

From: s 22(1)(a)(ii)
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
Subject: FCFCOA review brief: PDMS Notification - Record Assigned : MC24-088302 : VIP Priority - Review of the Federal Circuit and Family Court of Australia Act [SEC=OFFICIAL]
Date: Tuesday, 18 June 2024 10:22:28 AM
Attachments: [MC24-078944 001 VIP Priority - Native Title Act 1993.docx](#)
[MC24-078944 004 Attachment B - Draft response to the Attorney-General.docx](#)
[2022.10.27 PM Letter to AG s 47C & s 47E\(d\) 27 October 2022.pdf](#)
[image002.png](#)

OFFICIAL

Hi s 22(1)(a)(ii)

As discussed, attached is an example of a brief and reply following the AG writing to the PM regarding his intention to undertake a review.

I also attach the letter from the PM dated 27 October 2022 which the AG refers to in the incoming letter about the review of the FCFCOA Act.

From a quick look at the FCFCOA Act it looks as if the AG has legislative authority to commence a review and is merely writing in because of the PM's letter dated 27 October 2022. If this is the case (grateful if you can take a closer look at this), this means the brief can ask the PM/AM to merely note the review is going to proceed rather than needing to technically agree for it to proceed (this was the case in the attached brief).

Suggest also confirming with s 22(1)(a)(ii) if this should be an AM brief.

Thanks very much and happy to chat as always!

Kind regards

s 22(1)(a)

s 22(1)(a)(ii) | Adviser (she/her)
 Legal Policy Branch
 Department of the Prime Minister and Cabinet
 Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600
 p. s 22(1)(a)(ii)
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The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: noreply@pws.gov.au <noreply@pws.gov.au>
Sent: Monday, 17 June 2024 5:44 PM
To: s 22(1)(a)(ii) <s 22(1)(a)(ii)@pmc.gov.au>
Subject: PDMS Notification - Record Assigned : MC24-088302 : VIP Priority - Review of the Federal Circuit and Family Court of Australia Act [SEC=OFFICIAL]

SEC=OFFICIAL

s 22(1)(a)(ii) has assigned **MC24-088302** to s 22(1)(a)(ii). This record can be actioned via the following link:

[MC24-088302](#)

Record details	
<i>*please note if any of the below fields are empty, the associated field is not populated on the record.</i>	
PDR Subject	VIP Priority - Review of the Federal Circuit and Family Court of Australia Act
Processing Instructions	Hi s 22(1)(a)(ii) and s 22(1)(a)(ii) for your action as discussed please. Thanks, s 22(1)(a)(ii)
Category	VIP Correspondence - Priority

Correspondent	DREYFUS, Mark
Milestones	Due for Clearance : 20/06/2024 10:00:26 AM Due to Parliamentary : 20/06/2024 2:30:26 PM
Status	Created

For help, contact the PDMS Helpdesk at s 47E(d) [s 47E\(d\)@pmc.gov.au or on s 22\(1\)\(a\)\(ii\).](mailto:span style=)

To register for PDMS training please visit https://pmc.acornlms.com.au/view_facetoface/812

Note: Please do not reply to this message.

CC Recipients:
s 22(1)(a)(ii) [s 22\(1\)\(a\)\(ii\)@pmc.gov.au\)](mailto:span style=)

SEC=OFFICIAL

VIP PRIORITY – INQUIRY INTO THE FUTURE ACTS REGIME - NATIVE TITLE ACT 1993

Assistant Minister to the Prime Minister, we recommend you:

1. s 47C
Agreed / Not Agreed

2. Note the Attorney-General proposes to announce the inquiry and release the terms of reference on 3 June 2024 (at [Attachment A](#)).
Noted / Discuss

3. Note the Attorney-General will write to the Prime Minister again to recommend the appointment of a part-time member of the ALRC to co-lead the inquiry.
Noted / Discuss

4. s 47C
Signed / Not Signed

PATRICK GORMAN

Date:

Comments:

KEY POINTS

1. On 22 May 2024, the Hon Mark Dreyfus KC MP, Attorney-General (Attorney-General), wrote to the Hon Anthony Albanese MP, Prime Minister (Prime Minister), advising that he intends to refer an inquiry to the Australian Law Reform Commission (ALRC) into the future acts regime in the *Native Title Act 1993 (Cth)* (the Act).
 - a. As per section 20 of the *Australian Law Reform Commission Act 1996 (Cth)* (ALRC Act), the Attorney-General may refer matters to the ALRC.
 - b. The Attorney-General proposes to ask the ALRC to commence the inquiry in June 2024 and report to Government by 8 December 2025 to allow 18 months for the inquiry to be conducted.
 - c. The Attorney-General proposes to publicly announce the inquiry, and its terms of reference, by media release on 3 June 2024.
 - d. The Attorney-General proposes the inquiry be co-lead by the Hon Justice Bromberg, President of the ALRC, as well as an additional part-time member, who is yet to be identified. Pursuant to s 7 of the ALRC Act, the Attorney-General may appoint part-time ALRC members. The Attorney-General advises he is currently working through a short list of eminent First Nations candidates, and will write to the Prime Minister again to recommend a specific candidate for consideration.

2. The Attorney-General’s letter also seeks agreement to the draft terms of reference (at [Attachment A](#)) which asks the ALRC to undertake a broad review into the future acts regime.

- a. Under the Act, proposed actions or developments that affect native title are classed as 'future acts'. The future acts regime establishes procedures for future acts to be validly undertaken.

3. s 47C

[Redacted]

SUPPLEMENTARY INFORMATION

A Way Forward report

- 4. On 11 June 2020, the Senate asked the former Joint Standing Committee on Northern Australia to inquire and report into the destruction of 46,000 year old caves at the Juukan Gorge in the Pilbara region of Western Australia. The Committee published its report, titled *A Way Forward*, in October 2021.
- 5. Recommendation 4 of the report calls for the Government to review the *Native Title Act 1993* with the aim of addressing inequalities in the negotiating position of Aboriginal and Torres Strait Islander peoples in the context of the future act regime. Recommendation four calls for the review to address:
 - a. the current operation of the future act regime and other relevant parts of the Act,
 - b. developing standards for the negotiation of agreements that require proponents to adhere to the principle of Free, Prior and Informed Consent as set out in the UN Convention of the Rights of Indigenous People,
 - c. 'gag clauses' and clauses restricting Aboriginal and Torres Strait Islander peoples access to Commonwealth heritage protections should be prohibited, and
 - d. making explicit the authority and responsibilities of PBCs and Representative bodies in relation to cultural heritage.
- 6. The Government tabled its response to the report titled *A Way Forward* on 24 November 2022 and agreed in principle to recommendation 4. The response noted the latter two points of recommendation 4 may be better dealt with in cultural heritage legislation rather than in the Act. The Attorney-General has advised these two issues are being considered by the partnership between the Australian Government and the First Nations Heritage Protection Alliance and are not included in the draft terms.

Terms of reference

The Attorney-General advises that the terms of reference have been developed in consultation with stakeholders across Commonwealth agencies, the Australian Law Reform Commission, the National Native Title Tribunal and the National Native Title Council.

s 47C

[Redacted]

The Attorney-General is required to table the ALRC report within 15 sittings days after he receives it (ALRC Act, s 23).

s 47C

s 47C

Financial Implications

s 34(3)

s 34(3)

The inquiry will otherwise be resourced from the ALRC's base funding.

Consultation

PM&C DIVISIONS – Fiscal, First Nations Policy – Social and Economic Policy, CommState, Environment.

Branko Ananijevski

Acting Assistant Secretary

Legal Policy Branch

30 May 2024

Policy Officer: s 22(1)(a)(ii)

Phone no: s 22(1)(a)(ii)

Circulation

PM&C Secretary; DS, Governance and Corporate Group, *M Hehir*; FAS, Ministerial Support, *G Martin*; A/g FAS, Government Division, *A McDonald*; AS, First Nations Branch, *K Thomann*, FAS, Intergovernmental Relations and Reform, *Lee Steel*; AS, Commonwealth State Relations, *Hope Peisley*.

AMO Chief of Staff, s 22(1)(a)(ii)

PMO Senior Advisers: s 22(1)(a)(ii)

ATTACHMENTS:

ATTACHMENT A DRAFT TERMS OF REFERENCE

ATTACHMENT B DRAFT RESPONSE

ATTACHMENT C INCOMING CORRESPONDENCE



**ASSISTANT MINISTER TO THE PRIME MINISTER
ASSISTANT MINISTER FOR THE PUBLIC SERVICE
MEMBER FOR PERTH
The Hon Patrick Gorman MP**

Reference: MC24-078944

The Hon Mark Dreyfus KC MP
Attorney-General
Parliament House
CANBERRA ACT 2600

Dear Attorney-General

Thank you for your letter dated 22 May 2024 to the Hon Anthony Albanese MP, Prime Minister, regarding the referral of an inquiry to the Australian Law Reform Commission (ALRC) into the future acts regime in the *Native Title Act 1993* (Cth). The Prime Minister has asked me to reply on his behalf.

I agree to your proposed terms of reference for this inquiry and your proposal to publicly announce the inquiry and terms of reference in early June 2024.

I note that you propose to appoint a part-time member to co-lead the inquiry on an urgent basis and are working through a list of eminent First Nations candidates, and will write to the Prime Minister recommending a specific candidate in due course.

I ask that you work with relevant ministers, including the Minister for Indigenous Australians, regarding the handling of and messaging strategy for the ALRC's final report.

I have copied this letter to the Hon Richard Marles MP, the Deputy Prime Minister, the Hon Dr Jim Chalmers MP, Treasurer, the Hon Linda Burney MP, Minister for Indigenous Australians, the Hon Tanya Plibersek MP, Minister for the Environment and Water, and the Hon Madeleine King MP, Minister for Resources and Northern Australia.

Thank you for progressing this important work.

Yours sincerely

PATRICK GORMAN

/ / 2024

From: s 22(1)(a)(ii)
To: s 22(1)(a)(ii)
Subject: FW: FOR REVIEW: Letter to Ministers s 47C & s 47E(d) [SEC=PROTECTED, CAVEAT=SH:CABINET]
Date: Wednesday, 2 October 2024 9:25:54 AM
Attachments: [Prime Minister Letter - MPs and Senators - v2.docx](#)
[image002.png](#)

PROTECTED//CABINET

Hi team – see below/attached FYI and to keep in mind for future advice to AGD. s 34(3)
so useful for early vis.

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @pmc.gov.au
Sent: Wednesday, 2 October 2024 9:14 AM
To: s 22(1)(a)(ii) @pmc.gov.au; s 22(1)(a)(ii) @pmc.gov.au
Subject: FW: FOR REVIEW: Letter to Ministers s 47C & s 47E(d) [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

FYI both – as you’ll see, in the [attached draft](#) letter, s 34(3)

s 34(3)
s 34(3)
s 34(3)
s 34(3)
s 34(3)
s 34(3)
s 34(3)

I’m not aware of whether we have s 47C & s 47E(d) coming up in our space, but grateful if we can keep in mind.

Cheers,

s 22(1)(a)(ii) (she/her) | Legal Policy Branch | s 22(1)(a)(ii) | s 22(1)(a)(ii)

From: Walter, Andrew <Andrew.Walter@pmc.gov.au>
Sent: Wednesday, 2 October 2024 9:09 AM
To: s 22(1)(a)(ii) @pmc.gov.au; Belgrove, David <David.Belgrove@pmc.gov.au>; Easton, Deanna <Deanna.Easton@pmc.gov.au>
Cc: Walter, Andrew <Andrew.Walter@pmc.gov.au>
Subject: FW: FOR REVIEW: Letter to Ministers s 47C & s 47E(d) [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

For information. A

From: Elliston, Lisa <Lisa.Elliston@pmc.gov.au>
Sent: Tuesday, 1 October 2024 5:36 PM
To: Doherty, Greta <Greta.Doherty@pmc.gov.au>; Johnson, Tim <Tim.Johnson@pmc.gov.au>; Steel, Lee <Lee.Steel@pmc.gov.au>; Garbin, Christina <Christina.Garbin@pmc.gov.au>; Quigley, Janet <Janet.Quigley@pmc.gov.au>; Neil, John <John.Neil@pmc.gov.au>; Evans, Jo <Jo.Evans@pmc.gov.au>; Morony, Kendra <Kendra.Morony@pmc.gov.au>; Kang, Pablo <Pablo.Kang@pmc.gov.au>; Sadleir, Richard <Richard.Sadleir@pmc.gov.au>; **s 22(1)(a)(ii)** <**s 22(1)(a)(ii)** @pmc.gov.au>; Walter, Andrew <Andrew.Walter@pmc.gov.au>; Hupalo, Paul <Paul.Hupalo@pmc.gov.au>
Cc: **s 22(1)(a)(ii)** @pmc.gov.au
Subject: FOR REVIEW: Letter to Ministers **s 47C & s 47E(d)** [SEC=PROTECTED, CAVEAT=SH:CABINET]

PROTECTED//CABINET

Colleagues,

As mentioned at Div Heads the other week, **s 34(3)**
 [Redacted]
s 34(3)
 [Redacted]
 [Redacted]
 [Redacted]
 [Redacted]
 [Redacted]
 [Redacted]
 [Redacted]

Please find attached a draft letter to Ministers **s 47C & s 47E(d)**
s 47C & s 47E(d)
 other feedback, please let me know by **cob Thursday 3 October**. If this timeframe isn't feasible given other priorities, please get in touch.

Thanks and regards,
Lisa

Lisa Elliston | First Assistant Secretary
 Strategy, Projects and Priorities Division
 Department of the Prime Minister and Cabinet
 p. **s 22(1)(a)(ii)** | m. **s 22(1)(a)(ii)** | e. **s 22(1)(a)(ii)** @pmc.gov.au | w. www.pmc.gov.au
 Nggunawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600



The Department acknowledges and pays respect to the past, present and emerging Elders and Traditional Custodians of Country, and the continuation of cultural, spiritual and educational practices of Aboriginal and Torres Strait Islander peoples.

From: [redacted] s 47E(d)
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii); [redacted] s 47E(d)
s 47E(d) s 22(1)(a)(ii) s 47E(d)
Subject: RE: For comments by 9.30am tomorrow Wednesday 23 October - ALRC inquiry into surrogacy laws [SEC=PROTECTED]
Date: Tuesday, 22 October 2024 5:19:36 PM
Attachments: [image007.png](#)

PROTECTED

Hi [redacted] (and thanks [redacted] for looping our team in)

Thanks for your time on the phone, and as I mentioned, we do have some further context for consideration as you draft a response.

[redacted] s 34(3)
[redacted]
[redacted]
[redacted]
[redacted]

I've provided full details below, but s 34(3)
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

[redacted] s 47C
[redacted]
[redacted]
[redacted]
[redacted]

We would be happy to discuss further if needed, [redacted] s 47C
[redacted] s 47C

- [redacted] s 34(3)
[redacted]
[redacted]
- s 34(3)
[redacted]
[redacted]

s 34(3)

s 47C & s 47E(d)

Kind regards

s 22(1)(a)(ii) (she/her)

A/g Director, Strategy Planning and Analysis

Strategies, Projects and Priorities Division

Department of the Prime Minister and Cabinet

p. **s 22(1)(a)(ii)** m. **s 22(1)(a)(ii)**

Ngunawal Country, One National Circuit Barton ACT 2600



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From: s 22(1)(a)(ii) @pmc.gov.au>
 Sent: Tuesday, 22 October 2024 4:08 PM
 To: s 22(1)(a)(ii) @pmc.gov.au>
 Cc: s 22(1)(a)(ii) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>
 Subject: RE: For comments by 9.30am tomorrow Wednesday 23 October - ALRC inquiry into surrogacy laws [SEC=OFFICIAL]

OFFICIAL

Hi s 22(1)(a)(ii)

Thank you for consulting!

Please find proposed minor edits from Fiscal attached in the brief (just to flesh out the financial impacts info).

I would also encourage you to check the approach for the review with the Strategy Planning and Analysis Unit (I have cc'd them in) s 47C & s 47E(d)

checking 😊

Kind regards

s 22(1)(a)(ii)

s 22(1)(a)(ii) | Adviser
 National Security and Economics Team
 Fiscal Branch | Economic Division
 Department of the Prime Minister and Cabinet
 p. s 22(1)(a)(ii) | m. s 22(1)(a)(ii) | High: s 22(1)(a)(ii)
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From: s 22(1)(a)(ii) @pmc.gov.au>
 Sent: Tuesday, 22 October 2024 10:20 AM
 To: s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>; s 47E(d) @pmc.gov.au>

s 47E(d) @pmc.gov.au>; **s 47E(d)** @pmc.gov.au>
Cc: **s 22(1)(a)(ii)** @pmc.gov.au>
Subject: For comments by 9.30am tomorrow Wednesday 23 October - ALRC inquiry into surrogacy laws [SEC=OFFICIAL]

OFFICIAL

Hi teams

Grateful for your comments by 9.30am tomorrow Wednesday 23 October on the attached draft brief and response letter regarding the Attorney-General's proposal to refer an inquiry to the Australian Law Reform Commission into surrogacy laws.

Fiscal – we understand this won't have financial implications.

Sharing this to international/immigration mainly for vis noting commercial surrogacy is illegal in all states and territories and travelling to engage in international commercial surrogacy is a criminal offence in some states and territories however Australians sometimes rely on international surrogacy (manly in Asia and Eastern Europe). When children are born of surrogacy overseas, parents must arrange Australian citizenship or visas and passports before they are able to bring the child back to Australia.

Many thanks in advance and happy to discuss!

Kind regards

s 22(1)(a)(ii)

s 22(1)(a)(ii) | Adviser (she/her)

Legal Policy Branch

Department of the Prime Minister and Cabinet

Ngunnawal Country, One National Circuit Barton ACT 2600 | PO Box 6500 CANBERRA ACT 2600

p. **s 22(1)(a)(ii)**

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From: s 22(1)(a)(ii)
To: s 22(1)(a)(ii)
Cc: s 22(1)(a)(ii)
Subject: RE: PM authority for public consultation [SEC=OFFICIAL]
Date: Wednesday, 5 March 2025 11:09:16 AM
Attachments: [2022.10.27 PM Letter to AG s 47C & s 47E\(d\) 27 October 2022.pdf](#)

OFFICIAL

Hi s 22(1)(a)(ii)

Perhaps s 22(1)(a)(ii) refers to the attached s 47C

There is also the newer letter, which may or may not have been signed?

s 47C

On public consultation, the general points are:

- In accordance with the Legislation Handbook, policy authority is required before exposure draft of legislation is released for public consultation. Consultation on proposed legislative amendments, or announcements of proposed legislation would also require policy approval (see paragraphs 3.7(k), 3.26-3.29 of the Legislation Handbook)
- Generally, we encourage line departments to engage PM&C before any announcements or public consultation are made that could commit the Government to introducing a form of legislation, any funding or engaging in a review or inquiry.

S 47C

Thanks

s 22(1)(a)(ii)

From: s 22(1)(a)(ii) @pmc.gov.au>
Sent: Wednesday, 5 March 2025 10:51 AM
To: s 22(1)(a)(ii) @pmc.gov.au>; s 22(1)(a)(ii) @pmc.gov.au>
Subject: FW: PM authority for public consultation [SEC=OFFICIAL]

OFFICIAL

Hi both,

Do you know what letter s 22(1)(a)(ii) may be referring to? Even if not, grateful if one of you could draft up some high level points for me to send her.

Cheers,

s 22(1)(a)(ii) (she/her) | Legal Policy | **s 22(1)(a)(ii)**

From: **s 22(1)(a)(ii)** <[s 22\(1\)\(a\)\(ii\)@ag.gov.au](mailto:s 22(1)(a)(ii)@ag.gov.au)>
Sent: Wednesday, 5 March 2025 10:50 AM
To: **s 22(1)(a)(ii)** <[s 22\(1\)\(a\)\(ii\)@pmc.gov.au](mailto:s 22(1)(a)(ii)@pmc.gov.au)>
Subject: PM authority for public consultation [SEC=OFFICIAL]

OFFICIAL

Hi **s 22(1)(a)(ii)**

I remember seeing a letter from several years ago (perhaps 2022?) **s 47C & s 47E(d)**
s 47C & s 47E(d) I don't
suppose you have a copy you could send me, or just send me some points about when we need
to seek his authority?

Many thanks

s 22(1)(a)(ii)

OFFICIAL

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