

The Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011

Native Title and Leadership Branch, FaHCSIA

The *Native Title (Prescribed Bodies Corporate) Amendment Regulations 2011* (the Regulations) came into force on 15 December 2011. The Regulations are the product of significant consultation: they have their origin in the 2006 Australian Government report entitled 'Structures and Processes of Prescribed Bodies Corporate', and were made following a public consultation on exposure draft regulations in 2010.

The Regulations make a number of changes to the *Native Title (Prescribed Bodies Corporate) Regulations 1999*. They:

1. improve the flexibility of the native title corporation governance regime;
2. provide for the determination of a new native title corporation in circumstances where there has been failure to nominate a native title corporation, where a liquidator is appointed, or where the native title group wishes this to occur; and
3. enable native title corporations to charge a fee for costs incurred in providing native title related services to third parties.

The Regulations improve the flexibility of the governance regime that applies to native title corporations in a number of ways. The Regulations enable a native title corporation to represent more than one native title group, and to include people from outside the native title group as members. These changes allow native title groups to create economies of scale and manage native title across regions. They also allow native title groups to use existing entities and avoid unnecessary duplication in corporate structures. Importantly, if the native title corporation is to have a broader membership base, the consent of the affected native title group/s is required.

The Regulations also allow native title corporations to modify the process by which native title decisions

are made. Until now, native title decisions could only be made in consultation with, and with the consent of, the native title group. This change recognises that there may be some situations where consent is either not required, or required from only a limited number of individuals. Provided the native title group agrees, the native title corporation can now recognise and support local decision-making processes and priorities by providing for alternate processes in its constitution, or in standing authorisations that apply to classes of native title decisions. The Regulations also incorporate some mandatory consent requirements in relation to certain important native title decisions, including the decision to enter a native title agreement. This protects the rights and interests of the native title group in relation to those key decisions.

Second, the Regulations set out the process by which replacement native title corporations can be determined, and the process by which native title corporations can change between trustee and agent corporations. In all cases, the Federal Court is responsible for determining replacement native title corporations.

In circumstances where no corporation has been nominated by the native title group (including where a liquidator has been appointed to wind up an existing corporation and no replacement has been nominated), the Federal Court may determine the Indigenous Land Corporation (ILC) as native title corporation for the native title group. The ILC has the organisational capacity and land management expertise to effectively represent the native title group during the period when the native title group, assisted by their native title representative body, is working to establish and/or nominate a new entity to take on native title corporation functions.

The ILC can only be appointed as an agent corporation, and for an initial 5 year term. During the 5 year period, it is open to the native title group to apply for a determination of a new native title corporation.

Finally, the Regulations allow native title corporations to charge a fee for services, allowing corporations to establish an independent income stream for the statutory native title functions they perform. The cost recovery provisions will enable

native title corporations to determine the real cost of doing native title business and charge accordingly. They do not affect the corporations approach to cost recovery for non-native title related services. The fees charged may be reviewed by the Registrar of Indigenous Corporations.

The Regulations are available at:

<http://www.comlaw.gov.au/Details/F2011L02677>,

and the new compilation of the *Native Title (Prescribed Bodies Corporate) Regulations 1999* is at

<http://www.comlaw.gov.au/Details/F2011C00971/Download>. Information about the Regulations is at

http://www.fahcsia.gov.au/sa/indigenous/progserv/and/Pages/prescribed_bodies_corporate.aspx.

General information for native title corporations can also be found at <http://nativetitle.org.au/>.

Specific queries from corporations regarding assistance or other matters can be directed to Claire Stacey at AIATSIS on (02) 6246 1158 or claire.stacey@aiatsis.gov.au

New AIATSIS Centre for Land and Water Research

Dr Jessica Weir, AIATSIS

Much of AIATSIS's collaborative research with Indigenous people into their land and water issues has been undertaken through the Native Title Research Unit (NTRU), and in the Indigenous Country and Governance Research Program. The new AIATSIS Centre for Land and Water Research (ACLWR) creates the opportunity to bring this work together in one place, to profile and build our ethically engaged research in this rapidly increasing area of research inquiry and government interest.

The ACLWR has had early success with the award of two grants, classified as Higher Education Research Data Collection Category 1. The first is with Rural Industries Research and Development Corporation to investigate the governance issues surrounding weeds management on native title lands. Nick Duff and I are conducting this research, as reported on in the Nov-Dec 2011 *Native Title Newsletter*.

The second grant is with the Department of Climate Change and Energy Efficiency's National Climate Change Adaptation Research Grants Program, for the research project 'Changes to Country and Culture, Changes to Climate: Strengthening Institutions for Indigenous Resilience and Adaptation'. Tran Tran and I are co-principal investigators. Our research is with native title holders from two Registered Native Title Bodies Corporate, one in Cape York and one in the Kimberley. The project considers how institutional arrangements might better facilitate the involvement of native title holders in climate change adaptation.

Also with Kimberley and Cape York communities, ACLWR researcher Patrick Sullivan is investigating 'Whole of Government, Water Catchment Management Groups and Indigenous Livelihoods' as part of a contract with the North Australia Indigenous Land and Sea Management Alliance (NAISMA), and funded by the Commonwealth government's Northern Australia Water Futures Assessment.

Toni Bauman and Claire Stacey, together with Chris Haynes, have been working on a national comparative analysis of joint or co-management outcomes, and towards developing a national community of co/joint management arrangements for conservation areas. The NTRU in partnership with the Northern Territory Government's Parks and Wildlife is holding a workshop of relevant Commonwealth, State, and Territory representatives around these topics. The workshop will be held in Alice Springs in early April 2012.

Graeme Ward's research focuses on the impact of tourism on heritage places, especially sites with rock-markings. He has a forthcoming volume on cultural heritage, co-edited with Mark Crocombe, Honorary Curator, from the Kanamkek-Yile Ngala Museum, and to be published by Batchelor Press. Steve Kinnane (previously with AIATSIS, now working at Notre Dame University in Perth) has researched approaches to sustainability in the Kimberley, and helped to produce the Kimberley Aboriginal Caring for Country Plan. He is currently concluding the project's final report.

More information about these and other projects, our publications and the researchers involved in the ACLWR is available from our website: <http://www.aiatsis.gov.au/research/lw/overview.html>