

FACILITATION AND ASSISTANCE POLICY

1 INTRODUCTION

1.1 Scope and purpose of policy

This policy sets out how NTSCORP Limited (**NTSCORP**) exercises its facilitation and assistance functions under the *Native Title Act 1993* (Cth) (**NTA**).

The purpose of this policy is to explain:

- the scope of NTSCORP's facilitation and assistance functions (section 2.1 of the policy);
- when NTSCORP may exercise its facilitation and assistance functions (section 2.2 of the policy);
- who may apply for assistance (section 2.3 of the policy);
- how NTSCORP performs its facilitation and assistance functions (section 2.4 of the policy);
- how to apply for assistance from NTSCORP (section 3 of the policy);
- NTSCORP's process for dealing with applications for assistance (section 4 of the policy);
- the factors NTSCORP considers when deciding whether to provide assistance (section 5 of the policy); and
- avenues of review if applicants are dissatisfied with decisions made under this policy (section 6 of the policy).

1.2 Currency and application of policy

This policy was adopted by the NTSCORP Board of Directors on 14 February 2025 and applies to all decisions whether to provide assistance made after that date, until this policy is superseded.

2 NTSCORP'S facilitation and assistance functions

2.1 Scope of NTSCORP's facilitation and assistance functions

NTSCORP is the funded native title service provider performing the functions of a native title representative body for New South Wales and the Australian Capital Territory under Part 11 of the NTA. As such, NTSCORP has all the functions of a representative body under the NTA, including the facilitation and assistance functions.

As set out in section 203BB(1) of the NTA, NTSCORP's facilitation and assistance functions are:

- (a) *to research and prepare native title applications, and to facilitate research into, preparation of and making of native title applications; and*
- (b) *to assist registered native title bodies corporate, native title holders and persons who may hold native title (including by representing them or facilitating their representation) in consultations, mediations, negotiations and proceedings relating to the following:*
 - (i) *native title applications;*
 - (ii) *future acts;*
 - (iii) *indigenous land use agreements or other agreements in relation to native title;*
 - (iv) *rights of access conferred under the NTA or otherwise; and*
 - (v) *any other matters relating to native title or to the operation of the NTA.*

A "native title application" means an application under:¹

- i. Subsection 24DJ(1) of the NTA, meaning an objection against registration of an indigenous land use agreement that is an alternative procedure agreement² on the ground that it would not be fair and reasonable to register the agreement.

¹ NTA, section 201A.

² An agreement meeting the requirements of sections 24DB to 24DF of the NTA; NTA, section 24DA.

- ii. Section 61 of the NTA, meaning a native title determination application (a standard native title claim, or a non-claimant application), a revised native title determination application, or a compensation application (**section 61 applications**).
- iii. Section 69 of the NTA, meaning an application to the Federal Court of Australia (the **Court**) as mentioned in subsection 190F(1) of the NTA for review of a decision of the Native Title Registrar not to accept a claim for registration; an application to the Court under section 199C(2) of the NTA to remove an indigenous land use agreement from the Register of Indigenous Land Use Agreements; an application to the Court about transfer of records under section 203FC(4) of the NTA; or, any other application to the Court in relation to a matter arising under the NTA.
- iv. Section 75 of the NTA, meaning an expedited procedure objection application made to the National Native Title Tribunal (“**the Tribunal**”) under subsection 32(3) of the NTA, or a future act determination application made to the Tribunal under section 35 of the NTA in relation to a future act.
- v. An appeal under subsection 169(1) of the NTA, meaning an appeal to the Court on a question of law arising from any decision or determination of the Tribunal in relation to a right to negotiate application.

2.2 When NTSCORP may exercise its facilitation and assistance functions

NTSCORP’s can exercise its facilitation and assistance functions only if:

- i. someone (an applicant for assistance – see section 2.3 below) has requested that NTSCORP exercise its functions;³ and
- ii. the matter relates to land or waters that are wholly or partly within the area for which NTSCORP performs relevant functions.⁴ This means that NTSCORP cannot exercise its facilitation and assistance functions unless the matter relates to land that is wholly or partly within New South Wales or the Australian Capital Territory.

³ NTA, section 203BB(2).

⁴ NTA, section 203BB(3).

It should be noted that NTSCORP has other functions including dispute resolution functions pursuant to section 203BF of the NTA that are not contingent on it receiving a request that it perform this function.

Other statutory considerations bear upon NTSCORP's discretion whether to provide assistance in particular cases, and the manner in which it is allowed to provide assistance. These factors are discussed below.

2.3 Who may apply for assistance

An application for assistance may be made by or on behalf of:

- i. A person or persons who, if they were properly authorised, would be able to make a "native title application" as set out in section 2.1 above. Depending on the type of native title application, such persons may include a native title body corporate (commonly known as a "prescribed body corporate" or "PBC"), native title holders, persons who may hold native title, or persons seeking assistance in relation to opposing a non-claimant application.
- ii. Registered native title bodies corporate, native title holders and persons who may hold native title who seek assistance in consultations, mediations, negotiations or proceedings relating to any of the following:
 - (A) native title applications;
 - (B) future acts;
 - (C) indigenous land use agreements or other agreements in relation to native title;
 - (D) rights of access conferred under the NTA or otherwise; and
 - (E) any other matters relating to native title or to the operation of the NTA.

In this policy, these persons are referred to as "applicants".

2.4 How NTSCORP performs its facilitation and assistance functions

If NTSCORP decides to provide assistance in accordance with this policy, the assistance can be provided in a number of different ways depending on the type of assistance sought and all the circumstances of the particular case.

Where the application for assistance is in relation to a section 61 application,⁵ the most common way NTSCORP exercises its facilitation and assistance functions is to use its in-house resources to undertake preliminary research and, in some cases, prepare applications on behalf of the proposed claimants. Much less commonly, assistance may consist of monetary grants to external lawyers who may be engaged by persons claiming, or wishing to claim, native title. This is called “briefing out”, and is discussed further below.

Native title claims and compensation claims will not be funded to trial unless they have significant legal merit (see sections 5.2.1 and 5.3 of the policy). In most cases, this will require a significant level of consultation, preliminary research and legal consideration prior to the filing of any claim. Even for such claims, NTSCORP may require that additional merit-based factors are satisfied.

Where there are serious disputes between groups claiming to hold native title, any assistance provided will usually be limited to facilitating a resolution of the dispute. A resolution will be attempted by any reasonable means agreed by the parties involved. In these circumstances, parties seeking NTSCORP’s assistance may be asked to provide an undertaking that they will be guided by NTSCORP’s anthropological advice and participate in good faith in any mediation or arbitration that may be undertaken to resolve the conflict.

2.5 Briefing out

In general, NTSCORP will brief matters out to external lawyers only if one or more of the following factors applies:

- (a) there is a lack of in-house staff or resources;

⁵ A native title determination application (including a non-claimant application), a revised native title determination application, or a compensation application.

- (b) particular skills are required that are not available in-house; or
- (c) there is a conflict of interest.

If a matter is to be briefed out, NTSCORP will discuss with the applicants the way the case should be handled, and by whom. The wishes of the applicants as to which private lawyers, consultants and researchers should be engaged will be taken into account by NTSCORP but any final decision is at NTSCORP's sole discretion. In deciding such issues NTSCORP will have particular regard to:

- i. the costs associated with briefing out the matter;
- ii. the qualifications, level of experience and suitability of any private lawyer, consultant or researcher; and
- iii. whether there is an advice on prospects from experienced counsel.

In matters which are briefed out, NTSCORP reserves the right to:

- I. provide assistance for a specified purpose only;
- II. provide assistance up to a specified amount only; or
- III. review, suspend or revoke the arrangement where the matter is not, in the reasonable opinion of NTSCORP, being conducted in accordance with appropriate professional standards or for any other reason if in the reasonable opinion of NTSCORP the matter ought be conducted internally or briefed to an alternative practitioner, approved by NTSCORP.

2.6 Types of assistance NTSCORP will NOT provide

Under no circumstances will NTSCORP provide assistance:

- i. in the form of a cash grant, even where the applicants do not wish to be represented by NTSCORP; or
- ii. in payment for services already rendered by external consultants or lawyers and which were incurred without NTSCORP's prior written agreement.

2.7 Statutory considerations

Whatever form NTSCORP's assistance takes in a particular case, the NTA provides that in performing its facilitation and assistance functions, NTSCORP must:⁶

- (a) *consult with, and have regard to the interests of, any registered native title bodies corporate, native title holders or persons who may hold native title who are affected by the matter; and*
- (b) *if the matter involves NTSCORP representing such bodies corporate, native title holders or persons—be satisfied they understand and consent to any general course of action that NTSCORP takes on their behalf in relation to the matter.*

The NTA also provides that in performing its facilitation and assistance functions in relation to section 61 applications, NTSCORP must:⁷

- (a) *act in a way that promotes an orderly, efficient and cost-effective process for making such applications; and*
- (b) *if the land or waters covered by the application are wholly or partly covered by one or more applications (including proposed applications) of which NTSCORP is aware—make all reasonable efforts to minimise the number of applications covering the land or waters.*

These factors are discussed in section 5 below.

3 HOW TO APPLY FOR ASSISTANCE FROM NTSCORP

3.1 Pre-application consultation

Before applying for assistance, it is a requirement that applicants first consult NTSCORP about their proposed application. Such consultations can take the form of a meeting or telephone discussion with NTSCORP's Chief Executive Officer (CEO) or a member of

⁶ NTA, section 203BC(1).

⁷ NTA, section 203BC(3).

NTSCORP's Management, or, in other cases, an exchange of emails or letters with these persons.

The requirement for pre-application consultation is discussed in more detail in section 5.2.2 below under the heading "NTSCORP's procedures".

3.2 Application form and supporting information

A person or persons who wishes to apply for assistance from NTSCORP and is not already represented by NTSCORP must complete and submit the relevant Facilitation and Assistance Form. There are 2 forms for different types of applications:

- **Form A** is for assistance with the making of native title determination applications (native title claims), whether proposed to be filed, or already filed.
- **Form B** is for all other types of assistance. These may include assistance relating to applying to join an existing native title claim as a respondent party, non-claimant applications, future act matters including negotiations, and native title compensation claims.

Pre-application consultation (see above) will assist prospective applicants in deciding which of the forms is appropriate for their particular purposes.

As set out in each form, applicants should provide with the form all information they consider supports their application, which may include genealogies, family histories, anthropological reports or other factual information. Whilst such information is not essential, additional information which is relevant will assist NTSCORP making an informed decision. Pre-application consultation may identify additional information that applicants should provide with their form.

4 NTSCORP'S PROCESS FOR DEALING WITH APPLICATIONS FOR ASSISTANCE

A decision on an application for assistance will follow each of the following steps, depending on the particular circumstances:

4.1 Step 1 (determination of whether the application is valid)

The first step NTSCORP is to take upon receiving an application for assistance is to determine:

- (a) whether the application has been made by a person who is entitled to request assistance (see section 2.3) above; and
- (b) whether the type of assistance sought is assistance that NTSCORP is able to provide (see section 2.1) above.

If the application does not meet either of these requirements, NTSCORP will notify the applicant of the outcome of this first step, and will endeavour to do so within 15 business days in most cases.

4.2 Step 2 (assessment and decision by NTSCORP's Management)

If the application for assistance is valid, the application will be considered and determined at the next meeting of Management.

At this meeting, Management will assess the request in accordance with this policy and make a decision in relation to the application. There are 3 possible decisions Management may make:

- (a) accept the application (conditionally, partially, or otherwise);
- (b) refuse the application; or
- (c) defer the application pending receipt of further information or advice, and, potentially, further consultations (see sections 4.3, 4.4 and 4.5 below).

A decision to accept an application may involve deferral of the provision of assistance, depending on the circumstances including where there is limited availability of Commonwealth funding. This consideration is set out in further detail in 5.2.1.

4.3 Step 3, if applicable (request for further information)

If Management's assessment identifies any issues that appear to bear significantly upon the merits of the application, or Management's ability to make an informed decision on the application, NTSCORP will inform the applicant of the issues and invite them to provide further factual information that addresses the issue within a certain timeframe. Applicants will usually be given 20 business days to provide such further information, however this may be varied to account for particular circumstances.

4.4 Step 4, if applicable (legal advice about merits of the application)

If Management consider it appropriate, it may seek legal advice about the merits of the application. Such legal advice is usually sought from NTSCORP's Principal Solicitor (who will be assisted by other NTSCORP solicitors), though in some cases (such as where NTSCORP may have a conflict of interest), legal advice may be sought from external, independent, solicitors and/or barristers.

Whoever provides the legal advice, it is advice on the merits of the application (i.e., whether NTSCORP should grant the assistance or not) based on:

- (a) the application form and any supporting materials provided by the applicant; and
- (b) any relevant factors and information supplied by NTSCORP as identified by Management.

The factors taken into account in preparing any such advice are discussed in section 5 below.

As a matter of practice, Management will usually follow, but will not be bound by, any legal advice provided.

4.5 Step 5, if applicable (consultation)

If Management considers that assistance should be provided, the next step is for NTSCORP to determine whether it needs to carry out any further consultations with any registered native title bodies corporate, native title holders, or persons who may hold native title who are affected by the matter that may be required by s 203BC(1)(a) of the NTA in all the circumstances (see section 2.4 above).

Whether consultation is required at this stage, and, if it is, the persons NTSCORP consults and the nature and extent of the consultation, depends on the type of assistance sought and the circumstances of the case. For example, where the nature of assistance sought is the preparation of a native title claim, NTSCORP will undertake reasonable and practicable measures to consult all persons who (to the best of NTSCORP's knowledge) may hold native title in the area of the proposed claim. These persons may be the members of the Applicant for a pre-existing native title claim over the area, or the board of a PBC that represents persons who may hold native title rights over the area.

If the nature of the assistance sought is research into a potential native title claim, consultation with persons who may hold native title will be carried out as part of the research process, and is not needed before the decision whether to grant assistance is made.

4.6 Step 6 (notification to applicant of decision)

The final step is that the applicant is informed of NTSCORP's decision. NTSCORP will use best endeavours to notify the applicant within 10 business days of Management's decision.

If the decision is to accept the application, the notice to the applicant will explain the terms and conditions of the provision of assistance (if any), and a meeting to discuss these may be arranged if necessary.

If the decision is to refuse or to defer the application, succinct reasons will be provided with the notice. However, applicants will not be provided with any legal advice provided to Management, if any, because these documents are confidential and subject to legal professional privilege.

Whatever the decision, the notice will also contain information about the applicant's rights of review (see section 6 below).

The time required for all of steps 1-6 to be completed will vary from case to case depending on the circumstances, though NTSCORP will use its best endeavours to complete the process within 3 months of receipt of applications for assistance in most cases.

5 FACTORS NTSCORP CONSIDERS WHEN DECIDING WHETHER TO PROVIDE ASSISTANCE

5.1 Introduction

The factors NTSCORP considers when deciding whether to provide assistance pursuant to its facilitation and assistance functions are guided by the NTA, relevant caselaw of the Court,⁸ and its resourcing and capacity. These factors are set out below.

Broadly, the factors fall into 3 categories:

- (a) **NTSCORP's priorities and procedures:** NTSCORP may take account of its priorities and procedures in deciding whether to provide assistance: see sections 203B(4), 203FBA(3)(a) and 203FBB(3)(a) of the NTA. NTSCORP's relevant priorities and procedures are set out in section 5.2 below.
- (b) **Legal merits of the application:** An assessment of the legal merits of the application is a threshold test in the sense that if NTSCORP considers that the application lacks legal merit, the application will be refused. The concept of legal merits as applied under this policy is explained in section 5.3 below.
- (c) **Statutory factors:** These are factors the NTA requires NTSCORP to consider.

There is some overlap between these categories. For example, consideration of whether the decision would be consistent with priorities determined by NTSCORP (category 1) can also be described a "statutory factor" (category 3).⁹

⁸ See, in particular, *Tucker on behalf of the Narnoobinya Family Group v Aboriginal & Torres Strait Islander Commission* [2004] FCA 134 (**Tucker**).

⁹ See NTA, sections 203FBA(3)(a) and 203FBB(3)(a).

5.2 NTSCORP's priorities and procedures

5.2.1 NTSCORP's priorities

NTSCORP's overall priority is to provide assistance to applicants whose applications have merit, including legal merit, subject to funding and operational considerations (see below). NTSCORP therefore has both merit-based and operational priorities that have to be balanced.

The merit-based factors NTSCORP takes into account in deciding whether to exercise its facilitation and assistance function and grant assistance are set out below. Generally, these are "positive" factors in that their satisfaction will generally make the application for assistance more likely to be granted. Others are "negative" factors in that their satisfaction will generally make the application less likely to be granted. However, NTSCORP assesses all factors having regard to all the relevant circumstances, and considers the factors both individually and together.

Although an application for assistance with significant merit (as assessed by reference to the factors below) will generally succeed in the sense that some form of assistance will be provided (see section 2.4 above), all applications for assistance are considered having regard to NTSCORP's operational priorities. These priorities are based on the availability of Commonwealth funding from time to time (as obtained through allocations and grants) and NTSCORP's allocation of resources to its various statutory functions, as contemplated by section 203B(4) of the NTA.¹⁰

The mere fact an application for assistance concerns subject matter for which NTSCORP has not already allocated resources does not mean that the application will be denied assistance. However, this is a factor NTSCORP takes into account in determining applications for assistance, along with all the other factors.

Merit-based factors considered by NTSCORP in determining applications for assistance

NTSCORP considers each of the following factors in determining the relative merits of an application for assistance, recognising that not every factor will be relevant to every

¹⁰ See NTA, sections 203FBA(3)(a) and 203FBB(3)(a).

application. These factors reflect NTSCORP's merit-based priorities with respect to its facilitation and assistance functions.

- (a) Whether the claim has significant legal merit. For applications for assistance concerning native title claims or compensation claims, this may be the case where the claim is supported by substantive factual material such as an expert anthropological report or other factual materials that tend to disclose the legal merits of the claim. This factor is discussed further below in section 5.3 of the policy;
- (b) Whether the area sought to be claimed is subject to development pressures;
- (c) Whether the native title claim group (where applicable) has secure tenure to the land they wish to claim. If the native title claim group has secure tenure to the relevant land (for example, in the form of a 99-year lease) it may weigh against the granting of assistance, depending on all the circumstances;
- (d) Whether the claim (where applicable) raises test case issues. A test case is a case that will, if and when a determination is made, decide and clarify issues that might affect other native title claims. The fact an application raises a test case will generally weigh in favour of assistance being granted. However, where a test case covering the same legal issues as those raised by the application is already before the Court, it may be considered more prudent to await a decision of the Court before considering the application further;
- (e) Whether the native title claim group (where applicable) includes people whose availability as witnesses is at risk because of their age or state of health;
- (f) Whether there are any legislative changes pending that may adversely affect the claim;
- (g) Whether a substantial number of people will benefit from the successful outcome of the claim or negotiations;
- (h) Whether the native title claim group (where applicable) has made genuine, demonstrable efforts to engage with any persons who assert a competing native title over the relevant area with a view to resolving disputes with such persons by consent as much as practicable;

- (i) Whether the proposed claim area (where applicable) overlaps with any existing or imminent claim. Having regard to NTSCORP's duty (under section 203BC(3)(b) of the NTA) to make all reasonable efforts to minimise the number of applications covering any land or waters, the fact an application for assistance will result in overlapping claims will generally weigh against the provision of assistance, depending on all the circumstances;
- (j) Whether the proposed native title claim group (where applicable) is already part of a larger claimant group for which assistance has been provided by NTSCORP. This is a factor that generally weighs against the provision of assistance, depending on all the circumstances; and
- (k) In the case of assistance regarding non-claimant applications (Form B), whether the potential impact of a successful non-claimant application is extinguishment of native title or significant impairment.

5.2.2 NTSCORP's procedures

As set out in section 3.1 above ("Pre-application consultation"), it is an NTSCORP requirement that applicants for assistance consult NTSCORP about their proposed application before they apply. Such consultations can take the form of a meeting or telephone discussion with NTSCORP's CEO or a member of NTSCORP's Management, or, in other cases, an exchange of emails or letters with those persons.

The purpose of early consultations is mainly to promote an orderly and efficient process for making applications under section 61 of the NTA, though such consultations are useful even if the application for assistance is about something other than a section 61 application (such as a negotiation). Early consultations enable an exchange of information between parties at an early stage such that any fundamental issues with the proposed application can be addressed before the applicants and NTSCORP potentially expend considerable resources in preparing and considering the application.

5.3 Legal merits

5.3.1 *General considerations*

Assessing merits in a strict legal sense at the time an application for assistance is made can be difficult because often there will be limited factual materials available upon which to base an assessment. NTSCORP will nevertheless assess the legal merits of an application as a threshold issue based upon the materials it has (including those provided by the applicant), while at the same time recognising the limitations of such materials.¹¹

An assessment of merits will be guided by the nature of the assistance sought.

5.3.2 *How legal merits are assessed*

Since an evaluation of legal merits will depend on the subject matter of the application for assistance, and the type of assistance sought, it is not possible to set out a definitive guide for how legal merits are assessed that applies in every case. However, the following general guide applies to applications for assistance concerning native title claims (Form A), and may be adapted for other types of applications (Form B).

5.3.2.1 *Question 1: Are there any fundamental legal difficulties with the proposed claim, or (if applicable) the proposed native title claim group?*

Part of the assessment of merits involves consideration of whether there are any fundamental legal difficulties with the proposed claim, or (if applicable) the proposed native title claim group.

For a native title claim, there may be fundamental legal difficulties if there has been complete or substantial extinguishment of native title over the relevant area, or if the persons seeking assistance are excluding persons who may hold native title in the relevant area.

For a compensation claim, there may be a fundamental difficulty if it does not appear there is a “compensable act”, meaning an act that caused the extinguishment of native title and for which compensation is available under the NTA.

¹¹ See *Tucker* at [48] (“The judgment made in decisions by native title representative bodies and decisions by reviewers will necessarily be based upon material which is provisional or incomplete. The representative body and the reviewer must do the best they can.”).

For an applicant seeking to become a respondent to a non-claimant application, there may be a fundamental difficulty if the applicant is not able to show it has credible evidence that it has a native title interest over the relevant area.

5.3.2.2 *Question 2: (For applications for assistance concerning native title claims (Form A)) Does the proposed claim (or claim already filed) have reasonable prospects of satisfying the requirements of the NTA?*

Because of the complexity of the legal factors relevant to whether a claim has reasonable prospects of success, and the generally limited information available at the stage of an application for assistance, NTSCORP considers these factors by reference to the following matters:

- (a) Whether there is a body of credible evidence (including anthropological research) that supports the proposed claim;¹²
- (b) Whether it can be shown that the applicants are part of a cohesive, identifiable group that can trace its ancestral connection to the area to the time of effective sovereignty;¹³
- (c) Whether the native title claim group has the form of an appropriate native-title holding group. For example, it will rarely be the case that an individual family will be an appropriate communal group because such a group is unlikely to include all native title holders. Nor will a group that deliberately excludes persons who the applicant knows or reasonably suspects holds native title in the area;
- (d) Whether it can be shown that the applicants have a continuing connection to the land and/or waters they are claiming through the observance of traditional laws and customs received and acknowledged generation by generation from effective sovereignty. This factor will be assessed by reference to any factual examples and/or factual materials provided by the applicants, as well as any such materials held by NTSCORP; and

¹² See NTA, section 203BC(3)(b), which requires a representative body to make all reasonable efforts to minimise the number of applications covering the land or waters.

¹³ Effective sovereignty means the date at which European invasion first impacted the relevant area.

- (e) Whether the form of native title claimed, or proposed to be claimed, is broadly supported by the persons in the group, whether or not they are among the applicants for assistance. Lack of such internal support for the application will weigh against provision of assistance.

5.3.2.3 Question 3: (For applications for assistance concerning compensation claims (Form B)) Does the proposed claim (or claim already filed) have reasonable prospects of satisfying the criteria for determining compensation in section 51 of the NTA?

In simple terms, section 51(1) of the NTA provides that the entitlement to compensation under the NTA is an entitlement on “just terms” to compensate the native title holders for any loss, diminution, impairment or other effect of the act on their native title rights and interests.

In assessing an application for assistance in relation to a compensation application, NTSCORP will consider the applicants’ factual material to try to determine whether the application would have reasonable prospects of success having regard to the statutory criteria, as considered by the courts (including the High Court of Australia) in such cases as *Northern Territory v Griffiths* (2019) 93 ALJR 327.

5.3.2.4 Question 4: (For applications for assistance concerning non-claimant applications (Form B)): Does the applicant have reasonable prospects of opposing the non-claimant application, or achieving an outcome that preserves or mitigates the impact on native title?

In assessing the legal merits of an application for assistance in relation to a non-claimant application, NTSCORP will examine any available evidence of the applicant’s native title rights and interests in the area, and the likely impact of the non-claimant application on those rights and interests.

5.4 Statutory factors

Having regard to Divisions 3 and 7 of Part 11 of the NTA and the Court’s interpretation of relevant provisions in these divisions, NTSCORP considers the following statutory factors in deciding whether to provide assistance in any given case:

- (a) Whether the provision of assistance would be consistent with NTSCORP's merit-based and operational priorities as determined under s 203B(4)(a) of the NTA¹⁴ and explained in section 5.2.1 above;
- (b) Whether, to provide the assistance sought, NTSCORP would need to allocate or re-allocate resources in a way that interferes with the efficient performance of its functions;¹⁵
- (c) Whether NTSCORP would breach a condition imposed under section 203CA of the NTA (in other words, a condition on its funding) if it were to provide the assistance sought;¹⁶ and
- (d) If the assistance sought is in relation to a section 61 application:¹⁷
 - (i) whether the provision of the assistance would promote an orderly, efficient and cost-effective process for making such applications; and
 - (ii) in a case where one or more other applications have been made or are proposed to be made in relation to land or waters covered by the application—whether the provision of the assistance sought would be reasonable given the need to minimise the number of applications covering the land or waters.

Depending on the type of assistance sought, NTSCORP may also consider at this stage the interests of any registered native title bodies corporate, native title holders or persons who may hold native title who are affected by the matter.¹⁸ Such interests are identified and assessed through consultation (see step 6 in section 4 above).

¹⁴ See NTA, sections 203FBA(3)(a) and 203FBB(3)(a).

¹⁵ See NTA, sections 203FBA(3)(b), 203FBB(3)(b) and 203BA(2)(a).

¹⁶ See NTA, sections 203FBA(3)(c) and 203FBB(3)(c).

¹⁷ NTA, sections 203FBA(3)(d), 203FBB(3)(d) and 203BC(3).

¹⁸ NTA, section 203BC(1)(a).

6 RIGHTS OF REVIEW

A person who is dissatisfied with a decision of NTSCORP made under this policy may apply for internal review of the decision. The process for applying for internal review is set out in NTSCORP's Internal Review Policy.

An application for internal review must be submitted within 20 business days of NTSCORP notifying the applicant of its final decision, in accordance with section 4.6 of the policy.

7 OTHER MATTERS

7.1 Confidentiality

All information obtained by NTSCORP for the purpose of considering an application for assistance is held in confidence if NTSCORP is instructed by the applicant that this should be the case. In some instances, information provided to lawyers for the purpose of native title proceedings may also be subject to legal professional privilege.

NTSCORP will ensure that any sensitive information relating to claims is held securely on behalf of applicants, for instance where the information is restricted on the basis of gender. Such information will carry a clear warning that access to the material is restricted according to the instructions received from the informants.

A handwritten signature in black ink, appearing to read "Michael Bell", written over a horizontal line.

Michael Bell

Chairperson of NTSCORP Limited