Indigenous Affairs Legislation Amendment Bill (No. 2) 2011

No. , 2011

(Families, Housing, Community Services and Indigenous Affairs)

A Bill for an Act to amend the law relating to Indigenous affairs, and for related purposes
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A Bill for an Act to amend the law relating to Indigenous affairs, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Indigenous Affairs Legislation Amendment Act (No. 2) 2011.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule.
concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments relating to the Aboriginal and Torres Strait Islander Act 2005

Part 1—Chief Executive Officers

Aboriginal and Torres Strait Islander Act 2005

1 Subsection 4(1)
Insert:

*Indigenous Business Australia Chief Executive Officer* means the Chief Executive Officer of Indigenous Business Australia referred to in section 168.

2 Subsection 4(1) (definition of *Indigenous Business Australia General Manager*)
Repeal the definition.

3 Subsection 4(1)
Insert:

*Indigenous Land Corporation Chief Executive Officer* means the Chief Executive Officer of the Indigenous Land Corporation referred to in section 192K.

4 Subsection 4(1) (definition of *Indigenous Land Corporation General Manager*)
Repeal the definition.

5 Subsection 4(1)
Insert:

*TSRA Chief Executive Officer* means the Chief Executive Officer of the TSRA referred to in section 144G.

6 Subsection 4(1) (definition of *TSRA General Manager*)
Repeal the definition.
Schedule 1  Amendments relating to the Aboriginal and Torres Strait Islander Act 2005
Part 1  Chief Executive Officers

7  Subsections 142D(7) and (8)
   Omit “General Manager”, substitute “Chief Executive Officer”.

8  Subsections 142K(3) and (4)
   Omit “General Manager”, substitute “Chief Executive Officer”.

9  Section 144F (heading)
   Repeal the heading, substitute:

144F  Delegation to TSRA Chief Executive Officer or staff member
   of TSRA

10  Subsection 144F(1)
    Omit “General Manager”, substitute “Chief Executive Officer”.

11  Subsection 144F(2) (heading)
    Repeal the heading, substitute:

   TSRA Chief Executive Officer may sub-delegate function or power

12  Subsections 144F(2) and (3)
    Omit “General Manager”, substitute “Chief Executive Officer”.

13  Division 7 of Part 3A (heading)
    Repeal the heading, substitute:

Division 7—TSRA Chief Executive Officer

14  Section 144G (heading)
    Repeal the heading, substitute:

144G  TSRA Chief Executive Officer

15  Subsections 144G(1) and (2)
    Omit “General Manager”, substitute “Chief Executive Officer”.

Note: This item alters the name of an office. Section 25B of the Acts Interpretation Act 1901
provides that the office continues in existence under the new name so that its identity is
not affected.
16 Subsection 144G(3)
Omit “as the TSRA General Manager”, substitute “as the TSRA Chief Executive Officer”.

17 Subsection 144G(3)
Omit “However, this rule does not apply to the first TSRA General Manager.”.

18 Subsections 144G(4) and (5)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

19 Subsection 144H(1)
Omit “General Manager”, substitute “Chief Executive Officer”.

20 Subsection 144H(2)
Repeal the subsection, substitute:
(2) The period must not be longer than 5 years.

21 Section 144J
Omit “General Manager”, substitute “Chief Executive Officer”.

22 Subsections 144K(1) and (2)
Omit “General Manager”, substitute “Chief Executive Officer”.

23 Section 144L (heading)
Repeal the heading, substitute:

144L Acting TSRA Chief Executive Officer

24 Section 144L
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

25 Subsections 144M(1) and (2)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.
Schedule 1  Amendments relating to the Aboriginal and Torres Strait Islander Act 2005
Part 1  Chief Executive Officers

26  Section 144N
Omit “General Manager”, substitute “Chief Executive Officer”.

27  Subsections 144P(1) and (2)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

28  Section 144Q
Omit “General Manager”, substitute “Chief Executive Officer”.

29  Subsection 144R(2)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

30  Subsection 144ZD(5)
Omit “General Manager”, substitute “Chief Executive Officer”.

31  Division 6 of Part 4 (heading)
Repeal the heading, substitute:
Division 6—Indigenous Business Australia Chief Executive Officer

32  Section 168 (heading)
Repeal the heading, substitute:
Indigenous Business Australia Chief Executive Officer

33  Subsections 168(1), (2) and (3)
Omit “General Manager”, substitute “Chief Executive Officer”.
Note: This item alters the name of an office. Section 25B of the Acts Interpretation Act 1901 provides that the office continues in existence under the new name so that its identity is not affected.

34  Subsection 169(1)
Omit “(1)”.

35  Subsection 169(1)
Omit “General Manager”, substitute “Chief Executive Officer”.

36 Section 170
Omit “General Manager”, substitute “Chief Executive Officer”.

37 Section 171
Omit “General Manager”, substitute “Chief Executive Officer”.

38 Section 172 (heading)
Repeal the heading, substitute:

172 Acting Indigenous Business Australia Chief Executive Officer

39 Section 172
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

40 Subsections 172A(1) and (2)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

41 Section 173
Omit “General Manager”, substitute “Chief Executive Officer”.

42 Section 174
Omit “General Manager”, substitute “Chief Executive Officer”.

43 Subsection 175(1)
Omit “General Manager”, substitute “Chief Executive Officer”.

44 Section 177
Omit “General Manager”, substitute “Chief Executive Officer”.

45 Subsection 178(1)
Omit “General Manager”, substitute “Chief Executive Officer”.

46 Paragraph 182(b)
Omit “General Manager”, substitute “Chief Executive Officer”.
Schedule 1  Amendments relating to the Aboriginal and Torres Strait Islander Act 2005
Part 1  Chief Executive Officers

47 Section 190 (heading)
Repeal the heading, substitute:

190 Delegation to Indigenous Business Australia Chief Executive
Officer or member of staff

48 Subsections 190(1) and (2)
Omit “General Manager” (wherever occurring), substitute “Chief
Executive Officer”.

49 Paragraph 191(1)(b)
Omit “General Manager” (wherever occurring), substitute “Chief
Executive Officer”.

50 Division 8 of Part 4A (heading)
Repeal the heading, substitute:

Division 8—Indigenous Land Corporation Chief Executive
Officer

51 Section 192K (heading)
Repeal the heading, substitute:

192K Indigenous Land Corporation Chief Executive Officer

52 Subsections 192K(1), (2) and (3)
Omit “General Manager” (wherever occurring), substitute “Chief
Executive Officer”.

Note: This item alters the name of an office. Section 25B of the Acts Interpretation Act 1901
provides that the office continues in existence under the new name so that its identity is
not affected.

53 Section 192L
Omit “General Manager”, substitute “Chief Executive Officer”.

54 Section 192M
Omit “General Manager”, substitute “Chief Executive Officer”.

55 Section 192N (heading)
Repeal the heading, substitute:

192N Remuneration and allowances of Indigenous Land Corporation Chief Executive Officer

56 Section 192N
Omit “General Manager”, substitute “Chief Executive Officer”.

57 Section 192P (heading)
Repeal the heading, substitute:

192P Acting Indigenous Land Corporation Chief Executive Officer

58 Section 192P
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

59 Section 192Q
Omit “General Manager”, substitute “Chief Executive Officer”.

60 Section 192R
Omit “General Manager”, substitute “Chief Executive Officer”.

61 Subsection 192S(1)
Omit “General Manager”, substitute “Chief Executive Officer”.

62 Subsection 192T(2) (heading)
Repeal the heading.

63 Subsection 192T(2)
Omit “(2)”.

64 Subsection 192T(2)
Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

65 Section 192U
Omit “General Manager”, substitute “Chief Executive Officer”.

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Schedule 1  Amendments relating to the Aboriginal and Torres Strait Islander Act 2005
Part 1  Chief Executive Officers

66  Subsection 192V(1)

Omit “General Manager”, substitute “Chief Executive Officer”.

67  Subsection 193S(1) (paragraph (b) of the definition of ILC officer)

Omit “General Manager” (wherever occurring), substitute “Chief Executive Officer”.

68  Section 193T (heading)

Repeal the heading, substitute:

193T  Delegation to Indigenous Land Corporation Chief Executive Officer or member of staff

69  Section 193T

Omit “General Manager”, substitute “Chief Executive Officer”.

70  Paragraphs 200(2)(a) and (b)

Omit “General Manager”, substitute “Chief Executive Officer”.

71  Subparagraph 200A(1)(b)(iii)

Omit “General Manager”, substitute “Chief Executive Officer”.

72  Transitional—secrecy provisions

(1)  Paragraph 191(1)(b) of the Aboriginal and Torres Strait Islander Act 2005 applies on and after the commencement of this item as if:

(a)  a reference in that paragraph to the Indigenous Business Australia Chief Executive Officer included a reference to the Indigenous Business Australia General Manager; and

(b)  a reference in that paragraph to an acting Indigenous Business Australia Chief Executive Officer included a reference to an acting Indigenous Business Australia General Manager.

(2)  Paragraph (b) of the definition of ILC officer in subsection 193S(1) of the Aboriginal and Torres Strait Islander Act 2005 applies on and after the commencement of this item as if:
(a) a reference in that paragraph to the Indigenous Land Corporation Chief Executive Officer included a reference to the Indigenous Land Corporation General Manager; and

(b) a reference in that paragraph to an acting Indigenous Land Corporation Chief Executive Officer included a reference to an acting Indigenous Land Corporation General Manager.

(3) Subparagraph 200A(1)(b)(iii) of the Aboriginal and Torres Strait Islander Act 2005 applies on and after the commencement of this item as if a reference in that subparagraph to the TSRA Chief Executive Officer included a reference to the TSRA General Manager.

Aboriginal Land Rights (Northern Territory) Act 1976

73 Paragraph 76(1A)(e)

Omit “General Manager”, substitute “Chief Executive Officer”.
Part 2—Secrecy provision

Aboriginal and Torres Strait Islander Act 2005

74 Before subsection 191(2A)

Insert:

Exception—housing or business loans

75 After subsection 191(2A)

Insert:

Exception—Indigenous Business Australia Chief Executive Officer

(2B) Despite subsection (2), the Indigenous Business Australia Chief Executive Officer may divulge or communicate information, or produce a document, to the Secretary of the Department for the purposes of the Department.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2B): see subsection 13.3(3) of the Criminal Code.

(2C) In exercising a power under subsection (2B), the Indigenous Business Australia Chief Executive Officer must act in accordance with any guidelines in force under section 191AA.

Exception—public interest

(2D) Despite subsection (2), the Indigenous Business Australia Chief Executive Officer may, if he or she determines in writing that it is necessary in the public interest, divulge or communicate information, or produce a document, to specified persons for specified purposes.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2D): see subsection 13.3(3) of the Criminal Code.

(2E) In making determinations under subsection (2D), the Indigenous Business Australia Chief Executive Officer must act in accordance with any guidelines in force under section 191AA.

(2F) A determination under subsection (2D) is not a legislative instrument.
Exception—consent

(2G) Despite subsection (2), a person may:

(a) divulge or communicate information to a person authorised in writing, by the person to whose affairs the information relates, to receive the information; or

(b) produce a document to a person authorised in writing, by the person to whose affairs the document relates, to receive the document.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2G): see subsection 13.3(3) of the Criminal Code.

Exception—information already publicly available

(2H) Despite subsection (2), a person may:

(a) make a record of information, if the information is already publicly available; or

(b) divulge or communicate information to a person, if the information is already publicly available; or

(c) produce a document to a person, if the information contained in the document is already publicly available.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2H): see subsection 13.3(3) of the Criminal Code.

Exception—making records

(2J) Despite subsection (2), a person may make a record of information in connection with the exercise of a power under subsection (2B), (2D) or (2G).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2J): see subsection 13.3(3) of the Criminal Code.

76 Before subsection 191(3)

Insert:

Divulging or communicating information to courts

77 Before subsection 191(4)

Insert:
Schedule 1  Amendments relating to the Aboriginal and Torres Strait Islander Act 2005

Part 2  Secrecy provision

Definitions

78 At the end of Division 9 of Part 4

Add:

191AA  Guidelines for exercise of Indigenous Business Australia
Chief Executive Officer’s powers

The Minister may, by legislative instrument, make guidelines for
the exercise of either or both of the following:
(a) the Indigenous Business Australia Chief Executive Officer’s
   power under subsection 191(2B);
(b) the Indigenous Business Australia Chief Executive Officer’s
   power to make determinations under subsection 191(2D).
Part 3—Aboriginal Hostels Limited

Aboriginal and Torres Strait Islander Act 2005

79 Subsection 200(6)

Repeal the subsection, substitute:

(6) For the purposes of the Administrative Decisions (Judicial Review) Act 1977, if Aboriginal Hostels Limited makes a decision relating to an application by an incorporated body for the provision of accommodation for one or more Aboriginal persons or Torres Strait Islanders, the decision is taken to be a decision of an administrative character made under an enactment.

80 Application

The amendment made by this Part applies in relation to decisions made on or after the commencement of this Part.
Schedule 2—Acting appointments

Aboriginal Land Rights (Northern Territory) Act 1976

1 After subsection 76(1)

Insert:

(1AA) The Minister may, in writing, delegate the Minister’s power under section 20J to:

(a) the Secretary of the Department; or

(b) a Deputy Secretary of the Department.

Coordinator-General for Remote Indigenous Services Act 2009

2 After section 28

Insert:

28A Delegation of certain powers by Minister

The Minister may, in writing, delegate the Minister’s power under section 20 to:

(a) the Secretary of the Department; or

(b) a Deputy Secretary of the Department.