SECTION 31 AGREEMENTS

The proposed retrospective validation of agreements is not to be taken lightly. It should only be done after due consideration of the variety of factual circumstances involved in the execution of Section 31 Agreements without the signatures of all of the members of the registered claimant. In the NLCs case it is only where members of the applicant have been deceased that agreements have been executed after provision of a death certificate to the other parties.

Section 31 Agreements primarily concern future acts notified under Subdivision P of the NTA. These are mainly the conferral of mining rights and certain compulsory acquisitions of native title rights and interests.

In relation to relevant mining rights there will be no extinguishment of native title, and s31 agreements in any event commonly provide that the non-extinguishment principle applies to the grant of the future acts concerned. This would of course not be the case in relation to the compulsory acquisition of native title. In the NLC region there are no s31 Agreements in relation to the compulsory acquisition of native title.

It is our submission that any s31 Agreements that permit the compulsory acquisition of native title should be closely examined if possible before any retrospective validation takes place as this would involve the extinguishment of native title.

Subject to these comments the NLC is supportive of the First Nations Legal and Research Services (FNLRS) submission at paragraphs 1-5 as follows:

The Northern Land Council (NLC) supports the First Nations Legal & Research Services (**FNLRS**) submissions at paragraphs 1 to 5 as follows.

1. First Nations supports the amendment of the NTA to confirm the validity of section 31 agreements made prior to the *McGlade* decision.[1] Such an amendment would resolve the uncertainty in relation to authorisation that has arisen following the *McGlade* decision that has already been corrected, in relation to Indigenous Land Use Agreements (**ILUAs**), by the *Native Title Amendment (Indigenous Land Use Agreements) Act 2017* (Cth).

2. As was First Nations' submission in relation to the amendment of the NTA to ensure the validity of pre-existing ILUAs, First Nations considers that the proposed amendments are essential to validate section 31 agreements that have been negotiated and entered into in good faith by native title holders and other parties across Australia in recent years.

3. In addition to the validations of *existing* section 31 agreements the options paper provides three options for applicant execution of *future* section 31 agreements. First Nations is generally supportive of streamlining processes to ensure that positive outcomes are not prevented by unrealistic requirements. First Nations does not

[1] *McGlade v Native Title Registrar* [2017] FCAFC 10

support Option 1, as this would not provide an adequate solution to problems of the kind raised in McGlade continuing to persist in relation to section 31 agreements.

4. First Nations supports Option 3, which would require a majority of members of the applicant to be mandatory parties to section 31 agreements. As noted by the options paper, this option would also involve the imposition of an authorisation process for section 31 agreements. Whilst First Nations is generally supportive of Option 3, First Nations would caution against the imposition of too onerous an authorisation process for section 31 agreements.

5. First Nations supports amendments to ensure that any changes to the role of the registered native title claimant in making section 31 agreements also extends to the role of the registered native title claimant in making agreements under approved alternative schemes. First Nations supports the proposals in relation to section 31 agreements being framed to capture agreements under alternative state regimes, such as the *Traditional Owner Settlement Act 2010* (Vic) (**Settlement Act**) and that contained in Part 9B of the *Mining Act 1971* (SA).

In respect of Option 3, the NLC supports a majority of the applicant entering into section 31 agreements as the default position unless the group has authorised otherwise when filing the application for determination of native title.

AUTHORISATION AND THE APPLICANT

The NLC makes the following comments in respect of the proposals in Attachment A.

A1: Scope of Authority of the Applicant

The NLC supports FNRLS submissions 6 to 9 as follows.

6. Section 62A provides that the 'applicant may deal with all matters' arising under the NTA in relation to their application to have native title recognised. This obviously gives the applicant and the individuals involved substantial decision-making powers and responsibilities regarding the progress of the application, any settlement of the claim in a consent determination and any future acts. It does not apply to the authorisation of Indigenous Land Use Agreements.
7. However, some groups wish to limit the authority that the authorised applicant has, or as such, the authorised applicant may not wish to make decisions regarding the native title matter without the direction of the full group.
8. First Nations considers the amendments to section 62A essential to defining the scope and authority an applicant has when providing instructions to their solicitors on a native title matter. In some instances the authorised applicant may be reluctant to provide instructions without gaining feedback and authorisation from the claim group, or alternatively, the claim group may expect the applicant to bring certain native title decisions back to the group.
9. The proposed amendment would also ensure greater transparency and accountability in the actions the applicant undertakes on behalf of the full group.

The NLC considers that any limitations on the Applicant's authority be described in a claim group's Form 1 (Application for determination of Native Title) and that in order to reduce uncertainty in the drafting of such limitations the types of limitation be specified in the Form 1. The other parties to the claim should be entitled to assume that the applicant has full authority unless and to the extent it is informed otherwise.

A2: Applicant can act by majority

The NLC supports FNLRS submission 10 as follows.

10. First Nations supports the proposed amendments that allow the applicant to act by majority so far that they will streamline the native title process. These amendments will assist the claim group and the Native Title Representative Body or Service Provider to progress a native title matter. Furthermore the proposed amendments will reduce the costs and resources required to replace an applicant through an authorisation process.

The NLC considers that this proposal would ensure that a native title decision made by a claim group is not frustrated by one or more members of the applicant who do not agree with the decision or otherwise require the claim group to replace that member. The option included at A2 that will still allow for the authorisation to require more than a majority or unanimity should also be maintained.

A3 and A4: Composition of the Applicant

The NLC supports FNLRS submissions 11 and 12 as follows.

11. First Nations supports the proposal that the claim group can, at the time individuals comprising the applicant are appointed, either: appoint persons to stand in the place of a person appointed to the applicant if the appointed person is either unable or unwilling to act as directed by the claim group; or, determine a process by which replacement members of the applicant can be appointed in the event the appointed person is either unable or unwilling to act as directed by the claim group.
12. First Nations believes these sensible proposals will both reduce the cost and timeframes involved in native title claim resolution (and future act) proposals and also reduced the burden imposed on the Federal Court through the requirement to employ the section 66B procedures.

The NLC does not support the position in FNLRS paragraph 13. It supports the amendment of the NTA to introduce a process whereby the claim group would have to apply for a Federal Court order to allow the remaining members to continue to act or to appoint the replacement members to act in accordance with the terms of their authorisation. This will ensure certainty of authority especially in circumstances where there may be contestation and ambiguity concerning the appointment of alternative persons and or the nature of the process for replacement members.

It may though given the passage of time or the particular circumstances still be appropriate to have another authorisation meeting.

A5: Fiduciary Duty

The NLC supports the decision of Greenwood J in *Gebadi v. Woosup [2017] FCA 1467* that the applicant owes a fiduciary duty to the claim group throughout the native title process and until determination. However, in light of His Honour's decision, the NLC does not consider the NTA requires amendment to put this matter beyond doubt. The common law concerning fiduciary duties is clear and well established.

Although the NLC is prepared to consider legislative drafting on this point, I'm in two minds about this. Depending on the drafting of the amendment it may be useful to have a particular statutory reference.

A6: Retrospective application of amendments

The NLC supports FNLRS submissions 17 that none of the proposed amendments regarding "Authorisation and the Applicant" can by their nature be retrospective.

AGREEMENT-MAKING AND FUTURE ACTS

The NLC does not consider it necessary to amend the NTA to include alternative agreement-making mechanisms. The NTA and the *Prescribed Body Corporate Regulations 1999* (Cth) includes mechanisms which may be utilised to fulfil the objectives of flexibility and reasonable transaction costs in agreement-making. Seeking standing instructions in respect of certain future acts from a claim group or the determined common law native title holders can also aid the realisation of those objectives.

It is noted that the Expert Indigenous Working Group (EIWG) to the Investigation into Indigenous Land Administration and Use*, Report to the Council of Australian Governments (December 2015)* stated that (p42):

> While the Expert Indigenous Working Group is supportive of decision-making and approval processes being made more efficient, the Group opposes any measure to achieve this through weakening Indigenous land owners' and native title holders' procedural rights.

Further the EIWG stated that (p44):

> the most effective way of increasing efficiency and timeliness of decision-making and approvals processes is to increase the capacity of Indigenous land holding and representative bodies to effectively respond to land use applications.

The NLC supports these views and notes the increase in funding for capacity building for PBCs from the Commonwealth Government announced as part of the White Paper on Developing Northern Australia in 2015.

The NLC does not support any of the proposals in Attachment B.

STREAMLINING EXISTING AGREEMENT-MAKING

The NLC supports FNRLS submissions 29 to 33 and 35 to 41 in respect of the proposals set out in Attachment C as follows.

29. The options paper refers to the COAG Investigation making several recommendations as to options intended to streamline existing agreement-making processes. First Nations reiterate previous concerns of ensuring native title holders' rights are protected first and foremost, prior to exploring ways in which agreement-making can be made more efficient.

30. The COAG Investigation recommended allowing minor technical amendments to be made to the Register of ILUAs without requiring re-registration. First Nations

supports this proposal.

31. The COAG Investigation recommended removing the requirement in section 24EB that compensation is dealt with in an ILUA. As noted above, First Nations supports this proposal and reiterates that any such proposal of this nature must be accompanied by strict guidelines to ensure safeguards remain in place for the native title holders, and to prevent exploitation of these rights and/or preventing the right to compensation for applicable future acts, completely.

32. The COAG Investigation recommended clarifying that the removal of details of an ILUA from the Register of Indigenous Land Use Agreements does not invalidate a future act that is the subject of the ILUA. First Nations is not opposed to this proposal.

33. The COAG Investigation recommended removing the requirement for government parties to be a party to a section 31 agreement under section 30A of the NTA. First Nations does not oppose this proposal, however it should not result in government stakeholders abandoning their duties and obligations in respect of the matters negotiated in these agreements, and in supporting native title parties in their dealings with proponents over the exploration of their country by enforcing and regulating these proponents.

34. The COAG Investigation recommended providing for electronic transmission of notices for agreements and other processes under the NTA. First Nations supports this option, noting that delays of up to 7 days are common in the issue date of notifications and the date on which they are received by First Nations and our clients.

35. The COAG Investigation recommended amending the NTA to ensure that the future acts regime applies to land and waters to which section 47B may apply to disregard previous exclusive possession acts on vacant Crown land. First Nations supports this proposal and again, reiterates the importance of protecting the rights of native title holders in any such amendment.

36. The COAG Investigation recommended amending the PBC Regulations to remove the requirement for PBCs to consult with NTRBs on native title decisions, such as prior to entering into an ILUA. First Nations does not support this proposal. The existing provisions ensure PBCs have the benefit of the views and experience of the relevant NTRB developed over many years and the benefit of an awareness of current practice in relation to future act benefits.

37. Further, not having oversight on the native title matters or decisions relevant to a PBC may likely impose disadvantage to the PBC in so far as the NTRB is unable to accurately gauge the resources it can dedicate to the PBC in its work with the native title holders on other projects. Having the requirement to consult with NTRBs in place for PBCs ensures the protection of the rights of all native title holders represented by the PBC in question.

38. In so far as the option paper canvasses amendments to section 251A regarding the authorisation of ILUAs, that were included in the *Native Title Amendment Bill 2012* (Cth), ("*2012* Bill) First Nations continues to support the provisions on the *2012 Bill* in this regard.

39. The proposal by the COAG Investigation to remove the requirement that the Registrar give notice of an area ILUA even if it does not meet the requirements of the NTA to be registered is supported by First Nations in so far as the reduced compliance procedures do not cause detriment to or impose burdens on the native title applicant of the area ILUA.

40. The COAG Investigation also proposes that body corporate ILUAs cover areas where native title has been extinguished in specific circumstances, noting the benefits of enabling wider use of such ILUAs and reducing transaction costs and registration timeframes. First Nations supports this proposal.

In particular at Attachment C of the Options Paper C1,C2,C3,C5,C6,C8 and C11 are supported.

C4 is not supported for the reasons given at paragraphs 37 and 38 of the FNLRS submission.

In relation to C7 the proposal is given qualified support on the assumption that the amendment has no other unintended consequences. For example, in relation to the payment of compensation for the validation of a past act.

In relation to C9 the proposal is not supported. The supposed uncertainty referred to in Table 2, Item 4 of the COAG Investigation Report lacks supporting evidence.

In relation to C10 the proposal is given qualified support. Any amendments should not remove the requirement to send a detailed written notice, as parts of remote Australia do not have internet and mobile phone connection nor may some groups be able to afford such a connection if it does exist.

TRANSPARENT AGREEMENT-MAKING

The NLC does not support the proposals to create a register of section 31 agreements or making publicly available the full contents of any registered ILUAs or any other agreement negotiated by or on behalf of a PBC and/or native title holders. We disagree that the introduction of such proposals would necessarily increase transparency in agreement making or the accountability of the parties to the agreements. The principles of confidentiality that attach to commercial agreements including native title agreements should not be compromised at the expense of the privacy of native title holders and PBCs.

The NLC cannot identify any benefit that would be realised by native title holders or PBCs from the establishment of a register of section 31 agreements. On the contrary, we consider that the introduction of such a register would give rise to the finalisation of section 31 agreements being attended by additional delays and expense.

The NLC considers that Commonwealth human and financial resources would be better directed at increasing the support and resources given to native title representative bodies and PBCs engaged in section 31 agreement-making processes.

INDIGENOUS DECISION-MAKING

The NLC does not support the amendment of 251A or 251B to make traditional decision-making optional. The current provisions ensure the continued observance and protection of traditional decision-making processes and their primacy should not be weakened to increase flexibility in decision-making or for any other reason. The NTA adequately provides for native

title holders to make decisions in accordance with their traditional law and customs or an agreed decision-making process.

To quote from the NLC submission to the **Senate Legal and Constitutional Affairs Committee Inquiry into the *Native Title Amendment (Indigenous Land Use Agreements) Bill 2017*:**

> Traditional decision making is of the essence of native title as it reflects the ancient traditional laws and customs of the Aboriginal and Torres Strait Islander people concerned in any given claim or determination of native title.
>
> The NLC does not support the proposed amendments to section 251A of the NTA which propose adopting Recommendation 10-2 of the Australian Law Reform Commission's *Connection to Country: Review of the Native Title Act 1993* (Cth) report in 2015.
>
> This amendment seeks to remove 'the phrase "where there is no such process" and substitutes the phrase "in any case" ' in section 251A (b) of the NTA. The effect of that proposed change is to dilute the primacy of traditional decision-making and make it optional. This may lead to undue pressures being placed on elders and senior people within a native title group to forgo their intramural rights to ensure the primacy of the maintenance of traditional law and custom especially in relation to the protection of cultural matters.
>
> The current provision in the NTA provides that it is only in the situation where there is no relevant traditional decision making process that an alternative or western style decision making process can be adopted by the group concerned. The NLC submits that this situation should remain.

CLAIMS RESOLUTION AND PROCESS

The NLC makes the following comments in respect of the proposals in Attachment E.

E1: The NLC does not support measures that would force an applicant for a determination of native title to participate in a Tribunal Inquiry without their consent.

E2: If an Inquiry still requires consent of the applicant then there is no objection to this proposal.

E3: Pastoral Leases

The NLC supports FNLRS submissions 52 and 53 as follows.

52. First Nations supports an amendment of the NTA to allow the determination of native title over areas where claimants own or hold the pastoral lease. There are a number of PBCs and claim groups within Australia who hold multiple forms of land tenure over their native title Country. Land tenure systems within Australia can be quite complex for native title holders and this amendment will streamline the land tenure process.

53. First Nations submits that the changes to the legislation that allows a native title determination to include areas where a claim group holds the pastoral lease will promote economic development and autonomy for the native title holders.

In particular, it should be made certain that section 47 applies to bodies corporate established under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) that have members instead of shareholders. This will ensure that the original legislative intention is fulfilled in relation to section 47.

E4 and E5: Compensation Applications

The NLC supports the amendment of the NTA to allow a PBC to be an applicant in a compensation claim as outlined in Attachment E4 of the Options Paper.

E6: Historical Extinguishment

The NLC supports the amendment of the NTA to allow for historical extinguishment over areas of national, state or territory parks to be disregarded where the parties agree, for the purposes of making a native title determination. The proposed amendment will make more land available for positive determinations of native title and enable more economic and employment opportunities to be realised by native title holders on their traditional lands.

The proposal would be enhanced by amendments to the same effect as ss 47,47A and 47B to the extent that it does not require the consent of the government party.

POST-DETERMINATION DISPUTE MANAGEMENT

The NLC generally supports proposed amendments F1 – F11 for post-determination dispute management, with exceptions as set out below, and with the following brief additional submission.

F7 - Registers of PBC decisions and directions

The NLC supports the general proposal to require Registers of Native Title Decisions and Trust Money Directions for additional accountability of PBCs to native title holders in these important areas, and thus does not agree with the FNLRS submission paragraph 76. The NLC does not agree that access to these Registers should extend to persons said to have a 'substantial interest' in their subject matter. NLC does not consider that there exists a category of third parties whose interests would justify access to such decisions, and notes that non-Indigenous corporations are not required at law to disclose decision-making processes about their business priorities and decision-making processes within their rules. This information should only be available to members and common law native title holders.

The NLC further proposes that template registers scheduled to the Regulations as a guide only would assist smaller PBCs to implement this requirement.

The need for dispute resolution support

The NLC agrees particularly with FNLRS's submission at paragraph 65 as follows:

65. First Nations recommends amending the CATSI Act to implement a staged approach to dispute resolution, with disputants only able to escalate a dispute to the next stage if they provide evidence (for example, a certificate) that the previous stage has been exhausted. The stages of dispute resolution suggested are:

    a. Internal – Disputants attempt to resolve the dispute following the PBC's internal processes (where relevant).

b. NTRB/SP – In the event the dispute persists, disputants are required to engage the NTRB/SP from their area to assist in dispute resolution. NRTBs and SPs are well placed to perform this function as increasingly they have mediation and dispute management experience, as well as strong legal and research expertise.

c. NNTT – In the event the dispute is unresolved at the NTRB/SP level and involves 'native title' (cf governance) issues, it can be referred to the NNTT. The NNTT has appropriately trained and experienced staff and would not face the same perceptions in relation to lack of impartiality as NTRBs/SPs may.

d. ORIC – In the event the dispute involves governance (cf 'native title' issues) the dispute may referred to ORIC.

It should also be noted that in most cases it is only the regional NTRB/SP that will have the anthropological records to meaningfully assist in dispute resolution.

The NLC further submits that disputes may involve both native title and governance matters, in which case the NNTT should receive the referral, while the assistance of ORIC should be available if either agency or any party requests.

Indigenous Community Development Corporation (ICDC)

The NLC agrees with the FNLRS submission that the ICDC model be developed further, in relationship to the current Proposals, as follows:

68. A related proposal which would provide support to these kinds of objectives is the development of an Indigenous Community Development Corporation (ICDC) system. The ICDC proposal is a joint initiative of the Minerals Council of Australia and the NNTC which has also been recommended by the Treasury Working Group looking at Native Title and Tax. The ICDC would be a 'custom built' corporate structure, available to native title groups under the CATSI Act and administered by ORIC. It would free native title groups from the restrictions inherent in charitable status, allowing them to invest in economic development opportunities without tax disincentives. The proposed system would be underpinned by mandatory strong governance and management processes with a set of minimum key principles supported by a mechanism for registration. The ICDC structure would be entirely voluntary and include some flexibility on requirements dependent on the ICDC's volume of revenue.

69. It is envisaged that the ICDC system would involve the provision of new functions to ORIC in determining standards of capacity, accountability, processes and prudential management for ICDCs and that guidance or regulatory requirements would need to be developed to ensure such standards were met. First Nations supports the establishment of an ICDC system along the lines set out above and submits that it would be an ideal mechanism where broad issues in relation to PBC compliance, transparency and accountability, which have been raised by the Options Paper, could be addressed.

Registrar's powers over rulebook amendments

The NLC agrees with the caution and proposal submitted in relation to Proposal F2 by FNLRS as follows:

71. The COAG Investigation recommended that the CATSI Act be amended to provide a power for the Registrar to refuse to amend a PBC's rulebook in circumstances where the amendment would result in the PBC no longer meeting the requirements of regulation 4(2) of the PBC Regulations. This change would reduce administrative and conflict-related issues in situations where amendments were proposed contrary to this regulation. First Nations is concerned that the ORIC does not have the necessary expertise to form a view on these matters. Accordingly First Nations supports this recommendation provided that the Registrar's power in this regard in only exercised in accordance with advice provided by the NNTT.

General submissions

Generally, the NLC proposes that changes to the regulation of PBCs should include generous transition periods to avoid placing an additional governance burden on PBCs that are operating under existing regulations.

STATE AND TERRITORY PROPOSALS

G1	Shorten the objection period for acts which the government party considers attract the expedited procedure from 4 months to 35 days where the entire area affected by the act is subject to a native title determination. **The NLC does not support this proposal and does not recognise any rationale for the differential treatment of determined or registered native title rights and interests.**
G2	Amend section 29 so that a minor defect in the notification of the proposed act does not invalidate the notice if there is no detriment to the native title party. **The NLC does not support this proposal, as it is the general approach of the common law and statutes to require formal compliance in documents related to interests in land.**
G3	Confirm that s 29 notices to identified parties may be made by email, and that public notice is able to be given online. **The NLC does not support the proposal that notices may be sent by email in place of post. Many native title holding groups in the NLC region lack access to reliable internet and office facilities.**
G4	Amend section 141(2) of the Act to clarify that parties to inquiries in relation to expedited procedure objection applications are the Government party, native title parties which have objected under s 32(3), and the grantee parties. **The NLC does not support the proposal.**
G5	Amendments to ensure that any changes to the role of the registered native title claimant in making section 31 agreements also extend to the role of the registered native title claimant in making agreements under approved alternative schemes. **No comment.**
	The applicant (and authorisation)
G6	Require any limitations on the Applicant's authority to be notified, e.g. on the Form 1. The other parties to the claim should be entitled to assume that the applicant has full authority unless and to the extent it is informed otherwise. **The NLC supports this proposal, but considers that such a requirement should only apply prospectively.**

	Agreement-making and future acts
G7	Amend section 24CH to replace with notification requirements with those of s 24BH where registration of the area ILUA is part of a consent determination process and the agreement area is fully within the determination area. **The NLC supports this proposal.**
G8	Repeal subsection 24JAA(1)(d) to remove the sunset clause applying to the process for construction of public housing. **This is not supported as the standard rights for native title holders should be reinstated.**
G9	Clarify that section 24MD(3) (treatment of acts that pass the freehold test) applies to a compulsory acquisition of native title rights as if the taking of native title rights and grant of the new interest in land are the same act. **The NLC does not support this proposal.**
G10	Amend the definition of sections 24MD(6B) and 253 to expand the definition of 'waste facilities' to include rubbish tips and other waste disposal facilities. **The NLC does not support this proposal as it does not consider the matter to be uncertain.**
G11	Insert 'or' between 24KA(8)(c) and (d) to clarify that notice can be given to either representative bodies or registered claimants. **No comment.**
G12	Require RNTBCs to be bound by arrangements (e.g. ILUAs) negotiated prior to a determination, following a determination. **The NLC does not support this proposal.**
G13	Amend section 211 to ensure adequate protection for native title rights against the government's need to regulate certain actions for public purposes, e.g. hunting with firearms in national parks or hunting endangered species. **This statement is too uncertain to provide an opinion.**
G14	Amend the Act to allow for the enactment of legislation by Western Australia which validates mining leases affected by the invalidity identified in *Forrest & Forrest Pty Ltd v Wilson & Ors* [2017] HCA 30. **The NLC does not support this proposal.**
G15	Amend the act to confirm that 'renewals' in s 26D(1)(a)(i) includes renewals within the meaning of 24IC(2) and (2A); allow for 'renewals' to be made without being subject to the right to negotiate process without any substantive reason for the application of that process. **The NLC does not support this proposal.**
	Claims resolution
G16	Allow hearing of native title and compensation applications together. **It is not clear that this an issue that warrants consideration.**
G17	Amend section 61A to remove restriction on bringing a claim over an area subject to a previous exclusive possession act.

	The NLC supports this proposal.
G18	Agreement as to part of the proceedings – amend s 87(3) to say that agreement is only required from those respondents whose interests relate to the relevant part. **The NLC supports this proposal.**
G19	Amend section 47B to clarify meaning of 'when the application is made' in the case of combined claims. **There appears to be no basis for this assertion.**
G20	Confirm the purpose of a non-claimant application by distinguishing between those actively seeking a negative determination and those only seeking section 24FA protection. **The NLC does not support this proposal.**
G21	Clarify the 'applicant' in a non-claimant application – whether the claim 'runs with the land' and the applicant can be substituted (and 24FA protection remain) or whether a new claim must be brought by the new lessee /purchaser. **The NLC does not support this proposal.**
G22	Clarify appropriate use of section 87 (power of Federal Court if parties reach agreement) vs 87A (power of Federal Court to make determination for part of an area). **The NLC does not support this proposal.**
G23	Amend section 87A to clarify that the Commonwealth is not required to sign a consent determination in circumstances where it previously intervened and later withdrew. **The NLC supports this proposal.**
G24	Require respondents to applications under sections 84(3), (5) and (5A) to provide a proper address for service. **The NLC supports this proposal.**
	Prescribed bodies corporate
G25	Introduce provisions for the establishment and membership of PBCs ensuring that native title holders are represented on any default PBC. **The NLC does not support this proposal as it is impractical in a default PBC scenario.**
G26	Amend the Act to ensure that the Commonwealth may fund a PBC for various purposes including start-up and administrative/compliance costs. **The NLC supports this proposal.**
G27	Amend Part 11, Division 3 (Functions and powers of representative bodies) to make explicit reference to functions performed in relation to persons who may hold native title (including where they seek recognition and settlement agreement under the *Traditional Owner Settlement Act 2010*). **The NLC supports this proposal.**

The NLC supports proposal G3 to enable s 29 notices to be delivered to identified parties by email provided that email not replace other forms of notification. The NLC is concerned that

many native title holders throughout the Northern Territory and other parts of regional and remote Australia do not have either any or reliable Internet access.

The NLC does not support proposals G1, G2, G4, G9, G10, G12, G13, G14, G15, G16, G19, G20, G21, G22 or G25.