

## **Aboriginal Land Rights (Northern Territory) Amendment (Delegation) Regulation 2013 [F2013L02122]**

*Portfolio: Prime Minister and Cabinet*

*Authorising legislation: Aboriginal Land Rights (Northern Territory) Act 1976*

*Last day to disallow: The instrument was disallowed in full on 20 March 2014*

### **Purpose**

2.11 The Aboriginal Land Rights (Northern Territory) Amendment (Delegation) Regulation 2013 (the regulation) amends the Aboriginal Land Rights (Northern Territory) Regulations 2007 to prescribe certain requirements and time periods in relation to an application by an Aboriginal and Torres Strait Islander corporation for a delegation of Land Council functions or powers.

2.12 The explanatory statement accompanying the regulation clarifies that subsection 28A(1) of the *Aboriginal Land Rights (Northern Territory) Act 1976* provides that an Aboriginal and Torres Strait Islander corporation may apply to a Land Council for a delegation of certain Land Council functions or powers. This provision was inserted by the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* with the objective of enabling Northern Territory Aboriginal people to have more control over development decisions by allowing for the devolution of decision-making to local Aboriginal communities.

### **Background**

2.13 The committee reported on the regulation its *Second Report of the 44th Parliament*.

2.14 The committee deferred detailed consideration of this regulation while it considered its proposed 12 month review of the human rights compatibility of the *Stronger Futures in the Northern Territory Act 2012* and related legislation.

2.15 The committee notes that this instrument was disallowed in full by the Senate on 20 March 2014.

### **Committee view on compatibility**

#### ***Right to equality and non-discrimination***

##### ***Special measures***

2.16 The committee drew the Minister for Indigenous Affairs' attention to its comments in relation to 'special measures' in its *Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation*.

2.17 The committee sought clarification from the Minister for Indigenous Affairs in relation to the categorisation of the *Aboriginal Land Rights (Northern Territory) Amendment Act 2006* and related regulations, including this regulation, as a special measure in light of the committee's comments in its *Eleventh Report of 2013*.

### **Minister's response**

The Regulation and the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) do give effect to traditional Indigenous land rights.

While the scheme provides traditional land rights benefits to individuals and groups based on race, there are objective and reasonable justifications for this differential treatment.

In relation to the specific matters contained in the Regulation, differential treatment is justified because:

- The Regulation will create a more certain pathway for Aboriginal and Torres Strait Islander corporations to seek a delegation of Land Council functions or powers;
- The Regulation will assist in enabling Northern Territory Aboriginal people to have more control over their traditional lands by allowing for the devolution of certain decision-making to them and their communities;
- The Regulation will promote effective self-determination and decision-making by relevant Aboriginal people over matters that materially affect them, such as land development, land use and leasing; and
- The Regulation necessarily involves differential treatment because the Land Rights Act is a scheme designed to give effect to traditional Indigenous land rights in the Northern Territory.<sup>1</sup>

### **Committee response**

2.18 The committee thanks the Minister for Indigenous Affairs for his response and has concluded its examination of this instrument.

---

1 See Appendix 2, Letter from Senator the Hon Nigel Scullion, Minister for Indigenous Affairs, to Senator Dean Smith, 17 March 2014, pp 1-2.