

**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 8 August 2022**

**Context**

1. On 8 August 2022 the Registrar of Aboriginal and Torres Strait Islander Corporations (**the Registrar**) received a compliant application for an opinion on 34 fees charged by a registered native title body corporate (**RNTBC**) under section 60AB of the *Native Title Act 1993* (**the Act**).
2. The Registrar's power to issue an opinion about that 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 18 August 2022, requesting further information by 2 September 2022. Further information was provided to the delegate on 1 September 2022. Clarification of the information was requested on 16 September 2022. The RNTBC responded on 21 September 2022.

**Material considered**

5. The following material was considered in relation to this application:
  - a. Application received 8 August 2022 inclusive of relevant invoices and information sent to the applicant on 18 July 2022.
  - b. Information emailed to the delegate by the RNTBC on 26 August 2022, inclusive of attachments.
  - c. Further clarification of information emailed to the delegate by the RNTBC on 21 September 2022, inclusive of attachments.
6. All materials considered have been copied to the applicant and the RNTBC.

**Substantive issues common across the 34 invoices**

7. The table that follows provides my opinion and reasons with respect to each of the 34 invoices, noting there are substantive issues common across some invoices. Three invoices have been withdrawn by the RNTBC, which are identified in the table below.

**Jurisdiction**

8. 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

30 September 2022

Row	Invoice no.	Reasons the applicant considers the fee cannot be charged	Opinion of the delegate of the Registrar
1	<p>0350-0358 0360-0368 0411-0415 0417-0423</p>	<p><b>Notification pursuant to section 29</b> The applicant contends a 'notification pursuant to section 29' is not a matter for which a fee can be charged under section 60AB(1) or regulation 20.</p> <p>Further, the applicant contends the entry provided under the heading "Description" in the invoices (which, in effect, merely acknowledges receipt of a notice from the Department) cannot cure the deficiency in the invoices in failing to properly identify the work in respect of which the fee-for-service is charged.</p> <p>Further, in considering these invoices in light of the 'FANs Letter' [the letter sent by the RNTBC to the applicant on 18 July 2022], the applicant submits that the result is the same, namely that the body corporate is not entitled to charge fees for services for work done in the accordance with activities conducted under or related to section 29.</p>	<p>1. An invoice for a 'notification pursuant to section 29' will not, on its own, amount to a fee that can be charged under section 60AB(1) of the Act.</p> <p>2. A RNTBC must demonstrate the fee charged is for costs incurred performing a function permissible under section 60AB. It is open to a person charged a fee to seek information from an RNTBC on costs incurred.</p> <p>3. A letter sent to the applicant on 18 July 2022, which was appended to the invoices in this Row 1 purported to identify the functions performed and costs incurred in relation to the 'issuance of future act notices' (FANs). The letter referred to fees charged under Regulation 20. The fees proposed to be charged in most of the subject invoices were fees under section 60AB(1), namely fees for cost incurred when performing the function of 'negotiating an agreement under paragraph 31(1)(b)'. 4. In circumstances such as these, it is reasonable for the Registrar to decline to give an opinion in the absence of efforts by the parties to clarify between themselves the basis upon which a fee is proposed to be charged, including efforts to correct errors and seek more information and clarification.</p> <p>5. Notwithstanding the above, in this instance, the delegate of the Registrar requested further information from the RNTBC about the service provided to which the invoices relate, the amount of fee charged and how it was calculated.</p> <p>6. The information supplied on 1 September 2022, which was copied to the applicant, outlines the activities undertaken by the RNTBC after receiving a notice under section 29 of the Act.</p> <p>7. A notice initiates a requirement to engage in a good faith negotiation procedure (as required by paragraph 31(1)(b) of the Act) about matters related to the effect of a proposed future act on the registered native title rights and interests of the relevant native title parties. This procedure must be fulfilled before any grant may be made.</p> <p>8. With respect to the invoices identified in this Row, I consider the activities described by the RNTBC in its 1 September 2022 correspondence – communicating with effected parties, seeking information, considering and consolidating advice – are activities performed in connection with fulfilling this negotiation procedure. None of the activities can be described as unnecessary or unreasonable. The activities result in the RNTBC incurring costs for the time spent by personnel undertaking the activities. The amount of the fee charged bears a sufficient relationship with the costs incurred.</p> <p>9. I consider the fees charged in the invoices identified in this Row to be fees that may be charged under section 60AB(1).</p>

Row	Invoice no.	Reasons the applicant considers the fee cannot be charged	Opinion of the delegate of the Registrar
2	0361 0362 0414 0412	The applicant raises certain discrete factual issues in each of the invoices identified in this Row 2.	<ol style="list-style-type: none"> <li>1. The issues raised by the applicant about the invoices listed in Row 2 may amount to errors that should be corrected or clarified by the RNTBC before a fee can be paid. Alternatively, the invoices may have been raised in error and are required to be withdrawn.</li> <li>2. In circumstances such as these, it is generally reasonable for the Registrar or their delegate to decline to give an opinion in the absence of efforts by the parties to clarify between themselves the basis upon which a fee is proposed to be charged, including efforts to correct errors.</li> <li>3. Notwithstanding the above, in this instance, the delegate of the Registrar requested further information from the RNTBC about the service provided to which the invoices relate, the amount of fee charged and how it was calculated. Further clarification was requested on the specific discrete factual issues raised by the applicant in relation to the invoices in Row 4 on 16 September 2022.</li> <li>4. The Registrar notes that reasonable opportunity has been provided to the RNTBC to address the discrete factual issues raised by the applicant. These issues have not been addressed in the information received on 21 September 2022.</li> <li>5. On this basis and given the potential errors raised by the applicant and opportunity that has been provided to the RNTBC to clarify matters, I cannot conclude that, on the information available to me, the fees in the invoices in Row 4 are fees that can be charged under section 60AB(1) of the Act. I accordingly express the opinion that the fees are not fees that may be charged.</li> </ol>
3	0369 0416	Notification of an infrastructure facility associated with mining under section 24MD(6B)(e)	On 21 September 2022 the RNTBC indicated it would withdraw the invoices identified in this Row 3, accordingly no opinion is expressed on the invoices.
4	359 370	Notification under section 24HA(7) (management of water)	On 21 September 2022 the RNTBC indicated it would withdraw the invoices identified in this Row 4, accordingly no opinion is expressed on the invoices.