



Opinion of the delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations, issued under section 60AC(2) of the *Native Title Act 1993*, in response to an application received 13 March 2024

1. On 13 March 2024 the Registrar of Aboriginal and Torres Strait Islander Corporations (**the Registrar**) received a compliant application for an opinion on four invoices issued by a registered native title body corporate (**RNTBC**) containing fees charged under section 60AB of the *Native Title Act 1993* (**the Act**).
2. The Registrar's power to issue an opinion about a fee is contained in section 60AC(2) of the Act. The *Native Title (Prescribed Bodies Corporate) Regulations 1999* (**the Regulations**), specifically Regulations 20 to 25, specify the procedure for applying for and giving an opinion and related matters.
3. The Office of the Registrar of Indigenous Corporations (**ORIC**) has issued Policy Statement 23 'Review of fees charged by RNTBCs for certain native title functions' to provide guidance on how the Registrar deals with such requests.
4. A delegate of the Registrar wrote to the RNTBC on 9 April 2024, requesting further information by 26 April 2024. The matter was briefly discussed with a representative of the RNTBC in a phone call on 10 April 2024 however no further substantive information about the nature of the fee was received from the RNTBC by the requested date.

Material considered

5. The following material was considered in relation to this application:
 - a. Application received 13 March 2024 inclusive of relevant invoices and correspondence between the applicant and the RNTBC.
 - b. Record of a phone discussion between an ORIC Officer and the RNTBC on 10 April 2024.
 - c. Policy Statement 23 'Review of fees charged by RNTBCs for certain native title functions'.

Reasons for my opinion

6. An RNTBC may charge a person a fee for the costs incurred when performing functions that are either:
 - a. specified under section 60AB of the Act; and
 - b. specified under regulation 20 of the Regulations.
7. Where the Registrar (or their delegate) exercises their discretion to give an opinion, they must form a view on whether the fee is one that the RNTBC may charge under the above provisions.



8. The four invoices in question provided the following descriptions of services rendered:
 - a. Correspondence Activity – E**/[****] (S.29 NTA
 - b. Mining tenement documents ID:*****.*** / STP EPA ****
 - c. [company name withheld] - Mining tenement documents - Regional Standard Heritage Agreement: E**/**** & E**/****
 - d. Consolidated - Mining leases **/***, **/***, **/***, **/*** & Exploration licence **/****

9. I note the invoices were accompanied by lengthy correspondence to the applicant. I do not consider that correspondence sufficiently clarified what services were rendered. I note the applicant requested further information from the RNTBC but that request was not satisfactorily responded to.

10. I have requested the RNTBC provide information or documents about the:
 - a. service provided
 - b. the amount of the fee
 - c. and how it was calculated.

11. While an ORIC Officer was contacted by the relevant RNTBC by telephone on 10 April 2024, ORIC has not been provided with a satisfactory account by the RNTBC of the functions that were performed for the fees charged in the subject four invoices or how the relevant fees were determined.

12. For this reason I do not consider the description of the activities performed by the RNTBC in the four invoices provides a sufficient basis for charging a fee under section 60AB of the Act. As such, I have formed an opinion that the fees charged in the subject four invoices are not fees the RNTBC may charge under the Act, the body corporate must withdraw the invoices.

Jurisdiction

13. I have jurisdiction to give this opinion, delegated to me by way of an instrument of delegation made by the Registrar on 12 August 2022.

Mr Andrew Huey
Deputy Registrar
Delegate of the Registrar

14 May 2024