) applies, the Court is satisfied that:
14 (a) prima facie, at least some of the native title rights and
15 interests claimed in the application can be established; and
16 (b) at some time in his or her lifetime, at least one parent of one
17 member of the native title claim group had a traditional
18 physical connection with any part of the land or waters and
19 would reasonably have been expected to have maintained
20 that connection but for things done (other than the creation of
21 an interest in relation to land or waters) by:
22 (i) the Crown in any capacity; or
23 (ii) a statutory authority of the Crown in any capacity; or
24 (iii) any holder of a lease over any of the land or waters, or
25 any person acting on behalf of such a holder of a lease;
26 the Court may order the Registrar to accept the claim for
27 registration.

28 *Opportunity to be heard*

- 29 (4) Before making an order under subsection (3), the Court must give
30 to any person who is a party to the proceedings in the Court under
31 Part 4 in relation to the application an opportunity to be heard in
32 relation to the making of the order.

1 *Where no application for review, or Court does not make order*
2 *under subsection (4) on review*

- 3 (5) Subsection (6) applies in a case where:
- 4 (a) the Registrar does not accept the claim for registration either
5 because, in the opinion of the Registrar:
- 6 (i) it does not satisfy all of the conditions in section 190B;
7 or
8 (ii) it is not possible to determine whether all of the
9 conditions in section 190B have been satisfied because
10 of a failure to satisfy section 190C; and
- 11 (b) the Court is satisfied that the avenues for:
- 12 (i) the reconsideration under section 190E of the
13 Registrar’s decision; and
14 (ii) the review under this section of the Registrar’s decision;
15 and
16 (iii) the review of orders made in the determination of an
17 application under this section; and
18 (iv) the review of the Registrar’s decision under any other
19 law;
- 20 have all been exhausted without the registration of the claim.
- 21 (6) The Court may, either on the application of a party or on its own
22 motion, dismiss the application in which the claim was made (the
23 *application in issue*) if:
- 24 (a) the Court is satisfied that the application in issue has not been
25 amended since consideration by the Registrar, and is not
26 likely to be amended in a way that would lead to a different
27 outcome once considered by the Registrar; and
28 (b) in the opinion of the Court, there is no other reason why the
29 application in issue should not be dismissed.

30 **108 Paragraph 193(1)(c)**

31 Repeal the paragraph.

32 **109 At the end of section 193**

33 Add:

1 (5) The Registrar may also include in the Register details of other
2 determinations of, or in relation to, native title decisions of courts
3 or tribunals.

4 **110 Subsection 199(2)**

5 Repeal the subsection, substitute:

6 *Definition*

7 (2) In this section:

8 *relevant land titles office* means the body responsible for keeping a
9 register of interests in real estate under the law of the State or
10 Territory within whose jurisdictional limits the land or waters
11 covered by the determination or decision are located.

12 **111 Subsection 199B(3)**

13 Omit “paragraph 24BH(1)(a),”, substitute “subsection 24BH(1) or
14 paragraph”.

15 **112 Subparagraph 199C(1)(c)(i)**

16 Repeal the subparagraph, substitute:

17 (i) a party advises the Registrar in writing that the
18 agreement has expired, and the Registrar believes, on
19 reasonable grounds, that the agreement has expired; or

20 **113 At the end of section 203BK**

21 Add:

22 *Information obtained in providing assistance not to be used or*
23 *disclosed in other contexts*

24 (4) The NNTT must not use or disclose information to which it has
25 had access only because it provided assistance under subsection (3)
26 for any purpose other than providing that assistance without the
27 prior consent of the person who provided the NNTT with the
28 information.

29 **114 Section 222 (after the table item dealing with subject to**
30 **section 24FA protection)**

31 Insert:

1 subsection 24DJ(1) objection application 253

2 **115 Subsection 223(3) (note)**

3 Omit “permissible”, substitute “valid”.

4 **116 Section 253 (definition of *right to negotiate application*)**

5 Omit “139(1)(b)”, substitute “139(b)”.

6 **117 Section 253**

7 Insert:

8 *subsection 24DJ(1) objection application* has the meaning given
9 by paragraph 139(d).

10 ***Native Title Amendment Act 2007***

11 **118 Subitem 89(3) of Schedule 2**

12 Repeal the subitem, substitute:

13 (3) If, either before the Registrar begins to reconsider, or consider, the
14 claim in accordance with subitem (2), or while the Registrar is doing so,
15 a notice is given in accordance with:

16 (a) paragraph 24MD(6B)(c); or

17 (b) section 29; or

18 (c) a provision of a law of a State or Territory that corresponds
19 to section 29 and is covered by a determination in force under
20 section 43; or

21 (d) a provision of a law of a State or Territory that corresponds
22 to section 29 and is covered by a determination in force under
23 section 43A;

24 in relation to an act affecting any of the land or waters in the area
25 covered by the application, the Registrar must use his or her best
26 endeavours to finish considering the claim under section 190A by the
27 end of:

28 (e) in a paragraph (a) case—2 months after the notice is given; or

29 (f) in a paragraph (b) case—4 months after the notification day
30 specified in the notice; or

31 (g) in a paragraph (c) case—the period, in the law of the State or
32 Territory, that corresponds to the period of 4 months after the
33 notification day specified in a notice under section 29; or

- 1 (h) in a paragraph (d) case—the period at the end of which any
2 person who is a registered native title claimant or registered
3 native title body corporate has a right to be consulted about
4 the act, to object to the act or to participate in negotiations
5 about the act.

6 **119 Subitem 90(3) of Schedule 2**

7 Repeal the subitem, substitute:

- 8 (3) If, either before the Registrar begins to consider, or reconsider, the
9 claim in accordance with subitem (2), or while the Registrar is doing so,
10 a notice is given in accordance with:
11 (a) paragraph 24MD(6B)(c); or
12 (b) section 29; or
13 (c) a provision of a law of a State or Territory that corresponds
14 to section 29 and is covered by a determination in force under
15 section 43; or
16 (d) a provision of a law of a State or Territory that corresponds
17 to section 29 and is covered by a determination in force under
18 section 43A;
19 in relation to an act affecting any land or waters covered by the
20 application, the Registrar must use his or her best endeavours to finish
21 considering, or reconsidering, the claim under section 190A:
22 (e) in a paragraph (a) case—2 months after the notice is given; or
23 (f) in a paragraph (b) case—4 months after the notification day
24 specified in the notice; or
25 (g) in a paragraph (c) case—the period, in the law of the State or
26 Territory, that corresponds to the period of 4 months after the
27 notification day specified in a notice under section 29; or
28 (h) in a paragraph (d) case—the period at the end of which any
29 person who is a registered native title claimant or registered
30 native title body corporate has a right to be consulted about
31 the act, to object to the act or to participate in negotiations
32 about the act.

1

2 **Part 2—Application and other provisions**

3 **120 Definitions**

4 In this Part:

5 *commencing day* means the day on which item 1 of this Schedule
6 commences.

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

8 **121 Applications of items 7 to 14 and items 18, 19, 27, 28 and**
9 **111**

10 The amendments made by items 7 to 14 and items 18, 19, 27, 28 and
11 111 apply in relation to notices given on or after the commencing day.

12 **122 Application of items 4, 5, 15, 16, 20, 24, 25, 30, 57, 66, 67,**
13 **68, 89 and 113**

14 The amendments made by items 4, 5, 15, 16, 20, 24, 25, 30, 57, 66, 67,
15 68, 89 and 113 apply in relation to the disclosure or use on or after the
16 commencing day of information obtained in providing assistance or
17 mediation, whether the information was obtained or the assistance or
18 mediation provided before or after the commencing day.

19 **123 Application of items 22, 23, 31, 32, 78, 84, 97, 98, 99, 101,**
20 **102, 103, 104 and 107**

21 The amendments made by items 22, 23, 31, 32, 78, 84, 97, 98, 99, 101,
22 102, 103, 104 and 107 apply in relation to claims in a claimant
23 application under section 63 or subsection 64(4) of the Principal Act
24 made on or after the commencing day.

25 **124 Application of item 33**

26 The amendment made by item 33 applies in relation to a single lease,
27 licence, permit or authority granted on or after the commencing day.

28 **125 Application of items 36, 37, 39, 40, 44, 45, 47, 48, 50, 51,**
29 **53 and 54**

30 The amendments made by items 36, 37, 39, 40, 44, 45, 47, 48, 50, 51,
31 53 and 54 apply in relation to notices given or things done on or after
32 the commencing day.

1 **126 Application of item 42**

2 The amendment made by item 42 applies in relation to notifications
3 given under paragraph 24MD(6B)(c) of the Principal Act on or after the
4 commencing day.

5 **127 Applications of amendments made by items 62 and 63**

6 The amendments made by items 62 and 63 apply to:

7 (a) the making of determinations on or after the commencing
8 day; and

9 (b) the revocation on or after the commencing day of
10 determinations made before, on or after the commencing day;

11 except where the determinations are those mentioned in item 138.

12 **128 Application of items 71 to 74**

13 The amendments made by items 71 to 74 apply in relation to a claimant
14 application made on or after the commencing day.

15 **129 Application of item 76**

16 The amendment made by item 76 applies in relation to a compensation
17 application made on or after the commencing day.

18 **130 Application of item 80**

19 The amendment made by item 80 applies in relation to notices given by
20 the Registrar under paragraph 66(3)(a) of the Principal Act on or after
21 the commencing day.

22 **131 Application of item 81**

23 The amendment made by item 81 applies in relation to amended
24 applications of which the Registrar is given a copy under section 64 of
25 the Principal Act on or after the commencing day.

26 **132 Application of item 82**

27 The amendments made by item 82 apply in relation to a claimant
28 application, or a compensation application, whether made before or
29 after the commencing day.

30 **133 Application of item 88**

1 The amendment made by item 88 applies in relation to an application
2 made under section 61 of the Principal Act, if the person or persons
3 making the application were required under the Principal Act to be
4 authorised when the application was made.

5 **134 Application of item 91**

6 The amendment made by item 91 applies in relation to an application
7 under section 61 of the Principal Act, regardless of whether the
8 application is made before or after the commencing day.

9 **135 Application of item 92**

10 The amendment made by item 92 applies in relation to inquiries begun
11 on or after the commencing day.

12 **136 Effect of amendments of sections 190A to 190D of the**
13 **Principal Act on transitional arrangements in the *Native***
14 ***Title Amendment Act 2007***

15 To avoid doubt, the amendments of sections 190A to 190D made in
16 items 22, 23, 31, 32, 78, 84, 97, 98, 99, 101, 102, 103, 104 and 107 of
17 this Schedule are to be disregarded for the purposes of items 89 and 90
18 of Schedule 2 to the *Native Title Amendment Act 2007*.

19 **137 Application of amendments made by items 118 and 119**

20 The amendments made by items 118 and 119 of the Schedule apply
21 where a notice is given on or after the commencing day in accordance
22 with:

- 23 (a) paragraph 24MD(6B)(c) of the Principal Act; or
24 (b) section 29 of the Principal Act; or
25 (c) a provision of a law of a State or Territory that corresponds
26 to section 29 of the Principal Act and is covered by a
27 determination in force under section 43 of that Act; or
28 (d) a provision of a law of a State or Territory that corresponds
29 to section 29 of the Principal Act and is covered by a
30 determination in force under section 43A of that Act.

31 **138 Validation of certain pre-commencement determinations**
32 **in relation to South Australian alternative provisions**
33 **etc.**

1 *Validation*

- 2 (1) To avoid doubt, the following determinations made by the
3 Commonwealth Minister under paragraph 43(1)(b) of the Principal Act
4 are, and are taken always to have been, valid:
- 5 (a) the determination made on 18 October 1995 in relation to
6 alternative provisions consisting of section 58 and Part 9B of
7 the *Mining Act 1971* of South Australia, as amended by the
8 *Mining (Native Title) Amendment Act 1995* of that State;
 - 9 (b) the determination made on 16 April 1997 in relation to
10 alternative provisions consisting of Part 7 of the *Opal Mining*
11 *Act 1995* of South Australia.

12 *How subsection 43(3) applies to Mining Act alternative provisions*

- 13 (2) For the purposes of applying subsection 43(3) of the Principal Act after
14 the commencing day to the alternative provisions mentioned in
15 paragraph (1)(a) of this item, it is to be assumed that:
- 16 (a) subsection 43(2A) of that Act, as inserted by this Schedule,
17 applied when the determination mentioned in
18 paragraph (1)(a) of this item was made, and at all times
19 afterwards; and
 - 20 (b) the reference in subsection 43(2A), as so applying, to
21 conjunctive agreement/determination provisions or expedited
22 procedure provisions included a reference to the Mining Act
23 umbrella provisions.

24 *Definition*

- 25 (3) In subitem (2):
- 26 ***Mining Act umbrella provisions*** means:
- 27 (a) the provisions of Part 9B of the *Mining Act 1971* of South
28 Australia, as in force when the determination mentioned in
29 paragraph (1)(a) of this item was made, so far as those
30 provisions relate to umbrella authorisations within the
31 meaning of section 63K of that Act as so in force; or
32 (b) provisions that are of substantially the same effect.

1 *How subsection 43(3) applies to Opal Mining Act alternative*
2 *provisions*

- 3 (4) For the purposes of applying subsection 43(3) of the Principal Act after
4 the commencing day to the alternative provisions mentioned in
5 paragraph (1)(b) of this item, it is to be assumed that:
6 (a) subsection 43(2A) of that Act, as inserted by this Schedule,
7 applied when the determination mentioned in
8 paragraph (1)(b) of this item was made, and at all times
9 afterwards; and
10 (b) the reference in subsection 43(2A), as so applying, to
11 conjunctive agreement/determination provisions or expedited
12 procedure provisions included a reference to the Opal
13 Mining Act umbrella provisions.

14 *Definition*

- 15 (5) In subitem (4):

16 *Opal Mining Act umbrella provisions* means:

- 17 (a) the provisions of Part 7 of the *Opal Mining Act 1995* of
18 South Australia, as in force when the determination
19 mentioned in paragraph (1)(b) of this item was made, so far
20 as those provisions relate to umbrella authorisations within
21 the meaning of section 53 of that Act as so in force; or
22 (b) provisions that are of substantially the same effect.

23 **139 Entitlement to “just terms” compensation**

- 24 (1) If, apart from this item, item 138 would result in a paragraph 51(xxxi)
25 acquisition of property of a person other than on paragraph 51(xxxi) just
26 terms, the person is entitled to such compensation, or compensation in
27 addition to any otherwise provided by the Principal Act, from the
28 Commonwealth as is necessary to ensure that the acquisition is made on
29 paragraph 51(xxxi) just terms.

30 *Federal Court’s jurisdiction*

- 31 (2) The Federal Court has jurisdiction with respect to matters arising under
32 subitem (1) and that jurisdiction is exclusive of the jurisdiction of all
33 other courts except the High Court.

1
2 **Schedule 2—Amendments relating to**
3 **representative bodies**

4 **Part 1—Amendments**

5 *Native Title Act 1993*

6 **1 Section 201A (definition of exempt State body)**

7 Repeal the definition.

8 **2 Subsection 203AD(3)**

9 Repeal the subsection.

10 **3 Subsection 203CB(3)**

11 Omit all the words after “investment of money”, substitute “under
12 subsection (2), unless the provision expressly states that it applies to
13 such a contract”.

14 **4 Division 6 of Part 11**

15 Repeal the Division, substitute:

16 **Division 6—Conduct of directors and other executive**
17 **officers**

18 **203E Application of Division**

19 This Division does not apply to anything that is not related to the
20 performance of the functions of a representative body or the
21 exercise of its powers.

22 **203EA Representative bodies that are not corporations**

- 23 (1) This section applies to a representative body that is neither:
24 (a) registered under the *Corporations (Aboriginal and Torres*
25 *Strait Islander) Act 2006*; nor
26 (b) a company incorporated under the *Corporations Act 2001*.

Schedule 2 Amendments relating to representative bodies

Part 1 Amendments

1 (2) Division 4 (other than sections 27C, 27J and 27K) and Division 4A
2 of Part 3 of the *Commonwealth Authorities and Companies Act*
3 *1997*, and Schedule 2 to that Act, apply in relation to the body as
4 if:

- 5 (a) each reference in that Division or Schedule to a
6 Commonwealth authority were a reference to the
7 representative body; and
8 (b) each reference in that Division or Schedule to an officer of a
9 Commonwealth authority were a reference to an executive
10 officer of the representative body; and
11 (c) each reference in that Division or Schedule to a director of a
12 Commonwealth authority were a reference to a director of the
13 representative body; and
14 (d) each reference in that Division or Schedule to the Finance
15 Minister were a reference to the Commonwealth Minister.

16 Note: Similar provisions already apply under the *Corporations Act 2001* to
17 representative bodies that are companies incorporated under that Act.

18 (3) A director of the representative body who has a material personal
19 interest in a matter that is being considered by the body's
20 governing body:

- 21 (a) must not be present during any deliberation by the governing
22 body on the matter; and
23 (b) must not take part in any decision of the governing body on
24 the matter.

25 However, a contravention of this provision does not affect the
26 validity of any resolution.

27 **203EB Representative bodies registered under the *Corporations***
28 ***(Aboriginal and Torres Strait Islander) Act 2006***

29 (1) This section applies in relation to a representative body that is
30 registered under the *Corporations (Aboriginal and Torres Strait*
31 *Islander) Act 2006*.

32 (2) Division 4A of Part 3 of the *Commonwealth Authorities and*
33 *Companies Act 1997* applies in relation to the body as if:

- 34 (a) each reference in that Division to a Commonwealth authority
35 were a reference to the representative body; and

- 1 (b) each reference in that Division to an officer of a
2 Commonwealth authority were a reference to an officer of
3 the representative body; and
- 4 (c) in paragraph 27M(3)(b), the words “a civil penalty order
5 under clause 3 of Schedule 2 or a compensation order under
6 clause 4 of Schedule 2” were replaced with “a civil penalty
7 order under section 386-10 or a compensation order under
8 section 386-15 of the *Corporations (Aboriginal and Torres
9 Strait Islander) Act 2006*, made in relation to a breach of
10 subsection 265-1(1), 265-5(1) or (2), 265-10(1) or (2) or
11 265-15(1) or (2) of that Act”; and
- 12 (d) in paragraph 27M(4)(c), the words “brought by the Finance
13 Minister for a court order” were replaced with “brought by
14 the Registrar of Aboriginal and Torres Strait Islander
15 Corporations under section 386-20 or subsection 386-55(8)
16 of the *Corporations (Aboriginal and Torres Strait Islander)*
17 *Act 2006* for a court order”; and
- 18 (e) in paragraph 27M(4)(d), the words “this Act” were omitted,
19 and replaced with “section 386-60 of the *Corporations*
20 *(Aboriginal and Torres Strait Islander) Act 2006* against an
21 application under section 386-20 of that Act, or for relief to
22 the person under section 576-1 of that Act,”; and
- 23 (f) the reference to the Finance Minister in the final sentence of
24 subsection 27M(4) were a reference to the Registrar of
25 Aboriginal and Torres Strait Islander Corporations, and the
26 note after the subsection were omitted; and
- 27 (g) the reference in paragraph 27N(2)(b) to sections 24 and 25 of
28 the *Commonwealth Authorities and Companies Act 1997*
29 were a reference to sections 265-10 and 265-15 respectively
30 of the *Corporations (Aboriginal and Torres Strait Islander)*
31 *Act 2006*.

32 Note: Provisions similar to Division 4 of Part 3 of the *Commonwealth*
33 *Authorities and Companies Act 1997* and Schedule 2 to that Act
34 already apply in relation to companies incorporated under the
35 *Corporations Act 2001*.

36 **203EC Sections 203EA to 203EB not to affect certain obligations**

37 To avoid doubt, sections 203EA and 203EB do not affect the
38 obligations imposed by the *Commonwealth Authorities and*
39 *Companies Act 1997* upon a representative body that is a

1 Commonwealth authority within the meaning of section 7 of that
2 Act.

3 **5 Section 203FB**

4 Repeal the section, substitute:

5 **203FB Review of assistance decisions**

6 *Persons may apply for review*

7 (1) An Aboriginal person or Torres Strait Islander affected by a
8 decision of a representative body not to assist him or her in the
9 performance of its facilitation and assistance functions under
10 section 203BB may apply to the Secretary of the Department for
11 review of the decision.

12 Note: The Aboriginal person or Torres Strait Islander is able to obtain a
13 statement of reasons etc. for the decision from the representative body
14 under section 13 of the *Administrative Decisions (Judicial Review) Act*
15 *1977*.

16 *Appointment of person to conduct the review*

17 (2) As soon as practicable after receiving the application, the Secretary
18 must:
19 (a) review the representative body's decision; or
20 (b) appoint to conduct the review a person who, in the
21 Secretary's opinion, has skills or knowledge in relation to
22 matters of substantial relevance to the conduct of the review.

23 **203FBA External review**

24 *This section applies to external review*

25 (1) This section applies if the Secretary of the Department appoints a
26 person under paragraph 203FB(2)(b) to conduct the review.

27 *Review of decision*

28 (2) Subject to subsection (4), the person appointed must review the
29 representative body's decision and report to the Secretary whether:
30 (a) the decision should be affirmed; or

- 1 (b) the Secretary should make funding available under
2 section 203FE to a person or body for the purpose of
3 performing specified facilitation and assistance functions of a
4 representative body in relation to the matter to which the
5 representative body's decision relates.

6 *Matters to be taken into account when conducting review*

- 7 (3) In reviewing the representative body's decision, the person
8 appointed must have regard to:
9 (a) whether it would be consistent with priorities determined by
10 the representative body under paragraph 203B(4)(a) to
11 provide the assistance sought; and
12 (b) whether, to provide the assistance sought, the representative
13 body would need to allocate or re-allocate resources in a way
14 that interferes with the efficient performance of its functions;
15 and
16 (c) whether the representative body would breach a condition
17 imposed under section 203CA if the representative body
18 were to provide the assistance sought; and
19 (d) if the assistance sought was in relation to an application
20 under section 61:
21 (i) whether the provision of that assistance would promote
22 an orderly, efficient and cost-effective process for
23 making such applications; and
24 (ii) in a case where one or more other applications have
25 been made or are proposed to be made in relation to
26 land or waters covered by the application—whether the
27 provision of the assistance sought would be reasonable
28 given the need to minimise the number of applications
29 covering the land or waters; and
30 (e) any other matter relevant to the merits of the decision.

31 *Failure to use internal review procedures*

- 32 (4) The person appointed must refuse to review the representative
33 body's decision if satisfied that the applicant did not, before
34 applying for the review, make all reasonable efforts to seek a
35 review by the representative body of its decision.

1 *Report to be given within 60 days*

- 2 (5) The person appointed must give the report referred to in
3 subsection (2) to the Secretary within 60 days after the day on
4 which he or she was appointed, or within such other period as the
5 Secretary allows (whether or not the 60 days have expired).

6 *Inviting submissions*

- 7 (6) Before reviewing the representative body's decision, the person
8 appointed must invite the representative body to make a
9 submission in relation to the decision. The invitation must specify
10 a period of not less than 14 days within which submissions must be
11 made.

12 *Action to be taken by the Secretary*

- 13 (7) The Secretary must, within one month after the end of the period
14 referred to in subsection (5):
15 (a) affirm the representative body's decision; or
16 (b) make funding available under section 203FE as mentioned in
17 paragraph (2)(b) of this section.

18 *Notice of decision on review*

- 19 (8) The Secretary must give the applicant and the representative body
20 written notice of the Secretary's decision under subsection (7). The
21 notice must include the reasons for that decision.

22 **203FBB Review by Secretary of the Department**

23 *This section applies to review by Secretary*

- 24 (1) This section applies if the Secretary of the Department conducts
25 the review.

26 *Review of decision*

- 27 (2) Subject to subsection (4), the Secretary must review the
28 representative body's decision and decide whether:
29 (a) the representative body's decision should be affirmed; or
30 (b) the Secretary should make funding available under
31 section 203FE to a person or body for the purpose of

1 performing specified facilitation and assistance functions of a
2 representative body in relation to the matter to which the
3 representative body's decision relates.

4 *Matters to be taken into account when conducting review*

- 5 (3) In reviewing the representative body's decision, the Secretary must
6 have regard to:
- 7 (a) whether it would be consistent with priorities determined by
8 the representative body under paragraph 203B(4)(a) to
9 provide the assistance sought; and
 - 10 (b) whether, to provide the assistance sought, the representative
11 body would need to allocate or re-allocate resources in a way
12 that interferes with the efficient performance of its functions;
13 and
 - 14 (c) whether the representative body would breach a condition
15 imposed under section 203CA if the representative body
16 were to provide the assistance sought; and
 - 17 (d) if the assistance sought was in relation to an application
18 under section 61:
 - 19 (i) whether the provision of that assistance would promote
20 an orderly, efficient and cost-effective process for
21 making such applications; and
 - 22 (ii) in a case where one or more other applications have
23 been made or are proposed to be made in relation to
24 land or waters covered by the application—whether the
25 provision of the assistance sought would be reasonable
26 given the need to minimise the number of applications
27 covering the land or waters; and
 - 28 (e) any other matter relevant to the merits of the decision.

29 *Failure to use internal review procedures*

- 30 (4) The Secretary must refuse to review the representative body's
31 decision if satisfied that the applicant did not, before applying for
32 the review, make all reasonable efforts to seek a review by the
33 representative body of its decision.

34 *Inviting submissions*

- 35 (5) Before reviewing the representative body's decision, the Secretary
36 must invite the representative body to make a submission in

1 relation to the decision. The invitation must specify a period of not
2 less than 14 days within which submissions must be made.

3 *Secretary to decide matter within 60 days*

4 (6) The Secretary must make his or her decision under subsection (2)
5 within 60 days after the day on which the application for review is
6 made.

7 *Notice of decision on review*

8 (7) The Secretary must give the applicant and the representative body
9 written notice of the Secretary's decision under subsection (2). The
10 notice must include the reasons for that decision.

11 **6 Subsection 203FC(2)**

12 Repeal the subsection, substitute:

13 *Limit on directions*

14 (2) Directions must not require the former representative body to:
15 (a) allow the replacement body access to documents and records
16 of any kind mentioned in paragraph (1)(b) that relate to a
17 claim made in a claimant application or a compensation
18 application; or
19 (b) give the replacement body documents and records of any
20 kind mentioned in paragraph (1)(b) that relate to a claim
21 made in a claimant application or a compensation
22 application, or give copies of such documents or records;
23 unless the replacement body gives the Commonwealth Minister
24 notice, in writing, that the replacement body has been requested to
25 perform a representative body function in relation to the claim.

26 (2A) Directions must not require the former representative body to:
27 (a) allow the replacement body access to documents and records
28 of any kind mentioned in paragraph (1)(b) that relate to
29 native title rights and interests that are the subject of a
30 determination of native title; or
31 (b) give the replacement body documents and records of any
32 kind mentioned in paragraph (1)(b) that relate to native title
33 rights and interests that are the subject of a determination of
34 native title, or give copies of such documents or records;

1 unless the replacement body gives the Commonwealth Minister
2 notice, in writing, that the replacement body has been requested to
3 perform a representative body function in relation to those native
4 title rights and interests.

5 **7 After subsection 203FC(4)**

6 Insert:

7 *Former representative body under external administration*

8 (4A) To avoid doubt, the Commonwealth Minister may make a direction
9 under subsection (1), and the former representative body to which
10 the direction applies must comply with the direction, even if the
11 former representative body is under external administration.

12 **8 Subsection 203FE(2)**

13 Omit “paragraph 203FB(7)(b)”, substitute “paragraph 203FBA(7)(b) or
14 203FBB(2)(b)”.

15 **9 Section 203FI**

16 After “203FB,”, insert “203FBA, 203FBB,”.

1

2 **Part 2—Application provisions**

3 **10 Application of item 4**

4 The amendment made by item 4 applies in relation to conduct that
5 occurs on or after the day on which the item commences.

6 **11 Application of item 5**

7 The amendment made by item 5 applies where the application for
8 review is made on or after the day on which the item commences.

9 **12 Application of item 6**

10 The amendment made by item 6 applies to directions issued on or after
11 the day on which the item commences.

1
2 **Schedule 3—Amendments relating to**
3 **prescribed bodies corporate**

4 **Part 1—Amendments**

5 *Native Title Act 1993*

6 **1 Subsection 56(4)**

7 Repeal the subsection, substitute:

8 *Other matters relating to the trust to be dealt with by regulation*

9 (4) The regulations may also make provision in respect of:

10 (a) the following matters relating to the holding in trust of the
11 native title rights and interests:

12 (i) the functions to be performed by the body corporate;

13 (ii) the nature of any consultation with, or other role for, the
14 common law holders;

15 (iii) the circumstances in which the rights and interests may
16 be surrendered, transferred or otherwise dealt with;

17 (iv) the determination of any other matter by the Federal
18 Court;

19 (v) any other matter; and

20 (b) the replacement of the trustee where the common law holders
21 wish the trustee to be replaced; and

22 (c) any matter in relation to that replacement of the trustee with
23 another prescribed body corporate, including the
24 determination of the matter by the Federal Court; and

25 (d) the termination of the trust where:

26 (i) the common law holders wish the trust to be terminated;
27 or

28 (ii) a liquidator is appointed for the body corporate; and

29 (e) the determination of a prescribed body corporate to perform
30 the functions mentioned in subsection 57(3) once the trust is
31 terminated, including the determination of the body corporate
32 by the Federal Court; and

33 (f) any matter in relation to the termination of the trust, the
34 performance of those functions and the transition from the

1 trust arrangement to the new arrangement, including the
2 determination of those matters by the Federal Court.

3 **2 At the end of section 56**

4 Add:

5 *Where common law holders later wish a trust be determined*

6 (7) The regulations may make provision in respect of:

- 7 (a) the determination, including the determination by the Federal
8 Court, of a prescribed body corporate to hold the rights and
9 interests from time to time comprising the native title in trust
10 for the common law holders where:
- 11 (i) a determination is made, either under this section or
12 under regulations made for the purposes of this section,
13 that the rights and interests are to be held by the
14 common law holders; and
- 15 (ii) the common law holders wish a prescribed body
16 corporate to instead hold those rights and interests in
17 trust; and
- 18 (b) the functions to be performed by the prescribed body
19 corporate, once determined; and
- 20 (c) the nature of any consultation with, or other role for, the
21 common law holders; and
- 22 (d) the circumstances in which the rights and interests may be
23 surrendered, transferred or otherwise dealt with; and
- 24 (e) any other matter in relation to the holding in trust of the
25 native title rights and interests, and the transition from the
26 former to the new arrangement, including the determination
27 of the matter by the Federal Court.

28 **3 Paragraph 57(2)(c)**

29 Omit “prescribed body is to perform the functions”, substitute
30 “prescribed body corporate is to perform the functions”.

31 **4 Paragraph 58(a)**

32 After “section 56”, insert “, or regulations made for the purposes of that
33 section”.

34 **5 Section 59**

1 Repeal the section, substitute:

2 **59 Prescribed bodies corporate that may be determined under**
3 **paragraphs 56(2)(b) and 57(2)(b) and (c)**

- 4 (1) The regulations may prescribe the kinds of body corporate that
5 may be determined under paragraph 56(2)(b) or 57(2)(b).
6 (2) The regulations may prescribe the body corporate, or the kinds of
7 body corporate, that may be determined under paragraph 57(2)(c).

8 **6 Section 60**

9 Repeal the section, substitute:

10 **60 Replacement of agent prescribed bodies corporate**

11 The regulations may make provision for:

- 12 (a) the replacement of an agent prescribed body corporate (the
13 *original PBC*) with another prescribed body corporate (the
14 *replacement PBC*) to perform the functions mentioned in
15 subsection 57(3) where:
16 (i) the common law holders wish the replacement to occur;
17 or
18 (ii) a liquidator is appointed for the original PBC; and
19 (b) the determination of the replacement PBC, including the
20 determination of the replacement PBC by the Federal Court;
21 and
22 (c) any matter in relation to the transition from the original PBC
23 to the replacement PBC, including the determination of that
24 matter by the Federal Court; and
25 (d) any other matters in relation to the replacement of the
26 original PBC with the replacement PBC.

27 **7 At the end of Part 2**

28 Add:

1 **Division 7—Financial matters**

2 **60AB Fees for services provided by registered native title bodies**
3 **corporate in performing certain functions**

- 4 (1) A registered native title body corporate may charge a person, other
5 than a person mentioned in subsection (4), a fee for costs the
6 registered native title body corporate incurs when performing one
7 or more of the following functions:
8 (a) negotiating an agreement under paragraph 31(1)(b);
9 (b) negotiating an agreement under alternative provisions
10 provided for by a law of a State or Territory in respect of
11 which the Commonwealth Minister has made a determination
12 under paragraph 43(1)(b);
13 (c) negotiating indigenous land use agreements under
14 Subdivisions B, C and D of Division 3 of this Part.
- 15 (2) The regulations may provide for a registered native title body
16 corporate to charge a person, other than a person mentioned in
17 subsection (4), a fee for costs the registered native title body
18 corporate incurs when performing other functions specified in the
19 regulations.
- 20 (3) A fee imposed under subsection (1), or under regulations made for
21 the purposes of subsection (2), must not be such as to amount to
22 taxation.
- 23 (4) For the purposes of this section, a registered native title body
24 corporate may not charge the following persons a fee:
25 (a) the common law holders for whom the registered native title
26 body corporate holds native title rights and interests in trust;
27 (b) the common law holders for whom the registered native title
28 body corporate is an agent prescribed body corporate;
29 (c) another registered native title body corporate;
30 (d) a representative body;
31 (e) a registered native title claimant or other person who claims
32 to hold native title in relation to the land or waters in:
33 (i) an area affected by an act to which negotiations
34 mentioned in subsection (1) relate; or
35 (ii) an area proposed to be covered by an indigenous land
36 use agreement.

- 1 (5) A registered native title body corporate may not charge a person a
2 fee for costs the registered native title body corporate incurs when
3 performing functions:
4 (a) as a party to a proceeding or an inquiry in which:
5 (i) a determination that an act must not be done; or
6 (ii) a determination that an act may be done; or
7 (iii) a determination that an act may be done subject to
8 conditions being complied with;
9 may be made in respect of an act to which negotiations
10 mentioned in subsection (1) relate; and
11 (b) as a party to any court proceedings; and
12 (c) in any other circumstances prescribed by the regulations.

13 **60AC Opinion of the Registrar of Aboriginal and Torres Strait**
14 **Islander Corporations**

- 15 (1) If a registered native title body corporate charges a person a fee in
16 reliance on section 60AB, the person may, in writing, request the
17 Registrar of Aboriginal and Torres Strait Islander Corporations (the
18 **Registrar**) to give an opinion on whether the fee is one that the
19 body corporate may charge under that section.
- 20 (2) The Registrar may give an opinion, in writing, on whether the fee
21 is one that the registered native title body corporate may charge
22 under that section.
- 23 (3) If the Registrar gives the opinion that the fee is not one that the
24 registered native title body corporate may charge under that
25 section, the body corporate must withdraw the charge.
- 26 (4) An opinion given by the Registrar under subsection (2) is not a
27 legislative instrument.
- 28 (5) The regulations may make provisions dealing with:
29 (a) the circumstances in which the Registrar may decline to give
30 an opinion under subsection (2); and
31 (b) the process by which the request to the Registrar is made and
32 considered; and
33 (c) the withholding of payment of the fee in relation to which a
34 request is made; and

- 1 (d) any other matters in relation to the request, the consideration
2 of the request, the giving of an opinion by the Registrar, and
3 the consequences of the giving of that opinion.

4 **8 At the end of section 193**

5 Add:

6 *Registrar to reflect changes to prescribed bodies corporate*

- 7 (4) If:
8 (a) a prescribed body corporate that holds the native title rights
9 and interests on trust is replaced with another prescribed
10 body corporate as trustee; or
11 (b) the trust under which a prescribed body corporate holds
12 native title rights and interests is terminated and an agent
13 prescribed body corporate is determined; or
14 (c) an agent prescribed body corporate in relation to native title
15 rights and interests is replaced with another agent prescribed
16 body corporate in relation to those interests; or
17 (d) a prescribed body corporate ceases to be an agent prescribed
18 body corporate in relation to native title rights and interests
19 and another prescribed body corporate is appointed as trustee
20 in relation to those rights and interests;
21 the Registrar must update the Register to reflect the change.

22 **9 Section 197**

23 Repeal the section, substitute:

24 **197 Keeping the Register**

- 25 (1) The Registrar must, as soon as is practicable:
26 (a) include in the Register details of determinations or decisions
27 covered by subsection 193(1); and
28 (b) update the Register in accordance with subsection 193(4).

29 **10 Section 253 (paragraph (b) of the definition of agent**
30 ***prescribed body corporate***)

31 Omit “subsection 56(4)”, substitute “paragraph 56(4)(e)”.

1

2 **Part 2—Transitional and application provisions**

3 **11 Application of items 5 and 6**

4 (1) To avoid doubt, nothing in the amendments made by items 5 and 6 of
5 this Schedule is intended to affect:

6 (a) regulations made under section 59 or 60 of the *Native Title*
7 *Act 1993* that were in force before, or are in force after, the
8 commencement of this Schedule; or

9 (b) anything done under those regulations.

10 (2) Nothing in paragraph (1)(a) affects the power to amend or repeal
11 regulations mentioned in that paragraph.

12 **12 Application of item 7**

13 The amendment made by item 7 of this Schedule applies in relation to
14 functions performed on or after the day on which the item commences.

1
2 **Schedule 4—Technical amendments relating**
3 **to legislative instruments**
4

5 *Native Title Act 1993*

6 **1 Paragraph 23HA(a)**

7 Omit “in writing”, substitute “, by legislative instrument,”.

8 **2 Paragraphs 24GB(9)(c) and 24GD(6)(a)**

9 Omit “in writing”, substitute “, by legislative instrument,”.

10 **3 Subparagraph 24GE(1)(f)(i)**

11 Omit “in writing”, substitute “, by legislative instrument,”.

12 **4 Paragraphs 24HA(7)(a), 24ID(3)(a) and 24JB(6)(a) and (7)(a)**

13 Omit “in writing”, substitute “, by legislative instrument,”.

14 **5 Subsections 24KA(8), 24MD(7) and 24NA(9)**

15 Omit “in writing”, substitute “, by legislative instrument,”.

16 **6 Subparagraph 26(1)(c)(iv)**

17 Omit “in writing”, substitute “by legislative instrument”.

18 **7 Paragraphs 26(2)(b) and (c)**

19 Omit “in writing”, substitute “, by legislative instrument,”.

20 **8 Subsection 26A(1)**

21 Omit “may determine in writing”, substitute “may, by legislative
22 instrument, determine”.

23 **9 Subparagraph 26A(8)(a)(ii)**

24 Omit “in writing”, substitute “by legislative instrument”.

25 **10 Paragraph 26A(8)(b)**

26 Omit “in writing”, substitute “by legislative instrument”.

27 **11 Subsection 26B(1)**

1 Omit “may determine in writing”, substitute “may, by legislative
2 instrument, determine”.

3 **12 Paragraph 26B(9)(b)**

4 Omit “in writing”, substitute “by legislative instrument”.

5 **13 Subsection 26C(2)**

6 Omit “may determine in writing”, substitute “may, by legislative
7 instrument, determine”.

8 **14 Paragraph 26C(6)(b)**

9 Omit “in writing”, substitute “by legislative instrument”.

10 **15 Paragraph 43(1)(b)**

11 Omit “in writing”, substitute “, by legislative instrument,”.

12 **16 Paragraph 43(3)(b)**

13 Omit “in writing”, substitute “by legislative instrument”.

14 **17 Subparagraph 43(3)(c)(ii)**

15 Omit “in writing”, substitute “, by legislative instrument,”.

16 **18 Paragraph 43(3)(c)**

17 Omit “in writing” (last occurring), substitute “by legislative
18 instrument”.

19 **19 Subsection 43(3) (note)**

20 Repeal the note.

21 **20 Paragraph 43A(1)(b)**

22 Omit “in writing”, substitute “, by legislative instrument,”.

23 **21 Paragraph 43A(9)(b)**

24 Omit “in writing”, substitute “by legislative instrument”.

25 **22 Subparagraph 43A(9)(c)(ii)**

26 Omit “in writing”, substitute “, by legislative instrument,”.

27 **23 Paragraph 43A(9)(c)**

1 Omit “in writing” (last occurring), substitute “by legislative
2 instrument”.

3 **24 Subsection 43A(9) (note)**

4 Repeal the note.

5 **25 Subsection 207A(1)**

6 Omit “in writing”, substitute “by legislative instrument”.

7 **26 Paragraph 207A(4)(b)**

8 Omit “in writing”, substitute “by legislative instrument”.

9 **27 Subsection 207B(3)**

10 Omit “in writing”, substitute “by legislative instrument”.

11 **28 Paragraph 207B(7)(d)**

12 Omit “in writing”, substitute “by legislative instrument”.

13 **29 Section 214**

14 Repeal the section.

15 **30 Subsection 245(4)**

16 Omit “in writing”, substitute “by legislative instrument”.

17 **31 Subsections 251C(4) and (5)**

18 Omit “makes a written determination to that effect”, substitute “, by
19 legislative instrument, so determines”.

20 **32 Subsection 252(1)**

21 After “give notice in the way determined”, insert “, by legislative
22 instrument,”.

23 **33 Section 253 (paragraph (i) of the definition of**
24 ***infrastructure facility*)**

25 Omit “in writing”, substitute “, by legislative instrument,”.

26 ***Native Title Amendment Act 1998***

27 **34 Subclause 14(3) of Schedule 5**

1 Omit “in writing”, substitute “, by legislative instrument,”.

2 **35 Subclause 14(3) of Schedule 5 (second sentence)**

3 Repeal the sentence.

4 **36 Clause 26 of Schedule 5 (note)**

5 Repeal the note, substitute:

6 Note: Under section 214 of the *Native Title Act 1993*, as in force at the time the original
7 determination was made, the original determination was a disallowable instrument for
8 the purposes of section 46A of the *Acts Interpretation Act 1901*, as in force at that time,
9 which meant that it was required under that Act, as then in force, to be tabled.