

Native Title (Federal Court) Regulations 1998 1998 No. 272

EXPLANATORY STATEMENT

STATUTORY RULES 1998 NO. 272

ISSUED BY THE AUTHORITY OF THE ATTORNEY-GENERAL

Native Title Act 1993

NATIVE TITLE (FEDERAL COURT) REGULATIONS 1998

Subsection 215(1) of the *Native Title Act 1993* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Subsection 4(1) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make regulations, the regulations may be made before the Act comes into operation. Subsection 4(2A) of the *Acts Interpretation Act* provides that regulations made in these circumstances take effect on or from the date 'specified' in the regulations, provided that that date is not earlier than the date on which the Act concerned comes into operation.

The *Native Title Amendment Act 1998* (the Amendment Act) will commence on 30 September 1998, except for Part 1 of Schedule 3 which commences on 30 October 1998.

Under the current Act, applications for a determination of native title or compensation are lodged with the National Native Title Tribunal which has the function of making determinations for unopposed or agreed applications, with opposed applications being referred to the Federal Court for a determination. The Amendment Act provides for applications for a determination of native title or compensation to be made to the Federal Court, and for the Federal Court to decide all applications for a determination of native title or compensation.

The purpose of the proposed regulations is to set out the forms to be used for making applications to the Federal Court for a determination of native title, for a revised determination of native title or for a claim for compensation for extinguishment or impairment of native title rights and interests.

Details of the regulations are as follows.

Regulation 1 - Name of regulations

Regulation 1 states that the regulations are the *Native Title (Federal Court) Regulations 1998*.

Regulation 2 - Commencement

Regulation 2 provides that the regulations commence on 30 September 1998, the day on which the Amendment Act, other than Part 1 of Schedule 3, commences.

Regulation 3 - Definition

Regulation 3 provides that in the regulations Act means the *Native Title Act 1993*.

Regulation 4 - Forms

Regulation 4 indicates that where the regulations refer to a form by number, this is a reference to the form in Schedule which has that number.

Regulation 5 - Native title and compensation application forms

Subregulation 5(1) provides for the forms to be used when making the following applications under paragraph 61(5)(a) of the Act:

- * a native title determination application for a claimant - Form 1;
- * a native title determination application for a non-claimant - Form 2;
- * a revised native title determination application - Form 3;
- * a compensation application - Form 4.

All forms are contained in the Schedule to the Regulations.

Subregulation 5(2) provides for the information to be included in the application for the purposes of paragraph 61 (5)(c) of the Act and for the documents to accompany the application for the purposes of paragraph 61(5)(d) of the Act.

Regulation 6 - Notification of potential party in relation to an application

Regulation 6 provides that a notice of an intention to become a party to an application under paragraph 84(3)(b) may be in accordance with Form 5. The Schedule contains the forms for the purposes of the Act and regulations.

Form 1 - Native title determination application-claimant application

Form 1 sets out the information and accompanying documents that are required for a claimant application. Schedules M to T allow additional information to be included in the application which is not prescribed but will be relevant when the Native Title Registrars considers the claim for registration under section 190A of the Act.

Form 2 - Native title determination application-non-claimant application

Form 2 sets out the information and accompanying documents that are required for a nonclaimant application for a determination of native title.

Form 3 - Revised native title determination application

Form 3 sets out the information and accompanying documents that are required for a revised native title determination application.

Form 4 - Compensation application

Form 4 sets out the information and accompanying documents that are required for a compensation application. Schedules O to Q allow additional information to be included in the application that is not prescribed by the Act but may be relevant to the compensation claim.

Form 5 - Notice of intention to become a party to an application

Form 5 provides a form that may be used to give notice of intention to become a party to an application under paragraph 84(3)(b) of the Act.

