



# Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 18 March 2021

David Hurley  
Governor-General

By His Excellency's Command

Ken Wyatt AM  
Minister for Indigenous Australians

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## 1 Name

This instrument is the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*.

## 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Part 1 of Schedule 4 to the <i>Native Title Legislation Amendment Act 2021</i> commences.	25 March 2021

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

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

## 3 Authority

This instrument is made under the following:

- (a) the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
- (b) the *Native Title Act 1993*.

## 4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017*

#### 1 Section 5

Insert:

*PBC Regulations* means the *Native Title (Prescribed Bodies Corporate) Regulations 1999*.

#### 2 Section 55 (heading)

Omit “**Functions**”, substitute “**Public information functions**”.

#### 3 At the end of Part 11

Add:

##### **55A Registered native title body corporate functions of the Registrar**

For the purposes of paragraph 658-1(1)(k) of the Act, the Registrar has the functions of:

- (a) assessing whether or not, in the Registrar’s opinion, a certificate prepared by a registered native title body corporate for the purposes of regulation 9 of the PBC Regulations complies with that regulation, on request by:
  - (i) a common law holder; or
  - (ii) a person who has a substantial interest in the decision to which the certificate relates; and
- (b) notifying the person who requested the Registrar to make the assessment and the registered native title body corporate of the following:
  - (i) the date of the certificate;
  - (ii) the decision to which the certificate relates;
  - (iii) the Registrar’s opinion as to whether or not the certificate complies with regulation 9 of the PBC Regulations.

Note: The Registrar’s opinion does not affect the operation of subregulations 9(6) and (7) of the PBC Regulations.

#### 4 In the appropriate position in Part 12

Insert:

### **Division 2—Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021**

#### **61 Application of amendments made by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021***

Section 55A, as inserted by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*, applies in relation to any certificate prepared under regulation 9 of the PBC Regulations after the commencement of Schedule 1 to the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*.

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***Native Title (Indigenous Land Use Agreements) Regulations 1999*****5 Before regulation 1**

Insert:

**Part 1—Preliminary****6 Regulation 5 (definition of *native title decision*)**

Omit “subregulation 8 (1)”, substitute “subregulation 3(1)”.

**7 Before regulation 6**

Insert:

**Part 2—Documents, information and forms****8 Paragraph 6(2)(e)**

Omit “document mentioned in subregulation 9 (2)”, substitute “certificate under regulation 9”.

**9 Subregulation 6(2) (note 2)**

Omit “that will affect native title, must consult the common law holders”, substitute “to enter a body corporate agreement, must consult common law holders”.

**10 Subregulation 6(2) (note 3)**

Omit “document”, substitute “certificate”.

**11 Subparagraph 7(2)(g)(i)**

After “registered”, insert “native title”.

**12 Paragraph 7(2)(g)**

Omit “document mentioned in subregulation 9 (2)”, substitute “certificate under regulation 9”.

**13 Subregulation 7(2) (note 2)**

Omit “that will affect native title, must consult the common law holders”, substitute “to enter an area agreement, must consult common law holders”.

**14 Subregulation 7(2) (note 3)**

Omit “document”, substitute “certificate”.

**15 Subparagraph 8(2)(e)(i)**

After “registered”, insert “native title”.

**16 Paragraph 8(2)(e)**

Omit “document mentioned in subregulation 9 (2)”, substitute “certificate under regulation 9”.

**17 Subregulation 8(2) (note 2)**

Omit “that will affect native title, must consult the common law holders”, substitute “to enter an alternative procedure agreement, must consult common law holders”.

**18 Subregulation 8(2) (note 3)**

Omit “document”, substitute “certificate”.

**19 After regulation 9**

Insert:

**Part 3—Application, saving and transitional provisions**

**10 Application of amendments made by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021***

The amendments of regulations 5, 6, 7 and 8 made by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021* apply in relation to any native title decision made after the commencement of Schedule 1 to that instrument.

***Native Title (Prescribed Bodies Corporate) Regulations 1999***

**20 Subregulation 3(1)**

Insert:

***chief executive officer***, of a prescribed body corporate or registered native title body corporate, means:

- (a) if the body corporate is an Aboriginal and Torres Strait Islander corporation—the person primarily and directly responsible to the directors for the general and overall management of the body corporate; or
- (b) if the body corporate is the Indigenous Land and Sea Corporation—the Chief Executive Officer of the Indigenous Land and Sea Corporation; or
- (c) in any other case—the officer having the day to day management of the affairs of the body corporate.

***high level decision*** means a decision covered by paragraph (a), (b), (c) or (d) of the definition of ***native title decision***.

***low level decision*** means a native title decision other than a high level decision.

**21 Subregulation 3(1) (paragraph (b) of the definition of *native title decision*)**

Repeal the paragraph, substitute:

- (b) to enter an indigenous land use agreement under Subdivision B, C or D of Division 3 of Part 2 of the Act or an agreement under Subdivision P (right to negotiate) of that Division; or
- (c) to allow a person who is not a common law holder, or a class of persons who are not common law holders, to become members of a prescribed body corporate; or



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- (d) to include one or more consultation processes in the constitution of a prescribed body corporate; or
  - (e) to do, or to agree to, any act that would otherwise affect the native title rights or interests of the common law holders (other than a decision to make a compensation application).

## **22 Subregulation 3(1) (paragraph (b) of the definition of *prescribed body corporate*)**

Repeal the paragraph, substitute:

- (b) the Indigenous Land and Sea Corporation continued in existence by section 191A of the *Aboriginal and Torres Strait Islander Act 2005*.

## **23 Subregulation 3(1)**

Insert:

*specified native title determination* has the meaning given by subregulation 8B(2).

*specified persons* has the meaning given by subregulations 8B(3) and (4).

*standing instructions decision* means a native title decision that is:

- (a) a low level decision; or
- (b) a decision to enter an indigenous land use agreement under Subdivision B, C or D of Division 3 of Part 2 of the Act in relation to the doing of an act by or for the benefit of the prescribed body corporate; or
- (c) a decision to enter an agreement under Subdivision P (right to negotiate) of that Division in relation to which the prescribed body corporate is the only grantee party.

## **24 Regulation 4A (heading)**

Repeal the heading, substitute:

### **4A Obtaining consent to subsequent determination in relation to a prescribed body corporate**

## **25 Paragraph 4A(a)**

Repeal the paragraph, substitute:

- (a) the prescribed body corporate must consult the common law holders for whom the prescribed body corporate holds native title rights and interests in trust or for whom it is an agent prescribed body corporate (the *initial holders*) and obtain their consent:
  - (i) if there is a process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the initial holders, must be followed in relation to the giving of the consent—in accordance with that process; or
  - (ii) if subparagraph (i) does not apply—in accordance with the process of decision-making agreed to, or adopted, by the initial holders in relation to giving the consent; and

## **26 Regulation 6 (heading)**

Omit “(Act s 56)”.

## **27 Before subregulation 6(1)**

Insert:

*Body corporate that holds native title rights and interests*

## **28 Paragraph 6(1)(b)**

Omit “money (including payments received as compensation or otherwise related to the native title rights and interests) in trust”, substitute “in trust money connected with the holding in trust of the native title rights and interests (including payments received as compensation or otherwise related to the native title rights and interests)”.

## **29 Paragraph 6(1)(c)**

After “apply”, insert “the”.

## **30 Paragraph 6(1)(d)**

Omit “regulation 8”, substitute “regulations 8, 8A and 8B”.

## **31 Paragraph 6(1)(e)**

After “relating to”, insert “the holding in trust of”.

## **32 After subregulation 6(1)**

Insert:

*Body corporate that makes compensation application in relation to extinguished area*

(1A) For the purposes of section 58 of the Act, a registered native title body corporate that:

- (a) holds native title rights and interests in trust; and
- (b) makes a compensation application on behalf of all the persons who claim to be entitled to the compensation;

has the following functions:

- (c) to consult with the persons who claim to be entitled to the compensation in accordance with regulation 8B;
- (d) to hold in trust payments received as compensation;
- (e) to invest or otherwise apply the money held in trust as directed by the persons entitled to the compensation;
- (f) to perform any other function relating to the compensation as directed by the persons entitled to the compensation.

*General*

## **33 Subregulation 6(2)**

Omit “subregulation (1), in order to perform its functions, a prescribed body corporate may, on behalf of the common law holders”, substitute “subregulation (1) or (1A), in order to perform its functions, a prescribed body corporate or registered native title body corporate may, on behalf of the common law holders or persons entitled to, or who claim to be entitled to, the compensation”.

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**34 At the end of paragraph 6(2)(d)**

Add “or persons entitled to, or who claim to be entitled to, the compensation”.

**35 Subregulation 6(2) (note)**

After “prescribed body corporate”, insert “, or registered native title body corporate,”.

**36 Regulation 7 (heading)**

Omit “(Act s 57)”.

**37 Before subregulation 7(1)**

Insert:

*Body corporate that does not hold native title rights and interests*

**38 Subregulation 7(1)**

Omit “For paragraph 57 (3) (b) of the Act, if a prescribed body corporate that does not hold native title rights and interests in trust for the common law holders of the rights and interests becomes a registered native title body corporate, the body corporate”, substitute “For the purposes of section 58 of the Act, a registered native title body corporate that is an agent prescribed body corporate in relation to native title rights and interests of common law holders”.

**39 Paragraph 7(1)(a)**

Repeal the paragraph, substitute:

- (a) to act as agent of the common law holders in respect of matters relating to the native title;

**40 Paragraph 7(1)(c)**

Omit “money (including payments received as compensation or otherwise related to the native title rights and interests) in trust”, substitute “in trust money connected with the native title rights and interests (including payments received as compensation or otherwise related to those rights and interests)”.

**41 Paragraph 7(1)(d)**

After “apply”, insert “the”.

**42 Paragraph 7(1)(e)**

Omit “regulation 8”, substitute “regulations 8, 8A and 8B”.

**43 After subregulation 7(1)**

Insert:

*Body corporate that makes compensation application in relation to extinguished area*

- (1A) For the purposes of section 58 of the Act, a registered native title body corporate that:
  - (a) does not hold native title rights and interests in trust; and
  - (b) makes a compensation application on behalf of all the persons who claim to be entitled to the compensation;

has the following functions:

- (c) to consult with the persons who claim to be entitled to the compensation in accordance with regulation 8B;
- (d) to hold in trust payments received as compensation;
- (e) to invest or otherwise apply the money held in trust as directed by the persons entitled to the compensation;
- (f) to perform any other function relating to the compensation as directed by the persons entitled to the compensation.

*General*

#### **44 Subregulation 7(2)**

Omit “subregulation (1), in order to perform its functions, a prescribed body corporate may, on behalf of the common law holders”, substitute “subregulation (1) or (1A), in order to perform its functions, a registered native title body corporate may, on behalf of the common law holders or persons entitled to, or who claim to be entitled to, the compensation”.

#### **45 At the end of paragraph 7(2)(d)**

Add “or persons entitled to, or who claim to be entitled to, the compensation”.

#### **46 Regulation 8 (heading)**

Repeal the heading, substitute:

### **8 Consultation with, and consent of, common law holders in relation to native title decisions**

#### **47 Subregulations 8(1) to (5)**

Repeal the subregulations, substitute:

*Consultation and consent required before a native title decision is made*

- (1) Before making a native title decision, a prescribed body corporate that:
  - (a) holds native title rights and interests in trust for the common law holders;  
or
  - (b) is an agent prescribed body corporate that has become a registered native title body corporate;

must consult and obtain consent in relation to the decision:

- (c) if the decision is a high level decision—in accordance with this regulation;  
or
- (d) if the decision is a low level decision—in accordance with this regulation or regulation 8A.

*No need to consult or obtain consent in relation to a standing instructions decision if covered by approval*

- (2) However, the prescribed body corporate does not need to consult and obtain consent in relation to a standing instructions decision covered by an approval under subregulation (8).

*Consultation and consent processes*

- (3) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of:
- (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the proposed native title decision would have an effect; or
  - (b) in any other case—the common law holders;
- must be followed in relation to the giving of the consent mentioned in subregulation (1), the consent must be given in accordance with that process.
- (4) If subregulation (3) does not apply, the consent must be given in accordance with the process of decision-making agreed to, or adopted, for the proposed native title decision, or for decisions of the same kind as that decision, by:
- (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the proposed native title decision would have an effect; or
  - (b) in any other case—the common law holders.

*Effect of failure to consult or obtain consent***48 At the end of regulation 8**

Add:

*Approval for standing instructions decisions*

- (8) A standing instructions decision is covered by an approval under this subregulation if:
- (a) the prescribed body corporate has the approval of the following to make decisions of that kind without needing to consult and obtain further consent:
    - (i) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the decision would have an effect;
    - (ii) in any other case—the common law holders; and
  - (b) any conditions imposed by the common law holders mentioned in subparagraph (a)(i) or (ii) on the approval have been met in relation to the decision.
- (9) The common law holders mentioned in subparagraph (8)(a)(i) or (ii) may give or revoke an approval, and impose, vary or revoke conditions on an approval:
- (a) if the approval relates to low level decisions—using a relevant consultation process in the constitution of the prescribed body corporate; or
  - (b) in any case:
    - (i) if there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of those common law holders, must be followed in relation to giving the approval—in accordance with that process; or

- (ii) if subparagraph (i) does not apply—in accordance with the process of decision-making agreed to, or adopted, by those common law holders in relation to giving the approval.

## 49 Regulations 8A and 9

Repeal the regulations, substitute:

### 8A Alternative consultation processes in relation to native title decisions

- (1) This regulation applies to the making of a low level decision if the prescribed body corporate has in its constitution one or more consultation processes to which the following have consented:
  - (a) if the native title determination in relation to the prescribed body corporate identifies classes of common law holders—the classes of common law holders on whom the decision would have an effect;
  - (b) in any other case—the common law holders.
- (2) Before making a native title decision, the prescribed body corporate must consult and obtain consent in relation to the decision using the relevant consultation process in its constitution.

### 8B Consultation and consent in relation to the making of compensation applications

- (1) Before making a compensation application, a registered native title body corporate must consult and obtain consent in relation to the making of the application in accordance with this regulation.

*Identify relevant determinations*

- (2) Any of the following is a **specified native title determination** for the compensation application:
  - (a) a native title determination in relation to an area of land or waters to which the compensation application relates;
  - (b) if, in relation to an area of land or waters to which the compensation application relates (the **relevant land or waters**), there is no native title determination—the native title determination that covers the area of land or waters whose external boundary includes the relevant land or waters.

Note 1: A native title determination is a determination that native title exists: see the definition of **native title determination** in subregulation 3(1).

Note 2: Paragraph (a) of this subsection relates to applications made by a registered native title body corporate under paragraph (1) in the item dealing with compensation applications in the table in subsection 61(1) of the Act. Paragraph (b) of this subsection relates to applications made under paragraph (1A) of that item by a registered native title body corporate on behalf of all the persons who claim to be entitled to the compensation, being the common law holders in relation to the native title determination mentioned in paragraph (b) of this subsection.

*Identify relevant common law holders*

- (3) The **specified persons** for the compensation application are the common law holders included in any specified native title determination for the compensation application.
- (4) However, if:

- (a) it has been determined that native title exists in relation to all of the land or waters to which the compensation application relates; and
- (b) a specified native title determination for the compensation application identifies classes of common law holders;

the classes of common law holders identified in the specified native title determination who possess native title rights and interests in relation to the land or waters to which the compensation application relates are *specified persons* for the compensation application instead of all the common law holders included in the specified native title determination.

*Identify and follow appropriate consultation process*

- (5) If there is a particular process of decision-making that, under the Aboriginal or Torres Strait Islander traditional laws and customs of the specified persons, must be followed in relation to the giving of the consent, the consent must be given in accordance with that process.
- (6) If subregulation (5) does not apply, the consent must be given in accordance with the process of decision-making agreed to, or adopted, for the compensation application, or for compensation applications of the same kind, by the specified persons.

## **9 Certificate in relation to consultation and consent**

- (1) As soon as practicable after:
  - (a) a native title decision is made by a prescribed body corporate that:
    - (i) holds native title rights and interests in trust for the common law holders; or
    - (ii) is an agent prescribed body corporate that has become a registered native title body corporate; or
  - (b) a registered native title body corporate decides to make a compensation application;

the body corporate must prepare a certificate in writing.
- (2) The certificate must certify that:
  - (a) for a high level decision other than a standing instructions decision—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8; or
  - (b) for a high level decision that is a standing instructions decision:
    - (i) if the decision is covered by an approval under subregulation 8(8)—the decision is of that kind; or
    - (ii) in any case—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8; or
  - (c) for a low level decision:
    - (i) if the decision is covered by an approval under subregulation 8(8)—the decision is of that kind; or
    - (ii) in any case—the body corporate has consulted and obtained consent in relation to the decision in accordance with regulation 8 or 8A; or
  - (d) for a decision to make a compensation application—the body corporate has consulted and obtained consent in relation to the making of the compensation application in accordance with regulation 8B.

Note: The Registrar of Aboriginal and Torres Strait Islander Corporations has functions in relation to certificates prepared under this regulation: see section 55A of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017*.

- (3) The certificate must include the following:
  - (a) the date of the certificate;
  - (b) details of the process of making the decision;
  - (c) details (including names) of the persons who participated in the process of making the decision;
  - (d) if the certificate is of a kind mentioned in subparagraph (2)(b)(i) or (c)(i)—details of the process of approval under subregulation 8(8);
  - (e) if paragraph (d) does not apply—details of the consultation and consent process.
- (4) The certificate must be:
  - (a) executed by the body corporate in accordance with subsection 99-5(1) or (2) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*; or
  - (b) signed by the chief executive officer of the body corporate.
- (5) The body corporate may collect (within the meaning of the *Privacy Act 1988*) personal information (within the meaning of that Act) about common law holders or persons who claim to be entitled to compensation for the purposes of preparing a certificate.
- (6) A certificate prepared in accordance with this regulation in relation to a native title decision is prima facie evidence that the body corporate has consulted and obtained consent in relation to the decision as required by regulation 8.
- (7) A certificate prepared in accordance with this regulation in relation to a decision to make a compensation application is prima facie evidence that the body corporate has consulted and obtained consent in relation to the making of the compensation application as required by regulation 8B.

## 50 Regulation 10 (heading)

Omit “**certain documents**”, substitute “**certificates**”.

## 51 Subregulations 10(1) and (2)

Repeal the subregulations, substitute:

- (1) If a prescribed body corporate that:
  - (a) holds native title rights and interests in trust for the common law holders; or
  - (b) is an agent prescribed body corporate that has become a registered native title body corporate;makes a native title decision, the body corporate must give a copy of a certificate under regulation 9 to any person who is entitled to it under subregulation (3).
- (2) If a registered native title body corporate decides to make a compensation application, the body corporate must give a copy of a certificate under regulation 9 to any person who is entitled to it under subregulation (3).

## 52 Subregulation 10(3)

Omit “document if”, substitute “certificate if”.

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**53 Paragraph 10(3)(a)**

Repeal the paragraph, substitute:

- (a) is a common law holder or has a substantial interest in the decision to which the certificate relates; and

**54 Paragraph 10(3)(b)**

Omit “prescribed body corporate for a copy of the document”, substitute “body corporate for a copy of the certificate”.

**55 At the end of regulation 10**

Add:

- (4) For the purposes of the *Privacy Act 1988* and without limiting subregulation (3), the Registrar of Aboriginal and Torres Strait Islander Corporations is entitled under subregulation (3) to a copy of a certificate for the purposes of the Registrar performing the functions mentioned in section 55A of the *Corporations (Aboriginal and Torres Strait Islander) Regulations 2017* if the Registrar makes a request in writing to the body corporate for a copy of the certificate.

**56 Regulation 11**

After “Indigenous Land” (wherever occurring), insert “and Sea”.

**57 Subregulation 13(2) (note)**

Omit “regulation 7”, substitute “subregulation 7(1)”.

**58 Paragraphs 14(1)(b) and 17(1)(b)**

After “Indigenous Land” (wherever occurring), insert “and Sea”.

**59 At the end of the instrument**

Add:

**Part 5—Application, saving and transitional provisions****Division 1—Application of amendments made by the Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021****27 Application of amendments made by the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021****Definitions*

- (1) In this regulation:

*amending regulations* means the *Registered Native Title Bodies Corporate Legislation Amendment Regulations 2021*.

*commencement time* means the commencement of Schedule 1 to the amending regulations.

*Consent for subsequent determinations of native title*

- (2) The amendments of regulation 4A made by the amending regulations apply in relation to any consent obtained after the commencement time.

*Functions of bodies corporate*

- (3) The amendments of regulation 6 made by the amending regulations apply in relation to any prescribed body corporate, or registered native title body corporate, that holds native title rights and interests in trust after the commencement time, whether determined to hold the rights and interests in trust before or after the commencement time.
- (4) The amendments of regulation 7 made by the amending regulations apply in relation to any registered native title body corporate after the commencement time, whether it became a registered body corporate before or after the commencement time.

*Consent for native title decisions and compensation applications*

- (5) The amendments of regulations 3, 8 and 10 made by the amending regulations (other than the amendment of the definition of ***prescribed body corporate*** in regulation 3), and regulations 8A, 8B and 9 as inserted by the amending regulations, apply in relation to:
- (a) any native title decision made after the commencement time; and
  - (b) any compensation application made after the commencement time.