

EXPOSURE DRAFT

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT

Native Title Legislation Amendment Bill 2018

No. , 2018

(Attorney-General)

**A Bill for an Act to amend the law relating to native
title, and for related purposes**

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1 **A Bill for an Act to amend the law relating to native**
2 **title, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Native Title Legislation Amendment Act 2018*.

6 **2 Commencement**

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

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Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	
3. Schedule 1, Parts 2 and 3	Immediately after the commencement of the provisions covered by table item 11.	
4. Schedule 2	The day after this Act receives the Royal Assent.	
5. Schedule 3, Part 1, Division 1	The day after this Act receives the Royal Assent.	
6. Schedule 3, Part 1, Division 2	Immediately after the commencement of the provisions covered by table item 2.	
7. Schedule 3 Parts 2 and 3	The day after this Act receives the Royal Assent.	
8. Schedules 4 and 5	The day after this Act receives the Royal Assent.	
9. Schedule 6, Part 1	The day after this Act receives the Royal Assent.	
10. Schedule 6, Part 2, Division 1	The day after this Act receives the Royal Assent.	
11. Schedule 6, Part 2, Division 2	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	
12. Schedules 7 to 9	The day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

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1 **3 Schedules**

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

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Schedule 1 Role of the applicant

Part 1 Authorisation

1 **Schedule 1—Role of the applicant**

2 **Part 1—Authorisation**

3 *Native Title Act 1993*

4 **1 After subparagraph 24CG(3)(b)(ii) (after the note)**

5 Insert:

- 6 (iii) any conditions on the authorisation under
7 section 251BA that relate to the making of the
8 agreement have been satisfied;

9 **2 Subparagraph 24CH(2)(d)(i)**

10 Omit “paragraphs 203BE(5)(a) and (b)”, substitute
11 “paragraph 203BE(5)(a), (b) or (c)”.

12 **3 Subsection 24CI(1)**

13 Omit “paragraphs 203BE(5)(a) and (b)”, substitute
14 “paragraph 203BE(5)(a), (b) or (c)”.

15 **4 Paragraph 24CK(2)(c)**

16 Omit “paragraphs 203BE(5)(a) and (b)”, substitute
17 “paragraph 203BE(5)(a), (b) or (c)”.

18 **5 At the end of paragraph 62(1)(a)**

19 Add:

- 20 (vi) that any conditions on the authorisation under
21 section 251BA that relate to the making of the
22 application have been satisfied; and
23 (vii) setting out details of how those conditions have been
24 satisfied; and

25 **6 After paragraph 62(1)(b)**

26 Insert:

- 27 (ba) must contain details of any conditions under section 251BA
28 on the authorisation of the applicant to make the application
29 and to deal with matters arising in relation to it; and
-

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Role of the applicant **Schedule 1**
Authorisation **Part 1**

1 **7 At the end of paragraph 62(3)(a)**

2 Add:

- 3 (v) that any conditions on the authorisation under
4 section 251BA that relate to the making of the
5 application have been satisfied; and
6 (vi) setting out details of how those conditions have been
7 satisfied; and

8 **8 Paragraph 62(3)(b)**

9 Omit “to be specified by paragraph (1)(b)”, substitute “by
10 paragraphs (1)(b) and (ba)”.

11 **9 Section 62A**

12 Before “In the”, insert “(1)”.

13 **10 At the end of section 62A**

14 Add:

- 15 (2) Subsection (1) is subject to any conditions on the authorisation of
16 the applicant under section 251BA.

17 **11 After section 62A**

18 Insert:

19 **62B General law duties**

20 Any obligation of the applicant under this Act does not relieve the
21 applicant, or detract, from any other duty of the applicant at
22 common law or in equity to persons in the native title claim group
23 or compensation claim group.

24 **12 After paragraph 186(1)(g)**

25 Insert:

- 26 ; (h) whether or not there are any conditions on the authorisation
27 of the applicant under section 251BA.

28 **13 At the end of paragraph 190A(6A)(d)**

29 Add:

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Schedule 1 Role of the applicant

Part 1 Authorisation

1 ; (vi) reflect a condition on the authorisation of the applicant
2 under section 251BA or a variation or revocation of
3 such a condition.

14 Paragraph 190C(4)(b)

5 Repeal the paragraph (not including the note), substitute:

6 (b) both of the following apply:

- 7 (i) the applicant is a member of the native title claim group
8 and is authorised to make the application, and deal with
9 matters arising in relation to it, by all the other persons
10 in the native title claim group;
11 (ii) any conditions on the authorisation under
12 section 251BA that relate to the making of the
13 application have been satisfied.

15 Paragraph 190C(5)(a)

15 Omit “a statement to the effect that the requirement set out in
16 paragraph (4)(b) has”, substitute “statements to the effect that the
17 requirements set out in paragraph (4)(b) have”.

18 Paragraph 190C(5)(b)

19 Omit “it has”, substitute “they have”.

20 After paragraph 203BE(2)(a)

21 Insert:

- 22 (aa) any conditions on the authorisation under section 251BA that
23 relate to the making of the application have been satisfied;
24 and

25 Paragraph 203BE(4)(a)

26 After “paragraphs (2)(a)”, insert “, (aa)”.

27 After paragraph 203BE(5)(b)

28 Insert:

- 29 ; and (c) any conditions on the authorisation under section 251BA that
30 relate to the making of the agreement have been satisfied.

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Role of the applicant **Schedule 1**
Authorisation **Part 1**

1 **20 Paragraph 203BE(6)(a)**

2 Omit “and (b)”, substitute “, (b) and (c)”.

3 **21 After section 251B**

4 Insert:

5 **251BA Conditions on authorisation**

6 (1) The persons who authorise:

7 (a) the making of an indigenous land use agreement under
8 section 251A; or

9 (b) a person or persons to make a native title determination
10 application or a compensation application, and to deal with
11 matters arising in relation to it, under section 251B;

12 may impose conditions on the authorisation.

13 (2) The conditions must be imposed:

14 (a) where there is a process of decision-making that, under the
15 traditional laws and customs of the persons, must be
16 complied with in relation to authorising things of that kind—
17 in accordance with that process; or

18 (b) where there is no such process—in accordance with a process
19 of decision-making agreed to and adopted, by the persons, in
20 relation to authorising things of that kind.

21 Note: Consequences of a failure to comply with a condition may include:

22 (a) replacement of the applicant (see subparagraph 66B(1)(a)(iv));
23 and

24 (b) a Federal Court order (see section 84D).

25 (3) A person or persons authorised to make an application under
26 section 61 must seek leave to amend the application to reflect any
27 imposition, variation or revocation of conditions on the
28 authorisation that occurs after the application is made.

29 **22 Application and transitional provisions**

30 *Area agreements*

31 (1) The amendments of Subdivision C of Division 3 of Part 2 and
32 subsections 203BE(5) and (6) of the *Native Title Act 1993* made by this

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Schedule 1 Role of the applicant

Part 1 Authorisation

1 Part apply in relation to any agreement in respect of which an
2 application for registration is made after the commencement of this item
3 if the authorisation of the making of the agreement occurs after that
4 commencement.

5 *Claimant applications and compensation applications*

6 (2) The amendments of sections 62 and 190C and subsections 203BE(2)
7 and (4) of the *Native Title Act 1993* made by this Part apply in relation
8 to any application made after the commencement of this item if the
9 authorisation of the applicant occurs after that commencement.

10 *Conditions on authorisation*

11 (3) The amendments of sections 62A, 186 and 190A of the *Native Title Act*
12 *1993* made by this Part apply in relation to any authorisation that occurs
13 after the commencement of this item.

14 (4) Section 251BA of the *Native Title Act 1993*, as inserted by this Part,
15 applies in relation to any authorisation that occurs after the
16 commencement of this item.

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Role of the applicant **Schedule 1**
Applicant decision making **Part 2**

1 **Part 2—Applicant decision making**

2 *Native Title Act 1993*

3 **23 Paragraph 24CD(2)(a)**

4 Repeal the paragraph (not including the note), substitute:

- 5 (a) all registered native title claimants in relation to land or
6 waters in the area; and

7 **24 After subsection 24CD(2)**

8 Insert:

9 (2A) The requirement that all registered native title claimants in relation
10 to land or waters in the area be parties to the agreement is satisfied
11 if, for each of those registered native title claimants:

- 12 (a) a majority of the persons who comprise the registered native
13 title claimant are parties to the agreement, unless
14 paragraph (b) applies; or
15 (b) if conditions under section 251BA on the authorisation of the
16 registered native title claimant provide for the persons who
17 must become a party to the agreement—those persons are
18 parties to the agreement.

19 (2B) The persons in the majority must notify the other persons who
20 comprise the registered native title claimant within a reasonable
21 period after becoming parties to the agreement as mentioned in
22 paragraph (2A)(a).

23 **25 Subparagraph 24CG(3)(b)(ii) (note)**

24 Repeal the note.

25 **26 At the end of subsection 24CG(3)**

26 Add:

27 Note: The word *authorise* is defined in section 251A.

28 **27 After subsection 24CL(2)**

29 Insert:

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Schedule 1 Role of the applicant
Part 2 Applicant decision making

- 1 (2A) The requirement that a person who is or becomes a registered
2 native title claimant be a party to the agreement is satisfied if:
3 (a) a majority of the persons who comprise the registered native
4 title claimant are parties to the agreement, unless
5 paragraph (b) applies; or
6 (b) if conditions under section 251BA on the authorisation of the
7 registered native title claimant provide for the persons who
8 must become a party to the agreement—those persons are
9 parties to the agreement.
- 10 (2B) The persons in the majority must notify the other persons who
11 comprise the registered native title claimant within a reasonable
12 period after becoming parties to the agreement as mentioned in
13 paragraph (2A)(a).

28 Paragraph 24DE(4)(a) (note 1)

14 Omit “persons whose names appear”, substitute “named”.

29 At the end of section 24DE

16 Add:

- 17 (5) A registered native title claimant is taken to be a party to the
18 agreement if:
19 (a) a majority of the persons who comprise the registered native
20 title claimant are parties to the agreement, unless
21 paragraph (b) applies; or
22 (b) if conditions under section 251BA on the authorisation of the
23 registered native title claimant provide for the persons who
24 must become a party to the agreement—those persons are
25 parties to the agreement.
- 26 (6) The persons in the majority must notify the other persons who
27 comprise the registered native title claimant within a reasonable
28 period after becoming parties to the agreement as mentioned in
29 paragraph (5)(a).
30

30 Subparagraph 29(2)(b)(i) (note)

31 Omit “persons whose names appear”, substitute “named”.

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Role of the applicant **Schedule 1**
Applicant decision making **Part 2**

31 After subsection 31(1B)

Insert:

- (1C) The requirement that a native title party that is a registered native title claimant be a party to the agreement is satisfied if:
- (a) a majority of the persons who comprise the registered native title claimant are parties to the agreement, unless paragraph (b) applies; or
 - (b) if conditions under section 251BA on the authorisation of the registered native title claimant provide for the persons who must become a party to the agreement—those persons are parties to the agreement.
- (1D) The persons in the majority must notify the other persons who comprise the registered native title claimant within a reasonable period after becoming parties to the agreement as mentioned in paragraph (1C)(a).

32 After section 62B

Insert:

62C Acting where persons are jointly the applicant etc.

- (1) This section applies if:
- (a) an applicant makes a native title determination application or a compensation application; and
 - (b) 2 or more persons (the *authorised persons*) are jointly the applicant; and
 - (c) the applicant is required or permitted to do something under this Act, or for the purposes of this Act under another law of the Commonwealth; and
 - (d) apart from this section, for the applicant to do the thing, all of the authorised persons would need to do the thing.

Default rule—applicant may act by majority

- (2) The requirement mentioned in paragraph (1)(d) is satisfied if the thing is done by a majority of the authorised persons unless subsection (4) applies.

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Schedule 1 Role of the applicant

Part 2 Applicant decision making

1 (3) The authorised persons who do the thing must, within a reasonable
2 period, notify the other authorised persons that the thing has been
3 done.

4 *Default rule may be displaced*

5 (4) If conditions under section 251BA on the authorisation of the
6 authorised persons provide for the applicant to do the thing in a
7 particular way, the requirement mentioned in paragraph (1)(d) is
8 satisfied if the thing is done in that way.

9 Example: A condition may provide that all the authorised persons need to do
10 something required by a provision of this Act.

11 *Rule covers applicant acting in any capacity*

12 (5) This section applies whether the provision imposing the
13 requirement or giving the permission refers to the applicant as an
14 applicant, a registered native title claimant, a native title party, a
15 negotiation party, a party or otherwise.

16 *Deceased authorised persons*

17 (6) For the purposes of this section, the authorised persons include any
18 who have died. However, subsection (3) does not require notice to
19 be given to a person who has died.

20 Note: The applicant may be replaced where an authorised person has died:
21 see section 66B.

22 **33 Subsection 251A(1)**

23 Omit “(1)”.

24 **34 Subsection 251A(2)**

25 Repeal the subsection.

26 **35 Subsection 251BA(2) (note)**

27 Omit “Note”, substitute “Note 1”.

28 **36 At the end of subsection 251BA(2)**

29 Add:

30 Note 2: Conditions that may be imposed include:

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Role of the applicant **Schedule 1**
Applicant decision making **Part 2**

- 1 (a) a requirement that something required to be done under this Act
2 be done by the authorised persons unanimously, instead of by
3 majority (see section 62C); and
4 (b) a condition setting out what happens if an authorised person dies
5 or is unable to act as an applicant because of physical or mental
6 incapacity (see section 66B).

7 **37 Section 253 (paragraph (a) of the definition of *authorise*)**

8 Omit “subsection 251A(1)”, substitute “section 251A”.

9 **38 Application**

10 *Indigenous land use agreements*

- 11 (1) The amendments of sections 24CD, 24CL, 24DE and 251A of the
12 *Native Title Act 1993* made by this Part apply in relation to any
13 agreement in respect of which an application for registration is made
14 after the commencement of this item.

15 *Section 31 agreements*

- 16 (2) Subsections 31(1C) and (1D) of the *Native Title Act 1993*, as inserted
17 by this Part, apply in relation to any agreement of a kind mentioned in
18 paragraph 31(1)(b) of that Act made after the commencement of this
19 item.

20 *General rule*

- 21 (3) Section 62C of the *Native Title Act 1993*, as inserted by this Part,
22 applies in relation to any thing done after the commencement of this
23 item.

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Schedule 1 Role of the applicant

Part 3 Replacement of applicant

1 **Part 3—Replacement of applicant**

2 *Native Title Act 1993*

3 **39 Subsection 66B(1) (heading)**

4 Repeal the heading, substitute:

5 *Replacement in case of consent or absence of authority*

6 **40 Subparagraph 66B(1)(a)(ii)**

7 Repeal the subparagraph.

8 **41 Subsection 66B(2) (heading)**

9 Repeal the heading.

10 **42 After subsection 66B(2)**

11 Insert:

12 *Replacement in case of death or incapacity*

13 (2A) One or more members (the *applying members*) of the native title
14 claim group in relation to a claimant application, or of the
15 compensation claim group in relation to a compensation
16 application, may apply to the Federal Court for an order under
17 subsection (2B) if a person (the *ceasing member*) who is, either
18 alone or jointly with one or more other persons (the *continuing*
19 *members*), the current applicant for the claimant application or
20 compensation application:

- 21 (a) dies; or
22 (b) is unable to act as an applicant because of physical or mental
23 incapacity.

24 (2B) The Court may order that the following persons replace the current
25 applicant for the application:

- 26 (a) if:
27 (i) a member of the claim group is authorised by the claim
28 group to make the application and to deal with matters

EXPOSURE DRAFT

Role of the applicant **Schedule 1**
Replacement of applicant **Part 3**

- 1 arising in relation to it because of the death or
2 incapacity of the ceasing member; and
3 (ii) the authorisation of any continuing members continues
4 despite the death or incapacity of the ceasing member;
5 that member and any continuing members;
6 (b) unless the authorisation of any continuing members ceases on
7 the death or incapacity of the ceasing member—the
8 continuing members;
9 (c) if the applying members are authorised by the claim group to
10 make the application and to deal with matters arising in
11 relation to it—the applying members.

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 *Replacement by more than one person*

16 (2C) If the Court orders under this section that the current applicant is
17 replaced by more than one person, the persons are jointly the
18 *applicant*.

19 **43 Subsection 66B(3)**

20 Omit “the order”, substitute “an order under this section”.

21 **44 Section 253 (definition of *applicant*)**

22 Omit “subsection 61(2)”, substitute “subsections 61(2) and 66B(2C)”.

23 **45 Application**

24 The amendments of sections 66B and 253 of the *Native Title Act 1993*
25 made by this Part apply in relation to applications to the Federal Court
26 under section 66B of that Act made after the commencement of this
27 item, whether the death or incapacity occurred before or after that
28 commencement.

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Schedule 2 Indigenous land use agreements

Part 1 Body corporate agreements and area agreements

1 **Schedule 2—Indigenous land use agreements**

2 **Part 1—Body corporate agreements and area**
3 **agreements**

4 *Native Title Act 1993*

5 **1 Section 24BC**

6 Before “The”, insert “(1)”.

7 **2 At the end of section 24BC**

8 Add:

9 (2) If:

- 10 (a) there is an approved determination of native title to the effect
11 that native title does not exist in relation to part of the area; or
12 (b) part of the area was expressly excluded from the area covered
13 by an approved determination of native title because of
14 subsection 61A(2) (restrictions on making of certain
15 applications);

16 it is not necessary for there to be a registered native title body
17 corporate for that part of the area in order to satisfy subsection (1).

18 **3 Subsection 24CH(1)**

19 Omit “The”, substitute “If the Registrar is satisfied that an indigenous
20 land use agreement that meets the requirements of sections 24CB to
21 24CE is in existence, the”.

22 **4 Application**

23 The amendments of sections 24BC and 24CH of the *Native Title Act*
24 *1993* made by this Part apply in relation to any agreement in respect of
25 which an application for registration is made after the commencement
26 of this item.

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Indigenous land use agreements **Schedule 2**
Deregistration and amendment **Part 2**

1 **Part 2—Deregistration and amendment**

2 *Native Title Act 1993*

3 **5 After subsection 24EB(2)**

4 Insert:

5 (2A) To avoid doubt, removal of the details of an agreement from the
6 Register of Indigenous Land Use Agreements does not affect the
7 validity of a future act done while the details were on the Register.

8 **6 At the end of section 24EBA**

9 Add:

10 *Removal of agreement from the Register*

11 (7) To avoid doubt, removal of the details of an agreement from the
12 Register of Indigenous Land Use Agreements does not affect:
13 (a) the validity of a future act validated by subsection (2) or a
14 law of a State or Territory mentioned in subsection (3); or
15 (b) the effects of an intermediate period act that have been
16 changed under subsection (6).

17 **7 At the end of Subdivision E of Division 3 of Part 2**

18 Add:

19 **24ED Amended agreements**

20 (1) If the details of an agreement are entered on the Register of
21 Indigenous Land Use Agreements, the agreement has effect, for the
22 purposes of this Act, as if the details included any amendments of
23 the agreement that:
24 (a) have been agreed to by the parties to the agreement; and
25 (b) have been notified to the Registrar in writing by the parties;
26 but only so far as the amendments:
27 (c) update property descriptions, but not so as to result in the
28 inclusion of any area of land or waters not previously
29 covered by the agreement; or

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Schedule 2 Indigenous land use agreements

Part 2 Deregistration and amendment

- 1 (d) update a description identifying a party to the agreement,
2 including where a party has assigned or otherwise transferred
3 rights or liabilities under the agreement; or
4 (e) update administrative processes relating to the agreement; or
5 (f) do a thing specified in a legislative instrument made under
6 subsection (3).

- 7 (2) If the details of an agreement are entered on the Register of
8 Indigenous Land Use Agreements, the agreement has effect, for the
9 purposes of this Act, as if it did not include any amendments other
10 than those that have effect because of subsection (1).

11 Note: An application for registration of such an agreement as amended could
12 be made under Subdivision B, C or D.

13 *Instrument specifying a thing*

- 14 (3) The Commonwealth Minister may, by legislative instrument,
15 specify a thing that an amendment to an agreement may do for the
16 purposes of paragraph (1)(f).

17 **8 Subsection 199C(1) (note)**

18 Omit “Note”, substitute “Note 1”.

19 **9 At the end of subsection 199C(1)**

20 Add:

21 Note 2: Removal of the details of an agreement from the Register does not
22 affect the validity of a future act that has already been done: see
23 subsections 24EB(1) and (2A) and 24EBA(7).

24 **10 Application**

25 Section 24ED of the *Native Title Act 1993*, as inserted by this Part,
26 applies in relation to any agreement, the details of which are on the
27 Register of Indigenous Land Use Agreements after the commencement
28 of this item.

EXPOSURE DRAFT

Historical extinguishment **Schedule 3**
Park areas **Part 1**

1 **Schedule 3—Historical extinguishment**

2 **Part 1—Park areas**

3 **Division 1—Amendments commencing day after Royal**
4 **Assent**

5 *Native Title Act 1993*

6 **1 At the end of subsection 13(5)**

7 Add:

8 ; or (c) that the determination relates to an area in relation to which
9 the agreement required by paragraph 47C(1)(b) has been
10 given.

11 Note: Section 47C provides for extinguishment of native title rights and
12 interests in relation to certain areas such as national parks etc. to be
13 disregarded.

14 **2 At the end of Division 4 of Part 2**

15 Add:

16 **47C National parks etc. covered by native title applications**

17 *When section applies*

18 (1) This section applies if:

19 (a) a claimant application or a revised native title determination
20 application is made in relation to an area that is, or is part of,
21 a park area (see subsection (2)); and

22 (b) the operation of this section in relation to an area (the
23 **agreement area**) that is in an onshore place, and comprises
24 the whole or a part of the park area, is agreed to in writing
25 by:

26 (i) any registered native title body corporate concerned or
27 the applicant for any native title claim group concerned,
28 or, if there is no such body corporate or claim group, all
29 the representative Aboriginal/Torres Strait Islander
30 bodies for the agreement area; and

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Schedule 3 Historical extinguishment

Part 1 Park areas

- 1 (ii) whichever of the Commonwealth, the State or the
2 Territory by or under whose law the park area was set
3 aside, or the interest over the park area was granted or
4 vested, as mentioned in subsection (2); and
5 (c) none of sections 47, 47A and 47B applies in relation to the
6 agreement area.

7 *Meaning of park area*

- 8 (2) A ***park area*** means an area (such as a national, State or Territory
9 park):
10 (a) that is set aside; or
11 (b) over which an interest is granted or vested;
12 by or under a law of the Commonwealth, a State or a Territory for
13 the purpose of, or purposes that include, preserving the natural
14 environment of the area, whether that setting aside, granting or
15 vesting resulted from a dedication, reservation, proclamation,
16 condition, declaration, vesting in trustees or otherwise.

17 *Public works*

- 18 (3) An agreement referred to in paragraph (1)(b) may include a
19 statement by the Commonwealth, or the State or Territory
20 concerned, that it agrees that the extinguishing effect of any of its
21 relevant public works (see subsection (10)) in the agreement area is
22 to be disregarded.
- 23 (4) If the agreement area contains one or more relevant public works,
24 the application mentioned in paragraph (1)(a) may also be the
25 subject of an agreement in writing between:
26 (a) any registered native title body corporate concerned or the
27 applicant for any native title claim group concerned, or if
28 there is no such body corporate or claim group, all the
29 representative Aboriginal/Torres Strait Islander bodies for the
30 agreement area; and
31 (b) the Commonwealth, the State or the Territory to which the
32 relevant public work relates (see subsection (10));
33 that any extinguishment of native title by the construction or
34 establishment of the relevant public work is to be disregarded.

EXPOSURE DRAFT

Historical extinguishment **Schedule 3**
Park areas **Part 1**

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Notice and time for comment

- (5) Before making an agreement for the purposes of paragraph (1)(b) or subsection (4), the Commonwealth, or the State or Territory concerned, must:
- (a) arrange for reasonable notification of the proposed agreement in the State or Territory in which the agreement area is located, whether on the internet, in a newspaper circulating generally in the State or Territory, on the radio or otherwise; and
 - (b) give interested persons an opportunity to comment on the proposed agreement.
- The period for comment must be at least 3 months.
- (6) The agreement must not be made before the end of the period for comment.

Prior extinguishment to be disregarded

- (7) For all purposes under this Act in relation to the application, any extinguishment of the native title rights and interests in relation to the agreement area by any of the following acts must be disregarded:
- (a) the setting aside, granting or vesting mentioned in subsection (2);
 - (b) the creation of any other prior interest in relation to the agreement area;
 - (c) if:
 - (i) the agreement under paragraph (1)(b) includes a statement of a kind mentioned in subsection (3); or
 - (ii) there is an agreement under subsection (4);the construction or establishment of any relevant public works that are the subject of the agreement concerned.

Note: The applicant will still need to show the existence of any connection with the land or waters concerned that may be required by the common law concept of native title.

EXPOSURE DRAFT

Schedule 3 Historical extinguishment

Part 1 Park areas

1

Effect of determination

2

(8) If the determination on the application is that native title rights and interests exist in the agreement area:

3

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(a) the determination does not affect:

5

(i) the validity of the setting aside, granting or vesting; or

6

(ii) the validity of the creation of any other prior interest in relation to the agreement area; or

7

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(iii) any interest of the Crown in any capacity, or of any statutory authority, or of any other person, in any public works on the land or waters concerned (whether or not a relevant public work that is the subject of an agreement), or access to such public works; or

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(iv) any existing public access to the agreement area; and

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(b) the non-extinguishment principle applies to the setting aside, granting or vesting or the creation of any other prior interest in relation to the agreement area.

17

Exclusion of Crown ownership of natural resources

18

(9) For the purposes of this section, a reference to the creation of an interest in relation to an area does not include a reference to the creation of an interest that confirms ownership of natural resources by, or confers ownership of natural resources on, the Crown in any capacity.

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23

Meaning of relevant public work

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(10) In this section:

25

relevant public work, in relation to the Commonwealth, a State or a Territory, means a public work:

26

27

(a) constructed or established directly by the Commonwealth, the State or the Territory; or

28

29

(b) constructed or established by another person on behalf of the Commonwealth, the State or the Territory.

30

31

3 Subsection 61A(4) (heading)

32

Omit “*or 47B*”, substitute “, *47B or 47C*”.

EXPOSURE DRAFT

Historical extinguishment **Schedule 3**
Park areas **Part 1**

1 **4 Paragraphs 61A(4)(a) and (b)**

2 Omit “or 47B”, substitute “, 47B or 47C”.

3 **5 After paragraph 62(1)(c)**

4 Insert:

5 ; and (d) if the operation of section 47C has been agreed to in writing
6 in accordance with paragraph 47C(1)(b) in relation to the
7 whole or any part of the area covered by the application—
8 must be accompanied by a copy of the agreement, and if
9 there is an agreement under subsection 47C(4), that
10 agreement.

11 **6 At the end of section 62**

12 Add:

13 *Revised native title determination applications*

14 (4) A revised native title determination application that covers an area
15 in relation to which the operation of section 47C has been agreed to
16 in writing in accordance with paragraph 47C(1)(b) must be
17 accompanied by a copy of the agreement and, if there is an
18 agreement under subsection 47C(4), that agreement.

19 **7 After paragraph 63(b)**

20 Insert:

21 (ba) any copy of an agreement that accompanies the application
22 under paragraph 62(1)(d) or subsection 62(4); and

23 **8 Subsection 64(2) (heading)**

24 Omit “*Exception*”, substitute “*Exceptions*”.

25 **9 After subsection 64(2)**

26 Insert:

27 (2A) In addition, subsection (1) does not prevent an amendment that
28 results in the inclusion of any area of land or waters that was not
29 covered by the original application, if the operation of section 47C
30 has been agreed to in writing in accordance with

EXPOSURE DRAFT

Schedule 3 Historical extinguishment

Part 1 Park areas

1 paragraph 47C(1)(b) in relation to the area after the making of the
2 original application.

3 **10 At the end of subsection 66A(1)**

4 Add:

5 ; and (f) if the inclusion of any area of land or waters that was not
6 covered by the original application occurs as mentioned in
7 subsection 64(2A)—give notice to each other person to
8 whom the Registrar would be obliged to give notice under
9 subsections 66(3) and (5) if the application as amended were
10 a new application, but to whom notice is not already required
11 to be given under paragraph (d) or (e).

12 **11 Subsection 66A(1B)**

13 After “paragraph”, insert “(1)(f) or”.

14 **12 Paragraph 82(3)(a)**

15 After “section 47C”, insert “of that Act”.

16 **13 Subparagraph 84(3)(b)(ii)**

17 Omit “paragraph 66A(1A)(e)”, substitute “paragraph 66A(1)(f) or
18 (1A)(e)”.

19 **14 Paragraph 190B(9)(c)**

20 Omit “or 47B(2)”, substitute “, 47B(2) or 47C(7)”.

21 **15 Application**

- 22 (1) The amendments made by this Part apply in relation to any claimant
23 application or revised native title determination application:
- 24 (a) that is made after the commencement of this item; or
 - 25 (b) that was made before that commencement, but has not been
26 determined as at that commencement.
- 27 (2) To avoid doubt, an application mentioned in paragraph (1)(b) may be
28 amended to state that the operation of section 47C of the *Native Title*
29 *Act 1993* has been agreed in relation to the whole or any part of the area
30 covered by the application.

EXPOSURE DRAFT

Historical extinguishment **Schedule 3**
Park areas **Part 1**

1 **Division 2—Amendments commencing immediately after**
2 **Part 1 of Schedule 1**

3 *Native Title Act 1993*

4 **16 At the end of paragraph 190A(6A)(d)**

5 Add:

6 ; (vii) give effect to the operation of section 47C in relation to
7 the application as mentioned in subsection 64(2A).

EXPOSURE DRAFT

Schedule 3 Historical extinguishment

Part 2 Pastoral leases held by native title claimants

1 **Part 2—Pastoral leases held by native title claimants**

2 *Native Title Act 1993*

3 **17 Subparagraph 47(1)(b)(iii)**

4 After “shareholders”, insert “or, in the case of a body corporate without
5 shareholders, members”.

6 **18 Application**

7 The amendments of subparagraph 47(1)(b)(iii) of the *Native Title Act*
8 *1993* made by this Part apply in relation to any application under
9 section 61 of that Act:

- 10 (a) that is made after the commencement of this item; or
11 (b) that was made before that commencement, but has not been
12 determined as at that commencement.

EXPOSURE DRAFT

Historical extinguishment **Schedule 3**
Future acts where prior extinguishment to be disregarded **Part 3**

1 **Part 3—Future acts where prior extinguishment to be**
2 **disregarded**

3 *Native Title Act 1993*

4 **19 After paragraph 224(a)**

5 Insert:

- 6 (aa) in relation to an act that affects native title as mentioned in
7 subsection 227(2)—the person or persons who would, if the
8 application mentioned in that subsection were determined, be
9 determined to be the common law holders; or

10 **20 Section 227**

11 Before “An act”, insert “(1)”.

12 **21 At the end of section 227**

13 Add:

- 14 (2) An act in relation to an area also *affects* native title if:
15 (a) an application of a kind mentioned in column 1 of an item in
16 the following table is made in relation to the area; and
17 (b) the section mentioned in column 2 of the item applies in
18 relation to the area; and
19 (c) if any extinguishment mentioned in column 3 of the item
20 were disregarded in accordance with the section mentioned in
21 column 2 of the item, the determination on the application
22 would be that native title exists in relation to the area; and
23 (d) the act would:
24 (i) extinguish the native title rights and interests in relation
25 to the area; or
26 (ii) otherwise be wholly or partly inconsistent with their
27 continued existence, enjoyment or exercise;
28 if the extinguishment mentioned in column 3 of the item
29 were disregarded in accordance with the section mentioned in
30 column 2 of the item.
31

EXPOSURE DRAFT

Schedule 3 Historical extinguishment

Part 3 Future acts where prior extinguishment to be disregarded

Acts affecting native title if prior extinguishment disregarded			
Item	Column 1 Application	Column 2 Section	Column 3 Extinguishment to be disregarded
1	Application under section 61	section 47 (pastoral leases held by native title claimants)	any extinguishment of the native title rights and interests in relation to the area by any of the acts mentioned in subsection 47(2)
2	Claimant application	section 47A (reserves etc. covered by claimant applications)	any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by any of the acts mentioned in subsection 47A(2)
3	Claimant application	section 47B (vacant Crown land covered by claimant applications)	any extinguishment, of the native title rights and interests in relation to the area that are claimed in the application, by the creation of any prior interest in relation to the area
4	Claimant application or revised native title determination	section 47C (national parks etc. covered by native title applications)	any extinguishment of the native title rights and interests in relation to the area by any of the acts mentioned in subsection 47C(7)

1 22 Application

2 The amendments of section 227 of the *Native Title Act 1993* made by
3 this Part apply in relation to any act done after the commencement of
4 this item.

EXPOSURE DRAFT

Allowing a registered native title body corporate to bring a compensation application
Schedule 4

Schedule 4—Allowing a registered native title body corporate to bring a compensation application

Native Title Act 1993

1 After paragraph 58(b)

Insert:

(ba) to perform in a specified way any functions, in relation to a compensation application, given to it under other provisions of this Act;

2 Paragraph 58(c)

Omit “for acts affecting the native title”.

3 Paragraph 58(d)

After “common law holders”, insert “, or persons entitled to compensation under this Act,”.

4 At the end of paragraph 58(f)

Add “, or compensation under this Act”.

5 Subsection 61(1) (cell at table item dealing with compensation application, column headed “Persons who may make application”)

Repeal the cell, substitute:

(1) A registered native title body corporate, if the determination is sought in relation to an area of land or waters in relation to which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, the native title rights and interests; or

(1A) A registered native title body corporate, on behalf of all the persons who claim to be entitled to the compensation, if:

(a) the determination is sought in

EXPOSURE DRAFT

Schedule 4 Allowing a registered native title body corporate to bring a compensation application

relation to an area of land or waters (the *extinguished area*) that is within the external boundary of the area of land or waters covered by an approved determination of native title (the *earlier determination*) under which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, native title rights and interests; and

(b) either:

(i) the earlier determination is that native title does not exist in relation to the extinguished area; or

(ii) the extinguished area was expressly excluded from the area covered by the earlier determination because of subsection 61A(2) (restrictions on making of certain applications); and

(c) the persons who claim to be entitled to the compensation are the common law holders in relation to the earlier determination; or

(2) A person or persons authorised by all the persons (the *compensation claim group*) who claim to be entitled to the compensation, provided the person or persons are also included in the compensation claim group.

Note 1: The person or persons will be the applicant: see subsection (2) of this section.

Note 2: Section 251B states what it means for a person or persons to be *authorised* by all the persons in the compensation claim group.

EXPOSURE DRAFT

Allowing a registered native title body corporate to bring a compensation application
Schedule 4

1 **6 Application and transitional**

- 2 (1) The amendments of section 58 of the *Native Title Act 1993* made by this
3 Schedule do not affect the continuity of regulations that were made for
4 the purposes of that section and were in force immediately before the
5 commencement of this item.
- 6 (2) The amendments of section 61 of the *Native Title Act 1993* made by this
7 Schedule apply in relation to any compensation application made after
8 the commencement of this item.

EXPOSURE DRAFT

Schedule 5 Intervention and consent determinations

Part 1 Intervention in proceedings

1 **Schedule 5—Intervention and consent**
2 **determinations**

3 **Part 1—Intervention in proceedings**

4 *Native Title Act 1993*

5 **1 Subsection 84A(1)**

6 After “written notice to”, insert “the High Court or”.

7 **2 Paragraph 87(1)(a)**

8 Omit “between the parties”.

9 **3 After paragraph 87(1)(a)**

10 Insert:

11 (aa) the agreement is reached between all of the following
12 persons:

13 (i) the parties to the proceedings;

14 (ii) the Commonwealth Minister, if the Commonwealth
15 Minister is intervening in the proceedings at the time the
16 agreement is made; and

17 **4 Paragraph 87(1)(b)**

18 Omit “the parties”, substitute “the persons mentioned in
19 paragraph (aa)”.

20 **5 At the end of section 87**

21 Add:

22 (12) A reference in subsections (8) to (11) to the parties to the
23 proceeding includes a reference to the Commonwealth Minister if
24 the Commonwealth Minister is intervening in the proceeding at the
25 time a statement of facts is agreed.

26 **6 Subparagraph 87A(1)(c)(vii)**

27 Repeal the subparagraph, substitute:

EXPOSURE DRAFT

Intervention and consent determinations **Schedule 5**
Intervention in proceedings **Part 1**

- 1 (vii) the Commonwealth Minister, if the Commonwealth
2 Minister is a party to, or is intervening in, the
3 proceeding at the time the agreement is made;

4 **7 At the end of section 87A**

5 Add:

- 6 (13) A reference in subsections (9) to (12) to the parties to the
7 proceeding includes a reference to the Commonwealth Minister if
8 the Commonwealth Minister is intervening in the proceeding at the
9 time a statement of facts is agreed.

10 **8 Application**

11 *High Court proceedings*

- 12 (1) The amendments of section 84A of the *Native Title Act 1993* made by
13 this Part apply in relation to:
14 (a) any proceeding commenced after the commencement of this
15 item; and
16 (b) any proceeding commenced before the commencement of
17 this item, if the proceeding has not been finally determined
18 by the commencement of this item.

19 *Consent determinations*

- 20 (2) The amendments of subsection 87(1) of the *Native Title Act 1993* made
21 by this Part apply in relation to any agreement the terms of which are
22 filed with the Federal Court after the commencement of this item:
23 (a) whether the relevant proceeding commenced before or after
24 the commencement of this item; and
25 (b) whether the Commonwealth Minister intervened before or
26 after the commencement of this item.
- 27 (3) The amendments of paragraph 87A(1)(c) of the *Native Title Act 1993*
28 made by this Part apply in relation to any proposed determination of
29 native title a copy of the terms of which is filed with the Federal Court
30 after the commencement of this item:
31 (a) whether the relevant proceeding commenced before or after
32 the commencement of this item; and

EXPOSURE DRAFT

Schedule 5 Intervention and consent determinations

Part 1 Intervention in proceedings

1 (b) whether the Commonwealth Minister intervened before or
2 after the commencement of this item.

3 *Agreed statements of fact*

4 (4) Subsections 87(12) and 87A(13) of the *Native Title Act 1993*, as
5 inserted by this Part, apply in relation to any statement of facts a copy
6 of which is filed with the Federal Court after the commencement of this
7 item.

EXPOSURE DRAFT

Intervention and consent determinations **Schedule 5**
Consent determinations **Part 2**

1 **Part 2—Consent determinations**

2 *Native Title Act 1993*

3 **9 Paragraph 87A(1)(b)**

4 Omit “included in”, substitute “that is part of, but not all of”.

5 **10 At the end of subsection 87A(1)**

6 Add:

7 Note: For agreements reached in relation to the whole of the area covered by
8 the application, see section 87.

9 **11 Application**

10 The amendments of paragraph 87A(1)(b) of the *Native Title Act 1993*
11 made by this Part apply in relation to any proposed determination of
12 native title a copy of the terms of which is filed with the Federal Court
13 after the commencement of this item.

EXPOSURE DRAFT

Schedule 6 Other procedural changes

Part 1 Objections

1 **Schedule 6—Other procedural changes**

2 **Part 1—Objections**

3 *Native Title Act 1993*

4 **1 Paragraph 24MD(6B)(f)**

5 Repeal the paragraph, substitute:

6 (f) if:

7 (i) a claimant or body corporate objects, as mentioned in
8 paragraph (d), to the doing of the act; and

9 (ii) 8 months after the notification mentioned in
10 paragraph (c), the objection has not been withdrawn;
11 the Commonwealth, the State or the Territory must ensure
12 that the objection is heard by an independent person or body;
13 and

14 **2 Subsection 141(2)**

15 Repeal the subsection, substitute:

16 *Right to negotiate applications*

17 (2) The parties to an inquiry in relation to a right to negotiate
18 application are the following:

19 (a) the Government party;

20 (b) the grantee parties;

21 (c) for an expedited procedure objection application—any native
22 title party that has lodged an objection in accordance with
23 subsection 32(3) and has not withdrawn the objection;

24 (d) for a future act determination application—the native title
25 parties.

26 **3 Application**

27 (1) The amendments of subsection 24MD(6B) of the *Native Title Act 1993*
28 made by this Part apply in relation to any objection under
29 paragraph 24MD(6B)(d) of that Act:

30 (a) made after the commencement of this item; or

EXPOSURE DRAFT

Other procedural changes **Schedule 6**
Objections **Part 1**

- 1 (b) made before that commencement unless, before that
2 commencement:
3 (i) a request has been made in relation to the objection
4 under paragraph 24MD(6B)(f) of that Act (as in force
5 immediately before that commencement); or
6 (ii) the objection has been withdrawn.
- 7 (2) The amendments of section 141 of the *Native Title Act 1993* made by
8 this Part apply in relation to any right to negotiate application made
9 after the commencement of this item.

EXPOSURE DRAFT

Schedule 6 Other procedural changes

Part 2 Section 31 agreements

1 **Part 2—Section 31 agreements**

2 **Division 1—Amendments commencing day after Royal**
3 **Assent**

4 *Native Title Act 1993*

5 **4 At the end of subsection 41A(1)**

6 Add:

7 ; and (c) advise the arbitral body whether or not there is any other
8 written agreement made between some or all of the
9 negotiation parties in connection with the doing of the act.

10 **5 Application**

11 The amendments of section 41A of the *Native Title Act 1993* made by
12 this Part apply in relation to any agreement of a kind mentioned in
13 paragraph 31(1)(b) of that Act made after the commencement of this
14 item.

15 **6 Validating section 31 agreements made on or before**
16 **commencement**

17 (1) This item applies if:

18 (a) an agreement in relation to the doing of an act was made or
19 purported to be made before the commencement of this item;
20 and

21 (b) the agreement purported to be an agreement of the kind
22 mentioned in paragraph 31(1)(b) of the *Native Title Act 1993*;
23 and

24 (c) the agreement was not an agreement of that kind made in
25 relation to the act only because:

26 (i) if there was only one registered native title claimant in
27 relation to land or waters affected by the act—not all of
28 the persons who comprised that registered native title
29 claimant were parties to the agreement; or

30 (ii) if there was more than one registered native title
31 claimant in relation to land or waters affected by the

EXPOSURE DRAFT

Other procedural changes **Schedule 6**
Section 31 agreements **Part 2**

- 1 act—not all of the persons who comprised those
2 registered native title claimants were parties to the
3 agreement; and
4 (d) for each registered native title claimant in relation to any land
5 or waters affected by the act, at least one of the persons who
6 comprised that registered native title claimant was a party to
7 the agreement.
- 8 (2) The agreement is taken to be, and always to have been, an agreement of
9 the kind mentioned in paragraph 31(1)(b) of the *Native Title Act 1993*
10 made in relation to the act.

11 **Division 2—Amendments commencing 6 months after** 12 **Royal Assent**

13 *Native Title Act 1993*

14 **7 At the end of subsection 25(2)**

15 Add “However, the Commonwealth, State or Territory can limit its
16 participation in negotiations if the other parties consent.”.

17 **8 After subsection 31(1)**

18 Insert:

19 *Government party does not need to participate in negotiations*

- 20 (1A) Despite paragraph (1)(b), the Government party does not need to
21 negotiate about matters that the Government party determines do
22 not affect the Government party if the other negotiation parties
23 give written consent.

24 *Parties to the agreement*

- 25 (1B) Each of the negotiation parties must be a party to the agreement.

26 **9 Subsection 36(2)**

27 After “paragraph 31(1)(b)”, insert “(other than as provided by
28 subsections 31(1A) and (2))”.

EXPOSURE DRAFT

Schedule 6 Other procedural changes

Part 2 Section 31 agreements

1 **10 Application**

2 (1) Subsection 31(1A) of the *Native Title Act 1993*, as inserted by this Part,
3 applies in relation to negotiations commencing before or after the
4 commencement of this item.

5 (2) Subsection 31(1B) of the *Native Title Act 1993*, as inserted by this Part,
6 applies in relation to any agreement of a kind mentioned in
7 paragraph 31(1)(b) of that Act made after the commencement of this
8 item.

1
2

Schedule 7—National Native Title Tribunal

3

Native Title Act 1993

4

1 After section 60

5

Insert:

6

60AAA Assistance in relation to registered native title bodies corporate

7

8

(1) A registered native title body corporate may request the NNTT to provide assistance in promoting agreement about matters relating to native title or the operation of this Act between:

9

10

11

(a) the registered native title body corporate and another registered native title body corporate; or

12

13

(b) the registered native title body corporate and one or more common law holders; or

14

15

(c) common law holders.

16

(2) A common law holder may request the NNTT to provide assistance in promoting agreement about matters relating to native title or the operation of this Act between:

17

18

19

(a) the common law holder and the registered native title body corporate; or

20

21

(b) the common law holder, the registered native title body corporate and one or more other common law holders.

22

23

(3) The NNTT may enter into an agreement with a registered native title body corporate or common law holder or both under which either or both of them are liable to pay the Commonwealth for assistance under subsection (1) or (2).

24

25

26

27

(4) The NNTT must not use or disclose information to which it has had access only because it provided assistance under subsection (1) or (2) for any purpose other than providing that assistance without the prior consent of the person who provided the NNTT with the information.

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EXPOSURE DRAFT

Schedule 7 National Native Title Tribunal

1 **2 Paragraph 108(1B)(b)**

2 Omit “as mentioned in subsection 203BK(3) in relation to assistance of
3 the kind referred to in that subsection”, substitute “in relation to
4 assistance as mentioned in subsections 60AAA(3) and 203BK(3)”.

5 **3 After section 115**

6 Insert:

7 **115A Acting appointments**

8 *President*

- 9 (1) The Commonwealth Minister may, by written instrument, appoint
10 a person to act as the President:
- 11 (a) during a vacancy in the office of President (whether or not an
12 appointment has previously been made to the office); or
 - 13 (b) during any period, or during all periods, when the President:
 - 14 (i) is absent from duty or from Australia; or
 - 15 (ii) is, for any reason, unable to perform the duties of the
16 office.

17 Note: For rules that apply to acting appointments, see sections 33AB and
18 33A of the *Acts Interpretation Act 1901*.

19 *Deputy President*

- 20 (2) The Commonwealth Minister may, by written instrument, appoint
21 a person to act as a Deputy President:
- 22 (a) during a vacancy in the office of a Deputy President (whether
23 or not an appointment has previously been made to the
24 office); or
 - 25 (b) during any period, or during all periods, when a Deputy
26 President:
 - 27 (i) is absent from duty or from Australia; or
 - 28 (ii) is, for any reason, unable to perform the duties of the
29 office.

30 Note: For rules that apply to acting appointments, see sections 33AB and
31 33A of the *Acts Interpretation Act 1901*.

EXPOSURE DRAFT

National Native Title Tribunal **Schedule 7**

1

Non-presidential members

2

- (3) The Commonwealth Minister may, by written instrument, appoint a person to act as a member other than the President or a Deputy President:

3

4

5

- (a) during a vacancy in the office of a member other than the President or a Deputy President (whether or not an appointment has previously been made to the office); or

6

7

8

- (b) during any period, or during all periods, when a member other than the President or a Deputy President:

9

10

- (i) is absent from duty or from Australia; or

11

- (ii) is, for any reason, unable to perform the duties of the office.

12

13

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

14

15

Qualifications

16

- (4) A person must not be appointed to act in an office under this section unless the person may be appointed to that office under section 110.

17

18

19

Terms and conditions

20

- (5) A person (other than a Judge or an assessor) appointed to act in an office under this section is to act on such terms and conditions as the Minister determines in writing.

21

22

23

4 Subparagraph 123(1)(b)(ii)

24

Omit “in making or negotiating agreements”.

EXPOSURE DRAFT

Schedule 8 Registered native title bodies corporate

Part 1 Registrar oversight

1 **Schedule 8—Registered native title bodies**
2 **corporate**

3 **Part 1—Registrar oversight**

4 *Corporations (Aboriginal and Torres Strait Islander) Act*
5 *2006*

6 **1 After paragraph 487-5(1)(e)**

7 Insert:

8 (ea) if the corporation is a registered native title body corporate—
9 the affairs of the corporation are being conducted in a way
10 that is contrary to the interests of:

- 11 (i) the common law holders of native title as a whole; or
12 (ii) a class of the common law holders of native title;

13 **2 Subsection 487-5(1)**

14 Omit “Paragraph (j)”, substitute “A paragraph in this subsection”.

15 **3 Subsection 487-5(2)**

16 Omit “(1)(d) or (e)”, substitute “(1)(d), (e) or (ea)”.

EXPOSURE DRAFT

Registered native title bodies corporate **Schedule 8**
Membership and common law holders **Part 2**

1 **Part 2—Membership and common law holders**

2 **Division 1—Requirements for constitutions**

3 ***Corporations (Aboriginal and Torres Strait Islander) Act***
4 ***2006***

5 **4 Section 57-5 (table item 1A)**

6 After “Resolution of”, insert “internal”.

7 **5 Section 57-5 (table item 1)**

8 Repeal the item, substitute:

1B	Resolution of disputes with common law holders	subsection 66-1(3B)
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Chapter 4—Members and observers

1C	Eligibility requirements for membership of registered native title body corporate	section 141-25
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1	How does a person become a member?	section 144-1
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9 **6 Section 57-5 (table item 12, column headed “Subject of provision”)**

10 After “Member”, insert “of corporation that is not a registered native
11 title body corporate”.

12 **7 Section 57-5 (after table item 12)**

13 Insert:

12A	Member of registered native title body corporate not eligible for membership etc.	section 150-22
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14 **8 Paragraph 63-1(c)**

15 Repeal the paragraph, substitute:

16 (c) the rules (if any) in the corporation’s constitution providing
17 for the resolution of disputes between the corporation and a
18 common law holder of native title;

19 (d) the other rules dealing with the internal governance of the
20 corporation that are in the corporation’s constitution.
21

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Part 2 Membership and common law holders

1 **9 After subsection 66-1(3A)**

2 Insert:

3 (3B) If:

4 (a) the application for registration of the corporation seeks
5 registration for the purpose of becoming a registered native
6 title body corporate; or

7 (b) the corporation is a registered native title body corporate;
8 the corporation's constitution must provide for the resolution of
9 disputes between the corporation and a common law holder of
10 native title (whether or not the common law holder is a member of
11 the corporation).

12 **10 Subparagraph 66-1(5)(d)(i)**

13 Omit "an application for registration of an Aboriginal and Torres Strait
14 Islander corporation seeks registration of the corporation", substitute
15 "the application for registration of the corporation seeks registration".

16 **11 Section 135-1**

17 After "Subdivision 141-C imposes 1 eligibility requirement for
18 membership but a corporation may impose other such requirements.",
19 insert "A registered native title body corporate must include particular
20 eligibility requirements relating to common law holders."

21 **12 At the end of subsection 141-1(3)**

22 Add "A registered native title body corporate must include particular
23 eligibility requirements relating to common law holders."

24 **13 Section 141-25**

25 Before "The", insert "(1)".

26 **14 At the end of section 141-25**

27 Add:

28 (2) If the corporation is a registered native title body corporate, the
29 constitution must include eligibility requirements for membership
30 that provide for all the common law holders of native title to be
31 represented, directly or indirectly.

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1 **15 Subsection 150-15(1)**

2 After “replaceable rule”, insert “for Aboriginal and Torres Strait
3 Islander corporations other than registered native title bodies
4 corporate”.

5 **16 After subsection 150-15(1)**

6 Insert:

7 (1A) Section 150-22 provides for cancellation of membership of an
8 Aboriginal and Torres Strait Islander corporation that is a
9 registered native title body corporate on the grounds of ineligibility
10 for membership or failure to pay fees. If membership of such a
11 corporation is to be cancelled on either of these grounds, the only
12 way the membership may be cancelled is as provided for in
13 section 150-22.

14 **17 After subsection 150-15(2)**

15 Insert:

16 *Registered native title body corporate constitution may not include*
17 *other grounds for cancellation*

18 (2A) The constitution of an Aboriginal and Torres Strait Islander
19 corporation that is a registered native title body corporate must not
20 provide for cancellation of membership on any other ground.

21 **18 Section 150-20 (heading)**

22 After “Member”, insert “**of corporation that is not a registered**
23 **native title body corporate**”.

24 **19 Subsection 150-20(1)**

25 After “Aboriginal and Torres Strait Islander corporation”, insert “that is
26 not a registered native title body corporate”.

27 **20 After section 150-20**

28 Insert:

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Schedule 8 Registered native title bodies corporate

Part 2 Membership and common law holders

1 **150-22 Member of registered native title body corporate not eligible**
2 **for membership etc.**

3 *Operation of section*

4 (1) This section operates despite any provision of the constitution of an
5 Aboriginal and Torres Strait Islander corporation that is a
6 registered native title body corporate.

7 Note: An application may be made to exempt the corporation, or the
8 directors of the corporation, from the requirements of this section (see
9 section 187-5).

10 *Membership may be cancelled if not eligible etc.*

11 (2) If the membership of a member of an Aboriginal and Torres Strait
12 Islander corporation that is a registered native title body corporate
13 is to be cancelled on the ground that the member is not eligible for
14 membership or has not paid the member's membership fees, the
15 membership may only be cancelled on that ground if the
16 cancellation is effected in the manner and circumstances set out in
17 subsections (3) to (6).

18 *Manner and circumstances*

19 (3) The directors of an Aboriginal and Torres Strait Islander
20 corporation that is a registered native title body corporate may, by
21 resolution, cancel the membership of a member of the corporation
22 if:

23 (a) either:

24 (i) the member is not eligible for membership; or

25 (ii) the member has ceased to be eligible for membership of
26 the corporation; or

27 (b) the member has not paid the member's membership fees (if
28 any).

29 (4) Before cancelling the membership, the directors must give the
30 member notice in writing:

31 (a) stating that the directors intend to cancel the membership for
32 the reasons specified in the notice; and

33 (b) stating that the member has 14 days to object to the
34 cancellation of the membership; and

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- 1 (c) stating that the objection must be:
2 (i) in writing; and
3 (ii) given to the corporation within the period of 14 days
4 from the day the notice is given.
- 5 (5) If the member does not object as provided for in paragraph (4)(c),
6 the directors must cancel the membership.
- 7 (6) If the member does object as provided for in paragraph (4)(c):
8 (a) the directors must not cancel the membership; and
9 (b) only the corporation by resolution in general meeting may
10 cancel the membership.

11 *Notice*

- 12 (7) If the membership is cancelled, the directors must give the member
13 a copy of the resolution (being either the resolution of the directors
14 or the resolution of the general meeting) as soon as practicable
15 after the resolution has been passed.
- 16 Penalty: 5 penalty units.
- 17 (8) An offence against subsection (7) is an offence of strict liability.

18 **21 After paragraphs 187-5(2)(a) and 187-15(2)(a)**

- 19 Insert:
20 (aa) section 150-22; and

21 **22 Application and transition**

22 *Amendments apply in relation to new corporations from* 23 *commencement*

- 24 (1) The amendments of the *Corporations (Aboriginal and Torres Strait*
25 *Islander) Act 2006* (the *main Act*) made by this Division apply in
26 relation to an Aboriginal and Torres Strait Islander corporation that is
27 registered after the commencement of this item.

28 *Already registered corporations have up to 2 years to comply*

- 29 (2) The amendments also apply, in relation to an Aboriginal and Torres
30 Strait Islander corporation that was registered before the

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1 commencement of this item and that is still registered immediately
2 before that commencement, on and from:

- 3 (a) the second anniversary of that commencement; or
4 (b) if the Registrar registers a constitutional change for the
5 corporation under subitem (3) before that second
6 anniversary—the day the Registrar does so.

7 (3) The Registrar may, before the second anniversary of the
8 commencement of this item, register a constitutional change for an
9 Aboriginal and Torres Strait Islander corporation under this subitem if:

- 10 (a) the constitutional change is lodged:
11 (i) by the corporation under section 69-20 of the main Act;
12 or
13 (ii) by the special administrator of the corporation under
14 section 69-25 of the main Act; and
15 (b) written notice of an intention to opt in to the amendments
16 made by this Division is lodged with the constitutional
17 change; and
18 (c) the Registrar is satisfied that, with the constitutional change,
19 the internal governance rules of the corporation would
20 comply with the internal governance rules requirements of
21 the main Act as amended by this Division.

22 (4) If the Registrar is not satisfied as mentioned in paragraph (3)(c), the
23 Registrar must refuse to register the change and must notify the
24 corporation in writing of the Registrar's refusal.

25 (5) In the table in section 617-1 of the main Act (reviewable decisions):

- 26 (a) the reference in item 6 to the provision under which the
27 decision is made is taken to include a reference to subitem (4)
28 of this item; and
29 (b) the reference in item 7 to the provision under which the
30 decision is made is taken to include a reference to
31 subitems (3) and (4) of this item.

32 *2 year period also applies in relation to certain amendments to*
33 *the Native Title legislation*

34 (6) Before the time the amendments made by this Division start to apply
35 under subitem (2) of this item to an Aboriginal and Torres Strait

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1 Islander corporation registered before the commencement of this item,
2 the corporation does not fail to meet the internal governance rules
3 requirements merely because its constitution is not consistent with the
4 *Native Title Act 1993* as amended by Schedule 4 (allowing a registered
5 native title body corporate to bring a compensation application).

6 (7) However, subitem (6) of this item does not apply for the purposes of
7 subsection 69-35(2) of the main Act or subitem (3) of this item.

8 **Division 2—Refusal of membership**

9 ***Corporations (Aboriginal and Torres Strait Islander) Act*** 10 ***2006***

11 **23 Subsection 144-10(3) (heading)**

12 Repeal the heading, substitute:

13 *When membership application may be refused*

14 **24 Subsection 144-10(3)**

15 Omit “The”, substitute “Unless the corporation is a registered native
16 title body corporate, the”.

17 **25 After subsection 144-10(3)**

18 Insert:

- 19 (3A) The directors must accept the membership application if:
20 (a) the corporation is a registered native title body corporate; and
21 (b) paragraphs (2)(a) and (b) are complied with.

22 **26 Subsection 144-10(4)**

23 Omit “However,”, substitute “Despite subsections (3) and (3A),”.

24 **27 Application**

25 The amendments of section 144-10 of the *Corporations (Aboriginal and*
26 *Torres Strait Islander) Act 2006* made by this Division apply in relation
27 to any application for membership of an Aboriginal and Torres Strait
28 Islander corporation made after the commencement of this item.

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Schedule 8 Registered native title bodies corporate

Part 3 Jurisdiction of courts

1 **Part 3—Jurisdiction of courts**

2 ***Corporations (Aboriginal and Torres Strait Islander) Act***
3 ***2006***

4 **28 Paragraph 586-1(2)(b)**

5 Omit “section 39B”, substitute “sections 39, 39B and 67C”.

6 **29 Subsection 586-1(3)**

7 Omit “section 39B”, substitute “sections 39, 39B and 67C”.

8 **30 Subsection 586-1(4)**

9 Repeal the subsection, substitute:

10 (4) The Federal Court has jurisdiction to hear and determine civil
11 matters arising under the Aboriginal and Torres Strait Islander
12 Corporations legislation. In matters relating to registered native
13 title bodies corporate, that jurisdiction is exclusive of the
14 jurisdiction of all other courts except the High Court.

15 (4A) The jurisdiction conferred by this Division on the courts of the
16 Territories is conferred to the extent that the Constitution permits.

17 **31 At the end of subsection 586-5(2)**

18 Add “, other than matters relating to registered native title bodies
19 corporate”.

20 **32 Subsection 586-5(3)**

21 After “the Commonwealth”, insert “, other than matters relating to
22 registered native title bodies corporate”.

23 **33 At the end of subsections 586-10(1) and (2)**

24 Add “, other than matters relating to registered native title bodies
25 corporate”.

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Registered native title bodies corporate **Schedule 8**
Jurisdiction of courts **Part 3**

1 **34 Subsection 586-20(1)**

2 After “superior court matters”, insert “and matters relating to registered
3 native title bodies corporate”.

4 **35 Paragraph 586-40(2)(a)**

5 After “is pending”, insert “has jurisdiction in the matters for
6 determination in the relevant proceeding and”.

7 **36 Paragraphs 586-40(2)(b) and (c)**

8 After “Territory court”, insert “that has jurisdiction in the matters for
9 determination in the relevant proceeding”.

10 **37 Subsection 694-35(2) (note)**

11 Omit “Note”, substitute “Note 1”.

12 **38 At the end of subsection 694-35(2)**

13 Add:

14 Note 2: Under Division 586, the Federal Court’s jurisdiction in civil matters
15 relating to registered native title bodies corporate is exclusive (except
16 for the High Court). Accordingly, a reference to “court” in relation to
17 those matters is to the Federal Court (or the High Court, where
18 appropriate).

19 **39 Application**

20 Despite the amendments of Division 586 of the *Corporations*
21 *(Aboriginal and Torres Strait Islander) Act 2006* by this Part, that
22 Division, as in force immediately before the commencement of this
23 item, continues to apply in relation to:

- 24 (a) any proceeding instituted before that commencement; and
25 (b) any appeal from a decision of a court in relation to a
26 proceeding instituted before that commencement:
27 (i) whether the decision is made before or after that
28 commencement; and
29 (ii) whether the appeal is instituted before or after that
30 commencement.

EXPOSURE DRAFT

Schedule 9 Just terms compensation

Schedule 9—Just terms compensation

1 Entitlement to “just terms” compensation

(1) If, apart from this item, the application of any of the provisions of this Act in any particular case would result in a paragraph 51(xxxi) just terms, the person is entitled to such compensation, or compensation in addition to any otherwise provided by the *Native Title Act 1993*, from:

(a) if the compensation is in respect of a future act attributable to a State or a Territory—the State or Territory; or

(b) in any other case—the Commonwealth;

as is necessary to ensure that the acquisition is made on paragraph 51(xxxi) just terms.

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