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Fw: LEX 20664 Request to Draft a Deed - Broken Hill, NSW [DLM=Sensitive-Legal]

to s22

20/06/2013 12:33

**Sensitive-Legal**

This email contains information that is subject to legal professional privilege.

for action pls.

s22 | Director | Capital Works Section | Office for Aboriginal and Torres Strait Islander Health  
| Department of Health and Ageing | Phone:

— Forwarded by s22 i/OATSIH/Health on 20/06/2013 12:33 —

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Date: 3:18  
Subject: LEX 20664 Request to Draft a Deed - Broken Hill, NSW [DLM=Sensitive-Legal]

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Please find attached an amended version of the Funding Agreement in relation to this matter.

I have used the version of the funding Agreement previously entered into for the Narooma matter. I have amended the Funding Agreement in mark-up so that you can see the changes that have been made. s22

In relation to the specific issues raised in your email:

- Clause 36 of the proposed Funding Agreement deals with termination of the Narooma Funding Agreement and the use of those funds for the Broken Hill Project;

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From: s22 /OATSIH/Health  
To: s22 /OATSIH/Health@Health.gov.au, s22  
OATSIH/Health@Health.gov.au  
Date: 22/05/2013 17:04  
Subject: Request to Draft a Deed - Broken Hill, NSW [SEC=UNCLASSIFIED]

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**Background:**

On 30 June 2010 the Commonwealth executed an OATSIH Capital Works Funding Agreement (refer attached) with Health Administration Corporation (NSW Health) to provide a funding contribution of \$2 million (GST exclusive) towards the construction of a new primary health care facility in Narooma, NSW (the Narooma project). It was intended that the new facility, once completed, would be owned and operated by Katungul Aboriginal Corporation Community & Medical Services (Katungul). The Funding Agreement granted consent from the Commonwealth to the sale of the existing property owned by Katungul as this had previously been purchased using funds from ATSIC. The Commonwealth's consent was conditional upon the proceeds of the sale of the existing property contributing to the overall project funds. Further, the Funding Agreement required the State and Katungul to enter into a three-way Purposes Deed with the Commonwealth. Payment of \$2 million was made upon execution of the Funding Agreement. The Project Period expired on 30 June 2012 and no variations have been entered into to date. No Commonwealth funds have been expended by NSW Health.

The initial progress of the health clinic was slow due to the lack of suitable sites in and around Narooma and complexities negotiating land tenure with the local land council. Due to subsequent concerns with Katungul's governance and financial administration practices a special administrator was appointed by the Office of the Registrar of Indigenous Corporations to Katungul in December 2011. The capital works project was subsequently put on hold to mitigate further risk. The period of special administration ceased in September 2012, and while services from the existing property are

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currently being provided, both NSW Health and OATSIH do not consider the organisation currently has the capacity to proceed with managing a significant capital works project.

NSW Health has written to OATSIH seeking agreement to the redirection of \$2 million from the Narooma project towards a capital works project in Broken Hill. The project is estimated to cost \$5.2 million with NSW Health providing \$2 million towards the total funding. As yet, a source for the remaining balance of funds has not been confirmed.

A decision regarding the transfer of the funding amount from the Narooma project to the proposed Broken Hill project is currently under consideration by the Minister. Should the Minister agree to the change in purpose it is proposed to terminate the current Funding Agreement and enter into a new Funding Agreement with NSW Health. In order to provide NSW Health with sufficient time to negotiate a funding agreement with the Broken Hill service provider prior to end of financial year could you please draft a Deed that captures the following:

- Termination of the original Funding Agreement and the removal of all obligations on NSW Health and Katungul regarding the Narooma project.

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To minimise the complexity associated with negotiating a new agreement with NSW Health (as time is of the essence) it would be useful if the terms and conditions for the Broken Hill project were similar to those in the Narooma Funding Agreement wherever possible (instead of using the ESFA on this occasion). I have attached a Word version of the Narooma Funding Agreement below, as well as the latest OATSIH Capital Works Funding Agreement, as amended by LSB (s22) on 14 May 2013.

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C. The Commonwealth and the State are parties to an agreement relating to the provision of a Health Clinic in the Narooma NSW region dated 30 June 2010 (Narooma Funding Agreement). The Commonwealth and the State have agreed to terminate the Narooma Funding Agreement and for the funds provided under that Agreement to be used for the purposes set out in this Agreement on the terms contained in this Agreement.

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This document was released under the Freedom of Information Act 1982

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(d) Narooma Funding Agreement means the agreement relating to the provision of a Health Clinic in the Narooma NSW region dated 30 June 2010; and

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36.2 The Parties agree that the Narooma Funding Agreement is terminated with effect from the Effective Date.

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36.4 The State warrants that on the Effective Date no person has a Claim against the State regarding the performance of the project described in the Narooma Funding Agreement.

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36.5 The Parties acknowledge that all funds provided to the State by the Commonwealth pursuant to the Narooma Funding Agreement are to be treated as Funds provided by the Commonwealth pursuant to this Agreement.