Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014

No.      , 2014

(Senator Siewert)

A Bill for an Act to amend the *Aboriginal and Torres Strait Islander Act 2005*, and for related purposes
Contents

1 Short title ......................................................... 1
2 Commencement ...................................................... 1
3 Schedule(s) .......................................................... 2

Schedule 1—Amendments ......................................... 3

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Land Account</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Aboriginal and Torres Strait Islander Act 2005</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Indigenous Land Corporation</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td>Aboriginal and Torres Strait Islander Act 2005</td>
<td>8</td>
</tr>
<tr>
<td>3</td>
<td>Other amendments</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Aboriginal and Torres Strait Islander Act 2005</td>
<td>16</td>
</tr>
</tbody>
</table>
A Bill for an Act to amend the *Aboriginal and Torres Strait Islander Act 2005*, and for related purposes

The Parliament of Australia enacts:

1 **Short title**

   This Act may be cited as the *Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Act 2014*.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Land Account

Aboriginal and Torres Strait Islander Act 2005

1 Before Division 1 of Part 4A

Insert:

Division 1A—Objects of Part

191AB Objects of Part

(1) The objects of this Part are the following:

(a) to acknowledge the special relationship that Aboriginal persons and Torres Strait Islanders have with their lands;

(b) to acknowledge that land has an economic, cultural, social and environmental value for Aboriginal persons and Torres Strait Islanders;

(c) to acknowledge the past injustices suffered by Aboriginal persons and Torres Strait Islanders, arising from the dispossession of their land;

(d) to ensure that Aboriginal persons and Torres Strait Islanders receive the recognition within the Australian nation to which their prior rights and interests in their traditional lands and their rich and diverse culture entitle them to aspire;

(e) to provide a compensatory mechanism for Aboriginal persons and Torres Strait Islanders that addresses their ongoing land needs.

(2) Division 10 provides for the Aboriginal and Torres Strait Islander Land Account, which was established for the land-related benefit of Aboriginal persons and Torres Strait Islanders.

(3) In this Act:

land-related benefit means the acquisition and management of land by or on behalf of Aboriginal persons and Torres Strait Islanders, as mentioned in sections 191B and 192X.
2 Section 192X

Repeal the section, substitute:

192X Purpose of Land Account

(1) The purpose of the Land Account is the making of payments to the
Indigenous Land Corporation under this Division.

(2) Despite section 193J, money held by the Indigenous Land
Corporation that was paid to it from the Land Account 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:
(i) this Act; or
(ii) any other law;

as in force at the commencement of this subsection; and

(b) in payment of any remuneration and allowances payable to
any person under:
(i) this Act; or
(ii) any other law;

as in force at the commencement of this subsection; and

(c) in making any other payments which the Corporation is
authorised or required to make under:
(i) this Act; or
(ii) any other law;

as in force at the commencement of this subsection.

Note: The purposes of the Indigenous Land Corporation are:
(a) to assist Aboriginal persons and Torres Strait Islanders to acquire
land; and
(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 (see section 191B).

3 Subsection 193(3) (heading)

Repeal the heading, substitute:
Additional payments—2011-2014

4 Subsection 193(3)

After “1 July 2011”, insert “and before 1 July 2014”.

5 Subsection 193(5)

Omit “For the purposes of subsections (3) and (4), the”, substitute “The”.

6 After subsection 193(5)

Insert:

Additional payments—later financial years

(5A) On the first business day in December of a financial year (the current year) beginning on or after 1 July 2014, an amount is to be paid to the Indigenous Land Corporation, out of the Land Account, if the real return from investment of the Land Account for the previous financial year exceeds $50 million.

(5B) The amount to be paid is half of the excess.

(5C) The real return from investment of the Land Account for the previous financial year is the amount worked out using the following formula:

where:

indexation factor means the indexation factor for the current year worked out under section 192Y.

return is the actual capital value of the Land Account for the current year less the actual capital value of the Land Account for the previous financial year.

Note: If income is received by the Commonwealth from the investment of an amount standing to the credit of the Land Account, an amount equal to the income must be credited to the Land Account (see subsection 192W(4)).
Schedule 1  Amendments  
Part 1  Land Account

7  Subsection 193(6)
   Omit “subsection (2) or (3)”, substitute “this section”.

8  Subsection 193G(1)
   Omit “the investment policy”, substitute “the projected financial requirements of the Indigenous Land Corporation and the investment policy”.

9  After section 193G
   Insert:

193GA  Finance Minister to have regard to advice of Indigenous Land Corporation
   (1) The Indigenous Land Corporation may give the Finance Minister advice about the projected financial requirements of the Indigenous Land Corporation.
   (2) The Indigenous Land Corporation may give the Finance Minister advice as to how the Land Account should be managed, in order to meet the projected financial requirements of the Indigenous Land Corporation.
   (3) The Finance Minister must, in making a decision in relation to the investment policy of the Land Account, have regard to any advice given by the Indigenous Land Corporation under subsection (2).

10  At the end of Division 10 of Part 4A
    Add:

193IA  Changes to purpose of Indigenous Land Corporation and Land Account
    (1) This section applies to a Bill for an Act that:
        (a) is introduced into either House of the Parliament; and
        (b) contains a provision (the proposed provision) that would:
            (i) amend section 191AB or 191B or this Division; or
            (ii) would otherwise alter the operation of any of the provisions mentioned in subparagraph (i).
(2) Subject to subsection (6), the Bill is referred to the joint parliamentary committee responsible for the scrutiny of issues related to Aboriginal persons and Torres Strait Islanders (the joint committee).

(3) The joint committee must, not less than 10 sitting days and not more than 6 months after the introduction of the Bill, table in each House a report that meets the requirements contained in subsections (4) and (5).

(4) In preparing the report, the joint committee must consult with Aboriginal persons and Torres Strait Islanders, including prominent Indigenous organisations in all States and Territories, on the proposed provision.

(5) The report must include:
   (a) an assessment of whether the Aboriginal persons and Torres Strait Islanders consider that the proposed provision is necessary, having regard to the likely impact of the proposed provision on the ability of Aboriginal persons and Torres Strait Islanders to acquire or manage land for their economic, social, cultural or environmental benefit; and
   (b) details of the consultation process that was undertaken by the joint committee in preparing the report, including the number of Aboriginal and Torres Strait Islander persons or organisations that were consulted.

(6) If there is no joint parliamentary committee:
   (a) the Bill is referred to both the House of Representatives and Senate committees responsible for the scrutiny of issues related to Aboriginal persons and Torres Strait Islanders; and
   (b) the House of Representatives committee must, not less than 10 sitting days and not more than 6 months after the introduction of the bill, table in the House a report that meets the requirements contained in subsections (4) and (5); and
   (c) the Senate committee must, not less than 10 sitting days and not more than 6 months after the introduction of the bill, table in the Senate a report that meets the requirements contained in subsections (4) and (5).
Part 2—Indigenous Land Corporation

Aboriginal and Torres Strait Islander Act 2005

11 After subsection 191F(1)

Insert:

Indigenous Land Corporation to operate in accordance with good governance principles etc.

(1A) Without limiting subsection (1), the Indigenous Land Corporation must, in performing its functions and exercising its powers, ensure that its business and administration is conducted:

(a) efficiently; and

(b) in accordance with principles of good governance, transparency, financial accountability and ethical procurement.

12 Section 191L

Repeal the section, substitute:

191L Powers of Minister

(1) Except as expressly provided in this Act or the Public Governance, Performance and Accountability Act 2013, the Minister is not empowered to direct the Indigenous Land Corporation in relation to any of its activities.

(2) In deciding whether to make a request of the Indigenous Land Corporation for any reason, the Minister must have regard to the importance of maintaining the independence of the Indigenous Land Corporation.

13 Section 191W

Repeal the section, substitute:
191W Responsibilities of Indigenous Land Corporation Board

The responsibilities of the Indigenous Land Corporation Board are to:
(a) ensure the proper and efficient performance of the functions of the Indigenous Land Corporation for the purposes mentioned in section 191B; and
(b) determine the policy of the Indigenous Land Corporation with respect to any matter; and
(c) ensure that the Indigenous Land Corporation, its subsidiaries and Indigenous Land Corporation officers comply with the highest standards of good governance, transparency, financial accountability and ethical procurement.

14 Subsection 191X(3)
Repeal the subsection, substitute:

Consultation

(3) The Minister must, before appointing a person as an Indigenous Land Corporation Director, consult:
(a) the Nomination Committee; and
(b) the Finance Minister.

15 At the end of section 191X
Add:

Staggering of appointments

(5) The Minister must, in appointing persons as Indigenous Land Corporation Directors (including specifying the periods of appointment), ensure that the majority of the appointments of the members of the Indigenous Land Corporation Board would not expire at, or about, the same time.

(6) Subsection (5) does not affect the validity of any appointment.

16 After section 191X
Insert:
191XA Nomination Committee

(1) The Minister must establish a Nomination Committee, to make recommendations to the Minister about appropriate persons for appointment as Indigenous Land Corporation Directors.

(2) The Nomination Committee must consist of at least 3 members.

(3) The members of the Nomination Committee must:
   (a) be eminent persons; and
   (b) be Aboriginal persons or Torres Strait Islanders; and
   (c) have skills and expertise relevant to the functions of the Indigenous Land Corporation.

(4) In appointing persons to the Nomination Committee, the Minister must have regard to the gender balance of the Nomination Committee.

Chairperson

(5) The Minister must appoint a member of the Nomination Committee as its Chairperson.

(6) The Minister must, before appointing a person as a member, or as the Chairperson, of the Nomination Committee, consult:
   (a) the joint parliamentary committee responsible for the scrutiny of issues relating to Aboriginal persons and Torres Strait Islanders on the suitability of the candidate proposed for appointment, or
   (b) if there is no joint parliamentary committee—both the House and the Senate committee responsible for the scrutiny of issues related to Aboriginal persons and Torres Strait Islanders on the suitability of the candidate proposed for appointment.

Terms and conditions

(7) A member of the Nomination Committee holds office on such terms and conditions (if any) as are determined by the Minister by notice published in the Gazette.
191XB Consultation with Nomination Committee

(1) The Minister must, before appointing an Indigenous Land Corporation Director, request that the Nomination Committee prepare a report proposing potential candidates for appointment.

(2) Subject to subsections (3), (4) and (5), the Nomination Committee must determine procedures for its operation.

(3) The Nomination Committee must:
   (a) maintain a list of potential candidates for appointment as Indigenous Land Corporation Directors; and
   (b) meet at least once in every 12 month period for the purposes of discussing and updating the list.

(4) In preparing a report under subsection (1), or in maintaining the list under subsection (3), the Nomination Committee must have regard to the following:
   (a) the gender balance of the Indigenous Land Corporation Board;
   (b) the requirements of subsection 191X(4);
   (c) whether a person recommended for appointment is a fit and proper person to be an Indigenous Land Corporation Director.

(5) A report under subsection (1), or a list under subsection (3):
   (a) must not contain more than 10 potential candidates for appointment; and
   (b) must not be disclosed by a member of the Nomination Committee or an Indigenous Land Corporation officer, other than for a purpose authorised by the Indigenous Land Corporation Board.

(6) If the Minister makes an appointment, the Minister must make a statement, in writing, indicating whether or not the person appointed was a candidate proposed by the Nomination Committee.

(7) A statement under subsection (6) must be published:
   (a) on the Indigenous Land Corporation’s website; or
Schedule 1  Amendments
Part 2  Indigenous Land Corporation

(b) by any other means that the Indigenous Land Corporation Board considers appropriate.

17  At the end of Division 5 of Part 4A

Add:

191YA  Committees

For the purpose of performing its functions, or exercising its powers, the Indigenous Land Corporation Board may establish such committees as it considers necessary.

191YB  Audit and Risk Management Committee

(1) Without limiting section 191YA, the Indigenous Land Corporation Board must establish an audit and risk management committee (the Audit and Risk Management Committee).

Note: This requirement is in addition to the requirement contained in section 92 of the Public Governance, Performance and Accountability Act 2013.

(2) The functions of the Audit and Risk Management Committee are:

(a) to advise the Indigenous Land Corporation Board on:
   (i) the Indigenous Land Corporation’s governance framework and assurance mechanisms; and
   (ii) the key risks to the Indigenous Land Corporation, including risks relating to carrying out its functions; and
   (b) any other functions that the Indigenous Land Corporation Board determines.

(3) The Indigenous Land Corporation Board must appoint the members of the Audit and Risk Management Committee, including the Chairperson, for a period not exceeding 4 years.

(4) The members of the Audit and Risk Management Committee, other than the Chairperson:

(a) must be members of the Indigenous Land Corporation Board; and
(b) cease to hold office as members of the Audit and Risk Management Committee if they cease to be members of the Indigenous Land Corporation Board.

(5) The Chairperson of the Audit and Risk Management Committee must not be a current or former Indigenous Land Corporation officer.

(6) The Indigenous Land Corporation Board, before appointing the Chairperson of the Audit and Risk Management Committee, must consult the Minister in relation to the proposed appointment.

(7) The Chairperson holds office on such terms and conditions (if any) as are determined by the Minister by notice published in the Gazette.

18 Section 191Z

Repeal the section, substitute:

191Z Period of appointment

(1) An Indigenous Land Corporation Director holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.

(2) An Indigenous Land Corporation Director may be reappointed but cannot be reappointed more than once.

(3) If the Minister decides to reappoint an Indigenous Land Corporation Director, the decision to reappoint must not be made more than 3 months before the end of the Director’s term of appointment.

19 Application of amendment

(1) Subsection 191Z(1) of the Aboriginal and Torres Strait Islander Act 2005, as amended by this Schedule, applies to appointments made after the commencement of this item.

(2) Subsections 191Z(2) and (3) of the Aboriginal and Torres Strait Islander Act 2005, as amended by this Schedule, apply to reappointments made after the commencement of this item (whether the

No.  , 2014 Aboriginal and Torres Strait Islander Amendment (A Stronger Land Account) Bill 2014
relevant Indigenous Land Corporation Director was originally
appointed before, on or after that commencement).

20 Section 192F
Repeal the section, substitute:

192F Disclosure of interests

Notification of business interests to Minister—Chairperson

(1) The Indigenous Land Corporation 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.

Notification of business interests to Indigenous Land Council
Board—Directors

(2) Without limiting the requirements of section 29 of the Public
Governance, Performance and Accountability Act 2013, an
Indigenous Land Corporation Director must also disclose to the
Indigenous Land Corporation Board all direct or indirect pecuniary
interests that the Director has or acquires in any business, or in any
body corporate carrying on a business.

Register of interests

(3) The Indigenous Land Corporation Board must keep a register of
the interests disclosed in accordance with subsections (1) and (2).

21 After section 192S
Insert:

192SA Code of conduct

(1) The Indigenous Land Corporation Board must determine a code of
conduct for Indigenous Land Corporation officers.

(2) In determining the code of conduct, the Indigenous Land
Corporation Board must have regard to the content of the APS
Code of Conduct, set out in section 13 of the *Public Service Act 1999*.

(3) The code of conduct must be published:
(a) on the Indigenous Land Corporation’s website; or
(b) by any other means that the Indigenous Land Corporation Board considers appropriate.

(4) Indigenous Land Corporation officers must comply with the code of conduct.

(5) A determination under subsection (1) is not a legislative instrument.
Part 3—Other amendments

Aboriginal and Torres Strait Islander Act 2005

22 Subsection 4(1)

Insert:

actual capital value has the meaning given by subsection 193(5).

Audit and Risk Management Committee has the meaning given by section 191YB.

Indigenous Land Corporation officer means any of the following:
(a) an Indigenous Land Corporation Director;
(b) an employee engaged under section 192S;
(c) a person performing duties on behalf of the Indigenous Land Corporation under section 192T;
(d) an officer or employee made available to the Indigenous Land Corporation under section 192U;
(e) a consultant engaged under section 192V;
(f) a member, officer, employee or consultant of a subsidiary of the Indigenous Land Corporation.

land-related benefit has the meaning given by subsection 191AB(3).

Nomination Committee means the committee established under section 191XA.

real return has the meaning given by subsection 193(5C).