¶{Session}

2004-2005¶{Session}

¶{Normal}

The Parliament of the¶{Normal}

Commonwealth of Australia¶{Normal}

¶{Normal}

HOUSE OF REPRESENTATIVES¶{House}

¶{Normal}

¶{Normal}

¶{Normal}

¶{Normal}

Presented and read a first time¶{Reading}

¶{Normal}

¶{Normal}

{Normal}

DRAFT-IN-CONFIDENCE¶ {Normal}

This draft is supplied in confidence and should be given appropriate protection. {Normal}

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Sample Amending Bill 2005¶{ShortT}

¶{Normal}

No.·······, 2005¶{Actno}

¶{Normal}

(*Immigration and Multicultural and Indigenous Affairs*)¶{Portfolio}

¶{Normal}

¶{Normal}

¶{Normal}

A Bill for an Act to amend the *Native Title Act 1993*, and for related purposes¶{LongT}

··¶{Header}

··¶{Header}

Contents¶{Normal}

¶

1 ¶{Normal}
2 ¶{Normal}
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4 ¶{Normal}
5 ¶{Normal}
6 {Normal}

7 ¶{Normal}
8 {Normal}

OPC drafter to complete {Blocks,bb}	{Blocks,bb}
1. Does this Bill need a message? (See H of R Practice, fourth ed, pp403-408, and OGC advice.)¶ {Blocks,bb} If yes:¶ {Blocks,bb} • List relevant clauses/items—¶ {Blocks,bb} • Prepare message advice (see Drafting Direction 4.9)¶ {Blocks,bb} • Give a copy of the message advice to the Legislation area. {Blocks,bb}	Yes {Blocks,bb}
2. Does this Bill need a notice? (See H of R Standing Order 178 and Drafting Direction 3.2.)¶ {Blocks,bb} If no list relevant clauses/items— {Blocks,bb}	No {Blocks,bb}
3. Is there any reason why this Bill should not be introduced in the Senate?¶ {Blocks,bb} (See Constitution sections 53 and 55 and Drafting Direction 3.2) {Blocks,bb}	Yes {Blocks,bb}

9 ¶{Normal}

10 *[Note date of introduction in transitional provisions]*¶{note(draft),nd}
11 ¶{Normal}
12 ¶{Normal}
13 ¶{Normal}

14 **A Bill for an Act to amend the *Native Title Act 1993*,**
15 **and for related purposes**¶{LongT}

The Parliament of Australia enacts:¶{Normal}

1··Short title ¶{ActHead 5,s}

> >This Act may be cited as the *Sample Amending Act 2005*.¶{subsection,ss}

2··Commencement¶{ActHead 5,s}

> >This Act commences on the day on which it receives the Royal Assent.¶{subsection,ss}

[A commencement table to be made where commencement is different. See principal Bill example for format.]¶{note(draft),nd}

3··Schedule(s)¶{ActHead 5,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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.¶{subsection,ss}

¶{PageBreak,pb}

Schedule 1—Amendment of the Native Title Act 1993¶{ActHead 6,as}

Part 1—Amendments related to applications¶{ActHead 7,ap}

Division 1—Applications to Federal Court¶{ActHead 8,ad}

1··Subsection 13(1)¶{ItemHead,ih}

Omit "Registrar", substitute "Federal Court".¶{Item,i}

Note: >The heading to subsection 13(1) is altered by omitting "*Native Title Registrar*" and substituting "*Federal Court*".¶{note(margin),nm}

2··Paragraph 13(2)(a)¶{ItemHead,ih}

Omit "the NNTT or".¶{Item,i}

Note: >The heading to subsection 13(2) is altered by omitting "*NNTT or*".¶{note(margin),nm}

3··Subsection 13(2)¶{ItemHead,ih}

Omit "NNTT or".¶{Item,i}

4··Paragraph 62(1)(d)¶{ItemHead,ih}

Repeal the paragraph, substitute:¶{Item,i}

>(d) >give brief details of any other applications to:¶{paragraph,a}

>(i) >the High Court; or¶{paragraph(sub),aa}

>(ii) >the Federal Court; or¶{paragraph(sub),aa}

>(iii) >a recognised State/Territory body;¶{paragraph(sub),aa}

> >of which the claimant is aware, that have been made in relation to the whole or a part of the area and that seek a determination of native title; and¶{paragraph,a}

>(e) >give brief details of any notices under section 24A or 29 (or under a corresponding provision of a law of a State or Territory), of which the claimant is aware, that have been given and that relate to the whole or a part of the area.¶{paragraph,a}

1   **5··Subsection 62(1) (note)**¶{ItemHead,ih}

2   Repeal the note, substitute:¶{Item,i}

3   Note: >The person whose name is given under paragraph (1)(aa) will be the
4   registered native title claimant while the claim is entered on the
5   Register of Native Title Claims.¶{note(text),n}

6   **6··Sections 63, 64 and 65**¶{ItemHead,ih}

7   Repeal the sections, substitute:¶{Item,i}

8   **63··Reference of applications to Native Title Registrar**¶{ActHead 5,s}

9   >   >If an application that complies with sections 61 and 62 is filed in
10   the Federal Court, the Federal Court must, as soon as practicable,
11   give a copy of the application to the Native Title
12   Registrar.¶{subsection,ss}

13   **64··Amendment of applications**¶{ActHead 5,s}

14   *Amendment not to result in inclusion of additional*
15   *areas*¶{SubsectionHead,ssh}

16   >(1)   >An amendment of an application cannot result in the inclusion of
17   any area of land or waters that was not covered by the original
18   application.¶{subsection,ss}

19   Note: >The Federal Court Rules provide for the amendment of
20   applications.¶{note(text),n}

21   *Federal Court to give copy of amended application to Native Title*
22   *Registrar*¶{SubsectionHead,ssh}

23   >(2)   >If an application is amended, the Federal Court must, as soon as
24   practicable, give a copy of the amended application to the Native
25   Title Registrar.¶{subsection,ss}

26   *Federal Court may direct Native Title Registrar to give*
27   *notice*¶{SubsectionHead,ssh}

28   >(3)   >The Court may, if it considers it necessary, direct the Native Title
29   Registrar to give such notice of the amended application as the
30   Court considers appropriate.¶{subsection,ss}

7··Subsection 66(1)¶{ItemHead,ih}

Repeal the subsection, substitute:¶{Item,i}

Notification by Native Title Registrar¶{SubsectionHead,ssh}

>(1) >If the Native Title Registrar is given a copy of an application under section 63, the Registrar must give notice of the application to all persons whose interests may be affected by a determination in relation to the application. The Registrar may also give notice to such other persons as the Registrar considers appropriate.¶{subsection,ss}

Copy of notice to Federal Court¶{SubsectionHead,ssh}

>(1A) >The Registrar is to give a copy of the notice to the Federal Court.¶{subsection,ss}

Note: >The heading to section 66 is altered by omitting "**Action to be taken in relation to accepted**" and substituting "**Notification of**".¶{note(margin),nm}

8··After Division 1 of Part 3¶{ItemHead,ih}

Insert:¶{Item,i}

Division 1A—Reference to NNTT for mediation¶{ActHead 3,d}

86A··Referral of matters to NNTT for mediation¶{ActHead 5,s}

Purpose of mediation in a proceeding not involving compensation¶{SubsectionHead,ssh}

>(1) >The purpose of mediation in a proceeding that does not involve a compensation application is to assist the parties to reach agreement on some or all of the following matters:¶{subsection,ss}
>(a) >whether native title exists in relation to the area of land or waters covered by the application;¶{paragraph,a}
>(b) >if it exists:¶{paragraph,a}
>(i) >who holds it; and¶{paragraph(sub),aa}
>(ii) >whether the native title rights and interests confer possession, occupation, use and enjoyment of the land

1   or waters on its holders to the exclusion of all others;

2   and¶{paragraph(sub),aa}

3   >(iii) >if the native title rights and interests do not confer such

4   exclusive rights—the nature and extent of any native

5   title rights and interests; and¶{paragraph(sub),aa}

6   >(iv) >the nature and extent of any other interests in relation

7   to the land or waters that may affect the native title

8   rights and interests.¶{paragraph(sub),aa}

9   Note: >The matters set out in paragraphs (a) and (b) reflect those that are

10   required, under section 225, for a determination of native

11   title.¶{note(text),n}

12   *Federal Court must refer applications to*

13   *mediation*¶{SubsectionHead,ssh}

14   >(2) >Unless an order is made that there be no mediation, the Federal

15   Court must refer every application to the NNTT for

16   mediation.¶{subsection,ss}

17 **9··After section 97**¶{ItemHead,ih}

18   Insert:¶{Item,i}

19 **97A··Searches for Federal Court**¶{ActHead 5,s}

20   > >The Registrar has the power to conduct, or arrange for the

21   conducting of, searches as requested by the Federal Court under

22   section 83A.¶{subsection,ss}

23

¶{PageBreak,pb}

Part 2—Amendments related to section 24 protection¶{ActHead 7,ap}

10··At the end of paragraph 24(1)(d)¶{ItemHead,ih}

Add "and".¶{Item,i}

11··Subsection 66(4)¶{ItemHead,ih}

Repeal the subsection.¶{Item,i}

¶{PageBreak,pb}

Schedule 2—Amendment of other Acts¶{ActHead 6,as}

··¶{Header}

Federal Court of Australia Act 1976¶{ActHead 9,aat}

1··After Division 1 of Part 2¶{ItemHead,ih}

Insert:¶{Item,i}

Division 2—Judicial Registrars¶{ActHead 3,d}

18AA··Judicial Registrars¶{ActHead 5,s}

>(1) >The Governor-General may appoint one or more Judicial Registrars.¶{subsection,ss}

>(2) >A Judicial Registrar may be appointed either on a full-time basis or a part-time basis.¶{subsection,ss}

18AB··Independence of Judicial Registrars¶{ActHead 5,s}

> >Despite anything else in this Act or in any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under section 18AB.¶{subsection,ss}

2··Subsections 59(3) and (4)¶{ItemHead,ih}

After "under this section", insert "under this Act".¶{Item,i}

Human Rights and Equal Opportunity Commission Act 1986¶{ActHead 9,aat}

3··At the end of subsection 46C(1)¶{ItemHead,ih}

Add:¶{Item,i}

Note: >Functions are also conferred on the Commission under section 209 of the *Native Title Act 1993*.¶{note(text),n}

1 *Social Security Act 1992*¶*{ActHead 9,aat}*

2 **4··After section 660ZZZJ**¶{ItemHead,ih}

3 Insert: ¶{Item,i}

4 **660ZZZK··Lump sum payable in some circumstances**¶**{ActHead 5,s}**

5 > >If:¶{subsection,ss}

6 >(a) >a person is qualified for payments under this Subdivision in
7 relation to the death of the person's partner;
8 and¶{paragraph,a}

9 >(b) >the first available bereavement adjustment payday occurs
10 before the end of the bereavement period;¶{paragraph,a}

11 there is payable to the person as a lump sum an amount worked out
12 using the lump sum calculator at the end of this
13 section.¶{subsection2,ss2}

---

14 **Lump Sum Calculator**¶{BoxHeadBold,bhb}

15 This is how to work out the amount of the lump sum:¶{BoxText,bt}

16 *Method statement*¶{BoxHeadItalic,bhi}

17 *Step 1.* >Work out the amount that would have been payable to
18 the person on the person's payday immediately before the
19 first available bereavement adjustment payday
20 if:¶{BoxStep,bs}

21 >(a) >the person's partner had not died;
22 and¶{BoxPara,bp}

23 >(b) >where immediately before the partner's death the
24 couple were an illness separated couple or a respite
25 care couple—they were not such a
26 couple.¶{BoxPara,bp}

27 *Step 2.* >Work out the amount that would have been payable to
28 the person's partner on the partner's payday or service

1	payday immediately before the first available
2	bereavement adjustment payday if:¶{BoxStep,bs}
3	>(a) >the partner had not died; and¶{BoxPara,bp}
4	>(b) >where immediately before the partner's death the
5	couple were an illness separated couple or a respite
6	care couple—they were not such a
7	couple.¶{BoxPara,bp}
8	*Step 3.* >Add the results of Step 1 and Step 2: the result is called
9	the ***combined rate***.¶{BoxStep,bs}
10	*Step 4.* >Work out the amount that, but for section 85, would
11	have been payable to the person on the person's payday
12	immediately before the first available bereavement
13	adjustment payday: the result is called the ***person's***
14	***individual rate***.¶{BoxStep,bs}
15	*Step 5.* >Take the person's individual rate away from the
16	combined rate: the result is called the ***partner's***
17	***instalment component***.¶{BoxStep,bs}
18	*Step 6.* >Work out the number of paydays of the partner in the
19	bereavement lump sum period.¶{BoxStep,bs}
20	*Step 7.* >Multiply the partner's instalment component by the
21	number obtained in Step 6: the result is the amount of the
22	lump sum payable to the person under this
23	section.¶{BoxStep,bs}
24	

¶{PageBreak,pb}

Schedule 3—Transitional and miscellaneous¶{ActHead 6,as}

Part 1—Contents of Schedule¶{ActHead 7,ap}

1··Contents of this Schedule¶{ItemHead,ih}

This Schedule:¶{Item,i}

>(a) >sets out various situations that may exist in relation to an application that was given to the Native Title Registrar as mentioned in section 61 of the old Act, and the consequences of the commencement of this Act (see Part 2); and¶{paragraph,a}

>(b) >defines terms used in this Schedule (see Part 3); and¶{paragraph,a}

>(c) >clarifies the effect of certain acts (see Part 4).¶{paragraph,a}

1   ¶{PageBreak,pb}

2   # Part 2—Transitional provisions¶{ActHead 7,ap}

3   ## 2··Case 1—removal of claims from Register of Native Title
4   ## Claims¶{ItemHead,ih}

5   (1) >If:¶{Subitem,iss}
6   >(a) >at the commencement of this Act there is an entry on the
7   Register of Native Title Claims that records details of a claim
8   contained in an application made under the old Act;
9   and¶{paragraph,a}
10   >(b) >the application was made on or after 1 July
11   1992;¶{paragraph,a}
12   the Native Title Registrar must consider whether the application could
13   have been accepted by the Registrar under subsection 63(1) of the old
14   Act.¶{Item,i}

15   (2) >If the Registrar considers that the application could not have been
16   accepted under subsection 63(1) of the old Act:¶{Subitem,iss}
17   >(a) >the Registrar must remove the claim from the Register and
18   give the claimant and the Federal Court written notice,
19   including reasons, to that effect; and¶{paragraph,a}
20   >(b) >the provisions of section 190A, other than subsection (12),
21   apply as if the notice mentioned in paragraph (a) were given
22   under subsection 190A(10).¶{paragraph,a}

23   (3) >A court, in any appeal from the decision of the Registrar, is to
24   determine if the application could have been accepted under subsection
25   63(1) of the old Act.¶{Subitem,iss}

26   (4) >After the Registrar has complied with subitems (1) and (2), he or she is
27   taken to have complied with section 190A.¶{Subitem,iss}

28   ## 3··Previously directed mediation conference¶{ItemHead,ih}

29   If:¶{Item,i}
30   >(a) >an application that was made to the Native Title Registrar
31   under section 61 of the old Act is taken to have been made to
32   the Federal Court; and¶{paragraph,a}

>(b) >at or before the commencement of this Act, the President has directed the holding of a conference of the parties or their representatives under subsection 72(1) of the old Act, in respect of the whole or a part of the proceeding; and¶{paragraph,a}

>(c) >the Tribunal has not made a determination under section 73 or 160 of the old Act; and¶{paragraph,a}

>(d) >the Native Title Registrar has not lodged the application with the Federal Court under section 74 of the old Act;¶{paragraph,a}

then, for the purposes of the new Act, the Federal Court is taken to have referred the proceeding, or the part of the proceeding, to mediation under section 86A of the new Act. The Court is taken to have made the referral at the commencement of this Act.¶{Item,i}

4··Regulations¶{ItemHead,ih}

(1) >The Governor-General may make regulations prescribing matters:¶{Subitem,iss}

>(a) >required or permitted by this Act to be prescribed; or¶{paragraph,a}

>(b) >necessary or convenient to be prescribed for carrying out or giving effect to this Act.¶{paragraph,a}

(2) >In particular, regulations may be made for transitional measures in relation to the transition from the old Act to the new Act.¶{Subitem,iss}

1 ¶{PageBreak,pb}

2 # Part 3—Interpretation¶{ActHead 7,ap}

3 ## 5··Contents of this Part¶{ItemHead,ih}

4 This Part defines terms used in this Schedule.¶{Item,i}

5 ## 6··Meaning of *new Act* and *old Act*¶{ItemHead,ih}

6 *Meaning of new Act*¶{SubitemHead,issh}

7 (1) >The **new Act** is the *Native Title Act 1993*, as amended at the
8 commencement of this Act.¶{Subitem,iss}

9 *Meaning of old Act*¶{SubitemHead,issh}

10 (2) >The **old Act** is the *Native Title Act 1993*, as in force immediately
11 before the commencement of this Act.¶{Subitem,iss}

12