

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

(As read a third time)

**LAND FUND AND INDIGENOUS LAND CORPORATION
(ATSIC AMENDMENT) BILL 1995**

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AMENDMENT OF OTHER ACTS

THIS Bill originated in the House of Representatives;
and, having this day passed, is now ready for
presentation to the Senate for its concurrence.

L. M. BARLIN
Clerk of the House of Representatives

House of Representatives,
Canberra, 8 March 1995

A BILL

FOR

An Act to amend the *Aboriginal and Torres Strait Islander Commission Act 1989* and certain other Acts so as to establish a Land Fund and an Indigenous Land Corporation to help redress the dispossession of Aboriginal persons and Torres Strait Islanders, and for related purposes

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title etc.

5 **1.(1)** This Act may be cited as the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*.

(2) In this Act, “**Principal Act**” means the *Aboriginal and Torres Strait Islander Commission Act 1989*¹.

Commencement

2.(1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.

(2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period. 5

**PART 2—AMENDMENTS RELATING TO THE
ESTABLISHMENT OF THE INDIGENOUS LAND
CORPORATION AND THE ABORIGINAL AND TORRES
STRAIT ISLANDER LAND FUND** 10

Division 1—Establishment

Insertion of new Part

3. After Part 4 of the Principal Act the following Part is inserted:

**“PART 4A—INDIGENOUS LAND CORPORATION AND
ABORIGINAL AND TORRES STRAIT ISLANDER LAND FUND** 15

“Division 1—Indigenous Land Corporation

Indigenous Land Corporation

Establishment

“191A.(1) An Indigenous Land Corporation is established.

Body corporate 20

“(2) The Indigenous Land Corporation:

- (a) is a body corporate, with perpetual succession; and
- (b) is to have a seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name. 25

Seal

“(3) The seal of the Indigenous Land Corporation is to be kept in such custody as the Indigenous Land Corporation directs and must not be used except as authorised by the Indigenous Land Corporation.

Imprint of seal 30

“(4) All courts, judges and persons acting judicially must:

- (a) take judicial notice of the imprint of the seal of the Indigenous Land Corporation appearing on a document; and
- (b) presume that the imprint was duly affixed.

Purposes of Indigenous Land Corporation

“191B. The Indigenous Land Corporation is established:

- (a) to assist Aboriginal persons and Torres Strait Islanders to acquire land; and
- 5 (b) to assist Aboriginal persons and Torres Strait Islanders to manage indigenous-held land;

so as to provide economic, environmental, social or cultural benefits for Aboriginal persons and Torres Strait Islanders.

“Division 2—Functions and powers of Indigenous Land Corporation

10 **Functions of Indigenous Land Corporation**

“191C. The Indigenous Land Corporation has the following functions:

- (a) the **land acquisition functions** referred to in section 191D;
- (b) the **land management functions** referred to in section 191E;
- 15 (c) such other functions as are conferred on the Indigenous Land Corporation by this Act;
- (d) to do anything incidental to or conducive to the performance of any of the preceding functions.

Land acquisition functions of Indigenous Land Corporation

Functions

20 “191D.(1) The **land acquisition functions** of the Indigenous Land Corporation are as follows:

- (a) to grant interests in land to Aboriginal or Torres Strait Islander corporations;
- 25 (b) to acquire by agreement interests in land for the purpose of making grants under paragraph (a);
- (c) to make grants of money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land;
- (d) to guarantee loans made to Aboriginal or Torres Strait Islander corporations for the purpose of the acquisition of interests in land.

30 Note 1: ‘Interest in land’ is defined by section 4.

Note 2: ‘Aboriginal or Torres Strait Islander corporation’ is defined by section 4.

Grants—terms and conditions

“(2) The Indigenous Land Corporation may make a grant of money on terms and conditions that must relate to:

- 35 (a) the purposes for which the money may be spent; or

- (b) the period within which the money is to be spent; or
- (c) the acquittal of money spent; or
- (d) the giving of information in relation to the grant.

If the grant becomes repayable because of a breach of such a term or condition, the Indigenous Land Corporation must take all reasonable steps to recover the repayment. 5

Guarantees—terms and conditions

“(2A) A guarantee is subject to such terms and conditions as the Indigenous Land Corporation determines.

Performance of functions 10

“(3) For the purpose of the performance of the Indigenous Land Corporation’s land acquisition functions, the Indigenous Land Corporation must give priority to the following:

- (a) pursuing a policy of:
 - (i) acquiring interests in land and granting the interests to Aboriginal or Torres Strait Islander corporations; or 15
 - (ii) in cases where the Indigenous Land Corporation grants money to Aboriginal or Torres Strait Islander corporations for the acquisition of interests in land—acting as the agent of the Aboriginal or Torres Strait Islander corporations in connection with those acquisitions; 20

except where the circumstances make the pursuit of such a policy impracticable or inadvisable;

- (b) in a case where the Indigenous Land Corporation acquires an interest in land for the purpose of making a grant of the interest to an Aboriginal or Torres Strait Islander corporation—that grant being made within a reasonable time after that acquisition. 25

Searches under Native Title Act

“(4) In performing its land acquisition functions, the Indigenous Land Corporation must search any relevant Registers of the National Native Title Tribunal to ascertain whether any claims have been lodged or accepted or determined in relation to land under consideration for acquisition. 30

Land management functions of Indigenous Land Corporation

Functions

“191E.(1) The **land management functions** of the Indigenous Land Corporation are as follows: 35

- (a) to carry on, or arrange for the carrying on of, land management activities in relation to indigenous-held land under agreements with the holders of the land;

- (b) to carry on, or arrange for the carrying on of, land management activities in relation to land held by the Indigenous Land Corporation;
- 5 (c) to carry on other land management activities in relation to indigenous-held land;
- (d) to make grants of money for the carrying on of land management activities in relation to indigenous-held land;
- 10 (e) to make loans of money (whether secured or unsecured) for the purpose of carrying on land management activities in relation to indigenous-held land;
- (f) to guarantee loans made for the purpose of carrying on land management activities in relation to indigenous-held land.

Note 1: 'Land management activities' is defined by subsection (5).

Note 2: 'Indigenous-held land' is defined by section 4B.

15 Note 3: 'Holder' is defined by section 4.

Land management activities relating to particular indigenous-held land

20 “(1A) Paragraph (1)(c) does not authorise the Indigenous Land Corporation to carry on a land management activity in relation to particular indigenous-held land otherwise than under an agreement with the holder of the land.

Grants—terms and conditions

“(2) The Indigenous Land Corporation may make a grant of money on terms and conditions that must relate to:

- 25 (a) the purposes for which the money may be spent; or
- (b) the period within which the money is to be spent; or
- (c) the acquittal of money spent; or
- (d) the giving of information in relation to the grant.

30 If the grant becomes repayable because of a breach of such a term or condition, the Indigenous Land Corporation must take all reasonable steps to recover the repayment.

Loans—terms and conditions

“(2A) The Indigenous Land Corporation may make a loan of money on terms and conditions that must relate to:

- 35 (a) the purposes for which the money may be spent; or
- (b) the period within which the money is to be spent; or
- (c) the acquittal of money spent; or
- (d) the giving of information relating to the loan; or
- (e) the repayment of the loan; or

- (f) the payment of interest (including interest on interest); or
- (g) if the loan is secured—the loan security.

Guarantees—terms and conditions

“(2B) A guarantee is subject to such terms and conditions as the Indigenous Land Corporation determines.

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Performance of functions

“(3) For the purposes of the performance of the Indigenous Land Corporation’s land management functions, the Indigenous Land Corporation must give priority to the following:

- (a) pursuing sound land and environmental management practices; 10
- (b) pursuing a policy of granting money or making loans only where the Indigenous Land Corporation considers that alternative approaches (such as guaranteeing loans obtained from external sources or carrying on land management activities under an agreement with the holders of indigenous-held land) are impracticable; 15
- (c) in a case where the Indigenous Land Corporation carries on, or arranges for the carrying on of, land management activities under agreements with holders of indigenous-held land—directly involving the holders of the land in those activities.

Agreements may involve third parties

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“(4) A reference in this section to an agreement with the holder of indigenous-held land includes a reference to an agreement with the holder, where one or more other persons are parties to the agreement.

Definition

“(5) In this section:

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‘land management activities’ means activities that consist of, or relate to, the managed use, care or improvement of land, and includes:

- (a) carrying on a business that involves the use, care or improvement of land; or
- (b) providing any of the following services (whether on a commercial basis or otherwise) in connection with a business that involves the use, care or improvement of land:
 - (i) management services;
 - (ii) clerical or administrative services;
 - (iii) services relating to financial administration; 30
 - (iv) technical or professional services;
 - (v) advisory services; 35

- (vi) similar services; or
- (c) providing environmental management services (whether on a commercial basis or otherwise) in relation to the use, care or improvement of land; or
- 5 (d) providing training (whether on a commercial basis or otherwise) in the skills and knowledge relevant to:
 - (i) the carrying on of a business that involves the use, care or improvement of land; or
 - (ii) the managed use, care or improvement of land; or
- 10 (e) disseminating information (whether on a commercial basis or otherwise) about:
 - (i) land management practices; and
 - (ii) environmental management practices relating to land.

Performance of functions of Indigenous Land Corporation—general

15 *Sound business principles*

“191F.(1) The Indigenous Land Corporation must act in accordance with sound business principles whenever it performs its functions on a commercial basis.

Relevant matters

- 20 “(2) For the purpose of the performance of the Indigenous Land Corporation’s functions, the Indigenous Land Corporation must give priority to the following:
- (aa) ensuring that, as far as practicable, Aboriginal persons or Torres Strait Islanders derive social or cultural benefits as a result of the performance of those functions;
 - 25 (a) ensuring that the Indigenous Land Corporation has access to the skills and resources required to perform its functions;
 - (b) maximising the employment of Aboriginal persons and Torres Strait Islanders;
 - 30 (c) maximising the use of goods and services provided by businesses owned or controlled (whether directly or indirectly) by Aboriginal persons or Torres Strait Islanders.

Functions additional to functions of other bodies etc.

- 35 “(3) The functions conferred on the Indigenous Land Corporation by this Act are in addition to, and not instead of, any functions conferred on a person or body by or under:
- (a) any other law of the Commonwealth; or
 - (b) a law of a State or Territory.

Sacred matters

“(4) Subject to subsection (5), in performing a function that involves dealing with cultural material or information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders, the Indigenous Land Corporation must ensure that material or information is not disclosed if the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.

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Report to Minister if sacred matters affect performance etc.

“(5) The Indigenous Land Corporation must provide a written report to the Minister in cases where the performance of its functions is affected by matters referred to in subsection (4).

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Subsidiaries of Indigenous Land Corporation may perform functions corresponding to the Indigenous Land Corporation’s functions

Arrangements with subsidiaries

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“191G.(1) The Indigenous Land Corporation may make an arrangement with a subsidiary of the Indigenous Land Corporation about the performance by the subsidiary of functions corresponding to one or more of the Indigenous Land Corporation’s functions.

Note: ‘Subsidiary’ is defined by subsection 4(2).

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Matters covered by arrangements

“(2) Without limiting subsection (1), an arrangement may provide:

- (a) for the Indigenous Land Corporation to transfer money to the subsidiary in connection with the performance of the corresponding functions; or
- (b) for the Indigenous Land Corporation to make loans to the subsidiary in connection with the performance of the corresponding functions; or
- (c) for the Indigenous Land Corporation to guarantee loans made to the subsidiary for the purpose of the performance of the corresponding functions; or
- (d) for the staff of the Indigenous Land Corporation to be made available to the subsidiary in connection with the performance of the corresponding functions.

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Restrictions on performance of functions

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“(3) Subsections 191D(3) and 191E(3) and sections 191F and 191Q apply in relation to the performance by the subsidiary of the corresponding functions in a corresponding way to the way in which they apply to the performance of the Indigenous Land Corporation’s functions.

Generality of arrangements

“(4) An arrangement may relate to a particular function either generally or as otherwise provided by the arrangement.

Indigenous Land Corporation may continue to perform functions

5 “(5) The making of an arrangement about a function does not prevent the Indigenous Land Corporation from performing that function.

When subsidiary taken to perform a corresponding function

10 “(6) For the purposes of this Act and any other law of the Commonwealth, a subsidiary of the Indigenous Land Corporation is taken to perform a function corresponding to a particular function of the Indigenous Land Corporation if, and only if, the subsidiary performs the first-mentioned function under an arrangement under this section.

Independent function

15 “(7) Anything done by the Indigenous Land Corporation under this section, or under an arrangement under this section, is taken to have been done by the Indigenous Land Corporation in the performance of a function that is separate and distinct from the Indigenous Land Corporation’s land acquisition functions or land management functions.

Powers of Indigenous Land Corporation

20 *General powers*

“191H.(1) The Indigenous Land Corporation has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

Specific powers

25 “(2) The powers of the Indigenous Land Corporation under subsection (1) include, but are not limited to, the following powers:

- (a) to enter into contracts and agreements;
- (b) to invest money of the Indigenous Land Corporation;
- (c) to appoint agents and attorneys and act as an agent for other persons;
- 30 (d) to form, and participate in the formation of, companies;
- (e) to subscribe for and purchase shares in, and debentures and securities of, companies;
- (f) to enter into partnerships;
- (g) to participate in joint ventures and arrangements for the sharing of
- 35 profits;
- (h) to accept gifts, grants, bequests and devises made to it;
- (i) to act as trustee of money and other property vested in it on trust;

(j) to charge for the provision of services by it.

Trusts

“(3) Despite anything contained in this Act, any money or other property held by the Indigenous Land Corporation on trust must be dealt with in accordance with the powers and duties of the Indigenous Land Corporation as trustee. 5

Extra-territorial exercise of powers

“(4) The powers of the Indigenous Land Corporation may be exercised within or outside Australia.

Guidelines about certain land acquisition and land management functions 10

When section applies

“191I.(1) This section applies if the Indigenous Land Corporation Board makes written guidelines about the performance of a function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a), (c) or (d) or 191E(1)(d), (e) or (f). 15

Guidelines to be made available

“(2) The Indigenous Land Corporation must make a free copy of the guidelines available to any person who asks for a copy.

Disposal of surplus land 20

When section applies

“191J.(1) This section applies if:

(a) either:

(i) the Indigenous Land Corporation has acquired an interest in land: 25

(A) under paragraph 191D(1)(b); or

(B) by way of a gift, grant, bequest or devise made to it; or

(ii) a subsidiary of the Indigenous Land Corporation has acquired an interest in land:

(A) as a result of the performance by it of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(b); or 30

(B) by way of a gift, grant, bequest or devise made to it for the purpose of the performance by it of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a); and 35

- 5 (b) the Indigenous Land Corporation or the subsidiary, as the case requires, considers that it no longer needs to hold the interest for the purpose of making a grant of the interest to an Aboriginal or Torres Strait Islander corporation within a reasonable time after that acquisition.

Disposal of surplus land

“(2) The Indigenous Land Corporation or the subsidiary, as the case requires, may dispose of the interest to a person or body.

Commission may grant land to the Indigenous Land Corporation

10 *Grant*

“191K.(1) The Commission may grant an interest in land to the Indigenous Land Corporation.

Terms and conditions

- 15 “(2) A grant is subject to such terms and conditions as are agreed between the Commission and the Indigenous Land Corporation.

Acquisition

“(3) An interest in land granted to the Indigenous Land Corporation under this section is taken to have been acquired by the Indigenous Land Corporation under paragraph 191D(1)(b).

20 **Powers of Minister**

“191L. Except as expressly provided in this Act, the Minister is not empowered to direct the Indigenous Land Corporation in relation to any of its activities.

Minister may ask for information

25 *Request for information*

“191M.(1) The Minister may, from time to time, ask the Indigenous Land Corporation Board for information about the Corporation’s activities.

Information to be given

- 30 “(2) The Indigenous Land Corporation Board must give the Minister the information requested.

“Division 3—National indigenous land strategy and regional indigenous land strategies

National indigenous land strategy

Indigenous Land Corporation Board to prepare national strategy

- 35 “191N.(1) The Indigenous Land Corporation Board must prepare, and revise from time to time, a strategy to be known as the national indigenous land strategy.

Contents of national indigenous land strategy

“(2) The national indigenous land strategy must cover, but is not limited to, the following matters:

- (a) the acquisition of interests in land for the purpose of making grants of those interests to Aboriginal or Torres Strait Islander corporations; 5
- (b) land management issues relating to indigenous-held land;
- (c) environmental issues relating to indigenous-held land.

Note: It is not intended that the strategy will contain commercially sensitive information.

Consultation on national indigenous land strategy

“(3) In performing functions under this section, the Indigenous Land Corporation Board: 10

- (a) must have regard to the desirability of consulting the Commission about such matters as it considers appropriate; and
- (b) may consult such other persons and bodies as the Board considers appropriate. 15

Period to which national indigenous land strategy is to relate

“(4) The national indigenous land strategy must relate to a period of at least 3 years and not more than 5 years.

Review of national indigenous land strategy

“(5) The Indigenous Land Corporation Board must review the national indigenous land strategy regularly. 20

Copy to be given to Minister

“(6) The Indigenous Land Corporation Board must give a copy of the national indigenous land strategy and a copy of any changes it has made to the national indigenous land strategy to the Minister within 2 months of the Board agreeing to the strategy or change. 25

Copy to be tabled in each House

“(7) The Minister must cause a copy of the national indigenous land strategy or of any changes made to the national indigenous land strategy to be presented to each House of the Parliament within 15 sitting days of that House after the Minister has received the document. 30

Regional indigenous land strategies

Indigenous Land Corporation Board to prepare regional indigenous land strategies

“191P.(1) The Indigenous Land Corporation Board must prepare, and revise from time to time, strategies to be known as regional indigenous land strategies. 35

Indigenous Land Corporation Board to determine regional areas

“(2) For the purposes of this section, the Indigenous Land Corporation Board must, by writing, determine the boundaries of areas to be known as regional areas.

5 Note: A regional area need not correspond to a region under section 91.

Regional areas

“(3) A regional indigenous land strategy must relate to a specified regional area.

Contents of regional indigenous land strategy

10 “(4) A regional strategy relating to a regional area must cover, but is not limited to, the following matters:

- (a) the acquisition of interests in land in the regional area for the purpose of making grants of those interests to Aboriginal or Torres Strait Islander corporations;
- 15 (b) land management issues relating to indigenous-held land in the regional area;
- (c) environmental management issues relating to indigenous-held land in the regional area.

Note: It is not intended that a strategy will contain commercially sensitive information.

20 *Consultation on regional indigenous land strategies*

“(5) In performing functions under this section in connection with a regional area, the Indigenous Land Corporation Board:

- (a) must, if any part of a region is included in the regional area, consult the Regional Council for the region; and
- 25 (b) may consult such other persons and bodies as the Board considers appropriate.

Period to which regional indigenous land strategy is to relate

“(6) A regional indigenous land strategy is to relate to a period of at least 3 years and not more than 5 years.

30 *Review*

“(7) The Indigenous Land Corporation Board must review each regional indigenous land strategy regularly.

Copy to Minister on request

35 “(8) The Indigenous Land Corporation Board must give a copy of a regional strategy to the Minister on request.

Indigenous Land Corporation to have regard to strategies

“191Q. For the purpose of the performance of the Indigenous Land Corporation’s functions, the Indigenous Land Corporation must have regard to:

- (a) the national indigenous land strategy; and
- (b) each relevant regional indigenous land strategy.

Indigenous Land Corporation to make strategies available

Strategies to be made available

“191R.(1) The Indigenous Land Corporation must make a copy of the national indigenous land strategy or a regional indigenous land strategy available to any person who asks for a copy. 5

Fee may be charged

“(2) The Indigenous Land Corporation may charge a fee for making the copy available. 10

“Division 4—Dealings in land granted by Indigenous Land Corporation

Restriction on right to dispose of, or charge, property

When section applies

“191S.(1) This section applies if a body corporate has acquired an interest in land and: 15

- (a) the interest was acquired from the Indigenous Land Corporation under paragraph 191D(1)(a); or
- (b) the interest was acquired using money granted to the body corporate by the Indigenous Land Corporation under paragraph 191D(1)(c); or 20
- (c) the interest was acquired from a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a); or
- (d) the interest was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(c). 25

Disposals and charges prohibited 30

“(2) The body corporate must not, without the consent of the Indigenous Land Corporation:

- (a) dispose of the interest; or
- (b) give a charge with respect to an asset of the body corporate that consists of, or includes, the interest. 35

Purported disposals to be of no effect

“(3) If the body corporate purports to dispose of the interest without the consent of the Indigenous Land Corporation, the purported disposition is of no effect.

Purported charges to be of no effect

“(4) If:

- (a) the body corporate purports to give a charge with respect to an asset of the body corporate that consists of, or includes, the interest; and
- 5 (b) the purported charge is given without the consent of the Indigenous Land Corporation;
- the purported charge is of no effect.

Definition

“(5) In this section:

- 10 **‘charge’** means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether upon demand or otherwise.

Surrender of land to Indigenous Land Corporation

When this section applies

- 15 “191T.(1) This section applies if a body corporate has acquired an interest in land and:

- (a) the interest was acquired from the Indigenous Land Corporation under paragraph 191D(1)(a); or
- 20 (b) the interest was acquired using money granted to the body corporate by the Indigenous Land Corporation under paragraph 191D(1)(c); or
- (c) the interest was acquired from a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a); or
- 25 (d) the interest was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(c).

30 *Surrender of interest to Indigenous Land Corporation*

“(2) The body corporate may dispose of the interest to the Indigenous Land Corporation. The disposal is subject to such terms and conditions as are agreed between the body corporate and the Indigenous Land Corporation.

35 *Effect of surrender of interest*

“(3) If the Indigenous Land Corporation acquires an interest in land as a result of a disposal under subsection (2), this Part has effect as if the interest had been acquired by the Indigenous Land Corporation under paragraph 191D(1)(b).

Land granted by Indigenous Land Corporation must not be claimed under the *Aboriginal Land Rights (Northern Territory) Act 1976*

When section applies

“191U.(1) This section applies to land if a body corporate has acquired an interest in the land and:

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- (a) the interest was acquired from the Indigenous Land Corporation under paragraph 191D(1)(a); or
- (b) the interest was acquired using money granted to the body corporate by the Indigenous Land Corporation under paragraph 191D(1)(c); or
- (c) the interest was acquired from a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a); or
- (d) the interest was acquired using money granted to the body corporate by a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(c).

10

15

No claims

“(2) An application of the kind referred to in paragraph 50(1)(a) of the *Aboriginal Land Rights (Northern Territory) Act 1976* must not be made if it relates to a claim to the land.

20

“Division 5—Board of Directors of Indigenous Land Corporation

Board of Directors of Indigenous Land Corporation

Board

25

“191V.(1) There is to be a Board of Directors of the Indigenous Land Corporation.

Composition of Board

“(2) The Indigenous Land Corporation Board consists of the following members:

30

- (a) a Chairperson;
- (b) a Deputy Chairperson;
- (c) the Commission Chairperson;
- (d) an ordinary member (whose office may be referred to as the paragraph (d) office);
- (e) an ordinary member (whose office may be referred to as the paragraph (e) office);

35

- (f) an ordinary member (whose office may be referred to as the paragraph (f) office);
- (g) an ordinary member (whose office may be referred to as the paragraph (g) office).

5 *Vacancy not to affect performance of functions etc.*

“(3) The performance of the functions, or the exercise of the powers, of the Indigenous Land Corporation Board is not affected only because of there being a vacancy or vacancies in the membership of the Indigenous Land Corporation Board.

10 **Responsibilities of Indigenous Land Corporation Board**

“191W. It is the responsibility of the Indigenous Land Corporation Board to ensure the proper and efficient performance of the functions of the Indigenous Land Corporation and to determine the policy of the Corporation with respect to any matter.

15 **Appointment of Indigenous Land Corporation Directors**

Appointment by Minister

“191X.(1) An Indigenous Land Corporation Director referred to in paragraph 191V(2)(a), (b), (d), (e), (f) or (g) is to be appointed by the Minister by written instrument.

20 *Aboriginal persons/Torres Strait Islanders*

“(2) The Indigenous Land Corporation Chairperson and at least 4 other Indigenous Land Corporation Directors must be Aboriginal persons or Torres Strait Islanders.

Consultation

25 “(3) Before appointing a person as an Indigenous Land Corporation Director, the Minister must consult the Commission and the Minister for Finance about the appointment.

Qualifications

30 “(4) Each appointed ordinary member of the Board is to be a person who the Minister is satisfied has experience in:

- (a) land or environmental management; or
 - (b) business or financial management; or
 - (c) Aboriginal community life or Torres Strait Islander community life;
- 35 and the Minister must ensure that at least 2 appointed ordinary members of the Board have experience in business or financial management.

Commissioner

“(5) At least one appointed Indigenous Land Corporation Director must be a Commissioner. If such an Indigenous Land Corporation Director ceases to be a Commissioner, the Minister may terminate the appointment of the Director.

5

Automatic re-appointment of incumbent pending appointment of successor

When section applies

“191Y.(1) This section applies if:

- (a) a person appointed under subsection 191X(1) (the ‘**incumbent**’) ceases to hold a particular office of Indigenous Land Corporation Director because of the expiry of the period specified in the instrument of appointment; and 10
- (b) there is not in force an instrument under subsection 191X(1) re-appointing the incumbent, or appointing another person, to that office with effect from the end of that period. 15

Automatic re-appointment

“(2) The Minister is taken to have re-appointed the incumbent to that office under this subsection with effect from the end of that period. Section 191X does not apply to the re-appointment.

20

Tenure

“(3) The Minister may terminate the appointment of the incumbent at any time if an appointment under subsection 191X(1) of another person to that office takes effect immediately after that time. This subsection has effect despite section 191Z.

25

“Division 6—Administrative provisions

Period of appointment

“191Z. An appointed Indigenous Land Corporation Director holds office for such period as is specified in the instrument of appointment. The period must not exceed 4 years.

30

Basis on which Indigenous Land Corporation Directors hold office

General rule—part-time basis

“192.(1) Subject to this section, an Indigenous Land Corporation Director holds office on a part-time basis.

Chairperson may hold office on a full-time basis

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“(2) The instrument of appointment of the Indigenous Land Corporation Chairperson may declare that the Chairperson holds office on a full-time basis.

Remuneration and allowances

“192A. An appointed Indigenous Land Corporation Director is entitled to remuneration and allowances in accordance with section 194.

5 **Outside employment—full-time Indigenous Land Corporation Chairperson**

When section applies

“192B.(1) This section applies to the Indigenous Land Corporation Chairperson if the Chairperson holds office on a full-time basis.

No outside employment

10 “(2) The Indigenous Land Corporation Chairperson must not engage in any paid employment outside the duties of his or her office without the written agreement of the Indigenous Land Corporation Board.

Leave of absence—part-time Indigenous Land Corporation Directors

When this section applies

15 “192C.(1) This section applies to an Indigenous Land Corporation Director who holds office on a part-time basis.

Grant of leave

20 “(2) The Indigenous Land Corporation Board may, by writing, grant leave of absence to an Indigenous Land Corporation Director from a meeting of the Indigenous Land Corporation Board.

Delegation

25 “(3) The Indigenous Land Corporation Board may, by writing, delegate to the Indigenous Land Corporation Chairperson the power under subsection (2) to grant leave of absence to the other Indigenous Land Corporation Directors.

Leave of absence—full-time Indigenous Land Corporation Chairperson

Indigenous Land Corporation Chairperson to whom this section applies

30 “192D.(1) This section applies to the Indigenous Land Corporation Chairperson if the Chairperson holds office on a full-time basis.

Recreation leave

“(2) Subject to section 87E of the *Public Service Act 1922*, the Indigenous Land Corporation Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal.

Other leave

“(3) The Indigenous Land Corporation Board may grant the Indigenous Land Corporation Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

5

Acting appointments

Acting Chairperson

“192E.(1) The Deputy Chairperson of the Indigenous Land Corporation Board is to act as the Indigenous Land Corporation Chairperson:

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- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

15

Acting Deputy Chairperson

“(2) The Minister may appoint an Indigenous Land Corporation Director to act as the Deputy Chairperson of the Indigenous Land Corporation Board:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

20

but a person appointed to act during a vacancy is not to continue so to act for more than 6 months.

25

Acting Director

“(3) The Minister may appoint a person to act as an Indigenous Land Corporation Director (other than as the Chairperson or the Deputy Chairperson of the Indigenous Land Corporation Board):

30

- (a) during a vacancy in an office of Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when a Director is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office;

35

but a person appointed to act during a vacancy is not to continue so to act for more than 6 months.

Eligibility for acting appointment

“(4) The Minister must not appoint a person to act in an office unless, having regard to section 191X, the person could be appointed to that office.

Validation

5 “(5) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment;
or

10 (c) the appointment had ceased to have effect; or

(d) the occasion to act had not arisen or had ceased.

Disclosure of interests

Disclosure

15 “192F.(1) An Indigenous Land Corporation Director who has a direct or indirect pecuniary interest in a matter being considered, or about to be considered, by the Indigenous Land Corporation Board must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a meeting of the Board.

Participation

20 “(2) A disclosure under subsection (1) is to be recorded in the minutes of the meeting of the Indigenous Land Corporation Board and the Director concerned must not:

(a) be present during any deliberation of the Board in relation to that matter; or

25 (b) take part in any decision of the Board in relation to that matter.

Notification of business interests to Minister—full-time Chairperson

30 “(3) If the Indigenous Land Corporation Chairperson holds office on a full-time basis, the Chairperson must give written notice to the Minister of all direct or indirect pecuniary interests that the Chairperson has or acquires in any business, or in any body corporate carrying on a business.

Resignation

“192G. An appointed Indigenous Land Corporation Director may resign by writing signed by him or her and sent to the Minister.

Termination of appointment

35 *Misbehaviour or incapacity*

“192H.(1) The Minister may, after consulting the Commission, terminate the appointment of an appointed Indigenous Land Corporation Director because of misbehaviour or physical or mental incapacity.

Bankruptcy, conflict of interest etc.

“(2) If an appointed Indigenous Land Corporation Director:

- (a) becomes bankrupt; or
- (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (c) compounds with his or her creditors; or
- (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (e) fails, without reasonable excuse, to comply with section 192F;

the Minister must terminate the appointment of the Director. 10

Full-time Chairperson—unauthorised absence, paid employment

“(3) If the Indigenous Land Corporation Chairperson holds office on a full-time basis and the Chairperson:

- (a) is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (b) engages, except with the agreement of the Indigenous Land Corporation Board, in paid employment outside the duties of his or her office;

the Minister must terminate the appointment of the Chairperson. 15

Part-time Directors—unauthorised absence 20

“(4) If an appointed Indigenous Land Corporation Director who holds office on a part-time basis is absent, except on leave granted under section 192C, from 3 consecutive meetings of the Indigenous Land Corporation Board, the Minister must terminate the appointment of the Director. 25

Other terms and conditions

“192I. An appointed Indigenous Land Corporation Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister by notice published in the *Gazette*. 30

“Division 7—Operations of Indigenous Land Corporation Board

Meetings of Indigenous Land Corporation Board

Chairperson to convene meetings

“192J.(1) The Indigenous Land Corporation Chairperson must convene such meetings of the Indigenous Land Corporation Board as, in his or her opinion, are necessary for the efficient performance of the Board’s responsibilities. 35

Quorum

“(2) At a meeting of the Indigenous Land Corporation Board, a quorum is constituted by 4 Indigenous Land Corporation Directors.

Quorum if Director excluded under section 192F

5 “(3) If:

(a) an Indigenous Land Corporation Director who is present at a meeting is required by section 192F not to be present during the deliberations, or to take part in any decision, of the Indigenous Land Corporation Board with respect to a particular matter; and

10 (b) when the Director leaves the meeting there is no longer a quorum present;

the Indigenous Land Corporation Directors remaining at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

15 *Chairperson to preside at meetings*

“(4) The Indigenous Land Corporation Chairperson is to preside at all meetings of the Indigenous Land Corporation Board at which he or she is present.

Arrangements if Chairperson not present at a meeting

20 “(5) If the Indigenous Land Corporation Chairperson is not present at a meeting of the Indigenous Land Corporation Board:

(a) if the Deputy Chairperson of the Indigenous Land Corporation Board is present—the Deputy Chairperson is to preside at the meeting; and

25 (b) in any other case—the Indigenous Land Corporation Directors present must elect one of their number to preside at the meeting.

Voting

30 “(6) Questions arising at a meeting of the Indigenous Land Corporation Board are to be determined by a majority of the votes of the Indigenous Land Corporation Directors present and voting.

Deliberative vote

“(7) The person presiding at a meeting of the Indigenous Land Corporation Board has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

35 *Procedure and minutes*

“(8) The Indigenous Land Corporation Board:

- (a) may regulate the conduct of proceedings at its meetings as it thinks fit; and
- (b) must cause minutes of those proceedings to be kept.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc..

5

“Division 8—Indigenous Land Corporation General Manager

Indigenous Land Corporation General Manager

Appointment

“192K.(1) There is to be a General Manager of the Indigenous Land Corporation, who is to be appointed by the Indigenous Land Corporation Board. 10

Day-to-day administration

“(2) Subject to subsection (3), the Indigenous Land Corporation General Manager must manage the day-to-day administration of the Indigenous Land Corporation. 15

Board’s policies and directions

“(3) The Indigenous Land Corporation General Manager must, in:

- (a) managing the administration of the Indigenous Land Corporation; and
- (b) exercising any powers conferred on the General Manager by this Act; 20

act in accordance with any policies determined, and any directions given, by the Indigenous Land Corporation Board in writing.

Term of appointment

“192L. The Indigenous Land Corporation General Manager holds office for such period as is specified in the instrument of appointment. The period must not exceed 4 years. 25

Holding of office

“192M. The Indigenous Land Corporation General Manager holds office during the pleasure of the Indigenous Land Corporation Board. 30

Remuneration and allowances of Indigenous Land Corporation General Manager

“192N. The Indigenous Land Corporation General Manager is to be paid such remuneration and allowances as are determined by the Indigenous Land Corporation Board in writing. 35

Acting Indigenous Land Corporation General Manager

Acting appointment

“192P.(1) The Indigenous Land Corporation Board may appoint a person to act as the Indigenous Land Corporation General Manager:

- 5 (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the General Manager is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office;
- 10 but a person appointed to act during a vacancy must not continue so to act for more than 6 months.

Validation

“(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:

- 15 (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment;
- or
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

20 **Resignation**

“192Q. The Indigenous Land Corporation General Manager may resign by writing signed by him or her and sent to the Indigenous Land Corporation Board.

Other terms and conditions

- 25 “192R. The Indigenous Land Corporation General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Indigenous Land Corporation Board in writing.

“Division 9—Staff

30 **Staff**

Engagement of staff

“192S.(1) The Indigenous Land Corporation General Manager may, on behalf of the Indigenous Land Corporation, engage such employees as are necessary for the performance of the Corporation’s functions under this Act.

35 *Terms and conditions*

“(2) The terms and conditions of employment of persons engaged under this section are as determined by the Indigenous Land Corporation Board in writing.

Arrangements for Commission staff or Commercial Development Corporation staff to perform duties on behalf of Indigenous Land Corporation

Commission staff

“192T.(1) The Indigenous Land Corporation General Manager may make arrangements with the Chief Executive Officer for the performance of duties by the staff of the Commission on behalf of the Indigenous Land Corporation. 5

Commercial Development Corporation staff

“(2) The Indigenous Land Corporation General Manager may make arrangements with the Commercial Development Corporation General Manager for the performance of duties by the staff of the Commercial Development Corporation on behalf of the Indigenous Land Corporation. 10

Arrangements relating to staff

“192U. The Indigenous Land Corporation General Manager may, on behalf of the Indigenous Land Corporation, make arrangements for the services of officers or employees of: 15

(a) the Public Service of the Commonwealth or of a State or Territory;
or

(b) an authority of the Commonwealth or of a State or Territory; or 20

(c) any other organisation or body;

to be made available to the Indigenous Land Corporation.

Consultants

Engagement of consultants

“192V.(1) The Indigenous Land Corporation General Manager may, on behalf of the Indigenous Land Corporation, engage as consultants to the Corporation persons having suitable qualifications and experience. 25

Terms and conditions

“(2) The terms and conditions on which consultants are engaged are as determined by the Indigenous Land Corporation Board in writing. 30

“Division 10—Aboriginal and Torres Strait Islander Land Fund

Aboriginal and Torres Strait Islander Land Fund

Land Fund

“192W.(1) A fund called the **Aboriginal and Torres Strait Islander Land Fund** is established. 35

Trust account

“(2) The Land Fund is a trust account for the purposes of section 62A of the *Audit Act 1901*.

Investments

“(3) So far as practicable, money in the Land Fund that is not required for the purpose of making payments out of the Land Fund must be invested in accordance with section 62B of the *Audit Act 1901*.

- 5 Note: Under section 81 of the Constitution, income from investments must be paid into the Consolidated Revenue Fund.

Income from investments

“(4) Amounts equal to income derived from the investment of money in the Land Fund must be:

- 10 (a) debited to the Consolidated Revenue Fund; and
(b) credited to the Land Fund.

Standing appropriation

“(5) The Consolidated Revenue Fund is appropriated for the purposes of subsection (4).

15 **Purpose of Land Fund**

“192X. The purpose of the Land Fund is the making of payments to the Indigenous Land Corporation and the Commission under this Division.

Business day

- 20 “192Y. For the purposes of this Division, a **business day** is a day that is not a Saturday, a Sunday or a public holiday in the Australian Capital Territory.

Transfer of money etc. from the fund established under repealed Part 10 of the *Native Title Act 1993*

- 25 “192Z.(1) This section applies to the money and investments of the fund established under the repealed Part 10 of the *Native Title Act 1993* before the commencement of this section.

“(2) On the commencement of this subsection, the money and investments become, by force of this subsection, money and investments of the Land Fund.

30 **Credits to Land Fund in category A years**

Second category A year

“193.(1) On the first business day in the second category A year, there is to be credited to the Land Fund the amount worked out using the formula:

$$\text{Indexation factor} \times \$121 \text{ million}$$

where:

- 35 ‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D.

Note: ‘Business day’ is defined by section 192Y.

Later category A years

“(2) On the first business day in each later category A year, there is to be credited to the Land Fund the amount worked out using the formula:

$$\text{Indexation factor} \times \text{Previous year's amount}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 5

‘**Previous year's amount**’ means the amount credited to the Land Fund under this section in the previous financial year.

Note: ‘Business day’ is defined by section 192Y.

Rounding down 10

“(3) If the result of applying the formula set out in subsection (1) or (2) is an amount of dollars and cents, the cents are to be disregarded.

Consolidated Revenue Fund to be debited

“(4) The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section. 15

Standing appropriation

“(5) The Consolidated Revenue Fund is appropriated for the purposes of this section.

Credit to Land Fund in first category B year

Top-up payment—first category B year 20

“193AA.(1) If the target amount for the tenth category A year exceeds the sum of:

- (a) the uninvested money standing to the credit of the Land Fund immediately before the end of that year; and
- (b) the amount that, in the opinion of the Minister for Finance, represents the market value of investments of the Land Fund (other than fixed-interest investments) immediately before the end of that year, having regard to the relevant audited financial statements; and 25
- (c) the amount that, in the opinion of the Minister for Finance, represents the book value of fixed-interest investments of the Land Fund immediately before the end of that year, having regard to the relevant audited financial statements; 30

then, on the first business day in October in the first category B year, there is to be credited to the Land Fund an amount equal to the excess. 35

Note 1: ‘Target amount’ is defined by subsections (2) and (3).

Note 2: ‘Designated funding amount’ is defined by section 193A.

Note 3: ‘Business day’ is defined by section 192Y.

Target amount—second category A year

“(2) For the purposes of this section, the **target amount** for the second category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$1,106 \text{ million}$$

where:

- 5 **‘Indexation factor’** means the indexation factor for the year worked out under section 193D.

Target amount—later category A years

“(3) For the purposes of this section, the **target amount** for a later category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \text{Previous year's target amount}$$

- 10 where:

‘Indexation factor’ means the indexation factor for the year worked out under section 193D;

‘Previous year’s target amount’ means the target amount for the previous category A year.

- 15 *Consolidated Revenue Fund to be debited*

“(4) The Consolidated Revenue Fund is to be debited for the purposes of making a credit under this section.

Moneys to be appropriated by another Act

- 20 “(5) The Consolidated Revenue Fund is to be appropriated by the Parliament for the purposes of this section.

Payments out of Land Fund to Indigenous Land Corporation—category A years

First category A year

- 25 “193A.(1) In the first category A year, there is to be paid to the Indigenous Land Corporation, out of the Land Fund, \$25 million. The payment is to be made on a business day nominated by the Minister. The nominated day must be within 30 days after the beginning of the first category A year.

Note: ‘Business day’ is defined by section 192Y.

- 30 *Later category A years*

“(2) On the second business day in the second category A year or a later category A year, there is to be paid to the Indigenous Land Corporation, out of the Land Fund, an amount equal to the designated funding amount for the year.

- 35 Note 1: ‘Business day’ is defined by section 192Y.

Note 2: ‘Designated funding amount’ is defined by subsections (4), (5), (6) and (7).

Designated funding amount—second category A year

“(4) For the purposes of this Division, the **designated funding amount** for the second category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$24 \text{ million}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D. 5

Designated funding amount—third category A year

“(5) For the purposes of this Division, the **designated funding amount** for the third category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Previous year's designated funding amount}}{\text{Indexation factor}}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 10

‘**Previous year’s designated funding amount**’ means the designated funding amount for the previous category A year.

Designated funding amount—fourth category A year 15

“(6) For the purposes of this Division, the **designated funding amount** for the fourth category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Adjusted previous year's designated funding amount}}{\text{Indexation factor}}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 20

‘**Adjusted previous year’s designated funding amount**’ means the amount that would have been the designated funding amount for the previous category A year if the reference in subsection (4) to \$24 million were a reference to \$45 million.

Designated funding amount—later category A years 25

“(7) For the purposes of this Division, the **designated funding amount** for a later category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \frac{\text{Previous year's designated funding amount}}{\text{Indexation factor}}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 30

‘Previous year’s designated funding amount’ means the designated funding amount for the previous category A year.

Rounding down

5 “(8) If the result of applying the formula set out in subsection (4), (5), (6) or (7) is an amount of dollars and cents, the cents are to be disregarded.

Payments out of Land Fund to Commission—second and third category A years

Later category A years

10 “193B.(1) On the second business day in the second category A year or a later category A year, there is to be paid to the Commission, out of the Land Fund, an amount equal to the eligible funding amount for the year.

Note 1: ‘Business day’ is defined by section 192Y.

Note 2: ‘Eligible funding amount’ is defined by subsections (3) and (4).

Eligible funding amount—second category A year

15 “(3) For the purposes of this Division, the **eligible funding amount** for the second category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$21 \text{ million}$$

where:

‘Indexation factor’ means the indexation factor for the year worked out under section 193D.

20 *Eligible funding amount—third category A year*

“(4) For the purposes of this Division, the **eligible funding amount** for the third category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \text{Previous year’s eligible funding amount}$$

where:

25 **‘Indexation factor’** means the indexation factor for the year worked out under section 193D;

‘Previous year’s eligible funding amount’ means the eligible funding amount for the previous category A year.

Rounding down

30 “(5) If the result of applying the formula set out in subsection (3) or (4) is an amount of dollars and cents, the cents are to be disregarded.

Spending of payments by Commission

“(6) In deciding how to spend money paid to the Commission under this section, the Commission is to have regard to the desirability of spending the money for purposes relating to land acquisition and land management.

Payments out of Land Fund to Indigenous Land Corporation—category B years

Payments

“193C.(1) On the last business day in a category B year, there is to be paid to the Indigenous Land Corporation, out of the Land Fund, an amount equal to the designated funding amount for the year. 5

Note 1: ‘Business day’ is defined by section 192Y.

Note 2: ‘Designated funding amount’ is defined by subsection (3).

Designated funding amount

“(3) For the purposes of this Division, the **designated funding amount** for a category B year is equal to the realised real return on the investments of the Land Fund in respect of the previous financial year. 10

Method of measuring inflation

“(4) For the purposes of subsection (3), inflation for a financial year is to be measured using the indexation factor for the next financial year worked out under section 193D. 15

Indexation factor

Indexation factor—category A year

“193D.(1) The indexation factor for a category A year is worked out using the following formula (and then rounded under subsection (3)): 20

Sum of index numbers for quarters in first March year

Sum of index numbers for quarters in second March year

where:

‘**first March year**’ means the period of 12 months ending on 31 March immediately before the category A year;

‘**index number**’, for a quarter, means the implicit price deflator for gross non-farm product (trend) published by the Australian Statistician in respect of the quarter (ignoring any later number that may be published by the Australian Statistician in substitution for it); 25

‘**second March year**’ means the period of 12 months immediately before the first March year.

Indexation factor—category B year

“(2) The indexation factor for a category B year is worked out using the following formula (and then rounded under subsection (3)): 30

Sum of index numbers for quarters in first June year

Sum of index numbers for quarters in second June year

where:

'first June year' means the period of 12 months ending on 30 June immediately before the category B year;

5 **'index number'**, for a quarter, means the implicit price deflator for gross non-farm product (trend) published by the Australian Statistician in respect of the quarter (ignoring any later number that may be published by the Australian Statistician in substitution for it);

'second June year' means the period of 12 months immediately before the first June year.

10 *Rounding the indexation factor*

“(3) A result under subsection (1) or (2) must be rounded up or down to 3 decimal places (rounding up in the case exactly half-way between).

Change in statistical reference base

15 “(4) For the purposes of applying the formula component **'index number'** in subsection (1) or (2), if:

(a) at any time, whether before or after the commencement of this subsection, the Australian Statistician has changed or changes the reference base for the implicit price deflator for gross non-farm product (trend);

20 then:

(b) after the change, only numbers published in terms of the new base are to be used.

Advances on account of payments

Advances

25 “193E.(1) If the Minister is satisfied that, because of special circumstances, it is appropriate to do so, he or she may, on behalf of the Commonwealth, make an advance on account of payments that may become payable to the Indigenous Land Corporation under section 193A or 193C during a specified financial year.

30 *Advance to be paid out of Land Fund*

“(2) An advance is to be paid out of the Land Fund.

Repayment of excess advances

35 “(3) If, at the end of the specified financial year, the Indigenous Land Corporation has received a total amount, by way of advances on account of payments that may become payable to the Corporation under section 193A or 193C during that financial year, that is greater than the total amount

(if any) that became payable to the Corporation under section 193A or 193C during that financial year, the Corporation is liable to pay to the Commonwealth the amount of the excess.

Note: Under section 81 of the Constitution, amounts paid by the Indigenous Land Corporation under subsection (3) of this section must be paid into the Consolidated Revenue Fund.

5

Credits to Land Fund

“(4) If the Indigenous Land Corporation pays an amount under subsection (3), an amount equal to that amount is to be:

- (a) debited to the Consolidated Revenue Fund; and
- (b) credited to the Land Fund.

10

Standing appropriation

“(5) The Consolidated Revenue Fund is appropriated for the purposes of subsection (4).

Recovery of excess advances

“(6) If the Indigenous Land Corporation is liable to pay an amount to the Commonwealth under subsection (3):

15

- (a) the amount may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction; or
- (b) the amount may be deducted from any other amount that is payable to the Corporation under this Division, and if the amount is so deducted, the other amount is taken to have been paid in full to the Corporation.

20

Delegation of investment powers by Minister for Finance

Purposes for which this section applies

“193F.(1) This section applies for the purposes of the application of section 70A of the *Audit Act 1901* to powers conferred on the Minister for Finance by section 62B of that Act, in so far as those powers relate to the Land Fund.

25

Note: Under section 62B of the *Audit Act 1901*, the Minister for Finance is responsible for making investments of the Land Fund.

30

Delegation of investment powers to a member of the staff of the Commission

“(2) A reference in section 70A of the *Audit Act 1901* to an officer includes a reference to a member of the staff of the Commission.

Note: This means that the Minister for Finance may delegate Land Fund investment powers to a member of the staff of the Commission.

35

Consultative forum on investment policy of the Land Fund

Consultative forum to be convened by Minister

“193G.(1) The Minister must convene, at least twice each financial year, a meeting between:

40

- (a) 2 or more Indigenous Land Corporation Directors nominated by the Indigenous Land Corporation Board; and
- (b) the person to whom the Minister for Finance has delegated any of the powers conferred on the Minister for Finance by section 62B of the *Audit Act 1901*, in so far as those powers relate to the Land Fund; and
- (c) such other persons (if any) as the Minister considers appropriate; for the purpose of discussing the investment policy of the Land Fund.

Note: Under section 62B of the *Audit Act 1901*, the Minister for Finance is responsible for making investments of the Land Fund.

10 *Minister may attend meeting*

“(2) The Minister may attend a meeting convened under subsection (1).

Minister to provide information

“(2A) A person who is, or is to be, a participant in a meeting convened under subsection (1) may request the Minister to provide to each participant in the meeting such information as is specified in the request. The specified information must relate to the management and/or performance of the investments of the Land Fund. The Minister must comply with the request.

First category A year deemed to be a financial year

“(3) For the purposes of this section, the first category A year is taken to be a financial year.

Accounts and financial statements

“193H. The Commission must keep accounts, and prepare financial statements, in such form as the Minister for Finance determines, in respect of the Land Fund.

25 **Annual report about Land Fund**

Annual report—general

“193I.(1) The Minister must, as soon as practicable after the end of 30 June in each year, cause to be prepared a report about the administration of the Land Fund, and the operation of this Division, during the financial year ended on that date.

Annual report—specific matters

“(2) Without limiting subsection (1), a report relating to a financial year must include the following information:

- (a) particulars of amounts credited to the Land Fund during the financial year;
- (b) particulars of amounts paid out of the Land Fund during the financial year;

- (c) particulars of investments of the Land Fund;
- (d) the realised real return on investments of the Land Fund in respect of the financial year;
- (e) such other information (if any) as is specified in the regulations.

Tabling of annual report

5

“(3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Reporting obligations are in addition to other obligations

“(4) The obligations imposed by this section are in addition to, and not instead of, obligations imposed by any other law of the Commonwealth.

10

Realised real return

“(5) For the purposes of paragraph (2)(d), inflation for a financial year is to be measured using the indexation factor for the next financial year worked out under section 193D.

15

First category A year deemed to be a financial year

“(6) For the purposes of this section, the first category A year is taken to be a financial year.

“Division 11—Finances

Application of money held by Indigenous Land Corporation

20

“193J. Money held by the Indigenous Land Corporation must be applied only:

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the Corporation in the performance of its functions or the exercise of its powers under this Act or any other law; and
- (b) in payment of any remuneration and allowances payable to any person under this Act or any other law; and
- (c) in making any other payments which the Corporation is authorised or required to make under this Act or any other law.

25

Note: Paragraph 191H(2)(b) empowers the Indigenous Land Corporation to invest its money. This section is intended to authorise the Corporation to apply its money in making such investments.

30

Application of the *Audit Act 1901* to the Indigenous Land Corporation

Application

“193K.(1) The Indigenous Land Corporation is an authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

35

Modifications

“(2) Division 2 of Part XI of the *Audit Act 1901* applies to the Indigenous Land Corporation as if:

- (a) section 63E of that Act were omitted; and
- 5 (b) the report referred to in section 63H of that Act relating to the Indigenous Land Corporation’s operations were also required to include such additional information (if any) as is specified in the regulations; and
- (c) the first category A year were a financial year.

10 Note 1: Section 63E of the *Audit Act 1901* deals with investment.

Note 2: Section 63H of the *Audit Act 1901* deals with annual reports.

Borrowing

Power to borrow

15 “193L.(1) Subject to this section, the Indigenous Land Corporation may borrow money.

Borrowing

“(2) The Indigenous Land Corporation must not borrow money in a financial year if the sum of:

- (a) the proposed borrowing; and
- 20 (b) its current borrowings; and
- (c) the total of its liabilities (whether actual or contingent) in respect of guarantees; and
- (d) the current borrowings of its subsidiaries; and
- 25 (e) the total of the liabilities (whether actual or contingent) of its subsidiaries in respect of guarantees;

is more than the borrowing limit for the year. For this purpose, the first category A year is taken to be a financial year.

Note: ‘Borrowing limit’ is defined by subsections (3), (4), (5), (6), (7) and (8).

Borrowing limit—first category A year

30 “(3) For the purposes of this section, the **borrowing limit** for the first category A year is \$100 million.

Borrowing limit—second category A year

“(4) For the purposes of this section, the **borrowing limit** for the second category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$100 \text{ million}$$

35 where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D.

Borrowing limit—third category A year

“(5) For the purposes of this section, the **borrowing limit** for the third category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \text{Previous year's borrowing limit}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 5

‘**Previous year’s borrowing limit**’ means the borrowing limit for the previous financial year.

Borrowing limit—fourth category A year

“(6) For the purposes of this section, the **borrowing limit** for the fourth category A year is \$200 million. 10

Borrowing limit—fifth category A year

“(7) For the purposes of this section, the **borrowing limit** for the fifth category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$200 \text{ million}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D. 15

Borrowing limit—later financial years

“(8) For the purposes of this section, the **borrowing limit** for a later financial year is the amount worked out using the formula: 20

$$\text{Indexation factor} \times \text{Previous year's borrowing limit}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D;

‘**Previous year’s borrowing limit**’ means the borrowing limit for the previous financial year. 25

Validity of transactions

“(9) A failure to comply with subsection (2) does not affect the validity of any transaction.

Section to be sole source of power to borrow

“(10) The Indigenous Land Corporation must not borrow money except in accordance with this section. 30

Money not to be raised except by borrowing

“(11) The Indigenous Land Corporation must not raise money except by borrowing.

Giving of security over assets

5 “193M. The Indigenous Land Corporation may give security over the whole or any part of its assets:

(a) for the repayment by the Indigenous Land Corporation of money borrowed under section 193L and the payment by the Indigenous Land Corporation of interest (including interest on interest) on

10 money so borrowed; or
(b) in connection with a guarantee given by the Indigenous Land Corporation;

and not otherwise.

Limit on guarantees

15 *Limit*

“193N.(1) The Indigenous Land Corporation must not guarantee a loan in a financial year if the sum of:

(a) the contingent liabilities to which it would be subject if the proposed guarantee were to be given; and

20 (b) its current borrowings; and

(c) the total of its liabilities (whether actual or contingent) in respect of guarantees; and

(d) the current borrowings of its subsidiaries; and

25 (e) the total of the liabilities (whether actual or contingent) of its subsidiaries in respect of guarantees;

is more than the guarantee limit for the financial year. For this purpose, the first category A year is taken to be a financial year.

Note: ‘Guarantee limit’ is defined by subsections (2), (3), (4), (5), (6) and (7).

Guarantee limit—first category A year

30 “(2) For the purposes of this section, the **guarantee limit** for the first category A year is \$100 million.

Guarantee limit—second category A year

“(3) For the purposes of this section, the **guarantee limit** for the second category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$100 \text{ million}$$

35 where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D.

Guarantee limit—third category A year

“(4) For the purposes of this section, the **guarantee limit** for the third category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \text{Previous year's guarantee limit}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D; 5

‘**Previous year’s guarantee limit**’ means the guarantee limit for the previous financial year.

Guarantee limit—fourth category A year

“(5) For the purposes of this section, the **guarantee limit** for the fourth category A year is \$200 million. 10

Guarantee limit—fifth category A year

“(6) For the purposes of this section, the **guarantee limit** for the fifth category A year is the amount worked out using the formula:

$$\text{Indexation factor} \times \$200 \text{ million}$$

where: 15

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D.

Guarantee limit—later financial years

“(7) For the purposes of this section, the **guarantee limit** for a later financial year is the amount worked out using the formula: 20

$$\text{Indexation factor} \times \text{Previous year's guarantee limit}$$

where:

‘**Indexation factor**’ means the indexation factor for the year worked out under section 193D;

‘**Previous year’s guarantee limit**’ means the guarantee limit for the previous financial year. 25

Validity of transactions

“(8) A failure to comply with subsection (1) does not affect the validity of any transaction.

Exemption from taxation

“193P. The Indigenous Land Corporation is not subject to taxation under a law of the Commonwealth, a State or a Territory. 30

Foreign subsidiaries

No foreign subsidiaries

5 “193Q.(1) The Indigenous Land Corporation must take all reasonable steps to ensure that a company incorporated in a foreign country does not become a subsidiary of the Indigenous Land Corporation.

Exception—Minister’s consent

“(2) Subsection (1) does not apply if the Minister has given written consent to the company becoming or being a subsidiary of the Indigenous Land Corporation.

10 “*Division 12—Exemption from stamp duty etc.*

Exemption from stamp duty etc.

Definition

“193R.(1) In this section:

‘**exempt matter**’ means:

- 15 (a) the grant of an interest in land by the Indigenous Land Corporation under paragraph 191D(1)(a), if the grant occurs within 12 months after the interest was acquired by the Indigenous Land Corporation; or
- (b) an agreement relating to such a grant; or
- 20 (c) the grant of an interest in land by a subsidiary of the Indigenous Land Corporation as a result of the performance by the subsidiary of the function corresponding to the function of the Indigenous Land Corporation referred to in paragraph 191D(1)(a), if the grant occurs within 12 months after the interest was acquired by the subsidiary; or
- 25 (d) an agreement relating to a grant referred to in paragraph (c); or
- (e) the grant of an interest in land by the Commission under section 191K; or
- (f) an agreement relating to a grant referred to in paragraph (e); or
- 30 (g) the disposal of an interest in land by a body corporate under section 191T; or
- (h) an agreement relating to a disposal referred to in paragraph (g); or
- (i) the receipt of money by a body corporate, or by a person acting on behalf of a body corporate, in respect of a disposal referred to in
- 35 paragraph (g).

Exemption

“(2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:

- (a) an exempt matter; or
- (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, an exempt matter.

“Division 13—Secrecy

5

Secrecy

Definitions

“193S.(1) In this section:

‘court’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions; 10

‘ILC officer’ means a person:

- (a) who is or has been an Indigenous Land Corporation Director or an acting Indigenous Land Corporation Director; or
- (b) who is or has been the Indigenous Land Corporation General Manager or an acting Indigenous Land Corporation General Manager; or 15
- (c) who is or has been employed or engaged under section 192S or 192V; or
- (d) who is performing, or who has performed, duties on behalf of the Indigenous Land Corporation under an arrangement under section 192T; or 20
- (e) whose services are being, or have been, made available to the Indigenous Land Corporation under an arrangement under section 192U; or
- (f) who is or has been a director or employee of a subsidiary of the Indigenous Land Corporation; 25

‘produce’ includes permit access to.

Information and documents to which this section applies

“(2) This section applies to information acquired, or a document obtained, by an ILC officer: 30

- (a) in connection with the performance of a function, or the exercise of a power, of the Indigenous Land Corporation; or
- (b) in connection with the performance by a subsidiary of the Indigenous Land Corporation of a function that corresponds to a function of the Indigenous Land Corporation; or 35
- (c) in connection with the exercise of a power by a subsidiary of the Indigenous Land Corporation, where the power relates to such a corresponding function.

ILC officer not to disclose certain information

“(3) Subject to this section, an ILC officer must not, either directly or indirectly:

- 5 (a) disclose to any person any information concerning the affairs of another person acquired by the ILC officer, where:
- (i) the information was acquired by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
 - 10 (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or
- (b) disclose to any person information acquired by the ILC officer, where, to the knowledge of the ILC officer:
- 15 (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
 - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or
- 20 (c) produce to any person a document relating to the affairs of another person, where:
- (i) the document was obtained by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or
 - 25 (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or
- (d) produce to any person a document obtained by the ILC officer, where, to the knowledge of the ILC officer:
- 30 (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
 - (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders.
- 35

Offence

“(4) A person who intentionally or recklessly contravenes subsection (3) is guilty of an offence punishable on conviction by imprisonment for a term not exceeding 12 months.

ILC officer not required to disclose certain information to a court

“(5) Subject to this section, an ILC officer must not be required to:

- (a) disclose to a court any information concerning the affairs of another person acquired by the ILC officer, where:
 - (i) the information was acquired by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or 5
 - (ii) disclosure of the information could reasonably be expected to prejudice substantially the commercial interests of the other person; or 10
- (b) disclose to a court information acquired by the ILC officer, where:
 - (i) the information is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
 - (ii) the disclosure would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders; or 15
- (c) produce to a court a document relating to the affairs of another person, where:
 - (i) the document was obtained by the ILC officer in the performance of duties in connection with an application for, or the giving of, a loan, grant or guarantee; or 20
 - (ii) the production of the document could reasonably be expected to prejudice substantially the commercial interests of the other person; or 25
- (d) produce to a court a document obtained by the ILC officer, where:
 - (i) the document contains information that is considered sacred or otherwise significant by a particular group of Aboriginal persons or Torres Strait Islanders; and
 - (ii) the production of the document would be inconsistent with the views or sensitivities of those Aboriginal persons or Torres Strait Islanders. 30

Exception—disclosure for the purposes of performance of functions etc.

“(6) Subsections (3) and (5) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of: 35

- (a) the performance of a function, or the exercise of a power, of the Indigenous Land Corporation; or
- (b) the performance by a subsidiary of the Indigenous Land Corporation of a function that corresponds to a function of the Indigenous Land Corporation; or 40

- (c) the exercise of a power by a subsidiary of the Indigenous Land Corporation, where the power relates to such a corresponding function.

Exception—prosecutions

- 5 “(7) Paragraphs (3)(a), (3)(c), (5)(a) and (5)(c) do not apply to the disclosure of information, or the production of a document, if the disclosure or production, as the case requires, is for the purposes of a criminal proceeding.

“Division 14—Delegation

10 **Delegation to Indigenous Land Corporation General Manager or member of staff**

- “193T. The Indigenous Land Corporation may, by writing under its seal, delegate any or all of its functions and powers to the Indigenous Land Corporation General Manager or to a member of the staff of the Corporation.”.

Division 2—Consequential amendments

Title

4. The title to the Principal Act is amended by inserting “, **an Indigenous Land Corporation**” after “**Authority**”.

- 20 Note: This section amends the long title to the Principal Act. The long title is set out before the Preamble.

Interpretation

5. Section 4 of the Principal Act is amended:

- 25 (a) by omitting “193” from paragraph (b) of the definition of “approved bank” in subsection (1) and substituting “193V”;
- (b) by omitting from subsection (1) the definitions of “Corporation”, “Corporation Board”, “Corporation Chairperson”, “Director” and “General Manager”;
- 30 (c) by omitting the definition of “Land Fund” and substituting the following definition:
“**Land Fund**’ means the Aboriginal and Torres Strait Islander Land Fund established by section 192W;”;
- (d) by inserting in subsection (1) the following definitions:
“**Aboriginal or Torres Strait Islander corporation**’ means:
- 35 (a) an Aboriginal association incorporated under Part IV of the *Aboriginal Councils and Associations Act 1976*; or
(b) a body corporate where either of the following conditions is satisfied:

- (i) all the members of the body corporate are Aboriginal persons or Torres Strait Islanders, or both;
 - (ii) a controlling interest in the body corporate is held by Aboriginal persons or Torres Strait Islanders, or both;
- ‘appointed Indigenous Land Corporation Director’** means an Indigenous Land Corporation Director referred to in paragraph 191V(2)(a), (b), (d), (e), (f) or (g); 5
- ‘category A year’** means:
- (a) the period:
 - (i) beginning at the commencement of section 1 of the *Land Fund and Indigenous Land Corporation (ATSIC Amendment) Act 1995*; and 10
 - (ii) ending at the end of 30 June 1995; or
 - (b) the financial year beginning on 1 July 1995; or
 - (c) any of the next 8 succeeding financial years; 15
- ‘category B year’** means a financial year later than the last category A year;
- ‘Commercial Development Corporation’** means the Aboriginal and Torres Strait Islander Commercial Development Corporation established by section 145; 20
- ‘Commercial Development Corporation Board’** means the Board of Directors of the Commercial Development Corporation referred to in section 155;
- ‘Commercial Development Corporation Chairperson’** means the Chairperson of the Commercial Development Corporation Board referred to in section 155; 25
- ‘Commercial Development Corporation Director’** means a member of the Commercial Development Corporation Board;
- ‘Commercial Development Corporation General Manager’** means the General Manager of the Commercial Development Corporation referred to in section 168; 30
- ‘holder’**, in relation to indigenous-held land, means a person or body who holds an interest in the land, where the interest is relevant to determining the status of the land as indigenous-held land;
- ‘indigenous-held land’** has the meaning given by section 4B; 35
- ‘Indigenous Land Corporation’** means the Indigenous Land Corporation established by section 191A;
- ‘Indigenous Land Corporation Board’** means the Board of Directors of the Indigenous Land Corporation referred to in section 191V; 40

‘Indigenous Land Corporation Chairperson’ means the Chairperson of the Indigenous Land Corporation Board referred to in section 191V;

‘Indigenous Land Corporation Director’ means a member of the Indigenous Land Corporation Board;

‘Indigenous Land Corporation General Manager’ means the General Manager of the Indigenous Land Corporation referred to in section 192K;

‘interest’, in relation to land, includes:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right, power or privilege over, or in connection with, the land;

‘national indigenous land strategy’ means the strategy prepared under section 191N;

‘Regional Land Fund’ means the Regional Land Fund established by section 68;

‘regional indigenous land strategy’ means a strategy prepared under section 191P;”;

- (e) by inserting in subsection (2) “, of the Indigenous Land Corporation” after “Commission”.

Note: Subsection 4(2) of the Principal Act defines “subsidiary”.

Insertion of new section

6. After section 4A of the Principal Act the following section is inserted:

Indigenous-held land

Indigenous-held land

“4B.(1) For the purposes of this Act, land is **indigenous-held land** if, and only if:

- (a) an interest in the land is held by an Aboriginal or Torres Strait Islander corporation; or
- (b) an interest in the land is held by an Aboriginal person or a Torres Strait Islander.

Exception—minority interest in tenancy in common

“(2) For the purposes of subsection (1), an interest in land is to be ignored if:

- (a) the interest consists of a share in a tenancy in common; and
- (b) the proportion of the shares in the tenancy in common held by:

- (i) Aboriginal persons; and
 - (ii) Torres Strait Islanders; and
 - (iii) Aboriginal or Torres Strait Islander corporations;
- is less than 50%.

Exception—minority interest in partnership property

5

“(3) For the purposes of subsection (1), an interest in land is to be ignored if:

- (a) the interest consists of a share in partnership property; and
 - (b) the proportion of the shares in the partnership property held by:
 - (i) Aboriginal persons; and
 - (ii) Torres Strait Islanders; and
 - (iii) Aboriginal or Torres Strait Islander corporations;
- is less than 50%.

10

Exception—interest of a mortgagee

“(4) For the purposes of subsection (1), an interest in land is to be ignored if the interest is held in the capacity of mortgagee (whether legal or equitable).”.

15

Functions of Office

7. Section 76 of the Principal Act is amended:

- (a) by inserting after paragraph (1)(b) the following paragraph: 20

“(ba) when requested to do so by the Minister, to evaluate or audit particular aspects of the operations of:

- (i) the Indigenous Land Corporation; or
- (ii) a subsidiary of the Indigenous Land Corporation;”;

- (b) by inserting after paragraph (1)(d) the following paragraph: 25

“(da) when requested to do so by the Indigenous Land Corporation, to evaluate or audit particular aspects of the operations of:

- (i) the Indigenous Land Corporation; or
- (ii) a subsidiary of the Indigenous Land Corporation;”;

- (c) by inserting after paragraph (1)(jf) the following paragraphs:

“(jg) when requested to do so by the Minister or the Indigenous Land Corporation, to evaluate or audit the activities of an individual who has received one or more grants or loans from:

- (i) the Indigenous Land Corporation; or
 - (ii) a subsidiary of the Indigenous Land Corporation;
- but only to the extent that the evaluation or audit concerns those grants or loans;

35

(jh) when requested to do so by the Minister or the Indigenous Land Corporation, to evaluate or audit the operations of a body corporate that has received one or more grants or loans from:

5 (i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those grants or loans;

10 (ji) when requested to do so by the Minister or the Indigenous Land Corporation, to evaluate or audit the operations of an unincorporated body that has received one or more grants or loans from:

(i) the Indigenous Land Corporation; or
15 (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those grants or loans;

(jj) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the activities of a borrower, being an individual one or more of whose loans have been guaranteed by:

20 (i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those guarantees;

25 (jk) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the operations of a borrower, being a body corporate one or more of whose loans have been guaranteed by:

(i) the Indigenous Land Corporation; or
30 (ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those guarantees;

(jl) when requested to do so by the Indigenous Land Corporation, to evaluate or audit the operations of a borrower, being an unincorporated body one or more of whose loans have been guaranteed by:

35 (i) the Indigenous Land Corporation; or
(ii) a subsidiary of the Indigenous Land Corporation;
but only to the extent that the evaluation or audit concerns those guarantees;”;

40 (d) by inserting after paragraph (1)(k) the following paragraph:

“(ka) to report on evaluations and audits conducted in accordance with paragraph (ba), (jg), (jh), (ji), (jj), (jk) or (jl), in writing, to the Indigenous Land Corporation and the Minister at least every 3 months;”;

(e) by inserting after paragraph (1)(o) the following paragraph: 5

“(oa) to tell the Minister and the Indigenous Land Corporation about particular problems that have arisen or may arise in relation to the operations of:

(i) the Indigenous Land Corporation; or

(ii) a subsidiary of the Indigenous Land Corporation;”;

(f) by inserting after subsection (1) the following subsection:

“(1A) Paragraphs (1)(jg) to (jl) (inclusive) do not apply in relation to a thing done by a subsidiary of the Indigenous Land Corporation unless the thing was done as the result of the performance by the subsidiary of a function corresponding to a function of the Indigenous Land Corporation.”. 15

Examination of documents etc.

8. Section 78A of the Principal Act is amended:

(a) by omitting from paragraph (1)(a) “76(1)(b), (f), (g), (jb) or (jc)” and substituting “76(1)(b), (ba), (f), (g), (jb), (jc), (jh) or (ji)”;

(b) by omitting from paragraph (1)(b) “or (ja)” and substituting “, (ja) or (jg)”.

Board of Directors of Commercial Development Corporation

9. Section 155 of the Principal Act is amended by adding at the end the following subsection: 25

“(3) The performance of the functions, or the exercise of the powers, of the Commercial Development Corporation Board is not, and is taken never to have been, affected only because of there being, or having been, a vacancy or vacancies in the membership of the Commercial Development Corporation Board.”. 30

Re-numbering of sections 192 and 193 of the Principal Act

Section 192

10.(1) Section 192 of the Principal Act is re-numbered as section 193U.

Section 193

(2) Section 193 of the Principal Act is re-numbered as section 193V. 35

Regional Land Fund

11. The following provisions of the Principal Act are amended by omitting “Land Fund” (wherever occurring) and substituting “Regional Land Fund”:

5 sections 61, 66, 68, 72, 91 and 97.

Aboriginal and Torres Strait Islander Commercial Development Corporation

12. The following provisions of the Principal Act are amended by inserting “Commercial Development” before “Corporation” (wherever occurring) or “Corporation’s” (wherever occurring):

10 subsection 4(2), sections 58, 59, 61, 63, 66 and 76, subsections 145(2),
(3) and (4), section 146, the heading to Division 2 of Part 4, sections 147
to 154 (inclusive), the heading to Division 3 of Part 4, sections 155 to 165
15 (inclusive), the heading to Division 5 of Part 4, sections 167 to 191
(inclusive), 206, 208, 210, 211, 215 and 222.

Commercial Development Corporation General Manager

13. The following provisions of the Principal Act are amended by inserting “Commercial Development Corporation” before “General Manager” (wherever occurring):

20 the heading to Division 6 of Part 4, subsections 168(2) and (3),
sections 169 to 178 (inclusive), 182, 190 and 191.

Commercial Development Corporation Directors

14. The following provisions of the Principal Act are amended by inserting “Commercial Development Corporation” before “Director” (wherever occurring) or “Directors” (wherever occurring):

25 sections 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167 and 191.

PART 3—AMENDMENT OF OTHER ACTS

Amendment of other Acts

15. The Acts specified in the Schedule are amended as set out in the
30 Schedule.

SCHEDULE

Section 15

AMENDMENT OF OTHER ACTS

Native Title Act 1993

Section 4:

Omit from the table the item relating to Part 10 of the Principal Act.

Part 10:

Repeal the Part.

Heading to Part 12:

Omit the heading, substitute the following heading:

**“PART 12—PARLIAMENTARY JOINT COMMITTEE ON
NATIVE TITLE AND THE LAND FUND”.**

Subsection 204(1):

After “Native Title”, insert “and the Aboriginal and Torres Strait Islander Land Fund”.

Paragraph 206(a):

After “Act”, insert “and Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*”.

Paragraph 206(c):

After “NNTT”, insert “or by any person under Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*”.

Section 206:

After subparagraph 206(d)(vi), insert the following subparagraph:

“(vii) the operation of the Indigenous Land Corporation and the Aboriginal and Torres Strait Islander Land Fund established by Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*; and”.

Remuneration Tribunal Act 1973

After paragraph 7(9)(aca):

Insert:

“(acaaa) in the case of remuneration or allowances payable to a person who holds an office or appointment under Part 4A of the *Aboriginal and Torres Strait Islander Commission Act 1989*—be paid in accordance with the determination out of money of the Indigenous Land Corporation that is lawfully available to pay the remuneration or allowances;”.

NOTE

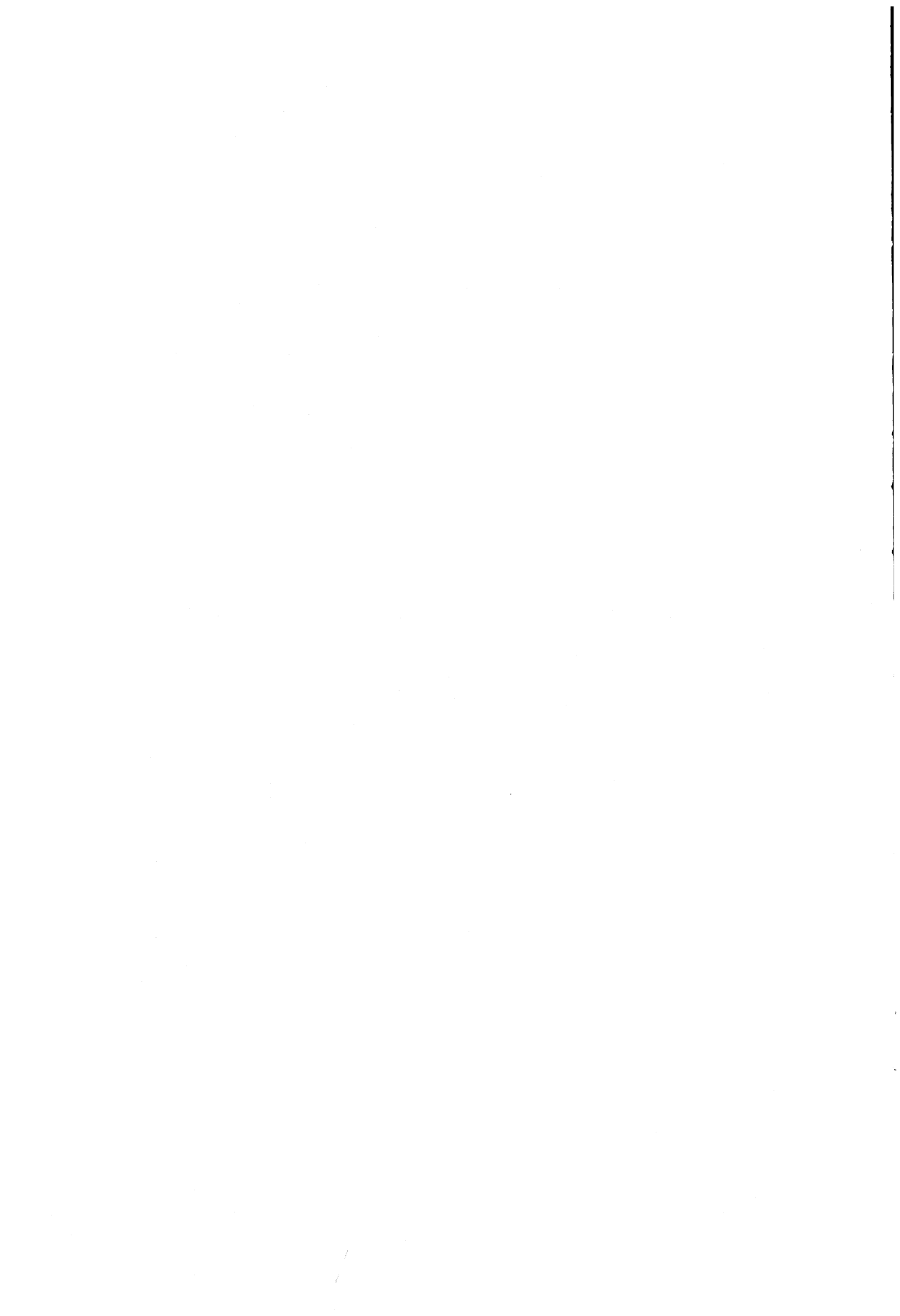
1. No. 150, 1989, as amended. For previous amendments, see No. 122, 1991; Nos. 26 and 37, 1993; and Nos. 1 and 00, 1994.

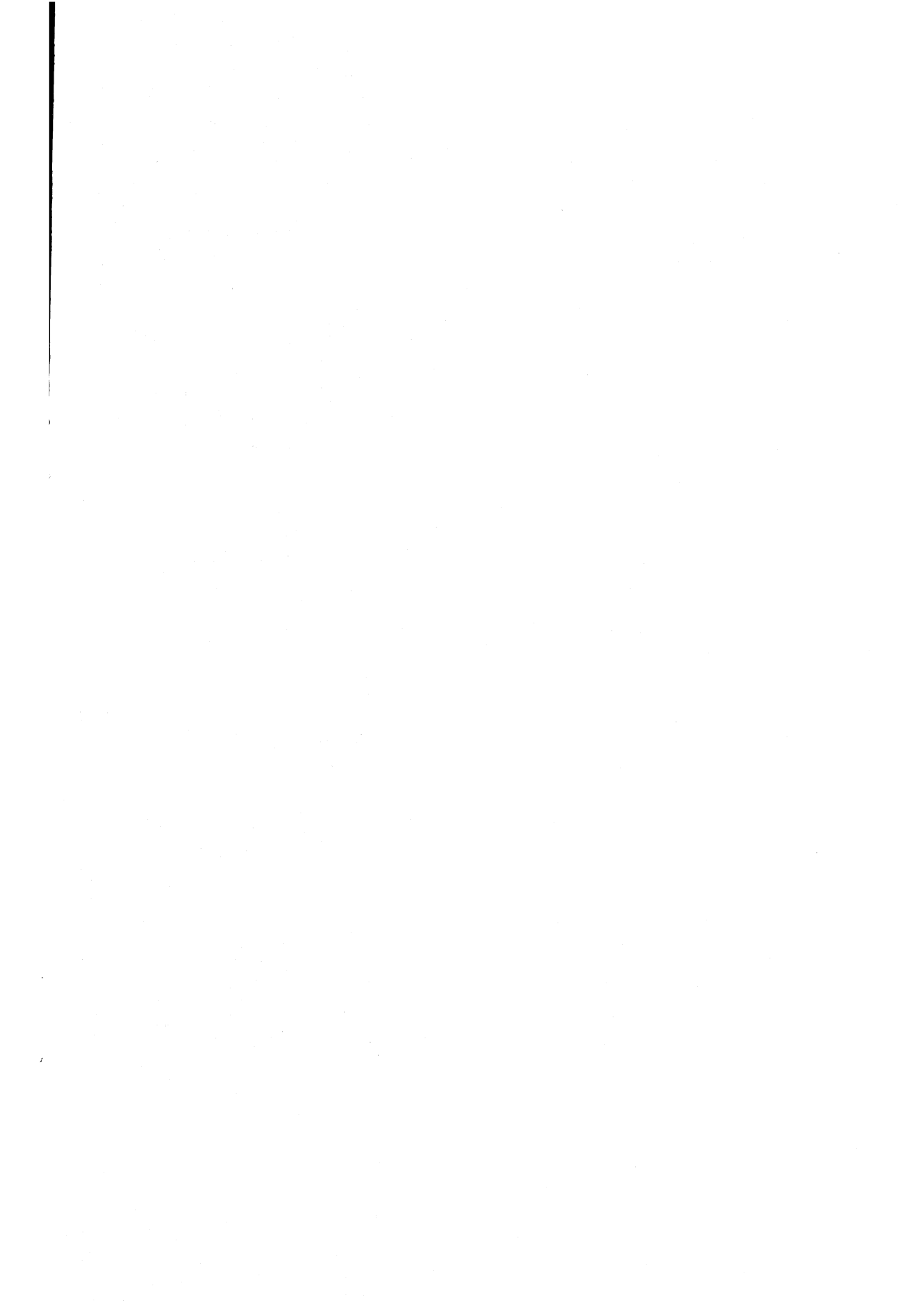
NOTES ABOUT SECTION HEADINGS

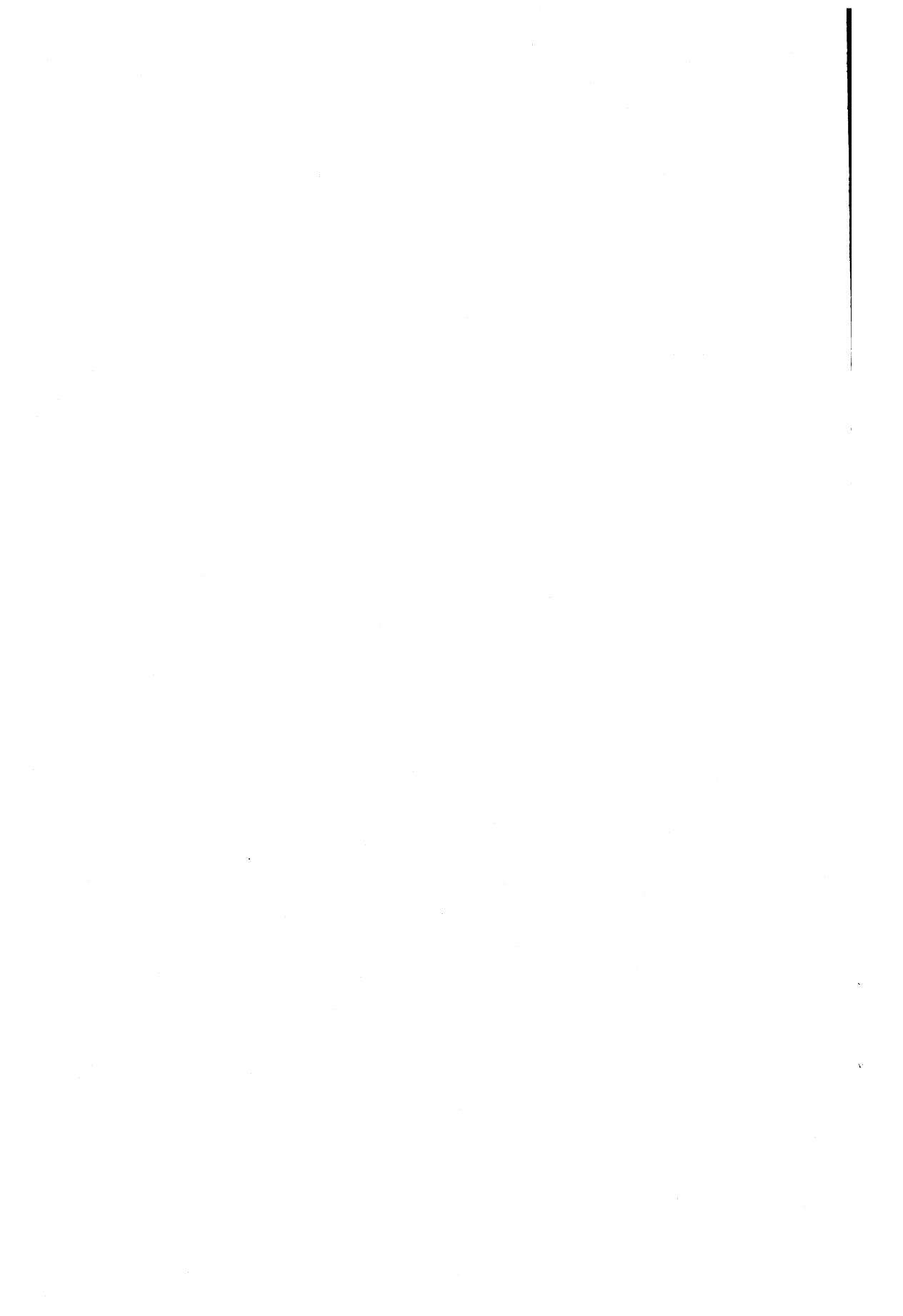
1. On the day on which section 1 of this Act commences, the headings to the following provisions of the Principal Act are altered by inserting "**Commercial Development**" before "**Corporation**" or "**Corporation's**":
sections 146, 147, 152, 156, 167, 176, 179, 181, 182, 184, 186, 187, 208 and 210.
2. On the day on which section 1 of this Act commences, the headings to the following provisions of the Principal Act are amended by inserting "**Commercial Development Corporation**" before "**General Manager**":
sections 168, 172 and 190.
3. On the day on which section 1 of this Act commences, the headings to the following provisions of the Principal Act are amended by inserting "**Commercial Development Corporation**" before "**Directors**":
sections 157 and 158.















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