



Native Title Legislation Amendment Act 2021

No. 6, 2021

**An Act to amend the law relating to native title, and
for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 6, 2021

An Act to amend the law relating to native title, and for related purposes

[Assented to 16 February 2021]

The Parliament of Australia enacts:

1 Short title

This Act is the *Native Title Legislation Amendment Act 2021*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with
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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. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 16 February 2021 |
| 2. Schedule 1, Part 1 | A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 25 March 2021 (F2021N00045) |
| 3. Schedule 1, Parts 2 and 3 | The day after the end of the period of 6 months beginning on the day the provisions covered by table item 2 commence. | 25 September 2021 |
| 4. Schedule 2 | At the same time as the provisions covered by table item 2. | 25 March 2021 |
| 5. Schedule 3, Part 1, Division 1 | At the same time as the provisions covered by table item 2. | 25 March 2021 |
| 6. Schedule 3, Part 1, Division 2 | Immediately after the commencement of the provisions covered by table item 9. | 25 March 2021 |
| 7. Schedule 3, Part 2 | At the same time as the provisions covered by table item 2. | 25 March 2021 |
| 8. Schedule 4, Part 1 | At the same time as the provisions covered by table item 2. | 25 March 2021 |
| 9. Schedule 4, Part 2 | Immediately after the commencement of the provisions covered by table item 2. | 25 March 2021 |
| 10. Schedules 5, 6, 7 and 8 | At the same time as the provisions covered by table item 2. | 25 March 2021 |
| 11. Schedule 9 | The day after this Act receives the Royal Assent. | 17 February 2021 |
| Note: | This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act. | |

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

3 Schedules

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

Schedule 1—Role of the applicant

Part 1—Authorisation

Native Title Act 1993

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

Insert:

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

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

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

3 Subsection 24CI(1)

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

4 Paragraph 24CK(2)(c)

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

5 Paragraph 62(1)(a)

Repeal the paragraph, substitute:

- (a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (1A); and

6 After subsection 62(1)

Insert:

- (1A) For the purposes of paragraph (1)(a), the matters are:
 - (a) that the applicant believes that the native title rights and interests claimed by the native title claim group have not been extinguished in relation to any part of the area covered by the application; and

- (b) that the applicant believes that none of the area covered by the application is also covered by an approved determination of native title; and
- (c) that the applicant believes that all of the statements made in the application are true; and
- (d) that the applicant is authorised by all the persons in the native title claim group to make the application and to deal with matters arising in relation to it; and
- (e) the details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it; and
- (f) if there are no conditions under section 251BA on the authority that relate to the making of the application—that there are no such conditions; and
- (g) if there are any conditions under section 251BA on the authority that relate to the making of the application:
 - (i) that the conditions have been satisfied; and
 - (ii) how the conditions have been satisfied.

Note: Section 251B states what it means for the applicant to be *authorised* by all the persons in the native title claim group.

7 After paragraph 62(2)(h)

Insert:

- ; (i) if there are any conditions under section 251BA on the authority of the applicant to make the application and to deal with matters arising in relation to it—details of the conditions.

8 Paragraph 62(3)(a)

Repeal the paragraph, substitute:

- (a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (4); and

9 At the end of section 62

Add:

- (4) For the purposes of paragraph (3)(a), the matters are:
 - (a) that the applicant believes that native title rights and interests exist or have existed in relation to the area; and

- (b) that the applicant believes that all of the statements made in the application are true; and
- (c) that the applicant is authorised by all the persons in the compensation claim group to make the application and to deal with matters arising in relation to it; and
- (d) the details of the process of decision-making complied with in authorising the applicant to make the application and to deal with matters arising in relation to it; and
- (e) if there are no conditions under section 251BA on the authority that relate to the making of the application—that there are no such conditions; and
- (f) if there are any conditions under section 251BA on the authority that relate to the making of the application:
 - (i) that the conditions have been satisfied; and
 - (ii) how the conditions have been satisfied.

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

10 Section 62A

Before “In the”, insert “(1)”.

11 At the end of section 62A

Add:

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

12 After section 62A

Insert:

62B General law duties

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

13 After paragraph 186(1)(g)

Insert:

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

14 Paragraph 190C(4)(b)

Repeal the paragraph, substitute:

(b) the requirements mentioned in subsection (4AA) are met.

15 Subsection 190C(4) (note)

Repeal the note.

16 After subsection 190C(4)

Insert:

(4AA) For the purposes of paragraph (4)(b), the requirements are:

(a) the applicant is a member of the native title claim group and is authorised to make the application, and deal with matters arising in relation to it, by all the other persons in the native title claim group; and

(b) either:

(i) there are no conditions under section 251BA on the authority that relate to the making of the application; or

(ii) any conditions under section 251BA on the authority that relate to the making of the application have been satisfied.

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

17 Paragraph 190C(5)(a)

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

18 Paragraph 190C(5)(b)

Omit “it has been met”, substitute “they have been met (other than in relation to subparagraph (4AA)(b)(i))”.

19 After paragraph 203BE(2)(a)

Insert:

Schedule 1 Role of the applicant

Part 1 Authorisation

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

20 Paragraph 203BE(4)(a)

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

21 After paragraph 203BE(5)(b)

Insert:

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

22 Paragraph 203BE(6)(a)

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

23 After section 251B

Insert:

251BA Conditions on authority

- (1) The persons who authorise:
- (a) the making of an indigenous land use agreement under section 251A; or
 - (b) a person or persons to make a native title determination application or a compensation application, and to deal with matters arising in relation to it, under section 251B; may impose conditions on the authority.
- (2) The conditions must be imposed:
- (a) where there is a process of decision-making that, under the traditional laws and customs of the persons, must be complied with in relation to authorising things of that kind—in accordance with that process; or
 - (b) where there is no such process—in accordance with a process of decision-making agreed to and adopted, by the persons, in relation to authorising things of that kind.

- Note: Consequences of a failure to comply with a condition may include:
- (a) replacement of the applicant (see subparagraph 66B(1)(a)(iv)); and
 - (b) a Federal Court order (see section 84D).

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

24 Application and transitional provisions

Area agreements

- (1) The amendments of Subdivision C of Division 3 of Part 2 and subsections 203BE(5) and (6) of the *Native Title Act 1993* made by this Part apply in relation to any agreement in respect of which an application for registration is made after the commencement of this item if the authorisation of the making of the agreement occurs after that commencement.

Claimant applications and compensation applications

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

Conditions on authority

- (3) The amendments of sections 62A and 186 of the *Native Title Act 1993* made by this Part apply in relation to any authority given after the commencement of this item.
- (4) Section 251BA of the *Native Title Act 1993*, as inserted by this Part, applies in relation to any authority given after the commencement of this item.

Part 2—Applicant decision making

Native Title Act 1993

25 Subsection 24CD(1)

Omit “persons in”, substitute “members of”.

26 Paragraph 24CD(2)(a)

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

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

27 After subsection 24CD(2)

Insert:

- (2A) The requirement that all registered native title claimants in relation to land or waters in the area be parties to the agreement is satisfied if, for each of those registered native title claimants:
 - (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 authority 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.
- (2B) 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 (2A)(a). A failure to comply with this subsection does not invalidate the agreement.

28 Subsection 24CD(7)

Omit “person in”, substitute “member of”.

29 Subparagraph 24CG(3)(b)(ii) (note)

Repeal the note.

30 At the end of subsection 24CG(3)

Add:

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

31 Subsection 24CL(2)

Omit “persons”.

32 Paragraph 24CL(2)(a)

Omit “a registered native title claimant or”.

33 After paragraph 24CL(2)(a)

Insert:

- (aa) any applicant who is, at the end of the notice period, a registered native title claimant in relation to any of the land or waters in the area covered by the agreement; and

34 Paragraph 24CL(2)(b)

Omit “any person”, substitute “any applicant”.

35 After subsection 24CL(2)

Insert:

- (2A) The requirement that an applicant who is or becomes 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 authority 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.
- (2B) 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 (2A)(a). A failure to comply with this subsection does not invalidate the agreement.

36 Subsection 24DE(1)

Omit “persons in”, substitute “members of”.

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

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

38 At the end of section 24DE

Add:

- (5) A registered native title claimant is taken to be a party to the agreement 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 authority 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.
- (6) 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 (5)(a). A failure to comply with this subsection does not invalidate the agreement.

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

Repeal the note, substitute:

Note: A registered native title claimant is a person or group of persons whose name or names appear on the Register of Native Title Claims as the applicant in relation to a claim to hold native title: see the definition of *registered native title claimant* in section 253.

40 Paragraph 30(1)(a)

Omit “person”, substitute “applicant”.

41 Subsection 30(2)

Omit “A person ceases to be a native title party if the person”, substitute “A registered native title claimant ceases to be a native title party if the registered native title claimant”.

42 Subsection 30(4)

Repeal the subsection, substitute:

Replacing a native title party

- (4) If:
- (a) an applicant (the **old applicant**) in relation to a claimant application is a native title party; and
 - (b) the old applicant is replaced as the applicant in relation to the claimant application by another applicant (the **new applicant**); and
 - (c) the new applicant becomes a registered native title claimant; the new applicant also replaces the old applicant as the native title party.

43 After subsection 31(1B)

Insert:

Registered native title claimants

- (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 authority 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). A failure to comply with this subsection does not invalidate the agreement.

44 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.
- (3) The authorised persons who do the thing must, within a reasonable period, notify the other authorised persons that the thing has been done. A failure to comply with this subsection does not invalidate the thing done.

Default rule may be displaced

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

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

Rule covers applicant acting in any capacity

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

Deceased authorised persons

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

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

45 After subsection 87(1)

Insert:

When a registered native title claimant is taken to be a party to the agreement

- (1AA) The requirements that a party to the proceedings that is a registered native title claimant be a party to the agreement and sign the terms of the agreement are satisfied if:
- (a) a majority of the persons who comprise the registered native title claimant are parties to the agreement and sign the terms, unless paragraph (b) applies; or
 - (b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement and sign the terms—those persons are parties to the agreement and sign the terms.
- (1AB) 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 and signing the terms, as mentioned in paragraph (1AA)(a). A failure to comply with this subsection does not invalidate the agreement or any signature.

46 Paragraph 87A(1)(c)

Omit “following persons”, substitute “following”.

47 After subsection 87A(1)

Insert:

When a registered native title claimant is taken to be a party to the agreement

- (1A) The requirements that a registered native title claimant be a party to the agreement and sign the terms of the proposed determination are satisfied if:
- (a) a majority of the persons who comprise the registered native title claimant are parties to the agreement and sign the terms, unless paragraph (b) applies; or
 - (b) if conditions under section 251BA on the authority of the registered native title claimant provide for the persons who must become a party to the agreement and sign the terms—those persons are parties to the agreement and sign the terms.
- (1B) 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 and signing the terms, as mentioned in paragraph (1A)(a). A failure to comply with this subsection does not invalidate the agreement or any signature.

48 Paragraphs 190A(2)(h) and 190E(8)(h)

Omit “person who is a”.

49 Subsection 251A(1)

Omit “(1)”.

50 Subsection 251A(2)

Repeal the subsection.

51 Subsection 251BA(2) (note)

Omit “Note”, substitute “Note 1”.

52 At the end of subsection 251BA(2)

Add:

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

53 Section 253 (paragraph (a) of the definition of *authorise*)

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

54 Section 253 (definition of *registered native title claimant*)

After “a person or”, insert “group of”.

55 Application

Indigenous land use agreements

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

Registered native title claimants

- (2) The amendments of sections 29 and 30 and the definition of ***registered native title claimant*** in section 253 of the *Native Title Act 1993* made by this Part apply in relation to any thing done after the commencement of this item by or in relation to any registered native title claimant or native title party:
- (a) whether the name or names of the registered native title claimant first appeared in an entry on the Register of Native Title Claims before or after that commencement; and
 - (b) whether the native title party became a native title party before or after that commencement.

Section 31 agreements

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

General rule

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

Consent determinations

- (5) Subsections 87(1AA) and (1AB) of the *Native Title Act 1993*, as inserted by this Part, apply in relation to any agreement the terms of which are filed with the Federal Court after the commencement of this item.
- (6) The amendments of section 87A of the *Native Title Act 1993* made by this Part apply in relation to any proposed determination of native title a copy of the terms of which is filed with the Federal Court after the commencement of this item.

Registration of claims

- (7) The amendments of subsections 190A(2) and 190E(8) of the *Native Title Act 1993* made by this Part apply in relation to any claim, if a notice mentioned in those subsections is given after the commencement of this item.

Part 3—Replacement of applicant

Native Title Act 1993

56 Subsection 66B(1) (heading)

Repeal the heading, substitute:

Replacement in case of consent or absence of authority

57 Subparagraph 66B(1)(a)(ii)

Repeal the subparagraph.

58 Subsection 66B(2) (heading)

Repeal the heading.

59 After subsection 66B(2)

Insert:

Replacement in case of death or incapacity

- (2A) One or more members (the ***applying members***) of the native title claim group in relation to a claimant application, or of the compensation claim group in relation to a compensation application, may apply to the Federal Court for an order under subsection (2B) if a person (the ***ceasing member***) who is, either alone or jointly with one or more other persons (the ***continuing members***), the current applicant for the claimant application or compensation application:
- (a) dies; or
 - (b) is unable to act as an applicant because of physical or mental incapacity.
- (2B) The Court may order that the following persons replace the current applicant for the application:
- (a) if:
 - (i) a member of the claim group is authorised by the claim group to make the application and to deal with matters arising in relation to it because of the death or incapacity of the ceasing member; and

- (ii) the authority of any continuing members continues despite the death or incapacity of the ceasing member; that member and any continuing members;
- (b) unless the authority of any continuing members ceases on the death or incapacity of the ceasing member—the continuing members;
- (c) if the applying members are authorised by the claim group to make the application and to deal with matters arising in relation to it—the applying members.

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

Replacement by more than one person

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

60 Subsection 66B(3)

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

61 Section 253 (definition of *applicant*)

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

62 Application

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

Schedule 2—Indigenous land use agreements

Part 1—Body corporate agreements and area agreements

Native Title Act 1993

1 Section 24BC

Before “The”, insert “(1)”.

2 At the end of section 24BC

Add:

(2) If:

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

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

3 Subsection 24CH(1)

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

4 Application

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

Part 2—Deregistration and amendment

Native Title Act 1993

5 After subsection 24EB(2)

Insert:

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

6 At the end of section 24EBA

Add:

Removal of agreement from the Register

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

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

Add:

24ED Amended agreements

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

- (d) update a description identifying a party to the agreement, including where a party has assigned or otherwise transferred rights or liabilities under the agreement; or
 - (e) do a thing specified in a legislative instrument made under subsection (3).
- (2) If the details of an agreement are entered on the Register of Indigenous Land Use Agreements, the agreement has effect, for the purposes of this Act, as if it did not include any amendments other than those that have effect because of subsection (1).

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

Instrument specifying a thing

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

8 At the end of section 199B

Add:

Amendments to agreements

- (5) If an amendment of an agreement changes any detail of the agreement that is entered in the Register, the Registrar must update the Register to reflect the change.

Note: Only certain amendments to agreements have effect for the purposes of this Act: see section 24ED.

9 Subsection 199C(1) (note)

Omit “Note”, substitute “Note 1”.

10 At the end of subsection 199C(1)

Add:

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

11 Application

Section 24ED and subsection 199B(5) of the *Native Title Act 1993*, as inserted by this Part, apply in relation to any agreement, the details of which are on the Register of Indigenous Land Use Agreements after the commencement of this item.

Schedule 3—Historical extinguishment

Part 1—Park areas

Division 1—Amendments commencing on Proclamation

Native Title Act 1993

1 At the end of subsection 13(5)

Add:

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

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

2 At the end of Division 4 of Part 2

Add:

47C National parks etc. covered by native title applications

When section applies

- (1) This section applies if:
 - (a) a claimant application or a revised native title determination application is made in relation to an area that is, or is part of, a park area (see subsection (3)); and
 - (b) the operation of this section in relation to an area (the **agreement area**) that is in an onshore place, and comprises the whole or a part of the park area, has been agreed to in writing by:
 - (i) any registered native title body corporate concerned or the applicant for any native title claim group concerned; and
 - (ii) whichever of the Commonwealth, the State or the Territory by or under whose law the park area was set aside, or the interest over the park area was granted or vested, as mentioned in subsection (3); and

Schedule 3 Historical extinguishment

Part 1 Park areas

- (c) the agreement area is:
 - (i) Crown land; or
 - (ii) covered by a freehold estate held by the Crown, or a statutory authority of the Crown, in any of its capacities; and
 - (d) none of sections 47, 47A and 47B applies in relation to the agreement area.
- (2) For the purposes of paragraph (1)(c), it is immaterial whether the land is:
- (a) subject to a lease or licence; or
 - (b) covered by a dedication, reservation, proclamation, condition or declaration made or conferred by the Commonwealth, a State or a Territory; or
 - (c) covered by legislation of the Commonwealth, a State or a Territory under which the whole or a part of the land is to be used for a public purpose or public purposes; or
 - (d) held on trust for the benefit of another person; or
 - (e) subject to native title.

Meaning of park area

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

Public works

- (4) An agreement referred to in paragraph (1)(b) may include a statement by the Commonwealth, or the State or Territory concerned, that it agrees that the extinguishing effect of any of its relevant public works (see subsection (11)) in the agreement area is to be disregarded.

- (5) If the agreement area contains one or more relevant public works, the application mentioned in paragraph (1)(a) may also be the subject of an agreement in writing between:
- (a) any registered native title body corporate concerned or the applicant for any native title claim group concerned; and
 - (b) the Commonwealth, the State or the Territory to which the relevant public work relates (see subsection (11));
- that any extinguishment of native title by the construction or establishment of the relevant public work is to be disregarded.

Notice and time for comment

- (6) Before making an agreement for the purposes of paragraph (1)(b) or subsection (5), 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.

- (7) The agreement must not be made before the end of the period for comment.

Prior extinguishment to be disregarded

- (8) 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 (3);
 - (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 (4); or
 - (ii) there is an agreement under subsection (5);

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.

Effect of determination

- (9) If the determination on the application is that native title rights and interests exist in the agreement area:
- (a) the determination does not affect:
 - (i) the validity of the setting aside, granting or vesting; or
 - (ii) the validity of the creation of any other prior interest in relation to the agreement area; or
 - (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
 - (iv) any existing public access to the agreement area; and
 - (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.

Exclusion of Crown ownership of natural resources

- (10) 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.

Definitions

- (11) In this section:

Crown land means:

- (a) land that has not been alienated from the Crown in right of the Commonwealth, a State or a Territory by a grant of an estate in fee simple; or
- (b) land that has been so alienated, but has been resumed by, or has reverted to or been acquired by, the Crown.

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

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

3 Subsection 61A(4) (heading)

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

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

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

5 After paragraph 62(1)(c)

Insert:

- ; and (d) if the operation of section 47C (national parks etc. covered by native title applications) has been agreed to in writing in accordance with paragraph 47C(1)(b) in relation to the whole or any part of the area covered by the application—must be accompanied by a copy of the agreement, and if there is an agreement under subsection 47C(5), that agreement.

6 After paragraph 63(b)

Insert:

- (ba) any copy of an agreement that accompanies the application under paragraph 62(1)(d) or subsection 62(7); and

7 Subsection 64(2) (heading)

Omit “Exception”, substitute “Exceptions”.

8 After subsection 64(2)

Insert:

- (2A) In addition, subsection (1) does not prevent an amendment that results in the inclusion of any area of land or waters that was not covered by the original application, if the operation of section 47C has been agreed to in writing in accordance with paragraph 47C(1)(b) in relation to the area after the making of the original application.

9 At the end of subsection 66A(1)

Add:

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

10 Before subsection 66A(1B)

Insert:

Notification day

11 Subsection 66A(1B)

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

12 Paragraph 82(3)(a)

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

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

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

14 After subparagraph 190A(6A)(d)(ii)

Insert:

- (ia) give effect to the operation of section 47C in relation to the application as mentioned in subsection 64(2A);

15 Paragraph 190B(9)(c)

Omit “or 47B(2)”, substitute “, 47B(2) or 47C(8)”.

16 Application

- (1) The amendments made by this Part apply in relation to any claimant application or revised native title determination application:
 - (a) that is made after the commencement of this item; or
-

(b) that was made before that commencement, but has not been determined as at that commencement.

Note: This subitem applies in relation to amendments made by Divisions 1 and 2 of this Part.

- (2) To avoid doubt, an application mentioned in paragraph (1)(b) may be amended to state that the operation of section 47C of the *Native Title Act 1993* has been agreed in relation to the whole or any part of the area covered by the application.

Division 2—Amendments commencing immediately after Part 2 of Schedule 4

Native Title Act 1993

17 At the end of section 62

Add:

Revised native title determination applications

- (7) A revised native title determination application that covers an area in relation to which the operation of section 47C (national parks etc. covered by native title applications) has been agreed to in writing in accordance with paragraph 47C(1)(b) must be accompanied by a copy of the agreement and, if there is an agreement under subsection 47C(5), that agreement.

Part 2—Pastoral leases held by native title claimants

Native Title Act 1993

18 Subparagraph 47(1)(b)(iii)

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

19 Application

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

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

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

Part 1—Amendments commencing on Proclamation

Native Title Act 1993

1 Subsection 13(2) (note)

Repeal the note, substitute:

Note: The compensation application must contain the information that would be required for a native title determination application for the area: see section 62.

2 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;

3 Paragraph 58(c)

Omit “for acts affecting the native title”.

4 Paragraph 58(d)

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

5 At the end of paragraph 58(f)

Add “, or compensation under this Act”.

6 Subsection 61(1) (table item dealing with native title determination application, column headed “Persons who may make application”)

Omit “(the native title claim group)”, substitute “(the *native title claim group*)”.

7 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 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.

8 Subsection 62(3) (heading)

Repeal the heading, substitute:

Compensation applications—compensation claim group

9 Paragraph 63(b)

Omit “or (3)(a)”, substitute “, (3)(a) or (5)(a)”.

10 Application and transitional

- (1) The amendments of section 58 of the *Native Title Act 1993* made by this Schedule do not affect the continuity of regulations that were made for the purposes of that section and were in force immediately before the commencement of this item.
- (2) The amendments of sections 61, 62 and 63 of the *Native Title Act 1993* made by this Schedule apply in relation to any application made after the commencement of this item.

Note: This item applies in relation to amendments made by Parts 1 and 2 of this Schedule.

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

Part 2 Amendments commencing immediately after Part 1 of Schedule 1

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

Native Title Act 1993

11 At the end of section 62

Add:

Compensation applications—registered native title body corporate

- (5) In the case of a compensation application by a registered native title body corporate, the application:
 - (a) must be accompanied by an affidavit sworn by the applicant stating the matters mentioned in subsection (6); and
 - (b) must contain the details that would be required to be specified by paragraph (1)(b), and may contain the details that would be permitted under paragraph (1)(c), if the compensation application were instead a native title determination application in respect of the native title involved in the compensation application.
- (6) For the purposes of paragraph (5)(a), the matters are:
 - (a) that the applicant believes that native title rights and interests exist or have existed in relation to the area; and
 - (b) that the applicant believes that all of the statements made in the application are true; and
 - (c) either:
 - (i) that the applicant holds, or is an agent prescribed body corporate in relation to, the native title rights and interests; or
 - (ii) that the area is within the external boundary of the area of land or waters covered by an approved determination of native title under which the registered native title body corporate holds, or is an agent prescribed body corporate in relation to, native title rights and interests.

Schedule 5—Intervention and consent determinations

Part 1—Intervention in proceedings

Native Title Act 1993

1 Subsection 84A(1)

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

2 Paragraph 87(1)(a)

Omit “between the parties”.

3 After paragraph 87(1)(a)

Insert:

- (aa) all of the following are parties to the agreement:
 - (i) the parties to the proceedings;
 - (ii) the Commonwealth Minister, if the Commonwealth Minister is intervening in the proceedings at the time the agreement is made; and

4 Paragraph 87(1)(b)

After “the parties”, insert “to the proceedings and, if subparagraph (aa)(ii) applies, the Commonwealth Minister”.

5 At the end of section 87

Add:

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

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

Repeal the subparagraph, substitute:

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

7 At the end of section 87A

Add:

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

8 Application

High Court proceedings

- (1) The amendment of section 84A of the *Native Title Act 1993* made by this Part applies in relation to:
 - (a) any proceeding commenced after the commencement of this item; and
 - (b) any proceeding commenced before the commencement of this item, if the proceeding has not been finally determined by the commencement of this item.

Consent determinations

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

Agreed statements of fact

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

Part 2—Consent determinations

Native Title Act 1993

9 Paragraph 87A(1)(b)

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

10 At the end of subsection 87A(1)

Add:

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

11 Application

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

Schedule 6—Other procedural changes

Part 1—Objections

Native Title Act 1993

1 Paragraph 24MD(6B)(f)

Repeal the paragraph, substitute:

- (f) if:
- (i) a claimant or body corporate objects, as mentioned in paragraph (d), to the doing of the act; and
 - (ii) 8 months after the notification mentioned in paragraph (c), the objection has not been withdrawn;
- the Commonwealth, the State or the Territory must ensure that the objection is heard by an independent person or body; and

2 Subsection 141(2)

Repeal the subsection, substitute:

Right to negotiate applications

- (2) The parties to an inquiry in relation to a right to negotiate application are the following:
- (a) the Government party;
 - (b) the grantee parties;
 - (c) for an expedited procedure objection application—any native title party that has lodged an objection in accordance with subsection 32(3) and has not withdrawn the objection;
 - (d) for a future act determination application—the native title parties.
- (2A) However, if:
- (a) a native title party mentioned in paragraph (2)(c) (the *original party*) is, at the time the objection is lodged, a registered native title claimant in relation to land or waters affected by the act to which the expedited procedure objection application relates; and
 - (b) the original party ceases to be a native title party; and

- (c) a body corporate (the *replacement party*) becomes a registered native title body corporate in relation to the land or waters;
the replacement party becomes a party to the inquiry in place of the original party.

3 Application

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

Part 2—Section 31 agreements

Native Title Act 1993

4 At the end of subsection 25(2)

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

5 After subsection 31(1)

Insert:

Government party does not need to participate in negotiations

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

(1B) However, the Government party must be a party to the agreement.

6 Subsection 36(2)

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

7 At the end of subsection 41A(1)

Add:

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

8 At the end of section 41A

Add:

(4) The arbitral body must give a copy of any agreement or advice the arbitral body receives under subsection (1) of this section to the Registrar.

9 After section 41A

Insert:

41B Access to information about agreements

Registrar must keep records

- (1) The Registrar must keep a record in relation to each agreement of the kind mentioned in paragraph 31(1)(b) that the Registrar receives under subsection 41A(4).
- (2) The record must include the following information in relation to the agreement (to the extent known to the Registrar):
 - (a) a description of the area of land or waters to which the agreement relates;
 - (b) the name of each party to the agreement and the address at which the party can be contacted;
 - (c) if the agreement specifies the period during which it will operate—that period;
 - (d) whether or not there is any other written agreement made between some or all of the parties to the agreement in connection with the doing of the act to which the agreement relates.

Parties must notify Registrar of changes

- (3) A party to the agreement must notify the Registrar in writing of any change to the information mentioned in subsection (2).
- (4) The Registrar must update the records to reflect any changes notified under subsection (3).

Information from records may be made available

- (5) The Registrar must make the information mentioned in subsection (2) available to a person on request.
- (6) However, if a party to the agreement notifies the Registrar in writing that the party does not wish some or all of the information to be made available under subsection (5), the Registrar must not make available the information concerned.

- (7) If a party to the agreement notifies the Registrar in accordance with subsection (6), the party must notify each other party to the agreement.

Expired agreements

- (8) The Registrar does not need to keep a record, or provide information, in relation to an agreement that has expired.

10 After section 98

Insert:

98AA Powers of Registrar—records of section 31 agreements

The Registrar has the powers set out in section 41B in relation to records of agreements of the kind mentioned in paragraph 31(1)(b).

11 Subparagraph 215(2)(aa)(i)

After “section”, insert “41B or”.

12 Application

- (1) Subsection 31(1A) of the *Native Title Act 1993*, as inserted by this Part, applies in relation to negotiations commencing before or after the commencement of this item.
- (2) Subsection 31(1B) and sections 41B and 98AA of the *Native Title Act 1993*, as inserted by this Part, apply in relation to any agreement of the kind mentioned in paragraph 31(1)(b) of that Act made after the commencement of this item.
- (3) The amendments of section 41A of the *Native Title Act 1993* made by this Part apply in relation to any agreement of the kind mentioned in paragraph 31(1)(b) of that Act made after the commencement of this item.
- (4) The amendment of section 215 of the *Native Title Act 1993* made by this Part does not affect the continuity of regulations that were made for the purposes of that section and were in force immediately before the commencement of this item.

Part 3—Evaluation

Native Title Act 1993

13 After section 209

Insert:

209A Evaluation of amendments made by the *Native Title Legislation Amendment Act 2021*

- (1) Before the end of the period of 5 years after the commencement of Schedule 6 to the *Native Title Legislation Amendment Act 2021*, the Commonwealth Minister must cause to be conducted an evaluation of the operation of the amendments made by that Act.
- (2) The Commonwealth Minister must cause to be prepared a report of an evaluation under subsection (1).
- (3) The Commonwealth Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Schedule 7—National Native Title Tribunal

Native Title Act 1993

1 After section 60

Insert:

60AAA Assistance in relation to registered native title bodies corporate

- (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:
 - (a) the registered native title body corporate and another registered native title body corporate; or
 - (b) the registered native title body corporate and one or more common law holders; or
 - (c) common law holders.
- (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:
 - (a) the common law holder and the registered native title body corporate; or
 - (b) the common law holder, the registered native title body corporate and one or more other common law holders.
- (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).
- (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.

2 Paragraph 108(1B)(b)

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

3 After section 115

Insert:

115A Acting appointments

President

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

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

Deputy President

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

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

Non-presidential members

- (3) The Commonwealth Minister may, by written instrument, appoint a person to act as a member other than the President or a Deputy President:
- (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
 - (b) during any period, or during all periods, when a member other than the President or a Deputy President:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

Qualifications

- (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.

Terms and conditions

- (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.

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

Omit “assistance in making or negotiating agreements”, substitute “any assistance”.

Schedule 8—Registered native title bodies corporate

Part 1—Requirements for constitutions

Corporations (Aboriginal and Torres Strait Islander) Act 2006

1 Section 57-5 (table item 1A)

After “Resolution of”, insert “internal”.

2 Section 57-5 (table item 1)

Repeal the item, substitute:

| | | |
|----|---|---------------------|
| 1B | Resolution of disputes with persons who are or who claim to be common law holders | subsection 66-1(3B) |
|----|---|---------------------|

Chapter 4—Members and observers

| | | |
|----|---|----------------|
| 1C | Eligibility requirements for membership of registered native title body corporate | section 141-25 |
|----|---|----------------|

| | | |
|---|------------------------------------|---------------|
| 1 | How does a person become a member? | section 144-1 |
|---|------------------------------------|---------------|

3 Section 57-5 (table item 12, column headed “Subject of provision”)

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

4 Section 57-5 (after table item 12)

Insert:

| | | |
|-----|---|----------------|
| 12A | Member of registered native title body corporate not eligible for membership etc. | section 150-22 |
|-----|---|----------------|

5 Paragraph 63-1(c)

Repeal the paragraph, substitute:

- (c) the rules (if any) in the corporation’s constitution providing for the resolution of disputes between the corporation and persons who are or who claim to be common law holders of native title;

- (d) the other rules dealing with the internal governance of the corporation that are in the corporation's constitution.

6 After subsection 66-1(3A)

Insert:

(3B) If:

- (a) the application for registration of the corporation seeks registration for the purpose of becoming a registered native title body corporate; or
- (b) the corporation is a registered native title body corporate; the corporation's constitution must provide for the resolution of disputes between the corporation and a person who is or who claims to be a common law holder of native title (whether or not the person is a member of the corporation) in relation to:
- (c) whether or not the person is a common law holder of native title; or
- (d) the corporation's performance of its functions under the Native Title legislation.

7 Subparagraph 66-1(5)(d)(i)

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

8 Section 135-1

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

9 At the end of subsection 141-1(3)

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

10 Section 141-25

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

11 At the end of section 141-25

Add:

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

12 Subsection 150-15(1)

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

13 After subsection 150-15(1)

Insert:

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

14 After subsection 150-15(2)

Insert:

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

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

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

15 Section 150-20 (heading)

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

16 Subsection 150-20(1)

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

17 After section 150-20

Insert:

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

Operation of section

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

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

Membership may be cancelled if not eligible etc.

- (2) If the membership of a member of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate is to be cancelled on the ground of ineligibility for membership or failure to pay fees, the membership may only be cancelled on that ground if the cancellation is effected in the manner and circumstances set out in subsections (3) to (6).

Manner and circumstances

- (3) The directors of an Aboriginal and Torres Strait Islander corporation that is a registered native title body corporate may, by resolution, cancel the membership of a member of the corporation if:
- (a) either:
 - (i) the member is not eligible for membership; or
 - (ii) the member has ceased to be eligible for membership of the corporation; or
 - (b) the member has not paid the member’s membership fees (if any).

- (4) Before cancelling the membership, the directors must give the member notice in writing:
- (a) stating that the directors intend to cancel the membership for the reasons specified in the notice; and
 - (b) stating that the member has 14 days to object to the cancellation of the membership; and
 - (c) stating that the objection must be:
 - (i) in writing; and
 - (ii) given to the corporation within the period of 14 days from the day the notice is given.
- (5) If the member does not object as provided for in paragraph (4)(c), the directors must cancel the membership.
- (6) If the member does object as provided for in paragraph (4)(c):
- (a) the directors must not cancel the membership; and
 - (b) only the corporation by resolution in general meeting may cancel the membership.

Notice

- (7) If the membership is cancelled, the directors must give the member a copy of the resolution (being either the resolution of the directors or the resolution of the general meeting) as soon as practicable after the resolution has been passed.

Penalty: 5 penalty units.

- (8) An offence against subsection (7) is an offence of strict liability.

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

Insert:

- (aa) subsection 150-15(2A); and
- (ab) section 150-22; and

19 Application and transitional

- (1) If, immediately before the commencement of this item, a corporation was a registered Aboriginal and Torres Strait Islander corporation, the amendments of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (the *CATSI Act*) made by this Part do not apply in
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relation to the corporation until the second anniversary of the day this item commences.

- (2) Until that anniversary, a corporation that was, immediately before the commencement of this item, a registered Aboriginal and Torres Strait Islander corporation does not fail to comply with the requirement in paragraph 66-1(5)(d) of the CATSI Act merely because its constitution is not consistent with the *Native Title Act 1993* as amended by Schedule 4 (allowing a registered native title body corporate to bring a compensation application).

Part 2—Refusal of membership

Corporations (Aboriginal and Torres Strait Islander) Act 2006

20 Subsection 144-10(3) (heading)

Repeal the heading, substitute:

When membership application may be refused

21 Subsection 144-10(3)

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

22 After subsection 144-10(3)

Insert:

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

23 Subsection 144-10(4)

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

24 Application

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

Part 3—Registrar oversight

Corporations (Aboriginal and Torres Strait Islander) Act 2006

25 After paragraph 487-5(1)(c)

Insert:

- (ca) if the corporation is a registered native title body corporate—
there has been a serious failure, or a number of failures, by
the corporation to comply with its Native Title legislation
obligations;

26 Subsection 487-5(1)

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

Part 4—Courts

Corporations (Aboriginal and Torres Strait Islander) Act 2006

27 At the end of Division 581

Add:

581-30 Civil proceedings in relation to registered native title bodies corporate

Proceedings in respect of a civil matter arising under this Act that relate to a registered native title body corporate (other than subsection 586-5(3) proceedings) may not be instituted in a court other than the Federal Court.

Note 1: The Federal Court may transfer proceedings to another court: see Subdivision 586-C.

Note 2: Subsection 586-5(3) proceedings relate to matters arising under the *Administrative Decisions (Judicial Review) Act 1977*. A Supreme Court may be required to transfer those proceedings to the Federal Court: see section 586-35.

28 Subsection 694-35(2)

After “subject to”, insert “section 581-30 and”.

29 Subsection 694-35(2) (note)

Repeal the note, substitute:

Note 1: Section 581-30 requires certain proceedings relating to registered native title bodies corporate to be instituted in the Federal Court.

Note 2: The matters dealt with in Part 14-3 include the applicability of limits on the jurisdictional competence of courts.

30 Application

Section 581-30 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*, as inserted by this Part, applies in relation to proceedings instituted after the commencement of this item.

Schedule 9—Just terms compensation and validation

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) acquisition of property of a person other than on 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.

2 Validating section 31 agreements made on or before commencement

- (1) This item applies if:
 - (a) an agreement in relation to the doing of an act was made or purported to be made before the commencement of this item; and
 - (b) the agreement purported to be an agreement of the kind mentioned in paragraph 31(1)(b) of the *Native Title Act 1993*; and
 - (c) the agreement was not an agreement of that kind made in relation to the act only because:
 - (i) if there was only one registered native title claimant in relation to land or waters affected by the act—not all of the persons who comprised that registered native title claimant were parties to the agreement; or
 - (ii) if there was more than one registered native title claimant in relation to land or waters affected by the act—not all of the persons who comprised those

Schedule 9 Just terms compensation and validation

registered native title claimants were parties to the agreement; and

- (d) for each registered native title claimant in relation to any land or waters affected by the act, at least one of the persons who comprised that registered native title claimant was a party to the agreement.
- (2) The agreement is taken to be, and always to have been, an agreement of the kind mentioned in paragraph 31(1)(b) of the *Native Title Act 1993* made in relation to the act.
- (3) Without limiting subsection 11B(2) of the *Acts Interpretation Act 1901*, an expression used in this item has the same meaning as in the *Native Title Act 1993* (as in force immediately before the commencement of this item).
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[*Minister's second reading speech made in—
House of Representatives on 17 October 2019
Senate on 12 November 2020*]

(198/19)
